

SPORT & LAW

Cricket and Law, separately and together are ... events through which we give meaning to our lives

David Fraser¹

Fraser convincingly demonstrates the importance of sport in thinking about law. Lamenting the narrowness and conservatism — indeed the boring nature — of Australian legal scholarship he argues:

Law and popular culture come together in a dialogic operation. We learn about law through popular culture and, if we look hard enough, we learn about popular culture through law. More importantly, however, and more basically, we learn and transmit pieces of knowledge through all our social practices ... These parts of our lives are not, contrary to the dominant view about legal scholarship in Australia, divided into an immutable hierarchy which privileges law and devalues other aspects of our existence.²

Recognition of sport's importance in human culture is not a new phenomenon. As Will³ points out:

Greek philosophers considered sport a religious and civic — in a word, moral — undertaking. Sport, they said, is morally serious because mankind's noblest aim is the loving contemplation of worthy things, such as beauty and courage. By witnessing physical grace, the soul comes to understand and love beauty. Seeing people compete courageously and fairly helps emancipate the individual by educating his passions.⁴

It should be noted here that women are increasingly involved in sport and this development has begun to be analysed⁵ along with the links between sport/popular culture, gender, race and identity,⁶ class, with a longer presence, is less regarded in contemporary writing.⁷

Sport, culture and identity formation

The recent visit to Australia by Louis Farrakhan raised some issues about the dialogic possibilities of an examination of sport and culture, in part based in my own experience and 'identity formation'.

Farrakhan leads the American Black Muslim Nation of Islam church. While in Redfern he expressed his solidarity with Australian Aborigines denouncing the Australian Government as hypocritical.⁸ For all his failings, and

they seem to include bigotry,⁹ Farrakhan was certainly correct in his criticism of Australia for the history of ill treatment of Aboriginal people. Yet he has little to offer beyond separatism based on race or religion. Rather than a prophet of a society cleansed of oppression, exploitation and intolerance, Farrakhan symbolises a massive failure of American democracy and the hollowness of the traditionally conceived Rule of Law.



Conditions for most blacks in America are still poor. Despite the economic 'success' of the otherwise deplorable Clinton Administration, poor blacks, the vast majority, are still doing it tough.¹⁰ And racism is still an important element in the successful exploitation of the American working class.¹¹ Farrakhan's huge spectacular, 'the Million Man March', produced a lot of media attention, but had no impact on the structural problems faced by black Americans. Individual 'promise-keeping' by black men is surely no bad thing, but it is difficult to see what impact it will have on the structure and processes of oppression and exploitation which have so degraded and divided the black community in America. And it is interesting to note the recent emergence of the highly organised and rapidly growing white male, quasi-religious Promise Keepers. There is surely something missing in American culture if so many people/males have to be mobilised — separately — by religious zealots to remember their basic social and civil obligations.

Blacks in baseball

Which takes me back to an earlier time, another black American, and the interconnections between sport, race, identity and law. It was a warm spring Sunday in Philadelphia, 11 May 1947, when I first saw the man who, apart

from my father and brother, probably has had the greatest impact on me: Jackie Roosevelt Robinson. The first black man to play in modern organised baseball,¹² he was to play for the Brooklyn Dodgers against the 'Phillies' at Shibe Park.¹³ I had squeezed into the ground with the largest baseball crowd Philadelphia had ever seen. Thousands of us had paid 'scalpers' prices for admission, and we intended to stand in the aisles if necessary — safety laws be damned — to watch Robinson.

Philadelphia was — and is — a racist town, with a high degree of racial segregation in employment, education and housing.¹⁴ At the time, the 'Phillies' were led by Ben Chapman, a red-neck Southerner who had made it clear he was going to give Jackie hell. The opposition to a 'colored' in 'the majors' had reached its zenith¹⁵ — a strike was expected any day; and the 'Phillies' were known to be the worst team in the league for abusive sledging; it was known that Chapman had them primed to show Robinson that he'd be better off back in the Negro League.¹⁶ The tension surrounding the game was high; yet the crowd, mostly black — at least where I was — were having a great time.¹⁷ They had bought their 'Jackie' buttons and banners, and they were noisily behind him 100%. The mood was happy, but apprehensive — how would Jackie do, and how would the 'Phillies' treat him? Could a black man make it? At the end of the day would he — and they — be proud, or humiliated?¹⁸

The story of Robinson's experience, his impact on baseball — and American culture — the ordeal that he went through, the Brooklyn strategy behind it all, have been widely written about and the subject of films. Not only was he one of the great baseball players but he had grace and courage under fire. It is a heroic story. And he was my hero.

