

Football Banning Orders, Proportionality, and Public Order Policing

CLIFFORD STOTT and GEOFF PEARSON

*Clifford Stott is Senior Lecturer in Social Psychology, University of Liverpool;
Geoff Pearson is Lecturer, Football Industry Group, University of Liverpool*

Abstract: This article provides a critical analysis of the UK legislation on football banning orders. The historical development of this legislation is outlined and concerns are raised about its impact upon civil liberties and human rights, particularly with respect to Section 14B of the Football (Disorder) Act 2000. The article then outlines a body of research on crowd psychology, public order policing and football 'disorder' that questions the determining role of the banning order in the reduction of English 'hooliganism' at international football tournaments. With regard to tests of proportionality the article concludes by raising important questions about the efficacy and justifiability of football banning orders as a long-term strategy for the management of football 'hooliganism'.

The issue of English football 'hooliganism' has been prominent on the political agenda in the UK since at least the mid-1960s (see Frosdick and Marsh 2005, p.19). While some have argued that these concerns have been merely a reflection of 'amplification processes' (Hall 1978) there can be little doubt that they also reflect the acute political embarrassment arising from repeated acts of 'rioting' involving English fans attending football matches abroad.¹ Following one such incident at the 1988 European Championships in Germany the UK government introduced the Football Spectators Act 1989. A central component of the statute was the international football banning order (FBO) which allowed the UK courts to control the freedom of movement of anyone convicted of a 'football-related' offence. Following further serious disturbances involving English fans at both the 1998 World Cup Finals in France (France98) and the 2000 European Championships in Belgium (Euro2000) the initial powers were strengthened by the Football (Disorder) Act 2000, which allowed for the imposition of FBOs in the absence of a criminal conviction. There has subsequently been a dramatic increase in the number of FBOs imposed by the UK courts. Correspondingly, following the introduction of the 2000 Act there has been a decrease in the number of 'riots' involving English fans attending international football competitions, most notably at the recent European Championships in Portugal (Euro2004). Given the

association between the increasing use of the FBOs and the decline in levels of 'disorder' it would be reasonable to assume that FBOs have begun to play a critical determining role.²

This article will critically analyse this assumption. To do so it will first outline the development of the FBO legislation, discuss the threat it poses to the basic civil and human rights of potentially innocent fans and consider whether the powers can be justified under the principle of proportionality. In order to ground its debate on the justifiability of the legislation, the article will then discuss an intervention into police activity during Euro2004 based upon a specific theoretical model of crowd psychology and dynamics. Subsequent empirical analysis of 'public order' at Euro2004 suggests that the strategic and tactical responses of the Portuguese police played the critical and determining role in both the presence and the absence of 'rioting' during the tournament. The article will draw out the legal implications of this research and theory and discuss the important questions it raises concerning the viability and justifiability of FBOs in the long-term management of 'hooliganism'. This debate will be one that is of key importance in the build up to the potentially high-risk World Cup in Germany in 2006, where a significant further increase in the number of FBOs can be anticipated.

The Evolution and Utilisation of Football Banning Orders

The underlying rationale behind FBOs is that major incidents of football crowd disorder at international football competitions are caused by the convergence of individuals, or 'hooligans', predisposed toward creating disorder. It follows from this that major 'riots' can be prevented by preventing these hooligans from leaving the UK. Consequently, powers to control the movement of 'hooligans' were introduced by Section 30 of the Public Order Act 1986 through which 'exclusion orders' could be served on those who were convicted of 'football-related' offences.³ These orders made it a criminal offence to attend designated football matches for a judicially-determined period and, at the domestic level, were widely credited with the break-up of several of the UK's infamous hooligan groups (or 'firms'). These powers were extended by Part II of the Football Spectators Act 1989 (Section 15), which allowed for the imposition of 'restriction orders' following conviction for football-related offences to prevent the defendant from leaving the UK when English teams were playing abroad.

