

[Home](#)[About ESLJ](#)[ESLJ Team](#)[ESLJ Issues](#)Volume 6  
Number 2[Dixon](#)[Submission Standards](#)[Call For Papers](#)[News](#)[Conferences](#)[Copyright](#)[Exclusivity](#)[Links](#)Not signed in  
[Sign in](#)Powered by [Sitebuilder](#)  
© MMIX | [Privacy](#)  
[Accessibility](#)

## ESLJ Volume 6 Number 2 Articles

[Contents](#)[Abstract](#)  
[The Sporting Exception](#)  
[Proportionality and the Hidden Judicial Regulator](#)  
[The Limits of Adjudication](#)  
[Fuller Applied to Proportionality](#)  
[Bosman and Quotas](#)  
[Bosman and Transfer fees](#)  
[Wage Inflation – Reality Bites Back](#)  
[The Bounty of the Big Clubs](#)  
[A. Lack of Evidence](#)  
[B. Lack of Foresight](#)  
[The Vice of Simplification](#)  
[Systematic Error](#)  
[Cures for Polycentricity](#)  
[Social Dialogue](#)  
[Governance](#)  
[Judicial Remedies to Polycentricity](#)  
[Evidential Approach](#)  
[Judicial Restraint and Polycentricity](#)  
[Variable Intensity of Review](#)  
[Institutional Competence](#)  
[Case Specific Rulings](#)  
[Conclusion](#)  
[References](#) [Download](#)

ISSN 1748-944X

### The Long Life of Bosman– A Triumph of Law over Experience

[Dennis Dixon<sup>1</sup>](#)

#### ABSTRACT

*This article urges a reconsideration of the analysis of the interests of football given by the Advocate General in Bosman. The article will show how much of the Bosman decision depends on the Advocate General's view of 'mutual interdependence' and its consequences in respect of a willingness of larger clubs to redistribute revenue. Although it is widely recognised that the redistribution of funds has declined in real terms since Bosman, the implications of this for Bosman have not been exposed. The article endeavours to show that the Bosman analysis has not simply been falsified by later events, but that the Advocate General's predictions went beyond the natural limits of adjudication. Using Fuller's theory of adjudicating polycentric problems, this article will argue that it is*

*not sufficient for the Court of Justice of the European Community to reverse its decision in Bosman; it must refrain from replacing one set of flawed predictions for another. In this regard, it will be suggested that we should consider applying the theories of judicial deference or restraint commonly raised when considering questions of proportionality in the human rights context. Such an approach may make the elite less confident that an assertion of their economic rights,*

Volume 6 Number 1  
Content

#### Articles

- [➔ Migai Akech](#)
- [➔ Rachel Cohen](#)
- [➔ Dennis Dixon](#)

#### Interventions

- [➔ Ian Blackshaw](#)

#### Reviews

- [➔ Ian Blackshaw](#)

and thus power, will be supported by the ECJ, and thus a less intrusive role for European law in proportionality adjudication may assist social dialogue.

---

## KEYWORDS

Bosman – proportionality – polycentricity - judicial restraint - social dialogue

---

Moreover, there is little to suggest that abolition of national quotas for players might lead to players possessing the nationality of the host State becoming a small minority in a league. (*Bosman*)

England v The Rest of the World. Statistics collated by the International Football League games.... Players: England 61; The World 139

The world of sports law had been awaiting the result of the *Union Royale Belge des Sociétés de Football ASBL v Union des Associations de Football* (*FIFA*) whether clubs could be forced to release players without compensation. The application of competition law to football was first considered in *Union Royale Belge des Sociétés de Football ASBL v Union des Associations de Football* (1996) CMLR 645 ('*Bosman*'), but advised on by the Advocate General Lenz. How far sporting interest justifies restricting ordinary competition law is squarely before the Court of Justice of the European Communities in the settlement including the disbanding of the G-14, the *Charleroi* (BBC Online 2008a). Much will be written, not least in the sports law journals for the future of football. From a legal perspective it is difficult to know where we were when the last major European Commission activity in sports law must guess as to whether recent compromises regarding television rights, transfer fees and player contractual freedom were the result of the ECJ when the time comes. We can speculate from the arguments of what the parties thought of their chances of success but the result is of little or no value. We remain in doubt and the result is 'lawyers' (Wetherill, 2003, p. 92-93).

The settlement of *Charleroi* also means that when national law applies the proportionality test to whether restrictions on Community Law freedoms, the principal argument was made by Advocate General Lenz in *Bosman*. There are many excellent pieces of academic literature. One prolific writer on European competition law has endorsed the *Bosman* view on 'mutual interdependence' (BBC Online 2008b). Van Bogaert thought it remarkable that the German arguments as to sporting interest (for example, the link between football and national development) that had been refuted by the Advocate General Lenz (2004, pp 273-274). Similarly, Miettinen and Parrish argue that to introduce a form of national quota are 'ill conceived given the principles of the Court to accept this type of agreement in *Bosman*' (Miettinen and Parrish, 2005) a view that has been borne out by the European Commission (BBC Online 2008b). For Boyes, exploring the legality of the *Charleroi* Cricket Board, the question is always whether the sports law analysis in *Bosman* to be distinguished (Boyes, 2005).

It will be argued that the *Bosman* analysis of the need for a proportionality test has not been proved wrong in most material respects. The correct application of the general principles and particular assertions must give value to the principles of professional sport, particularly football, and a better result than the current adjudication when applying the proportionality test to sports law. In working on the role of polycentricity in creating natural limits to competition law adjudication (Fuller, 1978, 393-405), it will be argued that a partial retreat without weakening the application of those principles is necessary.

freedoms.

This article provides very much an English perspective supported by consideration of the European elite's League. The basic effect of *Bosman* has been to increase trade between Member States and to either reduce or remove barriers. Obviously, this leaves significant room for differences in the responses of national associations: some nations have abundant talent, whereas, as we shall see, English football is strongly import business. Nevertheless, it is suggested that it is the *Bosman* analysis that it runs almost entirely counter to the most prestigious leagues. It also must be a particular irony that the richest league fails to conform to the *Bosman* analysis in terms of the redistribution of resources.

### THE SPORTING EXCEPTION

This article does not review in detail the so-called 'sporting exception' but instead addresses the application of the proportionality test to the EU's jurisdiction. This concept has its origin in *Walrave and Beyne* (1974) ECR 1405 ('*Walrave*'), which held that national law is subject to Community law only in so far as it constitutes an economic activity in that Community law has nothing to say on matters of sporting interest (paragraph 8).

The distinction made in *Walrave* is a difficult one. It is highlighted by the starkly different fates in *Walrave* and *Becken* (World Cycling Championships) and in European club football. It is also clear that the ECJ's assertion of jurisdiction to undertake a proportionality test in anti-doping rules in *Meca-Medina v Commission* (Case C-519/04) that there will be few rules of sporting interest that fall outside the scope of Community law (Miettinen and Parrish, 2007, at para 6). But this conclusion (para 45) expressly noted that banning performance enhancing drugs is not an issue of sporting interest. At issue in *Meca-Medina* was whether it was disproportionate for an athlete had taken performance enhancing drugs or Nandrolone in his urine. This is a scientific matter one of the purposes of sporting purpose behind drugs testing procedures – and the proportionality work throughout the EU was in issue, it should not be disproportionate (para 55).

