

# SPORT AND THE SOCIAL CONTRACT

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## Abstract

This thesis is a philosophical exploration of the idea that sport in an abstract sense is an idealised form of social contract. At the same time it recognises that social contracts themselves are abstractions. Thus, from the outset it is made clear that the thesis will also analyse the kind of comparison being made by the suggestion that sport is *like* a social contract. The social contract is an analogy. Similarly, the likening of sport to a social contract is also an analogy. At an appropriate stage in the thesis the use of analogy is examined; in particular the use of argument by analogy as a form of rhetoric. The role of metaphor, analogue, and analogous reasoning in science is presented and the criteria established by which argument from analogy is assessed. The second half of the thesis contains three case studies that evaluate the strength and weakness of two commonly used analogies concerning sport and the social contract. The first examines the case that fair play equates to justice and that sport represents a perfect illustration of a Rawlsian practice where the conditions of the implicit contract are determined behind a 'veil of ignorance'. The second examines the contention that games and sports are *prima facie* examples of prisoners' dilemma-structured situations and that interrogation of this analogy reveals useful insight into why athletes cheat and how best to try to prevent illegal practices such as the use of performance-enhancing substances in sport. The third explores the role of the cricket umpire as an exemplar of Hobbes' sovereign. These three case studies draw attention to the difficulty with determining whether sport or social contract theory is the familiar case. Is an analysis of sport providing a greater understanding of social contract theory or is it the other way round? This secondary analysis expands the reach of the thesis yet further through a consideration of the key constituents of both sport and social contracts that are discussed in order to make such a comparison. These constituents are rules, morality, selfishness, competition, fair play, justice, and rationality, amongst other things. The thesis is contextualised at the start and finish by the use of the conventional wisdom in sport history that sport is a product of modernity. Social contract theory is a prime exemplar of Enlightenment thinking and is representative of modern political philosophy as it developed during the same one-hundred-and-fifty year period as the formation of modern sport. The likening of sport to a social contract is, thus, not merely a philosophical thought experiment, but also has implications for the established history of sport that focuses on the appropriation of sport and its organisation by the emerging middle classes in the nineteenth century. Some comments on the potential combination of philosophy and history in a future study are made in the concluding chapter.

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# 1

## Introduction

This thesis in its broadest sense concerns fair play in sport, or to be more exact the concept or idea of fair play. At this point it is sufficient to state that fair play, as discussed here, refers in some way to notions of right conduct in sport. That is, the very idea of fair play carries with it certain assumptions of moral norms. It is, what can be called, an evaluatively laden concept. To say that such-and-such an act is fair is to do more than just describe the kind of action; it is also to commend that act as being good or right. Interestingly, it is one of the first concepts or ideas that children understand as having some sort of moral weight or force. To proclaim in a most despondent way, “that’s not fair” is also a judgement that something is wrong with what has happened as well as a demand that the injustice be corrected. It is my daughter’s primary weapon in her attempts to get her own way. Its use is versatile and broad-ranging. In its bluntest state, it simply means “I want  $x$ ; you won’t let me have  $x$ ; I ought to have what I want”. This use is countered equally bluntly along the lines, “I make the rules; you follow them”. When a sharper, more precise, use is made things get difficult: “you let  $p$  have  $x$ ; I see no difference between  $p$  and  $q$ ; why can’t  $q$  have  $x$ ?” What children learn very quickly (even if their application of this fact takes more time to master) is that adults *must* respond to such a charge: to be unfair is clearly wrong. And having realised this moral fact, they wield their new-found weapon mercilessly at every opportunity.

The idea of fair play is also, in part due to its evaluative use, an essentially contested concept. Its core meaning, its nature, its essence, is up for debate. In fact, when the concept is interrogated at even the most basic level it is difficult to be clear and

succinct about its meaning; “despite the prevalence and intuitive force of the term *fair play*, its precise content is much debated”.<sup>1</sup> There seems to be little problem with giving examples of the appropriate use of the concept: a fair way to divide up a cake between my children would be to cut it into equal-sized portions. The problems arise when the attempt is made to extrapolate from such examples a consistent and useable definition general enough to encompass all examples but precise enough to give the concept some practical use. In its broadest sense, “fair” simply means something like acceptable or permissible (or at the very least, to be expected), as in “all’s fair in love and war”. In a more precise manner, “fair” clearly implies equal treatment or equal provision or equal opportunity. Yet, the extent to which equality is present as a constitutive feature of fairness varies enormously from case to case. In golf, for example, putting-up with the vagaries of the bounce and roll of the ball on hard-packed fairways, off sprinkler-heads, stones, twigs, un-replaced divots, or an opponent’s ball is just part of the game:

Rule 19 is the dwelling place of one of the most peculiar terminological carryovers from our golfing past: the expression *a rub of the green*, referring to the accidental collision of a ball with something outside the match.<sup>2</sup>

The only concession to equality in the application of the *rub of the green* is that the rule applies equally to all participants: bad luck is something that can affect all of us and it is not within the remit of the rules of golf to attempt to eliminate luck from the game. Bad luck and good luck, then, in equal or unequal doses for the individual player or between players is totally fair in golf (fair, here, meaning something akin to ‘within the rules of the game’).

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<sup>1</sup> R. Butcher, and A. Schneider, ‘Fair Play as Respect for the Game’, in *Journal of the Philosophy of Sport*, XXV, 1998, p.1.

<sup>2</sup> K. G. Chapman, *The Rules of the Green: A History of the Rules of Golf*, London: Virgin Books, 1997, p.137.

This thesis will not explore the complexities of definitional attempts at fair play beyond these opening comments, although in a moment certain aspects of fair play will be considered in more detail; a significant amount has been said elsewhere already.<sup>3</sup> That is to say, this thesis will not address the metaethical question, “what does fair play mean?” But three things of importance to this thesis are worth noting at this stage that arise from the brief examples given above.

First, in the case of my daughter’s use of “that’s not fair” as a moral sword, the second-order question arises from her *petitio principii*. Why does it *have to be* fair? Why does *anything* have to be fair? In fact, on occasions when my tolerance threshold is low, I often respond to my daughter, “Life isn’t fair. Get used to it.”

Second, where fairness in some respect refers to agreement with or abiding by the rules, further questions need to be asked, “who makes the rules?” and “which rules are the right ones to follow?” Immediately following these comes the third consideration and the most difficult question of all, “why should I follow the rules anyway?” (especially when and where being fair is not in my interests).

These three issues lie at the heart of this thesis; they concern authority, legitimacy, and law-abidance. In response to the first potential rejoinder to my daughter, of course life does not have to be fair at all (and rarely is if we mean by that that we are all dealt a different hand). It is to go one step further to suggest that life, in essence, is totally unfair; that in its ‘natural’ state it is not governed by any moral order and is subject almost entirely to the vagaries of chance. Indeed this is often the starting

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<sup>3</sup> See in particular: R. Butcher, and A. Schneider, ‘Fair Play as Respect for the Game’, in *Journal of the Philosophy of Sport*, XXV, 1998, 1-22; S. Eassom, ‘Fair Game: Rules, Rawls and the Limits of Contractarian Ethics in Delineating the Morality of Game Playing’, Proceedings of the Philosophical Issues in Sport and Physical Education Conference, Cardiff: 17-19 March, 1995, 27-39; S. Loland, *Fair Play in Sport: A Moral Norm System*, London: Routledge, 2002; P. C. McIntosh, *Fair Play: Ethics in Sport and Education*, London: Heinemann Educational Books, 1979; R. Simon, *Fair Play: The Ethics of Sport*, Boulder, Colorado: Westview Press, 2<sup>nd</sup> Edition, 2004.

point – this supposed ‘state of nature’ – for a discussion on whether or not and how it could be different; how we could artificially create a fairer world. The assumption, immediately, is that a fairer world is a better world. Thus, one of the first difficulties to be overcome in any definitional attempt at ‘fair play’ is the inseparability of the descriptive elements from the evaluative elements of the use of the concept.<sup>4</sup>

The second set of considerations are more pertinent to this thesis: is playing fair just about following the rules? Who makes the rules? Are the rules themselves fair? Is there any way of getting beyond the rule-maker to determine what good rules ought to be? What if I disagree with the rules? How are the rules maintained? Who maintains them? What if they’re broken? The third set of considerations goes even further: why should I play fair or follow the rules, even when the rules in general are accepted?

In the context of sport, the starting point for an answer to these questions has often been the attempt to provide an internal ethic for sport, or what might be called an internal morality of sport. This has built upon the traditions of moral philosophy, particularly from the seventeenth century onwards, that have questioned the existence of, “requirements or *demand*s that are binding on all rational persons, even though the conduct demanded may lack any necessary connection to the good of the person obligated”.<sup>5</sup> This is a fundamental question of moral philosophy:

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<sup>4</sup> This thesis does not deal with the related issue of whether or not a more moral world is a better world or *vice versa*. As will be seen, the concept of fairness will be considered in a more limited sense.

<sup>5</sup> S. Darwall, *The British Moralists and the Internal ‘Ought’: 1640-1740*, Cambridge: Cambridge University Press, 1995, p.2. Darwall notes that the idea that modern philosophy (post-17<sup>th</sup> Century) differs from ancient philosophy in respect of the idea of *demandingness* is largely attributable to the legacy of Henry Sidgwick and his *Method of Ethics*. See also, N. White, ‘The Imperative, the Attractive and the Repulsive: Sidgwick and Modern Views of Ancient Ethics’, in B. Schultz (Ed.) *Essays on Henry Sidgwick*, Cambridge: Cambridge University Press, 1992, pp.311-330.



what makes morality obligatory? More than asking merely of what universal bindingness consists, the question digs deeper than this. It is asking about the very nature of bindingness. What is it to be (duty) bound, morally required, *obligated* to do anything? What does *ought to do* actually mean? An exposition of this “internal ought”, as Darwall calls it, takes moral philosophy into an area that is generally termed *normativity* and a consideration of a response to these questions that establishes a justification for “bindingness” is often referred to as *internalism*. The significance for a philosophy of sport is immediately apparent: why *ought* we to play fairly? Is our obligation to obey the rules of the game a *moral* obligation? Is there an inherent morality of sport grounded in a broad internalism?

A marker can be put down here for the first point of intersection between the issues raised so far and the beginnings of modern moral philosophy in the seventeenth century. This period will be returned to repeatedly in the course of this thesis: first because of the chronological coincidence of the origins of modern sport with this emergence of a new way of thinking about morality and second because of the relevance of certain philosophies and philosophers from this period for the study of fair play in sport. To illustrate this further, albeit briefly at this point, the following analogous comparison between modern moral philosophy and the morality of sport can be made.

Ancient theories of ethics, such as those of Plato or Aristotle,

Assumed a *unified practical object*, the *good*, which, because it is uniquely given *as end*, structures all rational deliberation, and whose status as end is guaranteed *metaphysically*, since it is intrinsic to human nature or part of the basic structure of reality.<sup>6</sup>

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<sup>6</sup> S. Darwall, *The British Moralists and the Internal ‘Ought’*, p.2.

For Aristotle in particular, practical normativity can only be understood through relation to the final 'good', the 'good for man'. However, in the absence of Aristotle's teleological metaphysics a harmony of individuals' 'goods' is not theoretically or practically guaranteed. In civil-war-torn seventeenth-century Britain the consideration of the possibility that individual person's goods might be in deep conflict with each other was both highly plausible and urgent. As Darwall states, the question could now be raised,

What should a person do if his good does conflict with those of others or, more to the point, with demands general compliance with which is mutually advantageous? Should he promote his own good? Or that of others or of all? More specifically, should he comply with mutually advantageous demands even when it is contrary to his good to do so? *These are genuine questions only if practical normativity is a different thing from relation to the agent's good (emphasis mine).*<sup>7</sup>

Thus, a key point in this thesis is clear from the outset: modern conceptions of morality have developed as a solution to the problems arising from conflicts of interest; in particular to conflicts of interest that arise amongst people who cannot be expected to share a common set of beliefs (such as those provided by a religious discipline).

The possibility of normative status is a starting point for one of the most influential thinkers in contemporary sport philosophy, Robert Simon.<sup>8</sup> His general thesis is that, "sport has a kind of internal morality that is tightly (perhaps conceptually) connected with the structural features of athletic competition".<sup>9</sup> In order to make

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<sup>7</sup> S. Darwall, *The British Moralists and the Internal 'Ought'*, p.3-4.

<sup>8</sup> Simon's position is stated most succinctly in his Presidential Address for the Philosophic Society for the Study of Sport in 1999, published as R. Simon, 'Internalism and Internal Values in Sport', *Journal of the Philosophy of Sport*, XXVII, 2000, pp.1-16. His book *Fair Play: The Ethics of Sport* further expands his thesis of broad internalism.

<sup>9</sup> R. Simon, R. *Fair Play: The Ethics of Sport*, p.45.

this claim, Simon distinguishes between external and internal ethics of sport, dismisses narrow forms of internalism, such as formalism and conventionalism, and derives a broad internal ethic of sport.

Simon contrasts internalist theories with a general position he calls *externalism*. According to this latter position, sport does not have a special set of values; it merely reflects or reinforces the values already prevalent in the culture or society in which sport is practiced. In a crude sense, critiques of sport that emphasise sport's reflection of capitalist values, such as intense competition and rivalry, are broadly externalist. The important point here is that under any externalist analysis, fair play has no normative status. *Internalism*, on the other hand, represents the position that sport expresses a set of values of its own that are logically derived from the nature of sport, that provide a moral basis for the judgement of right and wrong actions in sport, and that might be at odds with values dominant in culture.

In its narrowest sense, internalism is exemplified by formalist approaches to rules and laws in sport. *Formalism*, as its name suggests, represents the position that characterises games primarily in terms of their formal structure, usually in terms of their constitutive rules.<sup>10</sup> That is, winning and losing, making a move or a play, cheating, are all only comprehensible in the internal context of the constitution of the game. Moreover, what is fair is what is legal. The converse is also the case: the moves and plays of the game, winning and losing, are meaningless and, indeed, unintelligible outside of the constitutive rules of the game. The attraction of formalism lies in its supposed precision regarding right and wrong conduct in sport.

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<sup>10</sup> See W. J. Morgan, 'The Logical Incompatibility Thesis and Rules: A Reconsideration of Formalism as an Account of Games', *Journal of the Philosophy of Sport*, XIV, 1987, pp.1-20; and his more detailed account in, W. J. Morgan, *Leftist Theories of Sport*, Chicago: University of Illinois Press, 1994.

You cannot logically win the game at the same time as breaking one of its constitutive rules.

Much of the literature has focused on whether formalists have provided an adequate definition or characterization of games and sports, or of such derivative notions as “winning a game,” but formalism also has normative implications. Perhaps the best known of the normative implications of formalism is the incompatibility thesis, which denies that cheaters can win competitive games or sports. According to this thesis, since cheaters violate the rules, they fail to make moves within the sport and hence fail to play it. Since one can win the game only by playing it, and since cheaters do not play, cheater’s can’t win. In addition, formalists tend to characterize sportspersonship as playing fair, where playing fair is understood as respecting the letter and perhaps the spirit of the rules.<sup>11</sup>

Strict formalism is easily shown up to be too narrow an account of the relationship between moral obedience and the rules. In chapter seven of this thesis, the case from cricket of Dean Jones’ illegal run-out by Gordon Greenidge in the 1991 Test series between Australia and the West Indies illustrates the difficulty with pure formalism: a formalist account of the morality of sport sometimes allows as ‘legal’ what we would intuitively feel is incorrect, improper, unfair, or even immoral.

Cricket is a fine example of a sport that is seen by its advocates as first and foremost an ethical practice. No better illustration of this exists than the accepted practice of ‘walking’. Nowhere in the Laws of cricket does it state that a batsman should voluntarily give up his wicket because he believes himself to be ‘out’. Indeed, an umpire cannot rule on the decision of whether or not a player is ‘out’ unless at least one member of the fielding side appeals to the umpire for a decision.<sup>12</sup> However, there is an unwritten code of conduct in cricket that expects a batsman who has

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<sup>11</sup> R. Simon, ‘Internalism and Internal Values in Sport’, pp.2-3.

<sup>12</sup> The exact wording of the various laws pertaining to this example are given in chapter seven where a fuller account of umpiring decisions is examined.



'edged' the ball, that has subsequently been legally caught, to leave his crease and walk back to the pavilion without waiting either for an appeal or for a decision from the umpire.<sup>13</sup> The practice has arisen over the decades in part as an honourable practice to assist umpires with tricky decisions that might compromise their judgement but largely in the belief that if a player knows he is legally 'out' then, as a gentleman, he should not require either an appeal or a dismissal. In reality, 'walking' is a hotly contested matter. The great West Indian all-rounder, Sir Garfield Sobers, recounts in his autobiography an incident during a Test Match involving the England player Basil D'Oliviera who, at an early stage in his innings, refused to walk when the West Indian players indicated that he had been caught. They were in no doubt that D'Oliviera must be aware that he had played the ball. The umpire turned down the appeal. D'Oliviera went on to score eighty-eight despite constant 'sledding' from the opposing players, none of whom applauded his innings as he left the field.<sup>14</sup>

Sobers was well known for his exemplary conduct, even for giving up his wicket, whereas players such as the Indian batsman Sunil Gavaskar were known for emphatically not doing so.<sup>15</sup> Some players maintain a rule of thumb not to walk in the first over (at one extreme) or until they've scored at least a half-century (at the other). At a more general level, Yorkshiremen have always been said to operate under their own codes of conduct; Australian batsmen supposedly rarely walk; Indians and Pakistanis, reputedly, never do.

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<sup>13</sup> The fact that a batsman can be re-called if he leaves his crease ("walks") under the misapprehension that he is legally out when he is not only further complicates the issue. This also will be discussed in chapter seven.

<sup>14</sup> G. Sobers (with B. Scovell), *Twenty Years at the Top*, London: Macmillan, 1998, p.126.

<sup>15</sup> The most notorious incident involving Gavaskar occurred also against the West Indies in the Test Series of 1983-84 when Gavaskar hit a record 236-not-out (breaking Donald Bradman's long-standing mark of the time of twenty-nine test centuries) after being caught at slip for nought on his second ball, but refusing to walk. The West Indian team unofficially declined to recognise his achievement or congratulate him.

What seems to be in play here is the issue over the moral salience of a supposed 'ethos' of the game.<sup>16</sup> Theorists dissatisfied with the narrow account of the morality of game-playing presented by formalism have argued that formalists ignore these implicit 'conventions' and unwritten laws that form an integral part of the whole. *Conventionalism* attempts to account for the ethical and unethical practices in the game that are not dealt with by the rules without resort to the logical necessity that, because they are outside the formal legal application of the law, 'the game' has nothing to say about their desirability. Golf suits more the legal positivist's mindset, whereas cricket presents such formalists with numerous examples of 'legal' but 'illegal' actions.

It would be easy at this point to dismiss formalism, and look to conventionalism, on these grounds alone: issues of sportspersonship go beyond conformity to the formal rules of the game. But this would be too quick. First, it must be re-iterated that the formalist stance would simply be that the requirement to walk is above and beyond the law. Until the umpire rules the batsman 'out' on appeal from the fielding team, the batsman is 'not-out'. It is factually as well as legally incorrect to say that the batsman who edges to the wicket keeper but is not given 'out' by the umpire is *really* 'out', but not *actually* 'out'.<sup>17</sup> There is a curious ambiguity about the logical incompatibility thesis: the laws or rules here clearly identify the batsman as 'out' and, if he is 'out' then, he cannot go on to score more runs. Yet, he is legally 'not-out' because the decision to dismiss on appeal can only be made by the umpire. These issues will be returned to in more detail in chapter seven. At this point it is suffice to say that formalism appears to lack the normative resources to address

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<sup>16</sup> See F. D'Agostino, 'The Ethos of Games', *Journal of the Philosophy of Sport*, VIII, 1981, pp.7-18.

<sup>17</sup> For more comment on this, chapter seven discusses Richie Benaud's 'philosophy' of walking.

many of the curious and dense moral problems that arise in sports. However, the *normativity* of sporting practices is what is in question here so this, in itself, cannot be a knock-down argument against formalism. The formalist (in the form of a legal positivist such as H. L. A. Hart) might counter that sport would get into a terrible mess if we assume that the laws of the game must reproduce or satisfy certain demands of morality. The laws are all an umpire has to work with.

A more significant challenge for formalism (and importantly for any conventionalist alternative) exists when it is considered how to deal with changes of rules. How and when does a rule get changed? And, more importantly, according to what criteria can any rule be deemed good or bad such that there is a requirement for it to be changed. Formalism, seemingly, does not allow for an idea of the game outside of that defined by the constitutive rules of the game. There is no way of getting between the rules and the game to determine what the game *really* is in such a way that the rules can be judged. The history and practice of cricket, again, provides ample grist for this mill.

The Laws of cricket, encompassed in the cricket codes of various years, have been changed on numerous occasions since the first official governing body Code of 1784 (laid down by the newly formed Marylebone Cricket Club). The first significant challenge to the laws began in the early 1800s and led, in 1835, to a revised Code taking into account the new laws allowing round-arm bowling.

There was a band of paid players getting more and more annoyed with the Marylebone Club and growing anxious to run games in their own way. The main battlefield was Rule 10 of the Laws of Cricket which defined fair bowling. The trouble, as far as the bowlers were concerned, was that batsmen were on top. The most prolific run-getters were Beldham and Fennex, Lambert and Budd: centuries were beginning to become common-place. Batsmen no

longer stayed inside their creases playing defensively; they advanced out of them and swung the bat as they went.<sup>18</sup>

The MCC had attempted to redress the balance in favour of the bowlers by making the target bigger. In 1798 the stumps had been increased in height and width to twenty-four inches by seven inches. After a particularly pronounced glut of run-scoring over several seasons they heightened them by two inches in 1819. Within four years, in 1823, they had grown them to twenty-seven inches height by eight inches width. It remained, as has often been the case, for players to manipulate the laws to their own ends and, whilst remaining inside the law, threaten the spirit of the law. This the bowlers did by developing more and more elaborate methods of delivering the ball from a greater height without technically bowling 'over-arm'. Round-arm bowling became the new technique and its effect was immediate. David Harris, the finest of the Hambledon bowlers, "would bring it from under the arm with a twist, nearly as high as his armpit, and with his action push it, as it were, from him".<sup>19</sup> The increase in speed astounded all who witnessed it. Some jeered and booed any round-arm use and numerous games ended in uproar. As Lewis notes,

the only hope of order at this moment, when some players were trying to change the nature of the game, was to have a central authority, one body of law-makers. . . . the Marylebone had become that because they made the Laws.<sup>20</sup>

The MCC did act, but in the first instance it was to attempt to drive round-arm bowling from the game. When they finally acquiesced in 1835, the change to Rule 10 inadvertently gave rise to a new concept,

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<sup>18</sup> T. Lewis, *Double Century: The Story of MCC and Cricket*, London: Hodder & Stoughton, 1987, p.72.

<sup>19</sup> Cited in T. Lewis, *Double Century: The Story of MCC and Cricket*, p.73.

<sup>20</sup> T. Lewis, *Double Century: The Story of MCC and Cricket*, p.74.



The ball must be bowled, and if it be thrown or jerked, or if the hand be above the shoulder in the delivery, the umpire must call "No Ball".<sup>21</sup>

The change only clouded the issue and created a new headache for the umpires. Whilst the old amateurs preferred to stick to elite underarm games held in private, the leading exponents, gentlemen and players alike, wanted a more skilled, faster, more aggressive game. In 1864, the MCC finally gave in and legalised over-arm bowling.

There appears to be a common feature of the normativity of sports ethics at work, then, so far in the consideration of these examples from cricket, which presents two difficulties for both a formalist and a conventionalist account. On the one hand formalism cannot allow for (what Dworkin argues are) legal principles that exist in addition to the rules or laws themselves.<sup>22</sup> On the other hand, neither formalism nor conventionalism helps in difficult situations where the rules themselves are threatened and an appeal to authority cannot yield a non-stipulative response. In both cases, certain principles are assumed to exist that are presupposed by the legal system and are required to make sense of it – principles such as that of fair play.

Simon argues that the mainstream of moral philosophy in the study of sport appears to have shifted from a more formalist position to one of broad internalism whereby appeal is made, in cases of moral adjudication, not just to the laws or rules, but to the norms or principles deemed to be internal to the idea of sport in general or of specific sports in particular. Such internalists point to the kind of considerations that, they argue, need to be made if sporting practices are to make

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<sup>21</sup> T. Lewis, *Double Century: The Story of MCC and Cricket*, p.76.

<sup>22</sup> R. Dworkin, *Taking Rights Seriously*, London: Duckworth, 1978.

any sense (at all). Schneider and Butcher sum up the broad internalist position when they state,

If one honors or esteems one's sport . . . one will have a coherent framework for arbiting between competing claims regarding the fairness . . . of actions.

And further on,

the idea of the interests of the game provide a means for judging one's own action in relation to the sport . . . Taking the interests of the game seriously means that we ask ourselves whether or not some action we are contemplating would be good for the game if everyone did that.<sup>23</sup>

A critical difference between internalism and conventionalism is that the norms or principles underpinning our judgements about right and wrong conduct in sport are not mere conventions, nor are they moral norms imported from some external system. In fact, they may be instrumental in critiquing the conventions that exist as part of the ethos of the game, such as 'sledging' in cricket, for example. Internalism is still open to the requirement established earlier in this chapter for an explanation of normativity that avoids the metaphysical complications of Aristotelian ethics and enabling the idea of games and sports having their own interests independent of those of human agents. This is a stringent requirement as later chapters of this thesis (five, six and seven) demonstrate to be the case.

A specific application of a broad internalist position applied to sport has been provided by John Russell in the case of baseball umpiring.<sup>24</sup> Russell sets out to

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<sup>23</sup> R. Butcher, and A. Schneider, 'Fair Play as Respect for the Game', in *Journal of the Philosophy of Sport*, XXV, 1998, pp.9/11.

<sup>24</sup> J. Russell, 'Are Rules All an Umpire Has to Work With?', *Journal of the Philosophy of Sport*, XXVI, 1999, pp.27-49.

consider the nature and limits of umpires' discretion in interpreting and applying the rules of the games they adjudicate. In particular, he questions whether the umpire has the scope to apply 'higher' principles in applying the rules of the game when and where a strict formalist application of the rules would lead to a decision that intuitively goes against the spirit of the game that the rules explicitly set out to maintain. In doing so he seeks to question the idea, expressed by one well-known baseball umpire in the USA, that "rules are all an umpire has to work with".<sup>25</sup>

Russell argues that sports codes are too indeterminate to deal with all potential situations and that umpires are sometimes faced with practical and moral necessities to exercise their discretion where the rules themselves are insufficient to guide them. It is thus imperative that the practitioners of any sporting game attempt to understand and interpret the rules of the game, using certain underlying principles, in order, "to generate a coherent and principled account of the point and purposes that underlie the game, attempting to show the game in its best light".<sup>26</sup> Russell lists, and attempts to justify, four "principles of adjudication in sport":<sup>27</sup>

1. Rules should be interpreted in such a manner that the excellences embodied in achieving the lusory goal of the game are not undermined but are maintained and fostered.

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<sup>25</sup> A detailed exposition of Russell's argument will not be undertaken here, in part because it is mirrored by the comparative analysis of cricket umpiring in chapter seven. Russell's original paper was reviewed (anonymously) by me as part of the editorial process of the *Journal of the Philosophy of Sport* in 1998. This was during the period of research and writing of this thesis. My reviewer's comments to Russell were informed by the work for this thesis and both his paper and this thesis benefited from a reciprocal exchange of ideas. A further opportunity to discuss the issue arose at the 1998 World Congress of Philosophy in Boston, during a session of the Philosophic Society for the Study of Sport in which I participated and to which Russell was invited to present a draft of his paper.

<sup>26</sup> J. Russell, 'Are Rules All an Umpire Has to Work With?', p.35.

<sup>27</sup> J. Russell, 'Are Rules All an Umpire Has to Work With?', pp.35-36.

2. Rules should be interpreted to achieve an appropriate competitive balance.

3. Rules should be interpreted according to principles of fair play and sportsmanship.

4. Rules should be interpreted to preserve the good conduct of games.

Russell's thesis, attractive and intuitive as it seems, nevertheless appeals to two underlying features of sports, one of them sport specific and one a general moral requirement. Both were mentioned at the outset. Broad internalism requires a notion of the integrity of sport that is more than just the 'spirit of the game'; it requires an idea or operational principle for sport, such as a concept of fairness or justice. It also requires us to address the issue of normativity, outlined earlier: a justification for 'bindingness'.

Simon identifies in the literature three approaches to the kind of underlying account of sport required by broad internalism. Perhaps the most dominant (and arguably the most influential, if not persuasive) has been the contractual account. The sports contest is seen as governed, not only by rules, but by an implicit social contract that has amongst its terms an agreement to play by the rules. The contract necessarily remains hypothetical but is argued for on the basis of being the rational agreement athletes would make under fair conditions of choice. For example, Pearson, in one of the earliest analyses in the sport philosophy literature of cheating in sport, argues that strategic fouling "destroys the vital agreement which makes sport possible".<sup>28</sup> Fraleigh dismisses the conventionalist account that allows such practices as the (supposed) good foul in basketball, and thus indicates that an underlying implicit social contract is in operation, when he argues that, "it cannot

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<sup>28</sup> K. Pearson, 'Deception, Sportsmanship, and Ethics', *Quest*, XIX, 1973, p.118.



be stated unequivocally that all participants agree to performing the good foul by agreeing to play basketball”.<sup>29</sup> Revisiting his work in the light of thirty years of debate over the formal account of rules and the ethos of sports, Fraleigh states the normative suppositions required by a broad internalist position in clear contractual language where agreement to abide by the rules is “implicitly necessary” in order to engage in sports,

- What is the agreement we make when agree to engage in sport?
- What constitutes cheating?
- What are the reasons that make cheating wrong?
- Is intentional violation of the rules always cheating?
- Should acts of intentional tactical rules violations be acceptable?<sup>30</sup>

Simon himself loosely supports a contractarian account of sport when he argues that rational and impartial athletes would not agree on a social contract for competitive sports that allows the use of potentially harmful performance enhancing drugs.<sup>31</sup> However, he qualifies his suggestion that a contractual account is more than just a heuristic device,

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<sup>29</sup> W. Fraleigh, ‘Why the Good Foul is Not Good’, *Journal of the Physical Education, Recreation, and Dance*, January, 1982, p.42. Fraleigh developed his ideas from this article into a full thesis on sports ethics, contained in W. Fraleigh, *Right Actions in Sports: Ethics for Contestants*, Champaign, Illinois: Human Kinetics, 1984.

<sup>30</sup> W. Fraleigh, ‘Intentional Rules Violations – One More Time’, *Journal of the Philosophy of Sport*, XXX, 2003, p.167.

<sup>31</sup> R. Simon, R. *Fair Play: The Ethics of Sport*, Boulder, Colorado: Westview Press, 2<sup>nd</sup> Edition, 2004.

Contractualists will need to build some account of the nature and point of competitive athletics into their specification of the initial situation under which hypothetical contracts are formed. . . . For example, the analysis of strategic fouling as a violation of the contract among athletes presupposes that the penalties for such acts are *punishments* designed to penalize rule violations rather than prices designed to set the cost for exercising an allowable strategic option.<sup>32</sup>

Notwithstanding this qualification, it can be noted that some form of social contract theory has been utilised by numerous authors in the case Simon identifies and that is most pertinent, the use of illegal performance enhancing substances. Chapter six of this thesis addresses this issue directly through the application of Hobbesian contractarianism and its modern use in game theory in the form of the Prisoners' Dilemma.

Earlier in this chapter a marker was put down for the first point of intersection between the issues raised so far and the beginnings of modern moral philosophy in the seventeenth century. The introduction of the political and moral philosopher Thomas Hobbes on to the stage at this moment provides a convenient point to return to the rationale hinted at earlier, but not expanded upon, that now sets the scene for the remainder of this thesis: the chronological coincidence of the origins of modern sport with this emergence of a new way of thinking about morality (that has become prevalent in contemporary sports ethics) and the relevance of certain philosophies and philosophers from this period for the study of fair play in sport. It is time to move on from this overview of the question of fair play and state more specifically the aims and direction of this thesis.

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<sup>32</sup> R. Simon, 'Internalism and Internal Values in Sport', p.9.

# 2

## History of Sport & the Social Contract

The previous chapter concluded with the claim that contractarian thinking has underpinned a great deal of the work of sports ethicists who claim a broad internalist foundation for moral judgements in sport. In order to explore this further, this thesis examines the view that sport is an ideal type (in the Weberian sense) of social contract. In doing so it draws upon the existing conventional wisdom of modern sports history in two ways. First, it accepts the notion that sport is a peculiarly modern phenomenon. Here, the concept of modernity is dealt with in the context of political philosophy and the transition from traditional ways of thinking about government and law to modern liberal democratic views, beautifully exemplified in the social construction of sport. Second, it accepts the established view of sport as an invasion of popular and aristocratic pastimes by the middle classes. Here, social contract theory is seen as being the political stance most symbolic of the new middle classes.

The thesis is set out in the following manner. A full explanation of social contract theory in its historical context will be given and the case made for how the essential feature of fair play in sport might be viewed as *just like* a social contract. The expression 'just like' a social contract implies that whilst it is similar to one it is not *actually* a social contract. Thus, the social contract is an analogue. The validity of the argument from analogy will be discussed as will the interesting polar views of whether social contract theory helps us to understand something about fair play in sport or, rather, fair play in sport helps us to understand something about social contract theory - the latter being the contemporary Rawlsian view. The analogy of



sport as a social contract will be assessed through consideration of two uses of the social contract as a conceptual device, called here the weak analogy and the strong analogy. In the penultimate chapter, the general advocacy of a broad internalism underpinning normativity in judgements concerning right and wrong conduct in sport will be put to the test with the use of numerous rich cases from the sport of cricket. Finally, an assessment will be made of the value and benefit of the social contract analogy for furthering our understanding of sport.

At this early stage it is essential to comment on the relationship between philosophy and history in this thesis. The fundamental questions that this thesis seeks to investigate are philosophical in nature, but they arise from a consideration of sport as a historically contingent social product. This is not a history thesis, yet the philosophical ideas draw upon historical evidence. Moreover, the historical framework within which the philosophical ideas have developed is taken to be the same framework within which modern sport has developed. A full and historically grounded study of the correlation between the political and philosophical ideas presented here and the emergence of modern sport is both possible and desirable and would complement and strengthen the general thesis. Whilst it cannot be undertaken within the parameters of this study, some comments need to be made in this opening chapter concerning the history of sport. To begin with, the scene needs to be set and certain taken-for-granted assumptions laid out.<sup>1</sup>

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<sup>1</sup> In the following pages strong and explicit use will be made of metaphor and analogy. Whilst it is recognised that this style of expression might not be entirely in keeping with accepted standards of thesis writing (where the scientific paradigms of precision, accuracy, and objectivity prevail), there is a serious academic point being made. Science relies almost entirely upon analogy, history no less so. The analogues used in this first chapter are intended to illustrate the impossibility of understanding historic processes without utilising metaphor. The case is made well by G. Lakoff and M. Johnson in *Metaphors We Live By*, Chicago: University of Chicago Press, 1981.



It is no longer an issue to claim that sport is a socio-cultural product. It has become something of a commonplace for sport studies' academics, notably sociologists and historians, to discuss sport as a cultural practice contingently located in time and place. Furthermore, the established 'history of sport' in Britain over the past forty years has focused broadly on the cultural factors and structural changes in society at large that have been instrumental in bringing about social progress, development, evolution<sup>2</sup> and have, thus, initiated corresponding structural change to sports and Sport.<sup>3</sup> Moreover, the epoch in which these analyses of sport(s) have been situated has begun with the eighteenth century and ended at varying points ranging from the close of the Victorian and Edwardian eras – the early 1900s – to the present day. The framing of sport's growth and maturation around the Industrial Revolution, from 1760 onwards, is just one analogue giving rise to the now taken-for-granted sobriquet that sport is a 'product' of 'modernity'. This thesis will be no exception, although it will give equal emphasis to the embryonic stage of the emerging creature in pre- and post- Civil War Britain, rather than beginning with its 'birth' in Georgian or Regency times. But, in so far as the arguments of this thesis are primarily philosophical, the historical markers set out present a setting for the story and are not the story itself. To begin with, though, the scene can most definitely be set drawing upon established histories of sport.

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<sup>2</sup> These terms are for example only and are used in full knowledge of their problematic nature. They are, nevertheless, the common parlance of some historians (footnotes 4, 5, 20, and 21 below). The metaphors of growth and development are certainly reproduced freely with talk of the 'birth' of modern sport and its subsequent 'coming of age'. I will play freely with such imagery at various points in this thesis.

<sup>3</sup> Forty years is not an arbitrary period. It is convenient that Peter McIntosh's *Sport in Society* was first published forty years ago in 1963. It is reasonable to see his blend of sociology and history as one of the first books of its kind in the English language, particularly as one of the first attempts at a coherent social history of sport. The wholly different but hugely influential *Beyond a Boundary*, by C.L.R. James, was also published in 1963. It is much more than a book about cricket and exemplifies the impact of C. Wright Mill's "sociological imagination" on the writing of history.

The least sophisticated of the many descriptive histories of sport written over the past thirty years treat sport as some sort of nomological dangler attached tangentially to the plumb line of history like an angler's tracer. The development of sport is seen as a bi-product of social change happening independently of sport itself. Sport develops as part of the cascade effect of the macro changes to social institutions flowing down to the micro level: for example, the steam locomotive is invented; railway transport grows; geographical mobility improves; mass spectatorship is enabled; therefore, sport becomes more popular. Other, more sophisticated, histories have emphasised the role of sports as much as producer as product of social and cultural change. At the very least, such social histories have identified the entrepreneurial motivations that have driven the development of railways (for example) alongside the development of sporting spectacles and emphasised their concurrent growth, rather than focus on one being causally dependent upon the other. Sport is not simply a product of the railways, public schools, increased leisure, and so forth. All these things are products of their time. Sport has 'happened' at this particular moment in history for the same reasons that these other social and cultural developments have 'happened'. Thus, two simple concomitant questions emerge. Are we studying history to find out something about sport? Or, are we studying sport to find out something about history? The answer (notwithstanding the naivety of the question) is obviously both.<sup>4</sup> The matching couplet of questions of relevance here in more than just a rhetorical sense

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<sup>4</sup> Questions concerning the philosophy of history can only be hinted at throughout. The two questions here are asked merely to point out that history must always begin with description, but that description cannot be predicated on a truth about history. In order to discuss history I must first describe it, but describing it already determines what it is that will be discussed. To paraphrase Wittgenstein's comments on language in the *Philosophical Investigations*, there is no way of using history to get between History and the world. History, then is no different from any other 'science'. If it attempts to be an incremental building-up of the true picture, adding the detail to an already sketched-out map, then history has ended (or it has become something else, such as cartography). It must ultimately be revisionary. To write history, then, is to write the world.



might be: is philosophy used to inform history, or is history being used to inform philosophy? The answer, once again, is both.

The new and more sophisticated discipline-defining social histories of sport have been distinctive in their organisation and exposition through their focus on key themes rather than mere chronology. After an initial gloss over the “origins” of our national sports and pastimes springing from common “roots”, Wigglesworth orders the text of the intriguingly named *The Evolution of English Sport* into chapters covering commercialisation, professionalism, and recreation.<sup>5</sup> Brailsford chooses to focus on the themes of patronage, spectatorship, leisure time, and the institutionalisation of sports.<sup>6</sup> Holt’s standard, *Sport and the British: A Modern History*, has large sections on amateurism and the public school ethos; rational recreation and the working classes; colonialism; and commercialism.<sup>7</sup> Only Birley’s *Sport and the Making of Britain* stands out because of its clear chronological ordering. But even here it is immediately apparent upon reading that Birley attempts to position sport as a significant social, economic, and political feature of cultural change in Britain since the Roman invasion.<sup>8</sup> Early histories of individual sports<sup>9</sup> written in the 1950s and 60s had largely given way by the 1980s to social

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<sup>5</sup> N. Wigglesworth, *The Evolution of English Sport*, London: Frank Cass, 1996.

<sup>6</sup> D. Brailsford, *Sport, Time and Society: The British at Play*, London: Routledge, 1991; *British Sport: A Social History*, Cambridge: The Lutterworth Press, 1992; *Some Factors in the Evolution of Sport*, The Lutterworth Press, 1993; *A Taste for Diversions*, Cambridge: The Lutterworth Press, 1999.

<sup>7</sup> R. Holt, *Sport and the British: A Modern History*, Oxford: Oxford University Press, 1989.

<sup>8</sup> D. Birley, *Sport and the Making of Britain*, Manchester: Manchester University Press, 1993; and the further two volumes in the trilogy, both published by Manchester University Press, *Land of Hope & Glory: Sport and British Society, 1887-1910* (1995); *Playing the Game: Sport and British Society, 1910-1945* (1996).

<sup>9</sup> For example, A. Lunn, *The Story of Skiing* (1952); O.L. Owen, *The History of the Rugby Football Union* (1955); R. Browning, *A History of Golf* (1956); E. Burke, *A History of Archery* (1958); R. Mortimer, *The Jockey Club* (1958).

commentary.<sup>10</sup> To understand the growth and development of sport in nineteenth century Britain is not only to understand sport, but also to understand nineteenth century Britain. As stated earlier, sport is not an adjunct to 'history'. It is not an epiphenomena. Yet, surprisingly few standard 'histories' contain reference to sport and sport history has only recently gained respectability within academic history departments.

Despite the current trends within academic and popular history for biography, the shift of the locus of concern from the universal to the particular, the narrative turn and the ethnographic urge, the desire to see and project 'the big picture' still drives much contemporary sport history. In this respect, this thesis fits with the conventional approach: it seeks to understand something about sport through an analysis of concepts, ideas, and themes germane to the development of modern society and parallel to the 'life' of modern sport. This is not a thesis about any sport in particular, or any character or characters within sport. It is not a study about a particular carefully defined era or institution. It is a study about sport itself (if such a thing can be conceived).<sup>11</sup>

One starting point for this project is a reconsideration of the time-span of modern sport's adolescence. Rather than focus on the social structures and institutions that have encompassed sport, this thesis deals with the antecedent conditions that have formed the climate within which nineteenth-century sport emerged. Conventional approaches to the history of modern sport, as illustrated by the standard texts cited

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<sup>10</sup> J. Bale, *Sport & Place: A Geography of Sport* (1982); J. Hargreaves, *Sport, Power and Culture* (1986); S. Jones, *Sport, Politics and the Working Class* (1988); to name just three examples of very different approaches to social history of sport written in the 1980s.

<sup>11</sup> The problem of the definition of sport (or rather, the problem of conceptualising sport as a general concept rather than only referring to particular instances of sports) will be raised in more detail in later chapters. At this point it is enough to note that in one respect this is what this thesis is all about.



above, have given considerable coverage to the nineteenth century. This is perhaps a legacy of McIntosh's early analysis, although not because of it. McIntosh's description of the impact of social change within that hundred year period has certainly become established as a matter of fact,

At the beginning of the century all that was prominent and all that was organized in British sport was *aristocratic*, but the *aristocracy* made no attempt to hand down their sports to the populace, nor to organize them for participation by a wider clientele. At the end of the century the pattern of sport was predominantly *middle class* (italics mine).<sup>12</sup>

This thesis takes McIntosh's point in general as well-proven by subsequent scholars: that modern sport has primarily arisen from an invasion of popular pastimes and aristocratic sports by the growing middle classes. The result, by the end of the nineteenth century, was the preservation of only a handful of sports in aristocratic control (due in large part to regulation and control of land use, licensing, and pricing out of reach of the majority - sports such as golf, horse racing, and shooting); a few sports remaining with open access and enjoyed by the working classes (largely because they were not susceptible to regulation - sports such as athletics, bowls, swimming, and coarse fishing); and the large remainder appropriated by a powerful middle-class elite.<sup>13</sup>

The motives and interests of the middle classes and the mechanisms by which various groups organised, codified, and rationalised these popular pastimes are well recorded elsewhere, as are the notable arenas for resistance from the aristocracy and

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<sup>12</sup> P.C. McIntosh, *Sport in Society*, London: C.A.Watts & Co, 1963, p.64. McIntosh follows Matthew Arnold's "humble attempt at a scientific nomenclature" (p.62) for the structure of society - Barbarians (Aristocracy), Philistines (Middle Class), and Populace (Working Class). I have simply substituted the terms in italics.

<sup>13</sup> For an interesting table of sports affected by the repression of popular activities, see Wigglesworth's use of E. and S. Yeo's *Popular Culture and Class Conflict* (Oxford: Harvester Press, 1981): *The Evolution of English Sport*, p.161.

populace alike. This thesis will not rehearse or revise those aspects of the study of the emergence of modern sport. Instead, an attempt will be made to demonstrate that the conventional approaches to the history of modern sport, whilst focusing on the external social, economic, and political factors that have shaped the growth of sport, can be complemented by a philosophical examination of the nature of the beast itself: sport. That is, the history of sport has developed into a highly sophisticated study of the cranes of the industrial revolution that lifted sporting pastimes from their rudimentary origins and dropped them onto fertile ground; of the new-wave of public school educated architects and designers who gave these pastimes a modern make-over; of the salesmen and marketing agents who packaged the product; of the consumers who fuelled the demand; and the end-users who ironed-out the bugs in the software. But the extensive wealth of sport history and the self-reflexive questioning of the subject matter at-hand that exemplifies much sport philosophy have rarely sat side-by-side. Sport historians assume for methodological purposes either a naïve realism (homonymy means synonymy) or a tacit nominalism (why worry about synonymy, when homonymy will do?).<sup>14</sup>

There are also numerous texts describing and explaining why sports have been such ideal memetic<sup>15</sup> carriers – perfect hosts for cultural values and, thus, ideal agents of infection and contagion – proselytising muscular Christianity or vindicating

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<sup>14</sup> Naïve realists because they make the assumption that reality is exactly as it appears and our words name things as they really are: they're all called sports because they all share something in common – a common nature or 'essence' – which actually makes them sports. Alternatively, sports are sports simply because they are called sports. There are no essential features beyond the name (hence nominalism). It is enough that the class of things (all sports) share an homonymous feature (their name) without questioning in what way they are alike (synonymous).

<sup>15</sup> Meme: an information pattern, held in an individual's memory, which is capable of being copied to another individual's memory. Memetics: the theoretical and empirical science that studies the replication, spread and evolution of memes. Memetic to memes as genetic is to genes. Memes, invented by Richard Dawkins, are the cultural and social equivalent to genes: the transport mechanisms of cultural DNA. The analysis here does not require subscription to such an idea. The use is metaphoric only. See, R. Dawkins, *The Selfish Gene*, Oxford: Oxford University Press, 1976; S. Blackmore, *The Meme Machine*, Oxford: Oxford University Press, 2000.



Fascism. But (to continue with a contemporary analogy used above) the study of the computer age does not necessarily require the study of the computer itself beyond its exterior design, function, size, price, availability, and so forth. Commentary on the cybernetic revolution is cultural critique. An analysis of the computer age can be undertaken without an understanding of the internal architecture of the hardware (how a computer works). But, a study of the emergence of the computer must surely include such an analysis. Many sports historians have made all sorts of implicit assumptions about the internal architecture of sport. In fact, they have often chosen to ignore that there is one. In short, many historians have been reluctant to get philosophical (whereas many philosophers, more recently, have taken that historical or sociological turn).

Sport historians in general have done a very good job of answering the obvious question, "why sport?" - for gambling, for entertainment, for money, for the demonstration of athleticism, for comradeship, for affiliation, or just for the love of getting very muddy - which is why the best sports histories are as much good sociology and anthropology as they are good history. However, they have either left the question of "what is sport?" to philosophers or implicitly dismissed it as an irrelevant question (by simply describing those things called sports).<sup>16</sup>

This overview of the existing domain of sports history, if it is not to appear unnecessarily critical, requires substantiation through a demonstration of what a requisite philosophically-informed history, or (as in this case), what a historically-informed philosophy might be. The thesis that follows makes the case for such a

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<sup>16</sup> This claim probably needs evidence if the accusation is to stick. In fact, many social historians and sociologists would claim that they *are* discussing the nature of sport (for example, J. Hargreaves in *Sport, Power & Culture*; J. M. Brohm, *Sport: A Prison of Measured Time*, London: Inks Links, 1978; J. Hoberman, *Sport and Political Ideology*, London: Heinemann Educational, 1984), but would deny that such a 'nature' can be discussed independently of the sociological determinants of its existence.

history by focusing on the internal structure, the architecture, the formal logic, of sport. Moreover, it does this by linking the formal internal logic of sport to a historically contingent space (thereby denying sport's ahistorical essential 'nature'). It demonstrates that the philosophical concepts required to do the work of defining, delimiting, and delineating the domain of sport are extensionally and intensionally 'thick' normative concepts, such as 'fairness', that cannot be understood in total abstraction. Along the way, this thesis smuggles two bold implicit conclusions into its premises. Neither of these claims is new, so little time will be spent defending each of them. They are part of the set of taken-for-granted assumptions that underpin this thesis and are well-argued elsewhere. However, the exposition of the thesis will necessarily support them without being founded upon them.<sup>17</sup>

### **Sport is not "as old as the hills"**

This first claim is that modern sport is a distinct and separate species. It has precursors in ancient athletic-type activities, popular recreations, country pursuits, and courtly games. But, in so much as the existence of these cultural practices and modern sport are contiguous in time and place, modern sport is not an evolution or development of them as much as it is a colonisation of them. The distinction might be subtle but it is an important one. Colonisation always implies the infection of the host and its transformation into something more resemblant of the invader, to the point that the host is entirely assimilated. In contrast, the concept of

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<sup>17</sup> This point needs to be emphasised. The thesis herein substantiates these claims but is not dependent upon their truth. That is, neither of these claims is required to be demonstrated or proved first before the main question of the thesis proceeds. Yet, at the same time, the thesis assumes both to be indubitably true. If either claim were to be brought into doubt, it would not disprove the claims made throughout about the analogous relationship between sport and the social contract, it would simply remove the historically contingent significance of the analysis. This is known as "having one's philosophical cake and eating it".



cultural evolution, as it is commonly and metaphorically used, is a more self-contained process: “descent with modification”, to use Darwin’s own terminology.<sup>18</sup> The new species is definitely a new phenotype. It owes its ‘nature’ to its parent(s). By making this distinction (that modern sport is a distinct and different entity and not the current manifestation of an evolved species), what is meant is that any ‘essence’ of sport is not part of some sort of ahistorical DNA that allows historians to trace its roots to ancient times. What is being said here is perhaps best illustrated with an anecdote and an example.

