

Central Lancashire Online Knowledge (CLoK)

Title	'When is a Contract More than a Contract? Professional Football Contracts and the Pendulum of Power
Type	Article
URL	https://clock.uclan.ac.uk/925/
DOI	10.16997/eslj.89
Date	2006
Citation	Magee, Jonathan (2006) 'When is a Contract More than a Contract? Professional Football Contracts and the Pendulum of Power. The Entertainment and Sports Law Journal, 4 (2). p. 4.
Creators	Magee, Jonathan

It is advisable to refer to the publisher's version if you intend to cite from the work. 10.16997/eslj.89

For information about Research at UCLan please go to <http://www.uclan.ac.uk/research/>

All outputs in CLoK are protected by Intellectual Property Rights law, including Copyright law. Copyright, IPR and Moral Rights for the works on this site are retained by the individual authors and/or other copyright owners. Terms and conditions for use of this material are defined in the <http://clock.uclan.ac.uk/policies/>

Contents

[Abstract](#)

[Introduction](#)

[Agency-Structure](#)

[Power Determinants and the Evolution of the Professional Football Contract](#)

[Stage 1: The Clandestine Period - 1863 to 1885](#)

[Stage 2: Professionalism – 1885 to 1959](#)

[Stage 3: Freedom begins – 1960 to 1978](#)

[Stage 4: More freedom – 1978 to 1995](#)

[Stage 5: Even more freedom – 1995 to present](#)

[Conclusion](#)

[Bibliography](#)

When is a contract more than a contract? Professional football contracts and the pendulum of power

JONATHAN MAGEE

UNIVERSITY OF CENTRAL LANCASHIRE

ABSTRACT

Professional football contracts were established in England in 1885 and structured around a transfer and retain system whereby at the end of the contract clubs decided whether to retain or transfer the player. These contracts also had a maximum wage value so it is fair to say clubs were firmly in control of players' careers and earning capacities. However the early 1960s altered such labour conditions as the maximum wage was abolished (in 1961) whilst the retain and transfer system was overhauled as a case of unreasonable restraint of trade (in 1963). Contractual freedom and better earning

conditions were further enhanced in 1978 when the Independent Tribunal System was established to deal with out-of-contract professional players who sought to move to a new club having declined a retaining contract from their current club. The 1995 *Bosman* Case further lubricated the marketplace as players were now provided with total contractual freedom for the first time. This paper assesses contract power over professional football's historical timeline and demonstrates that the professional football marketplace has seen the pendulum of power swing away from the football authorities toward the player with regard to professional contracts.

KEYWORDS

Playing Contracts - Employment Conditions - Power Battles - Professional Football

INTRODUCTION

Academic attention has recently considered the regulation of football and its business and economics functions (see for example, Banks, 2002; Dobson and Goddard, 2001; Greenfield and Osborn, 2001; Hamil, Michie, and Oughton, 1999; Morrow, 1999). The stimulus for this attention has been the dramatic changes in the last decade within the sport, not only in England but across Europe, with regard to radically improved economic conditions and financial stealth. An example of this economic stealth was demonstrated by the willingness of *Sky Television* to part with £1.1 billion in 2001 for a five year contract for coverage rights of the FA Premier League. Two decades previously television had "blacked out" coverage of English domestic football but by the early 21st century 'the business had entered a new world and the once bedevilled English game enjoyed such a meteoric rise that it quickly became a global product, benefiting from its immense popularity and mounting commercial capacity' (Magee, 2002, p. 218).

Regarding football as a business, Banks (2002, p. 35) comments that 'it is almost a unique one and differs from other businesses in a number of highly significant ways' and then cites the competitive relationship between football clubs, the relationship between these clubs and their supporters/customers, and the competitive structure within which football operates as the fundamental factors that make football different from other businesses. Like most sports, football 'is unique in that competitors are needed in order to prosper. Furthermore, there needs to be at least some level of parity between them, otherwise the product loses much of its value and appeal' (Greenfield and Osborn, 2001, p. 39). Morrow (1999, p. 2) counters slightly and states that football 'is not big business...[and] while football is a business it is not just a business...Its importance and the extent of its coverage come from the fact that football cannot be simply reduced to economics. Football is the people's game'.

However, a key yet recent development within the football business, particular at the elite level, has been how those who attend football matches have come to be regarded, in pure business terms, not necessarily as *supporters* of a club but rather as *customers* of that club. In this sense it is conceivable to argue that football supporters *are* simply customers just as in any other sector of the sports and leisure industry. This analysis however removes the deep rooted loyalty, sense of attachment, and levels of affinity supporters attach to their respective clubs. These variables cannot be accounted for in monetary terms yet are fundamental factors as to why supporters are willing to spend their money on supporting a team. Thus regarding these people as *customers* rather than *supporters* is perhaps not appropriate and one need only assess the sale of the world's richest club, Manchester United, to the American tycoon

Malcolm Glazer to observe the difficulties of reducing a football club to a pure business transaction. It is no coincidence that breakaway football clubs such as FC United of Manchester, constituted following the sale of Manchester United by supporters disaffected at being viewed merely as customers, have recently been established by football supporter groups seeking to return clubs to what they consider to be their roots.

