



# A SPORTING CONTEST

## Football hooliganism - who won?

Robert Pinkney

Has the curbing of football hooliganism been one of the more successful areas of the Government's law and order policy? The occasional outburst may still occur, as in Dublin last year, but for the most part the disorderly mobs on the terraces, using violence against persons and property, appear to have gone. They have been transformed into, or been replaced by, docile customers seated in orderly rows, and doing nothing more harmful than the average pantomime-goer who jeers the villain on the appropriate cue. If what was perceived to be a 'problem' in the 1970s and 1980s has now been 'resolved', how has this been achieved, and what light does it throw on the policy-making process in Britain?

### Taking sides

In the early 1980s the existence of the problem was all too evident, with growing violence inside and outside football grounds and the behaviour of spectators abroad driving British football out of Europe. On the prescribed remedies, there was little common ground between the Government and its critics. To the Government, it was a straightforward 'law and order' problem, which required greater powers for magistrates and the police, the use of closed circuit television, restrictions on the availability of alcohol, perimeter fencing, and possible compulsory identity cards. This was caricatured as a 'fortress football' approach, with stadia made difficult to enter, and the movement and behaviour of those who were able to gain entry tightly controlled. To the critics, these remedies did nothing to tackle the social problems from which hooliganism sprang. At a micro level, there was a need for a 'community approach', with closer links between football clubs, schools, local authorities and youth clubs, so that spectators could take a pride in the clubs which represented their community and maintain the standards of behaviour which the clubs expected. At a macro level, the solution was seen in the establishment of a just society.

'If problems such as football

hooliganism are to be effectively tackled without doing further damage to the social fabric, the achievement of greater equality in all these spheres (class, sex and age group) is necessary in contemporary Britain'. (Murphy et., al., 1990: 244-5).

By the 1990s neither set of solutions, as coherent packages, appeared to be likely to achieve the desired results, though individual parts of each package might do no harm. The more egalitarian society was ruled out by a fourth Conservative election victory, perimeter fencing had contributed to the tragedy at Hillsborough, and the idea of compulsory identity cards, apart from the revulsion it might cause among libertarians, was shown to be impracticable and perhaps also showed the limits to the feasibility of the Big Brother state.

### A subsiding problem?

Yet if several of the proposed solutions failed, or were not even attempted, the problem itself appeared to subside. We may qualify this by referring to violence in the streets partly replacing violence in the stadium, and to a level of arrests which is still high by any standards except those of the past twenty years, but actual or attempted pitched battles between rival

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spectators is no longer a regular feature of Saturday afternoons. Much of the credit for the improvement is often attributed to the Taylor Report (HMSO, 1990), but what may be important is not just the contents of the report but the return to the traditional practice of setting up an impartial inquiry and seeking a consensus, rather than making policy

through consulting partisan think tanks or through instant reactions to immediate problems, and then legitimising the policy through a parliamentary majority. By putting the focus on safety rather than law and order or social harmony, the Taylor Report helped to change the order of priorities.

If identity cards and perimeter fencing were now rejected, two of the basic pillars of the 'fortress football' approach favoured by the law and order lobby were undermined, but there was also a retreat by the liberal, egalitarian school. The voices demanding the repeal of recent anti-hooligan legislation became fewer, even though it meant that football-related offences were punished more severely than comparable offences elsewhere, and little attention was paid to a Select Committee proposal for a gradual de-segregation of supporters (though what could be more illiberal or inegalitarian than branding human beings in this way?). Perhaps most significantly, the voices against compulsory all-seater stadia were muted, although it was clear that the majority of spectators did not want them and that there was little evidence that standing on the terraces involved a greater risk to life and limb than driving down the M1 to attend a match.

### Consensus politics

It is tempting to conclude that the outcome was an admirable one, with extreme, unrealistic positions on each side abandoned in favour of a consensus woven together by no less a consensual figure than a High Court judge. To consensualists this might seem preferable to the more frequent policy outcomes, in areas such as industrial relations, local government reform, privatisation and financial deregulation, where few concessions have been made to those who disagree with the Government. But is it as simple as that? In an era of deregulation, football is subject to a range of controls that would not be readily acceptable in other walks of life, some of which impose severe financial burdens that threaten the survival of some clubs, including the cost of ground improvements, reduced ground capacities and extensive policing. And when some of the costs are passed on in higher admission charges, watching our



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national sport is put beyond the means of much of the population, including many schoolchildren whose absence may have long-term effects if club loyalty is not developed at an early age. Other changes, such as the removal of traditional bank holiday local derbies, the lengthening of intervals before cup replays and the use of penalty shoot-outs to avoid second replays, appear to be designed to meet the convenience of the police, in contrast to recent legislation in other areas which has led to more people in a variety of other occupations having to work 'unsocial' hours to meet the needs of the market economy.