The pressure on Jackie, an extremely controversial rookie, was severe. Playing in the South, in racist Northern cities, amongst racist players and coaches/managers, the object of hostile demonstrators, innumerable death threats and constant abuse/harassment; target of opposing pitchers' fastest pitches which could seriously injure; sitting duck for opposition base

runners to smash into or slice up with their spikes, and much more. Through all of this, though often injured, he continued to play, stoically, enduring and excelling. Under strict instructions to keep quiet, not retaliate and stay out of trouble¹⁹ (in a game where physical and verbal confrontation is constant), Jackie fought to prove himself, and his race, in the only way he could: with his bat, his fielder's glove and, most exciting, with his dancing feet. He could literally steal a game by daring base-running; he had great speed, reflexes and bravado.²⁰ He was simply brilliant — the opposition pitchers often lost control in frustration.²¹ In his first year Jackie led the Dodgers into the World Series.

Robinson's signing with the Dodgers in October 1945 was a major event in my life. A baseball fanatic, by chance I had been a Brooklyn supporter though living in Philadelphia. But now the Dodgers had signed a 'nigger'. Did I ditch my team, or did I change my racist inclinations? I didn't hesitate, it was Brooklyn and Jackie. He became a beacon guiding me toward a new understanding of life.

In the next few years I was often abused as a 'nigger lover'. I was gaining an education, and forming a new identity. Gone were the hand-me-down racist ideas with which I had grown up in a comfortable white suburb of 'the City of Brotherly Love'.²² Developing too were a new set of political understandings.

According to Tygiel, integration of pre-season training in Florida by Brooklyn, in essence Branch Rickey — erstwhile baseball player and University of Michigan law graduate turned baseball administrator:²³

unveiled a strategy for later civil rights advocates. Aided and abetted by sympathetic whites, a handful of individual blacks shouldered the physical risks inherent in a policy of direct confrontation with the institutions of Jim Crow ... baseball's integration coalition refused to retreat... Rickey and Robinson relied heavily on the powers of the northern press to evoke sympathy... This adverse publicity hit directly at the weakest link in the southern armor. The hopes of Florida businessmen for economic expansion rested heavily on the influx of northern capital and population Jim Crow had to end.²⁴

There was no affirmative action for Robinson.²⁵ He had to prove himself in very difficult circumstances, as did others who followed quickly after. If they

were good enough, they survived; if they were not, they went to the minors²⁶ or out of baseball; sometimes back to the Negro league.²⁷ At a time when affirmative action in the USA is being very seriously questioned²⁸ Robinson's story suggests this is not necessarily a long term disaster for minorities in the USA.

Rickey believed that integration would succeed because even previously hostile white players would cooperate with blacks in order to achieve success.²⁹ In their common struggles, the whites would develop a new consciousness. Jackie and his teammates — especially 'Pee Wee' Reese and Eddie 'The Brat' Stanky; both southerners, they worked most closely with him in the Brooklyn infield — did indeed form a comradesly association against the racists who sought to harm Robinson and thereby the Dodgers.³⁰

To return to Farrakhan

My view of the integration of baseball suggests that the road out of oppression, exploitation and racism for American minorities does not lie with separation and appeals to individual improvement through strict adherence to religious norms/dogma. Nor interventionist schemes, e.g. affirmative action.

When I entered Shibe Park, a child of 13, I found myself in left field, without a seat, squeezed in behind the grandstand unable to see the action. A black man pulled me up to the top where I could perch behind the last row of seats.

When Jackie laced the ball safe and deep into left-centre field, my white arm went up with a forest of black arms. At that moment, I was connected — they were my brothers. It was a moment of joy, and understanding. Together — together with Jackie — we seemed invincible. The racists had been taught a lesson. And there would be more to come. United, we could not be defeated.³¹

Things didn't work out as well as I had naively expected. The Left was seen off — McCarthyism and the Cold War; the civil rights movement, limited as it ultimately was by the goal of formal equal rights in a 'liberal democracy', failed to alter the power/economic structures of American corporate capitalism; while the New Left achieved little of substance politically (aside from subverting the Vietnam war effort).

But that summer of 1947 had a profound impact on me, and Shibe Park remains in my mind, like a compass needle. Unity, not racial separatism — and certainly not religious sectarianism — will provide the basis for rolling back the oppression and exploitation of our peoples (minorities included) which is endemic in contemporary Western societies which, incongruously, claim to be based on a 'Rule of Law'.

