The man in white is always right

Cricket, law and the meaning of life

David Fraser

'What do they know of cricket who only cricket know?'

C.L.R. James

When I first came to Australia in December 1988, the Pakistani and West Indies cricket teams were touring this country. I knew little, if anything, about cricket and was astounded by the blanket media coverage accorded to the sport.

One day as I watched with some Australian friends there was a unanimous shout from the fielding side and the batsman was, or so I was informed, given out LBW. As my friends answered my queries I suddenly found myself with an anchor, a point of reference from which I could begin to understand this game. The LBW decision bears a strong resemblance to the issues raised in the very problematic area of causation in tort or criminal law, especially when dealing with liability for an omission. How can something which did not occur be said to have 'caused' something which did? How can the umpire be sure the ball would have hit the stumps?

While my fascination with cricket and obsession with the game soon found other points of reference and ways of understanding, the connections with law continue to fascinate. From the case of William Waterfall, the first person convicted of manslaughter on the cricket field at the Derby Assizes of 1775, to the restrictive trade practices litigation of Packer cricket, and continuing controversies over the tax status of benefit proceeds, cricket provides useful examples of 'real law'. More importantly, however, cricket offers examples of how legality, ethics and moral judgments inform all our lives and our daily social practices.

Cricket, and all the complexity and contradiction which make up our understanding of that game, can tell us much about the way we live and about the role and function of law in our society. What this article is about is the breaking down of barriers between the parts of our lives. It is an argument against seeing either law or cricket as a distinct area of existence which has nothing to do with the other. It offers support for the contention that it is wrong and counter-factual for us to think, as traditional views of the role and function of 'the law' would have us believe, that there are important and higher things like 'the Law', and unimportant and lower things like cricket.

This does not mean that we must not make individual and social orderings and rankings of priorities, but it does mean that we must realise that there is nothing pre-ordained or immutable about the orderings we do make. What follows, then, is my own idiosyncratic view of the inter-connections between the various parts of what we might call cricket, law and the meaning of life. Some of the analogies and metaphors are straightforward — causation and LBW, frequency of appeals and respect for the judicial process, neutral umpires and judicial bias. Others involve discussions of broader, traditional meta-constructs — race, class and gender. What they all share is a narrative ability, that is they can all serve as a means to understand and create stories about who we are and how we live.

Cricket in society

There is, of course, little doubt that organised sport as we now know it originated and grew in England at the time of the Industrial Revolution. Because of these historical and social roots, sport (and cricket) quite clearly reflected the dominant culture of the time. Mandle puts it succinctly when he states:

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> ... its framework, organisation, ethics, even its quirks and quiddities, were nineteenth century industrial. In organised sport we see the inventor, the entrepreneur, the employee, the class conflict. Whatever you like to name as part of Victorian industrial society was there: its passion for classification, order and detail, for moralising, for self-improvement, for respectability.[1]

Nowhere is this better epitomised than in the most Victorian of sports — cricket, with its fascination with statistics, its distinctive and gentlemanly clothing, its ideological connection with upright Christian morality — 'it's not cricket' etc. Nor need one be a Marxist to recognise the intimate connection between cricket and capitalism. No less an authority than Neville Cardus, certainly no political or cultural radical, writing about the 'greatest of all cricketers', W.G. 'Doctor' Grace, saw such a connection as he wrote: 'In an epoch of prosperity, when the idea of material expansion was worshipped for its own sake, even the vast runs made on a cricket field by W.G. Grace seemed symbolical; his perpetual increase of authority and performance suited a current love and respect for size and prosperity'.[2]

Yet to describe Grace, cricket and the accumulation of runs as prototypically capitalist is to tell only half the story: capitalism, even at its Victorian zenith, was not a cultural monolith. Cricket, as the epitome of capitalism, has always carried within it apparently unresolved and unresolvable contradictions. Even in the paradigmatic Grace we find the conflict of cricket as 'a violent battle played like a genteel, ritualised garden party' as well as the conflict between 'a new profession' and a game 'practised as if it was a pastime'.[3]

