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2   **Abstract**

3   Officiating and the role of officials in sport is are crucial and often decisive factors in sports
4   contests. Notable contributions in philosophy of sport include Collins (2012), Russell (1997;
5   1999), McFee (2011) & Mumford (2006) have brought a sharp philosophical focus to highlight
6   that justice and desert of sport contests, in part, rely on officiating truths (performances) that
7   arise from an appropriate admixture of epistemic (judgments) and metaphysical (actions)
8   ingredients. This paper provides a rigorous and original philosophical analysis of the problems
9   of obeying the rules and of applying the rules of sport. The paper focuses on a particular
10   phase of play in rugby union, namely the scrum. It is fair to say that the scrum has become a
11   focus of criticism and bewilderment. Elite televised rugby is damaged as a spectacle because
12   too much time is wasted setting and re-setting scrums. Furthermore, our trust in the fairness
13   of games is eroded because the scrum is a 'lottery' when it comes to officiating. In this paper,
14   we identify two fundamental structural problems which contribute to the scrum controversy.
15   First, drawing on Mumford (2006) and Collins (2012) we argue that officials cannot make
16   reliable judgments about scrums because they cannot see what they need to see. Secondly,
17   we argue that players cannot follow the laws of the scrum even if they have a strong desire
18   to do so. Laws which can't be followed are, according to Fuller (2000) defective.
19   Consequently, the scrum is not only potentially dangerous, but also flawed in terms of its
20   capacity to actualize an intended part of the game[1].

21   **Keywords**

22   Rugby, scrum, officiating, laws, fairness

23   **Introduction**

24   On 15th March 2005, a promising young rugby union prop forward was training with the
25   England under 21 squad. During the session, the young prop, Matt Hampson, suffered a life-
26   threatening and life-changing injury because of a collapsed scrum. He dislocated his neck,
27   severed his spinal cord, and became a C4/5 tetraplegic[2]. Hampson is not the first and will not
28   be the last to sustain terrible, but thankfully rare, injuries from a rugby scrum. Medics, sport
29   scientists, referees and governing bodies have been working hard over the years to make
30   rugby union in general, and scrummaging in particular, safer. Changes include law
31   modifications and improved conditioning of those occupying the specialist front-row
32   positions[3]. Front-row players are also much taller than ever before. Some, however, believe
33   that the scrummaging ability of players has diminished despite, or perhaps because, of these
34   changes and made things worse. Consequently, the scrum and its continued place in the game
35   of rugby union remains controversial. Is it safe? Does it (or its failure) detract from the flow
36   and appeal of the game? Is it an essential part of the game? Our aim in this paper is to examine
37   the rugby union scrum from an ethical-legal perspective in order to evaluate whether the rules

(henceforth laws) are morally justifiable.[4]. We bring together Mumford's (2006) insights into 'truth makers' in sport together with Collin's (2012) analysis of both the metaphysical and epistemological core of officiating and argue that the laws that govern the scrum are impossible to apply by referees in a consistently valid and reliable way. This is the first original conclusion of the paper. Furthermore, we argue that some laws are impossible for players to follow in a consistently voluntary way. Using Fuller's (2000) philosophy of law, we present another significant and original conclusion – namely that the scrum laws (and other laws in sport that demand the impossible) are flawed. We will return to Matt Hampson's case towards the end of the paper to draw out some of the implications of our analysis.

Rugby Union

Rugby's origins lie in the British public school at Rugby[5]. Rugby football's (as opposed to other types of football) laws permitted the ball to be carried and passed as well as kicked. Today the game has all the trappings of other commercialised professional sports including governing bodies, a World Cup, professional leagues, sponsorship and specialised training and coaching structures. Rugby has a law book which sets out the permitted means of achieving the goal of winning. The laws also stipulate the non-permissible means and the penalties and sanctions for violating such prohibitions. As with other sports, the laws provide a framework that allows scope for personal and collective 'athletic performance'. According to Jones and Howe (2005: 139), "athletic performance is a delicate mix of natural, moral, technical, aesthetic, psychological and physical capacities" and involves "a collection of contextually-grounded intentional and unintentional actions or excellences that we praise and celebrate". Athletic performance is underdetermined by the laws of rugby (and in all games other than the simplest) and may involve non-meritocratic elements. Poor officiating can be the most decisive non-meritocratic influence on games. One notable example of injustice in rugby comes to mind (at least for Welshmen), namely, the game between Wales and New Zealand (known as the All Blacks because of their uniforms) which took place at Cardiff Arms Park in 1978.[6] Wales lost the game by one point after the All Blacks kicked a penalty goal in the last few minutes. The referee awarded a penalty kick because of a lineout offence by Wales. The referee believed Welsh players had pushed their opponents out of the line intentionally (infringement). The television images, however, clearly showed that two New Zealand players deliberately jumped out of the line as a premeditated tactic to deceive the referee. The decisive 'act' was not an athletic performance and the All Blacks ought not to have gained an advantage from it. Conversely, Wales did not infringe and therefore ought not to have been penalised. Nevertheless, the record books show that Wales lost.