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## Criminalisation of sports field violence

Simon Gardiner

Over the past few years there has been an increase in the prosecution of players for acts of violence on the sports field in contact sports. This has occurred most notably in the amateur game which reflects a greater likelihood that offences are reported to the police and that the Crown Prosecution Service will decide to prosecute compared to a professional incident. There have however increasingly been actions brought in the professional world of football and rugby. The conviction of Duncan Ferguson in Scotland for head-butting an opposing player off the ball, has probably been the highest profile case. This article will evaluate the legitimacy of the criminal law encroaching on to the sports field. The following article by Mark James will consider the practical issue of prosecutorial discretion in prosecuting sports field violence. The essential question concerning the legitimacy of legal intervention is whether the sports field can be seen as a distinct private area where the criminal law cannot justifiably intervene, or whether sports field assaults should be prosecuted in the same way as if they had occurred in the streets.

tionalising particular incidents by meticulous dissection and analysis - for example the saturation newspaper coverage and the never ending 'slow-motion' replays and expert analysis on television.

Most modern sport has grown out of unregulated and mass participatory games where high levels of violence were customarily tolerated. In comparison, modern sport is highly regulated and controlled, both by a set of official rules external to players and self-control by the players themselves. A comparison with the recent past indicates that changes in the rules of contact team sports have outlawed practices that were part and parcel of the game in the 1950s, such as shoulder charging of goalkeep-

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ers into the net by burly centre-forwards in football and the running and wheeling of the scrum in rugby. The use of physical force is however an integral part of sport and has constantly been present in one form or another and reflects the accepted values of masculinity and competitive force. The issue of how physical force becomes characterised as physical violence and therefore potentially not having legitimacy is complex. However severe physical contact on the sports field does have a cultural specificity and must be understood within its temporal and geographical context.

#### The law's role is on the sidelines

The opposing position is that the law should not intervene and encroach on the sports field, which should not be subject to the gaze of the criminal law. There are those who are absolutist in this assertion. For example in the Ferguson case a

#### The law does not stop at the touchline

This latter position is supported by the view that the law does not stop at the touchline and that the criminal law should be actively involved in the regulation of violence on the sports field and should be prioritised over the intervention of the appropriate supervisory body of the sport in question. There is legal authority that holds that the rules of the game do not make that which otherwise would be illegal, and this position has recently been confirmed by the Law Commission. This support for greater involvement of the law in regulating conduct on the sports field is predicated on the belief that some sports are increasingly violent. This may be a popular perception and one that too easily legitimises legal regulation, but is the game really any more violent than in the past? The media have played some role in reifying and sensa-



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# ...FIELDS



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number of commentators argued that the incident was one of a type which happens commonly on the football field. However increasingly, a distinction is made between off-the-ball incidents, which can be seen as non-consensual acts of retaliation outside the rules of the game and therefore open to prosecution, and secondly, on-the-ball incidents, where consent may operate to negate liability.

The concept of consent is problematic: should it be constructed objectively with a set of criteria determined by the courts and applied to particular incidents, or is it essentially subjective, where players assume certain risks of physical contact within either the rules or the wider working culture of the sport?

The Law Commission in their latest examination of criminal liability in sport, see the rules of the sport playing an important role. They "propose that a person should not be guilty of an offence of causing injury if he or she caused the relevant injury in the course of playing or practicing a recognised sport in accordance with its rules." Whatever the position, sporting bodies and authorities are seen by this body of opinion as the more effective mechanisms for controlling excessive behaviour on the sports field and there is a need for them to either use existing disciplinary procedures more rigorously or develop effective procedures that can legitimately limit the intervention of the criminal law. The

involvement of lawyers is of course a vital issue. It has been argued that there is a risk that their association adversely affects the efficacious qualities of such mechanisms.

### Conclusion

It is difficult to justify no intervention of the criminal law to regulate sports field violence. However there is a danger that an increased role for the criminal law on the sports field will lead to the excesses of juridification where the interactions in sport, considered to be essentially constructed in terms of social relations, become primarily understood as legal relations and the intrinsic dynamic qualities of sport, such as its unpredictability and exploitation of human error, will be adversely affected. ■

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## Prosecutorial discretion and sports-field violence

Mark James

The recent conviction and imprisonment of the Scottish International footballer, Duncan Ferguson, for an assault on a fellow player during a Scottish Premier Division match, is the most high profile example of a growing trend towards the use of the criminal law to resolve issues of on-field violence in contact sports. It also highlights the inconsistent way that the criminal law is becoming involved in this area.

### Duncan Ferguson

Ferguson, of Glasgow Rangers, and John McStay of Raith Rovers, were challenging for the ball, when it went out of play. As play continued upfield, Ferguson headbutted McStay. The incident was unseen by the match officials and no serious injury was caused. At a Scottish Football Association disciplinary hearing, Ferguson was found guilty of foul play and banned for twelve matches.

The Glasgow and Strathclyde district Procurator Fiscal initiated a prosecution for assault. Ferguson was convicted and sentenced to three months in prison, becoming the first British international footballer to be imprisoned for on-field violence. His appeal against sentence was dismissed. The twelve match ban, which was suspended until after the outcome of the criminal trial to avoid undue prejudice, was then activated. A part of this ban has since been set aside as a result of a Judicial Review which found the Scottish Football Association had not properly followed its own disciplinary procedures. Most players receive bans of only three to five matches.