What makes cricket so fascinating as a cultural phenomenon, and so similar to law as a social practice, is not its monolithic and one-dimensional connection to the mode of production. Rather, it is at once inside and outside the mode of production, it affirms and denies capitalist values, it is anarchic and governed by Laws; it is a team sport dominated by a fascination with individual performance; it is a bourgeois game dominated in many ways by a proletarian practice; it is governed by Laws which are often supplanted in practice by higher ethical conventional norms; it is the epitome of British imperialism and colonialism and has in many instances been a driving force for colonial national freedom struggles. It operates, as does law, at many levels, through multiple contradictions and somehow, with all this, it continues to thrive. Indeed it might be argued that cricket, like law, is a system of normativity which thrives and grows because of the contradictions which create it.

The fundamental problem of cricket, like that of the legal system, arises not so much as a conflict between myth and reality, but as a conflict between competing myths and realities. Admirers of the higher or true cricket are wrong when they imply that we are witnessing a change from a system in which ethics dominated law to a modern, commercially-driven one where the hierarchy of values is reversed.[4] Like the structuralist Marxists who see cricket as merely a reflection of the mode of production, some see cricket as a one-dimensional thing which is and which, when it changes, is something else. A close study of the practice of cricket, on the contrary, shows cricket to be a totality, comprised of many conflicting and contradictory elements which have been and continue to be able to co-exist. Indeed, what makes cricket such a fascinating and valuable social text are these co-existing contradictions which enable us to tell and create truly interesting stories about our collective existence. It is in this ability to thrive with contradiction that cricket and law are most closely related.

Cricket and legal formalism

Rather than always being an ethically-governed practice in which the Laws are merely second-order norms, much of the character of cricket can be found in a rigid and unbending formalism in which the Law dominates over ethics and indeed commonsense. The first part of Law 28 states that the wicket is down if either the ball or the striker's bat or person completely removes either bail from the top of the stumps. In 1924, when batting for Cambridge against Surrey, R.J.O. Meyer was 'bowled' by a ball which caused his leg bail to hop up and balance itself on top of the leg stump. The umpire adjudged him out, but the MCC later regarded this decision as incorrect. The Law was later changed.

In an eight ball over at Georgetown in 1946-47: 'D.F. Hill bowled an over of 14 balls without any wides or no balls. The umpire had simply miscounted after reaching the number of eight and poor Everton Weekes was given out LBW off the fourteenth ball'.[5]

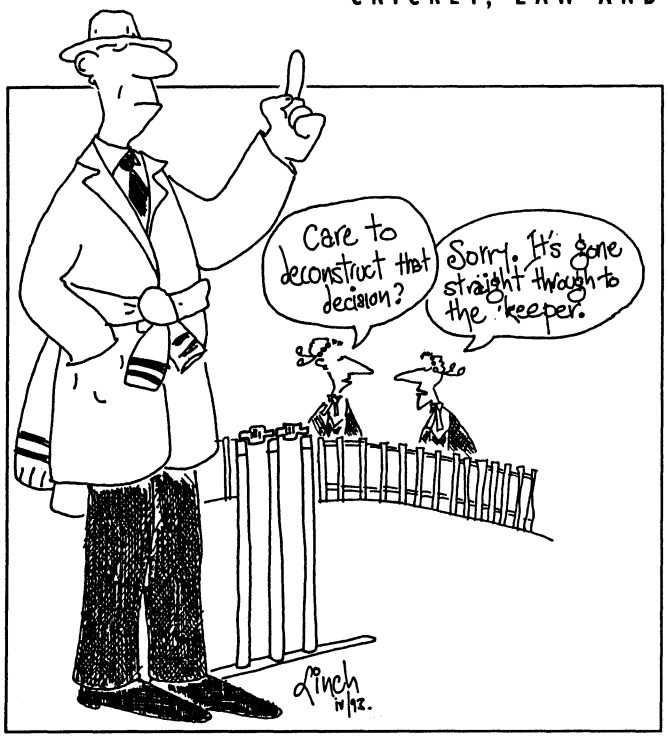
Wellington's Robert Vance created an unenviable first-class record of 77 runs scored off his one over in the match against Canterbury at Lancaster Park, Christchurch. Vance was under instructions to bowl no-balls to encourage the Canterbury batsmen to go for runs which would give Wellington a better chance to bowl them out. Canterbury batsman Lee Germon took maximum advantage of this act of 'charity and goodwill', plundering a record 69 runs in the over, hitting eight 6s, five 4s and a single. There were 17 no-balls besides five legitimate balls in this over. Chaos reigned, the match ending in a draw, both teams scoring the same total but Canterbury having two wickets in hand.