Many sports, and rugby is a paradigmatic example, are prone to officiating errors in general and decisive errors in particular[7]. Most sports seek to eliminate such errors whenever and wherever possible. In the past few decades, rugby union has employed numerous measures to reduce the errors made. Two classes of error routinely occur. Type 1 errors occur when a particular state of affairs is not 'called' by the official when it should be (fails to penalise an

offence by team A). Type 2 errors occur when an official 'calls' incorrectly (penalise team A when no offence occurred). What is the source of such errors?

Mumford (2006) provides a crucial analysis of judgment calls in sport. Despite the perspicacity of Mumford's (2006) analysis, this paper is the first to apply his ideas to a tangible problem in sport. Mumford (2006) identifies a tripartite model of judgment calls. He distinguishes between the metaphysical, the epistemic and the performative aspects of referee judgments. The metaphysical element refers to 'mind independent facts' in the world, for example, the body positions of players relative to each other, to the ball and to the field. The 'truth maker' for judgments are the state of affairs in the world. The epistemic aspect refers to the judgment process. Mumford (2006) argues that it is the referee's job to make a judgment based on facts in relation to the laws of the game. The referee adjudges a high tackle when player A tackles player B above the shoulders. The referee got it wrong if evidence emerges that the tackle was not in fact above the shoulders. The final aspect is the performative element whereby the referee makes the *call* by blowing a whistle and raising an arm[8]. Historically, once the official called, there was no right to appeal[9]. The official's word was final. Collins (2010) provides additional and important philosophical insight for our analysis with the concept of 'ontological authority'. The referee's ontological authority is enshrined in the laws of rugby. According to Law 6.A.4 (a), "The referee is the sole judge of fact and Law during a match" (World Rugby 2017: 49). The outcome of a match cannot be changed regardless of subsequent evidence. Collins (2010: 136) argues that ontological authority is granted to officials because they have "the 'epistemological privilege' in respect of everyone else" – in other words they are the most likely to be able to "call it as it is". This epistemological privilege has (or traditionally had) two sources. First, the officials have a 'superior view' – they are the closest independent and impartial persons to the action. Officials are usually in a better place to see the relevant metaphysical state of affairs in the world. Secondly, they have 'specialist skills' and knowledge – they know the laws and have been trained to apply them in accordance with the best traditions of the practice.

The referee no longer has the superior view *tout court*. TV viewers can see his mistakes and his authority is undermined[10]. Many sports have sought to re-establish authority both by helping referees 'see' and by improving their 'specialist skills'. At the elite level of rugby union, there are four officials responsible for adjudicating each game. A referee follows play on the field and is ultimately responsible for calling the game. Two assistant referees on either side of the field are responsible for specific elements like denoting whether or not the ball has crossed the touchline and provide additional 'eyes'[11]. There is also a fourth official or television match official (TMO) who watches the game on a television screen and has access to replays and various camera angles. If the referee on the field is unsure of certain decisions, usually to do with scoring or foul play, he has the right to ask for help from the TMO. Each official must meet standards of proficiency across a variety of relevant outcomes including fitness, knowledge of the game, decision-making and communication. Despite these improvements some 'calls' will continue to be controversial. Peters (1981: 37) argues "that

rules do not dictate their own application". We cannot avoid the epistemic element of calls in sport and the official invested with ontological authority must judge even when there is no dispute about what is seen. Rugby is not unique in this regard, but the scrum exacerbates such complexities and make disputes inevitable.

The Scrum

The scrum in rugby union has been a pivotal and fabled part of the game. It is a means of re-starting play following a minor infringement by one side or other. Eight specialist players (forwards – collectively known as the pack) from each side bind with each other roughly in a 3-4-1 formation and then bind with the opposition forwards (similarly formed) creating a 'scrum'. The two packs come together forming a 'tunnel' over a 'mark' – the precise location where the infringement took place. The scrum should remain stable over the 'mark' and must be 'square' (parallel to the touchline). The attacking team then feeds the ball 'straight' into the tunnel. This action triggers a 'contest' between the two packs who aim to win the ball by striking with their feet and/or pushing their opponents backwards. This requires individual and collective strength, technique and determination. Quick ball from the scrum provides a team an excellent platform to attack, but also provides an opportunity for one team's pack to physically and psychologically dominate their opponents. In recent years, the scrum has become problematic because many fail – most often, they collapse as the front rows fold downwards (the cause of the injury above). The cumulative time taken for scrums during any given rugby game detracts from the spectators' enjoyment and frustrates players and coaches. According to World Rugby, the average time taken per scrum is 60 seconds, the average number of scrums per international test match is 8-10. Consequently, over 10% of the game is 'wasted' on scrums. There is also a perception that scrums are a 'lottery' and especially prone to officiating errors. The scrum laws are complex, but here is one example.

