

The marriage of Bourdieu and private ordering on Gretna's football field<sup>1</sup>.

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## *Abstract*

This paper presents an in-depth study of the insolvency of Gretna football club. It sets the insolvency within the wider context of the field of football in Scotland and the special rules of the field which apply immediately upon the insolvency of a club and which are arguably at odds with general insolvency regulation in the UK. Insolvency presents a unique opportunity to study fields since it is at this point when there is a shortfall of funds that the field's power relations become most clear and the struggles on the field more visible. In order to provide a more nuanced complex picture of the football field, its actors and regulations, especially those relating to insolvency, this paper draws upon the work of Pierre Bourdieu. It also draws upon the concept of private ordering since the insolvency rules set by the governing body of the Scottish Premier League (a private company) have an impact that extend beyond the members of the League.

In April 2007, a piece of football history was made in the small town of Gretna when its team was promoted to the Scottish Premier League (SPL). Unfortunately, this fairytale did not have a happy ending. By the end of the 2007/08 football season Gretna football club (FC), which was founded in 1946, had ceased to exist. This paper presents an in-depth study of the demise of Gretna FC setting it within the wider context of the field of Scottish football. More specifically, the paper is concerned with the special rules of the field relating to insolvency which are at odds with general insolvency regulation in the UK. Insolvency presents a unique opportunity to study fields since it is at this point when there are asymmetries in the distribution of money that the field's power relations become most clear. Moreover, the role of accounting and the accounting profession are laid bare through the process of insolvency.

To the casual observer, the football field with its directors sitting in the best padded and sometimes heated seats, the lavish corporate hospitality (in comparison to the catering on offer to the "ordinary" supporter) and the oligopolistic position held by a few teams in the major leagues throughout the world, may appear to fairly accurately reflect the extant power relations in society. However, this surface insight, while strikingly obvious does not provide an explanation of how the dominance has been created and how it is maintained. Nor does it add insight into some of the unique facets of the football arena like its special rules relating to insolvency and why the super-rich would "invest" in football clubs seemingly with little hope of making profits. In order to provide a more nuanced complex picture of the football field, its actors and regulations, especially those relating to insolvency, this paper draws upon the work of Pierre Bourdieu.

Bourdieu's theoretical perspective adds a level of complexity to what might be described as a basic "class analysis", in that he argued that society cannot be analyzed simply in terms of economic classes and ideologies. To Bourdieu, as important as economics in any social analysis, are cultural, educational and other social factors which are dialectically related to economic wealth. Bourdieu believed that the central way of understanding the maintenance and reproduction of class power involves understanding the role that culture and education play in the reproduction and affirmation of differences between social classes. Equipped with education,

recognized social differences, economic wealth and social connections, actors strive to reach the top of various fields. To Bourdieu these fields are relatively autonomous and have their own rules.

In the field of Scottish football, a key regulatory body, the governing body of the Scottish Premier League is a private limited company. It is therefore unelected and unaccountable to the general public, yet it is allowed to make rules which impact on the lives of many people in Scotland. For this reason the paper also uses the legal concept of *private ordering* to inform the paper's understanding of the insolvency rules which have been created by the Scottish Premier League.

Unlike other important work in accounting (Cousins et al, 2000) this paper does not aim to critique the conduct of insolvency practitioners, although the actions of Gretna's insolvency practitioners are discussed in the context of Bourdieu's theoretical perspective and the rules of private ordering. This paper is more concerned with the field of football and how transactions between the field of football and the field of accounting serve to enhance the positions of those at the top of the football hierarchy.

The paper is structured as follows. The next section briefly considers the accounting literature on football and on insolvency. While there is a greater proportion of research into insolvency, both appear to be under-researched arenas. The following section sets out the theoretical perspective of the paper by introducing Bourdieu's concepts of habitus, capital and field. The concept of the field as a terrain of struggles enables a richer insight into Scottish football. The following section reflects upon the use of private ordering. The rest of the paper is concerned with the case study of Gretna football club and the insolvency policy of the footballing bodies. Finally, a summary and conclusions are presented.