When a major 'riot' involving England fans in Dublin, in 1995, caused the abandonment of a high-profile international match, it emerged that only two fans had ever been subjected to these orders and it was argued that the existing legislation was ineffectual. These concerns were reinforced by claims that the UK police authorities had been aware of the attendance of many 'known hooligans' at the match (*The Guardian*, 27 February 1995). It was also claimed that the limitations of the legislation were exacerbated because matches abroad were less effectively policed. In particular, those arrested for their involvement in disorder were typically

not charged but merely deported, and, therefore, in the absence of a conviction, could not be subjected to a restriction order. Despite a significant increase in the number of FBOs issued in the build up to the 1998 World Cup,⁴ there was widespread 'rioting' involving England fans in Marseilles, which was followed only two years later by the use of water-cannon, baton charges and tear gas against England fans by Belgian police during Euro2000.

Further legislative changes to extend police powers arrived first from a private member's Bill that became the Football (Offences and Disorder) Act 1999,⁵ and then from the Football (Disorder) Act 2000. The 2000 Act was a radical step in the legislative campaign to control football-related disorder because it allowed magistrates to serve suspected hooligans (or 'prominents' as the police labelled them) with FBOs in the *absence* of a criminal conviction for a football-related offence. These FBOs 'on complaint' from the local Chief Constable were established under the amended Section 14B of the 1989 Act. Section 14B encouraged the practice of the police authorities compiling 'profiles' (both locally and nationally) on suspects, which could then be used as evidence in FBO hearings. Within two years of the introduction of the 2000 Act, the number of banning orders had risen sharply to just over 1,000. Following the absence of serious disorder at the 2002 World Cup Finals in Japan and Korea, the UK Home Office made £5 million available to UK police forces to develop these profiles against 'known hooligans'. There was, once again, a steep rise in the number of FBOs, and by November 2005, over 3,700 banning orders had been imposed following conviction of an offence, and 550 obtained under Section 14B (Home Office 2005). Furthermore, there was a clear association between this increasing number of FBOs and the decreasing number of serious incidents of 'hooliganism'. For example, whereas 965 English supporters had been arrested at Euro2000, only 53 were arrested during Euro2004 (Home Office figures quoted by the Independent Football Commission (2004)). This association alone would make it reasonable to assume that the FBO had validated its underlying assumptions and begun to play a determining role in reducing the levels of disorder among English fans travelling abroad.

The Need to Assess the Effectiveness of FBOs

It is important to critically test this assumption for a number of reasons. First, once it is accepted that this type of behaviour should be controlled there is an obvious requirement to critically evaluate the dominant means of achieving this objective. If FBOs are an effective means of controlling 'public order' then they will stand the test of this critical analysis. Second, the legislation must be critically evaluated because of the seriousness of the human rights concerns surrounding the imposition of FBOs, particularly when they have been served upon those who have not been convicted of a criminal offence (see Pearson 2005). FBOs have been presented by both the Home Office and the courts as a preventative rather than a punitive measure, in the manner of a civil injunction, therefore needing to follow a

civil law procedure providing fewer protections for the defendant (for example, regarding the standard of proof and the admissibility of evidence) (see Pearson 2002). However, as the Court of Appeal has itself admitted, FBOs impose 'serious restraints of freedom'⁶ upon defendants. The power to confiscate passports (Section 14(E)3), and impose other conditions with banning orders (Section 14G), can mean that individuals who have not been convicted of any offence could be prevented from leaving the country or even placed under house arrest for the duration of a particular match or tournament. These are very serious restrictions which have already been criticised as potential breaches of Articles 5 and 6 of the European Convention on Human Rights,⁷ and the EC Treaty.

The effectiveness of FBOs in reducing disorder is closely tied in with these human rights concerns because the former has been used to justify the latter. This pragmatic justification of 'the end justifies the means' formed an important part of the most high-profile civil liberties challenge to the Football (Disorder) Act 2000 which reached the Court of Appeal in *Gough and Smith v. Chief Constable of Derbyshire* ([2002] QB 1213). Here, the Court was asked to consider the legitimacy of the legislation under the doctrine of proportionality espoused in *de Freitas v. Permanent Secretary of Ministry of Agriculture* ([1999] 1 AC 69), which required the Court to ask whether: (i) the legislative objective (that is, preventing football-related violence by English fans abroad) is sufficiently important to justify limiting a fundamental right of EU nationals to leave their territory (see Pearson (2006) for a discussion of the first 'branch' of the proportionality principle); (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective. In order to assess whether FBOs are proportionate in terms of tests (ii) and (iii), it is necessary to be confident that FBOs do reduce football-related disorder abroad and to consider whether there are any other methods that could be employed to achieve this aim that would not limit fundamental rights (the 'Less Restrictive Alternative' doctrine, 'one of the most stringent forms of proportionality appraisal' (Arai-Takahashi 2002, p.15)).