Law 20.3 (c)

> Binding by loose head props: A loose head prop must bind on the opposing tight head prop by placing the left arm inside the right arm of the tight head and gripping the tight head prop's jersey on the back or side. The loose head prop must not grip the chest, arm, sleeve or collar of the opposition tight head prop. The loose head prop must not exert *any* (our emphasis) downward pressure. (World Rugby 2017: 143)

The source of the problem – referees

Seeing

If the scrum collapses, we assume that there are mind independent facts that explain the collapse. Although it is clear *when* a scrum has collapsed, it is not always clear *why* a scrum collapsed and less clear *who* was responsible for the collapse. The *why* and *who* are both vital if the referee is to make the right call. It is not easy to help the referee see the *why* and *who*. We cannot see the forces that triggered a chain of causal events that bring about a scrum

collapse. Biomechanists have sought to measure and quantify the forces involved in scrummaging (mainly for safety purposes), but even in the lab, there is currently no technology that could identify *the* decisive causal event in a *live* scrum collapse. We must commit to the (metaphysical) idea that there are "mind independent facts of the matter in the world" (Mumford 2006: 183), but accept that the important facts required to make a call may not be available. If the referee cannot make a call because he is unable to judge the facts – or *see* the cause of the collapse, they must reset the scrum. This is a welcome option, but referees must use it sparingly. In theory, a scrum sequence could go on indefinitely because there may be a sequence of collapses where the *why* and *who* is not clear. Referees can use discretion to keep the game flowing. If possible, they will play 'advantage' – allowing the play to unfold despite the collapse – urging the advantaged team to 'use it'. The imperative to use it quickly has two sources. The first is game flow – to get the game moving. Torres (2012) argues that the aesthetic value of a game is not some supervening quality, but is definitive of that game. Referees must play their part in ensuring that the aesthetic values as well as the moral values prevail. A dominant, (although contested) aesthetic value of rugby originates in the expansive passing and running opportunities the game affords. Long disruptions caused by scrums devalue the game. The second is the safety of the players. The scrum can be a very dangerous phase of play and the referee has a duty to protect players from injury. The referee must decide if it is safe to allow the advantage to unfold or allow the scrum to 'breathe'. If the risk is too great, he must stop the play immediately. The capacity to make a valid and reliable 'harm-prevention' call is similarly difficult because a referee cannot definitively predict whether an injury (serious or otherwise) is likely to occur. He will therefore err on the side of caution. The advantage law provides an important, but limited, solution to excessive disruption of a game by scrums. Moreover, the advantage law favours the attacking team. This is *prima facie* positive; however, we believe that it threatens fairness in certain circumstances[12].

Knowing

Thus far, we have concentrated on the seeing – the 'superior view' that partly grounds their authority. Given the difficulties identified, their 'specialist skills' become more important.

> *Specialist skills*: Professional umpires are usually ex-players, are given special training, and their decisions are continually scrutinized by professional bodies. Thus, umpires have specialist skills that are enhanced by the build-up of scrutinised umpiring experience (Collins 2010: 136).

Critics are perhaps not sensitive to the distinction drawn by Collins between 'superior view' and 'superior skill'. They believe that referees make poor calls because they 'don't understand the scrum' or do not have 'empathy' for players. They argue that because certain referees have not played in the scrum they do not know what goes on. It is not that they do not know the laws, but rather do not know *how* to apply the laws. The former is a form of propositional knowledge – knowing that, whilst the latter is a form of procedural, practical, craft or tacit

knowledge – knowing how. Know-how is evidenced *in* action. Winch (2016: 566) argues that assessing know-how involves judging the action or performance – it cannot be discerned by a 'theory' test.

How do we know that a referee is good at refereeing a scrum?

Mumford (2006: 183) argues that when making a judgment call "the object of the judgement is something the existence of which is independent of the judgment". We have argued that on occasions the metaphysical state of affairs (the truth maker) is not accessible to the good referee, the poor referee, the referee reviewers or anyone else for that matter. Good referees are the ones that *do* see a player F-ing (violating law 20.3 c) when it *can* be seen, but good referees also must make a call when they cannot see a player F-ing[13]. Some argue that good referees do not need to *see* in the way we have described above, but know what goes on despite being unsighted. What kind of knowledge is this and what 'truth maker' is required to validate resultant judgments?

One view is that one acquires important knowledge through scrummaging. In other words, 'one knows what goes on in the scrum because one knows how to scrummage'. This explanation is problematic for at least two reasons. Firstly refereeing, like instructing, coaching or teaching demands a level of expertise about something one cannot do oneself. The referee currently considered the best in the world, like many other top referees (and coaches), did not play in the scrum at the elite level or otherwise.[14] This does not mean he cannot have important knowledge about it. Secondly, referees do not need to be able to scrummage, but do need to know how to scrummage in order to referee the scrum effectively. Scrummaging and refereeing the scrum are different tasks and involve different types of know-how. Knowing what happens in the scrum, knowing how the forces interact, knowing what tactics players use, knowing how stature and technique affect any given scrum is what a referee requires rather than the ability to scrummage excellently. The different 'know-how' is acquired differently.

Referees' know-how is acquired through structured and reflective practice. Their ability and expertise develops over time. As they gain experience officiating (starting with lower level games), their ability improves, they develop a 'feel' for the game and an understanding of how the game 'should' be played both from a lawful and aesthetic perspective. They have a period of 'apprenticeship' and progress when they are competent to do so. They are subject to continuous evaluation and training. Only the best progress to officiate at the elite level. Good referees can call on the 'spirit' of the law in addition to the letter of the law (see Russell 1999) and they receive clear directives about how to apply the laws[15]. The referee's high standards should be stable within an acceptable range and calls will vary according to the circumstances. The refereeing apprenticeship or development programme requires referees demonstrate their ability and continuously review and explain their decisions and actions to a review panel who evaluate and provide feedback.