## **Accounting, Football and Insolvency**

Despite the social and economic importance of football<sup>2</sup>, the academic accounting literature relating to football is sparse. Arguably football club financial accounts are unique since, for many clubs, the players' contracts are their most valuable financial assets. Yet these contracts are based upon human beings and their cultural capital. Academic research has therefore been concerned with accounting for player contracts under the rules of FRS 10 (Amir and Livne, 2005; Forker, 2005) and with accounting for transfer fees<sup>3</sup> (Rowbottom, 2002). Other research has looked at the accountability and annual reports of football clubs, for example, the extent to which English Premier League clubs have communicated their community activities through their Annual Reports (Slack and Shrides, 2008) and the accountability and finance in Scottish football (Morrow, 1999, 2005). Guzmán and Morrow (2007) further consider the question of efficiency in English football. Football has also been used metaphorically in the accounting literature by characterizing the rules of football as more akin to the rules for calculating net assets, net income and earnings per share (Mouck, 2004).

There is a more substantial body of academic accounting work on insolvency. An interesting body of literature has been developed which considers the historical role of bankruptcy in the development of the accounting profession and the activities of early accountants within bankruptcy (see for example, Cooper and Robson, 2006; Edwards et al, 2007; Larsson, 2005; Ramirez, 2008; Walker, 2003, 2004a, 2004b). More contemporary academic insolvency literature is concerned with the accounting profession's roles in relation to the legal and financial implications of insolvency. Included in this more contemporary analysis is the effect of going concern qualifications or the absence thereof (Van Peurse et al, 2006). Other work has brought to light the articulated lack of regulatory action taken against audit firms in the cases where accounting and auditing have been implicated in insolvency (for example, Sikka, 2001). Related to this the accounting profession's campaign to

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<sup>2</sup> Football (soccer in the North America) is the most watched and played sport in the world (Gerrard, 2006).

<sup>3</sup> Transfer fees represent amounts payable by one club to another club in respect of a player contract which has been sold on the transfer market.

secure liability concessions in the case of lawsuits in insolvency cases has also been reviewed (Cousins et al, 1999; Gietzmann and Quick, 1998; Napier, 1998). There has also been research concerned with other technical issues implicated in insolvency, for example debt restructuring (Pushkin and Pariser, 1991).

A stream of work from a more mainstream perspective concerns the possibility of predicting insolvency using (among other things) annual reports (for example, Agarwal and Taffler, 2007, 2008; LeClere, 2006), financial accounts and governance (Fich and Slezak, 2008), stock returns (Frino et al, 2007), earnings management (Charitou et al, 2007), audit going concern qualifications and other statistical techniques (Sun, 2007), group and subsidiary accounts (Dewaelheyns and Van Hulle, 2006) and Hidden Layer Learning Vector Quantization (Neves and Vierira, 2006).

There have also been some interesting “insolvency” case studies in the literature (Armstrong, 2005; Graham, 2008; Lew and Richardson, 1992). These cases have demonstrated the “non-neutral” nature of the insolvency/administration<sup>4</sup> process.

This paper presents a case study which reflects upon the administration of (at the time) one of the top twelve football teams in Scotland, Gretna football club. The paper contributes to accounting literature in an innovative way through the application of Bourdieu’s work to the football industry. Through a comprehensive analysis of the social actors in the field of football and, in particular within the context of financial distress, richer perspectives are derived on the interactions of actors within a stratum of society. Additionally, this paper integrates the effect of private ordering with Bourdieu’s perspective to rationalize self interest within powerful groups of society. The next section sets out the aspects of Bourdieu’s theoretical work which will be used in analyzing Gretna FC.

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<sup>4</sup> Administration is a formal insolvency proceeding contained within the UK Insolvency Act 1986. Other formal insolvency proceedings for companies are Receivership (which has largely been abolished by the Enterprise Act 2002. This is referred to as Administrative Receivership in England and Wales), Company Voluntary Arrangements (CVAs) and Liquidations.

## **The football field, habitus and capital**

As set out in the introduction an analysis of the events surrounding the insolvency of Gretna football club could be theorized by an understanding of the football industry as a social arena or “field” which has its own unique rules and structures. In order to reach the highest echelons of the field, a combination of economic and cultural capital (football ability) is required. Since insolvency knowledge is also important in this case, the cultural capital of insolvency practitioners is also required. Therefore, the key concepts which this paper will use from Bourdieu's writings are social field, (in order to theorise the football industry as a demarcated arena), capital, (since economic capital is clearly of importance in this case, as is cultural capital, in the form of knowledge of insolvency processes as well as football skills) and finally, habitus which provides a theoretical base for understanding our dispositions, how we react in certain situations and how we operate in fields.

