Playing the Game

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Soccer is my game. It has been part of my life and, therefore, a part of me since before I can remember. Much of my early years was spent kicking a ball around in one setting or another. Sleeping or waking, I was never far from a soccer ball. On my own against a wall or with a couple of like-minded friends, I took the part of legendary favourites and played out some of soccer’s great games. The stuff of boyhood fantasizing, some of my best memories can still be traced back to my grandfather’s back yard or the local schoolyard as we whiled away the hours with only a soccer ball for company. Even then, however, arguments over and about the game were commonplace—the ball was out of play, someone had used their elbows unfairly and, in particular, with coats as make-do goalposts, the ball had hit the post or was over the bar. Looking back, I realize that I was always near the centre of these interpretive encounters, making sure that I had my twopennies’ worth and that my team received what I considered its due. As is so often the case, more was learnt (good and bad) on soccer’s field of dreams than the prosaic skills of how to kick and head the ball—friendship, competitiveness, responsibility, sticking up for yourself and, of course, basic argumentative techniques and manoeuvres. It was always more than a game. In so many ways, it has been the defining thread and experience of my life as a person, a professor and lawyer.¹

¹ Osgoode Hall Law School, York University, Toronto. I am grateful to Adam Cohen, Pam Marshall and Wendy Rambo for their assistance and support.

1. In case this is seen as a sentimental overstatement, I should note that, when I was first considered for a job at Osgoode in 1978, the chair of the recruitment committee made the argument that “he is probably more at home on the soccer field than he is in the classroom, but we should take a chance on him.” I took and still take that as a compliment. Most importantly, it was through the language of soccer and our shared passion for the game that my father and I established our relationship and still continue it today.
I.

As I got older, I played in more organised games and at a more sophisticated level: a childhood pastime became a juvenile obsession. In the immortal words of the legendary Bill Shankly, soccer did not become a matter of life and death, "it was much more important than that." While my soccer skills were developing, my rhetorical technique was also coming along apace. In all facets of the game, I was argumentative in my attitude and combative in my actions. As the playing became more advanced and more intense, so did the rhetorical exchanges over the rules and how the game should be played. Much to my team’s regret, I would often be as ready to dispute with coaches about how we should play or argue the toss with the referee over his decision or interpretation of a rule as to play the game. Not surprisingly, this did not endear me to coaches, referees or fellow players. When I was selected to play, my name found its way much too often into the referee’s notebook and I found myself much too often taking an early bath. Through such encounters, I learnt, but never accepted, the fact that coaches and referees were always “right,” not because they were infallible, but because they were final and had the last say.

With the considerable benefit of hindsight and a legal education, I can now not only see the man in the boy and the boy in the man. I can also detect the critical legal theorist in the ebullient soccer player—authority was to be challenged, rules were to be disputed, conventions were to be broken, facts and context were vital, neutrality was a pious pretence and “right” and “wrong” were always situational. On reflection, I recognise that what is common to my soccer and legal involvements is the tendentious issue of what it means to play the game. It is a phrase that is heard around any sporting event or performance. Sometimes offered as a cry of encouragement, it is more often uttered as both an implicit criticism of what is happening and a plea for the game to be played in a way that respects some general expectation of what it means to play the game as it was meant to be played. As such, it invokes a general ideal of the game as a guide and standard for judging and disciplining its particular practice. In law, similar invocations echo around those multiple sites and venues wherever the game of law is played. Judges, lawyers, litigants and laypersons exhort themselves and others to play the game in accordance with a vision of Law that stands behind any particular manifestation of laws. Consequently, it would seem that the ghost of Dworkin’s Hercules appears to haunt sport in much the same way that it shrouds the world of law and legal interpretation.2

