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The "Theatre of Dreams"? - Manchester United FC, Globalization, and International Sports Law

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THE “THEATRE OF DREAMS”? - MANCHESTER UNITED FC, GLOBALIZATION, AND INTERNATIONAL SPORTS LAW

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*"Might Malcolm Glazer have avoided criticism by changing his name to Carlyle or Texas Pacific? A private equity firm can, for example, buy a large stake in a country's former defence research agency with hardly a peep being uttered. But that's not as sensitive as a football club."*¹

"La propriété, c'est le vol."

*("Property is theft.")*²

I. THE GLOBAL SETTING - LAW, INTERESTS, & CULTURAL INSTITUTIONS

A. Introduction

Based on the historical origins of sport, two organizational and proprietary models of professional practice exist. The traditional or universal model is practiced in Europe, Africa, and most parts of Asia and South America, where sport is a competitive open league system based on merit and promotion of clubs. These clubs have roots in the local society but spread their tentacles to

1. Clay Harris Mudlark, *Under Reds' Bed*, FIN. TIMES (London), May 17, 2005, at 24.

2. P.J. Proudhon, WHAT IS PROPERTY: AN INQUIRY INTO THE PRINCIPLE OF RIGHT AND GOVERNMENT (1840).

other parts. Organizational control is vested in an independent national sport federation that balances the interests of multiple participants. Under this model, proprietors are as much a part of the club as supporters. Sport is a multifaceted, socio-democratic institution with aims of education, culture, entertainment, and entrepreneurship. Then, there is the American model that is generally practiced in the U.S., Canada, and, in certain American-originated sports, in South America, Japan, Taiwan, and Korea. Sport is operated in a closed league system owned by powerful individuals and corporations whose control of the location of the club, the staff, and the assets is nearly absolute. Under the American model, sport thrives on the power of commerce to produce entertainment and to merchandise various services and articles to the fans. There is no permanent relationship with a team or the supporters. A city buys a club to stay with it until, perhaps, another club or city outbids the other.³ In the modern age of globalization, a clash of cultures is bound to occur once parties cross borders and intrude into another region's sport.⁴

The recent controversy involving the payment of £790 million sterling by Mr. Malcolm Glazer to acquire substantial majority control of Manchester United FC (ManU), a globally renowned team with strong local roots, listed on the London Stock Exchange (LSE), captures the unfolding challenges of sport globalization and the potential clash of cultures.⁵ Mr. Glazer, a foreign resident with no assets in the jurisdiction and no previous football experience,

3. See Lester S. Brooks, *Colts Gallop to Indianapolis*, in *SPORTS AND THE LAW*, 233–36 (Charles E. Quirk ed., 1996); Wayne S. Quirk, *Fear, Attack, and Pressure: The Relocation of the Raiders*, in *SPORTS AND THE LAW*, 224–32 (Charles E. Quirk ed., 1996); see also John McCormick et al., *Playing Stadium Games*, *NEWSWEEK*, July 14, 1997, at 37; cf. Ragan G. Reeves, Note, *Franchise Blackmail and the NFL: What a City Can Do to Keep Its Home Team*, 5 *TEX. ENT. & SPORTS L.J.* 6 (1996).

4. See EDWARD GRAYSON, *SPORT AND THE LAW* (3d ed. 2000); see also JOHN HORNE ET AL., *UNDERSTANDING SPORT* 276–81 (1999); *infra* Section I.C.; cf. *Damaged Goods: American Capitalism*, *ECONOMIST*, May 21, 2005. See generally RICHARD GIULIANOTTI, *SPORT A CRITICAL SOCIOLOGY* 190–210 (2005); BARRIE HOULIHAN, *SPORT & SOCIETY* 345, 359–60 (2003); JOHN HUGHSON ET AL., *THE USES OF SPORT* 106–08 (2005).

5. See Paul J. Davies & Matthew Garrahan, *Glazer Claims His United Prize After Irish Tycoons Sell Their 29% Stake*, *FIN. TIMES* (London), May 13, 2005, § 1, at 1 [hereinafter Davies & Garrahan, *Glazer Claims his United Prize*]; Paul J. Davies & Matthew Garrahan, *Glazer Seizes Control of Man United the US Tycoon Has Rothschild to Thank for the Deal*, *FIN. TIMES* (London), May 13, 2005, at 23 [hereinafter Davies & Garrahan, *Glazer Seizes Control*]; Paul J. Davies et al., *Glazer Tightens Grip on Man Utd*, *FIN. TIMES* (London), May 14, 2005, at 2; see also David Jones & Siobhan Kennedy, *Glazer Grabs Control of Man U, Makes Bid*, *TISCALI.COM*, May 12, 2005, <http://www.tiscali.co.uk/news/newswire.php/news/reuters/2005/05/12/sport/glazergrabscontrolofmanumakesbid.html>; *What Do You Think of Man Utd Bid?*, *BBC*, May 20, 2005, http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/talking_point/4541487.stm (containing interesting, diverse, and culturally linked opinions mainly from across North America and the UK).

caused consternation among most ManU supporters with his persistent, aggressive approaches toward acquisition and ownership of ManU shares.⁶ Ultimately, Mr. Glazer's controversial, refined, novel, and American-inspired financial device, called the performance-in-kind (PIK) bond, was an effective strategy in blowing away resisting shareholders and giving him effective control.⁷ This American corporate and management approach allowed Mr. Glazer to defy supporters and Manchester City. In England and the rest of Europe, the PIK bond raised the question of how professional clubs, situated historically as social institutions and traditionally promoted as a community asset, would be seen and evaluated.⁸ The contrasting responses are captured by a writer as follows:

A little while ago the fans took to the streets pointing out that Malcolm Glazer's offer to buy the club involved him running up a lot of debt, the collateral for which they were providing from future sales of match tickets. In other words, they were buying the club, and he would become the owner.

In other societies - and I can think of one across the Atlantic - this kind of thing is regarded as remarkably clever and worthy of celebration; the fella's made of the right stuff. It's tough out there, and this is the way of the world.

Over here in still softly social democratic Europe we regard it as shocking.⁹

The fact that disputes arise is therefore unsurprising. Significantly, where resistance by ManU supporters is culturally and legally symbolic for England and the traditional model states, the Glazer enterprise represents the advent of an untested, American spirit of sport globalization. What becomes important

6. See Ashling O'Connor, *Glazer Returns to Haunt United*, TIMES (London), Dec. 21, 2004, at 60; Paul Thompson, *United Mystery: US Man Linked to Irish Interest*, EVENING STANDARD (London), Mar. 7, 2003, at 84; Nick Louth, *Why Glazer's Man Utd Bid Could Fail*, MSN.COM, <http://www.joinmust.org/forum/showthread.php?t=11180&goto=nextnewest> (last visited Jan. 24, 2006); cf. Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5; *infra* Section I. C. .

7. See Peter Smith & Gillian Tett, *Why an Exotic New Species of Bond Spells Trouble for Hedge Funds and Man United PIK Debt, a Takeover Tool Used by Private Equity Firms and Malcolm Glazer, Should Come with a Health Warning*, FIN. TIMES (London), May 17, 2005, at 23.

8. According to the company secretary of Shareholders United, "We are opposed to any single person owning the club. . . . It is 126 years old and belongs to the community it serves. We are opposed to anyone who is going to take away the fans' voices." William Hall, *Fans Show Their Objections by Erecting "Not for Sale" Sign*, FIN. TIMES (London), May 13, 2005, at 23.

9. Peter Chapman, *Blog on the Glazer Fiasco*, FT.COM, May 13, 2005, <http://news.ft.com/cms/s/1de52228-b7e3-11d9-bc7c-00000e2511c8.html>. See Mudlark, *supra* note 1; *What Do You Think of Man Utd Bid?*, *supra* note 5.

is the role of law as a tool to reconcile global protests, rights, and interests.¹⁰

B. Scope and Scale of the Law

On its face, the Glazer debacle is an English problem and a matter for the English authorities.¹¹ There can be no doubt that consequences will result for ManU, local and national supporters, the sport of football, and the English Premier League.¹² On the other hand, the parties involved, the ideas at stake, the worldwide reaction, and the role of international financial lenders evidence the internationalization of the situation. Transnational legal issues and consequences also exist. The fate of ManU is bound to have an effect on the sporting and financial balance sheets of continental European based clubs.¹³ Further, the interests, powers, and responsibilities of regional and international football federations are at stake.¹⁴ In light of these facts, three regulatory bodies - national, regional, and international - have duties to inquire about the dispute; to protect, amend, or revoke the transactions; or to promote reasonable solutions consistent with ISL.¹⁵ The legal rules that will apply are therefore open, specialized, and inherently transnational. As national English

10. See *infra* Section I. B.

11. See *infra* Sections II.B. – II.D.; cf. *infra* Sections III.B. – III.D.

12. For Man U, the club will be placed under multiple intensive pressures, including sporting performance, bankruptcy, and unfamiliar political risks. See *infra* Sections I.B., II.B. – II.D., IV.D. Consequences exist for local and national supporters. See *infra* Sections I.B, II.D. For the sport, it heralds private takeovers of the Premier League clubs and the community-affiliated clubs. See generally *Man Utd Boost After Nike Warning*, BBC, May 30, 2005, http://news.bbc.co.uk/sport2/low/football/teams/m/man_utd/4591031.stm (reporting apprehension from kit sponsors as a result of the takeover); *Murray Urges Glazer Not to Get Greedy*, FOOTBALL365.COM, May 28, 2005, http://www.football365.co.uk/Print_page/index.shtml/REDIR?153592 (reporting the views of Sunderland Chairman, Bob Murray, on broadcasting rights to Premier League competitions and the sport as whole).