The first two of these extracts illustrate that a narrow, legalistic approach to the Laws has always been a strong and dominant theme of cricket; the third example shows, however, strict legality as a guise for sharp practice.

It's not cricket — underarm bowling, legality and the meaning of life

No other incident in recent cricket memory has so epitomised the conflict between law and morality than the infamous underarm incident at Melbourne in February 1981. In a one-day match with New Zealand, with the visitors needing six from the last ball for a tie, Australian captain Greg Chappell ordered the bowler, his brother Trevor, to deliver a 'mullygrubber', an underarm delivery rolled along the ground. Trevor Chappell complied — the incident continues to haunt him. He points out, however, that at one level, the incident has a different epistemological status than that attributed to it generally. He says that 'Most people did not realise that you had to tell the umpire, and he tells the batsman, that you were going to bowl underarm . . . ' Thus, unlike most observers, the active participants *knew* what was about to occur.[6]

The underarm incident continues to serve as an almost universal signifier in Australian-New Zealand sporting contacts. The manager of the New Zealand blind cricket team recently complained that Australia had an advantage in such competitions because all bowling was underarm; when describing a position of unfair advantage or dominant position in s.36A of the *Commerce Act* 1986 (NZ), the authors chose to highlight the issue in the trans-Tasman market by using the title, Section 36A: Underarm Bowling.[7]



The issues surrounding the underarm incident are myriad. At the surface level, the conflict is a straightforward one of rule-formalism confronting an unwritten ethical norm; needless to say, Chappell's underarm delivery was perfectly 'legal' at the time. But something deeper and more contextually important arises from even a cursory analysis of the 'case'.

Like all events to which we attribute significance and which we imbue with meaning, the underarm bowling affair occurs in a particular context; the Chappell incident takes on importance only because of a conflict between the Law and the convention. But there is in the debate around this case, as in all cases where it is convenient or necessary, a tendency to forget history and to grant one's position the status of a universal and transcendent epistemological basis. The 'it is legal' argument from this position appears much less problematic than the conventional 'it's not cricket' argument. As a matter of historical fact, for example, until 1864, it was illegal to bowl overarm and any bowler attempting to do so was no-balled. It was not until 1878 that Australia became the first team to use a specialist overarm attack. Appeals to the absolute ontological immorality of Chappell's decision lose their argument with the history of the game and its Laws.

Perhaps as a historical curiosity, the phrase 'it's not cricket' embodies the argument of the proponents of anti-formalist ethical versions of the game in general, and of those who condemn the Chappells in particular. The phrase was originally coined by Rev. James Pycroft to express his displeasure at and disapproval of overarm bowling. In a neat historical, contextual flip, 'it's not cricket' has left its original place in the interpretive community to stand as moral armament for those on the opposite end of its historical positioning. Truth and falsehood shift as time and community practices and texts shift.

Cheats and chuckers

'Chucking' and 'throwing' are the terms used by cricketers to refer to the bowling actions which violate the terms of Law 24(2). In most instances, it is simply shorthand for calling the offender a cheat. The issues which surround the chucking debate in cricket again find their sources in the history of the game. Like most other debates we have seen, they raise issues of law — the meaning of Law 24(2), its correct interpretation and application in specific situations, and issues of ethics — is chucking immoral as well as illegal? Why is it treated more harshly in the ethical practices of cricket than breaches of other Laws?

Interesting insights into the general and specific operations of the Laws and spirit of cricket emerge from a 1901 meeting of the County captains. The captains banned 14 players 'they all agreed were throwers'. At one level, this 'agreement' is a classic example of the experimental nature of our understanding about truth and law. If we operate within a system of rules (law and cricket) our knowledge about the practice of rules comes not so much from a scientific and rational study or understanding, but from our lived experience of them. We know a tort or a crime (or a thrower) when we see one because we have seen torts and crimes (and throwers) before. We have a lived, experiential base for our 'knowledge' of them. For us law is existential and sometimes ontological, not epistemological.