Nonetheless it is fair to observe that football is a fundamental component of the overall sports industry but it is different to other team sports in terms of business structures and regulations. For example, rugby league in England and Australia imposes salary caps as a means of regulating the expenditure of clubs while the American sports of baseball and American football operate the draft system that controls the destination of emerging athletic talent in order to provide competitive balance. Furthermore, baseball and American football operate a franchise system that permits the trading of franchises from individual to individual or company to company – usually resulting in a geographical relocation – as well as allowing cross-franchise ownership. 4

The football industry, on the contrary, does not implement salary caps – or upper limits on earning capacity – and favours a free marketplace where professional players are exchanged via a transfer market. The structure of professional football is also different with regards to club ownership, a point reflected by Morrow's (1999, p. 8) assertion that the industry has 'peculiar economics...that has encouraged football regulatory bodies to impose various redistribution mechanisms and restrictions on cross ownership of clubs'. Consequently the economic environment for football is different from other team sports, yet 'like all businesses, football clubs have to abide by the laws of the land, but they also have to comply with a number of other regulatory constraints imposed by governing bodies' (Banks, 2002, p. 36). 5

This paper is concerned with 'shifting balances of power within the game' (Magee, 2002, p. 216) and in particular incumbent power relationships within the football labour market regarding playing contract conditions. Of fundamental concern is the 'pendulum of power' (Magee, 2002, p. 221) and its "swinging" capability between football authorities and players at key moments in football's history. Whilst I previously described the power battle over playing contract conditions as 'arguably less tangible' (Magee, 2002, p. 221) than other power battles, such as over television coverage contracts, in the sport it is nonetheless important as an academic topic. 6

AGENCY-STRUCTURE

This paper will adopt contextual location within the agency-structure theoretical debate which duly permits the analysis of power determinants regarding the football labour market and playing contract conditions. It is recognised that the use of grand theory on a rather localised and narrow issue can be problematic in any piece of scholarly activity and consequently the use of structure-agency in this paper is offered as a metaphor or analogy. This permits analysis of the dynamics of this microcosm to occur and allow the power battles within the football labour market to be presented through the window of agency-structure. 7

Agency-structure has been the focus of considerable theoretical debate within the social sciences and particularly central is how competing social theories offer different interpretations of power relations between the agency (that is, the individual) and the structure (that is, society). The potency of this theoretical debate is summed up by Giddens (1997, p. 567) who comments that 'one dilemma concerns *human action* and *social structure*. The issue is the following: How far are we creative human actors, actively controlling the conditions of our own lives? Or is most of what we do the result of general social forces outside our control? This issue has always divided, and continues to divide, sociologists'. 8

Additionally, the conceptual relationship between the micro-level (individual human agents) and the macro (large scale social structures) cannot be underestimated. Ritzer (1996, p. 526-561), in a detailed examination of the main competing theoretical perspectives, outlines that the micro-macro issue has favour with American sociologists and agency-structure with European sociologists. In spite of theoretical difference Ritzer (1996, p. 526) comments that 'the surface similarities between the micro-macro and agency-structure terminologies and orientations seem to imply the possibility of an international consensus in social theory'. 9

Dominant within agency-structure are the competing notions of structuration theory (Giddens, 1984), culture and agency (Archer, 1988) and habitus and field (Bourdieu, 1977). Whilst interpretations differ as to who controls who (in other words, how much control does society exert on its members or can individual members influence the society they live within?), consistent to all is the connotation that power is centrally dominant to how society is structured and how its members subsequently function. As noted by Sugden and Tomlinson (2002, p. 4) a central facet of social science research is 'the idea that all human beings possess some power in the form of their ability to transform, to some extent, the circumstances in 10

which they find themselves. It is this ability to respond to the social environment and to manipulate it in some way that is a basic human characteristic'. Power, as argued by Russell (1940), is 'the fundamental concept in social science' (p. 10) and is the 'production of intended effects...[and] it is easy to say, roughly, that A has more power than B, if A achieves many intended effects and B only a few' (p. 35). Whilst this example does not denote that A is all-powerful, it does recognise however that B is less powerful as opposed to having no power at all.

It is well established within sociology of sport literature that sport is a site for the contestation of power (see for example, Hargreaves, 1986; Sage, 1990; Maguire, 1999) and that there are many varieties of power concepts and struggles with the sports world. Sugden and Tomlinson (2002, p. 3) observe that 'power games are played out in the institutional setting of sport which, in late modernity, has become a very highly valued global commodity, and an important vehicle for the acquisition of wealth and status and the exercise of power'. Nowhere is this best demonstrated than in football, the world's most popular sport, a point excellently demonstrated by the work on FIFA, football's global governing body, by Sugden and Tomlinson (1998) and Sugden, Tomlinson and Jennings (1999); and Sugden's accounts of football's "underground economy" (2002a) and power networks (2002b). 11

The football labour market, as this paper will demonstrate, is a site for power contestation between football authorities and players and the 'transformation of circumstances' (Sugden and Tomlinson, 2002, p. 4) with regard to playing contract conditions throughout the history of the game is central to this paper. The paper uses agency-structure as a framework and consequently adopts the view that football players perform their labour in an occupational workplace that is governed by football's authorities (that is, the game's rules, governing bodies, regulating authorities and clubs). In this sense, the players are considered to be the individual *agents* (*agency*) while the football authorities are the *structure* whilst the power battle between the players and authorities – as part of agency-structure – regarding playing contract conditions over time is the focal point of this paper. 12

Concerning changes to the transfer market and playing contract conditions in the late 1990s, I argued that 'football clubs, having once commanded total control and hold over playing contracts, would soon find that contract power rests firmly with the increasingly mobile and relatively emancipated player' (Magee, 2002, p. 217). Later in the same article, I noted that 'the evolution of the modern-day footballer into a high earning superstar saw the pendulum of power over labour rights shift away from the clubs / authorities and rest with the player' (Magee, 2002, p. 221). These statements, whilst pertinent, were made without providing a comprehensive analysis of power contestation throughout the history of football's labour market with regard to player contract conditions and the "swinging" 'pendulum of power' (Magee, 2002, p. 221). This paper seeks to redress that by charting the historical timeline of the major power developments within the football labour market and this will be done by dividing the timeline into five key stages. 13