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In both soccer and law, therefore, *play the game* is a simple instruction of what to do that relies upon a complex understanding of how a particular practice is to be carried out: it draws on a detailed and defensible ideal of play and participation. While the notion of what it means to *play the game* is crucial to all games in that they become unplayable without some shared understanding of what it is to *play the game*, that ideal is always a matter of contestation and conflict. What it means to *play the game* is always open and never closable. At times, dispute is muted and marginal; this is when there is some general, if unstated, acceptance of a working fit between practice and ideal or there is sufficient acceptance of some general ideal that practical disagreements are easily spotted and condemned. At other times, the dispute is voluble and widespread: this is when there is little fit between practice and ideal or there is rampant disagreement over what the general ideal is supposed to be. In both soccer and law, it should come as no surprise that there is an unnerving and widespread tendency to defend the status quo and the claim that extant practice is always a close approximation to its ideal performance.

In the same way that I now see limitations and excesses in my approach and attitude to soccer, I see similar shortcomings and exaggerations in my understanding and appreciation of law. While no less passionate and no more accepting in watching and playing both games, I have developed a more refined and nuanced stance that is intended to remain as uncompromising in its ambitions as it becomes more compelling in its actualisation. In both instances, I believe that the games of law and soccer are thoroughly political and that, like war, they are the continuation of politics by other means. I defend this, not only as one way of looking at each activity, but as something integral to their playing and performance. It is not that law and soccer are *like* politics, capable of being metaphorically understood in terms of each other, but that law and soccer are arenas and activities of and for politics. This is not to essentialise law, soccer and politics or claim that, deep down and in their basics, there is Really Something that law, soccer and politics are about. On the contrary, I insist that what is presently claimed to be the most favoured way to *play the game* is simply a melange of historical accident, human design, political sensitivities and economic interest. My earlier mistake, as soccer player and legal theorist, was thinking that there was a Best Way to do law or play soccer and that I knew what that Best Way was.

In this review essay, I want to push these thoughts a little further on two fronts. Through the work of another critical legal theorist, I will show how an engagement with sport can provide a valuable lived experience of what it means to argue about rules and to experience the unavoidable connection between interest and argument. While many sporting controversies are often factual (was the ball in or over the line?) or judgmental in nature (who was the best player?), there are continuing and complex entanglements over the way particular rules are interpreted. However, on a different tack, I will attempt to suggest how the analogy between law and sports begins to break down if it is pushed too far. Law and sports are both games, but they are different kinds of games in important ways for any appreciation of political practice and transformation.

II.

David Fraser is one of those law professors who has been smitten by sport. In his case, he has turned this to wonderful jurisprudential effect and produced an excellent book, “The Man in White is Always Right”: Cricket and The Law.4 It is a marvellous meditation on the nature of rule-governed behaviour and what it means to play the game. For many, cricket will be an unlikely activity through which to study the operation of modern legal systems. It is a game that is encrusted with all manner and form of affectation, custom, convention, decorum, professionalism, ritual, and lore. Nonetheless, in many ways like law, it is these very features of its practice that ought to recommend it to the legal enthusiast. International cricket’s rather mystical and mannered appearance hides a lived reality that is as contested and vital as any piece of litigation. Indeed, the history of cricket is riven with greed and venality as much as it is filled with the heroic exploits of the game’s great players. Like law, the majesty and allure of cricket resides as much in people’s romantic imagination as it does in the game’s daily practice.

Cricket has a long pedigree. The game of cricket as it is played and known today goes back to the late 18th century. This, of course, was also a very important phase in the historical development of the English common law. The game of cricket came to prominence as an excuse and occasion, along with pigeon-shooting and ballooning, for gambling among the English aristocracy. Indeed, as early as 1787 and well before most other sports that continue to dominate world interest today, the

4. D. Fraser, “The Man in White is Always Right”: Cricket And The Law (Sydney: Institute of Criminology, Sydney University Law School, 1993) [hereinafter referred to by page references in the text].
modern laws of cricket had been largely regularised in order to satisfy the interests of gamblers. It was only in the middle of the 19th century that cricket became the preserve of the snobbish amateurs of public-school education; its subtlety and sophistication was considered to be well beyond the vulgar grasp of the merchant-class, let alone the vast uneducated masses. Conveniently obscuring its seedy past, it was held up as the embodiment of all that was great and good about the Englishman and his sense of fair play. It was a gentleman’s game that was not so much an escape from the responsibility of maintaining superior standards of behaviour, but a conscious crystallisation and elevation of that code to an art form—sport as spectacle had been born.5