13. To the extent ManU's sporting performance fades, commercial partners and sponsorship fees paid for international competitions may decrease. Revenue and income from gate takings and transfer fees are generally increased when ManU is involved.

14. Such stakes include: (1) choosing not to follow broadcast rights practices, (2) leading or participating in breaking out of established competitions, or (3) undertaking business activities inconsistent with the social and educational functions of sport, such as gambling and edgy video games. See David Smith, *NFL Questions Glazer Casino Link*, SPORTBUSINESS.COM, May 25, 2005, http://www.sportbusiness.com/news/index?region=global&news_item_id=157629 (reporting that the National Football League (NFL) has asked Tampa Bay Buccaneers owner Malcolm Glazer to explain ManU's links to a Las Vegas casino). Another possibility is that it opens a wider door for a feared Americanized invasion of the sport market in Europe and other parts of the globe, with consequences on the present balance of power between clubs, National Sport Federations (NSFs), and International Sport Federations (ISFs). Finally, there are bound to be novel problems of inter-jurisdictional conflicts between various regional and national authorities. See Rob Hughes, *Liverpool Get Euro Go-Ahead*, SUNDAY TIMES (London), May 29, 2005, Sport, at 1.

15. See GRAYSON, *supra* note 4, at 353–54; cf. *infra* Section III.

law does not solely, exclusively, or clearly apply,¹⁶ ISL, as the applicable transnational law, will take into consideration mandatory rules and practices, including local customs and financial rules and practices affecting the relationship with England.¹⁷ A much more difficult question is the nature of the rights claimed and their recognition under national law. The relationship, functions, and responsibilities exercised by Manchester-based supporters is cognizable as a "community sport related right" in ManU protected with full or quasi-proprietary connotations.¹⁸ This is in line with an authoritative exposition that:

The law of property incorporates a series of critical value judgments, reflecting the cultural norms, the social ethics and the political economy prevalent in any given community. It is inevitable that property law should serve in this way as a vehicle for ideology, for "property" has commonly been the epithet used to identify that which people most greatly value.¹⁹

All other supporters and parties are able to exercise their claims under ISL. In light of the applicable regime being transnational law, it is pertinent to consider the most important, relevant ISL rules and doctrines that apply to English and non-English interests.²⁰

Fundamental Doctrines: The Commerce and Access Doctrines

The right of Mr. Glazer to invest in ManU is not in doubt in view of ISL's commerce doctrine.²¹ The commerce doctrine promotes international sport transactions, irrespective of the parties' nationalities. Mr. Glazer is within his right to rely on the doctrine to promote the commercial development of sport. No national or international football authorities, fans, or supporters can prima

16. There is no *per se* composite English law of sport. On the other hand, where a specific statute governs a particular relationship between parties that are residents of England, English law would be invoked. *Cf. infra* Section III.D.

17. *See infra* Sections I.C, I.D., III.C.

18. "New property" based theories recognizing participation rights that are vested under custom or usage suffice to grant recognition and protection. Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964). *See* DAVID CONN, *THE FOOTBALL BUSINESS FAIR GAME IN THE '90S?* 29-48 (1997) (containing a history of ManU and the role of Manchester society in developing the club); KEVIN GRAY & SUSAN FRANCIS GRAY, *ELEMENTS OF LAND LAW* 100-10 (4th ed. 2005) (discussing the scope for a wide legal definition of property in common law).

19. GRAY & GRAY, *supra* note 18, at 102-03. *See* William N. R. Lucy, *Hegel on Private Property and Public Access*, in *PROPERTY PROBLEMS FROM GENES TO PENSION FUNDS* 274-89 (J.W. Harris ed., 1997).

20. *See infra* Section I.B.

21. *Cf. infra* Sections I.C.

facie stop him from participating in European or international football.²² Similarly, ManU supporters have a right to participate in football related activities. The participative interest or right is historically rooted in non-American jurisdictions.²³ It is also supported by the access doctrine of ISL.²⁴ While the participative right may manifest in holding shares in the club of choice, the exercise or recognition of the right is not based on shareholding. Supporters have valid legal rights that must be taken into consideration.²⁵ Nonetheless, the doctrines recognize that any commercial or participative interest leading to acquisition of ownership rights must be subject to the "best interest of the sport" and the "good of the game" powers of the supervising authorities.²⁶

Fundamental Doctrines: The Olympism and Fair Play Doctrines

The Olympism doctrine broadly regulates international and inter-personal relationships in sport.²⁷ The doctrine permeates boundaries to address personal, commercial, and social aspects of society; promotes fraternity notwithstanding conflicting socio-cultural systems by emphasizing culture and fair play as an integral character of human interrelationship; and, consequently, rejects abuses of self and others. It thus fathers working concepts such as the "sport family" and "abuse of sport rights." Olympism is

22. Cf. Jonathan Wilson, *Terrace Taunts Mark New Era as Old Rivals Put the Boot in*, FIN. TIMES (London), May 14, 2005, at 2.

23. Recently, in spite of the interests of the club's manager, supporters of top Premier League club, Birmingham FC, opposed and prevailed in a decision that would have allowed Mr. Lee Bowyer, a controversial football player, to join the club. See *infra* Section IV.C. (discussing supporters' part in commercial activities); see also CONN, *supra* note 18; Hall, *supra* note 8.

24. The doctrine promotes the right of every person to maximally participate in all aspects of sport.

25. Due to financial and other contributions to the development of their teams and the final spectacle, supporters are a higher ranking of volunteers. Volunteers have formal recognition in sport law. In *Watson v. Prager*, Mr. Justice Scott acknowledged the interests of the participants, as well as the interests of the public as a basis for regulation. 3 Eng. Rep. 487, 493 (Ch. 1991). See generally ROGAN TAYLOR, FOOTBALL AND ITS FANS (Stephen Wagg & John Williams eds., 1992); Reeves, *supra* note 3, at 8 (discussing how fan loyalty is taken into consideration by a court to prevent franchise location).

26. See FIFA STATUTES, art. 2(e) (2005), available at http://www.fifa.com/documents/static/regulations/Statutes_09_2005_EN.pdf (stating that one of the duties of the Fédération Internationale de Football Association (FIFA) is to prevent the introduction of improper methods and abuses in the sport); see also David F. Dolan, *George Steinbrenner's Bronx Zoo*, in SPORTS AND THE LAW 92-96 (Charles E. Quirk ed., 1996); M. Philip Lucas, *Commissioner Kuhn Victorious over Owner Finley*, in SPORTS AND THE LAW 88-91 (Charles E. Quirk ed., 1996).

27. See INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC CHARTER 9 (2004); see also Editorial, *Quotations by Juan Antonio Samaranch*, OLYMPIC REV. (June - July 2001), available at http://www.olympic.org/upload/news/olympic_review/review_200219124232_UK.pdf.

a juridical resource to provide equitable and conscionable behavior for peace and harmony while reinforcing self-improvement and self-competition.²⁸ Furthermore, Olympism promotes independence of the sport movement from commercial sectors. Under this doctrine, Mr. Glazer's interests are protected and promoted, as long as they are neither impractical nor a charade. Implicitly, if the interests offend Olympism or the spirit of fair play, they must be rejected. The same measures equally apply to activities of supporters opposed to Mr. Glazer.

C. Globalization of Sport Agendas

Clearly from the above doctrines, ISL promotes the free development and exercise of globalization strategies in sport. Subject to compliance with mandatory, fundamental rules, corporations, individuals, and supporters have autonomous powers, duties, and rights. The ManU takeover presents an interesting opportunity for parties to exercise their individual and group policy visions.

Globalization of Sport and the Glazers' Interests

It has been noted that: "Manchester United has a fixed home city and stadium, but its [fifty] million global fan base means that, in theory, it could play "home" games anywhere in England, or even East Asia."²⁹ The Glazers' interests in acquiring ManU have little to do with being "long-term sports investors and avid Manchester United fans."³⁰ Their substantial pre-acquisition shareholding consistently delivered healthy profits. Since no American sport has the global support that football does, the prime motive is to establish the Glazers' business prowess into international sport through ownership of the globally supported ManU brand.³¹ This reach could permanently be exported to the U.S. with maximum effect. In Europe, Asia, and the Middle East, the Glazers would be able to maximize the potential of

28. See INTERNATIONAL OLYMPIC COMMITTEE, *supra* note 27.

29. GIULIANOTTI, *supra* note 4, at 198.

30. See *Glazer Lifts Manchester United Stake to 74.8 Pct*, HOME.EIRCOM.NET, May 13, 2005, <http://home.eircom.net/content/reuters/sportsextra/5553087?view=Eircomnet>; see also *Gold Trafford: Foreign Investors See Value in British Football Clubs*, FIN. TIMES (London), May 14, 2005, at 10; Nils Pratley & Daniel Taylor, *Glazer May Refloat United in Three Years*, GUARDIAN (London), May 17, 2005, at 36; Paul Sullivan, *Tampa Owner Can Turn a Buck*, FIN. TIMES (London), May 13 2005, at 23.

