through this legislative exception that women are represented as inferior and that inferiority is naturalised. It would seem then that the sport/sex/law nexus is an important site of cultural production, and one which, in the present context, serves to envelope and normalise the female body.

References

1. See the Hon. Dr B.P.V. Pezzutti, Debates of the Legislative Council, 4 June 1996, p.2390. See also Birrell, S. and Cole, C.L., ' Double fault: Renee Richards and the Construction and Naturalization of Difference', (1990) 7 *Sociology of Sport Journal* 1-21.
2. See the Hon. J.P. Hannaford, Debates of the Legislative Council, above, p.2367.
3. Debates of the Legislative Council, above, at p.2371.
4. See the Hon. Dr M. Goldsmith, Debates of the Legislative Council, above, at p.2391.

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The Super League case: a level playing field at last

This article will examine the contrasting *News Ltd v ARL* (Super League) decisions in the context of the transformation of sport from recreation to commodification. It will become apparent that the recent Super League appeal decision not only ended the ARL monopoly on Rugby League but laid to rest the myth that sport is purely for sport's sake. The appeal court chose to recognise the commercial context in which sport exists — corporate sponsorship, merchandising, advertising, pay television — refusing to insulate sport from the economic realm.

The legal point at issue

The *News Ltd v ARL* case highlights the commodification of sport as two corporations fought for the rights to a marketable product — Rugby League. News Ltd contended, among other things, that the ARL had breached s.45(2) of the *Trade Practices Act 1974* (Cth). This section prohibits a corporation from making a contract or arrangement which contains exclusionary provisions which would have the effect of substantially lessening competition in a 'relevant market'. News Ltd argued that a 'relevant market' did exist in the form of a 'Rugby League Competitions Market' which involved the provision of goods and services in the form of entertainment — broadcasting, merchandising and sponsorship.

News Ltd v ARL (No.1)[1]

At first instance Burchett J held that a 'relevant market' for Rugby League did not exist because its products were readily substitutable. In other words, if goods can be substituted then a market for them cannot exist. This form of judicial reasoning and economic analysis is suspect because it views sport as a monolithic category, characterised by its sameness rather than the highly differentiated and culturally rich phenomenen that it is in reality. Thus none dare confuse Rugby Union 'the game they play in heaven' with Rugby League.

The insistence of Burchett J that no 'relevant market' for Rugby League exists appears to be explicable as a form of purposive judicial reasoning concerned to insulate sport, and the values traditionally associated with it, from the domain of commerce. Further, in seeking to locate Rugby League beyond the claims of commerce Burchett J contended that while most clubs engage in 'incidental trade' they were formed for the purpose of playing and promoting their respective codes of sport and not for the purpose of trade or commerce. While this may have been the case in 1907 it is a far cry from the commercial reality of rugby league in 1996. It is also important not to lose sight of the fact that Rugby League emerged in 1907 as a departure from Rugby Union, motivated by the desire to pay players for their services.

News Ltd v ARL (No.2)[2]

On appeal Lockhart, von Doussa and Sackville JJ held that the terms of the commitment and loyalty agreements made between the ARL, clubs and players had the purpose of preventing, restricting and limiting competition and were therefore void under the *Trade Practices Act*. While the appeal court did not address the question of 'relevant markets' it would appear implicit that the court viewed Rugby League as constituting a market.

Further the court rejected Burchett's attempt to characterise, indeed idealise, the activities of the ARL, its clubs and players as unrelated to and distinct from business:

> Much of the reasoning of the trial judge and the submissions of the respondents proceeded on the basis that the relationship between the League and the ARL and the Clubs existed outside the sphere of business activity. In our view the League were engaged in trade and commerce . . . Plainly the League, ARL and Clubs were concerned to strengthen the national competition so as to enhance revenue potential. [at 212]

Conclusion

The appeal court decision is to be welcomed. As the appeal court judges point out 'a decision as to where the best interests of the game lie is not one that lends itself to judicial determination'. Ultimately, it will, and ought to be, the players and spectators of Rugby League who will decide where the best interests of the beloved game lie. The ruling that the ARL does not have a monopoly over Rugby League was a necessary precondition for effective player-spectator participation in the game's future.

Further, the decision helps explode the myth of traditional values of sport (sport for sport's own sake) which no longer appear to operate in the contemporary world, if they ever did. In this sense Burchett J's judgment gazes back romantically to a bygone, perhaps mythical, age whereas the appeal court recognised the reality of sport as having complex relations with various dimensions of the wider society in which it is located.

References

1. *News Ltd v ARL Ltd & NSWRL Ltd & Ors* No. NG 197 of 1995, Fed. No. 72/96.
2. *News Ltd & Ors v ARL Ltd & Ors* No. NG 213/96.

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