Most Canadian lawyers and law students will have been introduced to the game of cricket and the passions that it arouses through the nuisance case of Miller v. Jackson. In a quintessentially typical judgment, Lord Denning introduces the quiet village of Lintz, where “in summer time village cricket is the delight of everyone,”6 and the raging dispute between its cricket-lovers and those in favour of less intrusive weekend afternoons. As even the most uninitiated readers soon realise, there is much more at stake here than the lofting of occasional cricket balls into neighbouring gardens. It is nothing less than a battle over the lost soul of English country life, a titanic struggle between the cultural forces of dark and light. On one side are the public-spirited custodians of cricketing tradition; on the other side are the upstart killjoys of private interest. Although, like most games, cricket is basically a banal and silly exercise—grown men in fancy dress trying to hit a piece of leather-bound cork, while defending three sticks in the ground and surrounded by other men trying to stop or catch the ball—it is clearly no mere idle pastime. From the Lintz square to Lord’s and on to the Sydney Hill and Sabena Park, the game of cricket is a social drama of enormous human proportions and social significance whose performance and outcomes affect the fate of countries and individual lives daily. As the Duke of Dorset put it in 1777, “what is human life but a game of cricket?”

One who appreciates that about cricket and much more besides is David Fraser. In his exciting monograph, he has made a singular contribution to the literature on both cricket, law and critical theory. Replete with references to philosophical and hermeneutical literature, Fraser is completely at ease in moving between the equally arcane worlds of

hermeneutics, law and cricket. Indeed, it would not be going too far to suggest that he has established a new genre of writing in one fell swoop. In his witty and wicked way, Fraser has managed to debunk most of the myths that surround cricket as it is played at the highest levels, at the same time as he respects and reveres them. For, despite what will be some people’s initial negative reaction, his book is as much a labour of love as it is anything else. In a truly contradictory and postmodern way, he is the best of lovers. In his devotion to the game, he seeks to root out its discrepancies, aporias, etc., not in order to resist and reject cricket’s appeal, but to love it better and more fully. He is that best of Nietzschean friends who understands that “in a friend one should have one’s best enemy—you should be closest to him with your heart when you resist him.”

Fraser’s knowledge of the game is almost encyclopaedic. Not only does he have a grasp of the essential statistics and records, he has informed himself of the revealing minutia and trivia of the game that powerfully illuminate its deeper structural features and antagonisms. All in all, Fraser’s book is an attempt to demonstrate that “cricket, rather than being ‘just a game’, offers a classic case study on how legal and ethical norms interact, are created, interpreted and applied and how these examples can inform our understanding of other social phenomena” (9). As such, there is much in this book to capture the imagination and interest of legal readers. He meditates on “Cricket, Law and the Meaning of Life,” “Lord Denning, Cricket, Law and the Meaning of Life,” “Ethical Discourse, Legal Narrative and the Meaning of Cricket,” “Walking, the Judicial Function and the Meaning of Law,” “Capitalism and the Meaning of Cricket,” and “Bodyline, Postmodernism, Law and the Meaning of Life.” All these chapter titles open up to a nuanced and fascinating discussion on the social underpinnings of law and cricket. Whether Fraser is musing on racism, capitalism, the rule of law, judicial neutrality or Dantesque depictions of heaven and hell, he is never less than engaging and usually he is much more besides.

Fraser uses cricket as a medium through which to illustrate how issues of legality, ethics and moral judgment inform all person’s lives and their lives. 