It is perhaps wrong to read into *Meca-Medina* a fully fledged exception to the subject of only occasional interest to the ECJ. The proportionality test is perhaps from having a limited number of cases to a general principle. Considering the point in detail, it is worth noting that the proportionality test is a matter of national competence in the scope of Community law, where national competence is subject to 'consistently with Community law'. Taxation is an obvious example of a matter being made as to where a rule is held to be inoffensive to the free movement of disadvantage to intra-Community money-flows, and where national law, subject to proportionality (see, for example, *ACT Investment Income* (Case C-446/04)). The 'sporting exception' is after all, but an application of general principles inherent in the ECJ's jurisdiction. That, however, would demand an article 107 breach of Community law freedoms, and asks whether such a breach, sporting arguments are pleaded by way of justification and immunity to jurisdiction, even if the practical difference is small.

### PROPORTIONALITY AND THE HIDDEN JUDICIAL REVIEW

The application of the proportionality test determines whether the restrictions on freedoms are or are not justified. Stated simply, a measure is justified if it is the least drastic means for achieving a legitimate end. The proportionality test is an idea of justification: an action is not justified if: a) it does not pursue a legitimate aim; b) it is not necessary to achieve that aim; c) it is disproportionate to the aim pursued.

it does not achieve that aim; or, c) the aim could be achieved by other means. The aim could be achieved by other means. Added to this there is also 'the need to balance the interests of individuals and groups' as a further essential (if more so) see *Huang v Secretary of State for the Home Department* and *Oakes* (1986) 1 SCR 103, 139.

In theory, the test should give rise to a single answer: is the measure necessary for achieving the ends (Nicol, 2006, p. 734). In reality, however, the Supreme Courts, the European Court of Human Rights, the European Court of Justice, judges pull back from driving the test to the point where for the ECtHR is the 'margin of appreciation', for the ECJ the 'margin of discretion' and is well described by some as the 'margin of error' on which may be found a number of resolutions to the test that are acceptable to the court (Greer, 2004, p. 416). The margins represent the limit of the adjudication process.

In practice, it is the 'least drastic means' limb which is the most important part of the proportionality test (Edwards, p. 872). In the Canadian Charter on fundamental freedoms, every law that passes the 'least drastic means' limb passed the proportionality test (Trakman). The unwillingness of the court is to enquire into and speculate on alternatives, and the more sceptical the court is as to the necessity of the infringements, the narrower the indifference curve. Equally, the more engaged with the process, the wider the indifference curve. *mutandis*, to the extent to which courts are willing to accept the means as legitimate aims' or 'rational connections', and, although the test is likely to be determinative than those relating to 'less drastic means', it is relevant when considering the 'quotas' section of *Bosman*.

What does this mean for football? The greater the willingness of the court to engage in a proportionality analysis, the more the law acts as a hidden referee rather than a referee intervening only in exceptional circumstances. To the extent to which administrators administer, and governments govern, is circumscribed by the view the courts take on what is reasonable in the eyes of various parties' expectations of how an appeal to the courts will be handled. Football associations, clubs and players all calculate their actions based on their estimation of what the law will or will not allow. The ECJ will apply the proportionality test in any given situation based on the high level norms of EU law, but largely from a common sense perspective and principles and assertions found in the relevant judicial decisions, largely from the *Bosman* analysis of football's need for a competitive market. The willingness of the court to put sporting justifications to a proportionality test is a key factor.

Given that the rights that EU law positively uphold include commercial and economic freedoms, and that sporting is a legitimate activity in derogation to those freedoms, one cannot underestimate the willingness of the ECJ to involve itself in a proportionality analysis. The availability of 'less drastic means'. Outside the 'indifference curve', the law trumps.

### THE LIMITS OF ADJUDICATION

Put at the highest level of generality, the tasks 'inherent in the judicial process are those where it will be impossible 'to preserve the integrity of the process through proofs and arguments' (Fuller, 1978, p. 395). One reason why adjudication may be inappropriate is that there is no clear centre to the problem.

Fuller further illustrated the heart of the polycentricity of the legal system (Fuller, 1978, p. 395):

We may visualize this kind of situation by thinking



and therefore the proper price of, thirty kinds of plastics, an infinitude of woods, other metals, etc. The effects may have its own complex repercussions in the future.

A court may thus adjudicate on a snapshot picture, while or it may analyse a problem as a matter of cause and effect, while harming the interests of those beyond its notice. A decision may act as a precedent, often an awkward one, 'by the arbiter' (Fuller, 1978, 397). Even if all affected parties do nothing to do justice in the instant case, another thing to do in the future interactions should be governed.

An interesting part of Fuller's polycentricity analysis is how to judge pumpkins against pumpkins, not pumpkins against cucumbers when there are some relevant cucumbers not entered in the list. In *Walrave*, how can a court analyse whether it is possible to have a championship on national lines? It must weigh the effect on the pumpkins against the effect on the labour market. It is perhaps no surprise that, when faced with realistic sporting law's normal frames of reference, that it avails itself of comparing incomparable considerations. It is necessary that will come clear when we come to the first half of the assertion of sorting interest will not suffice.

#### *FULLER APPLIED TO PROPORTIONALITY*

Fuller's analysis concentrated on what governments do not commit to an adjudicative process. It is not obvious where a law or treaty has expressly or implicitly entrusted a court cannot refuse to adjudicate a claim on the basis that it is not its business. Similarly, if the law requires the court to decide whether it is competent, 'modest estimates of competence' cannot mean rights of non-competence (see *A v Secretary of State for the Home Department* (2004) 2 All ER 193). An American jurist noted, abdication of judicial responsibility (Frantz, 1963, pp 741-2).

Nevertheless, Fuller's analysis of polycentricity is correct. Proportionality to explain why the courts should leave the matter to those who carry out the ordinary legislative, executive or administrative functions (see p. 693; Rivers, 2006, pp. 175-176). Of course, the fact that a problem is polycentric does not mean that the resulting adjudication is proportionate. Lower a tax is polycentric given the unpredictable economic effects. It is of no importance to the court when applying the taxing statute. The problem begins if the court is supposed to take a broad view of the problem. To consider if a measure is proportionate or justified, there is no proportionality to be considered, nor can it confine itself to the immediate effects. It will consider everything apart from the wholly fanciful. It may strain the limits of adjudication to breaking point.

The limits of proportionality are where the 'indifference' of the court coincide with the limits of adjudicating the problem set before it. It is indifferent because it cannot with integrity adjudicate the matter. Fuller's theory is obvious, although it lacked a theory as to what are its own limits. We shall come to these theories later. The ECJ overstepped those limits in *Bosman*, and how, using the principal example, this led it to the wrong conclusion about proportionality.

#### *BOSMAN AND QUOTAS*

*Bosman* was, of course, a case of two halves. The first half was about the number of foreign players eligible to play in European football. The second was a prima facie breach of free movement of workers.



discrimination until such time as there was real evidence that a discriminatory rule requires strict scrutiny, something which would happen later, and that means a higher level of justification than what happened in the future.