On a long (seven hour) ferry crossing some years ago from Harwich in England to the Hook of Holland the time was spent mingling in the ship’s bar with a group of French, Irish, Dutch, and German travellers. As we were all eating liberal quantities of “chips”, the discussion naturally turned to the invention of the deep-fried chipped potato. It must have been invented by the French, of course, why else would the Americans call them “French Fries”. But surely it was an Englishman (Sir Walter Raleigh) who brought potatoes back from the New World; the English have the longest history in Europe of growing and eating potatoes; therefore, any inventions involving potatoes must have been made by the English. But the Irish always ate the most potatoes and surely would have looked for new and innovative ways of spicing up a rather bland foodstuff. And would not the likely answer be found if we asked who developed deep frying in oil or animal fat? Perhaps some factual evidence could settle the dispute: when is the first recorded evidence of the establishment of a “chip shop”? This brief summary should not detract from the animation and length of the discussion as it then took place. So, who was right? Which nation invented the “chip”? The answers, regardless of any evidence brought

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<sup>18</sup> C. Darwin, *On the Origin of Species by Means of Natural Selection*, Oxford: Oxford University Press, 1998 (edited by G. Beer), originally published 1859.

to bear on the discussion, is none of them. The “chip” is not an invention. It is more like a discovery. It is what Daniel Dennett calls “a good trick”.<sup>19</sup> That is, it is something that any member of a species, faced with an almost infinite recurrence of encountering specific environmental circumstances and armed with certain finite resources at its disposal to deal with them, might at any time discover and use as a good trick. Moreover, given the inevitability of encountering such circumstances (that any member of a particular species might find itself in) it is equally inevitable that one or more of them will discover the trick. To ask who discovered it first is not particularly relevant because its take-up and use by more and more members of the species is not dependent upon that first discovery. Examples of “good tricks” include useful things such as chimpanzees learning to break the shells of nuts using stones or sticks, and entirely useless pastimes such as human beings skimming stones across the water. Tricks are passed on quickly through imitation by those around us but this does not deny the possibility that other members of the species in a different location at a different time might discover the same trick. The existence of the trick amongst members of the species living in different times and locations does not imply transference of the trick throughout the species from one originating source.

What does this have to do with the history of sport? To give a very crude and simplistic example, the existence of an Egyptian hieroglyphic depicting two people standing face-to-face with hooked-sticks crossed and a ball between them is not *ipso facto* evidence that the Egyptians invented hockey.<sup>20</sup> Stick-ball is an obvious “good trick” amongst humans. It is not hockey. Hockey is the product of the colonisation of stick-ball and its variants. To understand hockey is to understand modern times,

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<sup>19</sup> D. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life*, New York: Simon & Schuster, 1995.

<sup>20</sup> I am not implying that any actual historians hold such a view.



not merely to understand stick-ball. The naïve realist within this caricature of the historian is easily beguiled by the resemblance between Egyptians, Incas, Mohawks, and Irish swinging at ball-shaped rocks or stuffed leather pouches with flat sticks, hooked sticks, webbed sticks and believes there must be a link, a common thread, a means of cultural transmission – but there is not, and there does not need to be. Thus, the quest of sports history is not a search for origins. It is neither palaeontology nor archaeology. It is like biology or, more specifically, biochemistry: it is the search for and the identification of the cultural virus that has infected alpha-sport and its points of dispersion; the realisation of the modes of infection and vehicles of transmission; and the understanding of the limits and extent of the contagion. The result of sports history is the location of ‘ground zero’. At what point did stick-ball become infected with the virus that led to the homeostatic end-state called hockey? This leads to the second broad underlying presumption of this thesis.

### **Sport is a product of modernity**

Sports as we now conceive them are products of the infection of former cultural pastimes by a ‘mind-set’ that has been broadly referred to as ‘modern’. Those in possession of that mindset were as foreign to the players of alpha-sport as the Romans were to the Britons or the Normans to the Saxons, not least because they spoke an entirely different language. In so much as many of the modern sports of the nineteenth century followed on chronologically from earlier popular pastimes, they did not develop ‘from’ them. To understand these new sports, it is necessary to understand the colonisers or the ‘virus’ more than it is necessary to understand the thing being colonised, the ‘host’ (and this is indeed what most good sport historians

do). For this reason, the 'ground zero' of modern sport needs to be shifted back a century or more to the early seventeenth century.<sup>21</sup>

Again, an illustration by anecdote might help here. In 1995 I had the good fortune to attend the Rugby Football World Cup finals in South Africa. In conjunction with this, academics from around the world gathered for various conferences related to sport, including the third meeting of the International Society for the History of Physical Education and Sport.<sup>22</sup> After watching a game of rugby a number of academics from non-rugby-playing countries sat around discussing the similarities to other sports. The Americans present compared it to football (American Football, that is). "No, no!" some Europeans protested, "you Americans don't understand football" (meaning Association Football, of course). After clarifying the nomenclature - Rugby Football (Union and League), Association Football, American Football, Australian Rules Football - the British and Australian historians attempted to educate their foreign colleagues, "they're all descended from the same game".<sup>23</sup> And on the discussion went. But, they are no more "descended" from the same game as humans are descended from gorillas or chimpanzees (which, of course, they are not): they are our cousins, not our grandparents. Whilst the modern variants of football are clearly 'related', talk of the transformation of 'folk football' into these various "descendents" is to mistake the

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<sup>21</sup> I have argued the case for this elsewhere in the context of understanding the concept of amateurism in sport: S. Eassom, 'From the Bank to the Baron (1694-1896): A 200-Year History of Amateurism Embedded in the Olympic Ideal,' Paper presented at the 22<sup>nd</sup> Annual Meeting of the Philosophic Society for the Study of Sport, London, Ontario: 3-5 October, 1994.

<sup>22</sup> It was at this conference that the general claim of this thesis was first made: S. Eassom, *Law-Makers and Rule-Breakers: An Historical Analysis of Philosophies of Law, the Concept of "Fair Play", and the Assumption of a Moral Basis for Sport*, Paper presented at the 3rd ISHPES Congress, Cape Town: 2-8 July, 1995.

<sup>23</sup> I do not remember all the specific details of the ensuing argument, but I do remember most clearly the use of the word "descended" because (being a philosopher with a great interest in biology and Darwin) I picked up on it straight away: "Descent? In what way is it descended?" I asked rather provocatively, sitting back and enjoying the extended debate that followed.



points of infection and dispersion for 'birth' and 'regeneration'. Noting the colonisation of folk football, it becomes necessary to focus on the colonisers and to identify the emergence of the mind-set that led all aspects of social and cultural life to be infected by it. Folk football is better seen as the host and not the parent. The variants of football were pulled apart from each other by the claimants for ownership who branded their game with its distinctiveness through legislation and control. It becomes necessary, then, to go back further in history to search for the conditions leading to the spread of the virus.<sup>24</sup> Brailsford is one of the few contemporary sport historians who has made the claim that,

the debt owed by modern sport to the English eighteenth century has never been fully acknowledged, yet this was its most creative period, more formative than any that followed and to which so much attention has been paid. . . . A recent widening interest in the history of popular culture has opened up further new avenues for sporting consideration, with extended studies on, for instance, poachers, inns and crowds, to name but three, but there is still no overall review of the sport of this all-important era.<sup>25</sup>

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<sup>24</sup> Sports history has too often dwelt on phylogeny, not bacteriology. Hence the apocryphal and entirely misleading story of William Webb Ellis who "with a fine disregard for the rules of football as played in his time, first took the ball in his arms and ran with it, thus originating the distinctive feature of the Rugby game". The words are from the plaque erected at Rugby School in 1895, taken here from Holt's *Sport and the British* (p.85). In discussing the myth of Webb Ellis, Holt comments that, "Football or 'soccer' as it came to be known and rugby football had common roots in popular tradition. They were innovations rather than inventions" (p.86). Aside from the mixing of biological and technological metaphors, it is worth noting Holt's use (common amongst historians, as suggested earlier) of words such as "roots".

<sup>25</sup> D. Brailsford, *A Taste for Diversions: Sport in Georgian England*, Cambridge, Lutterworth Press: 1999, p.7. The few texts that do give prominence to sport in the eighteenth century include: H. Cunningham, *Leisure in the Industrial Revolution*. London: Palgrave Macmillan, 1980; S. Deuchar, *Sporting Art in Eighteenth Century England*. New Haven, Connecticut: Yale University Press, 1988; E. Dunning & K. Sheard, *Barbarians, Gentlemen and Players: A Sociological Study of the Development of Rugby Football*, Oxford: Martin Robertson, 1979; J.M. Golby & A.W. Purdue, *The Civilisation of the Crowd: Popular Culture in England 1750-1900*, New York: Random House, 1985; M. Harrison, *Crowds and History: Mass Phenomena in English Towns 1700-1833*, Cambridge: Cambridge University Press, 1988; P. Munsche, *Gentlemen and Poachers: the English Game Laws 1671-1831*, Cambridge: Cambridge University Press, 1981; W. Vamplew, *The Turf: A Social and Economic History of Horse Racing*, London: Viking Press, 1976.

Despite this clarion call, this thesis will neither provide the overall review nor add significantly to that produced by Brailsford. It does not include the minutiae of detail or the primary evidence of a historical thesis. But in so far as history features in this thesis, it will support these claims through the analysis of the transformation of political philosophy from traditional to modern, with particular reference to the work of Thomas Hobbes and its extensive influence. I will argue that the modern political mind-set emerging after the English Civil War was radically different from the philosophies of politics, law and government that had existed for centuries before. These philosophies can be seen in microcosm through the structure and formation of modern sport. Importantly, though, the analysis of the relationship between sport as an ideal form and social contract theory is logical and analytical. The historical aspects of this thesis are contained within the scene-setting of this chapter, the description and exposition of modern political philosophy and social contract theory in chapter three, and as empirical support for the analysis of the weak analogy of justice as fairness in chapter five.

Why Hobbes, then, if history is somehow incidental to the philosophical thesis presented here? To begin and end with Hobbes (as the thesis does in chapters six and seven with a detailed discussion of modern applications of Hobbesian contractarianism) is part accident and design. It is Hobbesian contractarianism (not Rawlsian, for example) it is concluded, that provides a 'best fit' with the analogy of sport as social contract. Conveniently, but not simply as a matter of convenience, Hobbes' undoubted profound influence began in the late seventeenth century and continues to this day, paralleling (at the very least) the time-frame of the genesis of modern sport. This cannot be *mere* coincidence?

Between 1641 and 1658 Thomas Hobbes published the three parts of *The Elements of Philosophy*, a clear early attempt at a unity of science. *De Corpore* (1655) combined

his views on scientific method, language and logic and formed the first part of his trilogy. *De Homine* followed in 1658. But it was the third part *De Cive* – actually written first in 1640 – that gained Hobbes his reputation as a political theorist. In it Hobbes rejected the traditional view of Plato and Aristotle that political life is natural to human beings. By denying any innate desire of humans to be governed, the goal of political philosophy ceases to be the search for a theory of government but instead becomes a *justification* for accepting or needing government and a determination of what kind of government best fits human's natural desires. *De Cive* served to situate political philosophy firmly within Hobbes' materialist conception of the world through its requirement for politics to be predicated on a scientific explanation of the nature of human beings. In 1651, with the publication of *Leviathan*, Hobbes developed these ideas into a full and detailed political treatise. He initiated what has become known as social contract theory. He argued the case for the state and a contract between the individuals in a society and the state. Significantly, the state is obligated to protect certain natural rights of citizens, act as arbiter in disputes, and generally enforce the mutually agreed upon contract. If he, she or it fails to do this the right to govern is forfeit. The basis for Hobbes contract is twofold: first, humans are selfish and need their egoism restrained in order to act morally; and second, the establishment of a commonwealth is purely for the mutual benefit of its citizens.<sup>26</sup>

The parallels with sport and implications for the study of sport history will be teased out in the next chapter. At this point it is important to note several details from the brief synopsis above of Hobbes' work that will be pursued throughout this thesis: (i) Hobbes materialist conception of human nature assumes that human

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<sup>26</sup> Extracted from S. Eassom, 'Snapshot: Thomas Hobbes', *The Philosophers' Magazine*, 22, 2003 (2<sup>nd</sup> Quarter), p.53.



beings are not naturally co-operative animals, they are not given readily to fair play; (ii) they are also not freely governed in their natural state – government requires justification, not simply definition; and (iii) if humans are to live co-operatively for mutual benefit, then they need a kind of impartial referee to make sure the rules are adhered to. To develop further these three ‘connections’ for a moment, (i) raises interesting questions for the philosophical and historical analysis of fair play. Much has been made of the ‘gentlemen amateur’ and the ethos of fair play in late-Victorian and Edwardian sport. The question remains as to whether or not fair play is an *a priori* condition of sport’s internal logic or a social convention that exists as part of the socially and historically constructed nature of sport (a result of the ‘infection’). Second, play and sport are two different things – albeit, quite possibly, at opposite ends of the same continuum – and play is classically, traditionally, defined in terms of its freedom from control, order, pre-determination, government, rule-bindedness, and so on. Given the existence of play, it is sport that requires justification and explanation, as (ii) suggests. Third, the role of the referee is not to be taken for granted. Most sports differentiate greatly between a referee and an umpire, between punishment and adjudication, between policeman and judge. And in most cases, the role of either has a great deal to do with the assumed status of either in relation to the players: middle-class referees ‘policing’ working-class professional footballers; paid employees adjudicating on the constitutive rather than regulative rules and umpiring their superiors. The kind of law-keeper (iii) attests to is far more in keeping with middle-class contractarians ideas than with outmoded aristocratic views on authority. Chapter seven specifically analyses the case of the umpire as law-keeper and the support that lends or difficulties it raises for a contractarian view of fair play in sport.



In summary, then, this thesis focuses on government and political philosophies of sport; ideas of natural law, rules and the implicit acceptance of the necessity of rule-abidance in games and sports; and the general conception of fair play as an essential feature of sport. It does so through the analogue of the social contract. However, at the same time, this thesis offers a meta-analysis of the use of analogy more generally and a critique of philosophers' and historians' over-reliance on analogous argument, both broadly and narrowly construed.<sup>27</sup>

In the following chapters this thesis examines the social contract tradition in political philosophy and applies the device of the social contract itself to sport and asks, "Is sport, in fact, a form of social contract?" The significance of this question for our understanding of modern sport will become clear in chapter two (The Social Contract Tradition: Games, Rules, and Government) where the key concepts are explained.

The pertinence of the question can be justified clearly and succinctly by three considerations:

1. The aforementioned authors and their histories of sport all note the codification, rationalisation, institutionalisation, bureaucratisation, and democratisation of sport. The establishment of governing bodies of sport marks a significant departure from aristocratic rule and heralds the emergence of norms of liberal democracy within social institutions of the late nineteenth century (regardless of the exclusiveness and clear lack of

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<sup>27</sup> At this point, and prior to reading chapter 3, it might not be clear what is meant by argument by analogy. It certainly might not be readily accepted that analogous argument is a significant feature of historians' work. For the sake of evidence, the mere existence of David Hackett Fischer's *Historians' Fallacies: Toward a Logic of Historical Thought* (New York: Harper & Row, 1970) and Chapter IX in particular, 'Fallacies of False Analogy', is given in request of the benefit of doubt for the time being.

democracy in some of these early governing bodies). The impact of the social contract tradition beginning with Thomas Hobbes cannot be underestimated in its influence on nineteenth century liberal political theorists such as John Stuart Mill. Modern sport, maturing alongside dramatic changes in political philosophy, appears to bear the hallmarks of an archetypical implicit social contract. Furthermore, the liberal political mindset that embraced contractarian ideas can be seen analogously and heuristically (at least) as the virus that infected and colonised popular pastimes and mutated them into sports. Sports are new and modern, their internal constitutive structures mirroring new and modern political philosophies. Chapter three aims to substantiate this claim. It is further supported by chapter seven.

2. Sports and game-playing have been used as analogues for the exposition of the concept of social justice, most notably by the American philosopher John Rawls in his 1957 essay 'Justice as Fairness' and subsequently in his hugely influential *A Theory of Justice*.<sup>28</sup> Sigmund Loland has recently published an entire text on the concept of 'fair play', grounded in Kantian notions of morality and implicitly utilising Rawlsian ideas of reflective equilibrium and contractual fair dealing.<sup>29</sup> The consideration of justice as fairness is taken up in chapter five. In this chapter, historical evidence is used more directly and liberally to assess and critique the relationship between playing fairly in life and in sport (more specifically in the relationship between morality and rule-abidance) and in the evaluation of the weak analogy of justice as fairness.

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<sup>28</sup> J. Rawls, 'Justice as Fairness', *Journal of Philosophy*, LIV, 1957, 653-662; and *A Theory of Justice*, Oxford: Oxford University Press, 1971.

<sup>29</sup> S. Loland, *Fair Play in Sport*, London: Routledge, 2002.

3. The strongest case for the cogency of the argument of sport as a form of social contract exists in the analysis of the Janus-face of fair-play: cheating. The social contract theorist tends not to ask, "why not play fairly?" but to focus on the more pessimistic imperative, "what's to stop us cheating?" thereby assuming certain conditions of egoism and competitiveness in any pre-political state. The explicit use of the analogy of sport as a social contract has received significant attention in sport philosophy literature in just such a context. In recent years several authors have used the problem of the Prisoners' Dilemma as a model representing the decision making processes involved in an athlete's motivation to cheat or not to cheat, particularly with the example of illegal use of performance enhancing substances.<sup>30</sup> The Prisoners' Dilemma is a modern variant of the collective action problem illustrated by "Hobbes' Fool" and is a standard device in the consideration of certain kinds of social contract theory.<sup>31</sup> Chapter five considers this literature in further detail.

Between these chapters is sandwiched an essential discussion of the use of argument by analogy. This may seem to interrupt the historical flow of the thesis and, indeed, it does. It is a necessary diversion and not a distraction; a complementary scene and not a side-show. Analogy underpins this thesis. It

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<sup>30</sup> G. Breivik, 'The Doping Dilemma: Some Game Theoretical and Philosophical Considerations.' *Sportwissenschaft*, 17:1, March, 1987, 83-94; and 'Doping Games: A Game Theoretical Exploration of Doping.' *International Review for Sociology of Sport*, 27:3, 1992, 235-52; S. Eassom, 'Playing Games with Prisoners' Dilemmas', *Journal of the Philosophy of Sport*, XXII, 1995, 26-47; A. Schneider and R. Butcher, '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, 1993-4, 64-81; D. Shogun, 'The Prisoner's Dilemma in Competitive Sports.' In P. J. Galasso (Ed.) *Philosophy of Sport and Physical Activity*, Toronto: Canadian Scholars Press, 1988.

<sup>31</sup> T. Hobbes, *Leviathan* (1651), edited with commentary by R. Tuck, Cambridge: Cambridge University Press, 1991; J. Hampton, *Hobbes and the Social Contract Tradition*, Cambridge: Cambridge University Press, 1986.



permeates it at all levels. It flows through the content, the analysis and the writing itself, as illustrated here. The case must be made for the validity of analogy as argument. Indeed, the stronger case is actually made in chapter three that science proceeds almost entirely through the use of analogy. But here, such tendentious tub-thumping is not necessary. It is quite enough to point out that the social contract is itself an analogy and that the question of whether sport is a form of social contract poses the further peculiar question of the possibility of using one analogy to assess the validity of another. At some stage, argument by analogy itself must be analysed. This thesis examines *an* analogy, uses analogy, and assesses argument by analogy. The use of analogy has been illustrated throughout this chapter. It is time to elaborate upon and assess the particular and fundamental analogy at hand, to which the attention of this thesis must now turn.

# 3

## The Social Contract Tradition

### Games, Rules, and Government

The aim of this chapter is to examine the application of social contract theory to the philosophy of sport. To this end it will focus on the contract theories of Thomas Hobbes and John Rawls. The philosophy and history of social contract theories will be broadly sketched, although this is primarily to consider in what ways games and sports are like forms of social contract. The background setting for this, made clear in the previous chapter, is to illustrate the claim that modern sport arises from an infection or invasion of traditional and popular pastimes by a specific kind of mind-set, a thoroughly modern mind-set, that has transformed them into something quite 'other' than the original host activity. As stated in the previous chapter, though, this will proceed through philosophical argument in chapters five, six, and seven and not through the exploration of primary historical evidence. The 'evidence' for the claim is the assessment of the validity of the analogy that sport is *just like* a social contract. The fact that the structure, government and organisation of competitive sport changed significantly over a period of a century or more from the early eighteenth century onwards; the fact that politics and political thinking changed equally dramatically during the same period; combined with the fact that sport in *essence* emerged at the end of this period in many ways reflecting those changes in political philosophy, are evidence enough (for the purposes of this thesis as a necessarily limited examination of this claim) that modern sport is a product of the invasion of nearly all social and political institutions by this modern 'mind-set' (of which contractarian thinking is one exemplary part). The role of this chapter, then, is to describe and explain the

political mind-set that began to develop in the seventeenth and eighteenth centuries paralleling the transformation of traditional games and pastimes as the bureaucracies that came to be known as governing bodies established themselves and directed the strict codification and regulation of competitive sport. The ways in which modern sport reflect contractarian thinking will be addressed throughout, but the assessment of the extent of that ‘infection’ will be left to chapters five and seven where some of the historical context of the issues for sport will be examined.

A significant part of that modern mind-set, most evident in the establishment of most social institutions (such as governing bodies of sport), is a certain political orientation to authority, law, rule-establishment, and the justification for these. This is reflected most keenly in what could be called ‘contractarian’ or ‘contractual’ thinking. Social contract theory addresses the issue of needing to define and explain obedience to authority – sometimes in nations shifting from monarchy to republic, where residents of a country are no longer subjects owing allegiance to a monarch but citizens with the right of self-governance. But it also might help to explain the kind of obligation (possibly a moral obligation) to the rules of a game and the makers of the rules of a game.<sup>1</sup>

Two clear distinguishing features of all modern sports separate them from the popular pastimes that existed before.<sup>2</sup> These are: (i) clearly defined sets of rules that

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<sup>1</sup> In this thesis the terms ‘game’ and ‘sport’ are frequently used interchangeably. In most cases, where talking about rules and fairness, the term ‘game’ is used in preference, but where this occurs, the term is meant include all sports. Time could be taken here to justify the claim that all sports are games. Arguments concerning the borderline cases of sports such as marathon running, high jumping, angling, and so on, are well detailed in the sport philosophy literature. See, for example, B. Suits, ‘The Elements of Sport’ and ‘Tricky Triad: Games, Play and Sport’, and K.V. Meier, ‘Triad Trickery: Playing with Sports and Games’, chapters 2, 3, and 4 respectively of W.J. Morgan & K.V. Meier (Eds.), *Philosophic Inquiry in Sport*, Champaign, Illinois: Human Kinetics, 1995 (2<sup>nd</sup> edition). For the purposes of this thesis, no problems arise from a stipulative use of ‘game’ to cover both classes of activity.

<sup>2</sup> There are, of course, many features that distinguish modern sports from popular pastimes. However, it is suggested that these two features are not only common to all modern sports



are the standardised rules for the game or sport; and (ii) a ruling body (in the form of a club or association) with responsibility for making and maintaining the rules. With regard to each of these two features, some further comments are needed. It is accepted that all games have rules. Suits argues convincingly in *The Grasshopper: Games, Life, and Utopia* that every game (in order to be a game) must have at least one rule: a rule determining when the games starts.<sup>3</sup> Thus, games and sports existing before the modern era would also have had rules. This is not the point in contention. Rather, rules of the game as they existed prior to the eighteenth century were largely local, based on inherited custom and tradition, and constantly varying from time to time and place to place. There were generally less rather than more rules and in some cases the rules might be quite parochial and autocratically determined by the host of the game.<sup>4</sup> In his study of sport in Georgian England, Brailsford notes,

This was the age when sport first became a matter of institutions and systems as much as of people. Those who made up the sporting world, the patrons, promoters, players and spectators, were all in their different ways seeking more regular and reliable play and seeking a continuity which could depend upon something more secure than custom and oral tradition. How and how far they escaped from the limits of the past varied from one sport to another but in all clearer statements of rules emerged and formal associations were established. Nor was it mere coincidence that the two should appear together. Each needed the other to give cohesion to increasingly complex activities which had outgrown informal and unwritten practices. It was from the clubs that, in large measure, the

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(and missing from most traditional sports and popular pastimes) but also are definitive of modern sports and taken to be 'essential' elements.

<sup>3</sup> For a detailed discussion see 'Ivan and Abdul', chapter 6 of B. Suits, *The Grasshopper: Games, Life and Utopia*, Toronto: University of Toronto Press, 1978, pp.60-70.

<sup>4</sup> Although not to the extent of the Queen of Hearts' croquet game in Lewis Carroll's *Alice in Wonderland*, "The players all played at once without waiting for turns, quarrelling all the while, and fighting for the hedgehogs; and in a very short time the Queen was in a furious passion, and went stamping about, and shouting 'Off with his head!' or 'Off with her head!' about once in a minute"; Carroll, L. and Gardner, M. *The Annotated Alice*, Harmondsworth: Penguin, 1970.

promulgation and interpretation of the rules for the day derived. They had been comparative rarities before the last quarter of the eighteenth century . . . <sup>5</sup>

Elsewhere, Brailsford notes how the West Country poet of the time, William Barnes, told the tale of the Dorset cudgel player being surprised that the wrestler from Devon dived at his ankles.<sup>6</sup> The need for standardisation became apparent, but it was driven largely, not by a desire for equal opportunity on the part of the contestants but, by a demand for a fair contest required by the financial promoters and gamblers.

Large sums at risk in wagers meant that the terms of the competition had to be based on something more precise than inherited custom. The need expressed itself during a great age of codification, with Blackstone producing his *Commentaries of the Laws of England*, and it was a fitting moment for the rules of sport to begin to take on a firmer form. These rules combined two strands, the one inherited from concepts of honour, as old as the days of chivalry, the other depending very much on the law of contract, the contract involved in the wager.<sup>7</sup>

Brailsford (and others such as Birley) support the claim that the regulation of sport was driven by commercial interests and gambling.<sup>8</sup> Of the 'Rules and Orders of the Jockey Club' and the 'Articles' (specific to the King's Plates), some three-quarters of the rules defined the terms for betting on the races, not the races themselves. Jack Broughton's original rules for pugilistic contests at his newly formed boxing emporium in 1743 (accepted by many as the first written rules of boxing) made only one comment on the regulation of the fighting - that a man can only be hit

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<sup>5</sup> D. Brailsford, *A Taste for Diversions: Sport in Georgian England*, Cambridge: The Lutterworth Press, 1999, p.161.

<sup>6</sup> D. Brailsford, *British Sport: A Social History*, Cambridge: The Lutterworth Press, 1992, p.53.

<sup>7</sup> D. Brailsford, *British Sport: A Social History*, p.53.

<sup>8</sup> D. Birley, *Sport and the Making of Britain*, Manchester: Manchester University Press, 1993.

above the waist and whilst on his feet – with the remainder of the rules determining when a fight was won or lost (from the point of view of the stakes laid out) and how gambling on the contest was to proceed.<sup>9</sup> But most notable about these early forms of regulation was that they were generally reached by agreement amongst a select group – Broughton took the precaution of securing approval for his rules by having them “agreed by several gentlemen at Broughton’s amphitheatre, Tottenham Court Road, August 16, 1743”<sup>10</sup> – and that they moved from their original intention of being local rules to becoming national rules,

The racing regulations were for Newmarket, the cricket rules were designed for what became the MCC, and Broughton’s were solely for his own amphitheatre. They became national rules with varying degrees of rapidity, as other clubs and match-makers found them convenient or, as with the Jockey Club, they were denied arbitration on disputes unless they followed the rules.<sup>11</sup>

Birley reports on the apocryphal story that the first laws of cricket appeared on the border of a linen handkerchief sometime before 1744. There was no indication of authorship. But they were soon reprinted in a society magazine<sup>12</sup> and then in booklet form to be distributed to organisers of cricket matches around the country. This “game of cricket, as settl’d by the Cricket Club in 1744, and play’d at the Artillery Ground London” was not any particular cricket game played by any particular playing club but a result of a committee of the leading players of the day gathered at the Star and Garter in Pall Mall, London, and as such “settled by several cricket clubs”.<sup>13</sup> Thus, two further elements crept into the standardisation of rules,

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<sup>9</sup> D. Brailsford, *British Sport: A Social History*, p.53.

<sup>10</sup> Reproduced in facsimile in S. Andre and N. Fleischer, *A Pictorial History of Boxing*, New York, 1987, p.12, and cited by D. Birley in *Sport and the Making of Britain*, p.119.

<sup>11</sup> D. Brailsford, *British Sport: A Social History*, p.53.

<sup>12</sup> *The New Universal Magazine or the Gentleman and Lady’s Polite Instructor*, Vol.II, November, 1752. See D. Birley, *Sport and the Making of Britain*, p.121.

<sup>13</sup> Cited in D. Birley, *Sport and the Making of Britain*, p.121.



laws and regulations, as noted by (ii) earlier: the formation of rule-setting groups, committees or bodies; and an increasing degree of voluntary adherence to or requirement for adherence to the regulations established by these bodies. At this stage it is enough to point out the generally accepted practice, illustrated in the examples above from boxing, cricket, and horse racing, that promoters of these sports generally deferred to whom they saw as the authority on these matters (or, indeed, those persons who set themselves up as the authority). This matter will be returned to in due course.

Notwithstanding the requirement for further evidence and discussion on this issue, these examples of early attempts at standardisation and authority would appear to hint at two features of contractual dealings and obligations to them: *agreement* and *authority*. Any political philosophy must deal with two fundamental questions related to these: what are the demands that obligation to authority make on us and why should we feel obliged to accede to those demands? With regard to the early formation of governing bodies of sport, why should individuals and teams feel compelled to play by somebody else's rules and what say might they then have in shaping or changing those rules? The attractiveness of social contract theory resides in the apparent simplicity in its answer to these two questions. On the one hand, the demands that obligation to authority make on us are fixed by the agreements participants in the contract make in order to limit their own and each other's interactions. On the other hand, we submit to those demands precisely because we agreed to them in the first place. These early rule-establishments of sports such as cricket suggest that game-playing in the mid-eighteenth century represents a *prima facie* example of a social contract in practice. Before pursuing that claim further, it is necessary to outline the constituent characteristics of social contract theory in the

context of a time-frame for the emergence of contractarian thinking that coincides with the era identified in chapter two as the genesis of modern sport.

### The Social Contract

To begin with, a social contract theory is any theory that sets out to justify morally the existence and position of a ruling body on the basis that the need for government is reached by agreement amongst the people over whom the ruling body has authority. That is, in short, that members of a society contract to be governed. Furthermore, a social contract theory sets out to explain the range and limits of that authority and the terms under which it operates.

Several things can be noted immediately. First, government (whether it be in the form of a ruling body, the state or, ultimately, a league or federation of states) requires justification. Second, governments (according to social contract theorists) serve the purposes and interests of the people they govern. Third, government is accepted by those people solely because they agree to be governed. Each of these three points gives rise to further considerations. In the first instance, the requirement for justification implies that government (or the condition of being governed) is not a natural condition under which people would normally choose to exist. Hence, an explanation (or theory) is required that establishes why the rule of some over others is just. In this very broad sense, social contract theory has a long history. There is a clear example of the requirement for obedience to authority in the Jewish Torah and the Old Testament of the Christian Bible, in the book of Deuteronomy. In chapter twenty-eight, verses one to sixty-eight, God speaks of various blessings and curses that result from following, or not following, His commands. Whilst the issue of obedience and disobedience is significantly different to that of agreement and disagreement (thus limiting the appropriateness of

labelling this an example of social contract theory), the point is clear in Deuteronomy, as far as the early Jews were concerned, that society would fall apart if people chose to live without God.<sup>14</sup>

Plato, in book two of *The Republic*, presents his own version of a rationale for the requirement of the state in two related sections.<sup>15</sup> To begin with, Glaucon presents the mythical story of the Ring of Gyges<sup>16</sup> – one of the first examples in philosophy of a ‘thought experiment’ – in which he argues the case that the capacity for injustice lies within us all if we are not constantly watched (governed). Later on in the book, Socrates takes Glaucon to task and presents an alternative contractual account of the origin and need for justice in society. According to Socrates, societies are formed for the purpose of fulfilling our natural desires and specific human needs. These are many, varied, and complex and all kinds of people are required to satisfy those needs. Partnerships are required to fulfil those requirements; goods and services are exchanged; mutual benefits are accrued. A just society is one in which these mutually fulfilling tasks are realised. Plato discusses who is best positioned to serve those interests and rule the state justly and wisely. In Plato’s case, this is the specially selected, tutored, and empowered ‘philosopher kings’ who are the only kinds of rulers who will serve the interests of society. Hereditary kings, dictators, and army generals are all rejected as unsuitable.

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<sup>14</sup> The analogy of the shepherd and his flock is a constant and important one in the Old and New Testaments. Of interest here, at this juncture, is that sheep are deemed to be in need of shepherding. Obedience to authority is seen as a requirement for all people. It is a natural state that we find ourselves in. To try to live without God would be to try to live as a sheep outside its flock. It is not just that the sheep would be lost (physically and spiritually), but that such a life is no life for a sheep.

<sup>15</sup> Plato, *The Republic*, (translated by R. Grube), Oxford: Oxford University Press, 1979.

<sup>16</sup> Gyges is a shepherd who finds a magic ring that makes him invisible. He uses its powers to seduce the Queen and kill the King. Glaucon, expressing his scepticism about moral action, goes on to hypothesise that if two rings the same existed, and one was given to a just person and one to an unjust person, then both would commit the same unjust deeds under the veil of invisibility.



These two examples indicate the normal response to the first assumption of a social contract theory, that government needs to be justified.<sup>17</sup> In so doing, the justification usually stipulates that government serves the interests of the people being governed and that, because of this fact, people *agree* to be governed. However, the examples from Deuteronomy and Plato's *Republic* are distinguishable in important ways from Enlightenment social contract theories. They both exist within the framework of teleological and religious systems of thought that placed moral obligations within part of a larger natural or divine world order. Plato, and more significantly Aristotle, subsumed ethics and politics under their philosophical anthropologies of human being: to be human is to be moral and to be amoral is to be inhuman.

It is worth, briefly, summarising the teleological position that Aristotle takes, particularly as Aristotelian virtue theory has enjoyed something of a revival in contemporary ethics and especially amongst sport philosophers with a sociological or historical orientation.

In the opening section of the *Nicomachean Ethics*, Aristotle defines 'good' as the intrinsically valuable goal or end of any purpose, action, or being.<sup>18</sup> The 'good' is that which is aimed for, the end or purpose of that craft or investigation. His theory is *teleological*.<sup>19</sup> In order to know what a person ought to do one must first

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<sup>17</sup> 'Modern' examples of social contract theory are set against the backdrop of the breakdown of belief in the absolute rule of monarchy – Hobbes' *Leviathan* was published in 1651, during the English Civil War and after the execution of King Charles I – and are largely an extension of theories of law, particularly 'natural law' and the work of Grotius and Pufendorf: H. Grotius, *De Jure Belli ac Pacis* (1625), normally translated as *On the Law of War and Peace*; and S. Pufendorf, *De Jure Naturae et Gentium* (1672), normally translated as *On the Law of Nature and Nations*.

<sup>18</sup> Aristotle, *Nicomachean Ethics*, in J. Barnes (Ed.) *The Complete Works of Aristotle: The Revised Oxford Translation*, Oxford: Oxford University Press, 1984.

<sup>19</sup> From the Greek term *telos*, meaning end or purpose.

understand what a person is *for*, what is the goal or end of a human life?<sup>20</sup> Clearly, Aristotle believed that we were *for* something: the fulfilment of our essence or nature. In other words, to live a good life is to live a life that realises our nature as a human being. Just as we can judge whether or not a knife is a good knife by understanding what a knife is for - cutting - and then determining whether the knife in question cuts well, so we can judge a good person if we know what the life of that person is for. According to Aristotle (and the centuries of Aristotelian commentators that followed), each person has a natural place in the world from which their obligations and duties follow. The requirements of a good citizen are no different from the requirements of a good person. In this respect, personal, social, and political life are inseparable.<sup>21</sup>

The religious systems which dominated Western pre-Enlightenment thought were no less teleological. Individual's moral obligations to fulfil their divinely-ordained place were realised through duties to religious leaders and, most importantly, to their monarchs who ruled through divine-right. By the seventeenth century, the undermining of the belief in the divine-right-of-kings was completed by Oliver Cromwell.<sup>22</sup> Even those who wished to defend the institution of kingship (such as Thomas Hobbes) could no longer do so by claiming that the monarch ruled by divine command. Monarchs were now ordinary men and women who inherited,

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<sup>20</sup> Exactly the same descriptivist, naturalist account of *good sport* can be given. By asking what sport is *for* (in essence) - which requires a descriptive or prescriptive exposition of sport - it should be relatively easy to judge actions in sport as right or wrong according to whether or not they contribute to *good sport*. Contemporary philosophers Geach and Foot have revived this Aristotelian mode of analysis in moral philosophy. Robert Simon's work in the philosophy of sport shows this influence: we can judge good sport only when we understand the true meaning of participation in sport as "a mutual quest for excellence through challenge". See, R. Simon, 'Good Competition and Drug-Enhanced Performance', *Journal of the Philosophy of Sport*, XI, 1984, pp.6-13.

<sup>21</sup> This passage is extracted from S. Eassom, 'Setting Standards', *The Philosophers' Magazine*, 16, Autumn, 2001, pp.54-55.

<sup>22</sup> Charles I's defence at his trial was his lack of defence. He refused to engage with his prosecutors or to recognise the court as lawful. He was the King, nobody (not even Parliament) had any authority over him. He could, thus, not be tried by a lesser authority.

were gifted, married into, or seized positions of authority over whole nations. How is their authority legitimated? Because modern variants of social contract theory reject the traditional and religious conception of political life – that humans desire to be governed as part of their nature or their obedience to God – modern social contract theorists must explain why people would choose to put themselves under obligations to particular rulers where there is no natural or divine duty to obey them. So, why should people agree to be governed? <sup>23</sup>

Modern social contract theorists begin with the acceptance that political relations lack any natural or divine basis and that the ‘natural’ state of human existence is pre-political. Thus, in political terms, all people are both free and equal. This is not a statement of fact about their existence. Rather, it is an ideological position from which the political arrangements under which any individual lives can be judged. There is (supposedly) no system under which forced enslavement of one person by another is morally or politically justified. That does not mean that such political arrangements do not exist in actuality, but simply that they are unjust. Similarly, it is a fact that people are naturally unequal in a variety of ways. However, this fact and the nature of these inequalities should count for nothing in the treatment of individuals as political subjects. The right to vote, for example, should not be granted or denied on the basis of income or sex. Guilt or innocence should not be determined by a test of strength.<sup>24</sup>

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<sup>23</sup> This question, in relation to sport, will be considered in due course. Meanwhile, it is noted at this stage that this is a fundamental question with respect to the standardisation and codification of various sports that had existed in one form or other for centuries prior to the modern era. Why not just carry on playing your own way? Why submit to an authority controlling how the game should be played? Why play by somebody else’s rules?

<sup>24</sup> Both these examples are chosen deliberately, precisely because the right to vote in the UK has, until relatively recently, been dependent upon land ownership and being male. Also, in many cultures throughout history, guilt and innocence have been determined by means entirely inappropriate to the supposed crime and more closely related to the assumed character and virtue of the defendant.



At this point it is worth comment that modern sports share the assumptions of social contract theory with respect to freedom and equality. In fact, of all social institutions, modern sport more than any other cultural practice attempts to engineer this state of formal equality from the outset and takes as its fundamental premise the freedom of all participants from restraints that would otherwise interfere with their equal opportunity to realise the goals of the game. In some sports, obvious areas of potential inequality that might advantage some over others (height, weight, strength, profession, for example) are formally controlled by the regulation of competition. Imagine if courtship and marriage in a liberal society were regulated in ways that one suitor could not legitimately gain advantage over another by their sheer good looks, brains and personality? What would have happened to David and Goliath if the rules of warfare stipulated that all opposing combatants must be of equal stature? The difference between these examples and sport is that we assume looks and personality matter when it comes to choosing a marriage partner, size and strength matter a great deal in hand-to-hand combat. But what matters in sport? The obvious answer might be physical skill, of which most sports are a test. It is through an exercise of those skills that competitors realise the internal and external 'goods' of a sport. The rules enable all individuals to take part in the game without being (unfairly) advantaged or disadvantaged by competition-affecting traits and characteristics irrelevant to the stipulated *modus operandi* for achieving the benefits of participation in the game.

It could be suggested that sport has always been like this, but numerous commentators have drawn attention to the unproblematic fact that in pre-modern sport contests could be deemed to be fair if one participant had an obvious advantage of equipment or size or strength. Wigglesworth notes, in *The Evolution of English Sport*, that,

it was the nature of such activities that rules were lacking: play continued until boredom set in, skill broke down, the strongest prevailed or sufficient disruption occurred to encourage whatever authority existed to bring activities to a close.<sup>25</sup>

Similarly, sport in other cultures can show marked differences to the universal conception of modern sport as founded on principles of fairness and equality.

Consider the sport of archery in Bhutan,

At the Atlanta Summer Olympic Games in 1996, the tiny Himalayan kingdom of Bhutan sent representatives (only men) for the first time to compete in the archery events. In Bhutan, excellence at archery is revered and the country's bowmen are as close to celebrities as one could be in such a traditional society. But archery in Bhutan is a very different kind of activity . . . unlike at the Olympics, the bowmen have to endure countless attempts to make them miss the target. The women spectators, in particular, jeer at and torment the bowman as he prepares to release the arrow. They slander him. They laugh at his supposed poor sexual prowess. They tease him that while he is competing his wife is away making him a cuckold, because he cannot satisfy her in bed. They use every insult imaginable in almost childish playground-like abuse. They try every means possible to put him off his aim.<sup>26</sup>

Modern sport in Western societies is far from the only or the natural way that sport is played. In many traditional sports around the world, ethnic and cultural heritage, experience and a life-time of mastery, mutual respect and admiration, and the experiential elements of performance matter far more than beating an opponent in a highly stylised form of competition. Numerous anthropologists have argued the case that sport's origins are ritualistic, not competitive and moralistic.<sup>27</sup> In many ways, modern sport has been socially constructed as the expression of an idealised

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<sup>25</sup> N. Wigglesworth, *The Evolution of English Sport*, London: Frank Cass, 1996, p.14.

<sup>26</sup> S. Eassom, 'Sport, Ethics and Education', *Journal of the Philosophy of Sport*, XXV, 1998, p.122.

<sup>27</sup> David Sansone makes the case for the definition of sport as "a ritual sacrifice of human energy"; *Greek Athletics and the Genesis of Sport*, Berkeley, CA: University of California Press, 1988.

pre-political state of nature. In essence, it is the epitome of liberal democratic philosophy writ large in a social institution. But this is getting too far ahead too soon.

### Whose Social Contract Theory?

Although a number of philosophers have been mentioned so far whose work would be considered in any larger analysis of social contract theory, what would be immediately striking about any further exploration of their theses is that they each produced political prescriptions that were profoundly at variance with one another. Hobbes, Locke, and Rousseau, the three classical exponents of the modern doctrine developed concepts of the state that were largely incompatible. Does this mean that there is no such (unitary) thing as social contract theory? If so, then whose social contract should be considered (if not all of them)?

Nearly all commentators on contractarianism who give broad overviews of the subject maintain that there are two basic forms of contemporary social contract theory. Sayre-McCord states,

The contractarian framework, with its appeal to what people would agree to under appropriate circumstances, has found a natural home in two very different approaches that take their inspiration . . . from Kant and Hobbes.<sup>28</sup>

Similarly, Kymlicka asserts more boldly, “there are two basic forms of contemporary social contract theory”.<sup>29</sup> He characterises one form as “the mutual advantage theory” and the other as “the impartial theory”. The former finds its chief advocate

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<sup>28</sup> G. Sayre-McCord, ‘Contractarianism’, in H. LaFollette (Ed.) *Ethical Theory*, Oxford: Basil Blackwell, 2000, p.254.

<sup>29</sup> W. Kymlicka, ‘The Social Contract Tradition’, in P. Singer (Ed.) *A Companion to Ethics*, Oxford: Basil Blackwell, 1991, p.188.



in Thomas Hobbes, the latter takes its inspiration from Immanuel Kant's critique of Hobbes.<sup>30</sup> The Hobbesian approach begins from a basis of a natural equality of physical power which makes it mutually advantageous for people to accept constraints on their own behaviour in return for reciprocal restraints on those with whom they contract. Although few contractarians share Hobbes' naturalist premises, so-called Hobbesian contractarians adopt a framework that assumes non-moral reasons for embracing morality. The Kantian approach begins from the assumption of a natural equality of moral status. Accordingly, each person's interests are a matter of equal and impartial concern. The 'contract' expresses agreements in principle that recognise each contractor's moral status. The Kantian approach, in direct contrast to the Hobbesian approach, makes an immediate appeal to our special moral status; a status that Hobbes denies. The common ground – the reason for calling both approaches 'contractarian' – lies in their use of notions of legitimacy and agreement whereby both approaches seek to establish a basis for moral obligation not grounded in an appeal to God's command or ancient ideas of natural law.

Furthermore, Hampton, in her acclaimed analysis of Thomas Hobbes attributes the two kinds of traditional social contract to the work of Hobbes in so far as one kind is a direct extension of Hobbes' work and the other a refutation of Hobbes' underpinning psychological and ethical premises. In this respect, Hobbes is the founder of modern contract theory. The responses to Hobbes are of,

The kind that explains the state's justification by saying that people *lend* their power to political rulers *on condition* that it be used to satisfy certain of their most important political needs, and the kind that explains the state's justification by saying that people *alienate* or give up their power to political rulers in the (mere) *hope* that doing

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<sup>30</sup> See also, H. Williams, *Kant's Critique of Hobbes*, Cardiff: University of Wales Press, 2003.

so will satisfy certain of their most important needs. Advocates of the first kind of argument are drawn to an agent/principal understanding of the ruler/subject relationship; advocates of the second kind of argument are espousing a master/slave interpretation of the ruler/subject relationship that precludes legitimate rebellion.<sup>31</sup>

This thesis concluded chapter one by summarising Simon's analysis of the appeal to contractarianism made by broad internalists seeking to justify the nature of moral obligation in sport. At this point a straight-forward, descriptive analysis would examine whose (or which) approach has been taken, in general, by sport philosophers. It would reveal, unequivocally, that the concept of fair play has most typically been approached from a Kantian perspective throughout the sport philosophy literature.<sup>32</sup> Moreover, where a contractarian stance has been taken, the work of John Rawls (as the most celebrated exemplar of Kantian contractarianism) has been almost universally adopted. In consideration of certain specific issues, particularly the analysis of the use of performance-enhancing drugs in sport, the premises of a Hobbesian contractarianism have been adopted largely because of the efficacy of utilising rational choice theory and the model of the Prisoners' Dilemma. Arguably, an examination of the application of social contract theory to the philosophical investigation of fair play in sport needs to do no more than analyse what is the case.

What is the case need not necessarily equate to what ought to be the case. At this stage, some brief comments can be made concerning why Hobbes and Rawls ought to be studied, given the issues raised in the opening chapter. It was stated at the outset that the question of fair play is confounded by both the evaluatively-laden

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<sup>31</sup> J. Hampton, *Hobbes and the Social Contract Tradition*, Cambridge: Cambridge University Press, 1986, p.256.

<sup>32</sup> Ranging from Warren Fraleigh's *Right Actions in Sport* (1984), through Bill Morgan's *Lefist Theories of Sport* (1994), to Sigmund Loland's *Fair Play: a Moral Norm System* (2002).

nature of the concept and its essential contestability. It is assumed that an appeal to the normativity of moral obligation in sport is an appeal to the underlying principles of fair play. Those that hold such a view naturally migrate towards a Kantian explanation of moral conduct in sport and, where their analysis takes a contractarian turn, they espouse a Rawlsian version of contract theory to explain the inherent moral structure of sport. Issues of conflict over how we ought to act in sport are dealt with using Rawlsian strategies that reveal a just and fair solution. These will be explained later in this chapter.

In contrast, the normative status of moral obligation in sport should not be taken-for-granted. Demanding that we ought to play fairly begs certain questions, not least of which is “why should we?”, but particularly the question of what we mean by ‘fair’. Chapters five and seven in this thesis demonstrate that what is fair and what ‘fair’ means are not always easily discernible in games and sports. However, to reject a metaphysical basis for the internal ought requires an alternative to be put in its place that adequately explains the nature of obligation (or ‘bindingness’). Sports appear to present good case material for such a discussion because on first appearances they are outside of everyday life, non-serious (in certain respects), and serve no external purpose in themselves (they are autotelic). Thus, any obligations to the game can hardly be seen to be *moral* obligations. A contractarian approach to fair play in sport that begins from such premises will inevitably be profoundly Hobbesian.

At numerous stages throughout this thesis, it is suggested that an historical analysis of the emergence, formation, and continuation of authority invested in governing bodies of sport would also reveal interesting synergies between contract theory and sports history. However, such an investigation is beyond the remit of this thesis. At issue here is the nature and justification of individual obedience to authority, not



an explanation of how those authorities came about or how they maintain that authority. In this respect, the central question of this thesis is an abstract one to be addressed analytically. Nevertheless, a pertinent test of the application of social contract theory to sport must be an analysis of fit: does the theory fit the facts and do the facts fit the theory. Thus, the application of social contract theory to sport helps both to explain or understand certain sporting issues (chapter five) and to judge certain actions or cases (chapter seven).

The role of social contract theory in its application to sport is, thus, no different from the role of social contract theory in modern political thought since the seventeenth century. Contract theory has been used to justify political authority, to account for the origins of the state, and to provide foundations for moral values and the creation of a just society. To paraphrase this in terms of sport; herein, social contract theory is examined in order to assess the value of the analogy that sport is like a social contract theory whereby its use justifies the authority of the law-makers and guardians of sports; accounts for the origin and formation of governing bodies, referees and umpires; and provides foundations for why we should not cheat in sport and should seek a fair play of the game regardless of what the rules allow.

### Hobbesian Contractarianism <sup>33</sup>

The definitive statement of why individuals would agree to be governed when they are all free and equal is given by Thomas Hobbes in chapters thirteen through fifteen of *Leviathan*, published in 1651.<sup>34</sup> Hobbes conjectures that the pre-political 'state of nature' in which human beings found themselves in their 'original

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<sup>33</sup> The majority of this section has been previously published as, S. Eassom, 'Selfish Morality', *The Philosophers' Magazine*, 17, Winter, 2002, pp.28-29.