8. Fraser’s intimacy, indeed obsession, with cricket is all the more surprising since he only moved to Australia in the last few years. Prior to that, he was a resident of North America and a hockey enthusiast. See D. Fraser & A. Freeman, “What’s Hockey Got To Do With it, Anyway? Comparative Canadian-American Perspectives on Constitutional Law and Rights” (1987) 36 Buffalo L. Rev. 259.
daily social practices. Like life, cricket raises debate "about the function of umpires and respect for the rule of law, about cheating and sharp practice, nationalism and racism and even basic human personal dislike" (211). And, of course how issues of legality, ethics and moral judgment in all person's lives and their daily social practices inform the performance and understanding of cricket. In travelling this two-way street, Fraser has to pass through and negotiate some of the central dilemmas that energise and trouble lawyers, cricketers and citizens. In particular, he spends much time both reflecting theoretically and engaging practically on the issue of whether "the interests of justice are better served by uncritical devotion and respect for the ideal of judicial infallibility or by open, public critical debate" (52). Indeed, it is his exploration of what it means to play the game that threads together Fraser's stimulating and provocative monograph.

For Fraser, cricket is a social text. By this, he means to treat cricket as a social practice or performance that invites interpretation and obtains its meaning through its hermeneutical appreciation as a cultural artefact. As such, it can be interpreted and deconstructed in the same manner as any other social text, such as law or cock-fighting. While he denies the existence of any essence to cricket, he quite validly underlies the fact that frequent appeals are made to some transcendent archetype. However, unlike many players in the interpretive game, Fraser is acutely aware that any understanding of what it really means to play the game is constantly evolving and changing. As with law, cricket is "a more complex and contradictory social text than traditional scholarship would have us believe" (29). Throughout the book, Fraser reveals and explores how cricket and law, although ostensibly rule-based and rule-structured activities, are never quite what they seem. There is always a constant battle between claims to the letter and the spirit of the law. In other words, the heart of cricket and law is the inconclusive and passionate game over what it means to play the game.

Moreover, in the taking of sides in this interpretive contest, there is little consistency in any particular person's approach and allegiance. Sometimes, there is an appeal to the letter of the law and, at other times, to its spirit. In both cases, there is some felt and shared understanding that there is something called Cricket that transcends its actual practice, but there is little agreement on what that might be in its local particulars. In the jurisprudential debate between formalism and moralism, "the weap-

ons of one discourse may be turned in a radical interpretive move against themselves or, in what may amount to the same thing, in favour of their apparent opponent" (122). Fraser emphasizes that, in a game that is played internationally and therefore among and across different cultures, popular understandings of cricket come not so much from any rational study or understanding of rules, but from the lived experience of playing with and within them. There is a fluidity to interpretive interventions that renders the aspiration to a universal or objective understanding of cricket as hopelessly utopian (or, perhaps, dystopian). Accordingly, people are divided among, between and within themselves as to what it means to play the game. As with so many things, the game goes on while plans are being made about how to play the game.

Yet, as cricket's farcical roots show, English efforts to see a particular sport or way of playing the game as an incarnation of a national Geist is fraudulent; it smacks of the most blatant ideology-making. In cricket's case, as Fraser shows, it had much to do with the colonial attitude and the mission to spread the English way of life and thinking to the uncivilised masses of the New World. As its roots and its varied history show, English cricket no more had or has a comer on fair play than any other country. Fraser makes this absolutely clear in his rendition of the famous Bodyline Series of 1932-33 in which the English tourists passed off a violent barrage of dangerous deliveries as defensive bowling (264-71). The notion of what it means to play the game is always contested and contextual. Moreover, the tendency to characterise teams as having a peculiar and special national approach to playing is as often confounded by its most celebrated players as it is confined by the team's lesser lights. Like the game itself, national teams change in their attitudes and style as the exigencies of time and talent take their toll.