It can be seen that by going beyond the limits of adjudication and speculation, the Court based this part of *Bosman* on a legal principle. As such, Miettinen and Parrish (2007) and Van Bogaert (2007) are correct. FIFA has revisited this ground. By straying from solid legal principle to factual speculation beyond the limits of adjudication, the grounds for counterarguments. It is also worth noting the Advocate General's judgment in *Kahveci v Real Federación Española de Fútbol* (2011) where he considered proportionality when ruling that an EU-Turkish labour agreement meant that quotas for non-EU players could not be justified. One might wonder about the effect of this rule should it be applied to Africa and South America, but the ECJ is taking a more legalistic approach and speculating on such matters.

It is thus not my intention to revisit this half of *Bosman* in light of the fact that with recent attempts by UEFA and FIFA to introduce transfer fees, the issue has been considered at length in Miettinen and Parrish (2007). The decision to condemn the transfer fee system in respect of Article 39 is a decision whose effect has been greatly extended following the Commission's competition law investigation (Weatherill, 2003, pp. 66-67).

### *BOSMAN AND TRANSFER FEES*

Bosman's complaint was that a move from RC Liege of Belgium to a club in the Netherlands was prevented because of a dispute as to the transfer fee. The ECJ has ruled that clubs have paid a fee for a French player (*Bosman*, Lenz A-G, para 219.) The case has been dealt with on the grounds of non-discrimination. The Advocate General touches briefly on how variations in transfer fee rules might be justified in the European market. However, for better or for worse, the Advocate General held that the legality of transfer rules where there was no hint of discrimination. With discrimination removed from the picture, it is far easier to justify. Article 39 on free movement of labour applied where non-discrimination was irrelevant to the operation of the restriction. The Advocate General's movement of labour right, in Article 39.2, talks express discrimination based on nationality'. Even if Article 39 is interpreted as a concept of abolishing discrimination, the closest authority would be irrelevant in a case such as *Bosman*. As the Advocate General distinguished *Keck and Mithouard* (Cases C-267/91 and C-268/91) on the basis of *Alpine Investments BV v Minister van Financiën* (Case C-385/92), which greatly differed from *Bosman* in that the case concerned the disruption of EU economic freedoms. However, a prima facie case was held, and the case moved onto a consideration of whether the restriction was justified. In this it should be noted that the Advocate General held that whether transfer fees were justified under Article 39. The Advocate General (competition), a point that Weatherill makes when assessing the case remains relevant despite competition law having a limited focus of EU law's involvement in sport (Weatherill, 2003, pp. 66-67).

The justification argument was essentially this. First, it is not possible for a professional league to flourish only if there is no restriction on clubs taking part' (*Bosman*, Lenz A-G, para 219.) Secondly, the Advocate General readily agreed that 'it is of fundamental importance that the clubs be able to compete in a reasonable manner'. Thirdly, recounting the Advocate General at para 222 noted that, in the 1992/93 season, a total of £13.3m transferred from the Premiership to the Football League. The Advocate General to see how UEFA could lose its justification argument,



most important part of the proportionality test means' (Edwards, 2002, p. 872), which is to say: wa least as good, for upholding competitive balance which freedoms?

A court can scarcely assert the existence of 'less suggestions. The Advocate General made two suggestic

1. A salary cap; and
2. Solidarity payments, particularly by way of redistrib

The salary cap need not concern us: the Advocate problematic than redistributing television revenues. It doubtless correct. Not least of those problems would l players – the Major League Baseball cap was abandone notable that the success of a cap is speculative; post-*B* in US basketball had had no effect on league compe 2001, p. 129). Added to this Miettinen and Parrish have be contrary to Article 81 of the Treaty as restricting co 2007, at para 29).

It is thus Lenz's second suggestion, the redistribution turned. Could the redistribution of revenues (parti adequate alternative system for ensuring redistributing the poorer ones? The Advocate-General could see 'no ir ECJ agreed; Hausman and Leonard noted that an agr talent efficiently 'may be impossible as a practical o Leonard, 1997, p. 622). History appears to have vindica

### *WAGE INFLATION – REALITY BITES BACK*

The immediate effect of *Bosman* was that transfer fees contract players if the player was exercising his Artic labour. It had a profound effect on the scenarios that i transfer value players in-contract who might move o amortised to zero, depressing the value of in-contract ti transfer fees on domestic transactions, given that fe player under *Bosman*. *Bosman* was predictably follo principles to in-contract players. The attack came from name of competition law, with the players' union follo The result was a settlement negotiated under the al further reduced the circumstances when transfer fees pp. 66-69). The ins-and-outs of that agreement are b noting that it included what is now Article 6 of FIFA' Transfer of Players' that restricts transfers to the transfer-window during the season (FIFA, 2004/2007 greater hurdles to free movement than transfer fees, clubs with the biggest squads (Ley, 2007). Transfer lower than had *Bosman* been decided differently. Also, 69-73), the remnants of the transfer fee system rema Miettinen and Parrish (2007, para 33) have noted gene sectoral agreements of this sort, but they also note th to a free movement challenge.

It follows that, in *Bosman*, the ECJ reduced the significa that any resulting loss of cross-subsidy could be n systematic which would not prejudice free movement o of television revenues. But, as we have seen, the polyc of Courts to predict the consequences such a decision: of a spider's web is a hazardous operation.

Consider the following example from para 224 of the decision. The Advocate General speculates on how the end of transfer fees might in fact be in balance:

Since the players transferred to the bigger clubs are the best players of the smaller professional clubs, those clubs are not disadvantaged from a sporting point of view. It is admittedly true that the loss of income from transfers those clubs are placed in a difficult position to engage new players, in so far as their general financial situation has been seen, however, the transfer fees are not excessive on the basis of the players' earnings. Since the bigger clubs pay higher wages, the smaller clubs will probably hardly be able to themselves to acquire good players from those clubs. The new rules on transfers thus strengthen even further the imbalance in any case between wealthy and less wealthy clubs. Mr Bosman correctly drew attention to that consequence.

There is nothing wrong in every chain of the Advocate General's reasoning on the basis of the evidence before it. Had he known that the contractual transfer fees, he would have seen that fees were not a pay offer made by the new club, a system highly favourable to the club found big talent (Speight and Thomas, 1997, p. 205). The Advocate General's inadequacies can be attributed to the litigants and the Advocate General's reasoning is that a complex economic system is a closed set of binary calculations of cause and effect. In no transfer fees meant that small clubs could enter the market for the top players, if Manchester United can make savings or money to spend on players, and if players are totally free to enter a contract, their bargaining power in wage negotiations would be reduced from entering the market for the top players, smaller clubs would experience inflation resulting, in part, from *Bosman* itself. Dobson and Goddard in *The Economics of Football* note that wage inflation was a direct consequence of the decision (Dobson and Goddard, 2001, pp. 96, 421 and 422). The Advocate General simply did not exist in the Advocate General's analysis; the Advocate General 'the complex repercussions that may result from any change in the structure of European football' (394-395); or just another unexpected rearrangement of the deck in European football.

To make matters worse, wage inflation has been higher than expected. The Advocate General's set-back for the Advocate General's expectations. Dobson and Goddard (422, and 430) saw this as an obvious consequence:

(1) In the post-1995, post *Bosman* world of free transfers, the player is completely free to sell his services to the highest bidder. It is no wonder the players' earnings have rocketed as a result. It is also true that the earnings of the most talented players have risen more sharply than these are the players with the greatest monetary value. The services for which few or no direct substitutes exist are the most valuable.