<sup>34</sup> T. Hobbes, *Leviathan* (1651), edited with commentary by R. Tuck, Cambridge: Cambridge University Press, 1991.

condition' is a condition of constant struggle and contest, "that condition which is called Warre; and such a warre, as is of every man, against every man".<sup>35</sup>

Hobbes further conjectures that the condition of perpetual war and struggle is a condition which any rational and self-motivated person would want to end. After all, as Hobbes believes, their lives under such circumstances are likely to be nasty, brutish, and short. These people, then, would desire to create the circumstances within which peace, safety, and prosperity would flourish. This would require a recognition that they cannot achieve their own desired ends without the cooperation of others (who may or may not share their interests). But, there would be like-minded individuals who share in principal the broad constituents required for peace and harmony. They would, thus, devise fundamental social rules and moral laws that protect individuals and their property, and preserve peace.

Hobbes begins his treatise with five important assumptions. The last two of these are not explicitly stated but must necessarily be presupposed given the ensuing argument. Kavka categorises them as follows (descriptions mine):<sup>36</sup>

1. *Natural Equality* - People are approximately equal in their physical powers, in that as individuals we are relatively easily destroyed by any other individual given our use of stealth, weaponry.

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<sup>35</sup> There are numerous versions of Hobbes' *Leviathan* available. Most maintain Hobbes' original referencing system of numbering chapters and paragraph numbers and it is usual to refer to these rather than to page numbers. The "war of every man" quote can be found in Chapter 13, paragraph 8.

<sup>36</sup> Kavka, G. 'Hobbes War Of All Against All', *Ethics*, 93, 1983, pp.292-3. Also, *Hobbesian Moral and Political Theory*, Princeton, NJ: Princeton University Press, 1986.

2. *Conflicting Desires* - Our desires are constantly at odds with each other's. In particular, two or more people often seek exclusive possession of the same particular object.
3. *Forward Lookers* - People, if they are at least minimally rational, are as much concerned with their future well-being as they are with the present.
4. *Advantage of Anticipation* - In instances of conflict between persons in general, anticipation improves one's chances of domination: striking first or gathering power place an individual at a far greater advantage.
5. *Limited Altruism* - Individuals value their own survival and well-being much more than they value the well-being of others, such that they will seek to secure it even if it jeopardises the survival of others (Hobbes was conscious of exceptions concerning our own family).

Hobbes' clear assumption is that human beings are psychologically motivated by self-interests alone. In fact, Hobbes set out to establish a moral and political theory predicated on his scientific and materialistic conception of the human mind.

Hobbesian contractarianism, and Hobbes' own thesis in *Leviathan*, cannot be separated from their historical context. Hobbes saw himself as a 'man of science'. He was a true 'modern', looking to ground his ideas in empirically verifiable evidence concerning human nature and existence. At first the impact Hobbes might make in the world of philosophy was not at all certain and it appeared his life would be spent in the conventional way for a graduate of the time as a tutor to the



sons of aristocracy. But by chance he gained service for William Cavendish, soon to be Earl of Devonshire. Hobbes spent the next twenty years as much Cavendish's friend and personal secretary as tutor and the apprenticeship served him well. Most importantly, it introduced Hobbes to the scientific circle of England and France. During this time Hobbes served as secretary to Francis Bacon - it is through Hobbes we know the apocryphal story of how Bacon caught his death cold, going out into the winter snow to stuff a dead chicken and prove the preservative power of freezing.<sup>37</sup>

If Hobbes had achieved the acclaim he desired in his lifetime it would have been as a scientist. He achieved a modicum of success and a degree of notoriety, in part through his regular and frequent debates with leading members of the Royal Society and most notably through the open animosity between him and the French philosopher and mathematician René Descartes. Hobbes developed a radical theory of light and optics in the 1630s: he was probably the first person to suggest that colour is a creation of the brain and does not reside in the object. When Descartes published his own theory of vision in one of the appendices to his *Discourse On Method* (1637), the mutual distrust and jealousy grew. Yet, Hobbes and Descartes were actually closely matched in their philosophies. Both were enamoured with mathematics and Euclidean geometry, the power and perfection of transcendental deduction, and their belief that mathematics begets physics and that both can explain the entire nature of reality. The significant difference between them was that Hobbes was a committed materialist on matters of psychology and the mind.

With this commitment, Hobbes ventured to deduce that, for purely selfish reasons, each individual person is better off living in a world with moral rules than one

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<sup>37</sup> Biographical details used throughout are extracted from S. Eassom, 'Snapshot: Thomas Hobbes', *The Philosophers' Magazine*, 22, 2003 (2<sup>nd</sup> Quarter), p.53.

without moral rules. How much stronger, Hobbes felt, would a theory of morality be if it took nothing for granted, if it assumed only very basic things about human nature, and yet it managed to account for how we are capable of moral action and why we *ought* to be moral? Hobbes wished to argue the case for the existence of morality on rational grounds, but without recourse to either a super-natural power or an appeal to any intuitive moral sense. In so doing, he set morality against an assumed tendency in humans to act largely out of self-interest. Humans are not fundamentally moral beings, Hobbes claimed: they are competitive rather than cooperative and, despite living in social groups, tend towards selfishness before altruism. Such a tendency, Hobbes argued, if left unbridled, would lead to a war of all against all, “continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short”.<sup>38</sup> In order to save ourselves from this war of all against all, we need some sort of (enforceable, workable) contractual restraint. Morality is really a form of self-control, expressed and sustained by means of a ‘contract’ drawn up explicitly (or just adopted implicitly) for our mutual benefit. The argument for a Hobbesian contractarianism might be crudely summarised as follows:

- The ‘State of Nature’ is bad for every single person.
- It is, therefore, in everybody’s best personal interests to avoid it.
- The ‘State of Nature’ can only be avoided by accepting rules and limitations that constrain our own actions but also constrain others (and thereby grant us all certain rights).

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<sup>38</sup> *Leviathan*, Chapter 13, paragraph 8.



- It is a rational decision to accept such constraints if others also accept them.

The fundamental Hobbesian notion that arises here is the concept of negotiation. Thus, it is rationally in everybody's best interests to *negotiate* a way out of the 'State of Nature' and realise a better life.

Hobbes came to this conclusion partly through consideration of a moral dilemma. Hobbes considered it a commonplace understanding that when morally minded people and immorally minded people interact, the immoral often do better. For example, amongst honest, trusting people the thief often flourishes. So, why should anybody choose to be moral? Surely, it is disadvantageous. Everybody else dodges paying their taxes so why shouldn't I, especially as my taxes go up to pay for the losses? But, Hobbes also considered what happens when morally minded citizens interact with other like-minded moral citizens and conversely when immoral people interact with others who are immoral. He concluded that the former are more often than not better off than the latter. The problem with us all dodging our taxes is that we would all ultimately be worse off. Is this, then, reason why we should all be moral rather than all be immoral? Not necessarily, according to Hobbes returning to the first premise, because the most advantageous situation is to act immorally amongst a community of moral citizens: to be what has become known in contract theory as a *free-rider*. There will always be the temptation to *defect* (to use the language of modern game and contract theorists) because as a cheat I can *maximise* my own self interests. For Hobbes, any moral theory must deal with this fundamental contradiction that morality and immorality would appear to arise from the same basic instinct within us all: maximisation of our own self-interest. How can this dilemma be reconciled: that morality is deeply connected with self-interest and yet self-interest tips us over the edge from morality to immorality?



Hobbes ultimate conclusion was that immorality as a general condition of society is often self-defeating and that behaving morally can best serve everybody's self-interest if, and only if, we can guarantee that everybody abides by the contract.

It could be objected that Hobbes' view of human nature is too sceptical. Some people are naturally altruistic and moral, are they not? What about all the varied instances of self-sacrifice and charity that demonstrate the moral character of large numbers of human beings? Hobbes recognises such potential criticisms but deals with them in two ways. First, such morally altruistic behaviours exist in a generally civilised society where the convention of 'being good' is well established and reinforced through religion and family values. Hobbes was suggesting, in other words, that such behaviours are learnt - he was an early behaviourist, after all. He believed that the way things are now does not accurately reflect how they would be in the 'state of nature'. Second, Hobbes argued that in a 'state of nature' such do-gooders would not survive and, in the long run, being good would not be a rational course of action. Hobbes preceded Darwin, but later post-Darwinian biologists, psychologists, and game-theorists have agreed with Hobbes and would suggest that being good in itself is not an *evolutionary stable strategy*.

Hobbes' dilemma can be illustrated by a sporting example and his resolution to the problem can be found by considering the temptations facing Olympic athletes to cheat by taking undetectable performance enhancing drugs. It would be best for all concerned if nobody took drugs, perhaps for reasons of health or for reasons of public support and admiration. If, however, I cannot guarantee that my opponents are playing fairly (there is a free-rider out there), then I will be extremely disadvantaged if I am honest and they are all cheating. Without that guarantee, the temptation is too great for me to cheat as well. What we need, Hobbes would argue, is a law-enforcer who is not directly involved in the contest and who can insure that

everybody complies with the rules. There are two things required for this to work: (1) we must all *contract* to accept the rules and to abide by them, and (2) we must submit to the authority of the law-enforcer who is trying to prove that the contract is being maintained. In the case of the athletes, they must willingly subject themselves to urine or blood tests that will prove their compliance. Only then can we hope to have a community whereby everybody can agree to be moral without fear of being disadvantaged by the immoral amongst us.<sup>39</sup>

Hobbes own solution was to advocate that the King and his forces should be the impartial referee and law-keeper (rather than fulfilling the King's previous role as law-maker, which was going very much out of fashion in civil war-ridden England in the 1640s). Hobbes, coming from aristocratic stock and being fundamentally a Royalist, wanted to advocate a *commonwealth* arising from contractual agreement for mutual benefit without removing the King entirely from the picture. Having established the authority of the King through contractual agreement of all who live within the jurisdiction of the contract, the King resumes a degree of law-enacting powers as an impartial contract-maintenance-man, for as long as he acts only in the interests of the commonwealth and not of himself.<sup>40</sup>

The English empiricist John Locke (1632-1704) followed Hobbes but owed less allegiance to the King. For Locke, the referee is under the law and all authority is vested in the citizens of the state – the King is titular only – and the social contract becomes the fundamental principle of modern democracy.<sup>41</sup> Subsequent philosophers, living through turbulent times as Hobbes did, such as Jean-Jacques

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<sup>39</sup> This issue is discussed in considerably more detail in chapter five in the context of the modern variant of Hobbes' example, called by game theorists the "Prisoners' Dilemma".

<sup>40</sup> It is tempting to ask at this point whether or not athletes can be so sure of the International Olympic Committee's motives?

<sup>41</sup> J. Locke, *Two Treatises of Government* (1690), edited by Peter Laslett, Cambridge: Cambridge University Press, 1991.



Rousseau (1712-1778) presaging the French Revolution,<sup>42</sup> and Thomas Paine (1737-1809) helping frame the American Declaration of Independence,<sup>43</sup> extended and developed the ideas of Hobbes' and Locke's social contract. Moral philosophy and politics together took a liberal turn; individual beliefs and desires began to matter and required accounting for in the moral equation. Democracy was arriving. By the time of John Stuart Mill (1806-1863) the concept of individual rights within a democratic commonwealth was virtually complete and moral consideration was thus owed to the competing claims of individuals and minorities within society.<sup>44</sup>

For the first time since Plato and Aristotle, politics and morality were reunited. It is now a commonplace to think of *justice* as a fundamental *moral* concept. Politics (justice) and morality (altruism) are encased within a mutual agreement, tacitly consented to by all, maintained by the democratically accountable state. For all intents and purposes, morality became a social construct necessary (for Hobbes) to overcome naturally selfish and aggressive tendencies or (according to the more optimistic Rousseau) to enable weak but equally natural desires for co-operation.

#### *Description and Prescription*

Two features of Hobbesian contract theory, mentioned earlier and glossed over in the above synopsis, now need further investigation. Hobbes undertook two clear and distinct aims in his establishment of a social contract theory in *Leviathan*. He believed he was both describing the nature of political societies as well as prescribing a new and more justifiable form for such societies. Hobbes' description of our pre-political nature might seem unremarkable today, yet in its time it was a

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<sup>42</sup> J. J. Rousseau, *The Social Contract and A Discourse On Inequality*, in *The Social Contract and Discourses*, translated and edited by G. D. H. Cole, New York: Dutton, 1950.

<sup>43</sup> T. Paine, *The Rights of Man* (1791/1792), Harmondsworth: Penguin, 1976.

<sup>44</sup> J. S. Mill, *On Liberty* (1859), in *Utilitarianism, On Liberty, Essay On Bentham*, edited by M. Warnock, London: Fontana, 1985.



controversial and radical departure from the assumption that the authority of the state is derived naturally or innately from the possession by some of superior power or status. Authoritative political societies are human creations. This modest fact, in itself, seems unremarkable. But what it implied in seventeenth century England was far more significant. The creation of the state is the establishment of conventions, norms, rules, and the creation of laws that define the legal system and establish the obligations of those who administer them and are administered by them. The only legitimate legal authorities are those empowered by these authoritative norms. Thus, the legal system itself is a human invention. In short, the state is not the institution within which government takes place, it is the laws that constitute that government and legitimate its authority. Yet, the state pre-exists any contractual arrangements of a political group.<sup>45</sup>

One of the problems for Hobbes' contractual account is how members of a society interact both to create and to maintain such a theoretical political system. Hobbes' descriptive account of an ideal political society in which individuals consent to constraint in order to maximise their own long-term interests might offer a blueprint for how things would work if a group of individuals could start all over again and form their own state, but Hobbes was strongly opposed to revolution. He was, in many ways, a staunch royalist writing a document to gain the support of the ruling republicans. His ability to do this contributed greatly to his living to the ripe old age of ninety-two without losing his head along the way (as many others did). Jean Hampton's analysis of the details of Hobbes' and Locke's contractarian

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<sup>45</sup> This point will become important later: how do the 'citizens' of a state affect or alter the contract between themselves and the ruling body that pre-exists their membership of it?

arguments suggests that they view government structures as generated and maintained by convention.<sup>46</sup>

Hobbes accepted that certain constituent features of political life (accepted laws, social practices, and key institutions) become entrenched in social systems by the implicit acceptance of them by the populace continuing to support them. Hobbes thus introduces a notion of tacit consent to certain political arrangements as equivalent to contractual formation. Adherence to the rules of the existing authority by everybody, in so far as all people can appreciate the advantage to them of everybody abiding by them, is a form of consent or approval of such rules as being those that would be consented to in the original condition.

Hume extends the view of political arrangements being conventionally generated in his *A Treatise of Human Nature* (published in two parts in 1739 and 1740) with the example and discussion of the mutually advantageous respect for private property.<sup>47</sup> Tacit consent to such conventional arrangements is given by continuing to support them and is undermined by failing to support them or by actively working against them. What is required then, for the maintenance of the legitimacy of any state, is the capacity of its members (in theory and in practice) to appraise what *could* be agreed to if they had the opportunity to remake the co-operative conventions of society and thereby determine the acceptability of existing conventions and rules. Thus, the existing state is *hypothetically* consented to by participation in it – if, and only if, the laws of the state give sufficient autonomy and power to individuals as convention-creating beings. In other words, Hobbesian contractarians would not

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<sup>46</sup> J. Hampton, 'The Contractarian Explanation of the State', in T. Ueling (Ed.) *Midwest Studies in Philosophy: The Philosophy of the Human Sciences*, Minneapolis: University of Minnesota Press, 1990.

<sup>47</sup> D. Hume, *A Treatise of Human Nature*, Oxford: Clarendon Press (Edited by L. A. Selby-Bigge), 1988.



accept that once a government receives implicit consent it is suitably justified as a legitimate and morally successful authority. It is the arrangements by which the state is constituted and the terms (laws) under which it operates that makes it legitimate, not the procedures by which it came into being or maintains its power.<sup>48</sup>

### Hobbesian Sport?

At this stage it is now possible to begin thinking about modern sport as a kind of microcosm of Hobbesian social practice. In the process, some issues will be raised that require returning to the history of social contract theory and considering objections to it and more recent developments of the tradition.

Hobbes' 'state of nature' is clearly analogous to a game without rules, or a game in which nobody follows the rules. In the context of sport, there are two ways in which such an idea might be imagined: by thinking about a sport known to exist that appears to have very few rules, such as 'folk football', or by thinking about a game that deteriorates to the point of being chaos because nobody follows whatever rules do exist. Either way, there are obvious comparisons between such games and Hobbes' vision of a pre-political state. To begin with, there is little point in any participant unilaterally abiding by any conventional way in which the game is supposed to be played unless they can assume that everybody will do likewise. It is too disadvantageous to be 'moral'. Instead, you have to accept that everybody else will bite, punch, spit, kick, pull, push, and trip you up in order to get the ball. So,

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<sup>48</sup> Consider the example of an elected Member of Parliament for England and Wales. The legitimate way in which an MP is elected does not in itself further legitimate the action of that MP in the exercise of his or her powers as a member of parliament. That MP should at all times represent the interests of the constituents who elected him or her, because it is through the continued representation of them that the means by which they were elected is legitimated (morally as well as politically). Once elected, they cannot just serve the interests of their political party. If all MPs did the same, then the legitimacy of representative parliamentary democracy is brought into question. Government in the UK suffers currently from this blurring of the distinction between party politics and democratic representation.



you do likewise. Pretty soon, the game looks like a version of folk football on Orkney on New Year's Day, or any of the "annual mass contests that took place up and down the country . . . sprawling mauls that had little regard for property, life or limb".<sup>49</sup> The free-for-all riot that could describe folk football was "regarded as a public menace for many centuries, with 23 edicts issued against it between the fourteenth and seventeenth centuries".<sup>50</sup> Whilst participants most often sustained serious injuries and some even died in the rucks and mauls, the game itself was certainly nasty and brutish. Kavka's five categorisations of Hobbes' assumptions about individuals in the state of nature easily apply to the pre-modern sportsman.

Without rules determining the means by which the goal is legitimately achieved, each participant has a clear 'natural equality'. Skill does not matter greatly as it can be overcome by cunning or trickery. Size and strength need not be an advantage: a David can beat a Goliath. Pugilists of hugely different weights can be pitched against each other if they are not limited by rules favouring the bigger opponent. Indeed, sporting contests which brought together vastly different protagonists were extremely popular spectator events, especially when animals were involved, such as the 'baiting' contests of dogs against bears or bulls. Finally, even where rules exist, a good cheat can overcome any natural advantage an opponent has if the rules are not rigidly enforced. In such contests, guile and cunning matter as much as physical skill, if not more, because physical skill is not allowed to dominate.

Thus, the important comparison to be made here between unregulated sport and the state of nature concerns the significance and importance of skill in sport. If skill is seen as the appropriate means by which the goods of participation in sport are realised, then the lack of rules enables the less skilled to win by other (immoral?)

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<sup>49</sup> D. Brailsford, *A Taste for Diversions: Sport in Georgian England*, p.39.

<sup>50</sup> N. Wigglesworth, *The Evolution of English Sport*, p.20.

means. Thus, any participant can be overcome by any other. There is no obvious defence against this and leads, as Hobbes conjectures, to a state of great personal insecurity and anxiety.

Hobbes' second assumption of the natural conflicting desires shared by all persons is a hallmark representation of the conventional definition of competition. Where A and B are in competition for X, Dearden posits three separately necessary and jointly sufficient conditions for A and B to be in competition for X:

First of all, A and B must both want X. There must be some common object desired by both, such as the best seat, Mary's favours, the largest share in the market, the job just advertised, the prize to be first away from the traffic lights, to sit nearest to God, and so on. . . .

The second condition is that A's gaining possession of X must exclude B's gaining possession of it. For if both A and B can have their desires satisfied . . . then there is no need for or point in competition. . . .

Yet a third condition is that both A and B should persist in trying to gain exclusive possession of X even when they know that one of them must be excluded.<sup>51</sup>

This inherent characteristic of competitive activity leads some, such as Michael Fielding, to argue that competitive sports are inherently immoral.<sup>52</sup> Hobbes would not agree. Rather, Hobbes would argue that, in a state of nature, the fact of our competitive instincts means that there will be winners and losers and that it is a particular feature of competitive activities that there are far more losers than

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<sup>51</sup> R. F. Dearden, 'Competition in Education', *Proceedings of the Philosophy of Education Society of Great Britain*, Vol.4, No.1, 1972, p120.

<sup>52</sup> See Michael Fielding's 'Against Competition', *Proceedings of the Philosophy of Education Society of Great Britain*, Vol.10, 1976, pp.140-141.



winners (in some cases only one winner). He further assumes that most people would rather not choose to be faced by such competition if they felt that their chances of success are small or non-existent. Thus, competition requires reigning in and controlling so that all participants have a chance to realise the external goods of the contest.

As 'forward lookers' in sport and society, players recognise that whilst playing the game has its own rewards, winning matters where resources are allocated on the basis of victory not defeat. There will always be the temptation to secure victory at whatever cost. Players naturally become end-orientated and motivated and winning quickly becomes the only thing. Hobbes believed that individual survival strategies in the state of nature will always be determined by the motives of society's members to seek to secure their future. The 'advantage of anticipation' led Hobbes to believe that all rational agents in a state of nature will be tempted to gain advantage in any way they can before others do the same. Striking first becomes important, whether it be in gaining the good ground before the opposition, securing the available resources in advance, or being the first to cheat. About games and sports then, Hobbes' assumptions about the state of nature lead logically to the need for rules and rule-enforcement. Without them, the game quickly deteriorates into a no-holds-barred struggle which is bad for everybody concerned. So, it is in everybody's self-interest to try to overcome the state of nature. But that requires the acceptance of rules that limit each person's behaviour and act as a constraint on their freedom to pursue the goals of the game in any way they choose. It is logical for them to accept such constraints providing all others accept them as well. All sports-competitions are fundamentally rule-governed activities. The rules not only structure the practice, but also define it. John Searle states,



The rules of football or chess, for example, do not merely regulate playing football or chess, but as it were they create the very possibility of playing such games. The activities of playing football or chess are constituted by acting in accordance with (at least a large subset of) the appropriate rules.<sup>53</sup>

The philosopher of games, Bernard Suits, is even more specific about the functional role rules play in limiting the means by which the goal of the game is realised. The important point of Suits' definition is that rules are inseparable from means and ends. To play the game is to play by the rules and to do so is to accept the entirely voluntary nature of such restriction of action in order to realise the desired goal of the game. More specifically,

To play a game is to attempt to achieve a specific state of affairs [prelusory goal], using only means permitted by rules [lusory means], where the rules prohibit use of more efficient in favour of less efficient means [constitutive rules], and where the rules are accepted just because they make possible such activity [lusory attitude].<sup>54</sup>

To use Suits' own shorthand, "playing games is the voluntary attempt to overcome unnecessary obstacles".

No mention has yet been made of fair play or of any individual participant's sense of obligation towards it. This is a deliberate omission and will be discussed further when considering objections and alternatives to Hobbesian contractarianism (in this chapter and the next). However, the consideration of fair play is a significant one for this thesis and for Hobbes. If 'playing fair' as a social norm equates to being moral, Hobbes argues that neither exist pre-politically. Any obligation towards fairness (or morality) is rationally chosen and does not exist outside of the realm of

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<sup>53</sup> J. Searle, *Speech Acts: An Essay in the Philosophy of Language*, Cambridge, MA: Harvard University Press, 1969, pp.33-34.

<sup>54</sup> B. Suits, *The Grasshopper: Games, Life and Utopia*, Toronto: University of Toronto Press, 1978, p.41.

all our political obligations. Modern Hobbesian contractarians such as David Gauthier and John Buchanan are even stricter in their insistence on equating moral behaviour with rationally chosen restraint in order to maximise individual preferences.<sup>55</sup> Moral action is rational for a person to perform if and only if it advances the satisfaction of their desires. That this conception of morality (as selfishly motivated) is the total opposite of the conventional wisdom that associates moral conduct with unselfish behaviour is a problem for moral philosophy, not directly for Hobbes', or Buchanan's, or Gauthier's thesis. It raises interesting questions with regard to fair play in sport which is nearly always taken to be an *a priori* condition or essential feature of game playing and not a rational strategy deliberately chosen in order to maximise the outcomes of the game. Fair play becomes a conventional norm - one of many that comprise the institution of morality in a society. Such moral actions are 'mutually agreeable' to all players, who need to be protected from immoral aggressors who would take advantage of the rule-abiding majority.

All games, then, need a referee or policeman to prevent rule infringement. And this, for Hobbes, was the role of the (figuratively) castrated King. Because the King was not a participant in the 'game', he could be relied upon to control the game without a vested interest in its outcome or a preference for any of the players. The King's singular concern in the new republic was the maintenance of a legitimately functioning state - a well-played game. This was a radical departure in the seventeenth century from the traditional view of monarchs as law-makers and is no less radical a departure from the traditional view of governing bodies of sport. Governing bodies, in a Hobbesian sense, are law-keepers and not law-makers and

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<sup>55</sup> D. Gauthier, *Morals by Agreement*, Oxford: Oxford University Press, 1986; J. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan*, Chicago: Chicago University Press, 1975.



where they do serve as law-makers it is due to the established convention in which they serve as representative of their membership. This clearly is not how many governing bodies actually operate in practice but none would deny that one of their main functions is that of gate-keeper of the integrity of the game. Unfortunately, integrity is often interpreted rather simplistically as tradition.

If the notions of consent to convention described earlier are to exist in practice in ways that make the theoretical construct of a social contract meaningful, then players must be able to withdraw their support for a rule or law. They can do this in a number of ways: (i) by making representation to the governing body of the sport; (ii) by repeatedly demonstrating that adherence to such a rule (or failure to adhere to such a rule) brings the practice into disrepute such that the rule is eventually modified or removed; or (iii) by sport's version of civil disobedience - constant and deliberate rule violation. Simple examples of (ii) and (iii) spring readily to mind: the final abolition of the amateur-professional distinction in sports such as rugby, athletics, and skiing; and the constant controversy surrounding drug-testing and the associated sanctions for failure of a drugs test. How these possibilities have been borne out in practice throughout will be considered in chapters five, six and seven.

### **Objections to Hobbesian Contractarianism**

There are several immediate and obvious difficulties with the prescriptive account of contractarianism as advocated by Hobbes and others. The first is that Hobbes' account only prescribes the structure of a kind of democratic state; it does not prescribe its content. That is, it defines the way in which the state should be formed and function but does not attempt to prescribe the right way to live. Indeed, a legitimate Hobbesian state could well be responsible for things that would normally be taken to be quite immoral. The content of any agreed social conventions are the



subject of bargaining amongst the free and equal members of a society – each person logically and rationally trying to establish an agreement that protects their own interests as much as possible whilst restricting them as little as possible. Whilst the resulting constraints might in some way accord with traditional ideas of moral duty, the overlap is far from essential or complete. Establishing and following a particular convention depends upon one’s bargaining power and the wealthy, strong, and talented have far greater power than the poor, weak and disabled. In Hobbes’ state of nature there is no motivation to negotiate with those who lack the power to be a threat to any established convention. That is, despite the assumption of ‘natural equality’, there will always be some who, in Gauthier’s words, “fall beyond the pale” of morality.<sup>56</sup> Those who produce little of value in negotiation need not be considered and since there is little to gain from co-operation with them, and nothing to fear from retaliation, there is no incentive to establish conventions that help marginal members of society. After all, morality consists, Gauthier suggests, of rational constraint generated from the non-moral premises of rational choice. Most significantly, the agreed upon conventions in society naturally accord certain rights to participants in those conventions. But, because a Hobbesian contractarianism denies the existence of any pre-political rights or status – any inherent moral value – it is quite legitimate that some members of a society could find themselves without rights or moral status. In principle at least, Buchanan argues, and “if personal differences are sufficiently great”, there is no reason why the weak should not be “eliminated”, their goods seized and “something similar to a slave contract” established.<sup>57</sup>

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<sup>56</sup> D. Gauthier, *Morals by Agreement*, p.268.

<sup>57</sup> J. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan*, pp.59-60.

The fundamental criticism levelled against Hobbesian contractarians, because of this, is the failure of rational choice theory to recognise what has always been assumed as the intrinsic value of human life and the worth of each and every individual. Hobbes defines co-operative action and the people with whom one co-operates as *instruments* for realising our own satisfaction.<sup>58</sup> In other words, if you ask me why I should treat you morally, my response can only be that it is in my own best long-term interests to do so. I do not value you beyond your utility in fulfilment of any implicit contract in which we might both be engaged and, in fact, if you are a foreigner and not a participant in the contract at all then I have no duties or obligations to you whatsoever. Hobbes makes this quite explicit when he argues,

The Value, or Worth of a man, is as all other things, his Price; that is to say, so much as would be given for the use of his Power: and therefore is not absolute; but a thing dependent on the need and judgement of another.<sup>59</sup>

What then if the social arrangements we collectively contract to (or *hypothetically* contract to by continuing to participate in the established conventions) seem to be intuitively or inherently immoral?

The further criticism of Hobbesian contractarianism rests on the notion of consent. It is sufficient for Hobbes that the structure of the state enables the possibility of dissent such that hypothetical consent to established conventions can be questioned: anything goes as long as it is possible that anything goes. There is no

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<sup>58</sup> This criticism is also the standard normative position from which some sport philosophers have attempted to discuss the immorality of cheating and violence in sport, particularly in the context of the moral unacceptability of the professional foul which, when allowed without appropriate post-match sanction, legitimates the treatment of opponents as instruments or objects to be used (and abused) on the path to victory.

<sup>59</sup> *Leviathan*, Chapter 10, Paragraph 16.



requirement for the social contract to presuppose what would be appropriate to consent to. As stated earlier, morality does not exist pre-politically. There are no absolute moral standards that exist prior to the contract, shaping and determining the kind of society that the contract should establish; agreement is the only requirement. The sporting example used earlier might help here. Fair play is not a pre-condition of sport. Fair play – its establishment and maintenance – is a sport-dependent convention agreed to in order to provide participants in sport an equal opportunity to realise the internal and external goods of the game.

Alasdair MacIntyre's notion of a social practice can be usefully engaged here, though that is not to suggest that MacIntyre is in any way a contractarian. In *After Virtue* he defines a *practice* as,

Any coherent and complex form of socially established co-operative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and the human conceptions of the ends and goods involved, are systematically extended.<sup>60</sup>

Moreover, MacIntyre proceeds to name chess and football as illustrative examples of social and culturally valued practices. Games provide good examples because it is clear how the goods of the practice are wrapped up inside the construction of the practice: they cannot be achieved without adherence to the conventions of the practice; they are not external to and independent of the practice.

A practice involves standards of excellence and obedience to rules as well as the achievement of goods. To enter into a practice is to accept the authority of those standards and the inadequacy of my own performance as judged by them. It is to subject my own

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<sup>60</sup> A. MacIntyre, *After Virtue*, London: Duckworth, 1979, p.187.



attitudes, choices, preferences and tastes to the standards which currently partially define the practice.<sup>61</sup>

The assumption of Hobbesian theorists is that a 'fair play experience' is not *a priori* one of the internal goods of the game that participants wish to realise. This does not satisfy either critics of contractarianism or other (non-Hobbesian) types of contract theorist. As far as the contract is consented to hypothetically, then there must be some idea of what we think people would logically agree to. There must exist prior to any actual agreement an idea of which social policies would be just and fair and therefore likely (hypothetically) to gain the agreement of the individuals contracting together. In other words, any social contract is subject to scrutiny by moral standards outside of its own making. This is certainly the view of Immanuel Kant and those contract theorists who base their ideas on his moral philosophy.

### Kantian Contractarianism

Kant proposed that the idea of a hypothetical 'original' contract could serve as a heuristic device for examining which policies of a state of government would be just and fair.<sup>62</sup> He did not believe that hypothetical contracts are any substitute for genuine contracts and disagreed with any claim for hypothetical consent: only real consent by real people can give legitimacy to any binding contract. Kant was more interested in the moral force of hypothetical arguments. He certainly believed it to be worthwhile imagining what rational agents might agree to in circumstances where each individual wishes to receive his or her just reward whilst recognising that all other parties are seeking the same. Such thought experiments can be

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<sup>61</sup> A. MacIntyre, *After Virtue*, p.190.

<sup>62</sup> I. Kant, *Groundwork of the Metaphysics of Morals*, translated by H. J. Paton as *The Moral Law*, London: Hutchinson, 1953; and I. Kant, *Kant's Political Writings*, translated and edited by H. Reiss, Cambridge: Cambridge University Press, 1970 (particularly the essay 'On the Common Saying, "This may be true in theory, but it does not apply in practice"', pp.61-92).

morally revealing and Kant firmly believed it to be possible to determine political policies that are just in themselves, irrespective of the particular preferences of any individuals affected by those policies. Such policies would be logically consistent, prudent, and respectful of the infinite worth and value of individuals as 'ends in themselves' or 'self-originating sources of valid claims'.

Kant's moral precepts have been taken up by contractarians such as John Rawls in his classic and hugely influential *A Theory of Justice*.<sup>63</sup> Rawls is clearly a contractarian. He makes the same kind of noises all contract theorists make,

When a number of persons engage in a mutually advantageous cooperative venture according to certain rules and thus voluntarily restrict their liberty, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission.<sup>64</sup>

Rawls sets out to remove the dominant aspect of selfishness from Hobbesian contractual accounts and thus establish a more objective grounding for any potential agreements. The implicit assumption of a Kantian position is that morality and contract exist independently of each other, unlike in Hobbes' original position where morality is generated by the contract, and subsequently any contract can be judged to be morally sound or unsound - for Hobbes, any legitimately arrived at contract is necessarily morally sound. The contractual agreement that Rawls deduces is arrived at through the reasoning of hypothetical people. This does not make the contractual agreement any less valid. It strengthens it in Rawls' mind because the agreement will not be tarnished by the particular prejudices or (moral) dispositions of those reaching the agreement. In effect, Rawls is asking, how would it be best to reach a sound agreement that is in the interests of all people involved

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<sup>63</sup> J. Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1971.

<sup>64</sup> J. Rawls, *A Theory of Justice*, p.343.



but without knowing in advance what those interests are? For example, suppose ten people are required to do ten different jobs, each of which each individual is capable of doing. What is the most appropriate way of determining how much each job is worth and who should do which? Should the former be done before or after the latter? Once the latter has been decided would this prejudice individual's perceptions of the worth of each job?

The best way to proceed might be to determine the value of each job in ignorance of who will be chosen to do it. That way the dirty, smelly, dangerous jobs might be given greater remuneration than the intellectually challenging jobs. After all, if you are unfortunate to be the one picked to do the worst job, then should you not be compensated for the unpleasantness? Rawls calls this device the 'veil of ignorance' - whereby he desires that all hypothetical contracting parties be free from specific knowledge of any culturally or socially determined beliefs and prejudices; personal, sexual, and ethnic characteristics; and political persuasions. By purging people of any particular reference point from within the original position, Rawls believes that it is more likely that a suitable conception of justice will be reached; one that is reasonably derived in a morally sound way. The veil of ignorance insures that the assumption of self-interest is no different from an assumption of benevolence: any individual must empathetically identify with every other person in society and take other's good into account as if it were their own. Rawls' original position "represents equality between human beings as moral persons".<sup>65</sup>

The social contract for Kant and Rawls is necessarily hypothetical because it will always exist independently and over and above any change in social arrangements. It is a theoretical *device* used as much as anything else in judgement of the justice or

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<sup>65</sup> *A Theory of Justice*, p.190.



morality of existing social practices. We have intuitions about what it means to consider people equally and impartially, but these intuitions are vague and need procedural guidelines to enable us to make more precise judgements about justice and injustice. The social contract as a device is one such procedure, according to Rawls, because it embodies a basic principle of impartial deliberation. Some Kantian contractarians, such as Scanlon, go as far as to claim that the Rawlsian method defines more than just the best conception of social justice, but also serves as a device for assessing morality in general.<sup>66</sup>

According to Rawls, impartial contractors would agree to distribute resources equally, or in some case unequally where the inequality is to the benefit of those least well-off. This must be the rational choice (as the 'dirty jobs' example, above, illustrates) because impartial contractors would be unwilling to take the risk of being one of the inevitable undeserving losers in an unequal society. But, Rawls admits that individuals in the original position could theoretically begin with a different set of principles whereby, for example, they might base their judgements on moral Utilitarian principles that seek to maximise the greatest good for the greatest number even where there is a small risk that they individually end up being one of the minority sacrificed for the greater good. The only way to adjudicate between alternative principles in the original position is to evaluate which interpretations of the right way to proceed yield principles most in keeping with defensible ideas of justice. Thus, Rawls focuses his concern initially on the concept of justice which he freely equates in the first instance with fairness.<sup>67</sup>

### Rawlsian Sport?

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<sup>66</sup> T. M. Scanlon, 'Contractualism and Utilitarianism', in A. Sen and B. Williams (Eds.), *Utilitarianism and Beyond*, Cambridge: Cambridge University Press, 1982, pp.103-128.

<sup>67</sup> See J. Rawls, 'Justice as Fairness', *Journal of Philosophy*, LIV, 1957, pp.653-662.

The assumption of fairness as a core feature of justice existing independently of and prior to any contractual arrangements to realise a just society has had immediate appeal to many philosophers of sport who take fair play to be more than just a conventionally generated norm of sport. Sigmund Loland has gone so far as to establish an entire moral norm system for sport on the basis of a theory of fair play.<sup>68</sup>

Loland reveals his Rawlsian support when he establishes his first and fundamental moral norm for just and fair sport, “parties voluntarily engaged in sport competitions ought to act in accordance with the shared ethos of the competitions if this ethos is just”.<sup>69</sup> That is, players can and should agree to be bound by the contractual obligations of the game if and only if those contractual obligations establish and maintain a just practice. Loland goes on to add the necessary conditions (and qualifiers for those conditions) for judging that the shared ethos of a sport is “just”, with an elaborate schema of determinants:

The competitors are given equal opportunity to perform by eliminating or compensating for significant inequalities that the competitors cannot influence in any significant way and for which they cannot be held responsible;

Athletic performance is interpreted as based on talent and individual effort, and performances adhere to a basic norm of not exposing others or oneself to unnecessary harm;

Unequal treatment in the distribution of advantage is in reasonable accordance with actual inequality in athletic performance;

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<sup>68</sup> S. Loland, *Fair Play in Sport: A Moral Norm System*, London: Routledge, 2002. See also Loland’s ‘Fair Play: Historical Anachronism or Topical Ideal’ in M. J. McNamee and S. J. Parry (Eds.) *Ethics and Sport*, London: Routledge, 1998, pp.79-103; and C. Tuxill and S. Wigmore, ‘Merely Meat? Respect for Persons in Sports and Games’ in M. J. McNamee and S. J. Parry (Eds.) *Ethics and Sport*, London: Routledge, 1998, pp.104-116.

<sup>69</sup> S. Loland, *Fair Play in Sport: A Moral Norm System*, p.42.



Unequal treatment in terms of eliminating or compensating for advantage gained through rule violations is in reasonable accordance with the actual inequality that has arisen due to the violation.<sup>70</sup>

The clear distinctions Loland makes prescribe (or describe, as he would argue) what he believes a sports contest to be: it is an essentially just, co-operative activity, engaged in by rational individuals agreeing to adhere to rules and norms because they recognise them to be fair and entirely appropriate in the context of the desire of all players to strive to achieve the mutually agreeable goals of the activity. The means by which such goals are achieved are almost entirely (necessarily) achieved by a demonstration of skill with an allowance for a certain degree of luck (“uncontrollable inequalities”) and the elimination of “controllable inequalities”.

Games and sports are further internally moderated by applying the Rawlsian procedure of “reflective equilibrium”. Practices are evaluated from behind the veil of ignorance, adapted or changed, re-evaluated from a different perspective, modified and so on. Consider how this has worked with an invented sport such as basketball. The basic rudiments of the game are established, particularly the non-contact rule. But then it is recognised that in practice a player could hold onto the ball and neither bounce it nor pass it and because opponents cannot ‘tackle’ the player with the ball they cannot fairly gain possession of it. So a rule is introduced that limits each player’s possession to 5-seconds, when not in the act of dribbling the ball. But then a good ‘ball-handler’ in conjunction with a good set of team mates could still keep the ball away from their opponents. What is to stop one team from scoring a basket and then simply hanging on to the ball until the final whistle? A 30-second rule is introduced that requires the team in possession to shoot at the basket within 30-seconds of gaining possession or to lose possession. Further checks and balances have gradually been introduced to the game as inequalities or ‘unjust’

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<sup>70</sup> S. Loland, *Fair Play in Sport: A Moral Norm System*, p.144 (Figure 80).



practices have been revealed. The 3-second rule stops the exceptionally tall player from hanging around by the opponent's basket just waiting for a pass that they dunk into the basket unopposed by the shorter players. Having been prevented from goal-hanging, the goal-tending rule stops the same tall player from going down the other end of the court and defending the basket by simply preventing a shot going to the hoop: once a shot is on its downward path (even if it is clear it will miss the basket), if any defender interferes with it a 2-point basket is automatically awarded to the shooter. And so it goes on.

Even in such cases where distinct advantages accruing to competitors due to environmental circumstances are inevitable, Loland explicitly states that sports implicitly adopt a Rawlsian device,

Inequalities in external conditions may be due not only to weather changes and position. . . . changes in the competitive arena itself can cause problems. . . . As long as we accept outdoor competitions in close interaction with natural elements, inequalities of this kind can hardly be eliminated. But because they affect in negative ways the validity and reliability of our measurements, they ought to be compensated for. . . . In sports such as skiing and speed skating, what usually happens is that first, and before the competitions take place, representatives from all affected parties meet and decide the intervals within which arena conditions should be repaired. Then the start list is drawn by random lot. In this way each competitor is exposed to the same risk of ending up in the worst-off position. In this case, *we have in fact a situation close to Rawls' 'original position'. The decision-makers pursue their own interest behind 'a veil of ignorance', where they have all relevant information except knowledge of their own position in the upcoming conflict.* This situation ensures that decisions on repairing are taken impartially (italics mine).<sup>71</sup>

Loland's project clearly has a prescriptive as well as a descriptive element. Indeed, Rawlsian contract theorists are far clearer in their rationale for prescribing a just

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<sup>71</sup> S. Loland, *Fair Play in Sport: A Moral Norm System*, pp.52-53.

state: the criteria of goodness that are used to evaluate justice exist independently of the contractual arrangements and thereby act as a meter for measuring the fairness of those arrangements. Whether or not games and sports adhere to Loland's ideas of how fair and just sport *ought* to be is besides the point as far as Rawlsians are concerned. Unfair or unjust sporting practices are indicators of deficient sports. Sport and a contractual ideal of fair play are inextricably intertwined. Sport, like a justly contracted state, is a moral practice founded on principles of justice and fairness and exemplifying in its ideal performance numerous moral virtues such as courage and honesty. Thus, to engage in sport in any authentic manner is to engage in a moral activity that makes the demonstration of moral virtue an inevitable, and not just a concomitant product of sports participation and sporting excellence. A pervasive moral universalism is commonplace amongst many sport ethicists,

To engage in sport is to become a member of a worldwide practice community. Each member has not only the rights but obligations and is expected to be committed to and live out the values, including moral ones, that are intrinsic to the practice. Looked at from the moral point of view, sport is not relative but is instead a form of moral universalism.<sup>72</sup>

### Hobbes or Kant?

That Hobbesian and Kantian contractarians disagree on certain assumptions about the pre-political or contingent nature of justice within the contractual state does not matter here: the business of this thesis is not first and foremost with evaluating contract theories as viable political philosophies and the subsequent assessment of which actual theory is best.<sup>73</sup> The evidence exists for the acceptance at this stage

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<sup>72</sup> P. Arnold, *Sport, Ethics and Education*, London: Cassell Education, 1997, p.6.

<sup>73</sup> Although the question of which contractarian model is most analogously relevant in helping us to understand modern sport is absolutely an appropriate issue for this thesis and it is the basis of chapters four and five.



that sports *really are just like* social contracts. Put simply, if a Hobbesian view is taken, then sports exemplify the need for the establishment of lawful authorities to determine, apply, and maintain the rules in the face of the ever-present temptation for all parties to break them in the selfish pursuit of their own interests, realised within the framework of the game but not limited to that game. Kantians (exemplified by Rawls) view sports as ideal types of inherently fair competition where rules are accepted because they are recognised to be just and to establish a fair environment within which all parties can strive to realise their desires for the playing of the game.

At this point it would be tempting to think that the conjecture that sport is a form of social contract requires some historical context and evidence to establish how users of social contract theory have engineered modern sport or adapted traditional sports to reflect social contract thinking. Thus, it is necessary at this stage to reiterate the distinction made in chapter two between the philosophy and history elements of this thesis. This thesis is not concerned with an exploration of the factors that influenced the emergence and development of modern sports. These are well documented in a multitude of 'sport histories', some of which were mentioned at the outset. It is taken as a given that modern sport 'arrived' over a period of one or two centuries, beginning in the early eighteenth century, for a variety of reasons. Social contract theory was not a motivational factor in that development. But, having 'arrived', and having gone through a period of considerable change, rationalisation, and even invention (in the cases of tennis, volleyball, basketball etc.) there are countless relevant questions to ask, due in part to one simple fact: sports do seem to share a common 'appearance' or set of properties or qualities (beyond the physicality) that bind them together as members of the same class of things – sports – that consists of more than just the property of



being called 'sport'. Yet, sports have such diverse histories and backgrounds. It is as if they have been homogenised by an invisible hand and 'filled' with a universal essence or nature. Or maybe, it is simply that, regardless of the commercial, cultural, or hegemonic factors that shaped different sports at different times, there existed during the era of modern sports' development deeply ingrained and implicitly accepted ideas of how competitive practices ought to be conducted in keeping with liberal political ideas of fair dealing and contractual agreement. If sports are to be re-written, how else would they be? It is not far-fetched to see modern sport, analogously, as infected by this political mind-set, providing it is clear what purpose analogy serves.

### The Social Contract is an Analogy

Before proceeding with the exploration of these ideas it is necessary to take an essential diversion. Throughout the previous two chapters it has been suggested that the social contract is an analogy for the kind of cooperative-competitive practice of sport. That is, sport is *just like* a social contract. The immediate difficulty with this statement, which can now be understood in the context of this chapter, is that the social contract itself is an analogy. There is no *actual* contract. The consent to the fictitious contract is *hypothetical*. The principle of agreement is *assumed* would exist. Midgley goes as far as to describe the social contract as one of the myths we live by and, "a typical piece of Enlightenment simplification".<sup>74</sup> But, when considered as an analogy it has a useful place and function,

Social-contract thinking is no sort of adequate guide for constructing the whole social and political system. It really is a vital means of protection against certain sorts of oppression, an essential defence against tyranny. But it must not be taken for granted and

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<sup>74</sup> M. Midgley, *The Myths We Live By*, London: Routledge, 2003, p.8.

forgotten as a safe basis for all sorts of institutions. It needs always to be seen as something partial and provisional, an image that may cause trouble and have to be altered. It is a tool to be used, not a final decree of fate or an idol to be worshipped. It is, in fact, just one useful analogy among many. It must always be balanced against others which bring out other aspects of the complex truth.<sup>75</sup>

If it is the case that the social contract is itself an analogy (for the political arrangements of just societies) and that 'sport is just like a social contract' is an analogy, then where does that leave the relationship between the two? Moreover, would more be learnt about the social contract by comparing it to a well-played game (the Rawlsian approach), on the assumption that we know a lot about games and thus can learn more about social contracts? Or, would more be learnt about morality and social life in general by analogously comparing both to either games or social contracts (the Hobbesian approach), on the assumption that these are familiar to us and morality seems a mystery? Is there anything to be learnt about sport that makes the analogy of sport as just like a social contract worthwhile?

The answers to these questions will be assessed in chapters five, six and seven. But, they will not sound convincing unless an understanding is reached about not only the value of analogous argument but also its unavoidability. That is, we live by and understand the world through the use of analogy. In chapter five it will be examined whether or not fair play and rule-abidance is analogous to morality and thus, whether or not it helps with an understanding of sport that it is seen as a kind of Rawlsian social contract. This is not a simple revision of the current chapter. It is an assessment of the validity and use of the analogy through the formal evaluation of the rules of analogous reasoning applied to a particular case study, incorporating historical, empirical evidence to assess the strength of the analogy.

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<sup>75</sup> M. Midgley, *Utopias, Dolphins and Computers: Problems of Philosophical Plumbing*, London: Routledge, 1996, p.6.



Chapter six, likewise, assesses the strength of the analogy of modern Hobbesian contractarian accounts of cheating. There are very real issues to be discussed. The currently illegal use of performance-enhancing substances during the Olympic Games seems to be an intractable problem. What benefit is served by viewing the decision-making processes of those tempted to cheat as the same as those faced with the moral dilemma discussed by Hobbes, re-configured in contemporary philosophy, economics, and game-theory as the Prisoners' Dilemma? Is the analogy only useful if sport *really is just like* a social contract? Once again, what is an analogy and what use does argument by analogy serve?

Chapter seven returns to the issues raised in chapter one and explores the conflict between formalist and ethically-based ideas of the moral character of sport, particularly in the light of a broad internalist requirement for an underpinning ethic of sports contest that informs judgements of right and wrong actions in sport. In chapter one it was seen that internalists amongst sport philosophers have tended towards a contractarian view of moral agreement that enables a fair play of the game. The difficulties with the concept of fair play aside, the view of the cricket umpire as the sovereign (or law-keeper) who maintains fair play in cricket is seen to fit with a Hobbesian notion of morality by agreement.



# 4 Argument by Analogy

## “Philosophical Plumbing”

Midgley asks, “is philosophy like plumbing?”, thereby invoking one of her favourite analogies.<sup>1</sup> The comparison of philosophy with plumbing helps her to emphasise some important features of philosophy readily understood and appreciated when thinking about plumbing. Philosophy, as Midgley argues, is essential. It is also complex, difficult to fathom, and sometimes rather grand. If the comparison ended there, then “philosophical plumbing” would be a simple and neat metaphor, perhaps a rather clever one, but little more than that. But it is more than that. It is an analogy. Midgley wants to tease out the similarities in greater detail for one important reason. She assumes that we know quite a lot about plumbing – not necessarily how to do it, but what it is and what it is for – and that if we understand in what ways philosophy is like plumbing, then the things we know about plumbing might help us to understand more about philosophy.