In adopting this kind of approach, Fraser is taking an openly and self-consciously postmodern approach to not only the study of law and cricket, but their practice and performance. He eschews any attempt to provide universal or meta-theoretical explanations: "there is nothing pre-ordained or immutable about the orderings we do make" (vii). Instead, he replaces analyses of objective explanation with narratives of contextual and situated understanding. In this way, he is better placed to emphasis the contingency of history and show that matters do not end as they must, but as they have done and will continue doing. Unlike many critical commentators, Fraser never lets his readers forget that the ideas of context and history have to be understood in a contextual and historical way. What it means to play the game, whether it is cricket or law, is entirely experiential and situated. It is not a matter of abstract reflection, but a practice of situated engagement. As such, his ruminations on
cricket, law and life are fully situated in the rich details and unpredictable twists of social living. Accordingly, Fraser is adamant that one thing is certain about such social practices and that is that they are uncertain in the sense that "it is not always clear what the 'correct' legal or ethical decision or outcome should be" (66). While it is their informing context that gives meaning to rules, those contexts themselves are not a reliable or fixed ground for conclusive interpretation; there is no context of contexts through which to delineate the precise extent of any particular context. Interpretation is always context-bound and contexts are always interpretively unbounded.

At the heart of Fraser’s perspective—it would be mistaken, of course, to call it a “method” or “theory”—is that there is nothing beyond, below or besides interpretation, but more interpretation. There is no privileged route or resort to know what it means to play the game. It is only by playing the game of what it is to play the game that people can reach some understanding, albeit provisional and revisable, of what it means to play the game. It is in this sense that “interpretation is the only game in town.”

The laws of cricket and the laws of the land are bats and balls in the hands of the cricketing and lawyering community, to be used with as much dexterity and ingenuity as each player can muster in the game of what it is to play the game. Notwithstanding this, the players are not free to act or play in whatever way they choose; they must always work to persuade and convince others of their interpretations within the game as it is presently played. Indeed, Fraser maintains that interpretations of rules are both free and constrained at one and the same time: “the story of law and legal education and cricket depends for its content and meaning on our decisions about what to remember, underline, exclude, or elevate in our reading of the particular text and all other social texts of which it is a part” (14).

One of the best chapters in the book and the one that showcases Fraser’s modus operandi is entitled “The Man in White is Always Right; Umpires, Judges and the Rule of Law.” In this long essay, he plays out in fascinating and full detail the different moves and manoeuvres that are made by engaged players (both sporting and hermeneutical) in their attempts to utilize rules as their justification for a particular outcome. At the core of this chapter is the famous pair of incidents involving Dean Jones of Australia and Keith Arthurton of the West Indies (53–56). After Jones’ controversial dismissal by the West Indians, the Australian team

retaliated by asking for Athurton’s bat to be measured and for him to be ejected from the game for using an illegal piece of equipment. With a sure touch, Fraser demonstrates that the interpretive strategies and rhetorical tactics brought into play—rules, history, ethics, reason, authority, nationalism, etc.—are not merely opportunistic on the part of the participants, but represent some deeply held views about what it means to play the game in accordance with the rules. As such, Fraser’s account is not a simplistic theory that depicts judges, empires, and players as wanton manipulators. Instead, it shows that interest always effects interpretation and that any claim to neutrality is always tainted. More pointedly, it highlights how actually playing the game is never separate from the interpretive games over what it means to play the game. The game is always within the game. It is not that one informs or limits the other, it is that they are both played together and through each other at the same time. In the same way that one can never step outside the sporting game and play only the interpretive game, one can never stay inside the sporting game and take no part in the interpretive game. In both cases, what it is to play the game is always part of the game.