Ferguson's case illustrates prosecutors at their most active. There was no injury and no complaint, yet he was still convicted and suffered the double jeopardy of the imposition of a custodial sentence and a long ban. Despite the intense media interest surrounding his case, little has occurred to clarify when the criminal law will



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become involved following an incident of on-field violence.

The following examples show just how inconsistently on-field violence is being punished by internal disciplinary rules and uncertainty as to where the criminal law should intervene.

## Julian Dicks

West Ham United's Julian Dicks trod on the head of Chelsea's John Spencer after the latter had fallen to the ground during a fair challenge. Spencer made no complaint even though he received nine stitches. No action was taken by the match officials. Following a massive media outcry, partly due to Dicks' hard-man reputation resulting in him being sent off eight times in his career, he appeared before the English Football Association's disciplinary tribunal, where he was found guilty and banned for three matches.

No police action was taken, or considered, despite the tribunal's finding that there was intention. Either this was an accident or reckless, in which case no punishment is currently available, or it was an intentional use of a studded boot to inflict a wound on another and should have resulted in a longer ban than Ferguson's.

## Paul Gascoigne

In one more incident, another Glasgow Rangers player, Paul Gascoigne, clearly elbowed an Aberdeen player in the head, causing concussion and a wound which required five stitches. The match had been played in a particularly bad spirit, with police action considered against four players. Although two others involved in the game were bound over to keep the peace, no action was taken against Gascoigne despite his causing serious bodily harm to another player. Gascoigne received only a one match ban from the Scottish Football Association.

**If the criminal law is to be seen as a legitimate mechanism for controlling on-field violence, it must move away from the current position of the few, inconsistently selected prosecutions.**

## Discussion

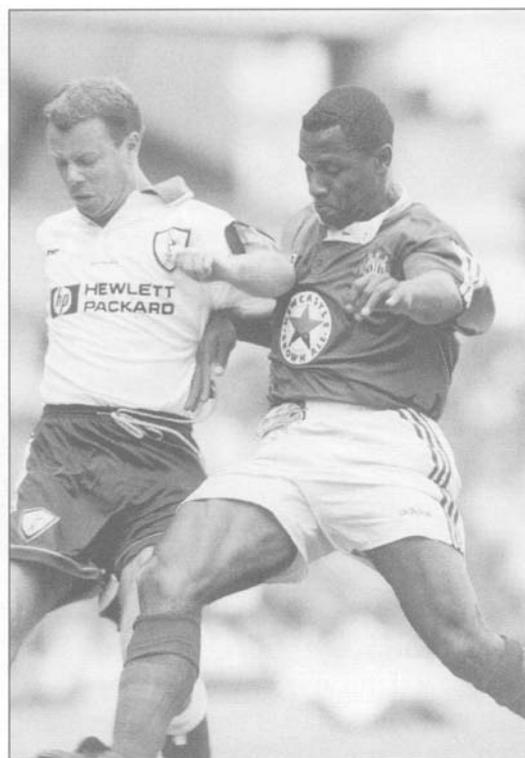
These three cases show a lack of

consistency by the authorities when faced with on-field violence. The most minor of the assaults resulted in a three month prison sentence and a twelve match ban. It must be borne in mind that Ferguson was on probation from an assault conviction and the attack was off the ball which would have added to the length of both punishments. The two other assaults both caused serious head wounds to the victims but the perpetrators received bans of only one and three matches. This further highlights the inconsistent approach to punishment by the governing bodies of sports.

For the purposes of this discussion, whether police intervention is right or wrong is irrelevant. The important point is that it is happening and with glaring inconsistencies at all levels of sport. Ferguson's case was unusual simply because police action was taken. It has also

led to claims from his manager that his treatment was unfair. If the police intervene, the sports complain of harsh treatment. If they do not, they are accused of treating sports participants differently.

The problem is, therefore, trying to determine the circumstances in which the prosecuting authorities will commence an action for on-field violence. In England and Wales there are no criteria beyond the generally applicable two-stage test. In Scotland, however, where there have been a number of recent cases, the Crown Office is to publish guidelines in the near future for the police and Procurator Fiscal to assist the investigation and prosecution of sports violence. At Ferguson's appeal hearing against the severity of his sentence, the Lord-Justice General stated that although the aim is not necessarily to prosecute more players for on-field assaults, one of the factors that may indicate the gravity of the incident and therefore warrant prosecution, is if the player is a public figure in a high profile match. Any sentence imposed on a convicted player, such as Ferguson, will set the standard of conduct throughout the country and hopefully deter similar assaults at the lower levels of the game. However this view does not provide guidance as to when prosecutions should take place in non-elite games where the



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vast majority of victims of sports violence play.

This increased exercising of prosecutorial discretion may be no more than legal symbolism. Chamblis and Seidman (1982) argue that legal symbolism can be identified by measuring the levels of enforcement. Where levels are low, symbolism is likely. If the criminal law is to be seen as a legitimate mechanism for controlling on-field violence, it must move away from the current position of the few, inconsistently selected prosecutions that are little more than 'show trials'. If the disciplinary tribunals do not exert their own powers and make the criminal law unnecessary, Ferguson will not be the last, or the most well known player, to find himself behind bars.

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