Plumbing and philosophy are both activities that arise because elaborate cultures like ours have, beneath their surface, a fairly complex system which is usually unnoticed, but which sometimes goes wrong. In both cases, this can have serious consequences. Each system supplies vital needs for those who live above it. Each is hard to repair when it does go wrong, because neither of them was ever consciously planned as a whole. . . . Neither system ever had a single designer who knew exactly what needs it would have to meet. Instead, both have grown imperceptibly over the centuries in the sort of way that organisms grow, and are constantly being altered piecemeal to suit changing demands as the ways of life above them

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<sup>1</sup> M. Midgley, ‘Philosophical Plumbing’, in A. Phillips Griffiths (Ed.) *The Impulse to Philosophize*, Cambridge: Cambridge University Press, 1992, p.159; reproduced as Chapter 1 of Midgley’s, *Utopias, Dolphins and Computers: Problems of Philosophical Plumbing*, London: Routledge, 1996, pp.1-14.

have branched out. Both are therefore now very intricate. When trouble arises, specialized skill is needed if there is to be any hope of locating it and putting it right.<sup>2</sup>

Midgley's primary aim is to make the case for philosophy as an essential business in everyday life. Philosophers are needed as much as plumbers are needed. That is not to say that there is a correspondence in frequency, but that philosophers serve just as important a need as do plumbers. Here, however, the similarity breaks down because where plumbing is concerned,

Everybody accepts this need for trained specialists. About philosophy, many people . . . not only doubt the need, they are often sceptical about whether the underlying system even exists at all. It is much more deeply hidden. When the concepts we are living by work badly, they don't usually drip audibly through the ceiling or swamp the kitchen floor. They just quietly distort our thinking.<sup>3</sup>

Midgley's comments are important in the context of this thesis for two reasons: first, Midgley goes on to demonstrate how the social contract is an example *par excellence* of analogous thinking; and second, Midgley's frequent use of analogy and metaphor illustrate how powerful argument by analogy can be, how much we rely on analogy for understanding, and how difficult it can be to separate analogy and metaphor from so-called reality.

Analogous argument is not limited to philosophy. It is a frequently used rhetorical device in all aspects of science where the author wishes to persuade the reader of the veracity of his or her claim. For example, discussing environmentalism and sustainability, the zoologist and evolutionary biologist Jared Diamond, in *The Rise and Fall of the Third Chimpanzee*, addresses the question of the feasibility of preserving just selected species and letting others die out, "could we not preserve

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<sup>2</sup> *Utopias, Dolphins and Computers*, p.1.

<sup>3</sup> *Utopias, Dolphins and Computers*, p.1-2.



only those species that we need, and let other species become extinct?" Suppose, he argues, we only keep the ten tree species that produce most of the world's paper pulp. How do we know which bird species feed on these trees' insects; which insects pollinate most of its flowers; which animals spread its seeds; and which other species these birds, animals and insects depend on?

Consider the following analogy. Suppose someone offers you a million dollars for the privilege of painlessly cutting out two ounces of your valuable flesh. You figure that two ounces is only one-thousandth of your body-weight, so you will still have nine-hundred and ninety-nine thousandths of your body left. . . . But what if the surgeon just hacks two ounces from any conveniently accessible part of your body, or does not know which parts are essential? . . . If you plan to sell off most of your body, as we now plan to sell off most of our planet's natural habitat, you are certain eventually to lose your urethra.<sup>4</sup>

There might be an initial reaction against the value of argument by analogy and the use of metaphor in 'academic' work because of the understandable association of these with poetry and literature rather than with science or research. Moreover, it could be claimed that analogy is a tool of argument and persuasion, and not a research instrument. Before elaborating on the features of argument by analogy and analysing the validity of such a conceptual device for research, it is worthwhile making and supporting a bold claim: science relies entirely upon analogy. Even when science does not use argument by analogy directly, it relies on the ready acceptance of 'analogues'<sup>5</sup>. Do light and sound really *travel*? Do they travel in *waves*?

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<sup>4</sup> J. Diamond, *The Rise and Fall of the Third Chimpanzee*, London: Vintage Books, 1992, pp.324-325.

<sup>5</sup> The term is used here in both senses: a physical object or quantity used to measure or represent another quantity (the scientific sense); and the ordinary-language sense of something used as analogous to something else. Sound "waves" are analogues in the second sense. The physical representation of those waves on a scientific instrument such as an oscilloscope is an example of an analogue in the first sense. The significant point in the use of 'analogue' rather than metaphor is in the assumption of representation rather than symbolism or imagery.



Do particles really *cling* to each other and other things? And then consider scientific discourse and how theories are *built* upon strong *foundations*. Arguments can be *shaky* and require *buttressing* lest they *fall apart* and ultimately *collapse*. Theories *stand* and *fall* on their *strength*. They are *soundly constructed* with plenty of *support* and developed from a *solid framework*.<sup>6</sup>

It could be suggested that these are simply metaphors used to help us understand how things work and that reality is actually different. But the problem for science is that described by Wittgenstein in the *Philosophical Investigations* and elaborated upon by numerous subsequent philosophers such as Nelson Goodman and Richard Rorty: language cannot be used to try to get between language and the world.<sup>7</sup> If arguments are not made, built, constructed, put together, established, and so on, then how would they be described? Everything is understood in terms of everything else, hence the dependency on synonymy (and ultimately tautology) in dictionary definition.

In so far as 'reality' cannot be described without giving a description of it, and description is dependent upon language, our understanding of reality is language-dependent. Moreover, because language is inextricably linked to the structure and function of the human mind (a mind "hard-wired" - to use another analogue<sup>8</sup> - for the learning and use of language) our language *makes* the world as much as it describes it.<sup>9</sup> Science, thus, cannot escape from metaphor and analogy: understanding is dependent upon a total experiential *gestalt* (or a "form of life" as

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<sup>6</sup> The examples are taken from G. Lakoff and M. Johnson, *Metaphors We Live By*, Chicago: University of Chicago Press, 1980, p.46.

<sup>7</sup> N. Goodman, *Ways of Worldmaking*, Hassocks, Sussex: Harvester Press Ltd., 1978; R. Rorty, *Philosophy and the Mirror of Nature*, Princeton, NJ: Princeton University Press, 1979; L. Wittgenstein, *Philosophical Investigations*, (translated by G. E. M. Anscombe) Oxford: Blackwell, 2002.

<sup>8</sup> See S. Pinker, *How Minds Work*, Harmondsworth: Penguin Books, 1999.

<sup>9</sup> See, in particular, Goodman's *Ways of Worldmaking*.

Wittgenstein might describe it) whereby no simple truth statement is ever 'simple' and understood on its own terms but necessarily evokes a larger range of natural dimensions that provide a background for understanding the sentence in terms that are meaningful (that is, in terms of an experiential category of our culture).<sup>10</sup> Oliver Sacks, the eminent neurologist, puts it another way (and draws on an analogy) in his powerful essay on the nineteenth-century chemist Humphrey Davy and the history of science,

Science sometimes sees itself as impersonal, as "pure thought", independent of its historical and human origins. It is often taught as if this were the case. But science is a human enterprise through and through, an organic, evolving, human growth, with sudden spurts and arrests, and strange deviations, too. It grows out of its past, but never outgrows it, any more than we outgrow our own childhood.<sup>11</sup>

Science is further intertwined with analogous reasoning beyond the use of the simple analogue and the requirement for an experiential *gestalt*. The essential structure of scientific categorisation and organisation is analogue-dependent. 'Natural philosophy' as Isaac Newton understood his own work is now sub-divided into mathematics, physics, chemistry, and biology. The biological sciences are further sub-divided into anatomy, physiology, medicine, botany, entymology, zoology, and so on. Botany and zoology divide their domain into species, genera, family and order, like a tree with branches. From Aristotle onwards, the human view of the world has been compartmentalised like a tidy office with a hierarchy of order and relationship: sometimes inappropriately, as historians, sociologists, and biologists (such as Harriet Ritvo, Donna Haraway, and Stephen J. Gould) have all

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<sup>10</sup> See Lakoff and Johnson's *Metaphors We Live By*; particularly the chapter on truth and the section, 'What Does It Take to Understand a Simple Sentence as Being True', pp.166-169.

<sup>11</sup> Cited by R. B. Silvers (Ed.) *Hidden Histories of Science*, London: Granta Books, 1995, p.i.



commented upon in varying ways.<sup>12</sup> Gould discusses the “ladder or linear march of evolution”, “the cone as a canonical icon of diversity”, and Ernst Haeckel’s “evolutionary tree”. He goes so far as to state, with reference to evolutionary biology and the history of life on earth,

I know of no other subject so distorted by canonical icons: the image we see reflects social preferences and psychological hopes, rather than paleontological data and Darwinian theory. . . . Consider the standard rendering of the Copernican solar system (or the Keplerian version with corrected orbits), and then recognize how much the Bohr atom became the microcosm of this macrocosmic icon. The Cartesian geometry of the celestial icon may be empirically adequate, but drawing electrons as planets cycling about the neutrons and protons of a central “sun” does not accurately represent the atomic world.<sup>13</sup>

In some areas of science and philosophy, there is no way to proceed initially other than by analogy. Indeed, analogy has been an important rhetorical device from early Greek philosophy onwards. Plutarch recounts how the ancients were convinced that elephants held religious beliefs: they cleansed themselves in the sea and faced the rising sun with their trunks uplifted in supplication.<sup>14</sup> How else could animal behaviour be understood, if not anthropomorphically by analogy with human behaviour. Behavioural psychology, by the same virtue, is almost entirely analogical. Thus, argument by analogy has played an extremely significant role in the history of two major philosophical issues: the problem of ‘Other Minds’ and the problem of

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<sup>12</sup> S. J. Gould, ‘Ladders and Cones: Constraining Evolution by Canonical Icons’, in R. B. Silvers (Ed.) *Hidden Histories of Science*, London: Granta Books, 1995, pp.37-67; D. Haraway, *Primate Visions: Gender, Race, and Nature in the World of Modern Science*. London: Routledge, 1989; H. Ritvo, *The Animal Estate: The English and Other Creatures in the Victorian Age*. Cambridge, Mass.: Harvard University Press, 1987; and *The Platypus and the Mermaid and Other Figments of the Classifying Imagination*. Cambridge, MA: Harvard University Press, 1997.

<sup>13</sup> S. J. Gould, ‘Ladders and Cones: Constraining Evolution by Canonical Icons’, p.42.

<sup>14</sup> Lloyd, G. E. R. *Polarity and Analogy: Two Types of Argumentation in Early Greek Thought*, Cambridge: Cambridge University Press, 1966.



God's mind (and more generally the problem of the existence of God).<sup>15</sup> Concerning the latter, analogy has been used from the outset to explain God's role in the creation of the world; usually by invoking the analogy of God as first cause, God as the designer of the world or as its gardener.<sup>16</sup> Even when the existence of a divine creator is denied, the analogy of design without purpose is still used in the metaphor of the "blind watchmaker".<sup>17</sup>

More significantly, the use of argument by analogy in the proof of the existence of 'Other Minds' has been the starting point for almost all thought experiments concerning the possibility of thinking machines and artificial intelligence. Simply, the argument for other minds goes like this. How do I know other minds exist? That is, how do I know that other people have minds? The first temptation is to draw a simple analogy. Other people are just like me. They have bodies with arms and legs and hands and feet just like me. Their insides are evidently just like mine: blood and sinew and guts and bones. They seem to see what I see. They hear as I

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<sup>15</sup> The overwhelming majority of literature concerning argument by analogy exists in these two areas: philosophy of mind (the nature of consciousness, the possibility of artificial intelligence, and cognitive psychology) and philosophy of religion. With respect to the former, see: E. A. Esper, *Analogy and Association in Linguistics and Psychology*, Atlanta: University of Georgia Press, 1982; and D. Gentner, B. Holyoak, & N. Kokinov, (Eds.) *The Analogical Mind: Perspectives from Cognitive Science*, Boston: MIT Press, 2001. For the latter, see J. Butler, *The Analogy of Religion*, Charlottesville, VA: Lincoln Rembrandt Publishers, 1986; R. McInerny, *Aquinas and Analogy*, Washington, DC: Catholic University of America Press, 1999; and H. Palmer, *Analogy (New Studies in Philosophy of Religion)*, London: Macmillan, 1973.

<sup>16</sup> In particular, the article 'Theology & Falsification' by Anthony Flew, first published in the Oxford undergraduate journal *University* in 1950 and re-printed in A. MacIntyre and A. Flew (Eds.) *New Essays in Philosophical Theology*, SCM Press, 1955. Flew begins with a parable developed from a tale told by John Wisdom in his essay, 'Gods', *Proceedings of the Aristotelean Society*, 1944-45, re-printed in A. Flew, *Essays in Logic and Language*, Oxford: Blackwell, 1951 (Chapter X) and in Wisdom's own *Philosophy and Psychoanalysis*, Oxford: Blackwell, 1953. Wisdom developed his own ideas further in his article 'Other Minds' for the journal *Mind* in 1940, re-printed in J. Wisdom, *Other Minds*, Oxford: Blackwell, 1952. Flew claims his article 'Theology & Falsification' to be possibly the most widely read philosophy publication of the second half of the twentieth century; see A. Flew, 'Theology & Falsification: A Golden Jubilee Celebration (2000)', *Philosophy Now*, Oct/Nov 2000, pp.28-29.

<sup>17</sup> R. Dawkins, *The Blind Watchmaker*, Harmondsworth: Penguin Books, 1990.

do. They talk in the same way that I do. We move in the same ways. Moreover, they respond to me – to my presence, my voice, my expressions, and my emotions – in much the same way as I respond to them. During all this action I am aware of things happening inside my head: thoughts and feelings. I associate these inner-states with something I have come to understand as my mind. My mind I have come to assume is, in fact, nothing but these thoughts, feelings, memories, perceptions and so on. Because in all other ways most people seem to be *just like me*, it seems inductively logical to conclude that, just like me, they also have minds. Moreover, it pleases me enormously to believe that other people do have minds. How lonely life would be if I was unique in this capacity.

The most famous embrace of this argument by analogy is found in Bertrand Russell's *Human Knowledge: Its Scope and Limits*.<sup>18</sup> He was probably inspired by his godfather, John Stuart Mill, in his critique of William Hamilton. Mill states,

I conclude that other human beings have feelings like me, because, first, they have bodies like me, which I know in my own case, to be the antecedent condition of feelings; and because, secondly, they exhibit the acts, and other outward signs, which in my own case I know by experience to be caused by feelings.<sup>19</sup>

Ironically, it is the conviction that I am minded that could lead to my doubting the minds of others. This paradoxical stance has been inherited from one of the most notorious pieces of deductive reasoning in Western philosophy: René Descartes' *Discourse On Method* and the passage that is commonly referred to as the 'cogito'.<sup>20</sup> Descartes set out to deduce transcendently what things can be known by him

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<sup>18</sup> B. Russell, *Human Knowledge: Its Scope and Limits*, London: Simon & Schuster, 1948.

<sup>19</sup> J. S. Mill, *An Examination of Sir William Hamilton's Philosophy*, New York: Longman's, Green & Co., Inc., 1889 (6<sup>th</sup> Edition), p.243.

<sup>20</sup> An abbreviation of the Latin expression, *cogito ergo sum*, "I think, therefore I am". From R. Descartes, *Discourse On Method; Meditations* (translated by F. E. Sutcliffe), Harmondsworth: Penguin Books, 1968.



without any doubt. He demonstrated how it is possible to doubt anything about the external world. He could even doubt the existence of his own body. But, through the process of doubting, there was one thing of which he could be sure: something must be there to do the doubting. That something is a thinking mind. Furthermore, that thinking mind is the only thing he could know about himself. As Descartes concluded, it is what 'I' primarily am and what I know best. As for others, 'I' know nothing. They could all be mindless machines just going through the motions. It could all just be a dream.<sup>21</sup>

Descartes' conclusion can be turned on its head. If I cannot know that other bodies possess minds, then I cannot know that they do not. More importantly, if argument by analogy gives me no proof of other minds, then by the same virtue other bodies could possess minds even if they are not 'just like me'. In other words, no amount of similarity of body or movement or expression between me and another thing is proof that they have minds; and thus, the only factor relevant in determining that something else is 'just like me' is the existence of its mind, because as Descartes' concluded, to be me is to be a thinking mind. The extension of this argument leads to some quite startling suppositions that are the stuff of science fiction as well as of serious scientific and philosophical investigation. Most notable are the various developments in the production of artificial intelligence that have resulted from the famous 'Turing Test'. Mathematician and logician, Alan Turing, proposed in a paper published in *Mind* in 1950 that if a computer could communicate with a human being in such a way that the human being could not tell the difference

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<sup>21</sup> The arguments against Descartes' conclusions are many. They are equally notorious, particularly the so-called 'Private-Language' Argument of Wittgenstein alluded to earlier in the main text of this chapter. Why Wittgenstein's argument is worth mentioning here is because he claims entirely the opposite of Descartes: only if I recognise other minds can I consciously apprehend my own. I cannot even understand mind-concepts without apprehending or realising them in the context of other people's minds.



between conversing with the computer and conversing with another human being, then it would be rather arbitrary to deny that the computer is minded just because it is a computer.<sup>22</sup> There may be other tests of mindedness, but if, for example, the capacity for conversation is a sufficient condition, then a conversing computer is minded: being a member of the species of things called humans or not is irrelevant.<sup>23</sup>

This slight detour, whilst not directly relevant to the study of sport and the social contract, serves one important purpose: it raises many of the questions about the use and validity of argument by analogy in the context of an area of philosophic inquiry where analogy is the first and foremost tool of analysis.<sup>24</sup>

### What is argument by analogy?

Analogy<sup>25</sup>, as the demonstration of the similarity between two relations, can be used as a comparison in order to clarify, structure, or evaluate a theme or proposed idea. Typically, in history, analogies can be used as examples for supporting causal arguments and they can be used to argue for the causes of events in the past and to predict events in the future.<sup>26</sup>

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<sup>22</sup> A. M. Turing, 'Computing Machinery and Intelligence', *Mind*, 59, 1950, pp.430-60.

<sup>23</sup> And the Turing Test has spawned its own literature of argument and counter-argument, beginning with John Searle's 'Chinese Room' thought experiment and the numerous responses to it. See J. Searle, 'Minds, brains, and programs', *Behavioral and Brain Sciences*, 3, 1980, pp.417-57; Paul M. Churchland's edited volume, *A Neurocomputational Perspective*, Cambridge, MA: MIT Press, 1989; Daniel Dennett's edited volume, *The Intentional Stance*, Cambridge, MA: MIT Press, 1987.

<sup>24</sup> When asking, "what kind of thing is a mind?" how else can one begin to answer without recourse to an analogue, metaphor or simile: "it's just like a computer". The important point of comparison is that we know a lot about computers and how they work, so by analogy, we know a lot about minds.

<sup>25</sup> The word analogy is from the Greek *anaolgy*, meaning proportion.

<sup>26</sup> D. Long, and R. Garigailano, *Reasoning by Analogy and Causality: A Model and Application*, Crystal City, VA: Ellis Horwood, 1993; David Hackett Fischer, *Historians' Fallacies: Toward a Logic of Historical Thought*, New York: Harper & Row, 1970.

Argument by analogy is unlike most other forms of inductive reasoning which require more rather than fewer examples. Rather than multiplying examples to support a generalisation, analogy argues from one specific case or example to another example, reasoning that because the two examples are alike in many ways they are also alike in one or more further specific ways. The general form of an argument by analogy can be expressed thus:

1. Some state of affairs, action or thing *A* is like a state of affairs, action or thing *B* in that they both share properties *a*, *b*, and *c*.
2. The state of affairs, action or thing *A* has the additional property *d*.
3. Thus, the state of affairs, action or thing *B* has the additional property *d*.

In the case of the argument by analogy for other minds, this deductive approach can clearly be seen. I (object *A*) am rather like you (object *B*) in that we both have features *a*, *b*, and *c* (limbs, locomotion, speech, etc). I, in addition, possess property *d* (a mind) and so it is reasonable to assume that you also possess a mind. Thus, the purpose of argument by analogy is to prove something about the state of affairs, action or thing *B*. It is assumed that *A* is the *familiar case* (we know a lot about it) and *B* is the unfamiliar case. In the case of the arguments for other minds, above, it is not always entirely clear which is the familiar case: can we learn about minds by learning more about computers, or can we improve computers by making them imitate minds? Even when argument relies upon deductive reasoning, analogy might be inferred in one of the premises: gardens are first designed in the minds of gardeners; the world is a perfect garden; thus, the world is designed by a perfect gardener (God).<sup>27</sup>

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<sup>27</sup> See the references to Flew and Wisdom earlier.



This latter example hints at the methods by which analogous argument can be analysed. These are no different from the means by which all deductive arguments are analysed; by taking issue with the premises. But, at this stage it is important to note that analogy, if it is 'argument' at all, is not in itself deductive. It is a form of *inductive* reasoning. The analogy is the comparison made by the constituent features of A and B. The 'argument' is the inference:  $A = B, Ap \rightarrow Bp$ .

In analysing argument by analogy, as illustrated by the syllogism above, either the premises (1 and 2) can be questioned or the conclusion (3) can be questioned. In calling into question the first premise, two possibilities will falsify the conclusion by falsifying the premise:

- a) Is there a relevant condition of A not shared by B which can account for property *d* in A (thereby discounting the necessity for *d* in B)?
- b) Is there a relevant dis-similarity between A and B?

The second premise can be similarly analysed and brought into doubt:

- c) Does the state of affairs, action or thing A actually possess *d*?
- d) Is the additional property *d* relevant to the similarity being claimed between A and B?

Furthermore, the conclusion (3) can be questioned by presenting an example of a state of affairs, action or thing C that also shares properties *a*, *b*, and *c* but is known for a fact not to possess property *d*.

David Hume uses just such methods of counter-argument when he dismisses the simple argument by analogy for the existence of God. The traditional argument attempts to infer the existence of a Creator from the fact of the order and beauty of



the world. Just as we can infer the existence of an architect or designer when we see a well-built and beautiful house, so we can infer the existence of a Grand Designer from the fact of a beautiful well-built world. The important question is whether or not the world is relevantly similar to a house. In particular, houses are parts of the world and aspects of 'nature'. Is it appropriate to extrapolate to the structure of nature as a whole and about what sort of causes it has? Hume comments in his *Dialogues Concerning Natural Religion*:

Is *part* of nature a rule for the whole? . . . Think of how wide a step you have taken when you compared houses . . . to the universe, and from their similarity in some circumstances inferred a similarity in their causes. . . . Does not the great disproportion bar all comparison and inference?<sup>28</sup>

Analogy is not identity. Argument by analogy is not the same as parallel argument where all elements are equal or similar in all essential particulars. Of course philosophy is not the same as plumbing. But, there are distinctive features of both that are similar, as Midgley shows, which make it relevant to consider whether the consideration of further features of plumbing will reveal further (interesting and hitherto unconsidered) features of philosophy. Plumbers use tools such as wrenches, pipe cutters and blow-torches. Philosophers do not. But these features of plumbing are not relevant to the analogy because it is not the techniques and apparatus of plumbers that make plumbing like philosophy; it is the existence of plumbing as an out-of-sight yet essential utility that is complex yet prone to going wrong that makes the comparison worthwhile. In this respect the inference, that plumbing needs professional plumbers therefore philosophy needs professional philosophers, is a valid one.

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<sup>28</sup> D. Hume, *Dialogues Concerning Natural Religion* (Edited M. Bell), Harmondsworth: Penguin, 1990, Part II.

In constructing and considering analogous arguments, then, several questions need to be asked:

How are the two things similar?

What properties do the two instances have in common?

What additional property does the familiar case have?

What additional property is being claimed for the unfamiliar case?

The purpose of argument by analogy is not to prove identity.<sup>29</sup> It is not to show that *A* is the same as *B*. It is to argue the point about property *d* of *B* and consequently gain greater understanding of *B*.

In his book *Practical Logic*, Monroe Beardsley denies the validity of argument by analogy, “Analogies illustrate, and they lead to hypotheses, but thinking in terms of analogy becomes fallacious when the analogy is used as a reason for a principle”.<sup>30</sup> However, this does not prevent Beardsley from supplying an example of a good analogy, where one thing is clearly represented by another in such a way that understanding or use of the latter thing helps us use the former. He was thinking of a map,

The dots on the map are not very much like actual cities, and the lines on the map are not at all like mountains or wet like rivers . . . But the structure of the map, if it is a good one corresponds to the structure of the country it represents. That is, the shapes of the states are like the shapes on the map . . . and the relative distances

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<sup>29</sup> S. Vosniadou and A. Ortony (Eds.), *Similarity and Analogical Reasoning*, Cambridge: Cambridge University Press, 1989.

<sup>30</sup> M. C. Beardsley, *Practical Logic*, New York: Prentice Hall, 1953, p.107.

between actual cities are like the relative distances between dots on the map.<sup>31</sup>

Beardsley missed the opportunity to make the further, essential, point about maps as analogues: property *d* (so to speak) of the map – direction from X to Y – is the same as property *d* of the landscape. Bedford is south of Leicester on both the map and in reality. That is how maps work.

### ‘Weak’ and ‘Strong’ Analogy

In discussing the map example, Beardsley coined the phrase “strong analogy”. And technically, bad analogies are not false because analogies do not make truth claims about the identity of *A* and *B*. Rather, analogies are *strong* or *weak* depending upon the degree of similarity between *A* and *B* and the relevance of inferring property *d* in *B*. Thus, analogies are useful or meaningful owing to the degree of correspondence between *A* and *B* but within the boundaries of extreme dissimilarity and near identity. Analogies are strengthened in the same way that other forms of inductive reasoning are strengthened: by increasing the probability of the inference. The more properties *A* and *B* have in common, the higher probability that both will share property *n*+1. Nevertheless, no analogy is perfect. There must be the possibility of some difference between analogues. The value of analogous argument lies in the lack of a complete picture of *B* and the assumption of similarity to *A*.

Conversely, even weak analogies ‘work’ because there is at least some similarity between the two cases and the potential to draw a conclusion about further similarities. For example, Lewis Carroll famously posed the nonsense riddle, “How is a raven like a writing desk?” in *Alice in Wonderland*.<sup>32</sup> Alice is at the tea party with

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<sup>31</sup> *Practical Logic*, p.106.

<sup>32</sup> L. Carroll and M. Gardner, *The Annotated Alice*, Harmondsworth: Penguin, 1970, p.95.



the March Hare, the Mad Hatter, and the Dormouse, when apropos of pretty much nothing the Hatter pops the question. Several pages of madness follow, and then:

“Have you guessed the riddle yet?” the Hatter said, turning to Alice again.

“No, I give it up,” Alice replied. “What's the answer?”

“I haven't the slightest idea,” said the Hatter.

“Nor I,” said the March Hare.

Alice sighed wearily. “I think you might do something better with the time,” she said, “than wasting it in asking riddles that have no answers.”<sup>33</sup>

Carroll's intention that the riddle and its lack of a solution is just an example of the Mad Hatter's madness did not deter readers from trying to solve the puzzle. Carroll was so irritated by the voluminous correspondence he received on the subject that he was moved to write in the preface to the 1896 edition of the book,

Enquiries have been so often addressed to me, as to whether any answer to the Hatter's Riddle can be imagined, that I may as well put on record here what seems to me to be a fairly appropriate answer, viz: “Because it can produce a few notes, tho they are very flat; and it is never put with the wrong end in front!” This, however, is merely an afterthought; the Riddle, as originally invented, had no answer at all.<sup>34</sup>

This did not deter subsequent attempts at a solution. Martin Gardner lists the most well-known in his book *The Annotated Alice*,

- Because the notes for which they are noted are not noted for being musical notes. (Sam Loyd, 1914)
- Because Poe wrote on both. (Loyd again)
- Because there is a B in both and an N in neither. (Aldous Huxley, 1928).<sup>35</sup>

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<sup>33</sup> *The Annotated Alice*, p.97.

<sup>34</sup> *The Annotated Alice*, p.95.

<sup>35</sup> *The Annotated Alice*, p.95.

Alice aside, some arguments from analogy are based on analogies that are so weak that the argument will not do the work required. But, with argument by analogy, the strength that the argument needs to have is dependent upon the context in which the analogy occurs and the use to which it is put. Weak analogies in riddles are fine. They are not so useful when arguing for or against nuclear disarmament. In some cases, in the absence of any further evidence or any other form of argument, and as a guide for further thinking on a subject, even a very weak analogous argument may have a purpose.<sup>36</sup> Thus, whilst the validity of deductive argument using analogy for its premises depends upon the strength of the analogy in those premises, the usefulness of argument by analogy is not solely determined by that strength. In general, though, several considerations clearly matter in determining the strength or weakness of the inductive inference in analogous arguments:

**Number of similarities.** If the number of instances in which A is similar to B is great, then the greater likelihood of a stronger analogy. Hence, the temptation of argument by analogy for other minds because of the great number of similarities between me and another person.

**Number of dissimilarities.** The fewer the dissimilarities between the familiar and the unfamiliar case, then the greater likelihood of a stronger analogy. The dis-similarity between plumbing in philosophy is the obvious one of pipes and washers, but in the context of how the analogy works there are surprisingly few dis-similarities.

**Relevance.** The strength of the analogy can be affected by the relevance of comparing the two cases. For example, in the case of Jared Diamond's analogy in the argument for bio-diversity, the complexity and inter-connection of all organs of the body is directly relevant to the inter-connectedness of all life on earth. The earth is,

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<sup>36</sup> S. T. Cargill, *Philosophy of Analogy and Symbolism*, New York: R.A. Kessinger Publishing Co., 1940.



in that respect, just like a giant living, breathing, thing. Conversely, if I find an argument for the possibility of ‘mindedness’ amongst an increasing number of other persons who don’t share the same features (no limbs, deaf, unable to speak properly, for example) then these features cease to be relevant and the analogy is weakened.

**Number of useable instances.** The strength of an analogy can be fortified by the repeated use of the analogy. As an inductive argument, its proximity to truth is increased as the probability of the next case being analogous increases.

**Instance variety.** In general, the more variety there is between instances of an analogy of the same kind where the analogy seems to hold true, then the increased likelihood that the analogy is strong. For example, Diamond could have used the analogy of body organs to talk about the ‘balance of nature’ in fish stocks; flowers, birds, and insects in the garden; or the pollination of apple trees.

**Modesty of conclusion.** How far do you take an analogy? Midgley makes one or two important claims about philosophy when comparing it to plumbing but leaves it there. What if Jared Diamond went on to claim that just as cutting two ounces of flesh from a person would be assault and immoral and so would chopping down trees, then the analogy might be weakened by being taken too far. The concept of assault brings into play all sorts of other considerations that threaten the relevance of the analogy.



So far in this chapter three aspects of argument by analogy have been considered. First, a number of examples of argument by analogy have been given, beginning with Midgley’s “philosophical plumbing”, to illustrate the use and potential value of analogy as a rhetorical device. Second, a case has been made for the acceptance of the use of analogues and analogous reasoning throughout science – analogy is not just a style limited to literature or oratory. Midgley, in fact, argues that science and poetry are two sides of the same coin and emanate from the same desires to describe and explain the world. Midgley makes considerable use of analogy when



discussing the meaning, purpose, value, use and abuse of science.<sup>37</sup> Third, the structure and features of argument by analogy have been outlined with ensuing principles for analysing the strength of analogous arguments. These principles will be put into practice in the following three chapters.

Throughout this chapter, no detailed mention has been made of the use of analogy in historical research or specifically in the case of the analogy of sport and the social contract. This has been a deliberate avoidance in order not to obfuscate the issues and to retain this chapter as a clear and unambiguous statement of ‘methodology’ related to the entire thesis.<sup>38</sup> Using the example of sport as a form of social contract to discuss the merits, structure, and validity of argument by analogy would pre-empt too much of what needs to be discussed in detail in chapters five, six and seven. How the description and evaluation of analogy in this chapter relate to ‘method’ and how that method is used to consider the questions raised in chapter two will be outlined in a moment. First, it is pertinent to establish precisely what this thesis has attempted to do up to this point and then to outline how it will proceed.

The opening chapters served two purposes. On the one hand they established the main research question of this thesis and the related sub-questions. Is sport in essence a form of social contract? Subsequently, are we more able to understand essential internal characteristics of sport (such as the necessary condition of a presumption of fair play) or analyse concomitant features of sporting practice (specific instances of cheating, such as the use of performance-enhancing drugs) via

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<sup>37</sup> See Midgley’s *Science as Salvation: A Modern Myth and Its Meaning*, London: Routledge, 1992; *Evolution as Religion: Strange Hopes and Stranger Fears*, London: Routledge, 2002; *Science and Poetry*, London: Routledge, 2002; and *The Myths We Live By*, London: Routledge, 2003.

<sup>38</sup> There are difficulties here with the term ‘methodology’ because analogy is both a tool used in the investigation and the object of the investigation. Broadly speaking, the methods involved in this research are many. However, the main method is philosophical argument: the use of conceptual analysis, deduction, and the testing of claims logically inferred by the interrogation of the premises upon which the argument is based.

the analogy of the acceptance of the internal logic of sport and the maintenance of its ethos and practice as a kind of social contract? On the other hand, chapter two attempted to establish the significance of the research question in the context of sports history by using an analogy of its own. The emergence of sport as a significantly 'modern' phenomena in the eighteenth and nineteenth centuries in Britain suggests two things: (i) what counts as 'sport' in modern times is distinct and different from what might be referred to as sport prior to this era; and (ii), the distinction between the two types of activity sharing the same name and the causes in the production or creation or evolution of the 'new' sport.<sup>39</sup>

In chapter two, the dramatic change to pre-modern sport and the factors affecting that change were likened to the metamorphosis of a host upon infection or contagion. This image or analogy is dramatically at odds with the frequently used analogies in sport history related to evolution in which new-sport is seen as a linear progression from old-sport. Either way, infection from an outside agent or modified descent from internal re-structuring of sport's genetic code, the strength of the analogy needs to be tested. Whilst the evaluation of a biochemical model rather than a procreative model is beyond the scope of this thesis, some comments will be made in chapter eight about the strength of analogy presented at the outset. However, the main purpose of the use of analogy in chapter two was served entirely in chapter two. It introduced the idea that a modern mind-set included an orientation to philosophical ideas and political theories that were thoroughly new;

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<sup>39</sup> The three analogues of production, creation, and evolution are chosen deliberately here to cross-reference to the discussion in chapter one and to reinforce the comments made there and in this chapter about analogue and metaphor in historical or scientific description. Production invokes a building analogy. Creation invokes an authorship analogy. Evolution invokes a biological analogy. The contention in chapter one was that each or any of these analogies operates tacitly in a great deal of historical description. It remains a question beyond the scope of this thesis to consider just how much these implicit analogies impact upon the way historians have gone about trying to find the answers to their questions.



that this mind-set had the effect of invading or colonising most social practices previously grounded in the cultures of the aristocracy and the populace; and that new-sport is the end result of the infection of the host (old-sport). The single most important claim being made in this analysis is totally dependent on the strength of this particular analogy: if, indeed, old-sport is the 'host', then modern sport is best understood by an analysis of the virus infecting it, not of the host itself. Thus, sport is not "as old as the hills" and any relationship between new and old is no more than that between a dwarf apple tree and its root stock - modern sport is grafted on to its more primitive cousin. This is a sweeping claim made with a broad brush-stroke. This thesis attempts to provide evidence for its consideration.<sup>40</sup>

Chapter three provides a further and substantial example of analogy in use. Throughout the chapter the history of social contract theory is described at the same time as the case is made for modern sport being viewed as a kind of social contract. The point of this is two-fold and can only now be made after the consideration of argument by analogy in this chapter. The social contract itself is a kind of analogy. This is made clear in chapter three, but only explicit at the end. No contract is ever really signed: it is an implicit contract. Thus, the consideration of whether or not sport is a form of social contract is no longer quite such a straightforward question. As chapter five will argue, when aspects of social contract theory and sport are compared it is not certain which is the familiar case and which is the unfamiliar case. John Rawls, for example, has used the comparison of the two with game-playing, sport, and fair play as the familiar case in order to undertake a more thorough conceptual analysis of social justice as the unfamiliar case.<sup>41</sup> Second, the

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<sup>40</sup> The difficulties involved with disentangling the old and traditional from the new and modern will be illustrated in chapter four with a discussion of the concept of fair play.

<sup>41</sup> J. Rawls, 'Justice as Fairness', *Journal of Philosophy*, LIV, 1957, pp.653-662; and *A Theory of Justice*, Oxford: Oxford University Press, 1971.



evidence for and establishment of the governance and structuration of modern sport under the influence of contractarian thinkers (chapter three) is in itself a significant analysis, but is beyond the scope of this thesis. That the analogy of the social contract is flawed, or that the analogy of sport as a form of social contract is weak, does not detract from the value of the comparison. As chapter three establishes at the outset, any political philosophy must deal with two questions: what are the demands that obligation to authority make on us and why should we feel obliged to accede to those demands? The claim of chapter three underpins the entire analysis therein of social contract theory. These two questions can be asked both of any political philosophy and of any participant in organised, governed, modern sport. If the off-spring of the liberal political reformers of the nineteenth century were the same educators, doctors, and captains of industry who formed the early governing bodies of sport, then it would not be surprising to find that sport is made in the same mould. Thus, the resemblances between sporting contests and social contracts made in chapter three are valid in themselves regardless of the independent strength of either the analogy of the social contract or the analogy of sport as a social contract.

It is now possible to re-consider chapter three in the light of the details about argument by analogy given in this chapter. Chapter three will not simply be revisited. Instead, the analytical tools used to evaluate analogous arguments will be wielded to dissect the application of the analogy in two common uses. The reason for this is simple. As mentioned earlier, argument by analogy can be a powerful rhetorical device. Its persuasiveness can often exceed its veracity. To use the terminology above, the modesty of its conclusions must be subject to a certain degree of parsimony. Two specific instances of implicit and explicit analogy are used to interrogate further the likeness of sport to a social contract. In chapter five the

slightly weaker analogy of the two is examined. In part, this was outlined without further investigation in chapter three: in what way is fair play in sport like social justice? That is, in part, how much is the requirement for fairness in sport as part of sport's own internal logic a feature layered-on at a particular historical moment in time? The assumptions of Loland's 'Rawlsian' model is that it is not. The method by which the strength of an analogy is assessed (outlined earlier in this chapter in the section 'what is argument by analogy?') will be demonstrated. That is, the premises upon which any deduction about the similarity between the familiar and unfamiliar cases will be assessed for their truth and relevance.

In chapter six a much-discussed section of Hobbes' *Leviathan* will be examined through its modern exposition as the case of the prisoners' dilemma.<sup>42</sup> As chapter three established, sport can be seen through both Hobbesian and Kantian eyes in terms of social contract traditions. The frequent analogy used in contemporary sport philosophy of the temptation to cheat as a kind of prisoners' dilemma firmly places sport as a social contract in the Hobbesian tradition. It is here that the six considerations of the strength of an argument by analogy (explained earlier in the section on 'weak' and 'strong' analogy) are implicitly applied to the arguments to evaluate an example of a supposed strong analogy.

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<sup>42</sup> T. Hobbes, *Leviathan* (1651), edited with commentary by R. Tuck, Cambridge: Cambridge University Press, 1991.



# 5

## The Weak Analogy

### Justice as Fairness <sup>1</sup>

In 1974 the England football team failed to qualify for the World Cup Finals. It ended the careers of two of the remaining members of the successful 1966 team, the captain Bobby Moore and manager Sir Alf Ramsey. It was a national disaster. It was the beginning of the end for England as a leading force in World soccer; no longer the leaders in their own National game - the game they had invented, nurtured and spread throughout the world.

In the same year, the eminent British moral philosopher Mary Midgley began her seminal article *The Game Game* with the often quoted piece of hagiology attributed to the late Bill Shankly, Liverpool Football Club's most charismatic manager, "Some people talk about football as if it were life and death itself, but it is much more serious than that".<sup>2</sup>

This chapter takes Midgley's ideas as a starting point for an examination of fair play and the assumption of a moral basis for sport. Midgley begins by questioning the assumption made by some philosophers that the issue of "why should we be moral?" can be solved by invoking the game analogy of why we ought to play fairly. However, as chapter four illustrates, Midgley herself warns us of the care with which

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<sup>1</sup> The original version of this chapter was published as S. Eassom, 'Fair Game: Rules, Rawls and the Limits of Contractarian Ethics in Delineating the Morality of Game Playing', Proceedings of the Philosophical Issues in Sport and Physical Education Conference, Cardiff: 17-19 March, 1995. A modified and extended version is published as S. Eassom, 'Games, Rules and Contracts', in M. J. McNamee and S. J. Parry (Eds.) *Ethics and Sport*, London: Routledge, 1998, pp.57-78.

<sup>2</sup> M. Midgley, 'The Game Game', *Philosophy*, Vol.47, 1974. The abridged version is referred to here, contained in, M. Midgley, *Heart and Mind*, London: Methuen, 1981, pp.133-150.



we ought to handle analogous arguments in her essay on *Philosophical Plumbing*.<sup>3</sup> In this thesis, it has been suggested that the social contract is itself one such analogy. Moreover, chapter three demonstrated how the use of sports and game-playing as institutions ideally representative of the contract analogy could be used to discuss further the validity of social contract thinking. There are significant issues to be raised by an examination of the structure of rules in games and sports, but no good will come of any reductionist attempt to suggest that games themselves are quite simple things to understand. Consequently, there are several main points that this chapter attempts to make in further developing Midgley's approach in *The Game Game*, particularly with reference to her concerns about contract theory expressed throughout her numerous articles and books.

From the general tone of this chapter it should become clear that a different approach to the analysis of contemporary issues involving cheating in sport, drug taking, violence, and so on, should be taken. It will become clear that this thesis argues for a return to the unfashionable area of ethical naturalism – and more generally for philosophy informed by sociology, history, and psychology, for example – and a more sophisticated analysis of anthropology, ethology, and related disciplines in the exploration of the murky area of moral conduct in sport. This is not necessarily to proclaim, as de Waal does in his recent book, *Good Natured: the Origins of Right and Wrong in Humans and Other Animals*, that “we seem to be reaching a point at which science can wrest morality from the hands of philosophers”, regardless of the merits that such a claim might have.<sup>4</sup> It is simply that a detailed examination of historical data related to moral conduct and fair play

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<sup>3</sup> M. Midgley, 'Philosophical Plumbing', in A. Phillips Griffiths (Ed.) *The Impulse to Philosophise*, Cambridge University Press, 1992, pp.159-171.

<sup>4</sup> F. de Waal, *Good Natured: the Origins of Right and Wrong in Humans and Other Animals*, Harvard University Press, 1996, p.218.

in sport reveals evidence that might render the analogous use of game-playing as a suitable ideal model of the social contract more problematic than it first seems. This chapter investigates the difficulties with the weak analogy of fair play as justice, before proceeding, in chapter six, to discuss the stronger analogy of cheating as a prisoners' dilemma-type situation. In brief, at this stage, rather than see the problem in terms of what is meant by cheating (via some sort of definitional analysis) or considering whether cheating is immoral or amoral, the approach ought to be one of examining the appropriateness of the particular conceptions of fair play used in any such analysis and by examining what conception of morality is being assumed. This chapter, by demonstration rather than explicitly through detailed conjecture and refutation, puts forward the negative thesis that the attempt to see the moral structure of sport in terms of an implicit 'social contract' (and thus to offer a rationale for why we should condemn cheating and so forth) needs further careful exploration through studies of both the history of sport and the contract tradition.

Midgley's comments in *Philosophical Plumbing* are pertinent here with respect to the argument that the social contract is just one sort of analogy for underlying moral structures that seem to bind societies together, as a "conceptual tool used by the prophets of the Enlightenment to derive political obligation from below rather than from above".<sup>5</sup> She goes on to say two things about this particular conceptual scheme. Without revisiting chapter three, Midgley's use of the plumbing analogy highlights two significant points about social contract theories and moral schema in general. First, as models they are merely an indicator of much wider and deeper structures. When the plumbing springs a leak (to use Midgley's metaphor), we are forced suddenly to notice the previously unconsidered mass of such underlying

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<sup>5</sup> M. Midgley, 'Philosophical Plumbing', p.143.



structures. Second, the social contract model, specifically, is only partial and provisional.<sup>6</sup>

If Midgley's claims are worthy of consideration, then it remains to show where the cracks in the pipework of the social contract analogy might be found. The method of doing this is the same as the method for analysing any argument by analogy, outlined in the previous chapter. Analogies work by invoking a 'familiar case' (in this instance sport) and stressing its similarity to an 'unfamiliar case' (in the first instance, contract theory, but also 'morality' in general once contracts are accepted as the 'familiar case'). The second step in the argument is to lay out the attributes of the familiar case, which are generally taken to be instantly recognisable and non-contentious. The conclusion puts these two stages together. Given that the two cases are alike and that the 'familiar case' has certain attributes additional to that similarity, then it is probable that the 'unfamiliar case' will share those attributes. Or so the story goes: What is interesting in the whole protracted mess about discussions of games and rules and contracts is that it is not entirely clear that sport or game-playing is, in fact, the 'familiar case'. Sometimes, paradoxically, the social contract is invoked as the 'familiar case' in order to reveal some sort of new understanding about the moral structure of game playing.<sup>7</sup> At other times, game-playing is the 'familiar case' informing us about morality in general by virtue of the contract model as an analogue that maps one onto the other.<sup>8</sup> Evaluating the

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<sup>6</sup> 'Philosophical Plumbing, p.147. Midgley sees analogies such as the social contract model as understandable quests for a single pattern that satisfy a unifying tendency amongst us. That this unifying tendency is strongly associated with the modernistic project has been successfully illustrated by the various representations of "Postmodernism", in spite of the conceptual confusion that surrounds some of the wilder claims of that genre.

<sup>7</sup> A. Schneider, and R. Butcher, '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-XXII, 1993-94, pp.64-81.

<sup>8</sup> This is undoubtedly the aim of Rawls in the early formation of his ideas concerning 'justice' as 'fairness': J. Rawls, 'Justice as Fairness', *Journal of Philosophy*, LIV, 1957, pp.653-662.



strengths of arguments by analogy requires the further consideration of two fundamental questions. To begin with, “Is the similarity between the cases strong enough to support the inference?” In other words, are sports *really* like models of social contracts? As both game-playing and the social contract are, at various times, offered as ‘familiar cases’, is the social contract *really* representative of the deeper underlying structures shaping our moral relations in a social setting. Furthermore, “Are the facts about the familiar case(s) correctly stated?” That is, do those wishing to utilise the contract model accurately portray the nature of game-playing and the supposed contractual obligations found within it? These two fundamental questions and their related applications are what directs the content of this chapter in considering the case of justice as fairness as an example of a weak analogy.

Thus, the approach taken here is not one of a theoretical critique of contract theory. These exist elsewhere and reference will be made throughout to such sources. Chapter three highlighted some of the difficulties with social contract theories. However, this thesis is not a consideration of social contract theory *per se*. It is taken as accepted that social contract theory is well established and has been one of the most significant developments of political philosophy in the past three hundred years. What is at issue here is the influence of social contract theory on the rationalisation and codification of modern sport. It is not even the issue of the influence of social contract theory explicitly on any particular sport(s). It is not the intent of this thesis to map chronologically the influence of social contract thinking on to key moments in the transformation of sport in the nineteenth century, if such a project was possible, although, clearly, historical evidence is used throughout this study to provide evidence for arguments where appropriate. This thesis aims to do the philosophical groundwork in exploring the idea that sport has become an analogous form of social contract in its organisation, structure, and practice. At the

same time, examples from sport history are offered to illustrate the potential for a critique of contract theory undertaken with reference to the study of sport, otherwise put forward as an archetypal example of an implicit contract in practice. It is suggested that before such analogies are accepted, a more detailed examination of the evolution of laws and rules in sport and of the changing conceptions of fair play are required (in the belief that such an analysis might reveal how the theoretical model does not correspond to 'reality'). Some suggestions for a more positive thesis are put forward towards the end of the chapter. To begin with it is necessary to 'set the scene' for the taken-for-granted assumption that sport and morality are inextricably intertwined with the common thread of rule-boundness.

### Rules and Morality

In *The Game Game* Midgley wished to address a number of questions about game playing in general, but specifically about why games do in fact seem to matter so greatly. When asked why philosophers seem to talk so much about games she began her answer by suggesting that philosophers are often interested in situations where there are rules - be they moral rules, or rules of logic or of language - but, more importantly in the case of moral rules, where it is not altogether clear why the rules have to be obeyed.<sup>9</sup>

Treating moral rules as if they are rules of a game tends to deflect attention from the difficult question of what exactly counts as a 'rule' in a moral sense and what sort of things rules are.<sup>10</sup> Additionally, if it transpires that the reasons why we play games are quite simple and explainable, then the problem of morality might prove

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<sup>9</sup> 'The Game Game', p.133.

<sup>10</sup> The most famous argument of Wittgenstein (excepting that against the possibility of a private language) concerns the problem of teaching and following a rule. In his *Philosophical Investigations*, and less so in *Remarks on the Foundations of Mathematics*, he shows clearly how the concept of a rule has problems of its own.



to be equally simple. Thus, the first problem with assessing the analogy of sport as a form of social contract comes to light. There are a number of 'cases' being considered here: social contracts, sport (in essence or nature), sports (in practice), rules (either as laws of the land or rules of the game), fair play (not merely limited to fair play as rule-abidance), and morality (as a form of rule following). As mentioned above, it is not altogether clear which, if any, of the above is being invoked as the 'familiar case'. In principle, social contract theory is the familiar case. But, Kantian contractarianism, as chapter three makes clear, is grounded on a pre-political discussion concerning justice. Thus, the social contract and a descriptive account of sport are both *post hoc* deliberations on fairness. Furthermore, it could be argued, moral rules are nothing more than the rules of the game of morality. Perhaps, game-playing is the familiar case and from a consideration of it the possibility of understanding more about morality arises.

So with this project in mind, Hare argued, in *The Promising Game*,<sup>11</sup> that our duty to obey the rule 'always keep your promises' is simply part of a game (the institution of promising, in this case), and that we could just as easily decide not to play in which case the duty would disappear. That is, accepting that one ought to keep one's promises immediately engages the promise maker in the game of promising, no more no less,

For unless one accepts this principle, one is not a subscribing member of the institution which it constitutes, and therefore cannot be compelled logically to accept the institutional facts which it generates.<sup>12</sup>

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<sup>11</sup> R. M. Hare, 'The Promising Game', *Revue Internationale de Philosophie*, No.70, 1964, pp.398-412.

<sup>12</sup> Taken here from a different source: R. M. Hare, 'The Promising Game', in K. Pabel and M. Schiller (Eds.), *Readings in Contemporary Ethical Theory*, New Jersey: Prentice Hall, 1970, pp.178-79.