### *Habitus*

Habitus is acquired through upbringing and education. On an individual level -

"Constructing the notion of habitus as a system of acquired dispositions functioning on the practical level as categories of perception and assessment... as well as being the organizing principles of action..." (Bourdieu, 1990, p 15)

In other words, our habitus is our socially constructed subjectivity. However, Bourdieu's habitus is richer than what would normally be considered to constitute our subjectivity -- perspective, feelings, beliefs, and desires -- although it is all of those things. Bourdieu argues that the struggle for social distinction is a fundamental dimension of all social life. In other words our tastes (an element of habitus) classify us and enable us to classify others. Furthermore, Bourdieu argued that taste, an acquired “cultural competence” (for example knowing what is “vulgar” from what is “cultured”), is used to legitimise social differences. The habitus of the dominant class can be discerned in the notion that “taste” is bestowed on us from birth. Thus the

myth is perpetuated that one is born “with class” and therefore the rich *know* that they have some kind of (birth) right to their place in society.

The habitus of a group is acquired through organisational socialisation (Bourdieu and Wacquant, 1992). The important theoretical point here for accounting researchers is that while actors adopt unconscious strategies and act at the level of “bodily logic”, their dispositions are partially developed in response to objective social structures and objective conditions. It is at this organisational level that the concept of habitus has mainly been used in the accounting literature. Baxter and Chua (2008) present a study of a Chief Financial Officer (CFO) “in action”. Their study considers the CFO’s habitus but also draws upon Bourdieu’s explanation that a “doxic” relationship emerges when agents absorb objective social structures into a personal set of cognitive and somatic dispositions. To Bourdieu, *doxa* denotes what is taken for granted in any particular society. Although doxa “has more often than not been imposed through struggles against competing visions.... What appears to us today as self-evident, as beneath consciousness and choice, has quite often been the stake of struggles and instituted only as the result of dogged confrontations between dominant and dominated groups” (Bourdieu, 1998, pp 56 – 57). This means that while agents construct their distinctive vision of the world, this construction is carried out under particular structural constraints (Bourdieu, 1990). Xu and Xu (2008) further use the concept of habitus and the closely related concept of cultural capital to explore the habitus of Chinese bankers in order to understand motivations behind their initiatives to standardize Chinese bank accounting classification and terminology. Finally, in a study of UK local government accounting, recent developments in governance and New Public Management (NPM) were theorised using Bourdieu’s concept of habitus (Goddard, 2004, 2005). Clearly, the implementation of NPM systems could serve to alter the habitus of organisations and therefore the ethos with which organisational actors carry out their daily activities.

The concept of habitus is closely related to Bourdieu’s concept of capital. The relationship between one’s tastes and one’s economic capital is an important feature of Bourdieu’s work. In *Distinctions* Bourdieu carefully chartered the distinctive dispositions of those with varying combinations of economic capital and cultural capital. However, there is a closer relationship between one’s habitus and one’s

cultural capital, in that cultural capital structures the knowledge and values shaping agents' dispositions (part of habitus). Bourdieu's capitals are discussed next.

### *Capital*

To Bourdieu, capital is accumulated labour (Bourdieu, 1983). Three forms of capital (cultural, social and economic) dominate Bourdieu's work<sup>5</sup>. Bourdieu's capitals are related but analytically distinct systems of social hierarchization. Bourdieu (1998) argued that in most Western societies, the most "efficient" principles of differentiation<sup>6</sup> are economic capital and cultural capital. An individual's position and power are in part determined by their economic capital (defined in terms of wealth). However, one's status is also determined by how much cultural capital one possesses<sup>7</sup>. Cultural capital can exist in various forms. Akin to habitus, cultural capital exists "within" us, since when we die, it dies with us. Cultural capital also exists in the form of cultural goods (for example in music, art and literature). It can also appear in an objectified/institutionalised form, for example through a professional accounting qualification.

Social capital is concerned with our social networks. Bourdieu described social capital as deriving from the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition. The most obvious example of this is the family. Bourdieu (1998, pp 70 - 71) argues that

"One of the properties of dominant social fractions is that they have extensive families...they are united not only by the solidarity of interests, that is, both by capital and for capital, economic capital naturally, but also symbolic capital (the name)...Bourgeois dynasties function like secret clubs; they are the sites of the accumulation and management of a capital equal to the sum of the capital held by each of their members..."

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<sup>5</sup> Although Bourdieu at times uses other capitals (academic, information, juridical, political, symbolic and so on.)

<sup>6</sup> telling one class from another

<sup>7</sup> Culture is also a source of domination, in which intellectuals are in the key role as specialists of cultural production and creators of symbolic power.