1 The truth maker for the call – 'player A was F-ing' is the independent fact that player A was
2 indeed F-ing. If the truth maker for the call is not available or is in doubt, can we still claim
3 that 'Referee X was right to make the call that player A was F-ing'? If there is no truth maker
4 available for the call, can there be a truth maker for the claim that the call was right? Assessors
5 and critics do make judgments about referees in the absence of the 'mind independent state
6 of affairs' but how do we know they are right? The explanation lies in a shift from a "factual
7 explanation" to a "judgmental interpretation" of truth makers (Mumford 2006: 182). 'The
8 referee is the sole judge of fact and Law during a match' embodies the 'judgmental
9 interpretation'. Once the referee, having consulted all the resources available, makes a call,
10 that call cannot be overturned. The post-match review process, however, can judge that the
11 referee made poor calls (although the result will stand). The panel might give the referee
12 advice about what to do next time and/or stop them from progressing to higher profile
13 matches. The 'judgmental interpretation' of 'truth maker' is not wholly satisfactory, especially
14 in cases where there is a decisive mind independent state of affairs.

15 ***Example***

16 On 18th March 2017, a game of rugby union between France and Wales became a paradigm
17 example of the problems we are highlighting here. Wales were leading the game, 18 points
18 to 13, with a few minutes to go. France had home advantage and could win the game if they
19 got seven points[16]. Wales were penalised close to their own goal line in the middle of the
20 field. France took the strategic decision to opt for a scrum. A lengthy sequence of calls and
21 plays followed including 12 more scrums. Each call was potentially decisive. In other words,
22 the match result rested on the referee's next call. Many of the decisive calls involved the
23 interpretation and application of scrum laws such as 20.3 above. The ultimate outcome was
24 that France won the game after an unprecedented sequence of plays[17].

25 Post-match analysis and debate focused on the process. *If A then B, if C then D*. In other words,
26 if there is an offence, then penalise the offender. If there is a repeated offence, use the sin
27 bin. If there is an injury, follow the Head Injury Assessment protocol. Our concern, however,
28 is not whether the referee *Bs* in response to *A*, but rather whether *A*? There are numerous
29 events in the sequence where the factual 'truth maker' was not available or is in dispute.
30 There were 13 scrums in the sequence above and none called against France. On occasions,
31 the referee re-set the scrum because there was no obvious offence. Subsequent analysis of
32 television coverage validates those decisions, but other decisions are significantly
33 questionable. On two occasions, television replays are suggestive of France offending –
34 binding offence – but they are not penalised. The referee could not be certain that France
35 'caused' the binding offence, but it 'looked' as if they did. We argue that in this sequence (and
36 in other scrums) the referee penalised Wales when it looked like they offended, but did not
37 penalise France when it looked like they offended. Were the calls correct? In the absence of
38 the 'factual truth maker', the referee makes a call that he believes he can 'justify' and will
39 achieve a consensus among the reviewers (judgmental interpretation). France were

dominant, they were on the attack, they had nothing to gain from offending, they had home field advantage. Only a courageous referee would have called against France, but courage is an important virtue and a courageous referee might have better served justice. We are not evaluating this referee's character, but illustrating a systematic issue with calling in the absence of, or when the truth maker is in doubt. At certain times during a game, calling a scrum can have a decisive impact and it is a heavy burden for a referee to carry[18]. When in doubt referees make calls that are easy to sell. More controversially, referees make calls they can sell even if they have a strong suspicion that it is not the right call.[19] There was a palpable sense when watching the above sequence unfold that play would continue until France scored, or they made an obvious error. Essentially the contest was over before France scored the decisive points.

The source of the problem – players

The referee has an unenviable task. The task is more difficult because of the impact the scrum laws have on players. The scrum is a contest within a contest. Each team seeks to gain a competitive advantage, or at least minimise the competitive advantage of their opponents. The scrum is part of the restorative justice process[20]. The laws of the scrum reflect this restorative goal by favouring one side over the other. Coaches select players in specific positions because they have the skills and stature that will help translate structural advantage into competitive advantage for their team and stop similar translation for their opponents. Teams want a dominant scrum and dominant players mainly, but not exclusively, the specialist prop forward positions (shirt numbers 1 and 3). The scrum can be lost ('against the head') when the team advantaged by the laws fail to convert structural advantage into an actual advantage. This can happen fairly because of a mismatch in strength, power, technique or skill or unfairly because of a poor call. Having a dominant scrum also means that close calls are likely to go in your favour which in turn translate into points on the scoreboard.

We have argued above that it can be very difficult for referees to detect foul play in the scrum. Here we argue that it can be impossible for players to comply with the laws of the scrum, even if they really want to. Some of what happens to players' bodies during the scrum is outside their control. External forces from the opposition and from their own players can literally *force* them into a position against their will. The sources that 'force' a player into such positions may include:

1. The combination of forces in a legal scrum
2. The player might slip because of a poor playing surface
3. The superior strength and technique of the opponent
4. The result of an unlawful action by opponent
5. Any combination of the above

The laws of rugby (and most of the rules of other sports) are strict liability, or absolute liability laws. In other words, the intention of the offender or their negligence is not a factor. Law 20.3

