The significance of the ‘legitimate sport’ standard used in *R v Barnes* in relation to the autonomy of sports bodies

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The position of the criminal courts

‘unlawful violence…on the football field needs discouraging as much as violence on the terraces or indeed anywhere else’ – *R v Johnson* (1986)

‘No rules or practice of any game whatever can make that lawful which is unlawful by the law of the land’ - *R v Bradshaw* (1878)
The issues

http://youtube.com/watch?v=5WAj7xdqT1c
The injuries

Many sports can involve a degree of aggressive and violent behaviour, of a sort not generally acceptable in society:

- Boxing, mixed martial arts, conventional martial arts.
- Rugby, soccer, AFL, American football, ice hockey.

In all of the above, serious injury or death can result.

High profile deaths and serious injuries in boxing (James Murray, Bradley Stone, Nigel Watson) Matt Hampson’s paralysis from rugby practice
Mark Barnes was playing (low-level, Saturday League) football and broke an opponent’s leg.

Bad-tempered game.

Mark Barnes, after several disagreements with an opposition player, was reprimanded by the referee.

Later in the game, he slid into the opposition player, after that player had scored.
Mark Barnes was convicted at first instance at Canterbury Crown Court.

He was acquitted on appeal, at the Court of Appeal, in December 2004.

James Cotterill, in last season’s FA Cup.
Possible offences

- Common law assault and battery
- Ss.47, 20 & 18 of the Offences Against the Person Act (OAPA) 1861
- Homicides, especially manslaughter

Offences are treated substantially the same on and off the sports field.
Therefore, it is easy to commit the offence on the sports field, in a boxing match for example. As intention to hurt is not required, it can easily be committed in football matches.
Possible defences

- Self-defence (unlikely)
- Consent – implied consent of those taking part in the sport.

Again, these defences are substantially the same as when employed away from sports.
Consent

Injury is permitted because, by entering the field, the players are deemed to have taken the risk of injury that comes with the sport.
Leading case and authority for consent on the sports field.

Arose from Operation Spanner in Manchester in 1987.

Police got hold of videos of what they believed to be tortured and murdered victims.

In actual fact, the ‘victims’ were men engaged in sado-masochistic sex.

This case from the House of Lords is now the leading authority for sports violence.
‘… it is an unlawful act to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence, and when such an act is proved, consent is immaterial’

‘…nothing which we have said is intended to cast doubt on the accepted legality of properly conducted games and sports …these apparent exceptions can be justified as...needed in the public interest’
Mark Barnes (a footballer) was convicted according to the provisions of a 140-year-old Act of Parliament. He was acquitted according to a case concerned with the nailing men’s genitals to tables. Consent to serious injury is only possible where that was during ‘legitimate sport’.
What’s the problem?

Normally, you cannot consent to serious bodily harm; therefore, inflicting bodily harm is always a criminal offence.

Sport is an exception: by participating, you are deemed to have consented to the possibility of harm.

Therefore, in a ‘properly conducted’ or ‘legitimate’ sport, the violent infliction of injury is not a criminal offence.
Legitimate sport?
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Who decides?

These legal arguments seem far removed from the running of sport

Governing bodies
Parliament
Judges

‘Legitimate sport’ is a nebulous standard, susceptible to cultural, political and legal change
What does it matter?

- Is this the end of contact sports?
- Police coming onto the sports field?
- Just an English issue?
- What does this have to do with the autonomy of sport?
- Why should the criminal law intervene?
- Are sportspersons really criminals?
Some more questions

• What exactly is ‘legitimate sport’?
• Does the use of ‘consent’ make sense as a defence in the context of sport?
• Should the criminal law intervene in the case of sports injuries?
• Should such injuries remain the preserve of the civil law (ie. Negligence)?