31. See James M. Gladden & Daniel C. Funk, *Developing an Understanding of Brand Associations in Team Sport: Empirical Evidence from Consumers of Professional Sport*, 16 J. SPORT MGMT. 54, 54-81 (2002).

football as the regional, dominate, and lucrative sport. Consequently, it therefore makes perfect sense to covet the acquisition of a leading brand as a strategic asset in a globally growing market.

Globalization of Sport and the Supporters' Interests

Special attention must be directed toward local supporters who oppose the sale or takeover of ManU. It is easy, because of the fierce and virulent language employed, to describe Mancunians or English opponents as parochial, nationalist, anti-American, or anti-globalization supporters.³² At least in sporting terms, these descriptions would be inaccurate and unfair. Manchester has quietly built a successful image as a global sporting city by bidding for the Olympic Games in 1996 and 2000, hosting the Commonwealth Games in 2002, and contributing to the success of ManU as a global football brand. In general, sport significantly contributes to the local economy. Where aggressive, one-man bids for its premier selling point are considered "fair" to only shareholders,³³ it is clearly a responsible and justifiable self interest for the wider community to evaluate commercial and political risks associated with Mr. Glazer's takeover or to take alternative measures.³⁴ It is of course possible that the Glazers will relocate the club's "Old Trafford" headquarters to the U.S. or, under sweet financial terms, transfer some sporting activities to the U.S. or elsewhere. In these and other arrangements, the Manchester community of stakeholders and shareholders will lose out to globalization. The only fair conclusion that may be reached is that most Mancunians would be receptive to foreign investment with a globalisation agenda. Thereby, the proprietors would strive to achieve a maximized global, commercial potential without any harmful social and economic effects on the club and the city. Thus, "the stranger must bring no fear, but bring good tidings."³⁵

32. Mr. Glazer has been described as a "parasite." *Man Utd Fans Vow to Fight Takeover*, CNN.COM, May 13, 2005, <http://cnn.com/2005/SPORT/football/05/13/united.glazer/index.html>. Focus on the nationalities of major selling shareholders as "Irish" and "Scottish" who are described as traitors may be noted. See *What Do You Think of the Man Utd Bid?*, *supra* note 5.

33. See *Manchester Dis-United*, SKY.COM, May 12, 2005, <http://www.sky.com/skynews/article/0,,30400-1181626,00.html>.

34. See HUGHSON ET AL., *supra* note 4, at 54–55; cf. *infra* Sections II.C. – II.D., IV.B. – IV.D.

35. See Nick Harris, *Glazer Plans to Raise Ticket Prices by 54%*, INDEP. (London), June 10, 2005, at 72; Andrew Hodgson, *Glazer Ticket Plans Spark Fans' Anger*, EVENING STANDARD (London), June 10, 2005, at 46; cf. *infra* Section V.

*D. Globalization of Sport in National Law***The Limited Impact of Corporatization**

Due to ManU's public limited company and capital market statuses, it is at first easy to dismiss supporters' concerns with the view that Mr. Glazer's acquisition of nearly all the shares will mean that less shareholders will be affected and that any dispute concerns only shareholders.³⁶ But this theory is missing vital points. To dye-in the wool, Anglo-American bred corporate lawyers and pragmatists, it may come as a rude shock to realize that the stock market is not the final judge of sporting matters.³⁷ The final regulators in football are the Football Association (FA) and the Premier League, which work under FIFA rules and ISL. If this was otherwise, the organization of sport would be fractured by inconsistent regulatory standards.³⁸ Universally, the special nature of sport business and its departure from pure business sectors is well acknowledged, so that it has a distinctive institutional base. Sport is too serious and ethical to be left to speculators and capitalists.³⁹ The commercialization of football in particular, and sport in general, cannot be decided by stock market rules. Mr. Samaranch, the then IOC president, said: "We shall serve sport not use. Money generated by sport shall benefit sport. Sport shall remain in control of its own destiny. . . . We must not let young athletes lose their freedom and become dependent on agents who determine where, and against whom, they should compete."⁴⁰ The vital power of national and international sport federations to intervene on behalf of the best interest of the sport and for the good of the game is inherent. Intervention need not be based on a shareholding right, as this raises conflict of interest issues.⁴¹ Taking into consideration that FIFA does not admire capital marketization of sporting clubs, shareholding interests are unnecessary for

36. Jonathan Michie, *Bankrupt the Firm and Save the Club: The Manchester United Takeover Reflects a Deeper Corporate Malaise*, GUARDIAN (London), May 17, 2005, at 26.

37. See Martin Dickson, *Glazer 1- Man U Fans 0*, FIN. TIMES (London), May 13, 2005, at 22; see also *What Do You Think of the Man Utd Bid?*, *supra* note 5.

38. This would have adverse sporting and economic consequences. See *infra* Section III.D.; cf. Hughes, *supra* note 14.

39. See Mudlark, *supra* note 1; see also PHILIP AUGAR, *THE GREED MERCHANTS* (2005); Stephen Weatherill, *Sport as Culture in European Community Law*, in *CULTURE AND EUROPEAN UNION LAW* 113-52 (Rachael Craufurd Smith ed., 2004); Richard Lambert, *Are Wall Street's Ethics Dead?*, TIMES (London), Oct. 8, 2002, at 7; cf. Joshua Chaffin, *Enigma Treats Sport as Pure Business*, FIN. TIMES (London), May 14, 2005, at 2; Robert Shrimsley, *Glazing over as Malcolm Strikes*, FIN. TIMES (London), May 17, 2005, at 18.

40. Editorial, *supra* note 27.

41. See Michie, *supra* note 36.

national authorities.⁴² The power to intervene is based on the proprietary right of management of leagues and competitions, a centralized hierarchy of control, and an institutional independence of concerned football authorities.

The Impact of Universal Interest on National Law

While local opposition to Mr. Glazer's raid was foreseeable, the global span and pedigree of objectors is astonishing. Fanatical supporters have more or less the same intensity as opposers, ordinary local and foreign supporters, reputable and decent academics,⁴³ past and present ManU players,⁴⁴ bankers,⁴⁵ and other professionals. With an understanding and appreciation of an *esprit d'équip*, there is something sad about the takeover. Supporters cannot call it their own club.⁴⁶ Professionals, academicians, and everybody else will have to redefine their relationship with the club as simply one man's property.⁴⁷ Notable among those with mild or qualified support for the takeover are Mr. Mourinho of Chelsea FC⁴⁸ and Mr. Arsene Wenger of Arsenal FC, both managers of rival football clubs.⁴⁹ Mr. Mourinho, in the words of Mr. Wenger, manager of an "economically doped" team,⁵⁰ has declared his hand. He wants to serially humiliate ManU under Sir Alex

42. See Josephine Cumbo & Paul J. Davies, *Shareholders Delighted as Tycoon Puts Club in a League of Its Own: Malcolm Glazer Has Helped to Deliver a Market Performance United Failed to Match on the Field*, FIN. TIMES (London), May 14, 2005, at 3 (discussing the general failure of capital market performance of English clubs, other than Man. U); Ashling O'Connor, *Blatter Censures Clubs for Sale of Shares*, TIMES (London), Apr. 19, 2003, at 38 (reporting on Mr. Sepp Blatter's objections to the practice on the basis that it forces clubs to invest more shareholders' funds thus funneling spending).

43. See Jonathan Northcroft & William Lewis, *Nomura Backs Man Utd Fans to Block Glazer Bid*, TIMES ONLINE, May 1, 2005, <http://www.timesonline.co.uk/printFriendly/0,,1-528-1592393-528,00.html>.

44. Notable opponents are former captain, Eric Cantona, and super sub, Ole Gunner Skoljer. See O'Connor, *supra* note 6.

45. See, e.g., O'Connor, *supra* note 6.

46. Unless, of course, Mr. Glazer is charitable and addresses supporters' interests. See *infra* Part V.B. This may be contrasted to the U.S., where supporters are psychologically adjusted for a possible relocation. Cf. Brooks, *supra* note 3; McCormick, *supra* note 3; Reeves, *supra* note 3.

47. On this account, I for one, wonder why, other than perhaps a genuine love for sport, I am writing about this or giving positive hints, particularly as I was, and am, not a supporter of ManU or in fact any other club.

48. *Mourinho Urges Fergie to Stay*, X-STREAM.COM, May 14, 2005, http://www.x-stream.co.uk/sport/365/football/news/2005/05/14/news_152356.html.