Rather than roam throughout Fraser’s volume and sample many of its intellectual delights, I will simply applaud and embrace its overall application of a postmodern approach to law. This plan of action is dictated as much by certain difficulties with the substance of the book as it is by my own scholarly agenda. The reason that I have decided not to pursue many of the wonderful stories, metaphors and incidents that Fraser selects from his vast repertoire of cricketing lore is that, as the postmodern Fraser himself is at pains to point out, any understanding of an activity or practice requires more than a rudimentary understanding of its rules. As C.R.L. James put it, “what do they know of cricket who only cricket know?” In a North American context, it would be absurd to pretend that people know anything about cricket, let alone “only cricket know.” Moreover, not only is Fraser’s book immersed in the details of cricket, it is also very Australian in orientation and intended audience. For this reason, I shall restrict my comments to the limitations of Fraser’s overall project. Nevertheless, this should not be taken as a slight on Fraser’s work. His book deserves the most thorough and avid attention of the North American reader. It is a brilliant book that, in shedding light on

11. There are shades here of Marty McSorley’s penalty for being found with an illegal stick in the crucial Stanley Cup final game between the Montreal Canadiens and Los Angeles Kings in 1993. The controversy surrounded not so much whether McSorley’s stick was illegally taped, but whether it was fair and appropriate for the Canadiens to resort to such tactics at such a pivotal point in the particular game.
the arcana of cricket, manages to light up the equally abstruse world of legal interpretation.

III.

Fraser’s insistence and instruction about the lessons that lawyers can learn about law from a study of cricket is compelling and cogent. In so many ways, he succeeds in his ambition “to demonstrate that cricket is a text upon which are inscribed signs from other texts and experiences (like law) and, at the same time, to show how the lessons we learn from cricket are inscribed in other parts of our lives” (272). Moreover, his examination of cricket does much to recommend a postmodern approach to law (and all facets of life) as the most illuminating and useful way for students of the law to proceed: “cricket encapsulates the texture of life itself. In every ball, every stroke, every catch, every over, we can see, know, understand and give meaning not only “to the game” but to our lives” (242). Nevertheless, as powerful and liberating as this insight is, I do not believe that the analogy between cricket and life will take as much intellectual weight as Fraser places on it. At some important point and in some crucial ways, it is no longer liberating or helpful to insist on the analogical equivalence of cricket and life as mediated through law. Indeed, Fraser seems to have abandoned his postmodern affiliations at exactly the point where a rigorous resort to them would be most useful and revealing.

For Fraser, the critical dynamic at the heart of playing cricket and doing law is the existential tension between freedom and restraint. Rejecting facile distinctions between these two competing forces, the strength of his approach is the acceptance that people are always situated within a context of freedom and restraint—that people are never fully restrained nor are they ever fully free. People give meaning to their lives in the constant struggle to negotiate and change the forces of freedom and restraint that frame their lives: people are freely restrained and restrain-edly free. Like bat and ball, freedom and restraint are mutually dependent and can only be made sense of in light of the other. However, as much as I agree with Fraser that “we are not condemned or restrained except when and if we participate in our own restraint,” I cannot accept the full force of his claim that “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” (273). On the contrary, it is only if we begin to see law and life as only cricket (or any other game) that we can begin to take full control over the construction of meaning in our daily existence. Indeed, the fact that life is seen as the same kind of game as cricket is one potent and disabling way in which, as Fraser might put it, “we participate in our own
restraint." Life is playful, but not in the way that games, like cricket and soccer, are.

One way of making this point is the distinction made by James Carse between "finite" and "infinite" games. In his aphoristic writings, he defines finite games as those which involve temporal, spatial and numerical boundaries and in which the aim of the players is to bring the game to what amounts to a successful rule-defined conclusion. However, in infinite games, play is not so much defined by rules and boundaries because the very rules and boundaries themselves are always in play. Also, the aim is not to bring the game to an end, but to keep everyone in play. Of course, the rules of finite games can change, but not during the course of the game. The difference between infinite and finite players is that the former have begun to disabuse themselves of the perceived necessity of particular rules and to realize that rules are more an expression of agreement rather than a requirement for agreement. This does not mean that participants are free to do as they wish: they are always participating within their extant context which they must struggle to change as they play within its constraints. In this sense, change and restraint are as much matters of imagination and persuasion as anything else. As such, in the infinite game of life, the players are vulnerable because, taking a self-consciously fluid attitude, they are always open to change and, therefore, surprise.¹²