Hare was responding directly to John Searle's suggestion, in *How to Derive "Ought" from "Is"*, that the duty to keep a promise might simply derive from the fact of having made one.<sup>13</sup> Searle's intention, in attempting to solve the fact-value controversy, or 'is-ought' problem, was to show how what seem to be evaluative statements might in fact be descriptive ones. In reply, Hare wished to suggest that any duty to keep a promise depends on whether one has agreed to play 'the Promising Game' or not. In other words he wished to treat promising as an institution, like game-playing, that is in some way or other dispensable and totally dependant on whether people choose to adopt it or not.<sup>14</sup>

On the one hand, according to Searle, the supposed prescriptive content of the 'promise' is dissolved by a description of the semantic meaning of the statement. On the other hand, as Hare would have it, the prescriptive element is not one of rule keeping or breaking, but of whether one *ought* to play the game or not.

Both suggestions are unsatisfactory to Midgley. Moreover, by associating promising with games, Midgley argues that Hare raises more questions about rules and game-playing than he answers about promising. The game parallel adopted by Hare, at first, seems to serve his purpose of demonstrating the way in which the duty to keep one's word is optional, in just the same way (Hare tacitly assumes) that choosing to play or not to play is optional. For Midgley,

That suggestion is the starting-point of this paper. It has made me ask, all right, what sort of need is the need to obey the rules of games? Why start? Why not cheat? What is the sanction? And again, how would things go if we decided tomorrow *not* to play the

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<sup>13</sup> Searle, J.R., 'How to Derive Ought from Is', *Philosophical Review*, Vol.73, 1964, pp.32-58.

<sup>14</sup> The comparison here to certain assumptions about implicit contracts in the Hobbesian tradition should be fairly obvious. Keeping promises only matters (morally or otherwise) once the contract has been entered into which stipulates promise-keeping as one of the rules of the contract.

Promising game, or the Marriage Game or the Property Game?  
 What is gained by calling them games? What, in fact, is a game? <sup>15</sup>

Whilst Hare probably misrepresents *promising*, he most definitely misrepresents *game-playing*. Games, Midgley rightly points out, are not totally closed systems, somehow discontinuous with the life around them, in the way that they are tacitly assumed to be by mathematicians and “game theorists”, and by moral prescriptivists such as Hare.

Any actual activity has motives, and it won't be a closed system, optional and removable, unless the motives are of a special kind. They must not be very strong, or it will begin to matter whether we play or not; they must not be very specific, or it will begin to matter *which* game we play. If they are strong or specific, the system will not be self-contained.<sup>16</sup>

It is this seeming arbitrariness of game rules that Hare wished to exploit in comparing the act of promising to game-playing. If the analogy works, the conclusion must be that there is no morally binding duty to obey rules (such as ‘you ought to keep your promises’) beyond an initial agreement to play the game of promising. Furthermore, as Hare wished to proceed, if promising is just such a game, one can stop playing at any time. Thus, morality itself consists of nothing more than following the rules required to play the game.

Rawls rejects this idea when he explicitly acknowledges that the duty of fair play necessitates recognition of other persons involved in the game with similar capacities, interests and feelings as oneself. The realisation of each other's desires in games is a joint activity,

Without this acceptance [players] would recognise one another as but complicated objects in a complicated routine. To recognise

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<sup>15</sup> M. Midgley, ‘The Game Game’, p.133.

<sup>16</sup> M. Midgley, ‘The Game Game’, p.138.



another as a person one must respond to him and act towards him as one; and these forms of action and response include, among other things, acknowledging the duty of fair play.<sup>17</sup>

In what sense is fair play a duty? And when does it become so? Like other terms that express an obligation as serious or binding, such as 'rights' or 'law', the concept of duty has a long and chequered history, but since the Cromwellian rebellion has been tightly wrapped up in its current contractarian cloth. Once the sovereign has been removed (figuratively and literally) as the originator of law, by what means is the law itself legitimated? The only creator of rights is law, according to Bentham, and the creator of law is the legislator.<sup>18</sup>

Contract theories were a radical departure from this notion, as outlined in chapter three. It must be that the law itself is just and fair whereby obedience to this law is a contractual obligation offered in exchange for the benefits brought by social harmony (or at the very least civil peace). Such was Hobbes response to his pessimistic view of the "state of nature" as "that condition which is called Warre; and such a warre, as is of every man, against every man".<sup>19</sup> Are there 'rights' that people possess by nature, by virtue of simply existing, being here, as rational agents? According to Hobbes, no, but Rawls follows a Kantian contractarian tradition. What then is just or fair under such circumstances? According to Rawls,

The question of fairness arises when free persons, who have no authority over one another, are engaging in a joint activity and amongst themselves setting or acknowledging the rules which define

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<sup>17</sup> J. Rawls, 'Justice as Fairness', p.658.

<sup>18</sup> The idea that there are some rights that exist by virtue of our nature as human beings Jeremy Bentham described as "nonsense upon stilts". Bentham was more vehement than Hume (later discussed) in his opposition to contract theories, seeing them as further examples of what he called "legal fictions": see his paper 'Anarchical Fallacies: Being an Examination of the Declaration of Rights issued during the French Revolution'. For a detailed discussion of rights discourse see the edited volume by Jeremy Waldron, *Nonsense Upon Stilts*, London: Methuen, 1987.

<sup>19</sup> T. Hobbes, *Leviathan* (1651), edited with commentary by R. Tuck, Cambridge: Cambridge University Press, 1991, Chapter 13, paragraph 8.



it and which determine the respective shares in its benefits and burdens.<sup>20</sup>

But do such practices commonly exist: ones where those engaging in them set the rules? And what notion of 'free persons' with no authority over one another is Rawls supposing? It is tempting to apply Rawls device to the example of rules in games, and Rawls freely uses the analogy himself. Hegel's traditional objection to contract theory is applicable here.<sup>21</sup> In its naiveté such theories ignore the complexity of 'political' life and the variety and complex levels of obligation and 'duty' that exist. Accordingly, game playing cannot be founded on a contract since the contract of rule observance has no meaning or reality until the game is already in place. Why should Rawls' 'duty of fair play' take preference over other duties that might exist as a result of people already realising some sort of social existence necessary for the contract condition? After all, Rawls notion of "the duty of fair play" does seem rather demanding, particularly as he wishes to maintain that,

acting unfairly is usually not so much the breaking of any particular rule, even if the infraction is difficult to detect (cheating), but taking advantage of loopholes or ambiguities in the rules, availing oneself of unexpected or special circumstances which make it impossible to enforce them, insisting that rules be enforced when they should be suspended, and, more generally, acting contrary to the intention of a practice.<sup>22</sup>

Such high demands at least match the lofty ideals of sport's great mythologists, such as Colonel E. G. French of Devon, MCC, I Zingari and Free Foresters, whose eulogy to the unwritten laws of cricket published in 1960, and idiomatically entitled *It's Not Cricket*, suggests that the curriculum of all schools ought to include lessons on cricket's great traditions,

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<sup>20</sup> 'Justice as Fairness', p.657.

<sup>21</sup> G. Hegel, *The Philosophy of Right*, Oxford: Oxford University Press, 1952.

<sup>22</sup> J. Rawls, 'Justice as Fairness', p.658.

Of this unwritten code, cricketers are intensely proud and small wonder seeing that it sets a standard of conduct which serves as a guiding light not only in the realm of cricket but in every sphere of human endeavour.<sup>23</sup>

Whilst certain practices, such as 'walking' before actually being given out by the umpire or the Edwardian code of not hitting a ball outside the off-stump to the on-side, have existed, the greats of cricket - no lesser immortal than W. G. Grace, for example - more often than not manipulated such codes to their own ends. It was not unknown for Grace to point blank refuse to leave the wicket even when he was given out, yet alone before the umpire raised his finger, and C. B. Fry in his autobiography admits freely to taking advantage of the opposition Captain's assumption that he would behave like a gentleman and not play over mid-on. Birley notes,

'Playing the game' may evoke lofty notions but the reality is that sharp wits have contributed more to the game and its development than high ethical standards.<sup>24</sup>

### *Do We Contract To Play Fairly?*

Ethical standards here are presumably referring as much to the simple obedience to the law as to Rawls' demand for supererogatory action. One of the canons of 'playing the game' is that the umpire or referee's decision is final, inviolable, unquestionable. The role of the umpire as 'sovereign' makes a comparison to Hobbes' justification for the social contract enticingly easy. The lapsing of the egoistic individual into a self-defeating tendency to betray the 'contract' was put forward as indicative of the need for strongly maintained rules and conventions in order to compensate for the failure of rational individuals to cooperate

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<sup>23</sup> Cited in D. Birley, *The Willow Wand*, London: Queen Anne Press, 1979, p.12.

<sup>24</sup> D. Birley, *The Willow Wand*, p.19.



spontaneously in the maximisation of their common interests, and thus as a justification for the State (or umpire, or governing body). The most obvious method of contract maintenance for the authority, in this respect, is the manipulation of the environment to make undetected breaking of the rules virtually impossible. Such a situation already exists in elite level tournament tennis through the use of mechanical 'eyes' (Cyclops™ and Hawkeye™), and more officials than players. The all-pervasiveness of television has a similar effect in other sports. But, sports such golf and snooker eschew such 'trial by television' even though knowledgeable viewers often 'shop' the professionals in golf tournaments. It is still considered an essential aspect of the game that the players police themselves. The television umpire has made cheating much harder in team games such as American football and cricket (for example, as with TV's close-up evidence of England cricket captain, Mike Atherton's, 'ball-tampering' in 1995). 'Trial by television' during the game is also vehemently opposed by the more conservative football and rugby authorities, and the 'third umpire' in cricket has very limited duties.

In chapter three the comparison was made between Hobbes' five nominal conditions in the 'State of Nature' (outlined by Kavka<sup>25</sup>). Condition (2) stated, "Our desires are constantly at odds with each others'. In particular, two or more people often seek exclusive possession of the same particular object". That condition (2) is often taken as a definitional characteristic of competitive games serves to tempt some into seeing further mileage in the analogous comparison of games and contracts.<sup>26</sup> But, the onus is upon them to substantiate further the

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<sup>25</sup> Kavka, G. 'Hobbes War Of All Against All', *Ethics*, 93, 1983, pp.292-3.

<sup>26</sup> For a comprehensive summary of this interpretation of competition and a rebuttal of its salience, see Michael Fielding's 'Against Competition', *Proceedings of the Philosophy of Education Society of Great Britain*, Vol.10, 1976, pp.140-141.



similarities between the 'familiar case' and the 'unfamiliar', whichever is seen as which, especially in the light of more recent argument by philosophers such as Peter Singer and James Q. Wilson, biologists such as Richard Dawkins and Richard Alexander, ethologists such Frans de Waal, and evolutionary psychologists such as Robert Wright, that present the case that our altruistic tendencies are far from limited in the sense that Hobbes presumed.<sup>27</sup> Indeed, one of the strongest criticisms of Hobbesian contract theory is of his assumptions of the possibility of a pre-political existence as described by the 'State of Nature'. This is also the big difficulty for the Rawlsian attempt to see games as forms of social contract founded on principles of justice as fairness; game-playing already pre-exists the hypothetical 'original position'.

Nevertheless, the metaphor of umpire as judge and jury is a compelling one for explicit and implicit social contractarians. Laws of the game seem to work in the same way as laws of the land. The umpire is the protector of the law and the law sacrosanct. The effusive Neville Cardus, permanently inebriated from the whiff of linseed oil and Meltonian Easy-White, went so far as to proclaim,

If everything else in this nation of ours were lost but cricket - her constitution and the laws of England of Lord Halsbury - it would be possible to reconstruct from the theory and practice of cricket all the eternal Englishness which has gone to the establishment of that Constitution and the laws aforesaid.<sup>28</sup>

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<sup>27</sup> Peter Singer, *The Expanding Circle*, Oxford University Press, 1981; James Q. Wilson, *The Moral Sense*, Simon & Schuster, 1993; Richard Dawkins, *The Selfish Gene*, Oxford University Press, 1976; Richard Alexander, *The Biology of Moral Systems*, Aldine, 1993; Frans de Waal, *Good Natured*, Harvard University Press, 1996; Robert Wright, *The Moral Animal*, Vintage Books, 1994.

<sup>28</sup> D. Birley, *The Willow Wand*, p.11.

The cricket analogy escaped Huizinga, twenty years later, in his discussion of play and the law.<sup>29</sup> *Homo Ludens* is replete with subtle reminders and analogies invoking the similarities between sporting occasions and legal cases, yet misses the chance of bowling an etymological 'googly' when Huizinga fails to comment on the meaning of the Greek word *agon* as both an athletic contest and a case in the law courts.<sup>30</sup> Cricket, unlike many lesser games, has laws rather than rules. The alternate innings do rather resemble the posturing of the defending and prosecuting council with the opportunity allowed for cross-examination and rebuttal. The umpire presides as judge and jury (although the '3rd umpire' may eventually take the place of the latter). And as in court, the umpire is treated with the greatest respect; at least until after his decision when he is likely to become an object of great hostility.

Unlike in law-courts, where the rules *are* the game and guilt or innocence matter far less than how well the game is played, the rules in games are often obstructions to be overcome or avoided. Ironically, whilst the best lawyers are those that exploit the rules to their advantage (quite contrary to Rawls' notion of fair play), in some games such behaviour is most definitely not cricket. Whereas in other games, such as rugby or basketball, it is almost impossible not to break the rules with predictable regularity. In one last ditch attempt to cling to the spirit of law, if not of the law, such games do allow the referee to invoke the fundamental jurisprudential notion of *mens rea* in assessing the intent of the violator.

It is not so unusual then that eminently learned commentaries on justice, such as that of Rawls, make the most of an accepted relationship between what is right in society and what is fair in play. Rawls goes so far as to use his sporting analogy to

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<sup>29</sup> J. Huizinga, *Homo Ludens: A Study of the Play Element in Culture*, London: Routledge & Kegan Paul, 1949.

<sup>30</sup> The equivalent cultural metaphor for North American sport, in baseball terminology, might be an "etymological curve ball", or something like it.



express the goal of his entire social contract when he likens it to, “the shared end, the common desire of all players that there should be a good play of the game”.<sup>31</sup> Unfortunately, Rawls knows less about games than he does about contract theory and ‘plays-on’ to his own stumps by failing to acknowledge that very often what is in fact fair play is not very fair at all. Rawls’ analogy begins to smell a bit funny (to return momentarily to Midgley’s metaphor of dodgy plumbing), not because his model of the social contract fails to conceptualise adequately ideal notions of justice as fairness, but because any model of game-playing upon which those notions of fair play are based is far more complex than he assumes. The concept of fair play is socially and historically constructed. Schneider and Butcher,

map out and examine five different philosophical treatments of fair play . . . the approaches . . . may be summarized as follows: (a) fair play as a “bag of virtues”; (b) fair play as play; (c) sport as contest and fair play as fair contest; (d) fair play as respect for rules; and (e) fair play as contract or agreement.<sup>32</sup>

If an analysis of the history of sport has any purpose here it is to intimate how supposed transcendently deductive accounts of fairness might still be begging the question.

Golf provides some of the finest examples of this. Some years ago the American golfer Craig Stadler, whilst playing on the USPGA Tour, knelt on a towel in order to keep his trousers dry when he was forced to play his shot from such an unusual stance by some overhanging branches. One of the knowledgeable spectators in the crowd pointed out to the tournament referee that technically, according to Rule 13-3, Stadler had artificially built his stance and thus incurred a two-stroke penalty.

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<sup>31</sup> J. Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1971, p.525.

<sup>32</sup> R. Butcher and A. Schneider, ‘Fair Play as Respect for the Game’, in *Journal of the Philosophy of Sport*, XXV, 1998, p.2.



In 1994 in Bali whilst establishing a potentially unassailable lead in the Dunhill Asian Masters, English golfer Nick Faldo removed some coral that was interfering with the lie of his ball (a practice allowed in Europe where more stones and impediments are found in bunkers, but not in Bali where USPGA Tour rules apply). His partner pointed out the infraction to him after the round was completed, and unfortunately after Faldo had signed his card. Faldo owned up and to add to his misery thus unwittingly found himself having signed his scorecard for a total two-strokes less than technically he had taken and was disqualified from the tournament.

Golf and cricket in particular have been especially intransigent when it comes to changing, removing, or modifying their rules.<sup>33</sup> It is not a coincidence that their traditions connect them most firmly with aristocratic involvement and control by the gentry. Other games, just like the law, have sets of rules which evolve and grow as precedents are set, more often than not by breaking them than by following them, especially where it is seen that the law is a proverbial ass.

In cricket the law-makers have been more conservative than most. For decades after 1835 a team falling short of the opposition total by more than a certain number of runs were required to 'follow-on' whether they wanted to or not (and more often than not the fielding team did not want the opposition to bat again no matter how many runs behind they were). Despite changing the margin of runs required the MCC declined to make the rule optional. In 1897 when Essex were about to bowl

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<sup>33</sup> Why just these two? The Football Association are similarly notorious for digging in their heels and resisting change. However, both Golf and Cricket in particular represent those governing bodies where attempts to change the rules are taken as a threat to the authority of the institution itself. Evidence for this assertion might be the basis of their existence since their origins as Gentlemen's Clubs (not unlike the smart and exclusive clubs of St. James's Street in the 18th. Century, such as Boodle's, Brook's, and White's). The question is not one of what is 'right' but who has the authority to say what is 'right'. The MCC and the R&A both attempt to maintain that authority and wish to be seen to make changes from within, not as a result of outside pressures.

out Lancashire short of the required runs, F. G. Bull had the novel idea of bowling continuous wides until Lancashire made enough runs to require them to field and let Essex come out to bat again. The Lancashire batsman Arthur Mold, not to be out-witted, knocked down his own wicket. These actions alone should have been sufficient to bring the old rule into disrepute - "it's just not cricket" - lead to a rule change, and thus illustrate one of the ways outlined in chapter three that conventions can be altered from within the contract. But it was not until England failed to win a test against Australia at Old Trafford in 1889, after the tourists had been obliged by law to 'follow-on', that the MCC finally gave in and introduced new legislation in 1890.<sup>34</sup>

In many respects the emergence of laws in sport reflect what is termed 'common-law reasoning'. The significant feature of common law is that it is not known what it actually is, only how it is applied.<sup>35</sup> The case is decided, presumably 'correctly', and the 'rule' which decided it is *then* extracted. 'New' sports such as Basketball (discussed in chapter three) - games and sports that are arguably more invention than evolution - show a clear process of rule development and change as new tactics and strategies have necessitated legislation to maintain some sort of equilibrium or the integrity of the game: hence, the three-second rule, goal-tending rules, thirty-second rule, and so on. Track and field athletics and competitive swimming have condoned or condemned the Fosbury flop, the O'Brien shift, swimming underwater, throwing the javelin with a turn rather than a run-up.

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<sup>34</sup> D. Birley, *The Willow Wand*, pp.16-17.

<sup>35</sup> The bulk of English law is created by the decisions recorded in case books: it is not determined by any explicitly stated constitution. The parallels with the emergence of laws in sports such as cricket are numerous and illuminating: see R. Bowen's authoritative and highly acclaimed, *Cricket: A History of Its Growth and Development Throughout the World*, London: Eyre & Spottiswood, 1970. In terms of the philosophy of law, H.L.A. Hart's *The Concept of Law*, Oxford: Oxford University Press, 1961, illustrates further the doctrine of *stare decisis* (that a decision should remain until it is overruled by a 'higher' court, and the consequent *ratio decidendi*: the extraction of a principle from a prior case that then serves as a guide to future jurisdiction.



The function of law in many cases is not to 'do justice' in the preferred view of legal naturalists such as Dworkin, but to resolve conflicts.<sup>36</sup> This is a philosophy of law as advocated by Hayek's *The Constitution of Liberty*:<sup>37</sup> a document unlikely to be found on the shelf in the Long Room at Lords. For Hayek, the law operates in much the same way as the economic market - as a constantly changing set of checks and balances that help to restore equilibrium when the rules are broken.

At the very least, by stretching the analogy between games and law courts, several significant issues of relevance to both sport and law finally arise. Firstly, the question 'why should I obey the rules?' has more in common with questions about the legitimacy of the law-makers than the formalist answer of game-apologists such as Bernard Suits would suggest.<sup>38</sup> What is the foundation of our obligation to the laws of the game? The answers to such a question lead any discussion of the meaning of fair play onto a bumpier pitch than might be presumed.

History shows us that the law-makers in sport defer to the difficult defence of inherited authority.<sup>39</sup> By beginning with a look into the past, one thing is clear: whilst our traditional sports can be traced back to medieval times, their laws have a more recent history. Cricket, for example, needed no laws - written ones at least - until the gentry intervened and began playing for stakes (as chapter two illustrates).

The oldest governing bodies of British sport, the Royal & Ancient Golf Club (founded in 1754), Marylebone Cricket Club (founded in 1788), and the Jockey

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<sup>36</sup> See R. Dworkin, *Taking Rights Seriously*, London: Duckworth, 1978.

<sup>37</sup> F. A. Hayek, *The Constitution of Liberty*, London: Routledge & Kegan Paul, 1960.

<sup>38</sup> Game-formalism is associated with what has become known as 'The Logical Incompatibility Thesis'. Given Bernard Suits' definition of game-playing in *The Grasshopper: Games, Life, and Utopia*, it is considered that breaking a rule is logically incompatible with playing the game. And thus, one cannot break a rule and still be playing the game.

<sup>39</sup> D. Birley, *Sport and the Making of Britain*, Manchester: Manchester University Press, 1993; D. Brailsford, *British Sport: A Social History*, Cambridge: The Lutterworth Press, 1992; R. Holt, *Sport and the British*, Oxford: Oxford University Press, 1989.



Club (founded in 1750), would only offer arbitration services if their rules were followed in the first place. At times, Harrow would not play Eton at football, and both Winchester and Westminster would play no-one. Cambridge would not accept Rugby rules and Shrewsbury old boys would not play against Harrow old boys. The eventual formation of the Football Association in 1863 following Cambridge and Harrow practices and the subsequent establishment of the Rugby Football Union in 1871 owes as much to squabbles about who was the legitimate authority as it does to ideas about how the game should be played.<sup>40</sup>

In fact, the early laws of sport made more or less no mention of how the game ought to be played. The first cricket codes appeared as early as 1727, amended by periodic re-drafting from 1744 onwards. They largely gave consideration to the terms of wagers on the games; a practice that continued until 1830.<sup>41</sup> The 'Rules and Orders of the Jockey Club' gave three-quarters of their space to betting regulations rather than to the racing itself. Jack Broughton's original rules for pugilistic contests, laid down in 1743, focused almost exclusively on wagering on the fights, with the exception of one sentence determining where and when a man could be struck - above the waist when on his feet - and this was partly due to the embarrassment caused to Broughton's aristocratic backers when George Stevenson died following his unsuccessful challenge fight against Broughton two years earlier.<sup>42</sup>

The concept of fairness does have a slightly longer history in association with sport. During Elizabeth I's reign, the Duke of Norfolk drew up 'laws of the leash' to regulate coursing matches. The concept of *fayre Lawe* required the quarry to be

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<sup>40</sup> D. Birley, *Sport and the Making of Britain*, pp.256-260.

<sup>41</sup> D. Brailsford, *British Sport: A Social History*, p.53.

<sup>42</sup> D. Birley, *Sport and the Making of Britain*, p.119.

given a reasonable head start, but this was more for the increased entertainment it offered than any notion of justice for the fox.<sup>43</sup> James I “expounded the conventional wisdom that it becometh a prince best of any man to be a fair and good horseman”.<sup>44</sup>

### The Limits of the Justice as Fairness Analogy for Sport

Legitimacy is largely grounded in consent. For Hume, in his *Essays Moral, Political, and Literary*, this was the best we could hope for.<sup>45</sup> And sport’s governing bodies make much of the common consent theoretically granted by time-honoured custom, using it to oppose many practical suggestions for the improvement of their traditional games. Many codes of British sport can be traced back along a distinguished lineage to the chivalry of medieval Europe. Birley notes,

There is a related continuity in the successive conventions - the etiquette of the Forest and the tournament, “fayre law”, “shooting flying”, Broughton’s rules, the laws of cricket, the Jockey Club’s rulings, public school regulation of football - that sustained sport in its formative years. They were devised by privileged groups narrowly concerned with their own interests, as in the conventions of society as a whole.<sup>46</sup>

Hume was largely objecting to the social contract theories of Hobbes’ *Leviathan* and Locke’s *Two Treatises of Civil Government*.<sup>47</sup> Locke’s minimal condition for the

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<sup>43</sup> D. Birley, *Sport and the Making of Britain.*, p.64.

<sup>44</sup> D. Birley, *Sport and the Making of Britain.*, p.77.

<sup>45</sup> See the section ‘Of the Original Contract’. Elsewhere, Hume’s main ideas on the principle of a social contract appear in his *Treatise of Human Nature* (Book III, section 2 in particular). Hume is mentioned here for no other reason than his reputation as an anti-rationalist in moral matters. Hume argued that reason alone cannot decide moral questions. As this argument is at the core of this chapter, Hume is put forward as the ‘champion’ of this idea in its original modern form. For a summary refer to D.G.C. MacNabb’s section on Hume’s moral philosophy in P. Edwards (Ed.) 8-volume *Encyclopedia of Philosophy*, London: Macmillan, 1967.

<sup>46</sup> D. Birley, *Sport and the Making of Briatin*, p.5.

<sup>47</sup> The recently published ‘Cambridge Texts in the History of Political Thought’ (Locke’s *Two Treatises of Government*, 1989, edited by Peter Laslett; Hobbes’ *Leviathan*, 1991, edited by Richard Tuck) contain useful introductory essays as well as annotated text. In addition, a useful



legitimacy of the contract is tacit consent. That is, similar to the analogy with sport, that nobody actually signs a contract before 'playing', but they would if there was one to sign as is (purportedly) evidenced by the fact that they freely engage in the 'game'. The challenge for the social contract analogist is to see how this minimal condition can be met in sport or in a broader context. Arnold, however, seems to think that it can be,

In 'broad' terms, justice as fairness relates to sport with regard to the principle of freedom, by an individual having the right to choose (or reject) which sport(s) he takes up; and in 'narrow' terms by him agreeing to the rules that characterise that sport as being the particular one that it is.<sup>48</sup>

But this is too simple. It assumes that any old game will do; that checkers can be substituted for chess and croquet for cricket, with no loss of meaning or purpose for the participants. It ignores the reasons why people play what they play, the unwritten parts of games that the rule book leaves out, and their close relationship with the culture and life around them. This is less an assumption of tacit consent than a tacit assumption about 'Existential Man', the final culmination of the myth of individualism at the heart of contract theory. As Midgley claims,

The myth itself - the myth of the original isolated, independent chooser needed for the Contract story - persists. It still provides the main image that we in the West are supposed to have of our moral nature. This becomes particularly clear at times when evidence surfaces for facts which do not easily fit it - in particular, for facts about our deeply social nature. Such occasions cause excitement,

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overview is provided by P. Riley, *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel*, Cambridge, MA: Harvard University Press, 1982. See also numerous thorough and helpful essays in David Boucher's and Paul Kelly's edited volume, *The Social Contract From Hobbes To Rawls*, London: Routledge, 1994.

<sup>48</sup> P. Arnold, *Education, Movement and the Curriculum*, London: Falmer Press, 1988, p.36.



anxiety, and a hasty rush of theorists to the pumps to disprove the facts or to interpret them in some safer way.<sup>49</sup>

Counter to the claims made by a contract theorist with reference to sport, the games we play give rich and fruitful pickings for anthropologists of a philosophical bent, such as Midgley, who see them as indicative of just such a “deeply social nature”. In a not too dissimilar vein, Gibson makes the same connections between tradition, law, institutions and a sense of community that gives meaning to our practices when he explores a MacIntyrean framework for relating the practitioner to the practice,

As we live out our lives we live out our own narrative. We become the cutting edge of a tradition as we apply ourselves to our chosen tasks, our practices, and simultaneously continue and change the tradition and the practice. But to preserve the internal goods of the practice we must resist the siren call of external goods alone, and the slick easy answers of the institution. The determination to preserve the practice and the bond between the practitioners is the basis of true community. So if the practice fails, and becomes dominated by the institution, then the basis of true community is lost along with the internal goods.<sup>50</sup>

Lockean contract theory assumes numerous available alternative practices in which the discontented could indulge, or even ‘vacant places’ to which they could flee; as if it were a simple matter of free choice.<sup>51</sup> In the great diaspora of suppressed

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<sup>49</sup> M. Midgley, *The Ethical Primate*, London: Routledge, 1994, p.113.

<sup>50</sup> J. Gibson, *Performance versus Results*, Albany: State University of New York Press, 1993, p.110.

<sup>51</sup> The term ‘vacant places’ is used analogously here. Peter Arnold suggests that other sports represent alternatives. There is no room at this point to get into a discussion about the nature of sport and whether alternative ‘types’ of sport could actually exist. Even watching traditional Indian sports such as *Kabbadi* (supposedly played by Bhudda as a young man) it is difficult to see that such sports have an internal logic that offers an “alternative” to Western sports. For further discussion of this matter, see W. J. Morgan, ‘Multinational sport and literary practices and their communities: the moral salience of cultural narratives’, in M. J. McNamee and S. J. Parry (Eds.) *Ethics and Sport*, London: Routledge, 1998, pp.184-204; and his *Leftist Theories of Sport*, University of Illinois Press, 1994. p.216. See also, S. Eassom, ‘Sport, Solidarity, and the Expanding Circle’, *Journal of the Philosophy of Sport*, XXIV, 1997, pp.76-95.

peoples around the world, the Irish and the Jews, they may be relocated but they are not reconstructed. They carry with them their practices and customs that bind them far from home into a community. The cricket in Sri Lanka, polo in Argentina, rugby in South Africa and New Zealand, are in many respects more English than in England. These alternative sports, or these 'vacant places', are phantoms. Arnold, in his defence of moral absolutism, *Sport, Ethics and Education*, goes even further when he claims,

Tennis, whether played in Boston or Bombay, is not only subject to the same rules of its governing body but to the same concepts and skills. The terms "serve", "ace", "volley", "dropshot" and "lob", and the way they are employed in relation to a particular tactic or strategy, are part of what is now a common stock of knowledge. . . . Sport as a practice is premised upon the rules being the same for all regardless of context or culture. In this way it aspires to be universalistic rather than relativistic.<sup>52</sup>

In terms of the structure of their rules, there *are* ways in which sports are much of a muchness and the same type of impositions and restrictions are to be found in them all. Viable alternatives for the dissenting sports player caught in the contract device are not to be found in alternative sports but in alternative ways of playing. In Dellatre's *Tales of a Dalai Lama* a Western philosophy professor visits Lhasa and observes what seems to be an ordinary game of volleyball,

"I don't understand", said the Dalai Lama. "Why should anyone be playing against anyone else? Everyone tries to keep the ball in the air. That's all there is to it. When the ball hits the ground, it's a sad moment for everyone and you'll notice how they take a moment to console the person responsible".

He and the Swedish professor of philosophy were watching a game of ball, and the professor was confused since nobody seemed to be playing against anyone else. Everybody wore the same colour

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<sup>52</sup> P. Arnold, *Sport, Ethics and Education*, London: Cassell Education, 1997, p.3.



uniform as the ball was batted back and forth over the net. “In our country”, he tried to explain to the king, “we divide into opposing sides and then we try to make the others miss the ball”.

The Dalai Lama found this quite distressing. “But the ball must hit the ground all the time”.

“Your Highness. Why are you weeping?”

“Such a way to play with the human spirit”, sobbed the boy. Deeply shaken, he went to his room to pray.<sup>53</sup>

Having made it through the moral qualifying tournament, past the early rounds and into the semi-finals, Hobbesian contractarians surface more commonly in contemporary debate about fairness. Hobbes’ approach stresses a natural equality of physical power which makes it mutually advantageous for contracting individuals to accept norms and conventions that protect each other’s possessions and interests and ‘keep the ball in the air’. As discussed in chapter three, this is not so much an alternative account of why we should be moral as an alternative to morality itself. In Gauthier’s words the contract provides a ‘moral’ code, “generated as a rational constraint from the non-moral premises of rational choice”.<sup>54</sup>

Various authors have invoked such prudential models of moral choice by comparing the rational choice to maximise individual advantage in sport through seemingly irrational decision making with game theorists’ analysis of the so-called ‘Prisoner’s Dilemma’.<sup>55</sup> This aspect of the contract device is discussed in detail in the next chapter. According to such accounts morality becomes a strategy that conforms to various *a priori* requirements for consistency, rational preference, and

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<sup>53</sup> P. Dellatre, ‘Celestial Sports’, in *Tales of a Dalai Lama*, London: Gollancz, 1978, pp.40-41.

<sup>54</sup> D. Gauthier, *Morals by Agreement*, Oxford University Press, 1986, p.4.

<sup>55</sup> S. Eassom, ‘Playing Games With Prisoners’ Dilemmas’, *Journal of the Philosophy of Sport*, XXII, 1995, pp.26-47. This article contains a comprehensive bibliography of literature relating to the Prisoners’ Dilemma.



maximum benefit. To suggest that this is not the same as morality begs the question. If the mutual advantage theorists cannot yield morality, this alone is not a refutation. Too bad for morality. In a world without objective values or natural duties, a Hobbesian contractarianism may be the best that can be expected. Kantian contractarians are not quite so ready to give up the ghost.<sup>56</sup>

People matter, not because they can and do harm and benefit others, but because they are 'ends in themselves', or in Rawls' terminology, 'self-originating sources of valid claims'. It is from this origin that a natural duty of justice arises. Rawls recognises that our intuitions about treating people with equal consideration are vague. The idea of a social contract is the presentation of some sort of procedure to help people towards a determination of a more precise meaning of justice.

The theoretical model of the social contract also has historical origins that cannot be ignored in recognising the motivations for its project. Born from seventeenth-century empiricism, and especially a physical model of the world where ultimate particles of matter were atomic snooker balls - uniform, predictable, totally unconnected - social contract theory has not changed in line with developments in physics. People appear only as individuals all in symmetrical relation to each other.<sup>57</sup> Rawls' 'veil of ignorance' requires us to discount any other asymmetrical relations found within our organic whole: to discount not only our race and sex, but also our previous conceptions of the 'good', even where they are derived from

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<sup>56</sup> Without revising chapter three, it is simply noted here for the sake of differentiation, by "Hobbesian" it is taken to mean those contract devices that approach the construction of a contract from a basis of mutual advantage (stressing equality of 'physical' power and thus the advantages in accepting conventions designed to protect each other's interests), and by "Kantian" those devices based on a principle of impartiality (stressing each individual's interests as a matter of impartial concern and equality of moral status). Rawls, it was suggested in chapter three, is the main exponent of a "Kantian" contract theory. At no time is it suggested that Kant himself would be.

<sup>57</sup> There is no inherent reason why contract theories must be individualistic. In principle they could be based upon any account of the interests being weighed: accounts which recognise our sociability.

deeply felt religious values.<sup>58</sup> He concedes, near the end of *A Theory of Justice*, “we should recall here the limits of a theory of justice. Not only are many aspects of morality left aside, but no account can be given of right conduct in regard to animals and the rest of nature”.<sup>59</sup> The matter of animals that Rawls so briefly passes over has been taken up by others as further evidence of the inadequacy of the analogy.<sup>60</sup>

Like Kant before him, Rawls posits rationality as the only valid motive without recognising that by doing so he strips away all *actual* motives. Can a single virtue, justice, do a sufficient job to make other non-contractual virtues such as compassion and humanity redundant? To leave reason alone in the driving seat is to suggest a strategy without any idea of the goal or the opposition’s strengths and weaknesses. Reason is the intellectual spoilsport that after tackling all the opposition on the way to the goal turns round and tackles them again, and again, and again. The idea of ‘respect for persons’ separates the duties and obligations people owe to each other as beings with feelings and instincts from those which it seems are owed merely as ‘thinkers’.<sup>61</sup>

If liberty is the goal, then what persuasive proof is there that people would attach to it the prominence that Rawls and others wish to suppose? Happiness might often be obtained at the cost of such liberty. The tool of liberal individualism is to present every human institution as the product of human choice. Choice, and the freedom to choose, is the well from which all legitimacy springs forth. The error of such

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<sup>58</sup> M. Midgley, 'Duties Concerning Islands', *Encounter*, 60/2, 1983, pp.36-44; also in P. Singer, *Ethics*, Oxford University Press, 1994.

<sup>59</sup> J. Rawls, *A Theory of Justice*, p.512.

<sup>60</sup> Michael Pritchard & Wade Robinson, 'Justice and the treatment of animals: a critique of Rawls', *Environmental Ethics*, 3, 1981, pp.55-61; Alan Fuchs, 'Duties to Animals: Rawls' Alleged Dilemma', *Ethics and Animals*, 2, 1981, pp.83-7.

<sup>61</sup> M. Midgley, 'Duties Concerning Islands'.



individualism, as seen by Hegel in his *Philosophy of Right*, is the attempt to build the ideal (sports)world on the abstract notion of rational choice alone.<sup>62</sup> Rawls argues that the participants in the game have the freedom to accept, or lodge complaint against, the rules. Engaging in the common practice of the game and accepting its benefits is a voluntary action. There is a necessary submission of liberty in accepting this joint undertaking in order to make the game possible. Justice becomes the procedural device whereby the freedom of one person can be reconciled with the freedom of another.

But communities are not formed through the implicit contractual agreement of rational individuals. We are shaped and formed as rational individuals through our membership of communities: without that membership we could never acquire any conception of value, we could never rationalise and justify our choices and decisions. Our very being as rational agents is revealed through the experience of family life, communal life, civil society, national identity, and so on. The rationalist from Mars looking on could never understand our morality without understanding something of the institutions in which it is found. How would the Martian make sense at all of cricket? It would be rather like Sussex and England amateur and all-round Corinthian sportsman C. B. Fry's commentary on his beloved game,

a cult and a philosophy inexplicable to the profanum vulgus . . . the merchant minded . . . and the unphysically intellectual.<sup>63</sup>

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<sup>62</sup> For Hume see earlier footnote. G. W. F. Hegel, *The Philosophy of Right*, Oxford: Oxford University Press, Knox translation 1952. See also, W. Kaufmann, *Hegel: Reinterpretation, Texts and Commentaries*, New York: Random House, 1965; and R. Solomon, *In the Spirit of Hegel*, Oxford: Oxford University Press, 1983. Hegel is mentioned here because his own arguments offer an interesting counterpoint to those of Kant. In particular Hegel maintains that one's own individual personality (and any notion of rational autonomy) is brought about by the institutions within which it exists. This idea is fleshed out in most detail in his *Phenomenology of Spirit*, where he explores his thesis on the nature and structure of consciousness itself.

<sup>63</sup> D. Birley, *The Willow Wand*, p.5.

Our understanding of playing fair and foul in sport must begin with an understanding of sport itself, through history, through sociology, and through participation and engagement. It is difficult not to see the contractarian project applied to fair play in sport as that of the “unphysically intellectual”: too far removed from the lived reality of the game. Perhaps the best examples of this exist in those sports where there are no established laws or rules, only generally accepted codes of conduct or traditional ways of doing things. Mountaineering is one such sport, as illustrated perfectly in the obituary to the German climber Reinhard Karl,

During his frequent visits to the USA and Britain, Reinhard made many friends from whom he learned new tricks of the trade. Though he was one of the people responsible for infiltrating the German climbing scene with radical foreign ethics, he was the last to adhere to them strictly himself. His purpose was to provoke the hardcores on both sides and to topple a few sacred cows . . . [T]he endless discussions he helped spark off on ethics still rage in the alpine literature - (“Chalk? I’ll smear your routes with honey and jam if I feel like it.”).<sup>64</sup>

Where does the debate begin here? There *are* no rules. An appeal to the categorical imperative “so act that the maxim of your will could always hold at the same time as a principle establishing universal law” renders reason as the architect with no brief as to the structure to be created.<sup>65</sup> Any discussion must begin with the practice itself; its history, its description, its sacred cows and what makes them so. Despite the absence of rules, accepted climbing ethics have emerged, albeit slowly and haphazardly, but in conjunction with the development of the climbing game itself. This is far more in keeping with a Humean notion of convention whereby government arises out of trial and error, and not contract. Karl’s comment is as

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<sup>64</sup> Obituary for Reinhard Karl by Liz Klobusicky, from the preface to Karl’s ‘By A Hair’, *Mountain*, 1982 (Sept/Oct) 87, p.25.

<sup>65</sup> I. Kant, *Groundwork of the Metaphysics of Morals*, translated by H. J. Paton as *The Moral Law*, London: Hutchinson, 1953.



much an affront to climbing as it is in any sense a disregarding of other climber's personhood. The debate begins with the contest between a descriptive or prescriptive analysis of good climbing. Rather than relying on strict covenants (in Hobbes' terminology) to impose rules and regulations in order for climbing to exist and be maintained by contractual obligation, climbing is itself defined by the conventions that naturally arise within its continued practice over a period of time. Conventions, as Hume outlines them, express, "a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules".<sup>66</sup> Coordination in our social practices depends on all players in the game having suitably concordant mutual expectations, as opposed to the pre-social opposition that Hobbes outlined in his *Leviathan* and that might be assumed as the basis for sporting competition.

### Game Rules and Moral Rules

Returning to the starting point of this chapter, the significant fact of the matter is that philosophers wishing to make simpler their discussion of moral rules have attempted to utilise the concept of a game as a model case of a rule-bound activity, either to show how moral rules are just the same and that morality is 'simply a game' or to show how moral rules somehow differ from those of games and that this tells us something more profound about morality.

In response to these and other suggestions about games, rules and morality, and with a desire to avoid the possible side-roads into which the ideas so far introduced could turn, it is pertinent to throw in a distinctly different viewpoint. That is, to suggest a way forward lies in an analysis of the assumption, not that morality is like

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<sup>66</sup> Hume, D. *A Treatise of Human Nature* (1st published 1738/40), edited by A. Selby-Bigge, Clarendon Press, 1988.

a game but, that it is 'simply' a game; as if this seemingly reductionist move will aid the clarity of further discussion.

Midgley's essay *The Game Game* goes a long way to showing how the problem has been misconceived from the beginning. Whilst there are clearly differences between types and uses of rules, the concept of a 'rule' and what it is to follow a rule must have some underlying unity. Furthermore, games do have a very special relationship between their means and ends that is somehow determined by their rules.<sup>67</sup>

Midgley wishes to express the unfashionable but powerful notion that the unity within such concepts as 'game' and 'rule' is found in their underlying structure: a structure that deals with human needs. The more pertinent question is to ask, 'What is a Game?' and to recognise the benefits of asking that question to our understanding of morality: "Man is . . . a game-playing animal. The business of moral philosophy starts with the analysis of such concepts."<sup>68</sup>

In examining concepts such as 'cheating' in sport, it seems fairly intuitive to accept that one kind of desire or motivation has succeeded over another. To suggest that this is by definition immoral due to that action's possession of some sort of necessary conditions misses the point entirely. If, as Hume wished to suggest, our passions orientated towards sympathy and concern for others are fainter than those based on self-interest, then an important part of maintaining the taboos about cheating and deception in general involves our maintenance of strong social condemnation of them.

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<sup>67</sup> As demonstrated by Bernard Suit's case of Professor Snooze in *The Grasshopper: Games, Life and Utopia*, University of Toronto Press, 1978, Chapter 3.

<sup>68</sup> M. Midgley, 'The Game Game', p.150.



Contract devices discount such personal interests leaving only an emotional vacuum. Our Humean sympathy, a weak voice though it may be, is reinforced by the agreement of others culminating in a collective moral sentiment that pulls our individual passion towards it.<sup>69</sup> This is the fertile nursery of custom and law. It is not a foolproof process. It is often high-jacked by those who wish the law to serve their partial concerns. Sports are not exempt from this and never have been.

The analysis begins with asking why we want to call someone a 'cheat' and to heap such scorn upon them. Why do we want to use the 'immoral' as such a strong form of condemnation? Along the way it will be necessary to consider why our taboos have not had the desired effect, or why they seem to have less effect now than they seemed to have before. The rational project and the application of the contract device to ideas of fair play have missed the point of the game.

In talking about motives and reasons, Midgley's shift of the venue from the closed stadium of sterile linguistic analysis to the open playing field of philosophical anthropology raises the game beyond the mere idea of diversion or recreation. She also renders necessary the importance of recognising these universal needs in their historical context. Not only 'why' have games evolved but 'when' and for what reason did these formerly instrumental activities become institutionalised into such elaborate and ritualised procedures? Their existence is, "not at all an optional extra, a froth on human life, peculiar to advanced and leisurely cultures".<sup>70</sup>

Such ideas are by no means new. Huizinga argued that play and the stylised patterns found in play are an essential element in all revered human activities and are commonplace, as already suggested, in the rituals of law and religion; in judicial

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<sup>69</sup> Hume's thesis that reason is and ought to be tempered by the 'passions' is contained in his *Enquiry Concerning the Principles of Morals* (sometimes just referred to as the 2nd. *Enquiry*).

<sup>70</sup> M. Midgley, 'The Game Game', p.143.

and political ceremonial; in family life; in the play of lovers and the machinations of war; and most significantly in all forms of art.<sup>71</sup> Just like games (and perhaps this is why Hare chose to treat 'promising' as a game), all these various institutions have rules which matter greatly and yet, from an external viewpoint, do not really seem to matter at all. Games are not alone in the paradoxical nature of their determination by the rules which define them but which are meaningless in isolation from them. An understanding of games and game-playing, and a closer examination of the structure of morality might yet yield some interesting results; not least of which is the consideration of the possibility that the nature of rules and rule-abidance in game-playing has not always been as straightforward as it has been considered up to this point.

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<sup>71</sup> J. Huizinga, J., *Homo Ludens: A Study of the Play Element in Culture*. Huizinga maintained that play is 'outside' of ordinary life and has no moral content.



# 6 The Strong Analogy

## Cheating, Drugs and the Prisoners' Dilemma <sup>1</sup>

At this stage it would be tempting to dismiss the use of the social contract theory as a useful analogy for understanding the nature of games and sport. One of the implications from chapter five is that games have been used (as *prima facie* examples of fair play in its 'pure' state) by social contract theorists (such as Rawls) in order to explain notions of justice as fairness. Yet, games and sports, it is suggested, are not simple things to understand. The difficulty arises, returning to the analogy from chapter two, discerning between the host activity and the resultant activity after contagion. There are many clear residues of the host left remaining. These residues are reminders that traditional ways of playing are infused with culturally determined meanings and significance that are more to do with the inherent values embedded in the rituals of playing than with the modern notions of a 'well-played game'. In the nineteenth century, the bathwater might have been changed, but the baby remained, scrubbed-up and re-clothed, but the same baby nevertheless. There is more work to be done on the relationship between old and new in modern sport.

Chapter five focused on a number of the considerations outlined in chapter four regarding the assessment of analogous arguments. In some respects, the analogy was found to be suspect. The similarities between sport and the social contract have been stretched too far. In particular, the motives for participating in sport are fundamentally different from the motives requiring individuals to agree to contractual constraint. Alternatives to the contract are not readily available. The

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<sup>1</sup> The majority of this chapter was originally published as S. Eassom, 'Playing Games with Prisoners' Dilemmas', *Journal of the Philosophy of Sport*, XXII, 1995, pp.26-47.

complex network of meanings of fair play in sport render the unitary ideal of fairness in Rawlsian contract theory difficult to compare. Most norms of sport have been conventionally generated over a significant period of time prior to any moment of contractual negotiation. In other words, how could a game be contractually agreed to in the 'original condition' prior to any comprehension of what a game is? The meaning of game-playing cannot be separated in such a way from its constitutive components.

Yet, the relevance of comparing sport to a social contract remains strong, as chapter three made clear, when sport's internal logic is considered. The important question remains: if a new sport was to be created, how would its constitutive and regulative rules be formulated if not by utilising a 'veil of ignorance' model (as described in chapter three) and an ongoing process of 'reflective equilibrium' (as basketball has, for example)? The question is not merely rhetorical. Modern sport is built upon foundations of formal equality, equality of opportunity, meritocracy, retributive justice, and fair distribution. The large degree of instance variety in the analogous comparison of sports to the social contract strengthens the analogy. The make-over job the Victorians did on all sports has left a remarkable degree of architectural homogeneity: the analogy could be discussed at the specific level of any particular sport, whether it be chess, football, tennis, basketball, speed-skating, bobsleigh, skate-boarding, or competitive climbing.

There's the rub. In all cases, the analogy is applicable to competitive sport especially. That does not mean it is only applicable to sports competitions, but it applies to those sports that have been modified in ways that enable personal test or contest to take place, such that formal competition is the epitome of performance in the sport. The conclusions from the analogy perhaps need to be more modest. What happens if the analogy is tested only with reference to competition in sport?



The answer to that question is relatively easy to ascertain, because a considerable literature exists already discussing competition in sport. A great deal of the groundwork has been done in determining the relationship between competition and cooperation in sport; the meaning and significance of 'winning'; the morality of competition; and the inevitable existence of cheating in sport.<sup>2</sup>

Within this more limited framework, the analogy of sport as a social contract is strengthened. The relevance increases and the similarity between the two cases is greater. After all, as chapter three illustrated, Hobbes discussion of his own formulation of a moral dilemma, in which he described the action of the "fool" whose selfishness ultimately leads to his own disadvantage, is easily translated into one of any number of relevant comparisons with cheating in sport.

In recent years several authors have used the problem of the Prisoners' Dilemma<sup>3</sup> as a model representing the decision making processes involved in an athlete's

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<sup>2</sup> C. Bailey, 'Games, Winning and Education', *Cambridge Journal of Education*, 5(1), 1975, pp.40-50; R. F. Dearden, 'Competition in Education', *Proceedings of the Philosophy of Education Society of Great Britain*, Vol.4, No.1, 1972, pp.119-133; B. J. Diggs, 'Rules and Utilitarianism', in E. W. Gerber and W. J. Morgan, *Sport and the Body: A Philosophical Symposium*, Philadelphia, PA: Lea & Febiger, 1979, pp.300-304; F. Dunlop, 'Competition in Education', *Cambridge Journal of Education*, 6(3), 1976, pp.127-134; R. M. Feezell, 'On the Wrongness of Cheating and Why Cheater's Can't Play the Game', *Journal of the Philosophy of Sport*, XV, 1988, pp.57-68; M. Fielding, 'Against Competition', *Proceedings of the Philosophy of Education Society of Great Britain*, Vol.10, 1976, pp.124-146; M. Fielding, 'Competition and Ideology: A Reply to Francis Dunlop', *Cambridge Journal of Education*, 6(3), 1976, pp.135-138; O. Leaman, 'Cheating and Fair Play in Sport', in W. J. Morgan and K. V. Meier (Eds.), *Philosophic Inquiry in Sport*, Champaign, Illinois: Human Kinetics, 1995 (2<sup>nd</sup> edition), pp.277-282; C. K. Lehman, 'Can Cheaters Play the Game?', *Journal of the Philosophy of Sport*, VIII, 1981, pp.41-46; D. C. Meakin, 'The Moral Status of Competition', *Journal of the Philosophy of Education*, 20(1), 1986, pp.56-67; P. C. McIntosh, *Fair Play: Ethics in Sport and Education*, London: Heinemann Educational Books, 1979.