Supporters of *Bosman* have tended to dismiss its effect on the balance of power as being minor in comparison to the effect of television revenues (Dobson and Goddard, 2001, p. 96). Certainly, we cannot ignore the effect of television revenues, a major factor, and other factors such as Champions League and World Cup merchandising, have strengthened the position of the elite clubs.

However, the existence of more immediate culprits does not mean that matters significantly worse – both in its effect on the balance of power and the picture is more polycentric. Television revenues were a major factor in wage inflation (which would increase the flow of money down the wage chain).

competitive balance) as well as wage inflation (which *Bosman* thus created a double blow to competitive balance by freeing up money in the hands of the richest clubs). Walker started buying Blackburn Rovers to the top, in truth that he was a benefactor to the whole English game downwards throughout football. Because of *Bosman*, wages went into £100,000+ per week wage packets.

### *THE BOUNTY OF THE BIG CLUBS*

Everything would have worked out according to the Advocate General if the big clubs ensured that revenues were shared in a way that maintained a competitive balance created by the *Bosman* decision. The Advocate General, in the absence of post-contractual transfer fees, the general effect of the decision was zero, and the effect on wage inflation. Quantifying such effects on television revenues and the arrival of the bankrolling of clubs of this type would itself be a polycentric problem of no small dimensions. The Advocate General (para 232) was in no doubt that a system could be devised to deal with this. In no doubt that a formula could be produced by way of a balance sheet. The Advocate General will proceed on the basis of the Advocate General's 'may' and not adopt Hausman and Leonard's 'may' to the extent that the Advocate General to the extent that an appropriate method of redistribution would be to concentrate on whether a redistributive solution would be possible.

The Advocate General stressed that clubs understood that

(F)ootball is characterised by the mutual economic interest of the clubs. Football is played by two teams meeting each other of equal strength against each other. Each club thus needs to be successful. For that reason each club has an interest in the success of other clubs...The economic success of a league depends on the existence of a certain balance between its clubs. The Advocate General, by one overmighty club, experience shows that la

Whilst he admits later in para 227 that the elite might not be satisfied, no doubt that 'specific measures' could be put in place. The Advocate General puts forward the Champions League (1992/93) as pr

The participating clubs received SFR 38 million (54% of the total) (18%) was distributed to all the clubs which had participated in two rounds of the three UEFA competitions for clubs. (8%) was distributed between the 42 member clubs. The remaining SFR 14 million (20%) went to UEFA, to be used for the benefit of football, in particular for the promotion of youth

Using the exchange rate of SFR2.3 to the pound (see [GBPpages.pdf](#)), we see the following:

1. The following eight teams each received £2.1m: Inter Milan; AC Milan; IFK Gothenburg; Porto and PSV Eindhoven.
2. £5.2m was distributed between the teams eliminated in the three European competitions. There were twenty teams. The European Cup and Cup Winners cup, and a further £56,000 each club received £56,000.
3. £2.5m went to the national associations and the rest was distributed up so as to give an insignificant sum to the rest of the clubs.
4. £6.1m went to UEFA to be invested for the benefit of football.

Far from being a model of sporting redistribution, we receive almost as much as all the national association gain significantly from redistribution of television revenue in the Champions League and teams like Glenavon of Northern Ireland (the Cup Winners Cup) who were so small that £56,000 would

Furthermore, the Champions League revenues have reduced the inequality, but a sizeable part of the problem and evidence of their advantage. Hoehn and Szymanski have demonstrated that international competition automatically creates domestic competition. In 1996/97, qualification to the Champions League was worth £10 million in revenues alone, a significant increase of the average club revenue (Hoehn and Szymanski, 1999, pp. 221-224). The elite clubs have broken away from the breakaway European league to successfully press UEFA to create a manner more financially favourable to the larger clubs (para 28). As is well known, in 1999 the Champions League teams from the biggest league qualify, and two of those teams get a direct passage to the ultra-lucrative group stage. The national league subsequently contracted, but not out of scruple but because of the fixture congestion caused by competition in football, a dynamic predicted by Hoehn and Szymanski (1999, p. 224).

#### A. LACK OF EVIDENCE

Let us consider what Football League history could have taught us. It is set out well by David Conn in *The Football Business*. One of the main points is that the Advocate General was overly optimistic about the 'measures' to redistribute resources – put shortly, the measures were not available, but depend on the support of the big clubs. The more money is redistributed, the less the money is available. The more money is at stake, the less the money is available. In the course, the greater the harm of such money to competition.

In 1988, ITV put a proposal to the then 'big five' of English football that they could all receive much more television money if the other clubs were to join the Premier League. The Premier League was born. Irvin (1997, p. 134) described it thus (Conn, 1997, p. 134):

Even if we only got the same money as 1988, we would not be as well off as the other smaller clubs.

It is worth starting the story of redistribution in English football. Conn (1997, p. 134) explains (1997, p. 134):

After the First World War (there was) sharing of television revenue between home and away teams. A small town club would get half the gate, and therefore be a lot better off. There was also a 4 per cent levy on the total gate of all clubs for the season, which were then distributed to the smaller clubs.

As for the redistribution of television revenues, originally there were ninety-two football league clubs (Conn, 1997, p.139). It has since been away from this redistributive paradise. The real problem was that created in the adjudicative proceedings before the court. The door, dialogue and solidarity between social partners was broken (1997, p. 140):

The first hectic whispers around the Big Five – Manchester United, Everton, Liverpool – about breaking away from the Premier League came in 1981. They were bought off by an agreement to share the television revenue.

clubs could keep all gate receipts, not have to share, was the first step towards the bigger clubs' total the smaller clubs.

In 1985 came the 'Heathrow Agreement': the gate levy the First Division kept 50% of the television revenues, and the remaining 25% went to the Third and Fourth. The Premier League saw a further decline in redistributions. The Premier League saw a further decline in redistributions. payment of £3m per year to the remaining Football League clubs from the Premier League, £2m coming from the Football League. (Dobson and Goddard, 2001, p. 81).

### *B. LACK OF FORESIGHT*

But does it matter that, pre-*Bosman*, England's top clubs received television revenues? The question was how they would react to the *Bosman* decision on the cross-subsidy by way of transfer fees. Clubs believed they would see the sense of making good on their European experience suggests otherwise.

Outside the virtual reality of adjudication, the Premier League paid an amount of £13.3m to clubs in other divisions by way of direct resource redistribution. By contrast, until recently the Premier League respected youth development, the Premier League distributed television revenues to the Football League clubs so as to keep them within the Premier League, television revenues are split between clubs, and those most in demand by satellite television. The Premier League agreed to redistribute some of its television revenues for their general use. We should not be too impressed by the £830m that the Premier League will receive annually from television and advertising rights. The Premier League believes in the completeness, the Premier League pays £11.2m per annum to clubs relegated to the Football League by way of 'parade' payments. The Premier League has a competitive edge over the crowd (Conn, 2000). The Premier League redistributed by way of television revenues done by way of transfer fee payments in 1992/93. The Premier League, in contrast, will receive £28m from the sale of domestic television rights.