The Role and Identification of 'Hooligans'

The first problem when assessing the impact of FBOs is a very practical one. The nature of football-related disorder generally makes it difficult to be confident that the authorities are targeting 'hooligans' who are actually intending to travel abroad to cause trouble. The high turnover of 'personnel' in the hooligan firms hampers work to compile profiles on suspects; some members will only attend a few high-profile games over a number of seasons and others will 'retire'. At the other end of the scale, the Home Office has expressed concern about a 'new generation' of young hooligans that as yet are unknown to them (*The Guardian*, *The Telegraph*, 19 August 2003). Second, it may also be the case that the current blanket approach of imposing FBOs upon fans who are merely suspected of being involved in football-related disorder is succeeding in identifying fans who

are either not 'hooligans' or who have no intention of travelling abroad to matches.⁸ The 2000 Act specifically allows courts to take into account issues such as arrest, deportation and ejection from football grounds, but there is substantial evidence that innocent fans have consistently fallen foul of mass arrests and deportations, particularly at Euro2000, where only one of the 965 arrested was even charged with an offence.⁹ Furthermore, ejections from grounds are typically used for non-violent breaches of ground regulations under contract law, for example, persistent standing, smoking in 'no smoking' areas or buying a ticket for the wrong section.

Questions also need to be asked about the use of FBOs 'on complaint' where there is sufficient evidence with which defendants could be charged with a criminal offence. Following the decision in *Gough*, it was established that FBOs should be imposed only where the court was convinced to a standard akin to the criminal standard of proof that the defendant had committed the acts in question.¹⁰ How far the magistrates' courts will follow this ruling has yet to be established,¹¹ but if police authorities are being asked to provide evidence to a quasi-criminal standard, that individuals have committed specific offences, then questions should be asked as to why these suspects are not being charged and convicted of specific football-related offences. With substantial police resources expended on monitoring and compiling portfolios of evidence on 'hooligans', it remains unclear why in cases such as *Gough*, charges are not being brought, especially as a conviction could also lead to an FBO under the old legislation.

The Causes and Nature of 'Rioting' Involving England Fans Abroad

It is important to note that the type of disorder in which England supporters have historically become involved while abroad is different to the highly organised and often pre-arranged serious violent 'disorder' engaged in by 'hooligan firms' in domestic football. Moreover, from a theoretical perspective, the assumption that 'rioting' is caused merely by the convergence of 'hooligans' is highly problematic. It is widely acknowledged that the majority of those English fans arrested during the major 'rioting' at international tournaments have no known history of involvement in football-related 'disorder' (for example, of the 965 English fans arrested at Euro2000, only 30 had been identified by police as 'hooligans': *Hansard*, HC 13 July 2000, col. 1181). This fact alone makes it difficult to sustain the rather circular argument that these individuals are involved in 'disorder' because they are 'hooligans'. Conversely, there have also been a number of large crowd events involving English fans abroad where 'known hooligans' have been present but 'disorder' has not occurred. Moreover, when 'disorder' has occurred, the idea that it has been caused by 'hooligans' offers little theoretical basis for understanding the targets of collective violence. In other words, the theoretical assumptions underpinning the FBO legislation are highly problematic in that they provide little to inform the authorities about precisely when 'hooliganism' will occur, when it does who will become involved and who it is that will be subjected to attack. Given these problems, it is unclear how a strategy based

exclusively upon controlling the movement of 'known hooligans' can actually prevent incidents from occurring. This is a critical point with regards to branch (ii) of the *de Freitas* proportionality test used to justify FBOs 'on complaint' in *Gough*, that is, that there is a direct (and one would assume detectable) connection between the legislative measure and the desired outcome of a reduction in crowd 'disorder' abroad.