(c) above makes no reference to a player's intention. Players in rugby and other sports are routinely punished (and rightly so) for actions they did not intend, for example, a high or late tackle. In relation to some laws it was arguably in the offender's power not to instigate the movement, which led to the state of affairs called as foul play by the referee. In the scrum, however, such freedom is not always available. Players might muster all their effort, strength and skill to avoid folding or standing up, but forces may conspire against them. They simply cannot avoid falling foul of the law. We believe that in attempting to legislate the scrum, the legislators (World Rugby) have failed to recognise an important flaw in their laws. Fuller (2000) provides valuable insights into the legislative process that helps substantiate our claim. According to Fuller (2000: 93), "…the attempt to create and maintain a system of legal rules may miscarry in at least eight ways"; in other words, there are eight features that must be avoided[21]. The first is not to make any law at all – so that every issue is decided on an ad-hoc basis. Such a legal system might be like the 'moral' particularism favoured by Dancy (2004), but morality and the law differ in important and significant ways. Moreover, there would be no 'sport' at all under such a system (no constitutive rules). Rules or laws bring sports into existence. Among the eight listed by Fuller, the sixth and the eighth flaw are most relevant for our discussion. The sixth flaw is to create "rules that require conduct beyond the powers of the affected party" and the eighth is "a failure of congruence between the rules as announced and their actual administration" (Fuller 2000: 93). Our claim is that the scrum is governed by laws that, on occasion, players simply cannot follow. This is an empirical claim about forces, muscles, angles and not a claim about mental states or intentions. It is sometimes impossible for individuals to withstand the forces and pressures generated by a dominant scrum created lawfully or unlawfully. According to Fuller (2000: 93), there can be no rational basis for insisting that someone ought to obey a rule that "commanded the impossible". Players, specialist coaches and even equipment manufacturers work to improve strength, grip, power and technique to try to meet physical demands, but on occasions players are powerless in the face of the scrum forces. It is likely that this has always been the case in scrums, but recent law changes have made the situation worse. They do not provide the opportunity for players to 'wrestle' in order to 'find' a strong position that will help them exert and/or manage force. Law 20.1 (f) prescribes "front rows coming together" (World Rugby 2017: 141). The current scrum cadence orchestrated by the referee is, 'crouch, bind, set'. This was introduced in 2013 to replace the 2012 cadence, 'crouch, touch, pause, engage'. These changes came about as a direct result of players having been coached to 'hit' at the coming-together phase to gain the upper hand. Such an action would often lead to scrum instability (and subsequent collapse) and an increased likelihood of sustaining a neck injury. By introducing the 2012 cadence, front rows were brought closer together, reducing opportunities to charge at one's opponent (an unlawful action). With the 2013 change, prop forwards were further limited in their pre-scrum 'shenanigans', as they had to pre-bind to their opponent. Such an action provides officials with an increased chance of 'seeing' binding infringements.

We have also made the empirical claim that it is impossible for referees to administer the laws as announced (flaw eight) because they do not have access to the relevant causal state

of affairs. Above, we discussed an example of a scrum where the attacking team appeared to be offending (standing up). It would have been reasonable to draw the conclusion that because their forward motion was being resisted, the laws of physics determined they stood up. We claim that it is reasonable to conclude that in this situation the referee did not 'call' the standing offence because the French team were 'dominant'. . It would have been very difficult for the referee to 'sell' the call given the match circumstances. The fact that France were playing at home in front of a big crowd and were behind might all contribute to the decision making. Garicano *et al*. (2005) found that (soccer) referees favour home teams by, among other things, shortening games when the home team is ahead, lengthening games when they are behind (the above game lasted 20 minutes longer than normal). We are not claiming that the referee in *this* game intentionally favoured either team, but given the complexity of the scrum we do claim that there is evidence of incongruity between the scrum laws and their administration in this case.

As a consequence of these key flaws in scrum laws, players are in the invidious position of knowing that they may be penalised despite their best efforts to comply with the laws and/or escape punishment when they have deliberately violated the laws. They are to a certain extent at the mercy of both the forces in the scrum (flaw six) and the referee's potentially unreliable reading of the situation (flaw eight). Consequently, the scrum has become notorious for gamesmanship, rule-bending or 'the dark arts'. Moreover, coaches analyse the performance of referees and identify that referee A, when given a choice between calling X or Y is likely to call Y. Coaches even alter team selection in the scrum based on which referee is adjudicating and/or make substitutions during games in response to perceived nuances of the referee's calls[22].

The scrum and game reasoning

Empirical research into the morality of athletes in general, and male contact sportsmen in particular, confirm Morgan's (1994) idea of an ethos of radical instrumentalism within sports. Shields and Bredemeier (1995: 113) describe a "moral atmosphere of sport" characterised by instrumental rationality or in Kohlberg's (1981) terms an 'obedience and punishment' or 'self-interest' moral orientation. This 'bracketed morality' or 'game reasoning' is characterised by transference of moral responsibility to the referee, 'It's only illegal if I get caught'. Such instrumentalism may be disapproved of publically, but unlawful acts that go undetected are often "admired and approved of" by spectators especially if successful (Reddiford 1998: 225)[23]. Given the inherent justice and safety jeopardy of the scrum that we have outlined above, players 'do what they have to do' to survive and dominate. To this end, scrums are a paradigmatic example of a non-verbal 'moral dialogue' (Haan: 1983) in sport whereby the terms of the interaction are 'thrashed out' by the players' physical acts. There is a dynamic of pressure, resistance, force, counter-force as both packs seek to dominate each other *and* get the referee onside. The methods used in the dialogue include legal techniques, but also include 'bending the rules' and straightforward rule-breaking. Russell (2017) coins the term