49. *Give Glazer a Chance, Says Arsenal Boss Wenger*, ESPNSTAR.COM, May 14, 2005, http://www.espnstar.com/epl/epl_newsdetail_1512166.html.

50. Mr. Wenger was referring to the financial muscle of Chelsea FC, as a result of the patron-owner role of Mr. Abramovich. See *id.*

Ferguson, the greatest manager in the English game, becoming, with Chelsea FC, the alpha male lion in the pack. This could, of course, be possible when the club, under heavy pressure from a new regime, supporters, and sporting is traumatized, as it will be in coming years. Mr. Wenger is comparable to the fox inviting hens to stay to play the "game of survival" in the coming rain. It knows rescuers will not hear their cries and that they will not be swift in motion. Thus, the sporting consequence and global interest confirm that a formal, localized approach is severely limited, being impacted by extra-territorial forces.

E. Conclusion

Modern relations reveal a complex setting for proprietary and entrepreneurial sport practice. Greater commercial opportunities exist now than ever before so that sport practice assumes a more internationalized fabric. Three points emerge. First, international practice in sport has been hastened by globalization, which, by its nature, is a dynamic, yet aggressive process of wealth accumulation and distribution. Pre-existing ISL norms contain doctrines on commerce, access, Olympism, and fair play, which, while promoting commerce, restrain the conduct of participants. These norms naturally regulate sport globalization, for which no additional legal rules have been created. Second, globalization also has the effect of pitching parties in contesting camps, as the ManU takeover situation effectively demonstrates. On the other hand, ISL is able to promote commerce without inflicting damage or friction on stakeholders. Resort to national law will be effective only if states regulate sport practice. Examinations of territorial and corporate structures have to be analyzed, and in the UK, a negative result suggests limitations. Third, due to formal limitations of national law, challenges to sport globalization are undertaken within states' territories by aggrieved persons. On the other hand, the role of ISL as the applicable transnational law is reinforced. This latter point will be validated by a detailed examination of the impact of the Glazers' takeover of ManU in the next part of this article.

II. TRANSACTIONAL OBJECTIONS, RISKS, AND CONSEQUENCES

A. Introduction

The protests against the style of Mr. Glazer, as well as the novelty and strategies of the acquisition, make it necessary to assess the procedural integrity of the transactions, compliance with applicable fundamental rules of sport law, and the impact and risks on the shareholders, the club, and the

country. These will be discussed below.

B. Acquisition, Representation, and Impact

A combination of procedural and substantive issues involving representation, process, outcome, and impact of the acquisition arise. *Representations* prior to the takeover are material. In the course of concerns about his share buying build-up, Mr. Glazer was reported to have made a statement that he was content with his shareholding and had "no current intention of making an offer for the club."⁵¹ Messrs. J.P. McManus and John Magnier, the other major shareholders, declared also that they were "long term investors."⁵² These statements were warranties that they would not buy or sell unless it was absolutely in the best interest of the club or if the club was not doing particularly well.⁵³ Neither of the conditions occurred to make the buyer and sellers go back on their words. On the other hand, supporters and other concerned shareholders apparently relied on them.⁵⁴ What subsequently happened prior to the final charge was that Mr. Glazer garnered more funds and fine-tuned his approach to obtain the support or surrender of the few that mattered. It is noteworthy that Messrs. McManus and Magnier have not issued any statement about the "best interest of the club" in relation to the sale.

With regard to the *process* of the takeover, it is understood that Mr. Glazer succeeded in his bid for effective control because the price of the acquisition was "very attractive" and "over-leveraged."⁵⁵ This coincides with the first of two major grievances by opponents on the real nature and sources of the capital. It is being suggested that, in conformity with Stock Exchange rules, the Board of Directors had no choice other than to surrender.⁵⁶ The fact that an "exotic" financial product based on borrowed funds was used to buy the shares amounts to a *de facto* case of "economic doping" *a la* Arsene Wenger.

51. *Glazer Rules out Imminent Bid for United*, TIMES ONLINE, Mar. 30, 2004, <http://www.timesonline.co.uk/article/0,,27-1056639,00.html>.

52. Messrs. J.P. McManus and John Magnier, horse racing millionaires who owned twenty-nine percent of the shares, consistently put forward claims of long term interests. Cf. Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5; Thompson, *supra* note 6.

53. Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5 (reporting that the reaction by the spokesman for "Shareholders United" was that: "This was a treacherous act of betrayal"). See also Thompson, *supra* note 6.

54. See Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5; Matthew Garrahan, *Man Utd Plays Down Takeover Talk*, FIN. TIMES (London), Apr. 2, 2003, at 21.

55. Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5.

56. See Davies & Garrahan, *Glazer Seizes Control*, *supra* note 5. Where there are wider interests, and these plainly exist (see *supra* Section I.B.; *infra* Parts II.C. – II.D.), there may be a duty to refuse. See *infra* Part III.D.

It is therefore unsurprising that the traditional investor supporters were disadvantaged. Interestingly, under national laws, rules on funding and acquiring shares in modern companies are influenced by attempts to prevent morally objectionable schemes, avoid creating a false market in a company's shares, prevent asset stripping, and prevent other malpractices by directors, shareholders, or the company.⁵⁷ Alone, or in conjunction with the applicable national law, it is justifiable to invoke the ISL doctrine for two reasons. First, it appears that the fundamental duty under ISL to engage in fair play, *vis a vis* the club and opposed minority shareholders, has been breached by the acquisitive approach.⁵⁸ Second, as the best interests of the sport and the club must be considered and served, any decision that does not consider these is voidable.

The *outcome* of the takeover is the second major source of grievance by opponents.⁵⁹ Analysts all agree that ManU has been put on a steep and slippery financial slope.⁶⁰ Indeed, the ownership interests in ManU are now complicated as a result of the sponsored funding.⁶¹ It has been reported that "Manchester United will clearly be in a weaker position financially."⁶² The fact that the debt will ultimately have to be largely borne or repaid by a

57. See Gerard McCormack, *Compulsory Expropriation and Company Law*, in PROPERTY PROBLEMS FROM GENES TO PENSION FUNDS 61–77 (J.W. Harris ed., 1997); Eddy Wymeersch, *Article 23 of the Second Company Law Directive: The Prohibition on Financial Assistance to Acquire Shares of the Company*, in ULRICH DROBNIG ET AL., Festschrift für Ulrich Drobniß zum Siebzigsten Geburtstag 725–47 (1998). See generally Sheldon Leader, *Private Property and Corporate Governance*, in PERSPECTIVES ON COMPANY LAW 85–113 (Fiona Macmillan Patfield ed., 1995).

58. COUNCIL OF EUROPE, CODE OF SPORT ETHICS (2001), available at <http://cm.coe.int/ta/rec/1992/92rl4rev.htm> (discussing "fair play" in commercial relations in sport). The CODE OF SPORT ETHICS provides that "fair play is essential for successful promotion, development and involvement in sport." *Id.* It is a concept associated with "exploitation, unequal opportunities, excessive commercialization and corruption." *Id.* See INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW, UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS, art. 1.7 (2004) (discussing the equivalent rule as good faith and fair dealing in transnational commercial relations); see also Leader, *supra* note 57; McCormack, *supra* note 57; Wymeersch, *supra* note 57.

59. See Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5; cf. *infra* Sections II.C. – II.D.

60. See Robert Cole, *Little Margin for Error with So Much Debt*, TIMES (London), June 10, 2005, at 9 [hereinafter Cole, *Little Margin*]; Robert Cole, *£88m Interest Round the Club's Neck*, TIMES (London), June 11, 2005, at 116 [hereinafter Cole, *£88m Interest*]; *Red Devils Poised to Plunge into the Red*, EPOCH TIMES (London), May 16, 2005, at 24; Smith & Tett, *supra* note 7; Gillian Tett, *Risky PIKs Make Their Return*, FIN. TIMES (London), May 17, 2005, at 23.

61. See also Ingrid Mansell, *The Men Who Funded the Deal*, TIMES (London), June 11, 2005, at 116; cf. Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5; Davies et al., *supra* note 5; Smith & Tett, *supra* note 7; .

62. *Red Devils Poised to Plunge into the Red*, *supra* note 60 (quoting Bill Gerrard, professor of Sports Management and Finance at the Leeds University Business School).

"captive audience" of herd-like supporters raises serious ethical concerns about the compliance with and enforcement of ISL fair play policy.⁶³ The ISL position, establishing a fundamental policy objective of transparency of ownership interests, is crucial to the rights and interests of supporters.⁶⁴ Ownership right to commercial property, which in this case is owning ManU, may be impossible if it is fundamentally incompatible with the advantage of non-ownership.⁶⁵ Furthermore, football's rules provide that it must remain a sport.⁶⁶ This is supported by the policy against excessive commercialization under ISL.⁶⁷ There can be little doubt that Mr. Glazer's highly irregular approach could be considered an infringement. The application of these rules and policies would be in conformity with the "best interest of the sport" doctrine.⁶⁸ Taking into account that ISL's Olympism doctrine calls for the highest ethical standards, there is, in principle, a case for proprietary and contractual nullification or remedies in restitution for excessive profit made by certain shareholders.