Despite the existing and dominant focus upon the convergence of 'hooligans' it is essential to recognise that major 'riots' involving English fans at football tournaments are crowd events. It therefore becomes relevant to address the existing research and theory on crowd dynamics and psychology, particularly as this relates to the presence and absence of 'rioting'. There is now substantial evidence that collective violence during a crowd event is determined by a particular form of shared psychological self representation, referred to as the crowd's 'social identity' (see Reicher (2001) for an overview). Once psychologically salient among participants, this 'social identity' determines both what people do collectively and who it is that becomes involved. While this 'social identity' is understood to be a product of participants' background beliefs it can also be affected, in both form and content, by the inter-group interactions that occur during the crowd event itself. Thus, research has identified that the emergence of 'rioting' during a crowd event can be linked to changes in the crowd's 'social identity' that have been brought about by how the crowd is policed (Drury and Reicher 1999, 2000; Reicher 1996; Stott and Drury 2000). For example, during a previously peaceful demonstration against the implementation of the 'poll tax' in the UK, the police, following a sit down protest, attempted to disperse the crowd with the use of baton charges and horses. This form of relatively indiscriminate intervention was itself driven by the expectation that the crowd as a whole was posing a threat to 'public order' (Stott and Reicher 1998b). Police intervention was subsequently experienced by many within the crowd as illegitimate and indiscriminately violent, and as a consequence their social identity changed such that they felt justified and empowered to confront the police. In this way, what began as a relatively isolated and minor confrontation escalated during the event itself as a consequence of indiscriminate police intervention against the crowd as a whole. In other words, research demonstrates that major 'riots' are best understood, not in terms of pre-existing violent individuality, but as an outcome of 'social identity' processes and inter-group dynamics which, in some cases, have been brought about by particular forms of public order policing tactics and philosophy (Drury, Stott and Farsides 2003; Stott and Reicher 1998b, Reicher *et al.* 2004).

In applying and developing this knowledge in the context of football, studies have begun to identify how police attempts to control 'hooliganism' among English football fans may ironically be generating group-level dynamics that are actually initiating and escalating the very conflict they were designed to prevent, as a kind of 'self-fulfilling prophesy'. In other words, the expectation that England fans are uniformly 'violent' leads to relatively indiscriminate forms of policing that inadvertently function to

create the social psychological dynamics through which ‘rioting’ becomes possible (Stott 2003; Stott and Reicher 1998a; Stott, Hutchison and Drury 2001).

To make these issues more concrete one can consider the ‘rioting’ involving England fans at ‘Euro2000’, incidents that led directly to the introduction of the 2000 Act. Almost all of the England fans arrested during the tournament were arrested in Belgium during events surrounding England’s game against Germany. In comparison, even though ‘known hooligan’ fans were present, there were no incidents of ‘disorder’ surrounding England’s previous match in Eindhoven against Portugal, and only six England fans, were arrested, all for non-violent offences. This pattern of ‘disorder’ is made more meaningful when one considers the differences in the policing styles adopted in these two host cities identified by a study of the security operation for the tournament conducted by the Police Academy of the Netherlands (Adang and Cuvelier 2001). Using analysis of structured observational data gathered in all host cities throughout the tournament, this study was able to detect two contrasting styles of public order policing. These two styles were characterised as ‘low profile’ and ‘high profile’. ‘High profile’ policing was defined in terms of approximately three times the number of visibly deployed uniformed police officers, significantly greater visibility of ‘riot’ police and ‘riot’ vehicles, and, despite the larger number of officers on the ground, a lower overall level and quality of contact between police and fans. Using the levels of ‘risk’ defined by the security forces before the tournament, the study analysed the relationship between these contrasting styles of policing and the observed levels of ‘public disorder’ in ‘low’ and ‘increased’ risk situations. It was found that the greatest levels of ‘disorder’ during the tournament actually occurred in ‘low risk’ situations when ‘high profile’ policing had been utilised. Indeed, in ‘low risk’ situations with high-profile deployments there was approximately twice the level of observed ‘disorder’ in contrast to low-profile deployments with the same level of ‘risk’. Moreover, in ‘high risk’ situations there were no significant differences in the levels of observed ‘disorder’ (despite the fact that there were nearly three times as many uniformed police officers deployed visibly on the ground).