Similarly, we 'know', or rather the County captains know, what throwing is, not because of an intimate knowledge of the mysteries of Law 24, but because to possess that knowledge is what it actually means to be a county cricket captain.[8] As part of their shared experience of 'cricket', 'they all agreed' the players in question were throwers. Cricket, Law and the spirit of the game are not technical skills, rather the technical skills are part of the practical wisdom of what it means 'to play cricket'.

The most important interpretive 'fact' to come out of this 1901 meeting is that the captains did 'all agree' that the players in question were throwers. The controversy had raged for 20 years and nothing was done until an Australian umpire, Phillips, took action and began to enforce the Law by no-balling offending bowlers. During this time, people involved in cricket 'knew', as they could not fail to 'know' by the very nature of their involvement and participation in the game, yet they did nothing.

This very idea of the practical wisdom and knowledge of the actors in the game of cricket is highly problematic. In addition, as we know from our experience of the criminal justice system, and of the theory and practice of propaganda, it is not impossible to create 'facts' simply through a concerted effort to change public perception. A similar process of chipping away at accepted legal principles and interpretations through changing social circumstances, including public perception and opinion is the very process of the evolution of the common law method and system.

The 'fact' of chucking is an interpretive construct, made up of a complex matrix of physical phenomena, public perceptions, ethical dilemmas and a host of other factors. These factors are combined with the problematic nature of the interpretive community of cricket and its 'knowledge' of chucking. Pollard refers to the actual definition of throwing as ' . . . the game's most complex problem, still unresolved', and states that John Arlott, one of the game's great observers, said 'the job of explaining a throw for the law book was one for the barristers, not cricket writers'.[9] It is obvious any claim of 'knowledge' as to what 'chucking' means is filtered through many complex and confusing factors, to which others like racism and nationalism must be added if the historical context which informs the chain of being of cricket (and of chucking) is to be understood.

Aboriginal fast bowlers Albert 'Alex' Henry, Eddie Gilbert and Jack Marsh have all been at the centre of the throwing controversies of their eras. Marsh even went so far as to have a doctor put his arm in a splint which made it physically impossible for him to throw. In a country where no Aboriginal has ever played test cricket, it would not be disingenuous to propagate the idea that decisions to no-ball all three were, in part at least, informed by an inherent Australian racism.

In addition to utilitarianism, formalism, moralism, racism and class-bias, the interpretive content of 'chucking' may also be informed by nationalism. Charlie Griffith, the West Indian fast bowler, was harassed and driven out of the game as a thrower, and among the main proponents of this view of his action were the Australians and the English. On the other hand, the West Indians defended their own bowler, as had the Australians during Ian Meckiff's similar ordeal.

None of what I have said means that the umpires who no-balled Marsh or the Australians who attacked Griffith's actions were blinded by nationalist bias or utilitarian desires to rid themselves of a fearsome opponent. What the chucking issue in all its complexity demonstrates is that cricket, like Law, is a social text which we imbue with meanings which are sometimes fixed or apparently universal, and sometimes fluid and subject to 'local' specificities. Our 'knowledge' of cricket, its Laws and ethics, its ethos and praxis, is an ever-changing text on which we inscribe, and from which we erase, meanings of which even we are sometimes unaware. In spite of this, or perhaps because of it, tit-for-tat allegations of chucking continue.

The meaning of life

Just as law has survived Legal Realism and Critical Legal Studies, and philosophy has survived the deconstruction of Derrida and Foucault, so cricket has survived Bodyline and all the other contradictions of the game. Like all other games, cricket involves a tension between the game as 'game' and the 'game' as an embodiment of cultural lessons and broader messages.