The position as regards the Champions League is similar. The Premier League's Champions League Revenue of €598m (£407m), of which 72% goes to Champions League teams (72% as opposed to 54% in 1992/93), and €22m (£14m) (24% as opposed to 20% in 1992/93), and €22m (£14m) (24% as opposed to 20% in 1992/93), and €22m (£14m) (24% as opposed to 20% in 1992/93). The 18% that used to go to less successful clubs disappeared. Even within the Champions League competition, the distribution is skewed in favour of the most successful. In the Champions League pool, even a team that loses all games would earn an amount that reached the last sixteen after a modest three wins (£4.6m). Should that team win the tournament, they would receive an amount equal to half the solidarity payments to national leagues. The remaining €206m would be distributed 'proportionate to the size of each country' – which further skewed distribution to the richest countries (UEFA, 2005). (The exchange rate used is €1 = £1.6 before the announcement was published on [http://www.taxfreegold.co.uk/2005\\_forexrates.html](http://www.taxfreegold.co.uk/2005_forexrates.html).)

The attitude to domestic cup competitions further demonstrates the support the financial position of smaller clubs. As Dobson and Goddard (pp. 89-90):

As with the explicit arrangements for sharing gate receipts, however, the willingness of the leading clubs to pay

subsidies by participating wholeheartedly in the FA Cup and the League Cup, has come under

This can be seen most clearly if we compare the League. Whereas a bottom division team had every hope of going to the next round, a top-flight elite team in the League Cup second round a attractive proposition of playing one game against what side if they reach the third round. The downgrading of the fact that staying in the Premiership is of paramount importance to the remainder. Brian Barwick, FA Chief Executive (World, 2008) that '(t)o stay in the Premier in League years' time, will the fans remember if they finished League? No.'/ In 1997 Middlesbrough fans could make and being relegated in the same season, as it was their relegated often. Notwithstanding the fate of the Big 6, the brutal logic of Reading's Kitson is inevitable (BBC Online,

We are not going to win the FA Cup and I do not care. I am honest. I care about staying in the Premier League. I care about this club. Our league status is not protected by the rules as that.

However, the point goes beyond a simple matter of priorities. As television revenues briefly declined at the start of the decade, the FA Cup was decreased. By raising a credible competition, the Premiership ensured that the prize money in the early rounds remained unchanged –? the loss was borne by the clubs (Fuller, 2004, pp. 366-367). This clearly favoured the largest clubs and was in line with the General's expectations.

### *THE VICE OF SIMPLIFICATION*

Let us consider another part of Fuller's critique (Fuller, 1999, p. 100):

(W)hen one considers the nature of the problem of how to allocate the money whether the ' adjudication' here proposed could be named. In allocating \$100m for scientific research between Project A v Project B, but rather Project A v Project E bearing in mind that Project Q may be an alternative to A, and that Project R may seek the money by a cheaper method, though one less certain to succeed.

When the ECJ announces that ' interdependence' and 'solidarity' should lead to a willingness to share television revenues between clubs, it is faced with the choice of 'Project A' (to share) or 'Project B' (not to share). In truth, the ECJ's analysis begs certain questions: v what is to be shared and between whom?; and to share what, and with whom?

Let us consider the following table which represents various models of revenue sharing and different possibilities for redistributing television revenue.

Competitive Level	Redistribution Model
Premiership elite (ie: Man Utd, Liverpool, Arsenal, Chelsea)	Model 1: Premiership elite finishers (1-6)
Premiership resident (eg: Everton; Spurs, Blackburn)	Model 2: Premiership resident clubs

Aston Villa)	Premiersh Premiersh
Premiership occasional (eg: Sunderland, Norwich, Derby)	Model 3: Champion Leagues 1
Football league residents (eg: Grimsby Town, Colchester, Crewe Alexandra.)	Model 4: League (t

In considering their attitude to redistribution, each maintain position; b) to improve their position; and c) football insofar as it affects themselves. The Premier interest in having a few direct competitors, but they have Villa (the Premiership residents) challenging them for C is undoubtedly their preference. The Premiership residents their ability to challenge for the title or even the coveted is Models 3 and 4 which would expose them to greater well as a significant reduction in revenues for their share for obvious reasons. As regards occasionals and residents have long-term influence. As should be clear from the re 'overseas round', clubs outside the Premiership were noting the 'overseas round' controversy to show the re the Premiership. Richard Scudamore, Chief Executive of club agreed with the idea because, if they did not, their identities who would go it alone (Dunn, 2008).

This analysis contradicts an important strand of sport revolt against the Old Firm to demonstrate the *Bosman* show that elite can be made to spread wealth that tl (Weatherill, 2003, pp. 52-54). Recent events have s cannot be generalised. Indeed, the possibility of the national leagues to create a European superleague is balance of power in the European game than the p 'plebians' might lead to increased redistributions.

As Pearson has noted in a review generally positive ab football, the 'commercial aspirations of the larger club will be any agreement for larger redistribution (Pearson the interest of elite clubs to foster challenges to their have appeared logical to the *Bosman* judges. As Hoef 229): 'a system (of redistribution) might be difficult structure where the beneficiaries are potential future might be more acceptable within a closed Superleague predictable top-four in European football, the Premiership winners - twelve of the Premiership's twenty-two mem the top-flight fifteen years later (Robinson, 2007, p. 80) into a desire to make lower league status less frighter parachute payment system aimed at assisting ex-Prer (Conn, 2006). Beyond this, Hoehn and Syzmanski's obs desire to assist competitors breaking into the charmed c

It is worth noting that revenue figures also explain why generous (Eason, 2008):

Club	Commercial and matchday revenue	Broadcast revenue

Manchester United	151.6	61.5
Chelsea	130.4	59.6
Arsenal	143.3	44.3
Liverpool	81.7	52.2
Tottenham	69.4	33.7
Newcastle	61.2	25.9

It is difficult to see a consensus for redistributing b  
Champions League revenues (the top four) will not re  
That being the case, Tottenham and Newcastle have  
regards domestic revenues. Added to which, any signif  
television revenues would only increase the power of t  
comes from a wealthy patron, whether it be Chelsea's f  
City's Abu Dhabi syndicate. Further, we must als  
shareholders in what are increasingly businesses will v  
get a return. Curiously, the *Bosman* analysis on econo  
this point, despite ostensibly looking at sport firstly as a

One might add, that with such a lack of common interes  
talk rationally in terms of 'social partners' for a proces  
wonders what 'democracy' in football can mean if pr  
forming a 'demos': the expansion of the G-14 to includ  
widening of the aristocracy than real democracy (BBC Or

### SYSTEMATIC ERROR

There is one leading part of the *Bosman* analysis th  
transfer fees represent a 'rather arbitrary and ineffi  
(Dobson and Goddard, 2001, 99). The Advocate Ge  
Opinion:

If a club can reckon with a certain basic amount whicl  
solidarity between clubs is better served than by the p  
of money for one of the club's players. As Mr Bosman h  
of a gifted player who can be transferred to a big cl  
largely a matter of chance. Yet the prosperity of footba  
of such a club, but also on all the other clubs being able  
guaranteed by the present rules on transfers.