The identified concerns and experiences create a basis for juridical expression and application of a fundamental ISL rule on hostile or quasi-hostile takeovers where parties in sport transactions engage in a takeover funded by debts that will do the following: (1) leave an efficient and profitable sport company in a risky situation,⁶⁹ (2) take out shareholder supporters who

63. See Cole, *Little Margin*, *supra* note 60; Ashling O'Connor, *Glazer's Ticket to Ride Adds Fuel to Fans' Fury*, TIMES (London), June 11, 2005, at 116; see also COUNCIL OF EUROPE, *supra* note 58.

64. Applied and enforced under the United European Football Association (UEFA) rule in *AEK v. UEFA*, CAS 98/200 (1999). See Mansell, *supra* note 61 (stating three names and contents of security rights to give the option to disclosed corporations to purchase thirty percent of the equity in 2010). The bases for this relate to the public nature of sport, the need for security, the interests of supporters, the integrity of ownership, etc. Cf. Nils Pratley, *Arsenal Shoulder More Debt Than Glazer's United*, GUARDIAN (London), May 17, 2005, at 35 (stating the existence of preference shareholders in ManU comprised of three secretive American hedge funds); *Americans Bid for Man Utd*, TVNZ.COM, Oct. 5, 2004, <http://tvnz.co.nz/view/page/506420/451462>.

65. Property interests are subject to the best interest of the sport, which include the supporters, maintenance of fair sporting rivalries, the reduction of sporting imbalance based on economic concentration of wealth, etc. Cf. Smith & Tett, *supra* note 7 (stating that the investment of the purchase of ManU through PIK bond is claimed to leave bondholders with limited recovery and rank them behind high priority debt claims, including trade creditors). See Michie, *supra* note 36 (stating a business and institutional organizational case against the acquisition of ManU by Mr. Glazer).

66. See FIFA STATUTES, *supra* note 26, at art. 2(e).

67. See generally COUNCIL OF EUROPE, *supra* note 58; INTERNATIONAL OLYMPIC COMMITTEE, *supra* note 27, at 2; UNITED NATIONS EDUCATIONAL SCIENTIFIC & CULTURAL ORGANIZATION, INTERNATIONAL CHARTER OF PHYSICAL EDUCATION AND SPORT, art. 7(1) (1978).

68. Cf. Robin Jacobs, *Trade Marks and the Olympic Games Throughout the Years*, 23 EUROPEAN INTEL. PROP. REV. 1, 5 (2001).

69. Cf. *infra* Section II.C. – II.D.

oppose the takeover on principled rational economic grounds,⁷⁰ (3) replace, either actually or potentially, the interests of displaced shareholders with that of the funders,⁷¹ (4) provide the new interests holders with no responsibility or interest in the primary objects of the company,⁷² and (5) place the risk of the debt in an unethical or non-commercial way, either on the innocent class or the government,⁷³ which will render the transaction subject to revision or nullification in the best interests of the sport by the competent authority. This formulation is consistent with FIFA's duty to prevent the introduction of improper methods or practices and abuses in the sport.⁷⁴

C. Commercial Risks

In buying out other shareholders with funded debt and converting the club into a private company, Mr. Glazer could be seen as preparing a hanging noose for himself in two ways. First, the risk of failure in running European football clubs is quite high. Second, the nature and determination of opposition is intense. It has been reported that supporters are burning their season ticket forms⁷⁵ and calling for the boycott of ManU products and the club's sponsors.⁷⁶ In so far as the club remains a public limited company, with a substantial minority opposed to Glazer, there are post-acquisition risks that are not in the shareholders' and club's best interests. If these principled efforts are by a decent degree successful, not only will less money go into the sport overall, but the wider community of merchants, whose businesses are built around ManU's supporters and businesses, will also carry heavy losses.

D. Political Risks

Since sport seeks to disassociate itself from geographical and racial politics and promote integration and peace, the consequences of the takeover

70. Cf. *infra* Section IV.D.

71. See *infra* Section IV.D.; see also *supra* Section I.D.

72. See *supra* Section I.D.

73. See *supra* Section I.D.

74. FIFA STATUTES, *supra* note 26, at art. 2(e).

75. Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5.

76. See Peter Thal Larsen, *Gardner's Wrath Falls on JPMorgan*, FIN. TIMES (London), May 17, 2005, at 23 (reporting that the chairman of ManU, who is also on the board of top UK companies, vowed to sever ties with JPMorgan based on the bank's role); Michie, *supra* note 36; David Owen, *Angry Fans Target Main Sponsors*, FIN. TIMES (London), May 14, 2005, at 2; *Man Utd Fans Vow to Fight Takeover*, *supra* note 32 (quoting a fan stating "[i]f that means starving ourselves, and starving the club of income, in order to make this parasite detach himself from us, then so be it"); see also Cole, *Little Margin*, *supra* note 60; O'Connor, *supra* note 63.

need to be assessed in terms of establishing and maintaining the Olympic ideal. Realistically assessed, the political risks are not negligible enough to be ignored. For the first time, we have football terrorists with global reach.⁷⁷ Mr. Glazer and his team have been the first of the victims of a bombardment of emails, faxes, and what not.⁷⁸ Extending the unglamorous fate reserved for American presidents, mainly by Palestinians, Iranians, Iraqis, and Muslim protesters, Mr. Glazer's effigy is regularly burnt or hung.⁷⁹ Perhaps if voodoo-supporting ManU fans from Haiti, Togo, and the Republic of Benin get involved, things may get worse for the Glazer family.⁸⁰ Also, cruel difficulties that create risks may arise due to the American and Jewish identity of Mr. Glazer as the sole proprietor.⁸¹ It is not clear what the impact of these factors will be in the Arab and Muslim world markets, but it appears that under Taliban and Al-Qaeda influence, those who align with ManU in Islamic

77. See Michael Morgan, *Rebels Cop It*, SUN (London), May 18, 2005, at 60 (discussing a police warning to shareholder opposition group that had threatened an "appetite for pure pandemonium"); Ashling O'Connor, *Hardliners State Intent in Glazer Campaign*, TIMES (London), Feb. 9, 2005, at 80 (discussing the identification of the Manchester Education Committee with loyalist paramilitary rooted tactics); see also David Rae, *£25m Fund to Fight Investor Terrorism*, ACCOUNTANCY AGE, July 39, 2004, at 3; Adrian Warner, *Glazer Hides Behind the Law to Protect Himself from Fans*, EVENING STANDARD (London), May 20, 2005, at 83. One group, the so-called Manchester Education Committee issued a veiled threat reported as follows:

Certain elements of United support are currently being kept in check, but the Committee can give no guarantee of this in the long term. . . . The Committee's intelligence network has been compiling dossiers over recent months ready to implement Operation Uranus, the result of which will render the club ungovernable. All senior figures within the club are considered "fair game." All such intelligence will be disseminated to maximum detrimental effect. The Committee has no intention of, nor any necessity to, race into hasty actions. The deed is now done. The payback will be immense.

Nick Harris, *Gill Ignores Militant Movement to Join Glazers*, INDEP. (London), June 10, 2005, at 70.

78. See O'Connor, *supra* note 77; Kevin Reed, *Directors Rush for Protection*, ACCOUNTANCY AGE, Oct. 21, 2004; Warner, *supra* note 77 (discussing that claims of "violence of intimidation" laws designed to protect animal lab scientists from activists have been invoked to prevent disclosure of Mr. Glazer's addresses); *Glazer Lifts Manchester United Stake to 74.8 Pct*, *supra* note 30 (detailing a report that indicates that a 100 person strong protest gang invaded a party hosted by JPMorgan bankers who acted for Mr. Glazer); see also Damian Wild, *Tough to Tackle*, ACCOUNTANCY AGE, Oct. 21, 2004.

79. See *Manchester Dis-United*, *supra* note 33.

80. So far, it has been reported that in Manchester "[s]ome fans sang 'Die Glazer Die' to the tune of 'She'll be Coming Round the Mountain.'" Hall, *supra* note 8. See also O'Connor, *supra* note 77 (reporting that a direct warning was sent to Mr. Joel Glazer stating that "no matter how large the phalanx of bodyguards you bring, Joel, we will always outnumber you").