POWER DETERMINANTS AND THE EVOLUTION OF THE PROFESSIONAL FOOTBALL CONTRACT

STAGE 1: THE CLANDESTINE PERIOD - 1863 TO 1885

Even though the professional football labour market has its origins in the 1880s – with the introduction of professional player status in 1885 – it is possible to consider playing contract conditions before then. Urbanized society restricted space for the playing of folk football and the recently codified form of association football found particular favour within expanding leisure time (see for example, Tischler, 1981; Mason, 1980; Walvin, 2000). The formation of the Football Association (FA) in 1863 established a codified, regulated code of football with clubs being founded in churches, factories, mills and public schools, albeit it initially in only a limited part of the country (Russell, 1997, pp. 18-21). 14

Football, with its paying masses of spectators, was part of a popular culture at the time where entertainers were paid for their talents. However this was problematic in football due to the amateur status of players which prevented forms of payment. Whilst signing players as amateurs prevented any form of authorised payments it materialised that 'clubs from the north and midlands commonly offered their players illegal expenses and other forms of veiled payments' (Taylor, 2001, p. 101). Russell (1997, p. 23) points out that clubs were in the practice of 'paying above the regulation rates for broken time, hiring players for specific matches and, above all, offering a whole series of inducements relating to off the field activities, in particular the provision of employment opportunities'. Clubs were able to entice higher quality players to their club through external inducements which included paying players for any loss of earnings from paid employment accrued by fulfilling club matches. Thus clandestine payments were of mutual benefit for clubs and players in this stage. 15

For example, there was a steady flow of Scottish players to clubs like Burnley and Preston North End in the 1880s and players who made the journey received preferential employment status in the local area (Russell, 1997, p. 23). This is of course an early form of football labour migration and even though football was not the *labour* of the migrants, it was the *cause* of the migration. It is fair to conclude that it 16

was financially beneficial for players to move between clubs even if that involved moving countries and this was quite a favourable position for players (Russell, 1997, p. 22–25; Morrow, 1999, p. 30-31). In essence players were rewarded for their football talents as ‘paid entertainers’ (Russell, 1997, p. 23), albeit in surreptitious manner.

Russell (1997, p. 22-29) details comprehensively the growth of the battle regarding professionalism in this era between clubs and the FA which resulted in some clubs even being expelled from the FA Cup for the practice of importing players and finding them employment in the local area. Even though the FA introduced professional status in 1885, Russell (1997, p. 23) comments that ‘the battle was not actually over payment of money for playing. There was never a “pure” amateur game in the sense that playing the game overrode all financial considerations...T he FA’s rule 16, introduced in 1882, allowed for the payment of expenses, including broken time payments, for those involved in FA cup ties’. Much of the dissension about professionalism however stemmed from class issues and concerns for the future of the game as ‘professionalism, it was believed, would encourage gambling, partisanship and the will to win at all costs’ (Russell, 1997, p. 24). 17

Thus from the 1870s to 1885 it is possible to observe a power battle regarding playing contracts and playing status. Players wanted to be paid for their footballing talent whilst clubs wished to legalise professionalism and as such both parties can be said to have been on the same side in the power battle against the FA. As a consequence this stage does not rest within the confines of the agency-structure debate of this paper. 18

STAGE 2: PROFESSIONALISM – 1885 TO 1959

According to Tischler (1981, p.48) ‘professionalism managed properly’ was the best way of maintaining control of the future state of football. Russell (1997, p. 26-7) elaborates by pointing out that the advent of professionalism ‘was also very much in the interests of the clubs. In the early 1880’s players were in an extremely strong bargaining position, able to move clubs whenever they wished according to the (usually illegal) deal offered. As a result of the July 1885 decision [to legalize professionalism] they had lost some of their power’. Consequently players and clubs became disengaged from one another as the legalization of professionalism altered their previous relationship. 19

Within the professional system players were in the employment of a league club and registered to the respective league authority (The Football League in England) and the Association that this league was affiliated to (The Football Association in England). Registration forms had to be signed annually and approved by the league in order for players to play for their club. The annual registration system was ‘designed to protect smaller clubs by preventing players from club-hopping, [but] instead resulted in the registration becoming something to be bought and sold’ (Morrow, 1999, p. 31). The theory was that a club should be compensated for losing the registration (and playing ability) of a particular player but ‘in practice, however, it resulted in the creation of a transfer market’ (Morrow, 1999, p. 31). Professional status was favourable for players in that they now received monetary reward as ‘paid entertainers’ (Russell, 1997, p. 23) yet it also meant that their talent had monetary value to clubs in a buyer-seller relationship. Thus the legalised practice of buying and selling players was established and whilst it was the players who moved from club to club for transfer fees, it was not in fact the player who was bought and sold on the transfer market but rather his registration form. 20

In this period professional players were signed on one year contracts – with maximum and minimum salary terms – and when the contract expired the club either retained the player on terms no less than the minimum or sought to transfer the player to another club for a fee. Subsequently ‘the operation of this early transfer system, referred to as the “retain and transfer” system, effectively meant that the club holding a player’s registration held a monopoly over him, in that any transfer required the approval of both regulatory bodies and most importantly the consent of the club holding the player’s registration’ (Morrow, 1999, p. 31). A player could seek a transfer during the season but only if a buying club could be persuaded to pay an appropriate fee. 21