Whilst the ECJ preferred redistribution to transfer fee  
method, Hoehn and Syzmanski note that this certainty  
229):

Redistribution among the clubs is essentially a wa  
of competition. Rather than promoting competitive  
mechanisms may reduce the incentive to compete  
balance.

The Advocate General believed that skilful design coul  
there is no evidence that Premiership clubs who be  
television wealth are competing less hard in that lea  
certainty of vast wealth simply by coming seventeenth  
competing less hard in cup competitions. As we have se



clubs for whom cup competitions provide a valuable  
Goddard have noted (p. 89-90) – although, if one follo  
would not harm the small clubs if the cup competi  
lucrative cup run is as much a matter of luck than  
'arbitrary and inefficient' means for a cross-subsidy.

The problem with the Advocate General's reasoning is t  
success. It is as Gary Player explained: 'The more I prac  
football fans know that Dario Gradi's Crewe Alexar  
development, and became exceptionally lucky (Conn,  
upturn for a club more accustomed to apply for re-ele  
fight for promotion. Wimbledon's rise from non-league  
League residents was likewise propelled by player deve

As often happens, adjudication struggles with complex  
court's proposed system is not that it is better but that  
The law could only look with incredulity at an outwardly  
than understand that it brought opportunity to  
*Bosman* reality, clubs look to benefactors more than lon  
gaps in competitive balance – which is ironic, if we ar  
commercial activity.

### *CURES FOR POLYCENTRICITY*

Having considered the various errors in the *Bosman* :  
consider how to prevent perpetuating such mistakes '  
exception' in the name of judicial restraint. Fuller arguec

There are polycentric elements in almost a  
adjudication. A decision may act as a precedent  
some situation not foreseen by the arbiter...It is :  
the polycentric elements have become so signifi  
the proper limits of adjudication have been reach

In the midst of the above quote, he gave an example:

(S)uppose a court in a suit between one litigant a  
an act of negligence for the railway not to co  
particular crossing. There may be nothing to dis  
other crossings on the line. As a matter of stati  
clear that constructing underpasses along the v  
lives (through accidents in blasting, for example  
only safety measure were the familiar 'Stop, Loo  
what seems to be a decision simply declaring th  
parties is in fact an inept solution for a polycentr  
of which cannot be brought before the court in a  
party against a defendant railway.

It should first be noted that such an action would de  
against the railway. As such, it should always be remer  
on the claimant. The more obscure and polycentric the  
claimant to convince the judge that he is right on the  
easier it should be for the defendant railway to raise si  
of resolving such a polycentric issue in favour of the C  
thing to make the railway pay damages, it is another th  
underpasses regardless of changes in circumstances and  
one thing to decide that UEFA had not justified th  
movement of labour and order damages to be paid, an  
fee revenues can be replaced by redistribution of televi:  
between resolving an individual dispute and setting dov

Fuller offers cures for polycentricity. The most important law of policy should be resolved outside of adjudication, the matter out of the hands of judicial legislation to 'political deal' or 'an accommodation of interests', in process (Fuller, 1978, 398-400). However, given the fundamental provision of the EC Treaty, there is no adjustment. It is notable that for all the complaints to the European Parliament, the Amsterdam Declaration on Sport (Weatherill, 2003, pp. 88-89).

### *SOCIAL DIALOGUE*

More directly, Fuller suggests that contract might be used in preference to adjudication. Miettinen and Parrish (2003) suggest that football might adopt a process 'making use of meetings and collective agreements', which would amount to a process of stakeholders to settle their differences and remain committed. The case of *Brentjens* (Case C-115/97), which concerned a club and employees within the Dutch building sector that a club should subscribe to a particular pension arrangement, and that the club should be bound to the same pension terms regardless of risk.

One cannot help being sceptical. The sectoral pension scheme is a felicitous mixture of solidarity and self-interest involving a return to Fuller's example of two galleries dividing up a painting only through its knowledge of prices, the artistic value of the painting or combination of paintings is outside its remit. In examples where dialogue can maximise the interests of both parties, dialogue can provide more than even a voluntary agreement, application where the interests are strikingly different. In football, poor clubs are such that they are not realistically socially capable of entering into such partnerships with players. In the state of football, dialogue is more about settling litigation in a dynamic very favourable to the richest clubs seeking to destroy such agreements as regards redistribution. Today, we find Chelsea's chief executive, Peter Kenyon, saying 'As we have seen, since the early 1980s, the English Football League is destroying such agreements as regards redistribution. Today, we find Chelsea's chief executive, Peter Kenyon, saying ways to get an even platform' (Hughes, 2008).

What does EU law offer to cajole the elite into spreading their selfishness? Weatherill suggests that a breakaway EU law providing permission to collectively sell broadcasting rights is an 'attractive opportunity' (Weatherill, pp 79-80). The same is true for Gardiner (2000, p. 60), although Pearson (2003, p. 11) is given 'the commercial aspirations of the large clubs and the threat of such a threat obviously depends on whether the beneficiaries are dependent in their earning power. Also the existence of a relevant law is relevant to the application of competition law, it would be a breakaway that invoked free-movement rights (Miettinen, 2003). In truth, almost by definition, EU law cannot oblige parties to dialogue. The greatest contribution it can make to dialogue is to provide a victory so as to blunt the confidence of the elite that, in the end, economic rights will be trumped. Of course, the law can't do what the law is.

### *GOVERNANCE*

Fuller's other suggestion is that administrators can make more than adjudicators, and thus a regulator may achieve more. Unless the Commission assumes the role of football's regulatory game's governing bodies. But the same point made earlier applies equally in respect of governance: an

proportionality assists the football elite against the gov

It is impossible to attribute the failure to redistr governance, for this presupposes that the governing b Conn may well be right that the Football Association League seceding from the Football League (Conn, 2004 old history. If we look at governance through the eye concerned only for the material consequences, he know by the governing bodies to dent his commercial freedom ECJ.

Perhaps more pressing is that the governance of associations is inevitably undermined by the credible th form a European super league – we have already see led to the expansion of the Champions League at th example, football's authorities introduced rules o redistribution of resources, or to restrict squad rotat phenomenon of billionaire owners bankrolling a club's s may well comply with EU law and even gain warm prais However, the involvement of EU law goes deeper; sho threatening to create a breakaway super league, the te fundamental Community law freedoms to trade and p being largely restricted to their own national 'market' authorities estimate their relative positions of streng countermeasures that the authorities might take to offering their product across the EU in this new man might prohibit the breakaway clubs from playing 'fri leagues or they might ban the players concerned from i can see immediately the difficulty for the authorities: impede the use of a Community law freedom is by difficulty of justifying countermeasures as proportionate scrutiny in the manner of the *Bosman* decision as reg must significantly increase the credibility of a breakaw fact that the elite's most powerful weapon involves it greatly strengthen the bargaining position of the authorities.

Thus, the question is whether the ECJ can remedy the way to pull back from giving arguments of sporting in *Bosman*. By doing so, EU Law would cease to provide j elite when the governing bodies seek to govern in the i

### *JUDICIAL REMEDIES TO POLYCENTRICITY*

This leads us to Fuller's suggestion as to how the judge: problems placed firmly in its court (Fuller, 1978, p. 398):

If judicial precedents are liberally interpreted and clarification as problems not originally fo process as a whole is enabled to absorb these co

The Court should thus avoid setting general rules by l more than usually ready to overrule itself. Unfortunatel key idea. As an idea, it exists in tension with his famous rule of law, particularly that the law should be a retrospective (Fuller, 1969, pp. 38-39, 51-62). But t should not simply repeat the oversights of the judici Oliver Wendall Holmes once wrote, a law should not p past' (Holmes, 1897, p.469). This must apply even r findings that have been falsified by experience.