The important issue to arise from these different but related bodies of research is that public order police tactics, fan/police interactions and crowd dynamics appear to play a very important role in determining the levels of ‘disorder’ that occur in the context of international football tournaments. The available data suggest that this is because the police can affect the inter-group interactions that underpin the emergence of the ‘social identity’ processes in the crowd, which make widespread ‘rioting’ more or less likely *regardless of the presence or absence of ‘hooligan’ fans*. This research, therefore, suggests that the impact of FBOs upon football crowd disorder abroad may actually be relatively incidental. It also suggests that a more effective approach would be to develop strategic and tactical knowledge in public order policing (Stott and Adang 2004). Such an analysis does, of course, carry important implications for the 2000 Act. The

fact that the presence of 'known hooligans' does not necessarily determine when or if 'rioting' occurs casts a serious doubt as to the 'rational connection' between the legislation and its objectives. Thus it becomes more difficult to justify the Act's infringement of fundamental rights under the principle of proportionality. Furthermore, as we will argue, the success of recent theoretically driven models of policing football crowds has begun to provide a serious alternative to FBOs that does not restrict the rights of football supporters, and which, therefore, also raises questions concerning the 'least restrictive alternative' that is so important to the third leg of the *de Freitas* test.

The Role of Public Order Policing at Euro2004

In order to build upon the crowd dynamics research outlined above, the UK Home Office funded a programme of further collaborative research between the University of Liverpool and the Police Academy of the Netherlands, to investigate the different ways in which English football fans are policed throughout the EU. Consequently, this research began to develop a theoretical understanding of those police philosophies, strategies and tactics that corresponded with low levels of 'disorder' among English football fans travelling abroad. Moreover, by collecting extensive data from both fans and the police, the research began to understand further the inter-group and social psychological dynamics underlying the impact of these police practices. For example, during a series of 34 observations involving fans of English teams playing in continental Europe between 2001 and 2003, 'disorder' typically emerged and escalated where 'heavy handed' and indiscriminate policing generated a collective social relationship among large numbers of fans, based on shared perceptions of the illegitimate nature of police action. Under these circumstances, and in line with the psychological changes identified in other crowd events (for example, Stott, Hutchison and Drury 2001), 'non-hooligan' fans came to see conflict with the police as acceptable and were more likely to condone and even engage in conflict with the police. In contrast, where policing was 'low profile' and accurately targeted those engaging in low-level 'disorder', fans tended to see police action as legitimate. Under these circumstances, the research indicated that 'high risk' fans actually began to psychologically differentiate themselves from 'hooliganism' and actively 'self-police'.

Developing upon the work of others who highlight the importance of studying police responses to 'public order' (for example, Adang and Cuvelier 2001; Fielding 1991; Fine and Millar 1985; Graef 1990; Northam 1988; Reiner 1992; Solomos and Rackett 1991; Stott and Reicher 1998b; Waddington and Leopold 1985; Waddington, P.J. 1987; Waddington, D. 1992; Waddington and King 2005), this research suggested that 'low profile', information-led policing (where officers interact with fans in a friendly manner and on the basis of fans' actual behaviour rather than their reputation), is the most effective at minimising major incidents of 'disorder' among 'high risk' fans. Moreover, it suggested that 'low profile' policing is effective because it manages crowd dynamics in ways that generate shared perceptions of the legitimacy of the social relationships

surrounding crowd members and subsequently supports non-violent forms of social identity for the crowd (see Stott and Adang 2003, 2004). To enhance the impact of this knowledge it was then subsequently used to develop a model of 'best practice' that was made available to police forces across the EU (Stott and Adang 2003), which was subsequently taken up by the Public Security Police (PSP) in Portugal to provide a theoretical and empirical underpinning for their security policy for Euro2004 (for example, Adang and Stott 2004; Stott and Adang 2003). As a consequence, the PSP developed a 'public order management' approach characterised by a dynamic, information-led 'low profile' graded intervention public order policing policy, that was designed to maintain the perception among fans of the legitimacy of their social relations with the police. Portugal's second police force, the GNR, did not make extensive use of this research in their policy development and adopted a much 'higher profile' form of policing, more in line with the 'riot control' approach implicated by the existing research to underpin the dynamics of 'rioting' both in football and non-football contexts (see Stott and Reicher 1998b; Reicher *et al.* 2004).