81. See O'Connor, *supra* note 77 (reporting the burning of the American flag and the promise of a dirty war); see also Eric Collier, *Ajax and the Jewish Issue*, AJAXUSA.COM, Feb. 16, 2005, www.ajax-usa.com/desk/ajax-and-the-jewish-issue.html; Simon Kuper, "We're Hunting the Jews!" *Yells Inside the Stadium*, AJAXUSA.COM, <http://www.ajax-usa.com/history/kuper/we-re-hunting-the-jews.html> (last visited Jan. 23, 2006); cf. *Damaged Goods; American Capitalism*, *supra* note 4.

hotbed countries may equally be victims. The recent experiences of Ajax FC in the Netherlands should give cause for concern for non-politicized English football clubs and fans in Europe.⁸² To stem supporters' flight and reduce violence, the President of Ajax FC recently had to deny claims of being a Jewish club, particularly after certain Dutch clubs' supporters claimed to be associated with the militant group, Hamas.⁸³

E. Conclusion - Evaluation of Risks and Interests

Critical analysis suggests that the transaction process is flawed and that the Glazer acquisition lies open to legal attack or undermining risks. At the same time, there are serious commercial and political risks. In rectifying or preventing further damage, several noses will be bloodied. Under these analyses, conceivable plans of asking ManU to promote or participate in global initiatives must now be thoroughly revised, if not thrown into the cooler. ManU's existing and prospective goodwill could be lost to the usual Italian, Spanish, or German suspects; some other clubs from France, Portugal, or Russia; or an English rising star club like Chelsea FC. It is open to debate whether, barring laches, it would be possible to unravel the transaction, annul the transfer, cancel the shares, or force those who profited at the shareholders' expense to regurgitate their profits. On the other hand, with their previous stake, the Glazers have the power to work within the system to achieve financial and sporting rewards for all.⁸⁴ Clearly, for all sides involved, something must be done in the "best interests of the club and the sport." However, in achieving this goal, the response and role of UK institutions is very vital and should first be examined.⁸⁵

III. TERRITORIAL COMPETENCE AND LAXITY

A. Introduction

As the center of focal activity and protests, the role of UK institutions is vital. A "laxitude," arising from laxity and an attitude of indifference in officialdom, may be observed as relevant institutions with general or specific powers to intervene, ask questions, or conditionalize the operations of

82. See Kuper, *supra* note 81.

83. Collier, *supra* note 81; Craig S. Smith, *Ajax's Jewish Identity Turns Sinister*, N.Y. TIMES, Mar. 29, 2005, at 1.

84. Cf. *infra* Section V.

85. Cf. *infra* Section III.

participants when the best interest of the sport have consistently not done so. The various reasons and consequences of laxitude will be discussed below.

B. The UK Government and Manchester City Council

Historically, with the aims of prevention of violence and consumer protection, in matters concerning fans, security, and consumer protection, the UK government has legally intervened in sporting matters and their organizations.⁸⁶ Also, the promotion of access to sport is implemented piecemeal through various policy formulation and implementation agencies.⁸⁷ With respect to commercialization and ownership crises, the UK government has been active.⁸⁸ However, compared to the disquiet in government circles when, in 1998, Mr. Rupert Murdoch launched his fan-led, foiled bid for ManU, there was a noticeable silence this time. Then, perceptive observers felt they could hear the steely objection silently made by British Prime Minister, Mr. Tony Blair, a ManU supporter. In the recent May 5, 2005 general elections, Sir Alex Ferguson, ManU manager and opponent of the raid, endorsed and campaigned for a Labour victory among the club's large supporters. It appears that there may be no political or ethical reciprocity this time from the government, even if it appears that there will be political risks.⁸⁹ Not to be carelessly dismissed as a beer parlor analysis, is a view that the acquisition sum is a significant investment into the UK economy and the club's supporters and local base can be sacrificed.⁹⁰ The role of the city council to intervene is based on economic and social costs of the decision. Surprisingly, given that ManU is the most famous brand from the region, the Manchester City Council authorities are unmoved. ManU supporters attribute this to local football politics, where city council officials traditionally support a less successful football club.⁹¹

C. The Football Association (FA) and the Premier League

The FA and the Premier League regulate and organize football and major competitions in which ManU participates. They have been perplexingly quiet.

86. See ADAM LEWIS & JONATHAN TAYLOR, *SPORT: LAW AND PRACTICE* 11–44 (2003). See generally GRAYSON, *supra* note 4, at xx–xxi.

87. See generally LEWIS & TAYLOR, *supra* note 86.

88. See OFT Decision, THEFA.COM, Aug. 1, 2003, <http://www.thefa.com/TheFA/NewsFromTheFA/Postings/2003/08/59488.htm> (regarding fines imposed on Football Authority and other bodies for price fixing of replica England shirts).

89. See *supra* Sections II.C. – II.D.; see also *infra* Section III.E.

90. The view is indeed consistent with the utilitarian "business as usual" policy in England.

91. See Hall, *supra* note 8, at 23.

⁹² Other than suggesting that there appears to be a complicated misunderstanding of the issues, roles, and forces in contention,⁹³ or inferring a quiet wink or nod exists in the transaction, the post-takeover comment of Mr. Leonart Johansson, UEFA president, is noteworthy: "I can ask what the hell is happening in England right now. It seems that the Premier League is taking over everything."⁹⁴ In this light, a sufficient case appears to be built for further external intervention or direct action by affected individuals and groups.

D. *The London Stock Exchange*

There are fundamental questions about the role of the LSE in the ManU saga. While the stock market lists certain products that may be associated with clubs, it is clearly an issue whether a company, whose primary property is a league affiliated and controlled football company, is naturally suitable for the stock market.⁹⁵ Because the LSE has limited aims and powers and, in general, will not assess parties' behaviors, there remains a predilection about listing.⁹⁶ The ManU takeover experience confirms a narrow remit by the LSE in football matters. On the other hand, there is a legitimate desire in football circles that standards should be set and applied in approving hostile type takeovers for football companies, particularly in light of a close and natural relationship between clubs and the wider community.⁹⁷ The proper questions about whether the takeover serves "the best interest of the sport" need to be asked by the FA and the Premier League. Alternatively, the LSE could have

92. Domestic allegations of incompetence, outdated methods, and, at the same time, over commercialization have been directed towards domestic English football authorities. See David Owen, *How to Manage a Country's Obsession*, FIN. TIMES (London), May 17, 2005, at 13; see also Hughes, *supra* note 14.

93. The websites of both associations do not contain information or comment on the events. Requests for a position statement have yet been received. See The Football Association, <http://www.thefa.com> (last visited Feb. 25, 2006); Premier League, <http://www.premierleague.com/fapl.rac?command=forwardonly&nextpage=homepage>.

94. See Hughes, *supra* note 14.

95. In traditional jurisdictions, obligatory responsibilities under ISL, membership of leagues, and the centralized hierarchy of authority restrain the freedom of initiative and commercial activity for individual football clubs. See also O'Connor, *supra* note 42, at 38 (detailing critical remarks by FIFA president, Mr. Sepp Blatter, about football clubs being listed on the stock exchange).

96. See Patrick Drayton, *Regulatory Structures: The Relationship Between the Takeover Panel, the FSA and the Courts*, in TAKEOVERS IN ENGLISH AND GERMAN LAW 65-72 (Jennifer Payne ed., 2002).

97. See Lambert, *supra* note 39; Glazer Lifts Manchester United Stake to 74.8 Pct, *supra* note 30 (stating that the Board of Directors of ManU had raised questions about how the interests of the company and the remaining minority would be protected); cf. Glazer Given Deadline on Man Utd, BBC NEWS, Apr. 28, 2005, <http://www.news.bbc.co.uk/1/hi/business/4494159.stm>.

demanded financial guarantees before approving the offer.

In debating responsibility, the LSE's listings of ManU and other football clubs presume a full awareness of the context and special nature of sport business and a duty to promote or obey the rules. In other words, the LSE, in regard to sport companies, is subject to Olympism. In failing to do so, the LSE must bear pecuniary and non-pecuniary responsibility to disaffected shareholders and supporter-stakeholders for breaches of ISL rules that caused financial loss or led to the denial of access rights on the basis of voluntary assumption of liability.⁹⁸ This claim would be strengthened if the LSE made significant commissions or profits on the transaction. Overall, the institutional nature and performance of the LSE justifies the earlier claim that the stock market cannot be the sole and final judge of matters relating to football.

E. Conclusion – The Consequences of Laxitude

Professor Michie, in noting the downgrading of the public and community interest objectives in English regulatory systems, indicts authorities for a failure to act. In his analysis, only bankruptcy can save the club from the present quagmire.⁹⁹ It may not be too late to act, and it would be better to do so than to watch or let ManU become bankrupt.¹⁰⁰ There are plainly going to be political repercussions if the diminished ManU brand has an impact on the national and local economy. If it ever does, the Blair Premiership, the Labour Party, and several Labour party candidates will, for a long time, bear the brunt.

It will probably be asked whether there arises liability toward the shareholders or stakeholders as a result of failures to act. While no specific answer is given here, it is certainly possible that professional associations may be liable for breach of statutory duty, negligence, or breach of contract. In any case, should directly responsible authorities fail, they risk the possibility of losing control of the game and the sport. This situation will occur if Mr. Glazer manages the club in a way that is inconsistent with established norms and practices, leaving fans disillusioned.¹⁰¹ For Mr. Glazer, knowing the manner and the price of participation and ownership, these authorities cannot question or restrain him from doing what he feels or knows best or at least

98. See *White v. Jones*, 2 A.C. 207 (H.L. 1995); *Williams v. Natural Life Health Foods Ltd.*, 2 All E.R. 577 (H.L. 1998) (applying the voluntary assumption of responsibility rule in English law).