The least that the Court could do is to overrule *Bos* inadequate response to the problem of polycentricity i conceived assertion to the next. For example, if collecti taken before the ECJ, the Court might conclude that su help competitive balance, and maybe transfer fees we might recommend salary caps. Or it might recon suggestion of a flat tax on payrolls distributed evenly a 633). What we need is not just a way to reverse *Bos* make the same mistake in a different way. To emphasis strict scrutiny will always render the position of the foot for an elite club to assert an EU law economic freedom competition; but it is very hard for a governing body to v proof as to necessity. This particularly if the court is will drastic means' which are in fact speculative at the time ;

### *EVIDENTIAL APPROACH*

One method to mitigate polycentric problems is simpl information or judicial investigation. This is an idea writt US constitutional law whereby a Court deals with knowledge, what is described as 'judicial education' 382-383; Sedley, 1995, 398; and Karst, 1960, 99 et s increasing practice of the English Courts to have specia and arguments that might be overlooked by the direct of this process have been discussed by Hannett, and Court will still only receive an incomplete picture, nov interest groups (Hannett, 2003). However, it is unneces a Court can overcome evidential limitations. The point th that this can only be a partial solution: no amount c confidently make the predictions it sought to make confidence. Indeed, as was noted earlier, the polycentr but to any attempt to systematise knowledge of ho economic studies of football on which the ECJ wol expertise, useful though they are, are prone to the sa move from descriptive to predictive. The Court's bold a interests are perhaps a prime case of what Fuller d 'desire to demonstrate virtuosity in his calling' (Fuller, 19

Ultimately, all tribunals hear a limited amount of evide time finishes they normally close their ears to further e point, the court having refused an application to hear judgment, paras 52-54). We thus do not need a way fi prediction, because we shall always fall significantly st principled strategy for the Court to avoid predicting bey

### *JUDICIAL RESTRAINT AND POLYCENTRICITY*

In human rights adjudication, it has long been recognis draw back from giving a positive view on questions of p discussed under such headings as judicial restraint or d reasons. First, as the Court will typically be overtur authority, there is the question of democratic legitimac Court is not ranging its opinion against the elected legis us is the second, ' pragmatic argument' that the incompetent' to properly resolve certain complex is problems (Edwards, 2002, p. 859).

### *VARIABLE INTENSITY OF REVIEW*

The principal route by which a Court can avoid giving issues is to hold that the issues do not merit in depth (2006, p. 207):

Where there is a minor limitation of a less important public interest need not be large, and courts appropriate executive body's assessment of the interest is furthered and admit a range of proportionate contrast, where the limitation of rights is sufficiently important, the gain to the public interest is not. Furthermore, review will also be more intense: demonstrate that its assessments of the public interest they can be, and persuade the court that the cost

To take a classic example, building restrictions that prevent are less intrusive than ones which prevent even building require greater justification (see Justice Holmes in *Hull v. E. I. du Pont de Nemours & Co.* (1908) 209 US 349, 355-356). It is a commonplace that applied more or less strictly depending on the importance (Allan, 2006, pp. 685-686; and Edwards, 2002, p. 880).

The Advocate General in *Bosman* did consider the level. However, he noted (para 216) that freedom of labour and thus only a public interest of 'paramount importance' however, ask himself whether some infringements of Article 17 than others. The transfer rules concerned were not directly have been held to be outside the core of the right.

Issues which are undoubtedly important within the balance would receive a higher level of scrutiny. For example, the sale of multi-billion pound television rights could not. Importantly for *Bosman*, and also for the current debate on limitations (Miettinen and Parrish, 2007), this would justify that contradict the fundamental norms of Community Law such as it being in essence of European club competitions home nationals in each time, could be argued. However contentions to a high standard – Greer suggests that be required (Greer, 2004, p. 432; and Rivers, 2006, p. 10) not be justified on the basis that having club team undermine European club competitions, because this approach of *Bosman* and has not been vindicated in the sports court may recognise clear speculation in others, how did the judicial over-reach of *Bosman* when strict scrutiny first to the theory of institutional competence.

### *INSTITUTIONAL COMPETENCE*

It has been suggested by many that Courts should exercise institutional competence in matters of proportionality. Such as the adjudication process, or may arise from the limited expertise of the judiciary – and as such could be overcome by court and judicial training could be expanded (Jowell, 2002) the court may demand that the rights-infringer justify this may often only be done by way of intelligent speculation. At this point the court may recognise (whether or not it is intelligent analysis) that its own intelligent speculation is inapt as

On this approach, the court may also, without abdicating 'due weight' to the considered opinions of the institutions closest to the situation and with a day-to-day expertise concerned. Certainly this was the approach to proportionality of the House of Lords in the recent case of *Belfast City Council v. McGuinness* (2001) 19, at paras 26, 37, 47, and 91). Whilst some legal control of football's governing bodies, it will be difficult for the governing bodies of world football have greater institutional competence

## CASE SPECIFIC RULINGS

Courts can respect polycentricity problems by limiting facts of the case. For example, a court could stress the balancing') and hold that the particular harm to the legitimate aim, even accepting the defence case. In *Bosman* the court have ruled that the greater good could never justify the predicament, but it could not have assumed that all possibilities. The court could have accepted that it was in the benefits of the transfer system, but they could never be suffered by Mr Bosman. Given that the English transfer create a risk of a player being left high-and-dry (Speigel decision on *Bosman* went beyond what was necessary to

## CONCLUSION

Much in football remains vulnerable to challenge before almost the entire competition law settlement between UEFA is vulnerable with regard to extent to which transfer windows, and the rules that restrict the amount clubs in a season (Weatherill, 2003, 93). Collective bargaining vulnerable. The requirement to release players for international focus, despite the settlement of *Charleroi*. Added to any measures taken by UEFA and FIFA to discourage round-trip plan could equally lead to arguments as to why these matters the ECJ will be the ultimate battleground according to their expectations of how the Court will rule can approach disputes with every reason to suppose read narrowly and sceptically as a derogation from the under the Treaty of Rome.

Many hope to see EU law as a facilitator for a social dialogue like a dispute over legal rights to lead to a negotiated are not always mutually beneficial processes, but are the case is likely to turn out in fact. This has proved Consider the settlement to the *Charleroi* litigation, which total of £128m from FIFA and UEFA in compensation for duty (BBC Online, 2008a). The Commission-brokered settlement the 'one in-season transfer window system' which works with the biggest squads, and leads to an artificial scramble and BBC Online, 2008d). The expansion of the Champions dialogue (social or otherwise) caused by the elite's threat economic freedoms and provide services across Europe superleague.