‘competitive shenanigans’ to describe tolerated morally questionable behaviours in sport. The reason ‘shenanigans’ are tolerated is that they add something to the contest. They contribute to the enjoyment, competitive intensity and tension. It is clear, at least among a certain constituency (the front row union), that certain strategies to ‘gain the upper hand’ are celebrated and valued. Props with the guile, strength, toughness and brutality to dominate achieve legendary status[24]. Russell (2017) argues that when such shenanigans detract from the contest they ought not to be tolerated. The game of rugby has changed significantly over the years. In the past, the shenanigans produced quick strategic advantage. Currently, such shenanigans are more likely to result in slow play, re-setting of scrums and penalties. Each strategy has a degree of jeopardy attached because the players are operating under the situation where the referee's judgment is seen as a lottery. It is not that the laws are indeterminate – what should be done if X is clearly stated. The problem is whether referees can decide if X. The referee, as Russell (1999) argues, can be guided in his decision-making by more than the laws. In the case of the scrum, sometimes the referee simply cannot reliably apportion blame. He can, and ought to use his discretion, but the discretion should ultimately aim at "fostering the excellences embodied in achieving the lusory goal" (Russell 1999: 35). Referees are encouraged and directed to reward ‘positive’ play. Rugby has so many aspects, however, that a team that plays with flair and creativity in general, might seek to compensate for a weak scrum by using ‘shenanigans’. Referees already exercise significant discretion in the scrum – allowing ‘failed’ scrums to continue, but they have a duty of care to the players which means that they must not allow dangerous situations to develop too far. A referee who allowed a collapsed scrum to continue in order to improve ‘flow’ might be putting players at risk.

More than a game

It will be interesting to see how governing bodies tackle some of the difficulties identified above. The scrum is a flawed part of the game because the ‘factual truth maker’ is not available for crucial and game-changing incidents. In the great scheme of things, need we really worry about poor calls? The example we started the paper with adds another dimension to the question. The question about who was responsible for the foul play (and therefore giving the opponents a strategic advantage) becomes who was responsible for causing this life-threatening and life-changing injury. Following Hampson's injury there was a tribunal to investigate the circumstances surrounding the injury and the care he received afterwards. Below are extracts from the tribunal considering the circumstances of his injury which further illuminate the discussion above (extracts taken from Kimmage 2011: 39-40, 73, 181-183).

- Barrister questioning Cusack, Matt Hampson's direct opponent during the fateful scrum.

Cusack

1   *It was their put-in. We were trying to disrupt them.*

2   **Barrister**

3   *Is that going in on the angle to bore underneath his chest with your head, Mr Cusack? Were*
4   *you trying to push him up and out of position? Was the objective to try and bend Mr Hampson*
5   *in two?*

6   **Cusack**

7   *I would never have taken you for a prop, barrister.*

8   **Barrister**

9   *It's called the dark art of scrummaging I believe.*

10   **Cusack**

11   *Some might say.*

12   **Barrister**

13   *And you employed that art against Mr Hampson?*

14   **Cusack**

15   *Matt knew how to take care of himself, believe me.*

16   •   Barrister questioning Tony Spreadbury, the referee overseeing the training session.

17   **Barrister**

18   *Why?*

19   **Spreadbury**

20   *If memory serves me correctly, it was for going in on an angle and taking the scrum down.*

21   **Barrister**

22   *Isn't that cheating?*

23   **Spreadbury**

24   *It was very competitive. They were all fighting for their places. They all bend the rules and*
25   *suffer from collective deafness.*

26   •   Barrister questioning Matt Hampson.

27   ***Barrister***

1   But have you done it before? *(Slipped a bind)*[25]

2   ***Matt Hampson***

3   Yes, I think all props have tried it.

4   ***Barrister***

5   But if there was no point in doing it, why did you try it?

6   ***Matt Hampson***

7   I did it because I got away with it, but I would not get away with it with Tony Spreadbury. He's
8   too good a referee[26].

9   ***Barrister***

10   But weren't you penalised at least once during the session for failing to take a correct bind?

11   ***Matt Hampson***

12   Yes, I was.

13   ***Barrister***

14   (*Smiles*) So he's not that good a referee?

15   ***Matt Hampson***

16   Well, like I say to the young lads at Oakham – you do what you can get away with. You bend
17   the rules to your own advantage.

18   ***Barrister***

19   Because that's what you were taught?

20   ***Matt Hampson***

21   Yes, it was.

22   ***Barrister***

23   To be hard and ruthless and dominant?

24   ***Matt Hampson***

25   Yes.

26   ***Barrister***

27   To never take a backward step?

1 *Matt Hampson*

2 Never.

3 **Barrister**

4 I put it to you, Mr Hampson, that you were prepared to use every trick in the book to gain an
5 edge and were both cheating like buggery[27]?

6 *Matt Hampson*

7 Cheating is a strong word.

8 **Barrister**

9 What word would you use, Mr Hampson? Be honest now. Tell the tribunal your exact
10 thoughts as you looked Mr Cusack in the eye (Mr Cusack was the opposing prop in the fateful
11 scrum).