One year contracts, as can be expected, afforded little security and although the retain and transfer system had specific regulations ‘clubs, especially those in financial difficulty, were not averse to discharging a player [at the end of the season] only to reappoint him the next September, in order to avoid paying summer wages’ (Russell, 1997, p. 93). Russell continues that ‘players could still be held against their will if clubs refused to release them when another club made an offer, while in yet another manifestation of this essentially feudal set of labour-capital relations, clubs could insert clauses into contracts which restricted a player’s off the field activities’. What can be observed here is that the contractual system favoured the clubs as opposed to the players and that power over labour conditions rested with football’s authority bodies. 22

As well as contractual rights, wages were regulated by the football authorities through the maximum 23

wage system with playing contracts having maximum salary levels imposed. The maximum wage was introduced by the FA in 1900 and Taylor (2001, p. 102-15) documents in detail the issue of payments to professional players and the intricacies of salary terms in the early to mid 1900s. From 1910 'the maximum wage began to develop an internal hierarchy...[and] sliding scale' (Taylor, 2001, p. 104) but 'clubs found ways of flouting the system in order to reward key players' (Russell, 1997, p. 48). Taylor (2001, p. 102) continues that 'there was more to player payment than the maximum wage. It is easy to forget that a player's weekly wage was only his basic form of remuneration. Bonuses, benefits and international match fees for the better players need to be considered alongside less direct forms of income'.

Clubs, as it materialised, were not averse to breaking the maximum wage regulations and 'obviously, some players were actually receiving substantially more than the maximum, as directors found endless interesting ways of circumventing the rules which they supported so enthusiastically in public' (Russell, 1997, p. 146). The key point, however, is that it was usually the *star* players who benefited from the willingness of clubs to break the rules as they were the most sought after as opposed to *all* players who did not receive over-and-above payments. 24

It is unsurprising that various challenges by the Player's Union (known as the Professional Footballers' Association [PFA] since 1958) over labour conditions occurred between the 1890s and 1950s and these resulted in 'bitter wage negotiations, strikes and disputes over the rights of players' (Tischler, 1981, p. 105). Whilst the maximum wage did steadily increase throughout the 1900s – 'at least *some* progress had been made on the issue of wages' (Russell, 1997, p. 146) – earnings were not much more than the national average and 'were higher still in more commercialized sports like horse racing, boxing and baseball' (Taylor, 2001, p. 114). Greenfield and Osborn (2001, p. 77) point out that 'relations between the PFA and the FL [Football League] had reached a point at the end of the 1950s where the parties were not formally meeting with any regularity to discuss common issues'. Clearly the power battle was strong and at the same time strained and the restrictiveness of playing contracts and low salaries cannot be discounted as to why some British players, particularly top ones like John Charles and Jimmy Greaves, went abroad to play for financially superior packages in the 1950s (Russell, 1997, p. 147-8; Mason, 1994, p. 39-48). 25

This stage covers approximately seventy years and it is fair to conclude that the advent of professional status ultimately resulted in professional players losing 'some of their power, and clubs were quick to cement this, for them, more suitable master-servant relationship via the introduction of the maximum wage and the retain and transfer system'. Consequently 'players lost their free-market negotiating rights and advantages' (Tischler, 1981, p. 61) and experienced considerable constraints on, and ultimately little control over, their working practices and labour conditions. With regard to agency-structure it is clear in this stage that the authorities (structure) held consummate power over the players (agency) in terms of restrictive labour conditions through the retain and transfer system and the maximum wage. Even though the players' union campaigned on behalf of their members (agency) and managed to get the maximum wage steadily increased they were unable to wrestle much power from the authorities (structure). 26

STAGE 3: FREEDOM BEGINS – 1960 TO 1978

Much has been written about the battles to end the maximum wage and the retain and transfer system and it is only necessary to detail the main features here. Trade union campaigning within professional football resulted in a situation where 'in April 1960 the PFA [players' union] formulated four principal demands: abolition of the maximum wage, the right of players to a proportion of their transfer fee, a new retaining system and new contracts' (Russell, 1997, p. 148-9). The maximum wage and retain and transfer system were interlinked as 'freedom of contract would have limited economic advantage for a player if his wage was limited' (Greenfield and Osborn, 2001, p. 76). Protracted negotiations which involved the football authorities, the PFA and the Ministry of Labour resulted in the abolishment of the maximum wage in January 1961 but players threatened to strike if the contract retainment issue was also not resolved and 'finally on, 18 January 1961, a settlement *appeared* to have been reached, which removed the worst elements of the existing system. Players were to be transfer-listed if they refused the terms offered but, crucially, they now had to be paid an agreed rate while listed. The threat was lifted' (Russell, 1997, p. 149). Players could now reject the retaining terms offered by the club, seek a transfer to another club *and* receive payment for doing so. The stranglehold, so long held by the game's authorities over playing contract conditions, was loosened. 27

Despite the new regulations the retainment issue continued to be contentious and a dispute between Newcastle United and their player George Eastham produced dramatic repercussions (Greenfield and Osborn, 2001, p. 79-83; Morrow, 2001, p. 31-32; Russell, 1997, p. 149-150). Eastham, after having a transfer request rejected in 1959, refused to sign the retaining contract offered and sought employment outside football. With the support of the PFA and its 'articulate' (Russell, 1997, p. 148) Chairman Jimmy Hill, Eastham challenged his release from Newcastle United and 'after a great deal of bad publicity, Newcastle eventually relented and, in November 1960, he joined Arsenal' (Russell, 1997, p. 149). 28

However the PFA wished to use this situation, even though it was resolved, to challenge the system as a case of 'unreasonable restraint of trade' (Morrow, 2001, p. 30) and court action, *Eastham v Newcastle United FC* [1963] 3 All ER 139 followed as a 'test of the legality of the retain-and-transfer system' (Greenfield and Osborn, 2001, p. 79).