99. See Larsen, *supra* note 76; Michie, *supra* note 36; Owen, *supra* note 76; *Man Utd Fans Vow to Fight Takeover*, *supra* note 32; see also Cole, *Little Margin*, *supra* note 60; O'Connor, *supra* note 63.

100. Cf. *infra* Section V.

101. Cf. David Owen, *TV Concerns as Soccer Attendances Drop*, FIN. TIMES (London), May 14, 2005, at 3.

better than them. In these situations, particularly where there would be extra-territorial impact, ISFs have the right to intervene to settle controversies and disputes in the best interest of the sport.

IV. SUPPORTERS' OPTIONS - HOLDING BACK NO PUNCHES

A. Introduction

Broadly speaking, political, financial, commercial, and legal courses of action are open to affected or disgruntled supporters. The specific options for the supporters are to unravel the transaction, compete, or maintain their participative shareholding interest and, consequently, stay on to challenge the Glazers. Finally, the most difficult option is to switch loyalty to other clubs.

B. Transactional Unraveling by Political and Legal Action

Arising from a combination of factors, there is a "public interest" in the Glazer affair.¹⁰² To unravel the transaction, shareholders' and supporters' groups may officially write every member of Parliament and mayor asking the government to take action, including requesting the Sport Minister or other competent authority to review the action and make recommendations, if appropriate, to the Competition Commission. Legal action is also an appropriate step where cognizable interests are impinged. It is, however, a necessary precondition that national and international regulators, as "guardians of the sport," be notified and given a chance to take action before independent action is commenced. Only if they fail, may supporters invoke proceedings in a competent jurisdiction.¹⁰³

C. Independence and Competition

Before now, the need for supporters to have an independent financial plan to promote, resist, protest, and support their activities had not been fully explored. Because their wishes and rights have not been respected, supporters may promote their participative interests by devising independent corporate, commercial, and financial strategies.¹⁰⁴ In view of their specific concerns,

102. See generally *supra* Sections I.E., II.B. – II.E., III.B., III.D – III.E.; see also *infra* Section IV.D.

103. While there is only one valid applicable legal system, ISL or the *lex sportiva*, England and Switzerland are alternative jurisdictions. The full or advisory jurisdiction of the Court of Arbitration (CAS) may also be invoked.

104. In common law jurisdictions, competitive commercialization would not be a problem. The

there is also a utilitarian justification in preventing the interests of seven men, made up of Mr. Glazer and his sons, to prevail over the mass of global supporters. In competing with the club commercially, efforts could be directed toward affecting the club's revenue streams in relation to merchandising and database rights. In relation to merchandising, the independent supporters' association has indicated a desire to do the following: (1) ^stop buying official merchandise of the club, (2) register its own trademarks and logo, (3) create its own merchandising items, (4) franchise its support base, and (5) seek sponsors.¹⁰⁵ Further, it appears that supporters may request that their names be taken off the database of ManU. They may create their own database and commercially exploit it. If actions like these are reproduced globally, they are bound to create an earthquake in the legal and economic relationships of clubs and supporters.

D. "Abuse of Rights" Claims

The abuse of rights doctrine may be invoked in relation to the way the takeover was affected.¹⁰⁶ This may lead to refinement, annulment, or civil liability.¹⁰⁷ Following acquisition, the doctrine will be an ISL watchdog to control post-completion activities. Minority shareholders may invoke the abuse of rights doctrine as part of the democratic consensus principle of European sporting tradition.¹⁰⁸ Otherwise, the doctrine applies to property, intellectual property, and contractual relations involving non-shareholders. Further, the doctrine will apply to manners of corporate governance of a sporting club.¹⁰⁹ Reports that minority shareholders will be denied a share of dividends for principled opposition represents an instance of abuse of rights.¹¹⁰ Though English law does not recognize a general abuse of rights doctrine,

right is promoted under the Statute of Monopolies (1624) and judicial development. *See generally* Hodgkinson & Corby Ltd. v. Wards Mobility Servs. Ltd., F.S.R. 169, 174 (C.A. 1997); USGA v. St. Andrews Sys., Data-Max, Inc., 749 F.2d. 1028 (3d Cir. 1984). In other jurisdictions, freedom of association, enterprise, and protection of dignity provisions in human rights conventions and national constitutions would have the same effect. *See* Cole, *£88 Interest*, *supra* note 60 (contributing £50 rather than watching matches would allow them to be able to buy back the club in five years).

105. Email from Nick Townle, Chairman, Manchester Independent Supporters Association (on file with the author). *Cf.* O'Connor, *supra* note 63, at 116.

106. *See* McCormack, *supra* note 57; *cf. supra* Section II.B.

107. *See supra* Section I.B.

108. *See generally* Chapman, *supra* note 9; Hall, *supra* note 8, at 23.

109. The identifiable bases are Olympism's "sport family" concept (*cf. supra* Section I.B.), relational contracting obligations (*cf.* Alan Schwartz, *Relational Contracts in the Courts: An Analysis of Incomplete Agreements and Judicial Strategies*, 21 J. LEGAL STUD. 271-318 (1992)), and improper purpose (*see* Gambotto v. WCP Ltd. (1995) 182 CLR 432 (Austl.)).

110. *See* McCormack, *supra* note 57 (arguing that compulsory acquisition of shares following

it must admit its application as a *lex specialis* known to sport law.¹¹¹ In any case, Mr. Glazer's new team will find their future transnational dealings subject to the abuse of rights doctrine.¹¹²

E. Conclusion

Clearly, but unfortunately for him and other club proprietors, Mr. Glazer has succeeded in irking supporters of clubs enough for them to consider exercising their participative interests in sport and football governance through various channels. The independent exercise of these rights and interests will be necessary, particularly if there is governmental inaction.¹¹³ This has implications for exclusive control of the financial honey pot. The legitimate exercise of such rights will be protected under applicable human rights conventions and their domestic equivalents.

V. GIVING IT BACK TO THEM - THE GLAZER OPTIONS

A. Introduction

While in control, and irrespective of whatever personal or professional opinion is held of Mr. Glazer and his past, it is proper to realistically assess what good Mr. Glazer can do for *his* club and, indirectly, the sport.¹¹⁴ Particularly effective responses will give the skeptics a black eye in exchange for a bloody nose.

B. Woo or Fight the Supporters

It is reasonable to believe that Mr. Glazer will fight back to retain the huge support base and inspire supporters' confidence in his management ability.¹¹⁵

takeovers is incompatible with the European Convention on Human Rights provision guaranteeing a right to peaceful enjoyment of possessions. English law, he contends, has a well balanced approach to refuse support to such intentions).

111. See *supra* Section I.B. This arises as a result of its qualification as an enforceable custom or customary law of the *lex specialis*. Cf. Roy Goode, *Usage and its Reception in Transnational Commercial Law*, 46 INT'L & COMP. L.Q. 1 (1997).

112. See *supra* Section I.B. See generally INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW, *supra* note 58.

113. See *supra* Section III.B.; cf. Michie, *supra* note 36.

114. Cf. Cole, *Little Margin*, *supra* note 60; Michie, *supra* note 36.

115. See Nick Harris, *Glazer Plans £100m War Chest*, INDEP. (London), May 23, 2005, at 77 (stating there was no formal commitment by Mr. Glazer to fight back); Ingrid Mansell & Ashling O'Connor, *Revealed: Glazer's Plan for Manchester United*, TIMES (London), June 10, 2005, at 1; Ingrid Mansell & Ashling O'Connor, *Ticket Prices Rise, Transfer Cash Kept to £25M, Income*

There are options open to him in this regard. First, he may avoid disappointing critics and experts by avoiding fee increases, so as not to be seen as exploiting the customers. Second, he needs to involve supporters' representatives in aspects of the management, thereby ensuring good faith compliance with the ISL doctrine and respecting the participative rights of supporters. Third, Mr. Glazer should begin and activate a process of wooing new supporters in order to fund his ventures and balance the power and influence of the present strand of supporters. Fourth, it is possible to develop classes of shareholding rights for a new supporters' structure consisting of varying privileges and responsibilities. A formal, jointly-developed supporters' charter would be welcomed. Finally, whether wooing or fighting the supporters, Mr. Glazer owes it to the supporters to officially disclose how he intends to pay the staggering interest reportedly associated with his bid and what the supporters will gain from his involvement. Other than a reliable scoop, these issues have not been dealt with.¹¹⁶

C. Maximize the Profit Objective

First, given the amount paid and the sources, Mr. Glazer has the prime motive to settle his debts and make a profit as soon as possible. In the face of competition from independent supporters and other clubs, one expects to begin to hear and see an unleashing of the "power of profit-motive" at work. In general, this will mean utilizing intellectual property (IPR) related rights, commercial property rights, and sport property rights to expand the ManU brand. Merchandising and licensing will therefore be actively featured in Mr. Glazer's scheme of things. At the same time, the Glazers have the corresponding duty not to over flog or destroy the brand's power.¹¹⁷ The power must not be used or abused in a manner inconsistent with ISL or national values.