12 *Matt Hampson*

13 My exact thoughts? That's easy, Mr Barrister. They were the same for every opponent for
14 every scrum. I would have looked at Michael Cusack and thought: I'm going to drive your head
15 through your fucking arse.

16 Hampson's story is a fascinating and disturbing read. The transcripts from the tribunal are
17 particularly interesting and revealing. The barrister was (in this section and others) trying to
18 find out why the scrum collapsed. The barrister was looking to see if the 'factual truth maker'
19 could be established using methods unavailable to referees (testimony under oath). The
20 barrister is asking whether someone's actions led directly to the collapse of the scrum, could
21 we consider these actions an offence, and can we identify an offender? There is far more
22 resting on the answers to these questions than the result of a game. We do not have the
23 methods to investigate each scrum forensically, but it is clear that there is a 'truth maker'.
24 Although there have been changes to mitigate risk, the scrum remains a phase of play that is
25 controversial. The laws are difficult/impossible to follow and the consequence of a collapse
26 can be extremely serious. Moreover, because the 'shenanigans' or 'cheating' of players which
27 increase the risk is difficult to detect, this serves to increase the risks further.

28

29 **Some possible changes**

30 Here are four ways in which the situation could be improved. One change that is in its infancy
31 is the re-setting of the scrum (with the same team throwing in) after the scrum has wheeled
32 more than 90 degrees. Consequently, teams are now focussing on pushing their opponents
33 off the ball as opposed to simply wheeling the scrum to gain a turnover (their throw-in at a

new scrum). Another way that World Rugby could improve matters is to simply emphasise the existent Law 20.1 (f), as mentioned above. This would see front rows coming together or 'folding in' in a controlled manner. There would be little or no opportunity to generate a 'hit' and the increased upper-body stability would enhance lower-body stability, as front-row players' feet would be in a strong position to push (i.e., under their torso). Arguably, teams use the scrum as a means to winning penalties. Given that "the purpose of the scrum is to restart play quickly, safely and fairly, after a minor infringement or a stoppage" (World Rugby 2017: 140), a reduction in sanction for scrum infringements could be introduced. That is, all scrum infringements, voluntary or otherwise, could be free-kick offences only. Team would then be unable to kick for goal following a scrum offence by their opponents. The fourth and final proposal centres on the 'aesthetic'. The referee could be 'allowed' to reward the team who was going forward prior to any offence (major or minor) occurring. Such an approach might lead teams to focus less on 'shenanigans' and more on positive behaviour.

Conclusion

Our aim in this paper was to argue that the scrum in rugby union is a facet of the game that causes significant and intractable problems. To officiate the scrum correctly, referees need information they cannot access. The factual 'truth maker' is unavailable to them. Consequently, they must do the best they can and seek to make decisions that will gain the approval of the relevant bodies (referee assessors). A judgmental interpretation truth maker comes into play. Good decisions are decisions that can be justified or 'sold' in the absence of a factual truth maker. Aesthetic considerations can sometimes trump fairness considerations. This is justifiable in some cases, but not others. Safety concerns also exacerbate the difficulty with officiating the scrum. The scrum is dangerous and the referee has a duty of care. Enacting this duty can sometimes be difficult for the same reasons above – the referee cannot *see*. Justice and care judgments must be balanced against the aesthetic considerations. This is a heavy burden to carry. Players exacerbate the problem. The scrum demands the impossible and often punishes the innocent. Players therefore do what they can under such constraints and engage in a 'moral dialogue' with each other that involves 'competitive shenanigans', bending the rules, cheating and the use of other means to get the referee 'onside'. Rugby is 'just a game' and nothing important beyond the game rests on 'game rules'. On the contrary, individuals may suffer serious 'game-transcending' injuries if games are not properly officiated and referees and other players may find themselves culpable for such injuries[28].

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[1] We are grateful to the editor and two anonymous reviewers for their helpful comments and feedback.

[2] The human spinal column consists of 33 vertebrae (bones). There are seven cervical vertebrae (neck bones) C1-C7. C1 is the bone at the base of the skull. Injuries in the neck region are the most serious. Hampson's spinal cord was severed at C4/C5 and he has no use of his legs (tetraplegic- quadriplegic = loss of use of all 4 limbs) and cannot breathe without a ventilator.

[3] Law changes include 2008 – pre-gripping in the lineout; 2011 – dangerous/high tackles; 2012 – scrum cadence: crouch, touch, pause, engage; 2013 – crouch, bind, set; 2016 – clearer/stricter sanctions for dangerous/high tackles.

[4] Rugby union has laws rather than rules.

[5] Rugby is a market town in the county of Warwickshire in England and it is the home of Rugby School and thought to have been the birthplace of rugby football.

[6] Wales have only beaten New Zealand three times in 33 games, most recently in 1953 and the Wales side of 1978 is one of the best Wales' sides ever and perhaps one of the best rugby sides ever.

[7] Perhaps the most infamous example of a refereeing error (for soccer fans), or at least a failure on the part of the referee to adjudicate validly, occurred in a World Cup game in 1986 between England and Argentina. Diego Maradona, considered one of the greatest ever players, used his hand to score a goal. The referee mistakenly awarded the goal.