Following consideration of the transfer market and its labour conditions with regard to playing contracts, Wilberforce, J ruled in favour of Eastham and the football authorities were forced to consider a new contractual system (Greenfield and Osborn, 2001, p. 79-83; Morrow, 2001, p. 30; Russell, 1997, p. 148-151). A new system was devised with a contract period (usually one to two years) and an option period of similar length on the same terms. Clubs had to indicate at the end of the season which players were to be kept and if offered new terms a player had 28 days to respond. If they did not then it was accepted that they were in agreement with the offer (Greenfield and Osborn, 2001, p. 82) but if the club failed to invoke the option then the player was free to sign for another club. 29

The changes were to affect the game considerably. According to Russell (1997, p. 150) 'for a few star players, this was the beginning of a road to truly spectacular wealth' with Fulham's Johnny Haynes becoming the first player to earn £100 per week, a figure seven and a half times the national average wage at the time. Not only were players better rewarded in terms of finance, they were now able to move to another club on a free transfer if the current club did not offer new terms upon contract expiration. This new situation, according to Russell (1997, p. 150-1) meant that 'even the most humble player had a hand in negotiating his contract, was paid at an agreed minimum at all times and was now very rarely held against his will'. The legislative changes were significant in the power battle between clubs and players yet the modified system still had an anomaly in that some players who were offered new terms by their current club refused them in preference for a transfer to another club. Disputes duly emerged between clubs seeking to retain players who themselves were seeking a move elsewhere and these could only be resolved if a buying club could be found to pay the transfer fee demanded by the selling club. 30

This period altered the landscape of the agency-structure battle as, following decades of challenge by the players' union, significant power was wrested from the authorities and the pendulum began to swing toward the middle ground. The abolishment of the retain and transfer systems and the maximum wage are evidence of how the agency (in this case the PFA) were able to gain power over labour conditions from the structure (football authorities and clubs). Whilst this was a significant development the pendulum had only begun to swing toward the centre because the now modified transfer system still permitted 'clubs...[to] retain a player even after the contract had expired and...claim a fee for that player' (Morrow, 1999, p. 32). In effect, freedom of contract was not yet a post-contract condition and thus it is argued that the pendulum of power was still weighted toward the structure and had yet to reach the middle ground between the agency and the structure. 31

STAGE 4: MORE FREEDOM – 1978 TO 1995

Throughout the mid-to-late 1960s and early-to-mid 1970s the PFA continued to challenge the transfer market as it perceived the modified system to still be restrictive as there was no freedom of contract upon contract expiration for its members. The campaigning proved successful as in 1977 freedom of contract was introduced whereby 'having fulfilled his contractual obligations, a player was free to make the best deal he could with any club offering terms. The club holding the registration was entitled to a compensation fee only if it offered to extend the player's previous agreement on no less favourable terms' (Morrow, 1999, p. 32). If the selling and buying club could not agree a fee an Independent Tribunal Panel decided the fee. Of course it was still possible for players to be transferred when under contract through the usual practice that existed but now freedom of contract could now not be denied to players upon contract expiration. 32

The establishment of the Tribunal System could be regarded as the moment when the pendulum of power within this contract power battle was positioned at the midway point between the agency and the structure. The agency had been able to counteract unfavourable employment conditions throughout the twentieth century and gradually wrestle power from the structure to the point that the power dynamic could be considered to rest between the two parties. Consequently, the shift in power had moved *from* the structure (authorities), who so long monopolised the careers of football players, *toward* the agency (players) in the slow journey toward contract emancipation throughout Stages 2, 3 and 4. 33

STAGE 5: EVEN MORE FREEDOM – 1995 TO PRESENT

The previous two stages had delivered significant power for professional players in relation to contract emancipation and labour conditions were improved during the 1980s with increasing salaries available as the game generated greater revenue from television money and commercial activity. Even though players had never been in a better position the 'modifications to the labour market, whilst welcome, were still restrictive and the transfer fee situation denied true occupational freedom to football players in similar manner to baseball's reserve system' (Magee, 2002, p. 219). The reason for this is that as the transfer 34

market still existed clubs could demand a transfer fee for an out-of-contract player who they had offered terms to (Morrow, 2001, p. 32; Russell, 1997, p. 150-1). Former professional footballer, Garry Nelson, described this situation as a 'ball and chain...s hackled to his (the player's) leg' (Nelson, 1995, p. 277) whilst the transfer market itself was described as a 'slave system' (Maguire, 1999, p. 102) and 'a modern form of slavery' (Horne, Tomlinson and Whannel, 1999, p. 249). In comparison to other industries occupational freedom within football's labour market, it seemed, was still denied even though players held more power than ever before.

Following a four year legal battle by Jean-Marc Bosman, an out-of-contract Belgian player denied a transfer by Belgian club RC Liege to FC Dunkerque in France, the European Court of Justice ruled in 1995 that the transfer fee demanded for an out-of-contract player was illegal (*URBSF v Bosman* [1996] I CMLR 645, hereafter '*Bosman*'). Fundamentally 'the court brought the contracts of employment in soccer [football] into alignment with those of any other industry...P ost-*Bosman*, a player was free to move to any club with whom he could agree personal terms' (Cashmore, 2000, p. 53). Magee (2002, p. 219) continues that 'the contract shackles were loosened and players started to utilise their contract freedom to become more mobile and alter recruitment patterns across Europe. *Bosman* facilitated increased traffic of football labour across European borders...as players utilised their new freedom to criss-cross the continent in search of inflated salaries in the wealthy core leagues'. Initially free movement for out-of-contract players could only occur for European Union (EU) players between clubs in different EU nations but further change occurred in 2000 with freedom of contract upon contract expiration movement extended to players moving between clubs in the same country. 35