<sup>3</sup> The Prisoners' Dilemma is variously referred to in the singular and the plural, i.e. with the apostrophe denoting possession as prisoner's (singular) or prisoners' (plural). I have chosen the latter, less common version, throughout. The whole point about the examination of this type of dilemma is the requirement for strategic rationality, as opposed to parametric rationality (where one party takes their circumstances to be fixed such that *their* choice is the only variable element). Consequently, the same dilemma, by necessity, faces both parties: it is the dilemma of both 'prisoners', not just 'the prisoner'. However, in quotation I always defer to the choice of the original author's positioning of the apostrophe.

motivation to cheat or not to cheat, particularly with the example of illegal use of performance enhancing substances.<sup>4</sup> Breivik offers the most thorough game-theoretical analysis in his examination of the 'doping problem' as a decision dilemma.<sup>5</sup> Some of his ideas are taken up by Schneider and Butcher and used to inform their rationale for a way forward in seeking both their avoidance by athletes and elimination of performance-enhancing substances from the Olympic Games.<sup>6</sup>

Given the long and prominent history of the Prisoners' Dilemma in certain areas of contemporary philosophical debate, it is somewhat surprising that its use has only just begun to surface in the context of sport philosophy, although Shogun's more recent work refers back to her published use of the dilemma as early as 1981.<sup>7</sup> The Prisoners' Dilemma game was invented around 1950 by Merrill Flood and Melvin Dresher, and formalised by A. W. Tucker shortly after. R. Duncan Luce and Howard Raiffa's *Games and Decisions*, first published in 1957, provides one of the earliest in-depth discussions of the Dilemma.<sup>8</sup> The prominence of the dilemma in contemporary contract theory is alluded to by the significance attributed to it in David Gauthier's recognition of the Prisoners' Dilemma as the motivation for his vastly influential *Morals by Agreement* (just one example among many of its continued contemporary use).<sup>9</sup> Gauthier begins the preface to his book with,

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<sup>4</sup> G. Breivik, 'The Doping Dilemma: Some Game Theoretical and Philosophical Considerations.' *Sportwissenschaft*, 17:1, March, 1987, pp.83-94; and *International Review for Sociology of Sport*, 27:3, 1992, pp.235-52; A. Schneider and R. Butcher, '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, 1993-4, pp.64-81; D. Shogun, 'The Prisoner's Dilemma in Competitive Sports.' In P. J. Galasso (Ed.) *Philosophy of Sport and Physical Activity*, Toronto: Canadian Scholars Press, 1988, pp.405-409.

<sup>5</sup> G. Breivik, 'Doping Games: A Game Theoretical Exploration of Doping'.

<sup>6</sup> A. Schneider and R. Butcher, 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games'.

<sup>7</sup> D. Shogun, 'The Prisoner's Dilemma in Competitive Sports'.

<sup>8</sup> R. D. Luce and H. Raiffa, *Games and Decisions*, Chichester, Sussex: John Wiley, 1957.

<sup>9</sup> D. Gauthier, *Morals by Agreement*, Oxford: Oxford University Press, 1986.



the present enquiry began on a November afternoon in Los Angeles when, fumbling for words in which to express the peculiar relationship between morality and advantage I was shown the Prisoner's Dilemma. Almost nineteen years later, I reflect on the course of a voyage that is not, and cannot be, completed, but that finds a temporary harbour in this book.

At first glance the Dilemma does seem to represent perfectly the decision making processes involved in choosing whether or not to cheat (or to 'dope'): that is, both parties taking an "if I don't she will, so I ought to just in case" attitude to ensure that neither loses out. However, if such a recognition is to be of any value, then it must be accompanied by the corresponding benefits accrued through the long and detailed expositions of the Dilemma in other areas of philosophy. A number of questions concerning the application of the dilemma to sport philosophy immediately spring to mind. If doping in sport is in fact an example of a Prisoners' Dilemma structured situation, then does this tell us anything new about doping that might help a future analysis? Having identified it as such, are there 'solutions' to the dilemma? What, in fact, is a Prisoners' Dilemma, and what does its exposition tell us about the broader area of the relationship between rational decision making and morality? These general questions will be considered throughout this chapter, but more pertinent to this thesis is the consideration of whether or not an understanding of cheating in sport realised through an analysis of the Prisoners' Dilemma strengthens the claim that sports are archetypal cases of social contract theory.

These questions are not considered in depth by any of the authors mentioned above. Breivik's more comprehensive paper makes passing reference to the work of Robert Axelrod, David Gauthier, Robert Nozick, and Derek Parfit, but does not enter into the bigger debate in any further sense.<sup>10</sup> This, in itself, need not

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<sup>10</sup> G. Breivik, 'Doping Games: A Game Theoretical Exploration of Doping'.

necessarily be a problem. However, the Prisoners' Dilemma as formulated, if it is to be used in any meaningful way (rather than simply as an interesting puzzle), does not come 'agenda-free' and taken in a broader context has implications for any assumptions concerning morality in general, and the politics of collective action more specifically. It may well be that a study of the Prisoners' Dilemma will yield fruitful discussion of the issues surrounding cheating and moral conduct more generally in sport. Indeed, its importance has been stressed, without undue exaggeration, by a number of authors: for example, Jon Elster has suggested that politics itself is the "study of ways of transcending the prisoners' dilemma".<sup>11</sup>

If the Prisoners' Dilemma is to enter into the discussions of sport philosophers and provide the fertile ground hoped for by Schneider and Butcher, then certain preparatory work needs to be done. It is worth referring back to chapter three, at this point, for a reminder of Butcher and Schneider's contention that,

A sporting competition is . . . a test of skill within the parameters prescribed by the rules. When athletes enter a contest, they agree, and form a tacit contract, to test their skills in the ways permitted by the game concerned. On this account, unfairness or cheating is wrong, because it breaks the agreement.<sup>12</sup>

If this is the case, then before proceeding further with the comparison between sport and social contracts, this chapter first needs to focus on three main areas of concern (two concerning the inherent features of such dilemmas and one with their application):

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<sup>11</sup> J. Elster, 'Some Conceptual Problems in Political Theory', In B. Murray (Ed.) *Power and Political Theory*, New York: John Wiley, 1976, pp.248-249.

<sup>12</sup> R. Butcher and A. Schneider, 'Fair Play as Respect for the Game', in *Journal of the Philosophy of Sport*, XXV, 1998, p.7.



1. *Can the issue of cheating/doping in sport be logically conceived as a Prisoners' Dilemma (that is, is it in fact a prima facie case of such a dilemma)?*

In this chapter it will be argued that the analysis of the Prisoners' Dilemma could prove to be of significant value to the study of ethical issues in sport in general and to the analysis of the analogy of sport as a social contract more particularly. First it will be demonstrated how the problem of doping as a case of just such a dilemma has possibly been misrepresented in both Breivik's paper and (more so) Schneider and Butcher's presentation. Not all collective action problems are 'dilemmas', and not all dilemmas are those of the Prisoners' Dilemma. It is acknowledged here that Schneider and Butcher's use of the Prisoners' Dilemma forms a relatively small section of their paper and the comments in this chapter do not give credit to an otherwise excellent and timely contribution to this area of sport philosophy. Nevertheless, it is felt that their presentation of the dilemma forms an important part of their argument for a way forward in persuading athletes themselves to bring about change and does so by assuming certain things about the nature of implicit contracts and convention-changing actions available to participants in the contract. As such, I am suggesting that their assumptions about Prisoners' Dilemma structured situations are more significant than they may at first appear in the overall context of their paper. Support for this point will be given later in this chapter.

2. *What are the broader conceptual and contextual issues arising from the identification of cheating/doping as a case of Prisoners' Dilemma?*

Whilst the establishment of 'the doping dilemma' as an example of Prisoners' Dilemma may give some insight into ways of confronting the motivations involved in the decision making processes of elite athletes, the significance of such an association goes further than this and has implications for broader concerns over rule-abidance and rule-maintenance; the government and politics of elite sport; the use of sports and games in moral education; issues concerning competition and co-operation, egoism and altruism. A consideration of the Prisoners' Dilemma may yet provide sufficient support for the strong analogy that sports are like forms of social contract. The Prisoners' Dilemma does not come value or theory-free, as some sort of D-I-Y diagnostic kit with a corresponding 'faults and fixes' handbook. To accept it as an explanatory tool is to embrace the mode of analysis and presuppositions that give the identification of a collective action problem as a Prisoners' Dilemma any meaning or significance in the first place. Specifically, there are conflicting views amongst theorists as to the exact nature of practical reason and of rationality in decision making assumed by the dilemma and consequently of the very possibility of cooperation. The previous chapter focused more specifically on Kantian contractarians schema, such as that of John Rawls, and critiqued the weak analogy of justice as fairness on the grounds that it is not at all clear what fair play means in sport and yet Rawls implicitly assumes fairness as the 'familiar case'. How, then, are



we to judge the validity of the analogy of sport as a form of social contract where the social contract is the familiar case? The Prisoners' Dilemma as a modern version of Hobbes' discussion of 'The Fool' places it firmly in the tool box of Hobbesian contractarians. Thus, the Prisoners' Dilemma raises numerous questions about the nature of morality itself (as already detailed in chapters three and five).

3. *What part does the Prisoners' Dilemma play in the presentation of a more comprehensive moral or political theory?*

Outside of the narrower context of game theory, the Prisoners' Dilemma has been utilised most often in two specific fields of moral philosophy: the areas of political philosophy (the association with contract theory has already been noted) and evolutionary ethics. With regard to the former, the influence of Hobbes' *Leviathan* (published in 1651) has already been discussed in depth. Here it is reiterated that *Leviathan* is taken by many to be the primary exemplar in traditional philosophy of a theory of the state grounded in an assumption of collective action problems being those of a Prisoners' Dilemma.<sup>13</sup> As a consequence, much discussion of the dilemma has focused on the possibility of cooperation in collective action problems without the requirement of maintenance of the contract by a specific authority (such as the sovereign, in Hobbes' case). There are interesting parallels that can be drawn with the governing bodies of sports' role in enforcing

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<sup>13</sup> Hobbes does not, of course, mention the Prisoners' Dilemma. However, many theorists suggest that Hobbes' presentation of the "fool" and his consequent discussion of the rationality account of conflict establish him as the precursor of this contemporary branch of political philosophy. This is certainly the case in Jean Hampton's definitive *Hobbes and the Social Contract Tradition*, Cambridge: Cambridge University Press, 1986. .

rules and detecting rule infringements. The work of contemporary philosophers such as Peter Singer<sup>14</sup> and Edna Ullmann-Margalit<sup>15</sup> in evolutionary ethics (both making liberal use of the Prisoners' Dilemma) has further relevance to sport philosophy: has the evolution of humankind as a moral animal and as a game-playing animal got anything in common, such that the study of games as Prisoners' Dilemma structured situations tells us interesting things about the structure of moral reasoning?

At this juncture it is enough to say that a philosophical anthropology that attempts to address the moral character of human being at the same time has much to commend it. Hobbesian social contract theory is a crude, but useful, starting point.

### The Prisoners' Dilemma

The so-called Prisoners' Dilemma is just one example of any number of possible scenarios that illustrate what can be called 'collective action problems'. As Michael Taylor uses the term,

the defining characteristic of a collective action problem . . . is very roughly that rational egoists are unlikely to succeed in cooperating to promote their common interests".<sup>16</sup>

A particularly important class of collective action problems involves conflicts of interest that arise in the use of resources to which there is open access. That is, whilst the resource is finite, there are no externally controlled regulations

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<sup>14</sup> P. Singer, *The Expanding Circle: Ethics and Sociobiology*, Oxford: Oxford University Press, 1981.

<sup>15</sup> E. Ullmann-Margalit, *The Emergence of Norms*, Oxford: Clarendon Press, 1977.

<sup>16</sup> M. Taylor, *The Possibility of Cooperation*, Cambridge: Cambridge University Press, 1987, p.3.



determining the volume of use. The text-book example of this is Garrett Hardin's much used 'tragedy of the commons' (where 'commons' refers to the traditional, colloquial, British sense of common grazing land).<sup>17</sup> To illustrate, Hardin's example can be easily translated into a sport-related setting.

Consider a wilderness area, particularly a mountain or lake, that is open to all potential users. Let it be assumed that each individual user seeks to maximise his or her own gain - whether it be enjoying the tranquillity of the setting, the remoteness of the mountain, the opportunity for hunting or fishing or bird-spotting, and so on. Whilst the total number of actual users and the frequency of their usage is below the optimal capacity of the wilderness area (if such a thing can be measured), each individual can increase their own usage without affecting the potential utility of the area for themselves and others. However, a point will be reached beyond which Hardin's 'tragedy of the commons' becomes apparent. There comes a time when each individual's usage begins to entail both a personal gain and a loss: he or she gains the increased pleasure, the extra fish, more stunning wildlife photographs or whatever. But they also begin to notice other users disturbing their tranquillity more often: fish stocks are lower, some of the wildlife seems to be disappearing. Yet, the *individual* benefit still outweighs the *individual* loss. So, the outdoor recreationist continues to go to the lake more often. But for the same reasons all other users begin to do likewise.

The net result is that *collectively* the total users bring about a situation where each one *individually* derives less benefit from each visit than they did before the optimum capacity of the area was exceeded. Despite this, most importantly, no

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<sup>17</sup> Hardin's article *The tragedy of the commons*, published in 1968, has been a seminal work in this area; G. Hardin 'The Tragedy of the Commons', *Science*, 163, December 13, 1968, pp.1243-8.

individual has an incentive to move unilaterally from their position of personal benefit usage.

The ensuing 'tragedy', as it has been characterised, is instantly recognisable. In recent times, it has been at the heart of arguments over Canadian, Spanish, and British fishing rights and quotas. It forms the rationale for control of wilderness areas for skiing developments, mountain climbing permits, and other recreational usage. It affects us all in our decisions to use private rather than public transport. The point of the 'tragedy' is made, most notably, by Mancur Olson in his *The Logic of Collective Action*: under what circumstances are large groups of people likely to work together to maintain the provision of a public good in which they share a common interest? Olson argues,

the larger a group is, the farther it will fall short of providing an optimal supply of any collective good, and the less likely that it will act to obtain even a minimal amount of such a good. In short, the larger the group, the less likely it will further its common interests.<sup>18</sup>

The implications of Olson's comment, if it is true, have consequences for Schneider and Butcher's desire to galvanise athletes into collective action from within to resolve the issue over doping in sport.

The heart of the problem lies in the rationality account of conflict. For this reason, collective action problems are seen to arise as the necessary result of rational egoists opting for the most individually maximising strategy regardless of its consequences. More strongly, that any other action would be illogical, indeed, irrational. The Prisoners' Dilemma is put forward as the archetypal illustration of this problem.

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<sup>18</sup> M. Olson, *The Logic of Collective Action*, Cambridge, MA: Harvard University Press, 1965, p.36.



The original presentation of the dilemma in terms of prisoners being interrogated in separate cells will not be dealt with here. There are various versions, all differing in various ways according to each author's desire to tell a good story. The details of the story are merely stage props used to embellish the drama, the script remains roughly the same in each. One feature is distinctly common to all versions. The protagonists' choices are articulated as *cooperate* and *defect*. This one allusion to the original seems to be enough to maintain the dilemmas association with that of *prisoners*.

The Prisoners' Dilemma simplifies the collective action problem into one of a two-person game in which each 'player' can choose one of just two strategies. For reasons that will become clear, these strategies will henceforth be referred to as C (for cooperate) and D (for defect). Both players must choose their strategy in ignorance of the other (for the simplified game, their choices do not need to be made simultaneously). The possible combination of two players and two strategies yields a strategy vector of four results with individual payoffs that can be represented by a *payoff matrix*, where the first letter denotes Player 1's payoff and the second denotes Player 2's payoff:

		Player 2	
		C	D
Player 1	C	$x,x$	$z,w$
	D	$w,z$	$y,y$

In any given situation, values for all the variables can be substituted in. Using the example of political prisoners in jail choosing to confess or remain silent (*Cooperate* or *Defect*), with the ensuing varieties of lengths of prison terms as the payoffs, is what gives the game its identity as the Prisoners' Dilemma. That is,  $w$  is equivalent to being released after a short interrogation,  $z$  to being executed, and  $x$  and  $y$  refer to varying lengths of prison sentence. Schneider and Butcher, following Breivik, present the 'Doping Dilemma', whereby  $C$  and  $D$  represent the choices to 'not dope' (cooperate with other athletes in keeping the contract) and 'dope' (defect and ignore the contract), respectively.<sup>19</sup> In their payoff matrix the  $x$ 's and  $y$ 's refer to the combinations of winning and losing with or without fair competition.<sup>20</sup>

The distinguishing criteria of the Prisoners' Dilemma are the relationships between the values of  $w$ ,  $x$ ,  $y$ , and  $z$ , where it is a necessary condition that  $w > x > y > z$ . Whatever the real values are, it is important to note that the Prisoners' Dilemma is characterised by a payoff matrix that shows it to be in each individual's best interest to choose  $D$  (defect), regardless of which strategy the other player chooses. With option  $D-C$  player-1 gets the big bonanza ( $w$ ) whilst player-2 loses out ( $z$ ), but if player-2 defects as well ( $D-D$ ) at least player-1 isn't suckered into losing out entirely (both players gaining  $y$ ). Such are player-1's supposed thoughts which apply equally to player-2 with the result that both players *Defect*. Thus, strategy  $D$  is said to be the *dominant* strategy.

But, of course, there is a twist that creates the supposed 'dilemma'. It is clear that if each player chooses their dominant strategy then they each receive a payoff ( $y$ ) that is inferior to the payoff ( $x$ ) that could be gained if both choose to cooperate.

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<sup>19</sup> G. Breivik, 'Doping Games: A Game Theoretical Exploration of Doping', p.237; A. Schneider and R. Butcher, 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.73.

<sup>20</sup> Their choice of pay-offs will be discussed shortly.



However, it is most important with the Prisoners' Dilemma that outcome  $(x,x)$  does not yield as great an individual preference to one of the players than some other possible outcome  $(w)$  gained at the other's expense  $(z)$ .

The dilemma becomes more intriguing when various conditions are introduced that at first sight might appear to aid the prisoners' decision making. Suppose the two prisoners are allowed to communicate and decide on a strategy of cooperation? Suppose one prisoner knows what the other has already chosen? Interestingly, the dominant strategy would still be to defect.<sup>21</sup> Moreover, the rational egoist is more likely to defect under such circumstances. The significance of the dilemma is that the game can be played out under all sorts of varying conditions and yet defection would still be the dominant strategy, but also produce the *Pareto-inferior* outcome.<sup>22</sup>

Immediately, the translation of the *prisoners'* dilemma into various interesting and speculative *athletes'* dilemmas becomes apparent: to cheat or not to cheat, to dope or not to dope, and so on. With regard to the dilemma of whether to take performance-enhancing substances, as Schneider and Butcher rightly conclude,

In reasoning about what to do, the athletes, just like prisoners in a prisoner's [sic] dilemma, use a form of rational egoism and restrict

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<sup>21</sup> Playing the Prisoners' Dilemma game with various groups of students has produced interesting and extremely fertile results, leading to some of the most stimulating group discussions and seminars in my experience of philosophy lecturing. Any number of rules or restrictions can be imposed to vary the game. For example, with one group I assured them that only I would know the results (and they would be anonymous), so only I would know if someone had taken advantage of their classmates' cooperativeness by choosing to 'cheat on them'. No two groups respond the same, but surprisingly most groups become more self-interested when financial incentives are offered and the 'stakes' get higher: it appears to be easier to be altruistic when the consequences matter less!

<sup>22</sup> The established terminology is used here because Breivik makes use of it, as do most other commentators on the dilemma, thus making cross-referencing easier. The terms 'Pareto-optimal' and 'Pareto-inferior' are named thus after the Italian economist Vilfredo Pareto. Technically speaking, an outcome is *Pareto-optimal* if (and only if) no other possible outcome affords one player a greater utility and no person a lesser utility. Any other outcome is *Pareto-inferior*. Thus, in the two-person, two-option Prisoners' Dilemma, *Defect-Defect* is *Pareto-inferior*, despite still being the *dominant* strategy.

themselves to independent reasons and so wind up with a less satisfactory outcome than they could have achieved. This is a general point about prisoners' dilemmas. Individual rational self-interest turns out to be self-defeating.<sup>23</sup>

The dilemma is not just restricted to the specific instance of doping. In more general terms, just like the "tragedy of the commons", collective action problems have endless exemplars and instances as relevant to sport studies as to anything else. To see this more clearly, Ullmann-Margalit, in *The Emergence of Norms*, simplifies the dilemma into what she calls "generalised PD-structured situations", with four necessary conditions:

A PD-structured situation is any situation involving at least two persons each of whom is facing a decision as to whether to do A or non-A, such that:

- (1) If all of them do A the outcome is (and is known to them to be) mutually harmful;
- (2) If all of them do non-A the outcome is (and is known to them to be) mutually beneficial - or at any rate better than the outcome produced by their all doing A;
- (3) Each of the persons involved stands to gain most by doing A. That is to say, one's highest pay-off is obtained when ones does A while all the others do non-A;
- (4) One's doing A when the others do non-A is - at least to some extent - at their expense. That is, when all-minus-one do non-A, the outcome to the

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<sup>23</sup> A. Schneider and R. Butcher, 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.74.



non-A doers is less beneficial than it would have been had everyone done non-A.<sup>24</sup>

That this conceptualisation of the generalised Prisoners' Dilemma appears to amount to a satisfactory description, in one sense, of cheating is both interesting and fruitful, and it will be returned to later. First, it is necessary to consider in more detail whether or not the 'doping dilemma' as constructed by Breivik, and utilised by Schneider and Butcher, is in fact an example of the Prisoners' Dilemma, despite the favourable comparisons just made a moment ago. There are some technical hurdles that need to be surmounted before these authors can use the dilemma in the way they would wish. Only three considerations will be dealt with here: (i) the Prisoners' Dilemma is a non-zero-sum game; (ii) the Prisoners' Dilemma possesses both *individual instability* and *individual inaccessibility*; and (iii) the Prisoners' Dilemma assumes no other benefits gained through any outcome other than those expressed in the matrix. The 'doping dilemma' is unclear about (i); implicitly denies (ii) without explicitly recognising it; and ignores (iii).

#### *Ordinal Utilities, Cardinal Utilities, and Preference Ordering*

Upon examination it can be seen that the payoff matrix for the Prisoners' Dilemma does not represent a zero-sum game. It is, by definition, essential that both parties could realise the minimally beneficial payoff, or similarly both achieve the maximally beneficial collective outcome: simply, they could both be 'losers' or both be partial 'winners'. One party's loss is not extensionally equivalent to the other's gain. If Schneider and Butcher's 'payoffs' are examined they are framed in terms of winning and losing, which in their context of athletic endeavour both have zero-sum connotations. As if to recognise this, they introduce other payoffs ('fair

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<sup>24</sup> E. Ullmann-Margalit, *The Emergence of Norms*, p.23.

competition' with and without dope) to equate to the reciprocally-defective payoff  $(y,y)$  and the mutually-cooperative payoff  $(x,x)$  respectively. To suggest that the "guaranteed win with dope" is better than "fair competition without dope" is unconvincing.<sup>25</sup> This also slightly misconstrues the nature of the dilemma. The payoffs need to be framed in terms of one parameter: either differing degrees of winning-losing, or varying quantities of fair/unfair competition. Given the obvious difficulty of conceptualising either, a combination of the two will not solve the problem. However, it is a technicality, and the 'doping dilemma' could most certainly be constructed in a more appropriate way. Moreover, the argument here is one with which the authors concerned would be entitled to disagree.

A greater difficulty rests with Breivik's, and Schneider and Butcher's, use of *cardinal utilities* rather than *ordinal utilities*. Whereas the preference ordering of the Prisoners' Dilemma presented above has been done in terms of *ordinal* utilities (in the relationship  $w > x > y > z$ ), the above authors have chosen to use *cardinal* values to express the preferences of the players. Admittedly, this has probably been done in both cases to aid clarity: 4 is obviously bigger (better?) than 1 (and after all, the original dilemma between prisoners was framed in terms of years in prison). However, the use of cardinal utilities raises a problem that begins to undermine the efficacy of the Prisoners' Dilemma as a model in this case. Ordinal utility ranking conveys nothing more than information on the ordering of preferences ( $w$  before  $x$  before  $y$  before  $z$ ); it does not give any information on the *strength* of the preferences (and is thereby limited). It seems appropriate in the case of the doping dilemma to determine such strengths, for the main reason that a critical factor in the athlete's decision making must surely depend on just how much stronger his or her

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<sup>25</sup> A. Schneider and R. Butcher 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.73.



preference for the “guaranteed win with dope” actually is. If this is the case, then an arbitrary use of 4, 3, 2, 1 will not do. The significance of careful consideration of the cardinal values attributed to choices can be illustrated quite simply as follows. Assume the simple cardinal cardinal values presented in the matrix below (they are not meant to represent any particular kind of dilemma) and your desire to choose an action on the basis of expected utility maximisation.

		Opponents	
		<i>Doped</i>	<i>Clean</i>
You	<i>Doped</i>	1	1
	<i>Clean</i>	0	2

#### Pay-off Matrix Expressed with Cardinal Values

Your ideal situation is one of fair competition without dope, but you do not want to play fairly if your opponents are cheating (you do not really care what your opponents do if you cheat). You know that if you cheat you will certainly receive 1 utility regardless of your opponent’s decisions. But, if you decide to play fairly there is a 1-in-3 chance that your opponents will also be dope free (yielding 2 utilities for you) and a 2-in-3 chance that at least one of them will cheat on you (yielding 0 utilities for you). On average, playing fairly will produce 0.66 utilities  $([0.33 \times 2] + [0.66 \times 0])$ . In general, if your assumptions about the probability of all your opponents playing fairly are expressed as  $p$  ( $p$  having some value between 0 and 1, e.g., 0.33) then your expected utility from playing fairly is  $2p$  and that from

cheating is 1. Consequently, you will only play fairly (as a utility maximiser) as long as  $p$  exceeds the value of 0.5 (there is more than a 50:50 chance your opponents will not cheat). The significance of the cardinal values chosen becomes that much more apparent if, for example, playing fairly is so important to you that it is worth 4 utilities compared to only 1 utility if you feel compelled to cheat. Thus, your expected utility from playing fairly in the long run is  $4p$ : in other words, you would be prepared to take the risk and not dope as long as there was a 1-in-4 chance, or better, of your opponents also playing fairly. In terms of the doping dilemma, the chosen cardinal utilities matter enormously, especially in conjunction with estimates of probability factors affecting the athletes' decisions regarding the likelihood of being caught, the likelihood of opponents cheating, and so on, if the Prisoners' Dilemma as a model is to have any use in persuading athletes to rationalise dope-free competition more carefully. To cut a long story short, the arbitrary use of cardinal values (4, 3, 2, 1) to express utility preference ordering presents more problems than it solves.

#### *Individual Instability and Individual Inaccessibility*

The second difficulty is more serious. Elster characterises the essential nature of the dilemma in terms of the conflicting polarities of individual preference for universal cooperation over universal non-cooperation contra the "individually unstable" and "individually inaccessible" nature of universal cooperation.<sup>26</sup> That is, there is *individual instability* if each individual has an incentive to defect from a position of universal cooperation (for example, the greater incentive to cheat if all others are playing fairly), and there is *individual inaccessibility* if no individual has any incentive

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<sup>26</sup> J. Elster, 'Rationality, Morality, and Collective Action'.



to move unilaterally from universal non-cooperation (that is, having no incentive not to cheat because of the possibility that everybody else is cheating).

Taylor takes up Elster's "weak definition" of the Prisoners' Dilemma to show how most collective action problems are *not* instances of such a dilemma, but rather of what he calls the "Chicken Game" (or "Hawk-Dove" as it is sometimes known) and the "Assurance Game" characterised by the matrices below.<sup>27</sup>

		Player 2	
		C	D
Player 1	C	$x,x$	$y,w$
	D	$w,y$	$z,z$

**The Chicken Game (where  $w > x > y > z$ )**

The game in which *Defect-Defect* realises the most disadvantageous pay-off for both, but *Defect-Cooperate* is still the individually optimal strategy. Thus, *defect if you dare!*

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<sup>27</sup> M. Taylor, *The Possibility of Cooperation*.

		Player 2	
		C	D
Player 1	C	$w, w$	$z, y$
	D	$y, z$	$x, x$

**The Assurance Game (where  $w > x > y > z$ )**

The game in which the co-ordination of both players' strategies yields the most beneficial pay-off if both are prepared to 'share' equally the goods in question. What is needed is the assurance that both will comply.

The important point to note for the moment is that neither game is a prisoners' dilemma; both games represent different sorts of collective action problem with different solutions; and the translation of what is stated as a prisoners' dilemma into either of these games cannot itself be a solution to the dilemma. As suggested both in the following paragraphs and later, Schneider and Butcher, while referring to it as a prisoners' dilemma, treat the doping dilemma as an assurance game, rendering it relatively easy to secure cooperation simply by the use of communication and the provision of information.<sup>28</sup>

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<sup>28</sup> According to Elster, 'Rationality, Morality, and Collective Action', *Ethics*, 96, 1985, p.140 footnote, the term "assurance game" was first introduced by Amartya Sen in his 'Isolation, Assurance and the Social Rate of Discount', *Quarterly Journal of Economics*, 80, 1967, pp.112-24. The



Schneider and Butcher implicitly recognise that the doping dilemma might not be a Prisoners' Dilemma when they put forward the dope-free athletic competition as best for realising the internal goods of Olympic sport,<sup>29</sup> which would seem to suggest a 'win-win' outcome for universal cooperation and hence an incentive for each individual unilaterally to cooperate. Is this a *solution* to the dilemma, or a reconceptualisation of the payoff matrix, and thus a different game (the Assurance Game)?

The use of threats and sanctions as a means of ensuring cooperation do not work by altering the players' preferences among the possible pay-offs in the dilemma matrix. Instead, they work by altering the players' expectations about the choices to be made by others in the game. That is to say, the player has greater assurance that his or her opponent will also cooperate if the opponent can also be assured that the players too will cooperate. Thus, the players rationally arrive at the decision to choose, in David Gauthier's terminology, their *utility-optimizing* strategy rather than their *utility-maximizing* strategy. Schneider and Butcher refer in the context of the doping dilemma to the "assurance problem" of "providing each participant with a guarantee that the other participant will in fact do the right thing".<sup>30</sup> Yet they shy away from advocating stricter enforcement on the grounds of respect for individual privacy rights, unless those rights are waived by the athletes' consent. They suggest that the job to be done is the persuasion of the athletes themselves to relinquish those privacy rights by first convincing them to desire the International Olympic

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two-person instance of the game known as "chicken" is from Anatol Rapoport's *Two-Person Game Theory*, Ann Arbor, MI: University of Michigan Press, 1966.

<sup>29</sup> A. Schneider and R. Butcher 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.75.

<sup>30</sup> A. Schneider and R. Butcher 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.74.

Committee's (IOC) interjection on their behalf to eliminate drug use, thus making it easier for each individual to adopt a cooperative strategy:

Athletes should choose to voluntarily limit their personal privacy in the ways that are required to guarantee compliance. It is one thing for state agencies or sport governing bodies to insist on random, unannounced, out-of-competition testing for a wide range of banned substances, without good reasons, and quite another thing for athletes to voluntarily request random, out-of-competition testing for substances they have declared they do not wish to use.<sup>31</sup>

If athletes are so persuaded, the problem begins to look more like the assurance game previously outlined (or similar to Breivik's Coubertinian game).

		Player 2	
		<i>no-dope</i>	<i>dope</i>
Player 1	<i>no-dope</i>	4,4	1,2
	<i>dope</i>	2,1	3,3

#### Breivik's Coubertinian Game

Each player acting alone cannot produce the desired end result (equitable competition), but can in conjunction with the other player, with or without doping. The incentive to

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<sup>31</sup> A. Schneider and R. Butcher 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.76.



'cheat' disappears if it is rightly assumed that both players desire equitable competition.

What is clear is that individuals acting alone cannot bring about the pay-off they desire (equitable, dope-free competition), if this is indeed what elite athletes do actually desire: the mention of winning and losing as pay-offs in the 'doping dilemma' conflates the issue somewhat. In which case, the achievement of utility-maximization is one of assuring the other players' compliance with the rules. There will necessarily be a desire to cooperate if all others cooperate as well. However, if this cannot be guaranteed, there are no grounds for cooperating, as the next most beneficial outcome is equitable competition with dope (defect-defect).

Quite contrary to the Prisoners' Dilemma, neither player in the "Assurance Game" gains if the other does not reciprocate in their choice of strategy: some athletes using dope whilst others do not renders equitable competition impossible. But this is a very big assumption: that we are playing the "Assurance Game" and not the "Prisoners' Dilemma game". Schneider and Butcher's solutions seem to waiver between the two, and trying to persuade athletes that they should be playing the former is certainly not a "solution" to the latter. That this seems to tend towards a contractarian view of fair play is reinforced by Rawls own sporting analogy to express the goal of his entire social contract when he likens it to, "the shared end, the common desire of all players that there should be a good play of the game".<sup>32</sup> The minimal condition for the legitimacy of the contract is the tacit consent that Schneider and Butcher wish to deny.

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<sup>32</sup> J. Rawls, *A Theory of Justice*, p.525.

Similarly, in referring to Brown's *Practices and Prudence*,<sup>33</sup> Schneider and Butcher offer a rationale for expressing the *Defect-Defect* outcome as potentially the most mutually harmful. Again, this changes the nature of the game (to that of Taylor's Chicken Game). Schneider and Butcher seem to be suggesting that one way of 'playing the game' (or at least 'solving' the dilemma) is by changing the participants' conceptions of the relative merits of the pay-offs. But this is not a legitimate formulation of the Prisoners' Dilemma and actually renders the 'doping dilemma', as just such a dilemma, redundant. That is to say, technically speaking, if the dilemma can be solved *internally*, then it is not a dilemma as such.<sup>34</sup> Breivik, on the other hand, after re-defining the Prisoners' Dilemma game as the "Lombardian Game", recognises other alternatives through his presentation of the "Coubertinian Game", the "Brownian Game", and the "Naessian Game".<sup>35</sup>

This playing with technicalities may grow wearisome if it has no direction. The necessity of dealing with them in such depth here does have a purpose that will become apparent in the next section. For the moment it is sufficient to point out the incongruity between Schneider and Butcher's conceptualisation of the dilemma, "in which none, *even though they act rationally*, get what they want, . . . Athletes must forego the choice that would be in their individual self interest" (emphasis mine) and their later statement that they, "have demonstrated that athletes have good reason to endorse bans on doping" (emphasis mine).<sup>36</sup> Admittedly, Schneider and Butcher see the latter statement as valid, believing that they have offered a

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<sup>33</sup> W. M. Brown, 'Practices and Prudence', *Journal of the Philosophy of Sport*, XVII, 1990, pp.71-84.

<sup>34</sup> This is not a universally held view. Michael Taylor argues, in *Anarchy and Cooperation* (1976) and in *The Possibility of Cooperation* (1987), that "internal" solutions (those that neither involve nor presuppose changes in the game) are the basic solutions to Prisoners' Dilemmas.

<sup>35</sup> G. Breivik, 'Doping Games: A Game Theoretical Exploration of Doping', pp.238-9.

<sup>36</sup> A. Schneider and R. Butcher 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.74 & p.78.



“solution” to the dilemma, but their use of “reason” is equivocal in the context of the Prisoners’ Dilemma.

*The Exclusion of Other Benefits Than Strategic Pay-Offs*

Lastly, the remaining significant feature of the Prisoners’ Dilemma, and other rational choice games, is that the benefits accrued by the strategies played out in the game are the *only* benefits that can be considered in determining the decision making processes involved. No other incentives are included. It can not be that the players’ desires to conform socially, or to obey the law, or to be seen to be moral, or to want to be a martyr, and so on, can be considered as incentives.<sup>37</sup> All altruistic motivations, expressive motivations, and intrinsic rewards are explicitly excluded by rational choice theorists.<sup>38</sup> The Prisoners’ Dilemma is an examination of the possibility of cooperation in the *absence* of any constraint to cooperate or incentive to cooperate for its own sake. It is by definition a *non-cooperative* game. Without this feature, no ‘dilemma’ would exist.

If the problems associated with cheating in sport are to be conceived in some ways as examples of the Prisoners’ Dilemma, then it must be the case that such problems are seen as intractable; that they cannot simply be solved by *rationally* persuading athletes to recognise other pay-offs as more beneficial. This appears to be ignored by Schneider and Butcher, particularly when utilising the argument from the ‘internal goods’ of Olympic sport. Either the “guaranteed win with dope” is the best pay-off

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<sup>37</sup> Consider, for example, just one account of a real prisoner, Nien Cheng’s *Life and Death in Shanghai*, London: Grafton Books, 1984: her harrowing autobiographical account of imprisonment during Maoist-China’s Cultural Revolution on the grounds of her dead husband’s association with the “Western imperialist” company Shell Oil. Whilst in prison she and her family endured endless persecution, including the beating to death of her adult daughter by the Red Guard. All she needed to do to end her torment was to confess (to “crimes” that she had not committed). Instead, she maintained her silence and suffered years of torture, purely motivated by her desire to maintain her innocence, her self-esteem, and her dignity.

<sup>38</sup> M. Olson, *The Logic of Collective Action*, p.61.

or it is not. If it is not, then where is the dilemma? Such a move does not 'solve' the dilemma; it simply suggests that there was no dilemma in the first place. This can be seen as a legitimate strategy for dealing with collective action problems, but it is more a denial of the salience of the Prisoners' Dilemma than a *solution* to it. However, Schneider and Butcher *do* recognise the problem when talking about "co-ordination" and "assurance" and the legitimacy of any authority providing these two on behalf of the athletes.<sup>39</sup> Unfortunately, they do not explore in sufficient depth the significance of this recognition. This brings the discussion around to the second area of concern outlined at the beginning of this chapter.

### The Prisoners' Dilemma, Rationality and Cooperation

If the Prisoners' Dilemma has any use at all in discussions about social contract theory, rational choice theory, morality, and the 'state of nature' or 'original position', then it must in some sense be representative of some truth about the interactions between individuals and the possibility of cooperation in societies (collective action problems). Are people, in fact, such rational utility-maximising agents that we are trapped by that very rationality into playing out numerous Prisoners' Dilemmas, to our own ultimate detriment? As mentioned above, the dilemma allows only rational egoism as a motivating factor in determining the player's strategy. Part of the problem, as far as other commentators are concerned, is just such a pre-eminence given to rationality as the only valid motive in decision dilemmas, stripping away all *actual* motives, such as compassion and humanity. This is Hume's criticism of Hobbesian contractarianism. Of course, as Schneider and Butcher rightly recognise and advocate, the 'internal goods' of a practice may

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<sup>39</sup> A. Schneider and R. Butcher 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.74.



provide sufficient motivation for action regardless of the external goods that could be received by successful engagement in that practice.

At this point it could be suggested that the Prisoners' Dilemma is a pseudo-problem; that as an abstraction it does not really exist; that its rules and procedures are so rigorous that it is too artificial; or that it can be *dissolved* by demonstrating how its pay-offs and strategies are not the only ones available to *rational* agents. As a cornerstone of contemporary Hobbesian contractarianism, exemplified by Gauthier and Scanlon (discussed in chapter three), such a denial would present serious problems for any analogy of sport as a form of social contract. Perhaps the Prisoners' Dilemma is a 'straw man' to be knocked down, an irresolvable conflict that paradoxically has a resolution. Why persist with it? The answer to this question lies in the assumptions made by rational choice theorists about *rationality* (and moreover, about morality) and in our general fascination with problems of a certain kind that might be termed *dilemmas*. Gauthier presents a typical dilemma (borrowed from Luce and Raiffa's *Games and Decisions*)<sup>40</sup> as an "ideal case" for his treatment of strategic rationality,

Jane wants very much to go to Ann's party. But even more she wants to avoid Brian who may be there. Brian wants very much to meet Jane. If Jane expects Brian to be at Ann's party she will stay at home. If Brian expects Jane to stay at home so will he. If Jane expects Brian to stay at home she will go to the party. If Brian expects Jane to go so will he. If Jane . . . but this is where we began.<sup>41</sup>

The decision making problem here is obvious in its comparison to the 'doping dilemma'. Gauthier puts it forward as exemplary of a problem in interaction. The requirement for strategically rational choice only arises in the context of conflict of

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<sup>40</sup> R. D. Luce and H. Raiffa, *Games and Decisions*.

<sup>41</sup> D. Gauthier, *Morals by Agreement*, Oxford: Oxford University Press, 1986, p.60.

interest. The problem for Jane and Brian (or prisoner-1 and prisoner-2) is that neither's "optimizing response" can be combined with any strategy of the other to yield a pair of mutually "utility-maximizing" responses, "going to the party is Jane's optimizing response, whatever Brian chooses, but it cannot be combined with any strategy of Brian's . . ." <sup>42</sup> In this way, there is no 'solution' to the dilemma.

How then are the two reconciled? Gauthier's answer is an attempt to 'solve' the problem by demonstrating that instrumental rationality demands cooperation and not defection. In order to do so he distinguishes between two sorts of maximisers: a straight-forward maximizer (SM) and a constrained maximiser (CM). Gauthier argues that the assumption that we are SMs (as exemplified in the presentation of the prisoners' dilemma so far) is mistaken. The constrained maximiser adopts a conditional strategy of cooperating with other constrained maximisers. To prove that the instrumentally rational agent would be a CM and not an SM requires a simple calculation of cardinal utilities along the lines presented earlier. Using Schneider and Butcher's cardinal values of 4, 3, 2, 1 for athlete X who is given the combined respective strategies dope/not-dope, not-dope/not-dope, dope/dope, not-dope/dope,<sup>43</sup> and presenting the probability of encountering another CM as  $p$ , then:

$$\text{Pay-off for being a CM} = p.3 + (1 - p).2$$

$$\text{Pay-off for being an SM} = 2$$

The option of gaining 4 utilities is not available to the constrained maximizer, but neither is it to the straightforward maximiser (for all the reasons explained earlier

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<sup>42</sup> D. Gauthier, *Morals by Agreement*, p.78.

<sup>43</sup> A. Schneider and R. Butcher 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices from the Olympic Games', p.73.



when demonstrating the dilemma). For any given probability of meeting and CM that is greater than 0 it pays to be a CM. For example, suppose that there is a 50:50 chance that my opponent is a CM. Calculating out the above sum, the long-term pay-off associated with being a CM is 2.5 utilities ( $0.5 \times 3 + [0.5 \times 2]$ ) as opposed to 2 utilities for an SM. The possible scenario is actually far more complex than this. CMs may fail to recognise each other, SMs might masquerade as CMs, CMs might not recognise SMs and thus treat them as CMs, and so on. Game theory calculations can allow for all these eventualities. It will always pay to be a constrained maximiser providing the probability of recognising other CMs is sufficiently greater than the probability of failing to recognise rogue straightforward maximisers.

The calculations are as follows. Given the same cardinal utilities of 4, 3, 2, 1, where  $p$  is the probability that CMs recognise each other when they meet; where  $q$  is the probability that a CM fails to spot an SM; and where  $r$  is the probability of encountering a CM; then . . .

The payoff for being a CM can be represented by:

$$\begin{aligned}
 &= rp.3 + r(1 - p).2 + (1 - r)q.1 + (1 - r)(1 - q).2 \\
 &= 2 + rp - (1 - r)q.2
 \end{aligned}$$

In contrast, the overall utility for an SM can be expressed as:

$$\begin{aligned}
 &= r(1 - q).2 + rq.4 + (1 - r).2 \\
 &= 2(1 + rq)
 \end{aligned}$$

The instrumentally rational agent will favour a CM disposition when:

$$= p/q > 2 + [(1 - r).2]/r \quad (\text{see}^{44})$$

In essence, then, where the probability is great that CMs recognise each other; there is low probability that SMs cannot be recognised for what they are by CMs; and where it is proportionately more likely that CMs will meet other CMs rather than SMs, then it pays to be a CM.

Gauthier's theory of strategic rationality is an attempt to adjudicate between the claims of "utility-maximization" and "utility-optimization", the culmination of which is a contractarian view of social justice that requires individuals to embrace "morals by agreement". It is fundamental to recognise that, for Gauthier, this is the whole business of moral theory: that it is "essentially the theory of optimising constraints on utility-maximization".<sup>45</sup> Gauthier wishes to maintain that moral principles are nothing other than principles of rational choice, whereby, according to the conventional view of 'choice', the rational agent chooses that which is most likely to yield the greatest utility (value). Given, as has been shown, that such individual choice under certain circumstances can be detrimental to utility-maximization, Gauthier argues for an agreed basis of cooperation aimed at the achievement of utility-optimization. Morality, in the broad determinants of justice and fairness, is thus firmly grounded in rational egoism. It is not so much an alternative account of why we should be moral as an alternative to morality itself.<sup>46</sup>

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<sup>44</sup> S. Hargreaves Heap and Y. Varoufakis, *Game Theory: A Critical Introduction*, London: Routledge, 1995, pp.162-3.

<sup>45</sup> D. Gauthier, *Morals by Agreement*, p.78.

<sup>46</sup> This, more than anything else, is what places Gauthier in the Hobbesian camp as a contract theorist.



In Gauthier's words the contract provides a "moral" code, "generated as a rational constraint from the non-moral premises of rational choice".<sup>47</sup>

If this differs from our traditional conceptions of morality, then this alone is not its refutation: too bad for morality. But, that this runs contrary to a vast wealth of moral philosophy of sport and discussions of fair play, respect for persons, and the like, must be taken on board by anybody wishing to use the dilemma and its literature to their advantage, particularly in a discussion on sport as a form of social contract.<sup>48</sup> This, for the most part, is what was meant at the beginning of this chapter by claiming that the use of the Prisoners' Dilemma does not come "theory-free". Its popularity with game theorists and socio-biologists rests largely in its power to explain the evolution of cooperation in ways that do not require non-anthropological explanations of morality.

Whilst Gauthier begins from a Hobbesian position of natural equality of physical power making it mutually advantageous for contracting individuals to accept norms and conventions that protect each other's possessions and interests, other theorists have chosen to examine the possibility of altruistic behaviour naturally emerging from rationally motivated self-interest. In other words, they wish to suggest that altruistic tendencies and motivations are quite 'rational', despite our 'selfish genes'.

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<sup>47</sup> D. Gauthier, *Morals by Agreement*, p.4. Gauthier is not alone in thinking that an account of rationality is central to moral theory. Recently, see, for example, Richard Brandt, *A Theory of the Good and Right*, Oxford: Oxford University Press, 1986; Alan Gewirth, *Reason and Morality*, Chicago: University of Chicago Press, 1978; Derek Parfit, *Reasons and Persons*, Oxford: Oxford University Press, 1984. In addition, R. M. Hare's *Freedom and Reason*, Thomas Nagel's *The Possibility of Altruism*, and John Rawls' *A Theory of Justice* have been in publication long enough to have considerable secondary literatures surrounding them.

<sup>48</sup> It is worth noting here a number of valuable discussions in the symposium on rationality and morality contained in volume 96 (1) of *Ethics*, published in October 1985. Only John Elster's article, 'Rationality, Morality, and Collective Action', has been explicitly referred to in this chapter. Most of the papers discuss the failings of Kantian philosophers (and Kantian contractarians) to account adequately for the Prisoners' Dilemma, and come down on the side of Utilitarianism. This moral stance most definitely goes against the grain with most of the sport philosophy written on fair play in the past twenty years.

If this is the case, does the dilemma disappear? Clearly not. We *are* surrounded by innumerable unsolved collective action problems, and we do still recognise the need for state intervention, political entrepreneurs, and other 'external agents' to help in their resolution. In sport, the problem with illegal use of performance-enhancing substances and procedures persists and the issue of potential (mis)use of gene therapy looms on the horizon. In practice, real cases of the Prisoners' Dilemma appear to be unsolvable. Is a Hobbesian view of an implicit social contract a useful device for directing us towards ways of negotiating our way out of these problems? The idea will be put forward in the concluding section of this chapter that games can possibly serve a purpose in stimulating altruistic tendencies amongst us; in teasing out our "Humean sympathies".<sup>49</sup>

The incentive to cooperate in the long term is best illustrated by the expansion of the 'one-shot' Prisoners' Dilemma into the, so-called, *Iterated* or repeated Prisoners' Dilemma. The iterated game is simply the ordinary game repeated an indefinite number of times with the same players. Unlike the simple game, in which *Defect* is the only rational strategy, the iterated game offers far greater strategic scope. It is also more realistic in its application to the games played out amongst athletes. For example, a particular strategy might be to "cooperate most of the time (dope free), but defect on certain occasions". Such a tactic might be used by the athlete wishing to establish trust and a particular public front before moving in for the 'sting' on the big occasion. But, of course, all others might be doing likewise. Strategies might also be conditional upon the past history of behaviours amongst the players on a reciprocal basis: "cooperate with A, B and C, but always defect against D". The

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<sup>49</sup> D. Hume, *A Treatise of Human Nature*, Oxford: Clarendon Press (Edited by A. Selby-Bigge), 1988.



*Pareto-optimal* strategy over the course of an iterated game turns out to be both surprising and exciting.

The American political scientist Robert Axelrod (working partly in conjunction with W. D. Hamilton) has explored vast numbers of alternative long term strategies through his computer-simulated competitions for which leading experts in game theory, genetic theory, economics, mathematics, and so on, were invited to submit their choice of utility-maximising strategy, all to be played out against each other.<sup>50</sup> Surprisingly, one of the simplest strategies defeated all the others: more surprisingly, it was one of the 'nice' strategies. Submitted by Canadian game theorist Anatol Rapoport, the "Tit for Tat" strategy required the player to cooperate in the first game and thereafter simply copy the previous move of the other player.<sup>51</sup> Furthermore, when subsequent competitions were created with all participants aware of the results of previous strategies, and consequently engaged in producing strategies to exploit "Tit for Tat", the results were always the same: "Tit for Tat" was the "collectively stable strategy". "Tit for Tat" is not an *Evolutionary Stable Strategy* (ESS) as it is possible for it to be 'invaded' by another strategy (albeit a 'nice' strategy). The significant point is that "Tit for Tat" cannot be invaded by a 'nasty' strategy. Nicer strategies than "Tit for Tat" are capable of being exploited by nastier strategies and become extinct in the long term, the nastier strategies then eliminating each other. "Tit for Tat" remains the collectively stable strategy over the long term.