Clearly, cricket and soccer are finite games. Like all sports, they only have meaning within a certain set of rules and boundaries. Of course, there is, as Fraser incontrovertibly shows, disagreement about those rules, but such debate is cabined and marginal. There is little or no space for discussion over whether soccer players can pick up the ball and run with it or whether cricketers must run when they hit the ball. While these might be possible or desirable rule changes, the game being played would no longer be what is now known as soccer or cricket. Indeed, they would be more like the different sports of rugby and baseball. Life, on the other hand, is an infinite game within which a changing series of finite games is played. While it is governed by rules and boundaries at any particular time, life is a game as much about playing with the rules as playing within them. Unlike soccer and cricket, life can have meaning in spite of or in contravention of prevailing laws: civil disobedients or criminals are still in the game of life even if they are not willing to play the game the way that others decree. Moreover, life goes on regardless of the particular

rules in play: its informing rules and its informed practice may be radically changed, but life itself, unlike the playing of cricket, will still go on.

This distinction between infinite and finite games and the limitations of treating cricket and life as precisely analogous begin to bite when the question and practice of politics are considered. If life is treated as a game of cricket and, therefore, as a finite game of traditional probabilities, politics has a very limited practice and confined understanding. Only certain moves are possible, the order of practice is regularised and change is marginal. By presenting the game of cricket as analogous with the play of life, Fraser trivialises politics and imposes unnecessary restraints on living. However glorious the game, political or sporting, might be, it checks people's political imagination and limits the practical alternatives available to them; there is only so much one can do with a bat and ball. Unfortunately, Fraser comes unintentionally close to backing himself into the corner of those recent prognosticators who maintain that political history has come to an end, that the competition among competing political games has played itself out and that the game of liberal democracy has established itself as the game of life par excellence. 13 While Fraser would be horrified at such a prospect, his enthusiasm "to see law and life as cricket" (273) puts him in such politically disreputable company.

In contrast, if life is treated not as game of cricket and, therefore, as an infinite game of postmodern possibilities, politics takes on a much more expansive practice and understanding. The appeal of the analogy between games and law is that, within games, there always appears to be closure; games have a beginning and an end with definite rules as to who wins and why. While this scenario is attractive to many, it does not capture the collective experience of living and, as such, offers a distorted picture of life's possibilities. Not only is there always a continuous openness in life's contingent practice, but an acceptance of, rather than resistance to, this is the first step towards a transformative politics. The joy of playing infinite games is not in the fact that they can be won, but that they can never be finished and, therefore, never won (or, at least, that they can be seen to be won and lost at the same time).

At this point, it is important to note what many consider the most important and neglected fact about sports, such as cricket and soccer—that they are largely played by men and, not surprisingly, embody a constrained set of male values. This observation is vital, but it does not

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so much invalidate the comparison between cricket and law, as it reinforces the insight that there is no one fixed or essential way to play the game. While the way sport is played may presently tend to reflect and inculcate stereotypical masculine traits, there is nothing about sport to limit the participation of women or the infusion of a different set of informing values and motivations. In the process of so doing, it might be possible to transform both male and female views about the (un)importance and potential of sport as an activity and metaphor for living. Once disabused of the patronising idea that women play an inferior version of cricket or soccer, it might be possible to appreciate that women’s sports are simply one more way, no better or worse, a simply different way to play the game. As such, women’s sports contribute to the diversity and richness of the game’s tradition as they challenge its most ingrained and narrow rites; they are a truly postmodern challenge to the very idea as well as practice of sport and life.

Of course, because anything is possible in such a postmodern vision of infinite politics, nothing is guaranteed. It does not tell people how to play, what to play the game means or whether playing in one way is better than playing in another. What is good or bad politics or playing is always up for grabs. However, this postmodern perspective implies a participatory democracy that is egalitarian and pluralist in order to inspire the robust kind of institutional arrangements that will permit the articulation and antagonism of different forms of life—sometimes cricket, sometimes baseball and sometimes neither. Of course, the question of what best serves and advances the idea of democratic practice is constantly open to interrogation. In a democracy, “bad” forces might carry the day, but only the day: tomorrow is always another day, another fixture, another game and another occasion to engage and transform democracy and its contingent experience.