Football was transformed. The finer details of the transformations in this period is comprehensively covered in Magee (2002, p. 219-223) as it affected English football as one of Europe's elite leagues. Of importance to this paper is how players assumed greater control regarding playing contract conditions at a time when the game, in England especially, was awash with cash. The impact of *Bosman* did not occur for a couple of seasons after the ruling when pre-1995 contracts were up for renegotiation. This was significant in England as a £670 million five year television deal was secured for FA Premier League rights in 1997 which provided clubs with a bigger pot of money than ever before. Clubs now had serious financial capital to play with and this had key consequences: clubs offered radically improved salaries not only to out-of-contract *Bosman*-type players but also to currently contracted players in an effort to stave off *Bosman*; long-term contracts became the norm; transfer fees radically rocketed on the transfer market as clubs tried to purchase players currently in contract; and significant numbers of overseas players, many on *Bosman*-type contracts, were recruited (Greenfield and Osborn, 2001, p. 74; Magee, 2002, p. 220-1). 36

Magee argues that (2002, p. 220), 'this was a powerful position for players to assume, especially the top ones, as clubs could not afford to lose a player without a transfer fee reimbursement. Increased television money and the lubricant of *Bosman* free transfers have given players, especially top ones, significant bargaining power and control to increase their earnings greatly as well as to manage their career destination'. Magee (2002, p. 221) indicated that the Manchester United captain, Roy Keane, commanded a 'weekly salary of £52,000...and this comparison shows the marked contrasts between the modern-day footballer and his less than affluent predecessor. The evolution of the modern-day footballer into a high earning superstar saw the pendulum of power over labour rights shift away from the clubs/authorities and rest with the player'. 37

However, it is too simplistic to conclude that the power acquired by the player in the 1990s was acquired without assistance. Rather, player representatives (popularly referred to as agents) became a central element of contract negotiations in increasing numbers in the 1990s (Horne, Tomlinson and Whannel, 1999, p. 248) and significantly assisted players to acquire greater control over playing contract conditions. Agents have a long presence in the history of football (Greenfield and Osborn, 2001, p. 190-2; Russell, 1997, p. 47) but *Bosman*, and seriously improved financial conditions in the mid-1990s, increased their number and importance. 38

Agents, in terms of their significance, became a powerful ally for the player as they were professional negotiators and consequently were in a position to provide favourable positions for their clients (players). Agents, of which there are a variety of types (Magee, 2002, p. 231), build up a player "bank" of clients and represent these during contract negotiations but some also perform other duties such as financial management and sponsorship deals. As well as seeking to re-negotiate existing contracts or negotiating transfer deals for contracted players, 'out-of-contract footballers provided greater opportunities for agents to get involved in football negotiations...I t is arguable that the agent has become the most important figure in the football market and more have become involved in the English football business, fuelled by the large commission fees available from negotiating contracts that could be worth millions of pounds' (Magee 2002, p.221). 39

Magee (2002, p.221-237) offers interesting insights into the football business and the role of agents: 40

agents are necessary in the modern game; agents are able to offer a protection screen around their players; agents are able to discuss terms with more than one interested club without contravening regulations; a licensing system exists but is not effective; agents work for both clubs and players, sometimes on the same transfer. Comprehensive interpretive research into agents and their roles / duties in the English football market would be most welcome to expand these observations as clearly agents occupy a powerful position in the game.

Consequently it is possible to consider that players, with the assistance of their agents, acquired a powerful position over clubs and that the reverse relationship from the beginnings of Stage 2 – when professionalism began – existed at the end of Stage 5. The power of players at the turn of the 21st Century is summed up by club manager Steve McMahon (cited in Magee, 2001, p. 236-7) who admitted that ‘The fear factor has gone. You can’t tell players off anymore. You can’t get players the sack, they get you (the manager) the sack. The manager was always the one with all the aces...and you shit yourself with the manager. He was always the one but now players get the manager the sack. He can say to the Chairman “I don’t like that manager, I’m not signing for this club unless the manager goes” and if he is the best player on £50,000 a week the Chairman will buckle. Players have such power now’. Sir Alex Ferguson, the highly successful manager of Manchester United, however counters McMahon’s assessment by insisting that managers should always earn more than players and the managerial practices of Ferguson indicate clearly that he will not be dictated to by players when it comes to power. As a case in point, the manager recommended the transfer of David Beckham, the England captain, to Real Madrid in the summer of 2003 with the initial stages of the transfer being conducted at a time when the player was on an end-of-season holiday unaware that he was about to be sold (Beckham, 2003, p. 388-97). 41

Therefore analysis of the current situation with regard to power, and especially in the post-Bosman era, must be treated with caution. For the top players, *Bosman* is still a powerful lever in contract negotiations as the threat of losing such players for no transfer fee is too huge for many clubs to take a risk with. Yet at the lower end of the professional tier *Bosman* is a grave worry as freedom of contract means unemployment in its basic terms and clubs have used *Bosman* to rotate playing staff and offer reduced packages to out-of-contract players unable to get a contract elsewhere. This has accounted for increased numbers of non-retained players at the end of recent seasons in England. Essentially in the lower tiers *Bosman* has permitted clubs to wrest back some of the power over playing contract conditions and thus *Bosman* can be considered a double-edged sword now. Top players use it to strengthen their position with clubs while clubs at the lower reaches use it to their advantage over players. 42