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<sup>50</sup> R. Axelrod and W. D. Hamilton, 'The Evolution of Cooperation', *Science*, 211, 1981, pp.1390-6.

<sup>51</sup> The mechanics of Axelrod's game are too complex to explain here. The best (briefest and most straightforward) summary of Axelrod's and others' work is found in Richard Dawkins' *The Selfish Gene*, Oxford: Oxford University Press, 1976, Chapter 12: 'Nice Guys Finish First'.

The net result of the success of “Tit for Tat” is support for the idea in evolutionary ethics of, what Robert Trivers has called, “reciprocal altruism”: a sort of “you scratch my back, I’ll scratch yours” morality.<sup>52</sup> The implications for the discussion here are found, firstly, in Axelrod’s identification of four properties which tend to make a decision rule successful: (i) avoidance of unnecessary conflict, (ii) provocability, (iii) forgiveness, and (iv) clarity of behaviour.<sup>53</sup> The first property is reflected in the desire to cooperate as long as one’s opponent does. However, if one’s opponent does cheat one must be prepared to retaliate, and yet be forgiving enough to return to the cooperative strategy afterwards. The key is in the clarity of behaviour enabling players to adapt to their opponent’s patterns of action. For this reason, following Axelrod in some respects, but also Thomas Schelling’s earlier work in *The Strategy of Conflict*,<sup>54</sup> salience (or ease of recognisability) becomes a necessary condition for the cooperative ‘solution’ to Iterated Prisoners’ Dilemmas.<sup>55</sup> The further implication of ‘reciprocal altruism’ is the requirement that “non-reciprocators” are, not only easily identifiable, but also, admonished or punished in some way to warn other “Tit for Tat” strategists to avoid playing with them. Here, it is argued, can be found the powerful emotive force of labelling somebody a ‘cheat’. In examining concepts such as ‘cheating’ in sport, it seems fairly intuitive to accept that one kind of desire or motivation has succeeded over another. To suggest that this is by definition immoral due to that action’s possession of some sort of necessary conditions misses the point entirely. It seems to serve little purpose, “to deal first with the definitional problem of what sorts of behaviour constitute

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<sup>52</sup> Trivers, R. ‘The Evolution of Reciprocal Altruism’, *Quarterly Review of Biology*, 46, 1971, pp.35-57.

<sup>53</sup> R. Axelrod and W. D. Hamilton, ‘The Evolution of Cooperation’.

<sup>54</sup> Schelling, T. *The Strategy of Conflict*, Cambridge, MA: Harvard University Press, 1960.

<sup>55</sup> This is in concord with Gauthier’s calculations concerning the value of CMs being able to recognise SMs, and other CMs, as discussed earlier.



cheating, and come to the ethical issue later".<sup>56</sup> The two clearly cannot be separated,

To understand what is meant by the concept *cheat* is unequivocally a case of understanding its usage as a strong form of condemnation. . . moral argument is about persuasion in the same way that calling someone a "cheat" is about persuasion. This is not to champion an emotivist explanation of moral discourse. On the contrary, we are not involved in mechanically pushing and shoving each other around by emotive forces. (Human persuasion does sometimes operate in such a way, but as such generally does not involve intellectual persuasion at all).

It is quite misleading to attempt to explain conceptually the term "cheating" and then ask whether any of its defining necessary conditions are also moral conditions. To condemn someone as a cheat is to condemn them morally. The problem is to understand why we want to make such a judgement. The question is not one of what the word means, in some vacuous sense of a definition, and then a consideration of whether such action is immoral. Quite the contrary, the issue is when do we feel strongly enough to apply such a condemnation and why it should be so. To answer this satisfactorily requires some careful thinking about the whole area of co-operation and obligation, of promising and treachery: thinking which has an impact upon all sorts of areas of human concern, such as social security fraud, adultery, embezzlement, burglary. The consideration that a player might cheat without "batting an eyelid" and see no moral issue involved is not itself evidence that cheating has nothing to do with morality, in just the same way that a professional burglar's blasé attitude towards the suffering of the victims does not mean that theft is not a moral issue.<sup>57</sup>

If, as Hume wished to suggest,<sup>58</sup> our passions oriented towards sympathy and concern for others are fainter than those based on self-interest, then an important

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<sup>56</sup> O. Leaman, 'Cheating and Fair Play in Sport', in W. J. Morgan and K. V. Meier (Eds.), *Philosophic Inquiry in Sport*, Champaign, Illinois: Human Kinetics, 1995 (2<sup>nd</sup> edition), pp.277-282.

<sup>57</sup> S. Eassom, 'So, You Want An Argument? . . . The Use and Abuse of Philosophy in Solving Moral Problems in Sport', in S. Eassom (Ed.) *Discourse On Sport: Proceedings of the 21<sup>st</sup> Annual Conference of the PSSS*, Bedford: Casper, 1994, pp.39-40.

<sup>58</sup> D. Hume, *A Treatise of Human Nature*.

part of maintaining the taboos about cheating and deception in general involves our maintenance of strong social condemnation of them.

To persist in maintaining the issue of cheating as a prisoners' dilemma is to accept that the greatest incentive to cheat exists where there is the greatest assurance that all others do not. In games, as in life, the temptation to cheat is at its highest where there is the greatest dependence on and requirement for trust. The most successful cheat is the person who survives totally undetected amongst rule abiders by strictly maintaining the fronts of rule-abidance himself or herself. The greater trust placed in the cheat by others allows the greater opportunity to maximise his or her own utility. Consider, for example, the 'trustworthy' honest-looking con-man who successfully embezzles the local community group's charity Christmas Fund, or the marriage partner who secures the spouse's continuing love and affection while carrying on countless undetected extra-marital relationships. Building up a situation of trust is a figurative 'Ring of Gyges'. For this reason alone, the traditional conceptual approach to the definition of cheating begins the analysis at the wrong end: from its defining conditions rather than its emotive use. The analogy of sport as a social contract and the specific consideration of the Prisoners' Dilemma is useful in that it brings to the forefront of the conventional analysis of cheating some hitherto rarely discussed ideas about the relationship between games, rules, and morality. Some comments on this will be made shortly.

### **The Prisoners' Dilemma, the State, and Community**

The lapsing of the egoistic individual into the Prisoners' Dilemma has been put forward as indicative of the need for strongly maintained rules and conventions to compensate for the failure of rational individuals to cooperate spontaneously in the maximisation of their common interests, and thus as a justification for the State.



This is fundamentally the reason for this lengthy discussion of the Dilemma and its application to sport in the context of asking whether or not sport is a form of social contract. As already outlined in chapter three, Hobbes begins his treatise from just such a pessimistic view of the 'state of nature' as "that condition which is called Warre; and such a warre, as is of every man, against every man".<sup>59</sup>

It is not surprising, then, to find the Prisoners' Dilemma as a favourite tool of the Hobbesian contractarian.<sup>60</sup> It is taken as standard to read Hobbes' rationality account of conflict presented in Chapter 13 of *Leviathan*, "Of the Natural Condition of Mankind, as concerning their Felicity, and Misery" (summarised in chapter three) as paradigmatic in game-theoretical terminology of the Prisoners' Dilemma. In Hobbes' own words,

it is a precept, or generall rule of Reason, *That every man, ought to endeavour Peace, as farre forth as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre.*<sup>61</sup>

Hobbes' subsequent treatise is a justification of any form of authority (in his case, the Sovereign), legitimated by implicit acceptance of a social contract, that has the ability and is empowered to deter its subjects, through any form of coercion, from breaking their promises and covenants.<sup>62</sup> For those following Hobbes, the 'solution' to the dilemma must be an *external* one: that is, by the use of outside agencies

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<sup>59</sup> T. Hobbes, *Leviathan*, Chapter 13, Paragraph 8.

<sup>60</sup> Although, for reasons discussed in chapters two and four, this does not include John Rawls' idea of the social contract in *A Theory of Justice* under this heading, he also makes passing reference to the Prisoners' Dilemma: J. Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1971, p.269.

<sup>61</sup> T. Hobbes, *Leviathan*, Chapter 14, Paragraph 4.

<sup>62</sup> Just as it is undisputed that the whole rationale for Hobbes' *Leviathan* is a defence of the power of the sovereign in the maintenance of the law and contract, so does any implicit contractarian thinking in the establishment of governing bodies of sport and the codification of their rules and laws defend and legitimate the authority of that body.

manipulating the players' possibilities within the game, through force, coercion, or the changing of players' attitudes and beliefs. Such 'solutions' might be centralised, whereby control is held by a relatively small percentage of the group; typically, by the State (or in the case of sport, national governing bodies, international associations, and so forth). Alternatively, decentralised 'solutions' exist whereby a greater proportion of the group's membership (or community) play an active role in providing the required initiatives and changes. Schneider and Butcher tend towards the decentralised external solution by favouring the athletes themselves as the prime movers in bringing about general changes in attitudes and behaviour with respect to doping.

The most obvious method of contract maintenance for the authority, here, is the manipulation of the environment to make undetected breaking of the rules virtually impossible. Such a situation already exists in elite level tournament tennis, golf, and snooker through the very visibility of the performance under the gaze of referees, officials, spectators and the television camera. The television umpire has made cheating much harder in team games such as American football and cricket (as discussed in chapter five). Yet, 'trial by television' is still vehemently opposed by the more conservative football and rugby authorities, and the 'third umpire' in cricket has very limited duties. However, none of this is any use in solving the problems of the 'doping dilemma', where detection is far more difficult.

The requirement of "keeping a contract" was Hobbes' own solution to the intractable dilemma represented by his own rationality account of conflict, in which the "fool's" position must also become his own. Contemporary commentators on Hobbes have worked hard to show how he implicitly recognises that the 'state of nature' is better represented by the Iterated Prisoners' Dilemma game, rather than



the one-shot game he portrays in Chapter 13 of *Leviathan*.<sup>63</sup> As a result, because contractual activity between the players is likely to be frequent and open-ended, maintenance of the contract is always rational. In addition to supplying each player with the benefits of that particular transaction, it reinforces and clarifies the behaviour of the players, signalling to both sides that each player will keep their contracts in the future, and thus enabling both sides to gain the benefits of long-term, constant, contractual activity. The dilemma for the eager 'contract-keeper' might now become that of the "Chicken Game", whereby the 'suckered' player is still tempted to cooperate, despite the defection of their opponent, because mutual defection would totally destroy the contract (the game?). It would also indicate that neither player can be trusted by others. The parallel with sport, here, is of the player(s) who continue(s) to play the game regardless of their opponent's cheating, in order to preserve the game itself. Whilst the "Chicken Game" is certainly a possible scenario, it is far less likely to be encountered than the Prisoners' Dilemma.

### Games, Rules, and Morality

As has been hinted at various times in this chapter, technically speaking a dilemma has no 'solution'. There is a tendency to think that it has and hence one might ask for advice from others who might see more clearly which choice to make. Usually, the advice one receives does not remove the frustration and, more often than not, is simply a re-statement of the dilemma (perhaps a little more clearly) with the imperative that one just has to make a choice. But how does one make that choice? That is the problem, especially if the reasoning behind each choice is the same. It could be that our request for advice is a request for somebody else to actually make

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<sup>63</sup> See, for example, Gregory Kavka's 'Hobbes War of All Against All', *Ethics*, 93, 1983, pp.291-310.

a decision for us: to save us from ourselves. The temptation within us all to sometimes do other than we feel we ought to is a tendency that in the main is controlled by sanctions, the fear of detection, social taboos, public or communal rejection, and so on.<sup>64</sup> In this regard, rules (in games, in law, in life) can sometimes act as decisional simplifiers: following the rule, without deploying our rational faculties to ponder its background justification, can itself become a rational decision procedure. In discussing “the force of rules”, Frederick Schauer contends that,

Even the agent willing to take seriously a certain range of decisions, and as a result willing to try to make the best decision she can on a particular occasion, may have prudential epistemic reasons for doubting her own decision-making capacities compared to those of the rule-maker. Again such a decision-maker might (or might not) reconsider that epistemic deference in particular cases when convinced her own judgement was correct, but for the same reasons as just mentioned it may be that the way in which the decision-maker considers this possibility is itself influenced by rules, and once again the consequence would be that the rule provided a reason for action by virtue of the decision-maker’s distrust of her own capacities with respect to some family of decisions.<sup>65</sup>

The rules of games and sports, moreso than laws of the land, are more readily accepted in just such a fashion. Games are first encountered by young children at, what educational psychologists would label, the pre-theoretical stage of a child’s moral development. A child who asks why the ball is placed in the centre of the

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<sup>64</sup> Consider, for example, the classic ‘candid camera’ scenario, where, for instance, the member of the public enters a store to buy some small item off the shelf (whilst being filmed by the hidden camera). There is nobody to take their money. Some people leave it on the counter; others leave their goods and walk out. Some call out for the store assistant. When he or she doesn’t appear, what do they do? Most walk out without paying (once they’re sure there’s nobody around); some help themselves to other goods as well; others help themselves to the cash register! That all of them would most likely be law-abiding citizens given the likelihood of some external agency to ‘help’ them, the temptation to do otherwise, just occasionally, seems too great.

<sup>65</sup> F. Schauer, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision Making in Law and in Life*, Oxford: Clarendon Press, 1991, pp.124-5.



pitch to start the game might be told that this is simply the way things are done. Beyond the specifics of the game, an important function of such a process is the recognition of rules *qua* rules. The encounter with Prisoners' Dilemma structured situations through the universal phenomena of game-playing might even serve some further purpose in reinforcing the value of rule-abidance as a saviour from our egoistic selves. Certainly, if the "Tit for Tat" strategy is to prevail, then any social animal, living in a relatively stable group or community, with the ability to recognise other members of their group and their previous cooperative or uncooperative actions, would need to encounter some recognisable analogue of the Prisoners' Dilemma quite frequently in real life in order to learn that in the long-term 'niceness' wins. There are very significant ways in which games can serve as 'moral educators', regardless of the difficulties that such an idea has faced in recent times.

The simplifying aspect of rules in games and sports provides a high degree of salience (ease of recognisability) with regard to identifying 'cheats'. Going hand-in-hand with this identifiability must come the necessary rejection from the rest of the game-playing community, or at the very least the public admonition of the defector.<sup>66</sup> For these reasons cheating *does* matter and we *do* want to view it as immoral. Such a way of criticising another's action is one of our strongest forms of condemnation. Cheating at games is like cheating on one's partner, cheating the tax man, cheating one's parliamentary constituents, cheating the shareholders, and so on. We want to label such actions as cheating and maintain the strong social

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<sup>66</sup> Just as wayward politicians return to public life after a brief spell in the wilderness (and the public seem to forget that at one time they were considered totally untrustworthy for a position serving their interests), so too do guilty athletes, such as Ben Johnson. It is not a question of whether an athlete is 'reformed', but of whether the authorities send out the right signals about our tolerance of such action. Hence, the outcry against French soccer star Eric Cantona of Manchester United after he violently assaulted a member of the public on the terraces. The popular opinion at the time of the incident was that he should *never* play professional football again.

attitudes towards it in order to deter people from such a course of action, because in a world of numerous Prisoner Dilemma-structured situations we must do our utmost to resist the obvious consequences of wholesale 'defection'. For this reason, philosophers such as Peter Singer in *The Expanding Circle* and Edna Ullmann-Margalit in *The Emergence of Norms*, with a bias towards evolutionary ethics, place such an emphasis on norms and conventions (supported by sufficiently severe sanctions) in order to foster the altruistic tendencies that help us avoid the pitfalls of one-shot Prisoners' Dilemmas,

It also brought with it something which has not, so far as we can tell, occurred in non-human society: the transformation of our evolved, genetically-based social practices into a system of rules and precepts guiding our conduct toward one another, supported by widely shared judgements of approval for those who do as the rules and precepts require, and disapproval for those who do not. Thus we arrived at a system of ethics or morality.<sup>67</sup>

The generalisations of socio-biology might be as distasteful to some as the reduction of morality to Gauthier's "theory of optimizing constraints on utility maximization". Gauthier concludes his *Morals by Agreement* quoting Nietzsche, from the second essay of *On the Genealogy of Morals*, "to breed an animal *with the right to make promises* is not this the paradoxical task that nature has set itself in the case of man? Is it not the real problem regarding man?".<sup>68</sup> Such promises arise, in Hume's view (in *A Treatise of Human Nature*) from human conventions. Less pessimistic than Hobbes, Hume felt that strict covenants are not the only escape from the 'state of nature'. A convention expresses, "a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate

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<sup>67</sup> P. Singer, *The Expanding Circle: Ethics and Sociobiology*, Oxford: Oxford University Press, 1981, p.92.

<sup>68</sup> D. Gauthier, *Morals by Agreement*, pp.354-5.



their conduct by certain rules".<sup>69</sup> Conventions are solutions to *coordination problems*,<sup>70</sup> where 'convention', according to David Lewis, is defined as,

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

- (i) everyone conforms to *R*;
- (ii) everyone expects everyone else to conform to *R*;
- (iii) everyone prefers to conform to *R* on condition that the others do, since *S* is a coordination problem and uniform conformity to *R* is a coordination equilibrium in *S*.<sup>71</sup>

Coordination will only be achieved if players in the game have, what Lewis calls, "suitably concordant mutual expectations". Gauthier's theory is based on the premise that given the possibility of suitable communication, *agreement* is the basic means of ensuring concordant mutual expectations. Conventions might also arise gradually as more and more people conform to a regular pattern of behaviour. Games and competitive sports are illustrative of just such a gradual evolution of convention and rule in the establishment of a commonly accepted social practice.

The study of game-playing as a human phenomena can make a valuable contribution to moral philosophy through an examination of the sorts of need expressed by humans by the need to obey the rules of games. Ask, 'why not cheat?'

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<sup>69</sup> D. Hume, *A Treatise of Human Nature*, Oxford: Clarendon Press (Edited by A. Selby-Bigge), 1988, p.490.

<sup>70</sup> M. Taylor, *The Possibility of Cooperation*, Cambridge: Cambridge University Press, 1987, p.156.

<sup>71</sup> D. Lewis, *Convention: A Philosophical Study*, Cambridge, MA: Harvard University Press, 1969, p.42.

But first ask, 'Why start?' As cited at the end of chapter five, Mary Midgley states, "Man is . . . a game-playing animal. The business of moral philosophy starts with the analysis of such concepts".<sup>72</sup>

The question with the 'doping dilemma' is whether the athletes do in fact share "suitably concordant mutual expectations", perhaps along the lines of Robert Simon's "mutual quest for excellence".<sup>73</sup> Such a precondition is essential if the 'doping dilemma' is to be solved, as Schneider and Butcher suggest, by solving the "assurance problem" and the "coordination problem". The main concern with their analysis is the suggestion that the general will to bring this about can come from rational persuasion of the athletes to act in their own best interests. The main reason that rational choice theorists, such as Olson, deliberately limit the range of decision-making principles available to the players of the Prisoners' Dilemma is to avoid the regression into such a tautology.

The significant point of this overview of the applicability of the Prisoners' Dilemma to the argument by analogy that games and sports are forms of social contract, is that games *themselves* are representative of such a dilemma, and not just the 'doping game'. Breivik's and Schneider and Butcher's association of the dilemma with the problem of performance-enhancing substances in elite athletics, paradoxically, does not help resolve the issue. What seems plausible is that the protracted problem of 'doping' in sport exists because the generalised solutions to Prisoners' Dilemmas *have not worked* in this instance. There are numerous possible explanations for this, none of which are new or unique to the analysis here, to do with the excessive

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<sup>72</sup> M. Midgley, *Heart and Mind*, London: Methuen, 1981, p.150.

<sup>73</sup> R. Simon, 'Good Competition and Drug-Enhanced Performance', *Journal of the Philosophy of Sport*, XI, 1984, pp.6-13.



commercialisation of the Olympics, the degradation of Sport, the Lombardian ethic and so on. Given these conditions, the Prisoners' Dilemma prevails.

# 7

## Legitimacy, Law and Authority

### The Umpire as Sovereign

If chapter five discussed the analogy of justice as fairness and if chapter six discussed the internal decision-making of ‘citizens’ in sport using the analogy of the Prisoners’ Dilemma as an application of rational choice theory to sport, then a further exploration of the relationship between sport and social contract theory (Hobbesian contractarianism specifically) exists in an examination of the role of the sovereign in the maintenance of the contract; that is, through an analysis or case study of the umpire or referee as ‘sovereign’. As indicated at the outset, cricket lends itself most readily to the analogy, not least because of its long-standing tradition of deference for the umpire, expressed in the adage, “the man in white is always right”.

Immediately, a number of distinctive features of the cricket umpire’s rule stand out in contrast to the role of referees and officials from other sports. Apart from counting the balls bowled in an over, determining the legitimacy of the bowler’s technique, indicating runs scored, notifying the scorers of byes and leg-byes, keeping a watchful eye over field placements and the condition of the pitch and the ball, forecasting the weather, and scrutinising diminishing levels of light, the umpire is seen by one and all, first and foremost, as the adjudicator in questions of dismissal upon appeal. In this respect, the umpire is both judge and jury and the sole arbiter of the law. It is no small matter of importance that for almost its entire



history, according to Law 27(6) of the game of cricket, it has been the case that, “the Umpire’s decision is final”.<sup>1</sup>

As fans of the game point out, cricket is governed by ‘Laws’ and not merely by ‘rules’.<sup>2</sup> More than anything this distinction indicates, at least etymologically, an affinity between the legal justice system and the playing of the game: just as the defendant is innocent until proven guilty, so is the batsmen ‘in’ until given ‘out’ by the decision of the umpire. In fact, it is a peculiar, much noted and praised feature of the game of cricket that,

Neither umpire shall give a batsman out, even though he may be out under the laws, unless appealed to by the fielding side. This shall not debar a batsman who is out under any of the laws from leaving his wicket without appeal having been made.<sup>3</sup>

Just as in a case in law, regardless of whether or not a crime has been committed, a charge must be made and a prosecution sought. According to Law 27(2), an appeal must be made by the fielding team. In such cases as where the defendant admits to the crime without a charge being brought by another party, the law prevents the defendant being prosecuted if he or she did not commit the crime,

An umpire shall intervene if satisfied that a batsman, not having been given out, has left his wicket under a misapprehension that he

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<sup>1</sup> *The Laws of Cricket*, Marylebone Cricket Club, 1980 Code. Law 27 (Appeals) has been changed in the 2000 Code and this is no longer stated. The reasons for this will be returned to in the course of this chapter. The first MCC code of 1788 also did not word the umpires authority in this way, but stated that “the umpires are the sole judges of fair and unfair play, and all disputes shall be determined by them” (cited in T. Lewis, *Double Century: The Story of MCC and Cricket*, London: Hodder & Stoughton, 1987, p.31).

<sup>2</sup> Traditionalists are prone to account for this anomaly by reference to the historical importance of the game, its gentlemanly Victorian nature, its moral superiority, and its high demand for super-egoratory ethical conduct on the part of the players; all of which give rise to a moral code that determines how the game is played and not a requirement for the mere prescription of regulatory rules. However, such lofty claims could also be made of golf, which is governed by rules not laws.

<sup>3</sup> *The Laws of Cricket*, 2000 Code (2<sup>nd</sup> Edition), 2003, 27(1).

is out. The umpire intervening shall call and signal Dead Ball to prevent any further action by the fielding side and shall recall the batsman.<sup>4</sup>

The umpire, like the jurist, is the sole interpreter and judge of the Laws of the game. He (or she) is the sole source for decisions concerning all the aspects of the game noted above. Moreover, the umpire is sovereign; as the revered umpire Dickie Bird once said, “the only acceptable form of dissent is a dirty look. And we don’t like that”. Whilst Law 27(6) also allows that the umpire, “may alter his decision, provided that such alteration is made promptly,” it is not allowable for any player to question the umpire’s decision or to request the decision be overturned. As in the law courts the plaintiff pressing charges for prosecution can withdraw the accusation against the defendant.<sup>5</sup> As Law 27(8) goes on to state,

In exceptional circumstances the Captain of the fielding side may seek permission of the Umpire to withdraw an appeal providing the outgoing batsman has not left the playing area. If this is allowed, the Umpire shall cancel his decision.

The legal right to make such a request is meant entirely to protect the integrity of the umpire by enabling any player to provide evidence unavailable to the umpire at the time of the decision that would have affected that decision. A typical example of when such a law might be used is if a player deemed to have caught-out the batsmen declares to his captain that, in fact, the ball touched the ground first before entering his hand(s). Given the usual vociferous nature of any appeal for caught-out made by players in quite close proximity to the catcher, it is quite understandable for the umpire to focus his attention, not on whether the ball was caught (for he takes this to be the case given the appeal by the fielders), but on

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<sup>4</sup> *The Laws of Cricket, 2000 Code (2<sup>nd</sup> Edition)*, 2003, 27(7).

<sup>5</sup> But note with this analogy, this is distinct and different from the Crown Prosecution Service choosing not to go to trial due to lack of evidence or the unlikelihood of gaining a conviction.



whether or not the ball was struck by the bat from a legitimate bowl. The law here maintains the spirit of the game, in principle, by enabling the honesty of the player to prevent the possibility of the umpire making an unfair (though legal) decision, thereby bringing both the umpire and the game into disrepute. This is the only case in cricket where the umpire has no authority in the matter: if the appeal is withdrawn, then the umpire cannot rule the batsman 'out'.

The Laws allow such a u-turn by the umpire because elsewhere they clearly state that, "the Umpires are the sole judges of fair and unfair play".<sup>6</sup> Nevertheless, it is within the power of the umpire to be quite arbitrary and idiosyncratic in such matters of appeals in general and it can be safely assumed that some give in to less than they might because they fear that the gentlemen doth appeal too much,

. . . the umpire must learn to overcome personal sensitivities and remain undisturbed and impartial, fearlessly continuing to control the game according to the Laws. . . . there will be times when an umpire must make decisions based on action and facts not specifically covered by the Laws. Commonsense and fairness must find an answer and the umpire will find these essential factors in his qualifications.<sup>7</sup>

The power and authority invested in the umpire would be hard to accept if exercised unlawfully. As Smith states elsewhere, "absolute impartiality is, of course, essential".<sup>8</sup> Dickie Bird puts the case for the integrity of umpires in more pragmatic terms,

We are dealing with inches and fractions of seconds and are bound to fall into error at some time or another. What it is important to

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<sup>6</sup> See Laws 3(7) and 42(2).

<sup>7</sup> T. E. Smith, *Cricket Umpiring and Scoring*, London: Dent, 1980, p.3.

<sup>8</sup> T. E. Smith, *Cricket Umpiring and Scoring*, p.3.

realise, however, is that umpires all over the world are honest men doing their best in difficult circumstances, without fear or favour.<sup>9</sup>

Dickie Bird's faith in his fellow umpire's aside, the supreme authority of the umpire and the inviolability of his decisions, when set against the requirement of the sovereign to act in accordance with the law, raises interesting questions about the contractual nature of obedience to the laws of cricket should those laws themselves prove to be unjust or unfair and the arbiters of those laws be led into making decisions that are legal but illegitimate. The history of cricket abounds with such cases and further lends cricket to the suitability of testing the analogy of sport as a form of social contract.

Chapter three made clear, of all the contractarians, it is Hobbes who argues most strongly for total submission to the authorities: respect but do not criticise Leviathan. This is not a blind allegiance to rule; rather, it is an acceptance of the truth that (for Hobbes) there is no alternative to political authority. It is imaginable that there is an appeal to natural reason and some *a priori* objective truths of justice, supposedly accessible to every person's individual conscience; and that such an appeal would reach to something beyond the present local authority to something which might justify resistance or rebellion if that authority is found to be corrupt or unjust as measured by those independent standards. Interestingly, the relationship between players and umpires (and indirectly the Governing Bodies) serves Hobbes purpose better than an analysis of the relationship between citizens and the State, for what he wants to show is that there are no such independently accessible standards. Of course there is natural law<sup>10</sup> and of course there are truths concerning what is just and unjust; but, for Hobbes, there is no way of realising

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<sup>9</sup> D. Bird, *That's Out*, London: Barker, 1985, p.19.

<sup>10</sup> The idea of law originating with Greek philosophy that there is a perfect justice given to humanity by nature and that human laws should conform to this as closely as possible. Natural law is distinguished from *positive* law, which is the body of law imposed by the State.



them independently of the local political superior. The truths of justice are what the sovereign says they are and none of them can be used against him or her. In this sense, there is no way of getting between rules and the game to determine what the game *really* is: the game is determined by its constitutive rules or laws. This was the opening issue in chapter one: the analysis of normativity.

Hobbes' starting point is disagreement. Disagreement makes justification difficult by demonstrating that what is objectively right is neither clear nor possible to attain. This is the problem that any attempt at justification has to solve: how to account for the plurality of voices that form any disagreement. In chapter one, the practice of 'walking' was used to illustrate the issues arising from the assumption of certain ethical norms and the disagreement between players as to how to interpret them. Richie Benaud is generally acknowledged as one of the game's knowledgeable and most articulate commentators; a former international player and captain of his national side, Australia. Benaud writes in his autobiography,

It has always been drummed in to me that as soon as an appeal is made I must look at the umpire and if he says 'out' or 'not out' I must obey that decision instantly and without any display of emotion. Consequently when the business of 'walking' came into vogue it proved a difficult assignment for me.<sup>11</sup>

Benaud frames his attitude to 'walking' in a quasi-formalistic manner: the sole judge of legality is the umpire. In fact, 'walking' even threatens to violate the strict role division between the umpire and the player upon which much of the underlying ethic of cricket depends. However, as Birley notes, elsewhere Benaud gives a much more pragmatic rationale for his stance on walking. After once thinking he had edged the ball and left his crease to walk to the pavilion he claims, "I . . . realised it

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<sup>11</sup> Cited in D. Birley, *The Willow Wand*, London: Queen Anne Press, 1979, pp.30-31.

had flicked my shirt – but there is no going back once you have started to move”.<sup>12</sup> Benaud was apparently referring to an innings in 1960, the inference being that after 1960 and realising that even his own judgement is fallible (best leave these things to the umpires), he adopted a more dogmatic stance. The England bowler “Firey” Fred Trueman hints at an altogether different Richie Benaud. In a Test Match between England and Australia, at Lord’s, in 1956,

I had Richie caught behind first ball, and he was given not out. He went on to score 97. . . . Some years later he told me the ball went off the edge of the bat, flicking his shirt and went to Godfrey Evans, but Richie, by immediately rubbing the arm where the ball had brushed his shirt, got the decision.<sup>13</sup>

A further example of profound disagreement and its consequences exists in the cricketing case of Dean Jones versus Courtney Walsh in the second Test Match of Australia’s 1990-91 tour of the West Indies.<sup>14</sup> The facts of the case are straightforward. The Australian batsman, Dean Jones, failed to defend a delivery from West Indian bowler, Courtney Walsh. Believing himself to be bowled-out, he set off on the walk back to the pavilion. Although no appeal had been made, Jones was acting according to modern Law 27(1), outlined above, that allows a batsman to leave his wicket without appeal if he is lawfully ‘out’. This is, indeed, the norm for batsmen who are bowled-out.<sup>15</sup> However, Jones had not heard the call or seen the signal given by the umpire at the bowler’s end indicating that Walsh’s delivery was a ‘no-ball’. Under the Laws of the game, a batsman cannot be dismissed ‘bowled-out’

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<sup>12</sup> Cited in D. Birley, *The Willow Wand*, p.31.

<sup>13</sup> Cited in D. Birley, *The Willow Wand*, p.31.

<sup>14</sup> P. Woodcock, ‘Australia in Peril After the Strange Dismissal of Jones’, *The Times*, March 28, 1991.

<sup>15</sup> It is worth noting that any batsman can legitimately hold his ground until an appeal is made and the umpire dismisses him. In the case of being dismissed by being clean bowled, few batsmen would wait for the inevitable and most begin the immediate walk back to the changing rooms. The Jones versus Walsh case demonstrates perfectly the problems with relying on “the spirit of the game” in such matters.



by a 'no-ball' as it is deemed not to be a legitimate delivery. Jones left his crease and 'walked'. The only way that a batsman can be dismissed off a 'no-ball' is by being 'run-out'. That is, if the batsman chooses to accept the delivery and try to gain advantage from it, then he can accumulate runs in the normal way. If he is subsequently run out during the attempt, then he will be given out legitimately as the method of dismissal is not affected by the illegal delivery. In the case of Dean Jones, the quick-witted, West Indian, wicket-keeper, Gordon Greenidge, picked up the ball and pulled out the stump (the bails having already been removed by the bowler's delivery) and appealed for dismissal. Jones was given out, run-out. According to Laws 27(5), in operation at the time<sup>16</sup>, Jones could not be legally dismissed and in any case could not be given out 'run-out' as he had, in fact, been 'stumped' - a form of dismissal not possible after a 'no-ball' (Law 38/2).

The umpires and players involved in the incident all made a mistake. A storm of controversy ensued as a result of the "illegal" decision. Both umpires were heavily criticised in the Press for not knowing the Laws and thereby making clear legal and factual mistakes. The Australian public, not known for their sufferance of fools, blamed the Australian captain, Allan Border (a highly experienced batsman who happened to be at the non-striking end of the wicket during the incident), for failing to bring the error to the attention of the umpires. They also lambasted members of the West Indian team, Greenidge in particular, for operating within the letter of the law but not the spirit of the game. After all, "the man in white is always right" and it was believed that somebody on the West Indian team must have realised that a mistake had been made but preferred to remain silent as "the

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<sup>16</sup> The match was operating under the 1980 Code. Due to additions to the Laws for the 2000 Code, what was Law 27(5) is now Law 27(7), as stated above, "the umpire shall intervene if satisfied that a batsman, not having been given out, has left his wicket under a misapprehension that he is out".

umpire's decision is final". Even the Archbishop of Trinidad and Tobago got involved, chastising West Indies' captain Viv Richards for unethical conduct, allowing the desire to win overcome his sense of fair play. Cricket suffered from its own authoritarianism and from its own ethos – you don't argue with the umpire – and already tense relationships between the two sides during the Tour were further soured.<sup>17</sup>

Given the absolute authority of the umpires and their sovereign status in the adjudication of dismissals, the awkward anomaly arises that Jones' dismissal was, in fact, 'legal' but 'illegal' and 'illegal' but 'legal' at one and the same time. From a purely legal positivist perspective, if the judge rules that the defendant is guilty and does not reverse his decision, then the defendant is, by that fact, guilty. According to legal positivism's precepts, no element of moral value enters into the definition of law. Furthermore, legal provisions are identified solely by empirically observable criteria, such as legislation, decided cases and customs and, thus, there is no such thing as natural law, only positive law.<sup>18</sup> Whether or not there are ethical criteria by which the merits of positive law can be judged, the law is the law, whether it is good or bad: "here we shall take Legal Positivism to mean the simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality".<sup>19</sup>

The case could be made in Jones versus Walsh that what matters is that the umpire is seen to make a decision and to stick by it. It would appear that this is indeed what the public and spectators expect. Perhaps the umpires and the West Indies' captain, Viv Richards, had in mind an earlier incident from 1984, again involving

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<sup>17</sup> P. Nicholson, 'Viv's Caught Up In An Unholy Row', *Daily Telegraph*, April 12, 1991.

<sup>18</sup> D. Lloyd, *The Idea of Law*. London: Harmondsworth, 1964.

<sup>19</sup> H. L. A. Hart, *The Concept of Law*, Oxford: Oxford University Press, 1961.



the West Indies, in the second Test Match at Lord's against England in which Richards had been given out by the umpire, Barry Meyer. The entire television audience were left in doubt by the instant slow-motion replay that Richards was 'not-out'. Umpire Meyer later admitted to making a mistake and apologised personally to Richards, but at the time of the dismissal did not have the benefit of television replay and made the decision fairly and honestly,

It was a brave and commendable action by Meyer to say that he might have been wrong, though some may say that he ought to have kept silent, and upheld the idea of an umpire's infallibility.<sup>20</sup>

Of course, such a positivist position is open to both formalist and ethically-based critiques, as discussed in chapter one. From a formalist perspective, the batsman is 'not-out' unless his dismissal is in accordance with the Laws of the game of cricket. In both the Jones case and the Richards case, legally neither batsman was 'out'. The positivist rejoinder would be that the umpire determines when and whether or not a player is out, in accordance with the laws determining the umpire's jurisdiction and powers. The laws allow the umpire to correct a mistake, providing he does so before the player given out leaves the field of play, but also require the incoming batsman to be at his crease within a certain time limit. Technically, mistake aside, the umpire acted lawfully in the Richards case, even according to the formalist position. This leaves only an ethically-based critique – an appeal to moral law or justice – of the legal-but-illegal decision.

The problem facing the ethically-based critique is more complex than it first appears. As the positivist and formalist positions both illustrate, the umpires acted 'legally' in both cases (albeit mistakenly). It is not clear whether what is at issue is

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<sup>20</sup> G. Brodribb, *Next Man In*, London: Pelham, 1985, p.153.

the practice of the law or the laws themselves. Legal positivists take this ambiguity to be fundamental in defending an anti-natural law stance,

When practising lawyers describe the law to clients, they do not give, and would not be thanked for giving, their views about what the law ought to be. They look up the books, and from them state what the law is. As to programmes of reform, we need to know what the law is before we can formulate ways of changing it. If, in stating the law, we base our reasoning on inferences from morality rather than on known source materials, we may smuggle in controversial moral claims. Better to set out the law as it is, and then go on to give our reasons why the law is right or in what ways it should be changed. The issues of justice and of the morally-binding nature of positive law raise questions as to which there is no specifically juristic answer. Lawyers, *qua* lawyers, have nothing special to say about them; so these issues should not be presented in the guise of a supposed higher law.<sup>21</sup>

Hobbes recognised such difficulties. It is at the heart of his premise that the state of nature is a place of profound and continuous disagreement. His solution, *Leviathan*, the artificially constructed commonwealth, is the state (or the MCC in the case of cricket, represented by the sovereign umpire). The state, for Hobbes, is the only mechanism by which a multitude of wills might be blended to achieve a single will and thus the avoidance of conflict. The state is a political solution, but also the only solution, to an intellectual and moral problem. That “the man in white is always right” (even when he’s wrong) is the only way it can be if the interests of all are to be served, justly.

If the Dean Jones incident had ended there it might not have provided the rich vein of jurisprudential debate that has followed.<sup>22</sup> During the same tour, but after the Test, Keith Arthurton of the West Indies Cricket Board XI was found to be

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<sup>21</sup> J. W. Harris, *Legal Philosophies*, London: Butterworths, 1980, p.17.

<sup>22</sup> See D. Fraser, *Cricket and the Law*, The Institute of Criminology Monograph Series, 4, 1993, pp.5-9.



using an illegal bat with measurements outside the permitted limits of Law 6. The fact that many illegal-sized bats were believed by players to be in use in international cricket had not presented a problem thus far. However, the matter of Arthurton's bat was brought to the attention of the authorities by Dean Jones. Whilst a generous interpretation of Jones' action would see it as a newfound vigilance for all things legal in cricket, following his experience with the run-out that wasn't, it could be seen that Jones' snitching on Arthurton was also a tactic to draw attention to either the West Indies' players' general lack of knowledge of the Laws or their deliberate flouting of them. Having suffered the consequences of a surfeit of legal formalism, Jones knew how to operate within the law.

However, the Australian captain for the game, Geoff Marsh, permitted Arthurton to play on and ignored Jones' request that the bat be replaced. Of course, that decision was not Marsh's to take. But the umpires agreed with Marsh. Whilst this might be seen as a sporting gesture on the Australian captain's part, it cannot be so seen on the part of the umpires. From the strictly legal positivistic bench from which Jones was convicted, the judge cannot choose to ignore the law. If the bat was, in fact, illegal, then the umpires had an obligation to the Laws of cricket to uphold them and ask for the bat to be replaced. The umpire's right of determination of what is fair and unfair does not include the right to apply or not to apply the Laws as and when they see fit.

It is a definitional given of Hobbes' state of nature that there exists within it only private judgement. Jones, Greenidge, Border, Marsh, Arthurton, the umpires, the spectators, the members of the press, everyone "is governed by his own reason":<sup>23</sup>

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<sup>23</sup> T. Hobbes, *Leviathan* (1651), edited with commentary by R. Tuck, Cambridge: Cambridge University Press, 1991, Chapter 14, paragraph 4.

The Right of Nature, which writers commonly call *Jus Naturale*, is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own judgement, and Reason, hee shall conceive to be the aptest means thereunto.<sup>24</sup>

If, as Hobbes presupposes, everyone has a right to preserve themselves and a right to anything required for such preservation, then who, in the state of nature, is to be the judge of such necessities? Since everyone is equal in the state of nature, there can be no authority superior to any one person's judgement: every person's judgement is equally good. Necessarily, if each and every person judges for himself or herself, then the plurality of views about the decision gives rise to conflict about what is right.

It is clear to see from this and earlier accounts in this thesis of Hobbes' starting position that much depends on his views on psychology and ethics and the reconciliation of the inalienable right of individuals to self-defence with the alienation of all their rights to a sovereign who shall be free to rule as he or she sees fit. The significant point here is that supported by all Hobbesian contractarians: there is a legitimate political association available to us and that all and only collectively rational political associations are legitimate. Kraus summarises the position thus,

1. There is some form of political association which is individually rational for us to create and maintain.
2. Political association is individually rational for us to create and maintain if and only if it is collectively rational.

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<sup>24</sup> *Leviathan*, Chapter 14, paragraph 1.



3. Political association is morally legitimate if and only if it is individually rational.

Therefore,

4. There is some form of political association for us which is both individually and collectively rational and thus morally legitimate.
5. Every form of political association which is collectively irrational is individually irrational and thus morally illegitimate.<sup>25</sup>

The political association for cricketers that is both individually and collectively rational is akin more to a formalistic than to an ethically-based interpretation of the game, but only if the players have the power and authority to bring about changes in the law to address clear unethical practices within the game. This has happened throughout the history of cricket where legal revision has owed more to unethical practice than to any description of the true nature of the game. At least that is the case with the famous 'bodyline' controversy.

It is difficult to separate the facts of the case from the cultural construction of the controversy in the bodyline series of 1932-33. As Fraser sates,

In Bodyline, each side has, and continues to have, a completely different interpretive perspective on events, reflected in and reinforced by the very linguistic/grammatical structures of their 'description' of the facts.<sup>26</sup>

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<sup>25</sup> J. S. Kraus, *The Limits of Hobbesian Contractarianism*, Cambridge: Cambridge University Press, 1993, p.52.

<sup>26</sup> D. Fraser, *Cricket and the Law*, The Institute of Criminology Monograph Series, 4, 1993, p.265.

In brief, 'bodyline' refers to a bowling attack, called 'leg theory' by its principal exponents, Douglas Jardine and Harold Larwood, designed to combat the almost unassailable and aggressive batting style of the Australian opener Don Bradman. It involved bowling exclusively to the leg-side of the batsmen whilst packing the leg-side outfield with fielders. Bradman liked to drive and cut the ball, so leg-side play was seen to be his weakness. However, to bowl to the leg-side and still attack the stumps means invariably bowling at the legs and the body: the 'theory' was also an aggressive and potentially harmful practice. As far as the English players and public in general were concerned, and more to the point the MCC, bowling to the leg-side was totally legal. For everybody else, not least because of the injuries it inflicted, it was totally unethical and definitely 'not cricket'.<sup>27</sup> Initially, the MCC left matters to the captains to sort out, a legal solution to the moral issue was required and the LBW law was modified in 1937, making it impossible to secure a dismissal LBW using leg-theory bowling. However, what was at stake, according to Fraser, was more than just the acceptability of leg-theory; cricket itself was under threat,

If there is no common understanding about what cricket 'is', about what we 'know' it to be, there can be no shared understanding that we are playing or watching or writing about the same game. All of our implied agreements when we enter the field of play with another team function and are functional because we all agree to be bound by the same rules, both written and unwritten. When the discrepancy between our knowledge of what is occurring and our practical experience is such that we no longer recognise what is going on, then the object of our one shared social understanding no longer exists. When the order of society breaks down and one side takes the law into its own hands, we no longer have a shared practice and experience of 'law'. When one side acts so that the other believes there is only one team 'playing cricket', no one is playing cricket and all the social understandings and local

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<sup>27</sup> It's worth noting that those injuries were slight compared to those suffered by all batsmen before the use of leg pads, especially in the early 1800s when round-arm bowling upped the tempo of bowling quite considerably.



knowledges we have of that activity are threatened with a collapse into meaninglessness.<sup>28</sup>

The advocates of a broad internalist account of sports (introduced in chapter one) necessarily turn to a notion of the integrity of the game here to counter such sharp practices. However, it took the MCC over two hundred years to incorporate such an ideal into the written laws and even then only in a preface. In 2003, the MCC introduced a pre-amble to the Laws of cricket, entitled the 'Spirit of Cricket' which states,

Cricket is a game that owes much of its unique appeal to the fact that it should be played not only within its Laws but also within the Spirit of the Game. Any action which is seen to abuse this spirit causes injury to the game itself. The major responsibility for ensuring the spirit of fair play rests with the captains.<sup>29</sup>

In this seemingly innocuous statement there are two items worth noting. First, the internal *ought* is introduced but disguised as a *fact*. It is a fact, a truth, that players *ought* to do more than just obey the Laws. Second, despite this fact, it is up to the captains to ensure that players do what they ought to do. Yet, the whole notion of moral responsibility turns on the nature of obligation. It is clear what the law-makers want to say here, but they end up in a rather curious position. To begin with they wish to elevate cricket beyond any formalist notion of its constitution and embrace a notion of a universally accepted social practice that is more than just the constitutive elements of the game. As Ashis Nandy states in *The Tao of Cricket*,

That is why it is not only enough to say the rules are not crucial in cricket; one must also affirm, however strange it may sound to

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<sup>28</sup> D. Fraser, *Cricket and the Law*, p.267.

<sup>29</sup> 'The Spirit of Cricket', *The Laws of Cricket*, 2000 Code (2<sup>nd</sup> Edition), 2003.

modern ears, that the cricket in which rules are crucial is a negation of cricket itself.<sup>30</sup>

The “unique appeal” of cricket, then, is in its social significance and sub-text of meanings. Thus “the game itself” is much more than any game. In the real cricket mere formal rule-abidance and technical legality are not only inferior modes of operating within the game, they are just “not cricket”. It is emphatically “against the Spirit of the Game”, according to the 2003 amendments to the Code, to “dispute an umpire’s decision by word, action or gesture” or “to appeal knowing that the batsman is not out”. And yet, the practitioners in any game cannot be wholly relied upon to uphold the spirit of The Game: they need to be marshalled by their captains. They are also not capable of discerning for themselves what is right and wrong; “according to the Laws the umpires are the sole judges of fair and unfair play”.

Despite being members of the practice community, the players’ authority is curtailed by a higher order. How this works in practice is even more curious,

In the event of a player failing to comply with instructions by an umpire, or criticising by word or action the decisions of an umpire, or showing dissent, or generally behaving in a manner which might bring the game into disrepute, the umpire concerned shall in the first place report the matter to the other umpire and to the player’s captain, and instruct the latter to take action.

Thus, it is the responsibility of the captain to discipline and punish his own team members. The umpire has no ‘red card’ facility. They may “intervene at any time”, but “it is the responsibility of the captain to take action where required”. It is this requirement for the captain to be even more morally vigilant than his players that,

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<sup>30</sup> A. Nandy, *The Tao of Cricket: On Games of Destiny and the Destiny of Games*, Oxford: Oxford University Press, 2000, p.121.



perhaps, accounts for the tirade of abuse directed at Australian captain Greg Chappell after the now infamous under-arm bowling incident at the Melbourne Cricket Ground in 1981. In a one-day match between Australia and New Zealand, the visitors required six runs off the last ball of the last over to earn a draw. Greg Chappell directed the bowler, his brother Trevor, to bowl what has always been called a “daisy-cutter” (a ball that bounces so low it cuts the heads off the daisies – in this case it was rolled along the ground). Trevor Chappell complied with the request; a shocked New Zealand batsman simply blocked the ball; and Australia won the match. The condemnation of the incident was universal and came from both sides, including the Prime Ministers of both countries. Australians themselves were the most vociferous and targeted the captain, Greg Chappell, even calling him a traitor to his country. Yet, at no time did either of the Chappell brothers break any of the Laws of the game.

The stark juxtaposition of the ethically-governed practice, in which the Laws are only second-order norms, with a game brought into disrepute by strict adherence to a rigid and unbending formalism is no better illustrated than by the application of Laws 29 and 38 that together permit a bowler to ‘run-out’ the non-striking batsman who is ‘backing-up’ his partner (leaving his crease before the delivery of the ball). Such dismissals are rare, particularly at international level. It is considered unethical to dismiss one’s opponent in this way despite being totally within the rules. However, because the unwritten moral rule dictates that the bowler first gives warning of his intent to the umpire (who passes on the warning to the batsman), the batsman feels confident that he won’t be ‘run-out’ and so backs-up further and further, taking advantage of the bowler. No sharp practice by the batsman is involved here and the bowler is perfectly at liberty to ‘run-out’ the player ‘backing-up’ too soon and too far. Ironically, the notion of sharp practice is reserved for the

bowler who does not first provide the conventional warning (showing the ball to the stumps without removing the bails). In reality, half the team could probably be dismissed by a quick-witted but unscrupulous bowler, who would be condemned for such action. What seems to be the case here is that three possible interpretations of the bowler's action can be made:

1. Legally correct with no moral implications.
2. Legally correct and morally correct.
3. Legally correct but immoral.

For (1) to be the case, a strictly positivistic stance to law and morality would have to be taken. Hopefully it has been shown throughout this thesis that the separation of law and ethics cannot be made so easily. The real issue at stake, raised in chapter one, is the level at which normativity operates in sports: are sports underpinned by an internal (binding) morality. As was shown in chapter five, an appeal to the norm of fair play cannot help here without begging the question. The apparent contradiction between versions two and three appears precisely because of the contested nature of the concept of fairness. Hobbes' contention, as seen in chapters three and six, is that there is no source for normativity that does not have a naturalistic grounding. Because normativity as instrumental rationality is undoubtedly most fundamental to his thesis, the obligation to the game that follows analytically from any contractual obligation brought about by it being unavoidably rational to keep one's covenants, can and must only arise given the end of 'self-preservation'. In the game sense, there can be no distinction between the moral 'ought' and the legal 'ought': interpretation (2) above, must be correct. As the whole protracted case of performance-enhancing drug-use in sport showed in the previous chapter, it is not in any player's self-interest to act unilaterally in



upholding the law. The laws are not just all an umpire has to work with; they are all a player has to work with. Whilst cricket relies upon an appeal to unwritten laws, in the true 'Spirit of the Game', there will always be controversies, scandals, and charges of sharp practice because there will always be differing interpretations of the game of cricket. Players can only 'contractually' obligate themselves to the letter of the law. As Hobbes argues clearly in *Leviathan*, the surrender of liberty to the sovereign occurs only at the conclusion of all possible deliberation,

Every *Deliberation* is then sayd to *End*, when that whereof they *Deliberate*, is either done, or thought impossible; because till then wee retain the liberty of doing, or omitting, according to our *Appetite*, or *Aversion*.<sup>31</sup>

Sports remain ongoing negotiations between the interested parties, speaking with different voices. As the iterated Prisoners' Dilemma shows, in chapter six, there is not one covenant, but an infinite number of negotiations. In fact, so long as there is no foreseeable determinate end to the series of contracting opportunities, as Kavka argues,<sup>32</sup> whether or not to keep a covenant is seen as a move in a potential series of covenants, either with the same person or with others who can be expected to have some knowledge of one's past performance, the question of how to act is greatly transformed.