During Euro2004 there was no major incident of 'disorder' in areas controlled by the PSP and only one England fan was charged by the PSP for a violence-related offence. Data arising from research conducted on the tournament reveal that the PSP did implement a 'low profile' approach, in line with their policy, across Portugal. Analysis of psychological data obtained during the tournament indicates that the actions of the PSP were perceived as legitimate by England (and other high-risk) fans. In line with theoretical predictions, this perception of legitimacy corresponded with the maintenance of a non-violent 'social identity' and a psychological differentiation from 'hooligan' activity among England fans. This psychological 'profile' was directly associated with the non-violent crowd events in areas controlled by the PSP. Moreover, in these areas there was the emergence of a 'self-policing' culture among England fans that played an important role in preventing 'disorder' during times of potential confrontation. By stark contrast, there were two major incidents of 'rioting' involving England fans in Albufeira, a small resort town in the Algarve region of Portugal, controlled and policed by the GNR. The research identifies how these incidents were characterised by the *escalation* of 'disorder', the involvement of initially peaceful fans and the concurrent escalation of relatively undifferentiated and coercive police intervention. Correspondingly, there was, among England fans in Albufeira, an increasing legitimisation of confrontation with the police and identification with 'hooligan' behaviour, even by those who were previously seeking to avoid conflict (Stott *et al.* in press).

Thus, even with the 2000 Act in place and 2,403 FBOs imposed, there was still widespread 'rioting' involving England fans at Euro2004. The UK authorities have also been unable to secure FBOs against those England fans arrested in Albufeira during these incidents. Moreover, the empirical evidence suggests that both the presence and the absence of 'rioting' *cannot* be related simply and unproblematically to the presence and absence of 'hooligans'. Instead, a far more complex picture emerges. The PSP

adopted a 'public order management approach' utilising 'low profile' policing which, being information led, reacted to incidents at an early stage and in a manner that differentiated between fans on the basis of their actual behaviour. This tactical response corresponded with an awareness of 'behavioural limits', a perceived legitimacy of the police and low levels of conflict among England fans despite the presence of fans clearly seeking to create 'disorder'. The GNR adopted a much 'higher profile' approach based upon a 'riot control' philosophy. This strategic response lacked the 'public order management' tactics of the PSP and thus led to a rather delayed and indiscriminate reliance on the use of force. This style of policing was seen by many England fans in Albufeira as illegitimate and corresponded with the escalation of relatively minor incidents into two consecutive nights of 'rioting' between fans and the police (Stott and Adang 2005). If this analysis is correct, then it follows that FBOs were relatively incidental to controlling the presence of 'rioting' in Portugal, and as such, questions should be raised concerning whether or not FBOs, particularly 'on complaint', were actually 'necessary to accomplish the objective' (test iii). Perhaps more importantly, however, since the development of public order policing techniques can evidently lead to such dramatic decreases in the levels of 'rioting' it would appear that a less 'restrictive alternative' exists that needs to be utilised more thoroughly making the FBOs' current infringement of fundamental rights harder to justify in the longer term.

Conclusions

The full effects of the Football (Disorder) Act have yet to become apparent, but the available empirical evidence suggests that it is problematic to assume that football banning orders played the central causal role in preventing disorder at Euro2004. Instead, a more parsimonious theoretical account, derived from extensive empirical evidence in social psychology, draws into focus the important role of group-level dynamics in shaping crowd events in ways that shift fans both toward and away from 'rioting'. Of course, FBOs may well impact upon these dynamics, both by preventing 'hooligans' from instigating initial acts of 'disorder' and by encouraging host police forces to move away from any tendency toward the early and indiscriminate utilisation of 'riot' police. But the assumption that FBOs are the primary and most effective means of preventing major 'riots' appears problematic. The relatively trouble-free tournaments in 2002 and 2004 do not necessarily demonstrate that the new FBOs 'on complaint' will significantly reduce future incidents of 'disorder' involving English supporters abroad. The evidence that FBOs alone can prevent the type of 'disorder' witnessed in 1998, 2000 and 2004 is scant. Fieldwork research and analysis of arrests suggests that it is not typically 'known hooligans' that are caught up in these incidents of 'disorder' and that the violence itself has been a result of local factors (most notably public order police tactics) rather than a pre-existing intention on the part of a significant body of supporters to become involved.