Much changed in the football labour market during the twentieth Century but rules and regulations still exist that, effectively, control and limit the actions of the players and their representatives regarding playing contracts, even though professional footballers have never had so much freedom and power (Magee, 2002, p.221). This was spectacularly highlighted by the clandestine meeting that took place between Arsenal FC player, Ashley Cole, his agent and Chelsea FC regarding a potential future transfer. Cole, the England left back was contracted to Arsenal and negotiations about extending that contract had reached an impasse and shortly afterward it emerged that a meeting had occurred between Cole and Chelsea FC. In effect this meeting contravened FA and FA Premier League rules as an illegal approach to a player currently under contract to another club. Following an FA investigation penalties were imposed on Chelsea FC, their manager and Cole while Cole’s agent was charged with breaching FA rules, breaking FIFA rules and of improper conduct (charges the agent has yet to respond to at the time of writing). 43

Cole was fined £75,000 and consequently but unsuccessfully challenged this at the Court of Arbitration for Sport. His legal team argued that their client should have occupational freedom as in other professions and industries to be able to discuss potential employment at other clubs when under contract without penalty. Even though the court ruled in favour of the game’s authorities, Cole’s defence demonstrates two things concerning power and labour conditions as it currently stands. First, players, and their advisors, appear to perceive themselves in a position of such power that rules and regulations regarding labour conditions can be contravened without sanction. Second, the battle for occupational freedom with regard to playing contract conditions is still not over despite all the changes throughout the last century and the movement of the pendulum from the structure toward the agency. The outcome of the case involving the charges brought against Cole’s representative is a power battle within the football labour market yet to be concluded but is one that will directly impact upon the labour conditions of players in the future. 44

With regard to the agency-structure debate, much occurred in Stage 5 as the pendulum swung from the centre ground to the agency for the first time in the game’s history. The catalyst for this was the *Bosman* ruling as players then commanded almost full control over their employment conditions and held power in contract negotiations, whether that was in terms of extending an existing contract or negotiating a new one with another club. Never before had clubs been dictated to in the manner they were in the late 1990s as the fear of *Bosman* caused clubs to over-inflate salaries on extended contracts to existing players or offer over-inflated salaries and / or long-term contracts in an attempt to lure potential players. A series of challenges over a numbers of decades had resulted in the pendulum of power swinging from the structure 45

(authorities) at one end to the agency (players) at the other. The position of agents in this agency-structure debate however is unclear as the role of agents within the game appears dichotomous as it appears they can represent clubs *and* players with regard to contract negotiations (Magee, 2002, p. 220-1). Greater study of the role of player representatives is welcome not only in determining their role(s) in the labour market but also with regard to their theoretical positioning in the agency-structure debate.

There is no doubt that players assumed immense power in Stage 5, particularly recently, but one must assess the power battles by considering the 'extent to which players are still exploited...Also, even though...football authorities have weakened, the power of the governing bodies of the Football Association, UEFA and FIFA cannot be discounted because no matter what changes are introduced to football these bodies are the ones who implement them' (Magee, 2002, p. 237). As well, despite Bosman offering freedom-of-contract, the transfer market still survives and clubs have recently used it to wrest back some power from players, particularly those on extended contracts by selling them before the end of their contracts. The transfer of David Beckham, referred to earlier, demonstrates that clubs still retain power over players and that the pendulum of power perhaps is more centralised than is perhaps realised. After all, the income generating value of Beckham to Manchester United was significant yet the club (structure) still had the power to sell the England captain (agency) at a time of theirs, and not the player's, choosing. This transfer could be viewed as a key moment in moving the pendulum of power back toward the centre and it will be interesting to note what direction the pendulum moves in Stage 6 as the power battle is far from over. 46

CONCLUSION

There is little doubt that decades of legislative challenge to the professional system in football's labour market reaped significant rewards for professional football players, especially as the twentieth Century progressed. In terms of power and agency-structure, Stage 1 in the timeline is discounted as the professionalised system was not in place and thus the game lacked the coherence, organisation and rigour it was to develop post-1885. It is clear that the *structure* was in a position of strength in Stage 2 but this shifted toward *agency* in Stage 3 and 4 and cemented itself with *agency* in Stage 5, especially in the 1990s. Presently, it is fair to argue that in Stage 5 the pendulum swung heavily toward the players in the immediate post-Bosman era but latterly has begun to take a more centralised position as the authorities, and in particular clubs, have wrested back some of the power. It is key in this assessment however to remember Russell's (1940, p. 35) earlier point about power as the 'production of intended effects' as in this historical timeline neither the agency nor the structure has been all-powerful at any point. Also, to describe the changes to playing contract conditions throughout the timeline as 'intended effects' (Russell, 1940, p. 40) is not appropriate as the timeline clearly demonstrates that relations between the *agency* and the *structure* have been, and still are, less than harmonious. 47

Importantly, nonetheless, is the position of the agent in this agency-structure relationship as 'it could be argued that even though the player has gained significant control from the clubs in recent times, it is the agent who ultimately controls and potentially exploits the player' (Magee, 2002, p. 230). Thus, it could be argued that the agent, and not the authorities, are in control of a player's career destinations as it is they who are the mediator in contract negotiations and the one who determines the player's choices. In this sense, the agent inhabits the space between the *agency* and the *structure* yet are able to move from the *agency* to the *structure* depending upon whom (the player or the club) the agent is representing. Extended interpretive research into player representatives would provide a greater theoretical analysis of the position of agents in the agency-structure debate than what is preliminarily offered here. 48