References

1. Fraser, D., *Cricket and the Law: The Man In White is Always Right*, Institute of Criminology, University of Sydney, 1993, vii.
2. Fraser, D., above, pp.1-2. He also provides useful references introducing the work on sport, popular culture and law in the USA. See e.g. Macaulay, S., 'Images of Law in Everyday Life: The Lessons of School, Entertainment and Spectator Sports', (1987) 21 *L and Soc Rev* 185; 'Popular Legal Culture: An Introduction', (1989) 98 *Yale LJ* 1545. And see a valuable recent Australian work, Brown, D. and Hogg, R., 'Violence, Masculinity and Sport: Governance and The Swinging Arm', (1997) 3 *UTS Rev* 129.
3. Will, G. F., *Men At Work: The Craft of Baseball*, Harper Collins, 1990, p.2.
4. See Gouldner, A.W., *Enter Plato: Classical Greece and the Origins of Social Theory*, Routledge and Kegan Paul, 1979. For sport in modern cultures see e.g. J.W. Loy and G.S. Kenyon (eds), *Sport, Culture and Society: A Reader on the Sociology of Sport*, Macmillan, 1968.
5. See e.g. King, Helen, 'The Sexual Politics of Sport: An Australian Perspective', in R. Cashman and M. McKernan (eds), *Sports in History: The Making of Modern Sporting History*, U of Queensland Press, 1979, p.68.
6. See generally, A. Baker and T. Boyd (eds), *Out of Bounds: Sports, Media and the Politics of Identity*, Indiana U Press, 1997. See also N. Elias and E. Dunning (eds), *Quest for Excitement: Sport and Leisure in the Civilising Process*, Blackwell, 1986. And see Edwards, H., *Sociology of Sport*, Dorsey Press, 1973, a book dedicated to Jackie Robinson.
7. See generally, McIntosh, P.C., *Sport In Society*, C A Watts, 1963. See also Morgan, W.J., *Leftist Theories of Sport: A Critique and Reconstruction*, U of Illinois Press, 1994.
8. See, e.g. 'Aboriginal misery is shame of Australia, says Farrakhan', *SMH*, 16 February 1998.
9. There seems to be evidence that Farrakhan — and his close aides — have a substantial list of undesirables who they blame for the decadence of Western society and would as soon see disappear; see e.g. 'No words of hate for Australia, says Farrakhan', *SMH* 14 February 1998. (It should be noted that the Nation of Islam is not generally considered a legitimate Muslim church by Islamic leaders outside America.)
10. According to a recent study 'the United States is now more unequal than at any point in the last seventy five years', noted in a San Francisco lawyer's account of defending poor blacks for many years. Harris, P., *Black Rage Confronts the Law*, NYU Press, 1997, p.288.

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Ambassador Wensley's paper provides a detailed survey of recent developments in international environmental institutions (including the Commission of Sustainable Development arising out of the Rio Summit, the World Trade Organisation Committee on Trade and Environment inspired by the conclusion of the Uruguay round of GATT negotiations) and legal instruments including international conventions relating to climate change, biodiversity, desertification, transboundary movement of hazardous wastes, the marine environment and the management of fisheries. The Ambassador also identifies emerging issues of international concern relating to the conservation and management of boreal, temperate and tropical forests, and the

management of international trade in hazardous chemicals.

With the end of the Uruguay Round of trade talks and the formation of the World Trade Organisation, *Environmental Outlook No 2* includes a section which specifically addresses trade and the environment. The conference included workshops on biodiversity, green house and waste management, and the papers from those workshops are reproduced in the book. There is also a discussion of the question of national standardisation of environmental regulation in Australia through the National Environmental Protection Council and National Environmental Protection Measures.

Environmental Outlook No. 2 provides a valuable resource for environ-

mental lawyers, business managers and government policy makers, and will be a useful and informative text for students of environmental law. In the rapidly changing area of environmental law and policy, the books based on the Environmental Outlook conferences organised by ACEL will, it seems, contribute a regular update in recent developments and trends in environmental law and policy around the world. *Environmental Outlook No. 2* not only provides a thorough account of contemporary developments in this field, it also consistently looks forward to future challenges for environmental protection. It leaves me anticipating the next volume.