[8] In rugby, the referee uses a range of hand signals to indicate to players and spectators what decision they have made. The signal for a high tackle is a raised arm to indicate which team committed the offence and the other arm across the neck.

[9] This was partly because there was no reliable and convenient means to judge the validity of the call.

[10] American golfer Lexi Thompson was penalised after a TV viewer e-mailed officials to inform them of Thompson's foul play. http://www.bbc.co.uk/sport/golf/39476590 accessed 5/04/2017

[11] At the elite level, assistant referees are fully qualified referees in their own right. They are capable and proficient. At grass roots level, the assistant referee is often a non-qualified volunteer.

[12] Davis (2007) challenges the view that a 'type' of skilful play ought to triumph. Strategic intelligence is also to be celebrated. His examples relate to football (soccer), but a similar argument can be made in relation to rugby. A side who 'sticks the ball up their jumper' and plays a non-expansive mauling game are considered less skilful and less aesthetically valuable (even if very successful) than teams who play a quick, expansive, running and passing game. In rugby, the latter is considered more attractive and marketable than the former.

[13] Referees cannot allow the scrum to continue indefinitely because of safety and aesthetic reasons.

[14] We are not claiming that the experience of playing could not help, but it is not decisive in the way critics claim.

[15] World Rugby's Designated Members of the Rugby Committee Governing Bodies

[16] The only way to gain seven points is to score a try (5 points) and then convert (2 points). A converted try is like a touchdown followed by a field goal. In rugby however, the conversion must be taken in line with there the try is scored. Converting a try from the edge of the field of play is more difficult. In this situation, France wanted to score a try in the centre of the field to guarantee a successful conversion. Another option for France was a penalty try. The referee awards a penalty try if he believes that an offence by the defending team stops a certain try. The conversion is taken in the centre of the field regardless of where the offence took place. France's strategy of repeatedly choosing a scrum aimed at gaining a penalty try. If the referee believed that France would have pushed the Welsh pack over the goal line, but Wales unlawfully stopped them from doing so, he would award a penalty try. The French players asked the referee to award a penalty try, and the referee explained why he was not willing to do so.

[17] For a detailed analysis see- http://www.walesonline.co.uk/sport/sport-opinion/wayne-barnes-big-decisions-right-12763778 (accessed 23/03/2017)

[18] Craig Joubert made a call in the quarter-final of the 2015 Rugby World Cup between Scotland and Australia. He awarded a penalty to Australia – they kicked for goal and won the game. He rightly resisted using the big screen to overturn his initial call of offside against Scotland (procedurally correct), but the correct call should have been a scrum award to Australia (although a forensic examination of TV coverage would have been required to get the call right). Fans at the stadium could see this and reacted aggressively. Joubert departed from the custom of shaking hands with players at the end of the match and ran off the pitch – perhaps in fear of the reaction of players and fans.

[19] The second author is a former elite-level rugby union official and continues to officiate as a TMO. The issue of 'selling' a call was often discussed in performance reviews. It is easy to 'sell' and award a penalty kick to the team moving forward in a scrum even though it may initially appear that the attacking loose head prop stands

up before his direct opponent (the defending tight head prop). XXXXX recalls awarding a penalty kick against the attacking team only to be 'told' by his performance reviewer that, while correct in Law, the defending team should have been punished in order to avoid unnecessary controversy (the call would 'look' wrong). We accept that during a review, television pictures might reveal new information that, if available at the time, could have resulted in a different call, but this is does not challenge the thesis here.

[20] We could say so much more about this, but it would take us too far away from the central issue.

[21] We are very grateful to John Russell for his valuable input in relation to this point in particular, but also to his comments and suggestions on the argument more generally.

[22] Wales did not select Gethin Jenkins (over 100 caps) for a Test match when it was announced that a certain French referee would be officiating. The coaches felt that the referee had incorrectly penalised Jenkins on numerous occasions in a recent club game and took precautionary steps to avoid a repeat.

[23] One infamous example of this type of behaviour featured a player called Neil Back. In 2002 at the end of the European Cup Final, Back deliberately committed a foul which would more or less guarantee victory to his team if he got away with it. He did get away with it, and his team won. It was clear, however, to all TV viewers that he had offended. He was loath to accept the label of cheat, instead describing his actions as a form of gamesmanship.

[24] Wales tight head prop Adam Jones was considered one of the best in the World in his position. He could dominate his opponents and they were often penalised. A recent change in the engagement sequence meant that Jones could no longer dominate. The changes eliminated Jones' strategy of 'hitting' and getting immediate dominance. http://www.walesonline.co.uk/sport/rugby/rugby-news/adam-jones-wales-axing-what-7981732 accessed 5/04/2017

[25] Slipping a bind was, and is an offence, discussed earlier in the tribunal.

[26] Tony Spreadbury was a referee who was attending the training session at the time to provide his expert input to assist with scrum practice. He was also a paramedic and his actions saved Matt Hampson's life.

[27] The barrister is quoting previous evidence by Richard Cockerill, a coach and former hooker.

[28] In January 1998, Richard Vowles, 29, was injured in a local derby game. Consequently, he is now wheelchair-bound. Mr Vowles took the referee to court for breach of his duty to take reasonable care for the safety of front-row players. http://www.telegraph.co.uk/news/1416031/Paralysed-rugby-player-wins-high-court-case.html accessed 21/07/2017