To conclude, Sugden and Tomlinson's (2002, p. 4) assertion that 'human beings possess some power in the form of their ability to transform' is appropriate to apply to professional footballers as they have been able to improve playing contract conditions – and thus employment conditions – throughout Stages 2 to 5. Consequently, and with the significant assistance of the PFA and Bosman's legal team, the *agency* has used power 'to respond to the social environment and to manipulate it in some way' (Sugden and Tomlinson, 2002, p. 4) for the benefit of the occupational status and labour conditions of professional football players. It is reported that in 2006 a Premier League footballer has an average salary of £676,000 (Harris, 2006, p. 69), a far cry from the days of maximum wage but indicative of the vast amounts of money now available to professional footballers. 49

Even though the focus of this article centred on playing contract conditions, analysis of power determinants in the football labour market cannot discount that 'supporters also have a lot of untapped power and the nuances of the football supporter are founded upon extreme levels of club loyalty; a disgruntled player holding his club to ransom in a power conflict tends not to be looked upon favourably. Football would be a very weak product without supporters and...fortunately the clubs are still able to access a strong ally in the supporter' (Magee, 2002, p. 237). The timeline has shown how players currently 'experience freedom unknown in previous phases of professional football, but claims of total player power need to be discounted' (Magee, 2002, p. 237). However the Chelsea-Ashley Cole illegal 50

meeting suggests that total player power is sought and that, at the top level at least, rules and regulations are worth testing by players and / or their advisors in the quest for the occupational freedom evident in other professions – in other words, the right to terminate a contract by serving a minimum period of notice. As for the pendulum of power, where it swings in the future depends upon the broader political economy that surrounds football and how key agencies are able to utilise the power that materialises but one can expect more conflict along the way.

BIBLIOGRAPHY

- Archer M (1988) *Culture and Agency: The Place of Culture in Social Theory* (Cambridge: Cambridge University Press).
- Banks S (2002) *Going Down: Football in Crisis* (Edinburgh: Mainstream Publishing).
- Beckham D (2003) *My Side* (London: CollinsWillow)
- Bourdieu P (1977) *Outline of a Theory of Practice* (London: Cambridge University Press).
- Cashmore E (2000) *Sports Culture: An A-Z Guide* (London: Routledge).
- Dobson S and Goddard J (2001) *The Economics of Football* (Cambridge: Cambridge University Press).
- Giddens A (1984) *The Constitution of Society: Outline of the Theory of Structuration* (Berkeley: University of California Press).
- Giddens A (1997) *Sociology* (Cambridge: Polity Press).
- Greenfield S and Osborn G (2001) *Regulating Football: Commodification, Consumption and the Law* (London: Pluto Press).
- Hamil S, Michie J and Oughton C (1999) (eds) *A Game of Two Halves? The Business of Football* (Edinburgh: Mainstream Publishing).
- Hargreaves J (1986) *Sport, Power and Culture: a Social and Historical Analysis of Popular Sports in Britain* (Cambridge: Polity Press).
- Harris N (2006) '£676,000: The average salary of a Premiership footballer in 2006' (Tuesday 11 April 2006: *The Independent*)
- Horne J, Tomlinson A and Whannel G (1999) *Understanding Sport: An Introduction to the Sociological and Cultural Analysis of Sport* (London: Spon).
- Magee J (2002) 'Shifting Balances of Power in the New Football Economy' in Sugden A and Tomlinson J (eds) *Power Games: Theory and Method for the Critical Sociology of Sport* (London: Routledge).
- Maguire J (1999) *Global Sport: Identities, Societies, Civilizations* (Oxford: Polity Press).
- Mason T (1980) *Association Football and English Society, 1863-1915* (Brighton: Harvester Press).
- Mason T (1994) 'The Bogota Affair' in Bale J and Maguire J (eds) *The Global Sports Arena: Athletic Talent Migration in an Interdependent World* (London: Frank Cass)
- Morrow S (1999) *The New Business of Football: Accountability and Finance in Football* (London: Macmillan Press).
- Nelson G (1995) *Left Foot Forward* (London: Headline).
- Ritzer G (1996) *Sociological Theory* (New York: McGraw-Hill).
- Russell B (1940) *Power: A New Social Analysis* (London: Basics Books/Allen & Unwin)
- Russell D (1997) *Football and the English* (Preston: Carnegie).
- Sage G (1990) *Power and Ideology in American Sport: a Critical Perspective* (Champaign: Human Kinetics).

Sugden J (2002a) *Scum Airways: Inside Football's Underground Economy* (Edinburgh: Mainstream Publishing).

Sugden J (2002b) 'Network Football' in Sugden J and Tomlinson A (eds) *Power Games: A Critical Sociology of Sport* (London: Routledge).

Sugden J and Tomlinson A (1998) *FIFA and the Contest for World Football: who Rules the People's Game?* (Oxford: Polity Press).

Sugden J, Tomlinson A and Jennings A (1999) *Great Balls of Fire: how Big Money is Hi-jacking World Football* (Edinburgh: Mainstream Publishing).

Sugden J and Tomlinson A (2002) 'Theory and Method for a Critical Sociology of Sport' in Sugden J and Tomlinson A (eds) *Power Games: A Critical Sociology of Sport* (London: Routledge).

Taylor M (2001) 'Beyond the Maximum Wage: The Earnings of Football Professionals in England, 1900-39' 2(3) *Soccer and Society* 101.

Tischler S (1981) *Footballers and Businessmen: the Origins of Professional Soccer in England* (London: Homes and Meier).

Walvin J (2000) *The People's Game: the History of Football Revisited* (Edinburgh: Mainstream Publishing).

Email: jmagee@uclan.ac.uk

Magee, Jonathan, "When is a contract more than a contract? Professional football contracts and the pendulum of power", [Entertainment and Sports Law Journal](#), ISSN 1748-944X, October 2006, <<http://go.warwick.ac.uk/eslj/issues/volume4/number2/magee/>>