The 'Spirit of the Game' cannot close down all the space for negotiation. It seems strange that the pre-amble should include clear directions to the umpires to intervene in cases of: time wasting; damaging the pitch; dangerous or unfair bowling; tampering with the ball; or any other action that they consider to be

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<sup>31</sup> *Leviathan*, Chapter 6, paragraph 52.

<sup>32</sup> G. Kavka, *Hobbesian Moral and Political Theory*, Princeton, NJ: Princeton University Press, 1986, pp.129-156.

unfair.<sup>33</sup> Most of these could be clearly accounted for in the Laws, if desired. Yet, the 'Spirit of the Game' is intended to paint a broad brush over the Laws and set them in a context where the players take responsibility for acting in accordance with an internal ethic of cricket that exists beyond formal adherence to laws.

No doubt the invocation to respect the "game's traditional values" owes much to its deep-rooted class structure, the history of gentlemen and players, and the awkwardness for a gentleman of being refereed by a social inferior. The umpires adjudicate impartially on matters of law; refereeing and punishment must remain the responsibility of one's social equal. In real cricket or the true version of cricket, umpires are never questioned, players 'walk' before an appeal, dubious appeals are curtailed or at the very least quickly withdrawn by the captain, 'sledging' does not exist, mistakes made by the umpires are courteously and graciously ignored, time-wasting never happens, and gamesmanship of any form is quickly admonished by vigilant captains. In general, ethics prevail over law-based formalism. That this is not 'real', and even less-so 'true' has been illustrated here, in chapter one and in chapter five. As Fraser puts it,

There is a competing narrative which is necessarily implied by the first. The basis of this narrative is the practice of standing on one's rights and at the same time stretching or breaking the law to gain an advantage. It is an internally inconsistent, yet practically 'successful', history of legal formalism and professionalism, utilitarian rule bending and flouting. It is a barrage of bouncers which is blatantly illegal but cheered by the crowd. It is the story of strict legality, law and order, the judge who must obey the law no matter what he believes personally, and at the same time, the ballad of the outlaw as hero. In fact, each and every one of these stories about cricket is

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<sup>33</sup> The fact that "the umpires are the sole judges of fair and unfair play" makes this requirement of the players somewhat difficult.



now and always has been a true representation of what we know of cricket.<sup>34</sup>

The game of cricket survives and flourishes, not because its participants wholly buy into its ethos of 'true cricket' but because they implicitly contract to play the game a certain way and are prepared to subjugate their own private concerns for the benefits a play of the game allows. Indeed, there will be those amongst the players who believe the game to be more than and bigger than any or all of its constitutive parts; that feel they are playing some small part in the preservation of an ideal or way of life; that have a 'spirit'-based ethical vision of the game. But there are those who do not. When Malcolm Marshall and other West Indies bowlers terrorised the England team with fearsome 'bouncers' in the Test Series of 1985, the England batsman Geoff Howarth remarked, "I've been a professional for 18 years and what happened out there had nothing to do with cricket". The view of the West Indies' captain, Clive Lloyd, was that "there's no rule in cricket against bowling fast".<sup>35</sup>

Cricket, in whatever form, survives because of what Hobbes refers to as "the mutual transferring of right",<sup>36</sup> where the condition of being, "obliged, or bound, not to hinder those, to whom such a right is granted" is treated as a direct consequence of such a transfer.<sup>37</sup> It would otherwise be difficult to see how it has survived the round-arm, bodyline, and bouncer crises; the occasional violent outbursts; the threats to the authority of the umpires; and blatant uses of the laws to undermine the game.

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<sup>34</sup> D. Fraser, *Cricket and the Law*, pp.179-180.

<sup>35</sup> Cited in D. Fraser, *Cricket and the Law*, p.152.

<sup>36</sup> *Leviathan*, Chapter 14, paragraph 9.

<sup>37</sup> *Leviathan*, Chapter 14, paragraph 7.

# 8

## Conclusions

A large part of the evaluation of the analogy of sport as a kind of social contract has been undertaken already in the last three chapters and specific comment made in the transition section at the start of chapter six. It is not the intent of this final chapter merely to summarise what has been said up to this point. It is inevitable that some of the points made will be repeated, but this chapter aims to consider the key themes of this thesis and re-examine them in the light of what has been discussed. In order to do this, it is necessary to distinguish clearly the different aspects of this thesis and discriminate between the subject, the context, the framework, the argument, the evidence, and the structure. Several of these aspects have primary and secondary content. For example, the subject of this thesis is clearly social contract theory related to sport and this is the primary concern. However, the nature of sport is also under consideration. Additionally, the analysis of analogy and analogous reasoning is itself examined as well as the specific analogy of sport as a form of social contract.

The context in which the subject is set is the history of sport, very broadly construed. Indeed, the thesis set out by making some general comments on the presumption of sport as a product of modernity, but also made clear that this is not a piece of historical research. Despite shying away from making claims about historical antecedents that might support the main thrust of the thesis, certain bold and contentious remarks were made in chapter two that now need further comment.



Chapter two drew its own analogy. It suggested that the transformation of sport that occurred largely in the nineteenth century is best understood as an 'invasion' (in a bacteriological sense) of certain traditional forms of recreational activity. These traditional 'host' activities were 'infected' by a 'virus' that distorted, re-shaped, and re-made certain sports. The metaphor of contagion is an important one because it contrasts quite dramatically with the standard biological analogies implicitly adopted by sport historians that utilise the metaphors of evolution, birth, growth, emergence, genesis, development, and so on, to state their case. Furthermore, sport historians use such analogies quite implicitly. That is, although they provide evidence for the factors determining change in sport - whatever they might be; commercial interests, changes in legislation regarding work or health, educational philosophies, urbanisation, for example - this evidence alone does not prove the analogy. But it does not need to. As chapter four made clear, analogous arguments do not result in truth statements that require proof. Analogies are tools of understanding. They help to make things clearer and more comprehensible. They are judged on the basis of (a) whether or not they achieve this, and (b) whether the comparison being made is strong enough to warrant the analogy.

It can only now, at this juncture, be stated that the power of the analogy of 'host and virus' is not best evaluated by an historical analysis of sport but by an analysis of the comparison between sport and the influences upon it and the nature of 'hosts' and 'viruses' and the way hosts are transformed by viruses. Given this, any weakness in the analogy does not detract from the content of this thesis. In fact, for the main part of this thesis, the analogy does not even need to be evaluated. Thus, the assessment of the analogy that sport is like a social contract is *not dependent upon* the strength of the analogy that sports' transformation were brought about by infection from outside agents. The contagion analogy is not a hypothesis within the

general theoretical structure of this thesis. Nevertheless, it is worth pursuing this analogy for a moment.

The main difference between the growth and development analogy used freely by sport historians and the viral analogy offered here is contained in some notion of agency and location. Metaphors of growth and development suggest change from within, affected by environmental factors, but generated by innate, genetic, determinants that dictate the kinds of change possible. Metaphors of infection and contagion stress outside influences, metamorphosis, and spread. Furthermore, bacterial infections and viruses are assimilated by the host whilst at the same time transforming it. As declared above, it is not the intention nor the necessity of this thesis to evaluate this analogy, but simply to put it forward for contemplation and possibly make some suggestions as to how its use might inform the main consideration of sport and the social contract.

Clearly, one assumption upon which this thesis is premised is that the kind of sport emerging from the late nineteenth century is markedly different from McIntosh's "barbarian" sport of the eighteenth century.<sup>1</sup> McIntosh's initial evaluation of the major changes to sport focused on the usurpers – the middle-classes – and some of the results of that usurpation. Despite the forty year period since McIntosh made his observations, the main facts remain intact. Prior to the start of the nineteenth century only three major sports had official governing or ruling bodies: horse-racing, golf, and cricket.<sup>2</sup> The emergence of a governing body for mountaineering, the Alpine Club, owes more to aristocratic origins than its 'birth-date' of 1857 might suggest. Apart from this, nearly all organised sports produced a governing

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<sup>1</sup> P. C. McIntosh, *Sport in Society*, London: C. A. Watts & Co, 1963, p.64; and pages 6 and 7 of this thesis.

<sup>2</sup> This thesis conveniently ignores sports such as yachting, as does McIntosh.



body in the period between 1863 (the formation of the Football Association) and the turn of the century. A minor, but not insignificant point, is that with one or two exceptions all these organisations chose to refer to themselves, for quite specific reasons, as 'associations' and not 'clubs'. The main, instantly recognisable governing bodies and their dates of formation include:<sup>3</sup>

Football Association	1863
Rugby Football Union	1871
Metropolitan Rowing Association	1879
Amateur Athletic Association	1880
Amateur Boxing Association	1884
Hockey Association	1886
Lawn Tennis Association	1888
Badminton Association	1895

These dates hint temptingly at a possible period of 'infection' beginning with the early 1850s and 'spreading' throughout the next decade or so. But, if 'point zero' is to be identified, then the source of the infection requires isolation.

It is not appropriate at this stage in the thesis to begin such a search, but fortunately most of the detective work has already been done by numerous authors, including those mentioned in chapter two.<sup>4</sup> All of them give varying amounts of attention to the public and grammar schools of the time and, more importantly, to the influential figures who dominated them: G. E. L. Cotton at Marlborough from 1852 (formerly a young master at Rugby school); Edward Thring, headmaster of

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<sup>3</sup> Dates taken from, P. C. McIntosh, *Sport in Society*, p.63.

<sup>4</sup> See also, S. Eassom, 'Sport as Moral Educator: Reason and Habit on the School Playing Field', in C. Barrett and T. J. Winnifrith (Eds.) *The Philosophy of Leisure*, London: Macmillan, 1989, pp.129-148.

Uppingham; and H. H. Almond at Loretto. More importantly, their liberal political leanings linked them firmly to the contemporary developments of contractarian thinking manifest in the work of philosophers such as the utilitarian, John Stuart Mill. For example, Mangan outlines H. H. Almond's enthusiasm for the philosophies of Mill and Herbert Spencer in his *Athleticism in the Victorian and Edwardian Public Schools* and outlines the consequences of this in conjunction with Almond's fervent Protestantism and love of Empire.<sup>5</sup> All these headmasters had a remarkably swift and powerful influence. By 1857, the *Quarterly Review* of October of that year was effusing, "the Isthmian games of our public schools do much to make England what it is".<sup>6</sup> These headmasters themselves had been infected from an early age through the schooling they'd received. Redmond identifies the moral messages written into children's literature from early Georgian times,

To play fairly and avoid cheating were sentiments which were reiterated time and again in the sports books produced for children in the first-half of the nineteenth century.<sup>7</sup>

The period from 1850 to 1865 witnessed a huge expansion in the number of new sports teams, particularly cricket teams<sup>8</sup> and football teams (playing by either Harrow rules or Rugby rules). Sheffield was just one particular local hotbed of development (Bramall Lane saw its first football match in 1855). Most importantly, Birley notes, the groups of friends meeting to form these new clubs and formulate

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<sup>5</sup> J. A. Mangan, *Athleticism in the Victorian and Edwardian Public Schools*, Cambridge: Cambridge University Press, 1981, pp.48-58.

<sup>6</sup> Cited in D. Birley, *Sport and the Making of Britain*, Manchester: Manchester University Press, 1993, p.257.

<sup>7</sup> G. Redmond, 'The First Tom Brown's Schooldays: Origins and Evolution of "Muscular Christianity" in Children's Literature', *Quest*, XXX, Summer, 1978, p.14.

<sup>8</sup> Birley lists: I Zingari, the Gypsies, Cambridge University Quidnuncs, Oxford University Harlequins, the Free Foresters, the Band of Brothers, Incogniti, Eton Ramblers, Butterflies, Yorkshire Gentlemen, Emeriti, Perambulators, Etceteras, Knickerbockers, Accidentals, Inexpressibles, Anomalies, Gnats, Active Fleas, Caterpillars, Grasshoppers, Limits, Jolly Dogs, Odds and Ends; *Sport and the Making of Britain*, pp.252-253.



the local rules they would adopt were “young technologists, businessmen, and future captains of industry” who made proposals about the adoption of the recently published Cambridge rules, “subject to amendments that might be negotiated”.<sup>9</sup>

The key concepts used here - adoption, formation, proposal, amendment, negotiation - suggest that the historical study of football and its codification would provide ripe pickings in the search for evidence to strengthen the analogy of sports’ invasion by a new middle-class mind-set fermenting amongst the free-market entrepreneurs and public school graduates of the time, especially in contrast to the reactionary Marylebone Cricket Club and the die-hards intransigence under pressure from the new professionals to change rules such as the overarm bowling law. But even the MCC could not hold out under pressure from the entrepreneurs exploiting numerous commercial opportunities. This thesis can do no more, here, than hint at the fruits of such research. The evidence exists already in the published history of sport to support the ‘infection and contagion’ analogy and this brief interlude suggests that a detailed analysis of the strength of the analogy shows how it could and would bear scrutiny.

The situation of an investigation of social contract theory within the context of an analogy for the transformation of modern sport is, thus, not incidental, even though the analogy itself is not germane to the argument of this thesis. If the comparison of sport to the social contract is worth scrutiny it must be because of the understanding of sport stimulated by such an analogy. This is not an abstract intellectual exercise. If sport really is *just like* a social contract, then the strength of such an analogy has considerable bearing on both the philosophy and history of sport. Chapter five demonstrates this indirectly. It does not simply assess the

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<sup>9</sup> D. Birley, *Sport and the Making of Britain*, p.258 & p.259.

Rawlsian equation of justice with fairness. It reveals the ways in which sport history informs that assessment, but moreover discerns the areas of potential investigation where there are clear signs of the resistance of the host to its infection. Further articulation of the differences between traditional and modern in sport would benefit from anthropological and philosophical methods and theories assisting the historian. In other words, sport is best understood when a multitude of perspectives are taken and the connections made between them.

The comparison of sport to the social contract is worth scrutiny as this thesis demonstrates. Has it proved that sport is *just like* a social contract? By now it should be absolutely clear that the matter of proof is not at issue. The expression of the primary research of the thesis in such terms in chapter two was necessary and unavoidable prior to the exposition of argument by analogy in chapter four. The necessary structure of this thesis can only be justified now, at the end. The case needed to be made (chapter three) before the means by which the case was judged could be presented (chapter four) and then, and only then, the judgement of the case in terms of its analogous structure enabled (chapters five, six and seven).

If all that was required was to show in principle, in abstract terms, that the structure and internal logic of contractarian formations are the same as the structure and internal logic of games and sport, then chapter three would be all that was needed. It firmly establishes that constitutive features of both abstract ideals, sport and the social contract, are so similar as to be almost cut from the same cloth. And indeed they are. In so far as the 'shape' of modern sport and the 'shape' of social contract theories are both products of modernity, it hardly seems surprising that both reflect the same values, ideals, and norms. Both are products of the same minds.



This parallel 'life' presents a potential problem for the supposed analogy at the core of this thesis. Which is the familiar case? Which construct do we know sufficiently well to learn from in consideration of the other? Chapter five takes issue with the automatic assumption that it is game-playing, as Rawls supposes. Chapter six, conversely, presents the case for assuming contract theory to be the familiar case, informing us about the moral dilemma presented to athletes caught between the rock of rule-abidance and the hard place of the rational decision that one cannot afford not to cheat. Yet neither chapter helps to ascertain in any definitive sense whether or not the central question of the thesis has been answered: is sport *just like* a social contract? Sport and the social contract represent the two sides of an equation where it is not clear which side needs 'working out'. Key ordinals in the equation represent rules, competition, morality, and even life in general. In fact, "is life a game we are playing?" asked Suits.<sup>10</sup> What is absolutely clear is that moral life and human being are far from being familiar cases.

Social contract theory, like modern sport, is an artificial construct. Both exist within the political framework of civilised societies. The analysis of chapter five supports such a contention. More importantly, it illustrates that neither can be understood as pre-political structures. In so far as the 'state of nature' or the 'original position' make any sense they do so as devices used to reveal more about the social, cultural, and historical construction of sport and social contracts. As Midgley points out,

The idea that people are solitary, self-contained, indeed selfish individuals, who wouldn't be connected to their neighbours at all if they didn't happen to have made a contract, looked rational because it reflected the atomic theory of the day, a theory that similarly reduced matter to hard, impenetrable, disconnected atoms like billiard balls. The two patterns, of political and scientific atomism, seemed to strengthen each other, and, for some time, each appeared

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<sup>10</sup> B. Suits, 'Is Life A Game We are Playing?', *Ethics*, Vol.77, No.3, 1967, pp.209-213.

as the only true rational and scientific pattern of understanding in its own sphere. Social atomism, expressed as political and moral individualism, got quite undeserved support from the imagery used in science.<sup>11</sup>

These “myths we live by”, as Midgley calls them, are not lies. In some respects they are all there is. Analogy is everything. These myths are imaginative stories, patterns of interconnected ideas, networks of powerful symbols that direct the interpretations of the world we make in order to shape its meaning. Sport itself is both symbol and myth at one and the same time. To understand it is to understand a great deal about ourselves.

Analogy underpins, structures, and flows through this thesis from the mere use of such metaphors, via the inward turn to examine analogy itself, to the detailed exploration of games and rules and contracts. The consideration of sport as a social contract is to make an analogy as well as to study the value of analogy, and this thesis has tried to do just that. It is hoped that by so doing it is informative and illustrative even if it only partially helps in the understanding of the peculiar existence of human beings as the animal that plays games.

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<sup>11</sup> M. Midgley, *The Myths We Live By*, London: Routledge, 2003, p.9.



# Bibliography

- Alexander, R. *The Biology of Moral Systems*, New York: Aldine, 1993.
- Aristotle, *Nicomachean Ethics*, in J. Barnes (Ed.) *The Complete Works of Aristotle: The Revised Oxford Translation*, Oxford: Oxford University Press, 1984.
- Arnold, P. *Education, Movement and the Curriculum*, London: Falmer Press, 1988.
- Arnold, P. *Sport, Ethics and Education*, London: Cassell Education, 1997.
- Axelrod, R. and Hamilton, W. D. 'The Evolution of Cooperation', *Science*, 211, 1981, 1390-6.
- Axelrod, R. *The Evolution of Cooperation*, New York: Basic Books, 1984.
- Bailey, C. 'Games, Winning and Education', *Cambridge Journal of Education*, 5(1), 1975, 40-50.
- Bale, J. *Sport & Place: A Geography of Sport*, London: C. Hurst & Co, 1982.
- Beardsley, M. C. *Practical Logic*, New York: Prentice Hall, 1953.
- Binmore, K. *Game Theory and the Social Contract, Vol.1: Playing Fair*, Cambridge, MA: MIT Press, 1994.
- Bird, D. *That's Out*, London: Barker, 1985.
- Birley, D. *The Willow Wand*, London: Queen Anne Press, 1979.
- Birley, D. *Sport and the Making of Britain*, Manchester: Manchester University Press, 1993.
- Birley, D. *Land of Hope & Glory: Sport and British Society, 1887-1910* Manchester: Manchester University Press, 1995.
- Birley, D. *Playing the Game: Sport and British Society, 1910-1945* Manchester: Manchester University Press, 1996.
- Blackmore, S. *The Meme Machine*, Oxford: Oxford University Press, 2000.

- Boucher, D. and Kelly, P. (Eds.) *The Social Contract From Hobbes To Rawls*, London: Routledge, 1994.
- Bowen, R. *Cricket: A History of Its Growth and Development Throughout the World*, London: Eyre & Spottiswood, 1970.
- Brailsford, D. *Sport, Time and Society: The British at Play*, London: Routledge, 1991.
- Brailsford, D. *British Sport: A Social History*, Cambridge: The Lutterworth Press, 1992.
- Brailsford, D. *Some Factors in the Evolution of Sport*, Cambridge: The Lutterworth Press, 1993.
- Brailsford, D. *A Taste for Diversions: Sport in Georgian England*, Cambridge, Lutterworth Press: 1999.
- Brandt, R. *A Theory of the Good and Right*, Oxford: Oxford University Press, 1986.
- Breivik, G. 'The Doping Dilemma: Some Game Theoretical and Philosophical Considerations.' *Sportwissenschaft*, 17:1, March, 1987, 83-94.
- Breivik, G. 'Doping Games: A Game Theoretical Exploration of Doping.' *International Review for Sociology of Sport*, 27:3, 1992, 235-52.
- Brodribb, G. *Next Man In*, London: Pelham, 1985.
- Brohm, J. M. *Sport: A Prison of Measured Time* (translated by I. Fraser), London: Inks Links, 1978.
- Brown, W. M. 'Practices and Prudence', *Journal of the Philosophy of Sport*, XVII, 1990, 71-84.
- Browning, R. *A History of Golf*, London: Dent, 1955.
- Buchanan, J. *The Limits of Liberty: Between Anarchy and Leviathan*, Chicago: Chicago University Press, 1975.
- Burke, E. H. *A History of Archery*, London: Heinemann, 1958.
- Butcher, R. and Schneider, A. 'Fair Play as Respect for the Game', in *Journal of the Philosophy of Sport*, XXV, 1998, 1-22.
- Butler, J. *The Analogy of Religion*, Charlottesville, VA: Lincoln Rembrandt Publishers, 1986.



- Cargill, S.T. *Philosophy of Analogy and Symbolism*, New York: R.A. Kessinger Publishing Co., 1940.
- Carroll, L. and Gardner, M. *The Annotated Alice*, Harmondsworth: Penguin, 1970.
- Chapman, K. G. *The Rules of the Green: A History of the Rules of Golf*, London: Virgin Books, 1997.
- Cheng, N. *Life and Death in Shanghai*, London: Grafton Books, 1984.
- Churchland, P. M. (Ed.) *A Neurocomputational Perspective*, Cambridge, MA: MIT Press, 1989.
- Cunningham, H. *Leisure in the Industrial Revolution*. London: Palgrave Macmillan, 1980.
- D'Agostino, F. 'The Ethos of Games', *Journal of the Philosophy of Sport*, VIII, 1981, 7-18.
- Daniels, N. *Reading Rawls*, Oxford: Basil Blackwell, 1975.
- Darwall, S. *The British Moralists and the Internal 'Ought': 1640-1740*, Cambridge: Cambridge University Press, 1995.
- Darwin, C. *On the Origin of Species by Means of Natural Selection*, Oxford: Oxford University Press, 1998 (edited by G. Beer), originally published 1859.
- Dawkins, R. *The Selfish Gene*, Oxford: Oxford University Press, 1976.
- Dawkins, R. *The Blind Watchmaker*, Harmondsworth: Penguin Books, 1990.
- Dearden, R. F. 'Competition in Education', *Proceedings of the Philosophy of Education Society of Great Britain*, Vol.4, No.1, 1972, 119-133.
- Dellatre, P. *Tales of a Dalai Lama*, London: Gollancz, 1978.
- Dennett, D. C. (Ed.) *The Intentional Stance*, Cambridge, MA: MIT Press, 1987.
- Dennett, D. *Darwin's Dangerous Idea: Evolution and the Meanings of Life*, New York: Simon & Schuster, 1995.
- Descartes, R. *Discourse On Method; Meditations* (translated by F. E. Sutcliffe), Harmondsworth: Penguin Books, 1968.
- Deuchar, S. *Sporting Art in Eighteenth Century England*. New Haven, Connecticut: Yale University Press, 1988.

- Diamond, J. *The Rise and Fall of the Third Chimpanzee*, London: Vintage Books, 1992.
- Diggs, B. J. 'Rules and Utilitarianism', in E. W. Gerber and W. J. Morgan, *Sport and the Body: A Philosophical Symposium*, Philadelphia, PA: Lea & Febiger, 1979, 300-304.
- Dunlop, F. 'Competition in Education', *Cambridge Journal of Education*, 6(3), 1976, 127-134.
- Dunning, E. & Sheard, K. *Barbarians, Gentlemen and Players: A Sociological Study of the Development of Rugby Football*, Oxford: Martin Robertson, 1979.
- Dworkin, R. 'The Original Position', in N. Daniels (Ed.) *Reading Rawls*, Oxford: Basil Blackwell, 1975.
- Dworkin, R. *Taking Rights Seriously*, London: Duckworth, 1978.
- Eassom, S. 'Sport as Moral Educator: Reason and Habit on the School Playing Field', in C. Barrett and T. J. Winnifrith (Eds.) *The Philosophy of Leisure*, London: MacMillan, 1989, 129-148.
- Eassom, S. 'From the Bank to the Baron (1694-1896): A 200-Year History of Amateurism Embedded in the Olympic Ideal,' Paper presented at the 22<sup>nd</sup> Annual Meeting of the Philosophic Society for the Study of Sport, London, Ontario: 3-5 October, 1994.
- Eassom, S. (Ed.) *Discourse On Sport: Proceedings of the 21<sup>st</sup> Annual Conference of the PSSS*, Bedford: Casper, 1994.
- Eassom, S. 'So, You Want An Argument? . . . The Use and Abuse of Philosophy in Solving Moral Problems in Sport', in S. Eassom (Ed.) *Discourse On Sport: Proceedings of the 21<sup>st</sup> Annual Conference of the PSSS*, Bedford: Casper, 1994, 35-44.
- Eassom, S. 'Law-Makers and Rule-Breakers: An Historical Analysis of Philosophies of Law, the Concept of "Fair Play", and the Assumption of a Moral Basis for Sport', Paper presented at the 3rd ISHPES Congress, Cape Town: 2-8 July, 1995.
- Eassom, S. 'Playing Games with Prisoners' Dilemmas', *Journal of the Philosophy of Sport*, XXII, 1995, 26-47.
- Eassom, S. 'Fair Game: Rules, Rawls and the Limits of Contractarian Ethics in Delineating the Morality of Game Playing', *Proceedings of the Philosophical*



- Issues in Sport and Physical Education Conference, Cardiff: 17-19 March, 1995, 27-39.
- Eassom, S. 'Sport, Solidarity, and the Expanding Circle', *Journal of the Philosophy of Sport*, XXIV, 1997, 76-95.
- Eassom, S. 'Games, Rules and Contracts', in M. J. McNamee and S. J. Parry (Eds.) *Ethics and Sport*, London: Routledge, 1998, 57-78.
- Eassom, S. 'Sport, Ethics and Education', *Journal of the Philosophy of Sport*, XXV, 1998, 119-125.
- Eassom, S. 'Setting Standards', *The Philosophers' Magazine*, 16, Autumn, 2001, 54-55.
- Eassom, S. 'Selfish Morality', *The Philosophers' Magazine*, 17, Winter, 2002, 28-29.
- Eassom, S. 'Snapshot: Thomas Hobbes', *The Philosophers' Magazine*, 22, 2003 (2<sup>nd</sup> Quarter), 53.
- Edwards, P. (Ed.), *Encyclopedia of Philosophy*, London: Macmillan, 1967.
- Elster, J. 'Some Conceptual Problems in Political Theory', In B. Murray (Ed.) *Power and Political Theory*, New York: John Wiley, 1976.
- Elster, J. 'Rationality, Morality, and Collective Action', *Ethics*, 96, 1985, 136-55.
- Esper, E. A. *Analogy and Association in Linguistics and Psychology*, Atlanta: University of Georgia Press, 1982.
- Feezell, R. M. 'On the Wrongness of Cheating and Why Cheater's Can't Play the Game', *Journal of the Philosophy of Sport*, XV, 1988, 57-68.
- Fielding, M. 'Against Competition', *Proceedings of the Philosophy of Education Society of Great Britain*, Vol.10, 1976, 124-146.
- Fielding, M. 'Competition and Ideology: A Reply to Francis Dunlop', *Cambridge Journal of Education*, 6(3), 1976, 135-138.
- Flew, A. *Essays in Logic and Language*, Oxford: Blackwell, 1951.
- Flew, A. and MacIntyre A. (Eds.) *New Essays in Philosophical Theology*, Canterbury: SCM Press, 1955.
- Flew, A. 'Theology & Falsification: A Golden Jubilee Celebration (2000)', *Philosophy Now*, Oct/Nov 2000, 28-29.

- Fraleigh, W. 'Why the Good Foul is Not Good', *Journal of the Physical Education, Recreation, and Dance*, January, 1982, 41-42.
- Fraleigh, W. *Right Actions in Sports: Ethics for Contestants*, Champaign, Illinois: Human Kinetics, 1984.
- Fraleigh, W. 'Intentional Rules Violations - One More Time', *Journal of the Philosophy of Sport*, XXX, 2003, 166-176.
- Fraser, D. *Cricket and the Law*, The Institute of Criminology Monograph Series, 4, 1993.
- Fuchs, A. 'Duties to Animals: Rawls' Alleged Dilemma', *Ethics and Animals*, 2, 1981, 83-7.
- Galasso, P. J. (Ed.) *Philosophy of Sport and Physical Activity*, Toronto: Canadian Scholars Press, 1988.
- Gauthier, D. *Morals by Agreement*, Oxford: Oxford University Press, 1986.
- Gentner, D., Holyoak, B., & Kokinov, N. (Eds.) *The Analogical Mind: Perspectives from Cognitive Science*, Boston: MIT Press, 2001.
- Gerber, E. W. and Morgan, W. J. *Sport and the Body: A Philosophical Symposium*, Philadelphia, PA: Lea & Febiger, 1979.
- Gewirth, A. *Reason and Morality*, Chicago: University of Chicago Press, 1978.
- Gibson, J. *Performance versus Results*, Albany: State University of New York Press, 1993.
- Golby, J. M. & Purdue, A. W. *The Civilisation of the Crowd: Popular Culture in England 1750-1900*, New York: Random House, 1985.
- Goodman, N. *Ways of Worldmaking*, Hassocks, Sussex: Harvester Press Ltd., 1978.
- Gould, S. J. 'Ladders and Cones: Constraining Evolution by Canonical Icons', in R. B. Silvers (Ed.) *Hidden Histories of Science*, London: Granta Books, 1995, 37-67.
- Grotius, S. *On the Law of War and Peace* (1625), New York: Wildy and Sons, 1964.
- Hackett Fischer, D. *Historians' Fallacies: Toward a Logic of Historical Thought* New York: Harper & Row, 1970.



- Hamlin, A. 'Liberty, Contract and the State', in A. Hamlin and P. Petit (Eds.) *The Good Polity*, Oxford: Blackwell, 1989.
- Hamlin, A. and Petit, P. (Eds.) *The Good Polity*, Oxford: Blackwell, 1989.
- Hampton, J. *Hobbes and the Social Contract Tradition*, Cambridge: Cambridge University Press, 1986.
- Hampton, J. 'The Contractarian Explanation of the State', in T. Ueling (Ed.) *Midwest Studies in Philosophy: The Philosophy of the Human Sciences*, Minneapolis: University of Minnesota Press, 1990.
- Haraway, D. *Primate Visions: Gender, Race, and Nature in the World of Modern Science*. London: Routledge, 1989.
- Hardin, G. 'The Tragedy of the Commons', *Science*, 163, (December 13) 1968, 1243-8.
- Hare, R. M. 'The Promising Game', *Revue Internationale de Philosophie*, No.70, 1964, 398-412.
- Hare, R. M. 'The Promising Game', in K. Pahl and M. Schiller (Eds.), *Readings in Contemporary Ethical Theory*, New Jersey: Prentice Hall, 1970, 168-179.
- Hare, R. M. *Freedom and Reason*, Oxford: Clarendon Press, 1963.
- Hargreaves Heap, S. and Varoufakis, Y. *Game Theory: A Critical Introduction*, London: Routledge, 1995.
- Hart, H. L. A. *The Concept of Law*, Oxford: Oxford University Press, 1961.
- Hargreaves, J. *Sport, Power and Culture* Oxford: Polity Press, 1986.
- Harris, J. W. *Legal Philosophies*, London: Butterworths, 1980.
- Harrison, M. *Crowds and History: Mass Phenomena in English Towns 1700-1833*, Cambridge: Cambridge University Press, 1988.
- Hayek, F. A. *The Constitution of Liberty*, London: Routledge & Kegan Paul, 1960.
- Hegel, G. *The Philosophy of Right* (Knox translation), Oxford: Oxford University Press, 1952.
- Hobbes, T. *Leviathan (1651)*, edited with commentary by R. Tuck, Cambridge: Cambridge University Press, 1991.

- Hoberman, J. *Sport and Political Ideology*, London: Heinemann Educational, 1984.
- Holt, R. *Sport and the British: A Modern History*, Oxford: Oxford University Press, 1989.
- Huizinga, J. *Homo Ludens: A Study of the Play Element in Culture*, London: Routledge & Kegan Paul, 1949.
- Hume, D. *A Treatise of Human Nature*, Oxford: Clarendon Press (Edited by A. Selby-Bigge), 1988.
- Hume, D. *Dialogues Concerning Natural Religion* (Edited M. Bell), Harmondsworth: Penguin, 1990.
- James, C. L. R. *Beyond a Boundary*, London: Hutchinson, 1963.
- Jones, S. *Sport, Politics and the Working Class Manchester*: Manchester University Press, 1988.
- Kant, I. *Groundwork of the Metaphysics of Morals*, translated by H. J. Paton as *The Moral Law*, London: Hutchinson, 1953.
- Kant, I. *Kant's Political Writings*, translated and edited by H. Reiss, Cambridge: Cambridge University Press, 1970.
- Karl, R. 'By A Hair', *Mountain*, 1982 (Sept/Oct) 87, 25.
- Kaufmann, W. *Hegel: Reinterpretation, Texts and Commentaries*, New York: Random House, 1965.
- Kavka, G. 'Hobbes War Of All Against All', *Ethics*, 93, 1983, 291-310.
- Kavka, G. *Hobbesian Moral and Political Theory*, Princeton, NJ: Princeton University Press, 1986.
- Kraus, J. S. *The Limits of Hobbesian Contractarianism*. Cambridge: Cambridge University Press, 1993.
- Kymlicka, W. 'The Social Contract Tradition', in P. Singer (Ed.) *A Companion to Ethics*, Oxford: Basil Blackwell, 1991, 186-196.
- LaFollette, H. (Ed.) *Ethical Theory*, Oxford: Basil Blackwell, 2000.
- Lakoff, G. & Johnson, M. *Metaphors We Live By*, Chicago: University of Chicago Press, 1981.



- Leaman, O. 'Cheating and Fair Play in Sport', in W. J. Morgan and K. V. Meier (Eds.), *Philosophic Inquiry in Sport*, Champaign, Illinois: Human Kinetics, 1995 (2<sup>nd</sup> edition), 277-282.
- Lehman, C. K. 'Can Cheaters Play the Game?', *Journal of the Philosophy of Sport*, VIII, 1981, 41-46.
- Lesnoff, M. *Social Contract*, London: Macmillan, 1986.
- Lewis, D. *Convention: A Philosophical Study*, Cambridge, MA: Harvard University Press, 1969.
- Lewis, T. *Double Century: The Story of MCC and Cricket*, London: Hodder & Stoughton, 1987.
- Lloyd, D. *The Idea of Law*, London: Harmondsworth, 1964.
- Lloyd, G. E. R. *Polarity and Analogy: Two Types of Argumentation in Early Greek Thought*, Cambridge: Cambridge University Press, 1966.
- Locke, J. *Two Treatises of Government* (edited by P. Laslett), Cambridge: Cambridge University Press 1991.
- Loland, S. 'Fair Play: Historical Anachronism or Topical Ideal' in M. J. McNamee and S. J. Parry (Eds.) *Ethics and Sport*, London: Routledge, 1998, 79-103.
- Loland, S. *Fair Play in Sport*, London: Routledge, 2002.
- Long, D. and Garigailano, R. *Reasoning by Analogy and Causality: A Model and Application*, Crystal City, VA: Ellis Horwood, 1993.
- Luce, R. D. and Raiffa, H. *Games and Decisions*, Chichester, Sussex: John Wiley, 1957.
- Lunn, A. *The Story of Skiing*, London: Methuen & Co., 1952.
- MacNabb, D. G. C. 'Hume', in P. Edwards (Ed.) *Encyclopedia of Philosophy*, London: Macmillan, 1967.
- MacIntyre, A. *After Virtue*, London: Duckworth, 1979.
- McInerny, R. *Aquinas and Analogy*, Washington, DC: Catholic University of America Press, 1999.
- Marylebone Cricket Club. *The Laws of Cricket*, 2000 Code (2<sup>nd</sup> Edition), 2003.

- McIntosh, P.C. *Sport in Society*, London: C. A. Watts & Co, 1963.
- McIntosh, P. C. *Fair Play: Ethics in Sport and Education*, London: Heinemann Educational Books, 1979.
- McNamee, M. J. and Parry, S. J. (Eds.) *Ethics and Sport*, London: Routledge, 1998.
- Meakin, D. C. 'The Moral Status of Competition', *Journal of the Philosophy of Education*, 20(1), 1986, 56-67.
- Meier, K. V. 'Triad Trickery: Playing with Sports and Games' in W. J. Morgan and K.V. Meier (Eds.), *Philosophic Inquiry in Sport*, Champaign, Illinois: Human Kinetics, 1995 (2<sup>nd</sup> edition), 23-35.
- Midgley, M. 'The Game Game', *Philosophy*, Vol.47, 1974.
- Midgley, M. *Heart and Mind*, London: Methuen, 1981.
- Midgley, M. 'Duties Concerning Islands', *Encounter*, 60/2, 1983, 36-44.
- Midgley, M. *Science as Salvation: A Modern Myth and Its Meaning*, London: Routledge, 1992.
- Midgley, M. 'Philosophical Plumbing', in A. Phillips Griffiths (Ed.) *The Impulse to Philosophize*, Cambridge: Cambridge University Press, 1992, 159-71.
- Midgley, M. *The Ethical Primate*, London: Routledge, 1994.
- Midgley, M. *Utopias, Dolphins and Computers: Problems of Philosophical Plumbing*, London: Routledge, 1996.
- Midgley, M. *Evolution as Religion: Strange Hopes and Stranger Fears*, London: Routledge, 2002.
- Midgley, M. *Science and Poetry*, London: Routledge, 2002.
- Midgley, M. *The Myths We Live By*, London: Routledge, 2003.
- Mill, J. S. *An Examination of Sir William Hamilton's Philosophy*, New York: Longman's, Green & Co., Inc. (6<sup>th</sup> Edition), 1889.
- Mill, J. S. *Utilitarianism, On Liberty, Essay On Bentham*, edited by M. Warnock, London: Fontana, 1985.



- Morgan, W. J. 'The Logical Incompatibility Thesis and Rules: A Reconsideration of Formalism as an Account of Games', *Journal of the Philosophy of Sport*, XIV, 1987, 1-20.
- Morgan, W. J. *Leftist Theories of Sport*, Chicago: University of Illinois Press, 1994.
- Morgan, W. J. and Meier, K. V. (Eds.), *Philosophic Inquiry in Sport*, Champaign, Illinois: Human Kinetics, 1995 (2<sup>nd</sup> edition).
- Morgan, W. J. 'Multinational sport and literary practices and their communities: the moral salience of cultural narratives', in M. J. McNamee and S. J. Parry (Eds.) *Ethics and Sport*, London: Routledge, 1998, 184-204.
- Mortimer, R. *The Jockey Club*, London: Cassell, 1958.
- Munsche, P. *Gentlemen and Poachers: the English Game Laws 1671-1831*, Cambridge: Cambridge University Press, 1981.
- Murray, B. (Ed.) *Power and Political Theory*, New York: John Wiley, 1976.
- Nagel, T. *The Possibility of Altruism*, Oxford: Clarendon Press, 1975.
- Nandy, A. *The Tao of Cricket: On Games of Destiny and the Destiny of Games*, Oxford: Oxford University Press, 2000.
- Nicholson, P. 'Viv's Caught Up In An Unholy Row', *Daily Telegraph*, April 12, 1991
- Nozick, R. *Anarchy, State, and Utopia*, Oxford: Basil Blackwell, 1974.
- Olson, M. *The Logic of Collective Action*, Cambridge, MA: Harvard University Press, 1965.
- Owen, O.L. *The History of the Rugby Football Union*, London: Playfair Books, 1955.
- Pahel, K. and Schiller, M. (Eds.) *Readings in Contemporary Ethical Theory*, Prentice Hall, 1970.
- Palmer, H. *Analogy (New Studies in Philosophy of Religion)*, London: Macmillan, 1973.
- Parfit, D. *Reasons and Persons*, Oxford: Oxford University Press, 1984.
- Paine, T. *The Rights of Man (1791/1792)*, Harmondsworth: Penguin Books, 1976.
- Pearson, K. 'Deception, Sportsmanship, and Ethics', *Quest*, XIX, 1973, 115-118.

- Phillips Griffiths, A. (Ed.) *The Impulse to Philosophize*, Cambridge: Cambridge University Press, 1992.
- Pinker, S. *How Minds Work*, Harmondsworth: Penguin Books, 1999.
- Plato, *The Republic* (translated by R. Grube), Oxford: Oxford University Press, 1979.
- Pritchard, M. and Robinson, W. 'Justice and the treatment of animals: a critique of Rawls', *Environmental Ethics*, 3, 1981, 55-61.
- Pufendorf, S. *On the Law of Nature and Nations* (1672), New York: Wildy and Sons, 1964.
- Rapoport, A. *Two-Person Game Theory*, Ann Arbor, MI: University of Michigan Press, 1966.
- Rawls, J. 'Justice as Fairness', *Journal of Philosophy*, LIV, 1957, 653-662.
- Rawls, J. *A Theory of Justice*, Oxford: Oxford University Press, 1971.
- Redmond, G. 'The First Tom Brown's Schooldays: Origins and Evolution of "Muscular Christianity" in Children's Literature', *Quest*, XXX, Summer, 1978, 7-21.
- Riley, P. *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel*, Cambridge, MA: Harvard University Press, 1982.
- Ritvo, H. *The Animal Estate: The English and Other Creatures in the Victorian Age*. Cambridge, Mass.: Harvard University Press, 1987.
- Ritvo, H. *The Platypus and the Mermaid and Other Figments of the Classifying Imagination*. Cambridge, MA: Harvard University Press, 1997.
- Rorty, R. *Philosophy and the Mirror of Nature*, Princeton, NJ: Princeton University Press, 1979.
- Rousseau, J. J. *The Social Contract and Discourses*, translated and edited by G. D. H. Cole, New York: Dutton, 1950.
- Russell, B. *Human Knowledge: Its Scope and Limits*, London: Simon & Schuster, 1948.
- Russell, J. 'Are Rules All an Umpire Has to Work With?', *Journal of the Philosophy of Sport*, XXVI, 1999, 27-49.



- Sansone, D. *Greek Athletics and the Genesis of Sport*, Berkeley, CA: University of California Press, 1988.
- Sayre-McCord, G. 'Contractarianism', in H. LaFollette (Ed.) *Ethical Theory*, Oxford: Basil Blackwell, 2000, 247-267.
- Scanlon, T. M. 'Contractualism and Utilitarianism', in A. Sen and B. Williams (Eds.), *Utilitarianism and Beyond*, Cambridge: Cambridge University Press, 1982, 103-128.
- Schauer, F. *Playing by the Rules: A Philosophical Examination of Rule-Based Decision Making in Law and in Life*, Oxford: Clarendon Press, 1991.
- Schelling, T. *The Strategy of Conflict*, Cambridge, MA: Harvard University Press, 1960.
- Schneider, A. and Butcher, R. '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, 1993-4, 64-81.
- Searle, J.R. 'How to Derive Ought from Is', *Philosophical Review*, Vol.73, 1964, 32-58.
- Searle, J. R. *Speech Acts: An Essay in the Philosophy of Language*, Cambridge, MA: Harvard University Press, 1969.
- Searle, J. R. 'Minds, brains, and programs', *Behavioral and Brain Sciences*, 3, 1980, 417-57.
- Sen, A. 'Isolation, Assurance and the Social Rate of Discount', *Quarterly Journal of Economics*, 80, 1967, 112-24.
- Sen, A. and Williams, B. (Eds.), *Utilitarianism and Beyond*, Cambridge: Cambridge University Press, 1982.
- Shogun, D. 'The Prisoner's Dilemma in Competitive Sports.' In P. J. Galasso (Ed.) *Philosophy of Sport and Physical Activity*, Toronto: Canadian Scholars Press, 1988, 405-409.
- Silvers, R. B. (Ed.) *Hidden Histories of Science*, London: Granta Books, 1995.
- Simon, R. 'Good Competition and Drug-Enhanced Performance', *Journal of the Philosophy of Sport*, XI, 1984, 6-13.

- Simon, R. 'Internalism and Internal Values in Sport', *Journal of the Philosophy of Sport*, XXVII, 2000, 1-16.
- Simon, R. *Fair Play: The Ethics of Sport*, Boulder, Colorado: Westview Press, 2<sup>nd</sup> Edition, 2004.
- Singer, P. *The Expanding Circle: Ethics and Sociobiology*, Oxford: Oxford University Press, 1981.
- Singer, P. (Ed.) *A Companion to Ethics*, Oxford: Basil Blackwell, 1991.
- Singer, P. *Ethics*, Oxford: Oxford University Press, 1994.
- Smith, T. E. *Cricket Umpiring and Scoring*, London: Dent, 1980.
- Sobers, G. (with Scovell, B.) *Twenty Years at the Top*, London: Macmillan, 1988.
- Solomon, R. *In the Spirit of Hegel*, Oxford: Oxford University Press, 1983.
- Stamberger, R. M. W. *On Analogy: An Essay Historical and Systematic*, New York: Peter Lang, 1995.
- Suits, B. 'Is Life A Game We Are Playing?', *Ethics*, Vol.77, No.3, 1967, 209-213.
- Suits, B. *The Grasshopper: Games, Life and Utopia*, Toronto: University of Toronto Press, 1978.
- Suits, B. 'The Elements of Sport' in W. J. Morgan and K. V. Meier (Eds.), *Philosophic Inquiry in Sport*, Champaign, Illinois: Human Kinetics, 1995 (2<sup>nd</sup> edition), 8-15.
- Suits, B. 'Tricky Triad: Games, Play and Sport' in W. J. Morgan and K. V. Meier (Eds.), *Philosophic Inquiry in Sport*, Champaign, Illinois: Human Kinetics, 1995 (2<sup>nd</sup> edition), 16-22.
- Taylor, M. *Anarchy and Cooperation*, London: John Wiley, 1976.
- Taylor, M. *The Possibility of Cooperation*, Cambridge: Cambridge University Press, 1987.
- Trivers, R. 'The Evolution of Reciprocal Altruism', *Quarterly Review of Biology*, 46, 1971, 35-57.
- Turing, A. M. 'Computing Machinery and Intelligence', *Mind*, 59, 1950, 430-60.



- Tuxill, C. and Wigmore, S. 'Merely Meat? Respect for Persons in Sports and Games' in M. J. McNamee and S. J. Parry (Eds.) *Ethics and Sport*, London: Routledge, 1998, 104-116.
- Ueling, T. (Ed.) *Midwest Studies in Philosophy: The Philosophy of the Human Sciences*, Minneapolis: University of Minnesota Press, 1990.
- Ullmann-Margalit, E. *The Emergence of Norms*, Oxford: Clarendon Press, 1977.
- Vallentyne, P. (Ed.) *Contractarianism and Rational Choice: Essays on Gauthier*, Cambridge: Cambridge University Press, 1990.
- Vosniadou, S. & Ortony, A. (Eds.) *Similarity and Analogical Reasoning*, Cambridge: Cambridge University Press, 1989.
- de Waal, F. *Good Natured: the Origins of Right and Wrong in Humans and Other Animals*, Cambridge, MA: Harvard University Press, 1996.
- Vamplew, W. *The Turf: A Social and Economic History of Horse Racing*, London: Viking Press, 1976.
- Waldron, J. *Nonsense Upon Stilts*, London: Methuen, 1987.
- Weber, M. *The Methodology of the Social Sciences*, New York: Macmillan, 1982.
- White, N. 'The Imperative, the Attractive and the Repulsive: Sidgwick and Modern Views of Ancient Ethics', in B. Schultz (Ed.) *Essays on Henry Sidgwick*, Cambridge: Cambridge University Press, 1992, 311-330.
- Wilson, J. Q. *The Moral Sense*, New York: Simon & Schuster, 1993.
- Wigglesworth, N. *The Evolution of English Sport*, London: Frank Cass, 1996.
- Williams, H. *Kant's Critique of Hobbes*, Cardiff: University of Wales Press, 2003.
- Wisdom, J. *Other Minds*, Oxford: Blackwell, 1952.
- Wisdom, J. *Philosophy and Psychoanalysis*, Oxford: Blackwell, 1953.
- Wittgenstein, L. *Philosophical Investigations* (translated by G. E. M. Anscombe) Oxford: Blackwell, 2002.
- Wittgenstein, L. *Remarks on the Foundations of Mathematics* (Edited by G. H. von Wright, R. Rhees, G. E. M. Anscombe) Oxford: Blackwell, 1981.

Woodcock, P. 'Australia in Peril After the Strange Dismissal of Jones', *The Times*, March 28, 1991.

Wright, R. *The Moral Animal*, New York: Vintage Books, 1994.

Yeo, E. and Yeo, S. *Popular Culture and Class Conflict* Brighton: Harvester Press, 1981.