The assumptions underpinning the FBO are not only problematic theoretically but may well also be dangerous practically in the build up to the potentially high-risk World Cup and European Championship tournaments in Germany and Austria/Switzerland in 2006 and 2008. An over-reliance on the utility of FBOs could inadvertently lead to a failure to address the potential of group-level factors in contributing to the dynamics of football 'riots'. Moreover, FBOs very rapidly expire and so-called 'hooligans' can once again be free to attend major tournaments, as is the case with respect to over 300 FBOs and the 2006 World Cup Finals in Germany. Thus, even with FBOs in place, police strategies and tactics must be developed internationally such that they consistently act to marginalise and disempower those seeking to create 'disorder' over the long term. This is not to suggest that banning orders on conviction do not have a role to play in the short term, as it is clear that preventing those who possess the intention of initiating trouble from travelling will reduce potential tensions between travelling fans, locals and police. However, the evidence suggests that FBOs must be seen merely as a short-term measure, and a small part of an overall long-term strategy to reform the way in which football crowds are controlled. If initiatives to police football crowds in terms of identifying and taking action against any 'troublemakers' as and when they commit offences, rather than dealing with an entire crowd as a group of potential 'hooligans', are followed, along with fan initiatives to encourage the more positive aspects of 'high risk' supporters, it is arguable that FBOs will not be necessary in the long term (see Stott *et al.* in press). Moreover, existing research suggests that the infringements of the fundamental civil and human rights of suspected 'hooligans' served with FBOs 'on complaint' cannot be easily justified under the principle of proportionality such as that utilised in *Gough*. First, preventing 'known hooligans' from travelling may not be a significant influence upon the levels of 'disorder' that occur. Second, an alternative method of preventing 'disorder' exists – in the form of changing models of policing football crowds – that appears to be both more effective and less restrictive on the rights of individuals who have not been convicted of a criminal offence. At present, there is a real danger that the apparent early success of FBOs under the 2000 Act will encourage authorities to simply introduce more orders 'on complaint' regardless of the important civil liberties concerns, in turn ignoring issues such as policing tactics and fan initiatives that could have a much more significant impact in reducing the type of serious 'disorder' that has occurred involving English football supporters in the past. Let us hope that by taking heed of the lessons derived from research in the behavioural sciences on the history of dealing with football 'hooliganism', developments can be made in policing practice that will ensure that the cycles of conflict (re)production can, once and for all, be broken.

Notes

- 1 Particularly when such incidents have occurred in European Union member states. Butler (1991, p.203) gives the example of former Prime Minister Margaret Thatcher's

- public response to disorder involving England fans at the 1980 European Championships in Italy, when she was also in the country on Common Market business.
- 2 Claims that FBOs were highly instrumental in reducing the disorder at the 2002 and 2004 tournaments have been made by the government, the Home Office, the Football Association and the media. The normally sceptical *When Saturday Comes* magazine was so impressed with the impact of banning orders on the English support at Euro2004 that it claimed 'more of the same' was required for future tournaments (August 2004).
 - 3 As defined in Section 31 of the Public Order Act 1986.
 - 4 The then Home Secretary called upon magistrates to impose orders upon all those convicted of football-related offences in the build up to France98, and the number of bans rose to 70 (*The Guardian*, 27 December 1997; *The Express* 21 August 1998).
 - 5 This combined domestic and international banning orders and provided for the confiscation of passports. However, its attempt to allow magistrates to impose FBOs on those who were merely *suspected* of football-related offences was abandoned for fear of its contentiousness resulting in it running out of parliamentary time.
 - 6 *Gough and Smith v. Chief Constable of Derbyshire* [2002] QB 1213, para. 90 (Lord Phillips).
 - 7 The Right to Liberty and the Right to a Fair Trial (which grants additional protections to those under a 'criminal charge').
 - 8 For example, Gary Smith, one of the defendants in *Gough*, had an international banning order imposed upon him as a result of a police file suggesting that he was a member of Derby County's 'hooligan firm'. This was despite the fact that he had never travelled abroad to watch either his club or the England National Team and claimed that he had no plans to do so.
 - 9 The authorities accepted that a significant number of *innocent fans* were arrested at the tournament, and in one incident, Belgian police fired CS gas into a bar and then arrested everyone when they came out to escape the fumes (*The Telegraph*, 19 June 2000; BBC 2 'Hooligan', broadcast 19 May 2002). Moreover, the one individual charged with an offence is currently appealing his conviction.
 - 10 Para. 90. This was in contrast to the civil standard of proof originally intended by the Home Office.
 - 11 Correspondence with the Home Office indicated their belief that the *Gough* ruling on the standard of proof would not make it more difficult to impose FBOs (correspondence with authors, February 2005).

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Date submitted: October 2005

Date accepted: February 2006

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