Second, the development of IPR related rights, involving literary, musical,

Forced up, TIMES (London), June 10, 2005, at 8 [hereinafter Mansell & O'Connor, *Ticket Prices Rise*]; Ashling O'Connor, *Business Will be Run as Family Affair*, TIMES (London), June 10, 2005, at 9; see also Louise Taylor, *Glazer Tells Fans Not to Worry*, GUARDIAN (London), July 2, 2005, at 11.

116. See Cole, *£88m Interest*, *supra* note 60; Mansell & O'Connor, *Ticket Prices Rise*, *supra* note 115; cf. Sullivan, *supra* note 30; *supra* Section III.C. – III.D. See generally Matthew Garrahan, *Interest on United Deal Could Spell £894m Debt for Glazer*, FIN. TIMES (London), May 17, 2005, at 21; Harris, *supra* note 115.

117. This duty survives with remaining minority shareholders but will disappear if Mr. Glazer assumes 100% ownership of the shares. On the other hand, too many marketing and branding devices may diminish the commercial interests of existing sponsors. See Kevin Roberts, *The Week that Was* . . . , SPORTBUSINESS.COM, May 27, 2005, http://www.sportbusiness.com/news/index?news_item_id=157657.

and cinematographic works based on the rich historical and sporting pedigree of ManU, and its global goodwill, if combined with Olympism values, Olympic partners, and capable entrepreneurs, may be a radical profit-generating innovation.¹¹⁸ These rights may be auctioned or licensed.

Third, the international franchising of the football club in the U.S., Japan, and China appears to be a possibility. We may, in the future, hear of ManU Buccaneers SC, ManU Tigers FC, and ManU Dragons FC.¹¹⁹ It may be possible to have agreements with the franchised clubs concerning player transfers, IPR claims, broadcasting rights, or friendly matches.

Fourth, the development and acquisition of broadcasting rights is also a matter of potential interest. It is not possible to upset the collective selling arrangement for official competitions in England,¹²⁰ or for that matter, the exclusive control held by UEFA and FIFA to broadcasting rights.¹²¹ The broadcasting rights that appear plausible are friendly games involving ManU. However, the club may acquire rights to national team matches to generate interest. With respect to new opportunities, it is debatable the extent to which the sale of media rights will flourish under the laws of football or Europe. In any case, this is only possible where, as in Italian and Spanish football clubs, there are superstar players.¹²² ManU presently has a limited attraction of players, one of which, on the basis of on and off the field conduct, is a potential liability.

D. Seek Additional Sponsors and Partners

Sponsorship has been a viable, but increasingly cluttered marketing concept in national sport. In international sport, it still remains viable. Sport and club sponsorship rights are vital to lowering costs and maximizing

118. Cf. Erik Kirschbaum, *Real Madrid Film Draws Cannes Market Buzz*, YAHOO.COM, May 11, 2005, <http://in.news.yahoo.com/050511/137/5yi86.html>.

119. SC means Soccer Club. This arises because of the different sport called "football" in the U.S. To denominate the American connection, the Glazers may call franchised clubs "SC." The local football federation may of course refuse this. It also places risks on the teams. Cf. *supra* Section II.D.

120. See *Re Television Premier League Football Matches* E.M.L.R. 78 (R.P.C. 2000); Taylor, *supra* note 115, at 11 (reporting no breakaway television deal); see also LEWIS & TAYLOR, *supra* note 86, at 405–10; Murray Urges Glazer Not to Get Greedy, *supra* note 12; cf. Davies & Garrahan, *Glazer Claims His United Prize*, *supra* note 5 (reporting that ManU is seeking to exploit overseas rights to competitions); Matthew Garrahan, *Will Manchester Utd Walk Alone into the Tunnel of Sole Broadcast Rights?*, FT.COM, May 2, 2005, <http://news.ft.com/home/us>; David Smith, *Fan Fury Over Glazer*, SPORTBUSINESS.COM, May 13, 2005, http://www.sportbusiness.com/news/index?news_item_id=157511.

121. LEWIS & TAYLOR, *supra* note 86, at 410–11.

122. Cf. David Owen, *Money Machine*, FT.COM, May 2, 2005, <http://news.ft.com/home/us>.

revenue rights. Division of sponsorship rights and contracts may be exploited on the basis of the brand recognition of ManU so that, conceivably, there will be regional or national sponsorship agreements. The role of technological partners to develop images and games, based on training and competitive matches, will be vital. Licensed partnerships with gyms, healthcare resorts, and sport medicine makers will be vital revenue sources.

E. "Abuse of Rights" Actions

A wild, abusive, or irresponsible expression by supporters of their participative interests may give rise to the invocation of abuse of rights related actions where supporters exercise their rights, promote violence, or support or preach national or race based discrimination contrary to ISL. The doctrine may also be utilized to limit excesses associated with rights to launch competitive CPR or IPR based products. As shareholders, it is possible to have their participative rights and interests determined where the exercise is not in the best interest of the sport or the club.¹²³ One justification for this is that their actions may diminish the proprietary value and the goodwill of the club, as well as place the club under criminal sanctions at home or abroad.¹²⁴

F. Conclusion

In the coming months a lot will be revealed by the actions of the Glazers. The possibilities no doubt are varied. With a combination of luck and dynamic management, there is a wide scope for financial and sporting glory that would literally leave Mr. Glazer's critics with a black eye.¹²⁵

VI. CONCLUSIONS

The ManU takeover is a significant manifestation of sport globalization.

123. Since fans and supporters who preach and support violence may be expelled from a club, there is no reason why their pecuniary interests in a club cannot be equally determined. *Cf.* Oliver Kay, *Riot Over, Its Business as Usual, Glazers Tell United*, TIMES (London), July 1, 2005, at 104.

124. "We shouldn't throw things or adopt abusive language because the law is designed to protect property and the sensibilities of cultured people. But we can all shout very loudly." *Cf.* Chapman, *supra* note 9. Mr. David Gill laments the "small minority of people who are doing the name of the club a disservice." Kay, *supra* note 123.

125. In a recent MUTV television interview, Mr. Joel Glazer provided six policy steps. He declared the following: (1) that he was change resistant and would not tamper with the club's heritage, (2) that true ownership would rest with the fans and that his family would be restorers, (3) that there would be no pricing out of supporters, (4) that there would be no sale of Old Trafford, the sporting ground, (5) that there was no breakaway television deal, and (6) that overseas activities may be looked at to benefit the community at large. *See* Kay, *supra* note 123; Taylor, *supra* note 115.

Its undiluted success will have profound long-term consequences for the sport. In light of its impact, certain general and specific conclusions can be made. They are discussed respectively in this part.

A. General Conclusions

First, in the relationship between globalization and ISL, ISL dominates with fundamental doctrines applicable to the acquisition and management of clubs. These doctrines, namely Olympism, good faith, commerce, access, and abuse of rights ensure that access, merit, justice, and fairness prevail in proprietary transactions and relationships. Second, under ISL's regime, entrepreneurs and supporters have legal rights and responsibilities. Consequently, there is no scope for untrammelled globalization. Third, the coherent nature of a transnational ISL has demonstrated an independent and effective body of norms, which is applicable when national law is lacking or national bodies are ineffective. Fourth, it has been shown that breaches of ISL may lead to the intervention of international sport authorities that have an interest. ISFs have an inherent responsibility under the "best interest of the sport" and the "good of the game powers" to intervene. Finally, supporters' independent rights to undertake generated revenue out of their activities in connection with the club have emerged. In rising to the challenge, all independent supporters will discover oil under their feet.

B. Specific Conclusions

As a well-loved sport philanthropist and former football club owner declared, "the bigger the head, the bigger the headache."¹²⁶ There are bound to be difficulties in hostile or semi-hostile takeovers of established clubs, particularly if objecting supporters will be reined in to new organizational and marketing regimes. This analysis reveals specifically that, while certain ISL doctrines promote the activities of entrepreneurs like Mr. Glazer, the process of acquisition of ManU is fraught with non-compliance with fundamental ISL doctrines, particularly Olympism, fair play, and abuse of sport rights. First, the resistance by ManU supporters is contextually legitimate if it is aimed at glocalisation, based on Olympism, and represents an attempt to find their own bearing in an age of globalization. However, in cases of wild and excessive behavior, the infraction of the abuse of rights doctrine is possible. Second, there are serious global takeover risks. These have not been examined within the UK due to the nonchalant attitude of national officials and authorities.

126. *About Chief Moshood Abiola*, http://www.kind.org/mko_biography.html (last visited Mar. 12, 2006).

Third, having obtained the control of the club, new and multiple commercial and proprietary options are open to Mr. Glazer. The club's "Old Trafford" headquarters and the "Theatre of Dreams" may become the most exciting originator for football-related action and transactions. Finally, while the parties' actions indicate that there is more to it than the love of the club, it is possible to use Olympism, the specialized feng shui of sport, to exercise the anger, jealousy, greed, fear, and ill wishes that surround the club's takeover aura.