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11. See Davis, M., *Prisoners of the American Dream: Politics and Economy in the History of the American Working Class*, Verso, 1986.
12. Tygiel, J., *Baseball's Great Experiment: Jackie Robinson and His Legacy*, Random House, 1983.
13. For a description of Shibe Park, the neighborhood surrounding it and some legal issues in baseball seen by a Professor of Law, see Skilton, R.H., 'Memories of Shibe Park' (1992) *Wisc LR* 174; and Skilton, J.G., 'Memories of My Father: We're Talking Baseball', Tygiel, J., above, p.1743.
14. See my discussion of race, class and criminal justice in Philadelphia in Boehringer, G., 'The "Hurricane" returns', (1988) 13 *Leg Serv Bull* 120.
15. See Tygiel, above, pp.182-9.
16. See the comprehensive account of black baseball in Peterson, R., *Only the Ball Was White*, Oxford U Press, 1970. See also Shannon, M., *The Day Satchel Paige and the Pittsburgh Crawfords Came to Hertford, NC: Baseball Stories and Poems*, McFarland and Co, 1992.
17. As they did everywhere the Dodgers played — to record crowds — that year; see the description by Mike Royko the American writer, of his day as a child at Wrigley Field when Jackie first played in Chicago, Tygiel, above, pp.196-7.
18. According to Tygiel, 'To blacks he represented racial pride and prowess', p.75; a black sports writer wrote that Robinson 'has the hopes, aspirations and ambitions of thirteen million blacks heaped upon his broad, sturdy shoulders', Tygiel, above.
19. This was going to be a tough call: Robinson was a fierce competitor, even aggressive. No Uncle Tom, Robinson had been court-martialled in the Army (though acquitted) for defying Jim Crown back-of-the-bus laws in Texas, see Tygiel, above, pp.59-63.
20. See Tygiel, above, pp.190-91, where his base running is described: 'He stops and starts as though turned on and off with a toggle switch. Once in motion he wobbles along, elbows flying, hips swaying, shoulders rocking — creating the illusion that he will fly to pieces with every stride'. It was his blend of power and deceptive speed that 'brought a

- new dimension into baseball'; Tygiel comments 'He revolutionised major league baseball by injecting an element of "tricky baseball" so common in the Negro leagues'. And see Will's discussion of blacks and base stealing, Will, above, p.184.
21. Robinson on the bases was such a distraction that *Time* reported: 'He dances and prances off base keeping the enemy infield upset and off balance, and worrying the pitcher'. Even in the World Series, veteran New York Yankee pitchers lost games because Robinson had broken their concentration, Tygiel, above, p.191.
22. See some of the contours of racism in Philadelphia in: Boehringer, G., above.
23. See Tygiel, esp. chap 4 for a discussion of Rickey the man, the strategist and an administrative genius with great foresight and no little ambition.
24. Tygiel, above, p.119.
25. Tygiel, a social historian, weaves the legal, social, political and economic forces into his story with great affect. But he is well aware of the importance of human agency; he cites a contemporary sportswriter: 'Alone, Robinson represents a weapon far more potent than the combined forces of all our liberal legislation', p.75. While anti-discrimination legislation was emerging in the late 1940s after the experience of WWII, Rickey always denied that it pushed him into the integration strategy, Tygiel, above, p.54.
26. The functions and nature of playing in 'the minors' is well captured in the Costner film *Bull Durham*. For hockey see Paul Newman in the hilarious *Slap Shot*.
27. See Peterson, above; however, separate black baseball leagues could not long survive financially after baseball was integrated. Many black owners were bitter about the poaching of their players without adequate — or even any — compensation. Contracts, written or not, were no protection.
28. See, e.g. *Telos*, No. 106 (Winter 1996) Special Section on Affirmative Action. See generally Hughes, R., *Culture of Complaint: The Fraying of America*, Oxford University Press, 1993.
29. See Tygiel, above, pp.55 and 195.

30. Tygiel, pp.192-95.

31. Little did I realise that Rickey and others were at great pains to keep the Communist Party at arms length. He and others saw its support for integration as a barrier to progress, Tygiel, above, 37. Tygiel gives the CPUSA credit for its 'major role in elevating the issue of baseball's racial politics to the level of public consciousness', p.36. For a fascinating account of the intensity of feeling against Communists, progressives and blacks in the late 1940s, see Fast, H., *Peekskill: USA — a personal experience*, Civil Rights, Congress, New York, 1951. Fast describes a savage attack on the crowd at a freedom rally and concert by Paul Robeson, Peter Seeger *et al*. The police were, not surprisingly, complicit.

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