Weatherill (2003, p. 93) might say, 'Fair Play!' to the ECJ time to rethink completely the *Bosman* analysis of football the Court gives to non-discriminatory sporting arguments rights wholly unprotected, nor completely remove the governing bodies. However, it is time to dent the elite's umpire on their side in disputes with the governing bodies 'social dialogue' a more attractive option than litigation in

## REFERENCES

Allan T (2006), 'Human rights and Judicial Review: A Critique of 'Due Deference'', (2006) 65 Cambridge Law Journal 671.

Allison J (1994), 'Fuller's Analysis of Polycentric Disputes and the Limits of Adjudication' 53 Cambridge Law Journal 367

Barwick B (2008), 'Every England star has duty to the country to behave on and off pitch' *News of the World* 27 January 2008, 71.

BBC Online (2008a) 'G-14 Group is disbanded', BBC Online, 16 February 2008, <http://news.bbc.co.uk/sport2/hi/football/7247791.stm>

BBC Online (2008b) 'Blatter faces player quota veto', 20 February 2008, <http://news.bbc.co.uk/sport2/hi/football/7254516.stm>

BBC Online (2008c) 'FA Cup does not matter - Kitson', 2 January 2008, <http://news.bbc.co.uk/sport2/hi/football/teams/r/reading/7168675.stm>

BBC Online (2008d), 'Coppell attacks transfer window', 2 January 2008, <http://news.bbc.co.uk/sport2/hi/football/teams/r/reading>

Boyes S (2005) 'Caught Behind or Following-On? Cricket, the European Union and the ' *BosmanEffect*' 3(1) *Entertainment and Sports Law Journal*

Caiger A and Gardiner S (2000) *Professional Sport in the EU: Regulation and Re-Regulation*, (The Hague: TMC Asser Press)

Conn D (2006), 'Rich clubs forced to give up a sliver of the pie', *The Guardian*, 10 May 2006. <http://football.guardian.co.uk/comment/story/0,,177139> (search 4 February 2008.)

Conn D (2007a), 'Have-nots ask the millionaires for a share option', *The Guardian*, 24 January 2007.

Conn D (2007b), 'The 22.4 million reasons why lower leagues get a raw deal', *The Guardian*, 8 August 2007.

Conn D (1997) *The Football Business* (London: Mainstream Publishing Projects)

Conn D (2004) *The Beautiful Game* (London: Yellow Jersey Press)

Dobson S and Goddard J (2001) *The Economics of Football* (Cambridge: Cambridge University Press).

Dunn A (2008) 'Scudamore: We feared breakaway', *News of the World Online*, 10 February 2008, <http://notw.typepad.com/sport/2008/02/scudamore-revea.html#>

Eason K (2008) 'English clubs are striking it rich in assault on European money league' *The Times*, 14 February 2008, 60.

Edwards R (2002) 'Judicial Deference Under the Human Rights Act' 65 *Modern Law Review* 859.

FIFA (2007), 'Regulations on the Status and Transfer of Players', <http://www.fifa.com/mm/document/affederation/admini>

[5fon%5fthe%5fstatus%5fand%5ftransfer%5fof%5fplayers%5fen%5f33410.pdf](#), (search 9 September 2008)

Frantz L (1963) 'Is the First Amendment Law? A Reply to Professor Mendelson' 51 California Law Review 729.

Fuller L (1963) 'Collective Bargaining and the Arbitrator' 3 Wisconsin Law Review 30

Fuller L (1978) 'The Forms and Limits of Adjudication' 92 Harvard Law Review 353

Fuller L (1969) *The Morality of Law* (Yale University Press)

Greer S (2004) 'Balancing' and the European Court of Human Rights: A Contribution to the Habermas-Alexy Debate' Cambridge Law Journal 412

Hannett S (2003) 'Third Party Intervention: In the Public Interest?' Public Law 128.

Hausman J and Leonard G (1997) 'Superstars in the National Basketball Association: Economic Value and Policy' 15 Journal of Labor Economics 586

Hoehn T and Syzmanski S (1999) 'The Americanization of European Football' 28 Economic Policy 205.

Holmes OW (1897) 'The Path of the Law' 10 Harvard Law Review 457

Hughes, M, 'Chelsea hit rivals with their latest call to arms', *The Times*, 29 July 2008, 64.

<http://fx.sauder.ubc.ca/etc/GBPpages.pdf>(search 5 January 2007)

<http://www.taxfreegold.co.uk/2005forexrates.html>  
(search 7 March 2008)

Ibañez Colomo P (2006) 'The Application of EC Treaty Rules to Sport: the Approach of the European Court of First Instance in the *Meca Medina* and *Piau* cases' 4 (1) [Entertainment and Sports Law Journal](#)

Johnson R (2007), 'Houllier and Schuster join the list for England Coach' *The Sunday Telegraph Sports Section*, 25th November.

Jowell J (2003) 'Judicial deference servility, civility or institutional capacity?' Public Law 592

Karst K (1960) 'Legislative Facts in Constitutional Litigation' *The Supreme Court Review* 75

Ley J (2007) 'Managers hit out at rubbish 'transfer' system', *Telegraph Online*, 31 December 2007, <http://www.telegraph.co.uk/sport/football/2287651/Ma-hit-out-at-'rubbish'-transfer-system.html>

Miettinen S and Parrish R (2007) 'Nationality Discrimination in Community Law: An Assessment of



UEFA Regulations Governing Player Eligibility for European Club Competitions (The Home-Grown Player Rule)' 5(2) Entertainment and Sports Law Journal

Nicol D (2006) 'Law and Politics after the Human Rights Act' Public Law 722

Pearson G (2003) 'Regulating Sport in Europe' 1(3) Entertainment Law 113.

Rivers J (2006) 'Proportionality and Variable Intensity of Review' 65 Cambridge Law Journal 174.

Robinson M (Ed.) (2007) 'Football League Tables 1888-2007' (Wellingborough: Soccer Books Limited).

Sedley S (1995) 'Human Rights: A Twenty-First Century Agenda', Public Law 386

Speight A and Thomas D (1997) 'Arbitrator Decision-Making in the Transfer Market: An Empirical Analysis' 44 Scottish Journal of Political Economy 198.

Steyn J (2005) 'Deference: a Tangled Story' Public Law 346.

Stone J (1964) Legal Systems and Lawyers' Reasoning (Stanford: Stanford University Press).

Trakman L, Cole-Hamilton W, and Gratien S (1998) 'R v Oakes 1986-1997 Back to the Drawing Board' 36 Osgoode Hall LJ 83.

UEFA (2005) 'Higher Champions League Revenue', <http://www.uefa.com/competitions/UCL/news/Kind=1/newsId=344540.html>, 26 September 2005

Van den Bogaert S (2004) 'And another uppercut from the European Court of Justice to nationality requirements in sports regulations' (2004) 29 European Law Review 267

Weatherill S (2003) 'Fair Play Please! Recent Developments in the Application of EC Law to Sport' 40(1) Common Market Law Review 51

1 Dennis Dixon is a barrister in the public sector and wrote this article whilst working for the Legislation Unit of the Government of Gibraltar. He would like to thank Dr Charles Legg for his assistance, and the anonymous reviewers for their helpful and challenging comments

---

Dixon, D., "The Long Life of Bosman– A Triumph of Law over Experience", [Entertainment and Sports Law Journal](#), ISSN 1748-944X, January 2008, <<http://go.warwick.ac.uk/eslj/issues/volume6/number2/>