The aim is to make everyone players such that they are participants, in various forms and styles, in the continuing and continual creation and recreation of social life. For such political players, there is no established play-book of acceptable moves and they openly see the role of citizens “as theatrical, its style as poses, its clothing as costumes, its rules as conventional, its crisis as arranged, its conflicts as performed, and its metaphysics as ideology.”

Politics in the infinite game of life will encourage and treasure occasions of truly innovative play. Unlike in cricket and other sports, life will not be lived out only as fans who experience living vicariously by watching or mimicking the exploits of the gifted few.

14. Supra note 12 at 56.
While citizens cannot be doing all things all at once, there must be opportunities for them to do different things at different times. People who are truly political are those who are empowered by their recognition that rules are always up for grabs and their struggles to change them as part of the essential fluidity of life. In such a postmodern society, politics is not something that people care to do, but something that people always live.

Of course, such a view of politics as "playful impertinence" might be seen to be indulgent and offensive to those whose lives are lived under economic and social oppression. To this objection, there is no better response than that the practice of "politics as play" offers the most serious and pertinent challenge to such suffering. Under the view of life as an infinite game, play ceases to be only a pastime and relief from the grinding earnestness of life. Instead, it becomes an activity of living that is intended to permeate all situations of social interaction and that strives to "open...political spaces for agonistic relations of adversarial respect."15 Within these patches of instability, conflicts of power might be challenged and robbed of their absolute and final pre-determination in a way that ordinary politics and finite games do not. None of this suggests that there would be an anarchic lack of standards; there would be new and changing standards that combine the playful and the serious in a defiantly pluralistic amalgam of style and substance. "Anything goes" is the libertine's licence, but "anything might go" is the watchword of the postmodern citizen. Such political players are capable of imagining and opening themselves up to possibilities other than those presently available. They are not actors in another's story, but they are committed to be "joyful poets of the story that continues to originate what they cannot finish."16 It is an infinite game of transformation.

IV.

Law is much the same as cricket. Lawyers learn about the law not from a detached and cool reflection on its rules and intricacies, but through an immersion in the attitudes and personalities that comprise the legal community. Law school is as much about how to use rules as it is about the learning of particular substantive rules. Despite what many continue to believe, there is never such a thing as simply applying the legal rule to


16. Supra note 12 at 149.
the facts. Fraser’s monograph drives that insight home with a power and timing that an intellectual Donald Bradman, cricket’s greatest batsman, might envy. But he has allowed his focus on cricket to blind him to its shortcomings as well as its strengths as a compelling analogy for life and law. As important as his insight is that “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” (272), he has fallen short of his ambition “to see law and life as cricket” (273). Cricket is only one way, among many, of living and doing law. As compared with traditional explanatory accounts of law and life, the advantage of a postmodern narrative about politics is that it is a story that shows that matters do not end as they must, but as they have done. Fraser uses this advantage to great critical effect. Unfortunately (or fortunately), in cricket, there is too much must for his own postmodern good.

In the jargon of cricket, Fraser is a genuine all-rounder who merits inclusion in any dream team of cricketing and jurisprudential lore. He has played magnificent innings, batting with confidence and clout. In the field, he has bowled with variety and guile, keeping an excellent line and length. Blessed with an unusual range of talent, he has honed his capacity to deploy those talents selectively and judicially. Most importantly, as the best of sports players and lawyers know, it is not so much whether you win or lose. It is, as the late and great Irish soccer player Danny Blanchflower put it, “about glory, about style, about the way you play the game.” For those in the know, the postmodern and swashbuckling David Fraser is a rare combination of an intellectual Colin Milburn and a sporting Duncan Kennedy. Play the game.