Many might still see law as involving something more than what is at stake in cricket. While at individual moments (for example, child custody hearings) what is at stake in law is clearly more important than what is at stake in cricket, these individual moments are also filled with an entire social content (for example, male/female relations in the child custody case; or national pride, physical violence in cricket) which makes distinguishing between them virtually impossible, and which may indeed imbue the apparently less important text (cricket) with a much more crucial over-all cultural impact.

Others may refuse to recognise the important connections between law and cricket because they suffer from outdated formalism which imbues 'law' with a kind of epistemological hierarchical status which, in practice, it does not deserve. For them, law is a formal certainty. Cricket is just a game.

But law is not a formal certainty. It is almost by definition and in practice a combination of uncertainty and certainty. A lawyer sells expertise and knowledge to a client, recognising that part of the expertise and knowledge is in identifying the areas of law which are uncertain. Most of what we can know is limited to what we cannot know, that is, the trace of our knowledge is more vital than any pseudo-epistemology. Medical 'science' can diagnose cancer, but cannot cure the common cold or explain how aspirin works. We watch television and turn off the lights yet we can never really explain how electricity works; we can play cricket or practise law yet never really know either law or cricket.

Just as a lawyer's advice is always couched in terms of 'it would appear', and just as a barrister or doctor may speak of 'chances' of success, so too is cricket based on a combination of uncertainty and Laws. Ian Chappell can proclaim the glorious uncertainty of the role the pitch can play in the outcome of a match and speak of certainty as making the game 'predictable and pedestrian',[10] and yet we know that uncertainty is fair because both sides play on the same pitch and the unexpected, in such circumstances, is to be expected. Cricketers can speak of an expensive missed chance where a batsman was dropped at 0 and went on to score a century, while at the same time recognising there is no statistical or scientific causal connection between the dropped catch and anything that happens afterwards. We celebrate the great individuals like Don Bradman, and celebrate with equal fervour the great Australian sides whose sum total was often greater than the whole of its parts.

Every aspect of cricket contains and competes with its contradiction. We can see it as a formalistic, bourgeois capitalist enterprise, we can see it as unveiling possibilities for true human community, or we can see it as both things at once, calling for us to imbue it with meaning through a collective social practice. If we can see this, then perhaps we can see the same thing in law and life — that we are not condemned or restrained except when and if we participate in our own restraint. When we begin to see law and life as cricket, we can begin to take control over the construction of meaning in our daily existence.

We will then realise that the answer to C.L.R. James's question, 'What do they know of cricket who only cricket know?' is at once nothing and everything. We know nothing of cricket if we see it as 'only a game', and we know everything of cricket when we know and acknowledge the contexts out of which it is constructed and into which we insert it. James poses the post-modernist question of presence and absence of the trace, the question of erasure, of the possibility of knowing, of knowing the possibility and of the possibility of possibility. When we know cricket we shall know ourselves.

References

1. Mandle, J., 'Games People Played: Cricket and Football in England and Victoria in the Late Nineteenth Century', 15 (1982) *Historical Studies* 511 at p.512.
2. 'William Gilbert Grace' in *The Great Victorians* 1982 as quoted in M. Davie and S. Davie (eds), *The Faber Book of Cricket*, Faber, 1987, at p.94.
3. Nandy, A., *The Tao of Cricket: On Games of Destiny and the Destiny of Games*, Oxford University Press, 1986, at p.8.
4. Nandy, A., above.
5. Brodribb, G., 'A Look at Some Laws', in *The Boundary Book*, p.279 at p.280.
6. Mossop, R., One ball dents Australia's image as a sports nation, *Sydney Morning Herald*, 2.2.81. See also Growden, P., Trevor Chappell reflects: Why I bowled underarm, *Sydney Morning Herald*, 25.3.86.
7. Calhoun, B. and Brown, J., *The Interface Between Amended Section 36 of the Commerce Act 1986 and Intellectual Property Law*, Competition Law and Policy Institute of New Zealand (Inc.), Workshop, August 1990, at p.16.
8. See Fish, S., 'Dennis Martinez and the Uses of Theory', 1987 96 *Yale LJ* 1773.
9. Pollard, J., *Australian Cricket — the Game and the Players*, Angus and Robertson, 1988, p.1047.
10. 'Pitched Battle', *Cricket Life International*, June 1990, p.5.