Thus social capital enables actors to have access to the combined capital of the members of the group as well as the symbolic (reputational) capital of the group. Fogarty (1998) considered the cultural, economic and social capitals possessed by US universities and their effects on maintaining university hierarchies. His paper suggests that hierarchies are reproduced directly according to the cultural capital (research productivity) and indirectly according to their economic capital (unit size) and symbolic capital (university reputation). Reputation (symbolic capital<sup>8</sup>) is of importance to all professions. Neu (2003) makes a close reading of the editorials in the Canadian Chartered Accountant (subsequently renamed CA Magazine) from 1911 to 1999. Borrowing from the literature on professions and Bourdieu's theory of practice, Neu (2003) starts from the assumption that editorials in practitioner-oriented publications are a form of cultural good traded on an internal symbolic market. By providing access to symbolic capital, trade in this good acts to bind together members of the accounting profession, yet trade in this good also has the potential to obscure a number of important, underlying social issues.

For the purposes of this paper, while capital and habitus and their inter-relation will provide powerful theoretical insights into the activities of some of the key participants, perhaps the most important theoretical concept we draw from Bourdieu is that of the field. This is because of Bourdieu's characterisation of a social field as a site of struggle.

### *Field*

To Bourdieu a *field* is a social arena in which people maneuver and struggle in pursuit of desirable resources. All human actions in modern societies take place within differentiated social fields. Individuals, institutions, and other agents try to distinguish themselves from others, and acquire capital which is useful or valuable in the field(s) in which they operate. The outcome of struggles within fields is frequently determined by one's access to capital (in its various forms). Thus those who have the highest requisite capitals in any particular field can more easily reach the top of that

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<sup>8</sup> Symbolic capital, that is to say, capital -- in whatever form -- insofar as it is represented, i.e. , apprehended symbolically, in a relationship of knowledge or, more precisely, of misrecognition and recognition, presupposes the intervention of the habitus, as a socially constituted cognitive capacity (Bourdieu 1993).

field. They will then acquire further capital on reaching the top of their field. Frequently this is economic capital, although not exclusively. It could for example be symbolic.

Thus, a social field is a system of social positions and struggles for ascendancy. In the accounting literature, Kurunmaki (1999) analyses the struggles on the Finnish health care field and found that those who fared better in the struggles within the field were those with the highest requisite capital. Internally, fields are structured in terms of power relationships (so for example in the academic field, journal editors have power over other academics, university vice chancellors have power over academics, academics have power over students and so on). More specifically, a field is a social arena of struggle over the appropriation of certain species of capital – capital being whatever is taken as significant for social agents (the most obvious example being monetary capital).

Fields are organized both vertically and horizontally. This means that fields are not strictly analogous to classes, and are often autonomous, independent spaces of social play. Thus in the academic field it wouldn't be strictly true to say that university vice chancellors *always* have their origins in the “highest” social class (nor are they necessarily those with the highest economic capital, although economic capital can be used over time to enable the acquisition of cultural capital of the type required to reach the top of the academic field.) In effect a field is constituted by the relational differences in position of social agents. The boundaries of a field are demarcated by where its effects end.

The concept of social fields and the organization of fields both horizontally and vertically were used by Ramirez (2001) to consider attempts to form a coherent professional field of accounting in France before World War II. It was found that the accountants' inability to solidify hierarchies internal to the professional field and the unfavourable insertion of this field in the overall hierarchy of social fields accounted for the failure to create a French accounting field. Neu (2004) drew upon Bourdieu's concept of a field to study the relationship between accounting and public space in the context of educational reforms in Alberta, Canada. This study categorised the various social groupings who were struggling on this field. Accounting and accountability changes were constraining on certain field participants but also created new

opportunities within the field for other field participants. Cooper et al (2005) used the concept of the academic field to examine the responses of North American academics to the recent wave of accounting and audit scandals. It is in this way that accounting (cultural and symbolic) capital can transform our understanding of the world and therefore change what is acceptable within the field. For example, Rahaman, Everett and Neu (2007) considered the debates surrounding recent attempts by the Ghanaian government to privatise its urban water services and the positioning of accounting practices, vocabulary and experts in the debate. Drawing upon Bourdieu's concepts of field and capital, the study showed how accounting is enlisted at an almost sub-conscious level, how its use can engender significant resistance and how accounting can be used to position the debate in various terms, including "profitability", "affordability" and "accountability." While these terms may at first be contested, they end up being "doxic".

One interesting feature of fields is that they each have their own "nomos"<sup>9</sup> or "laws". Each field's nomos is different from the others. Furthermore, every social field requires those entering it to have a relationship to the field that Bourdieu terms *illusio*. Illusio is the fact of being caught up in and by the game, or as Bourdieu puts it, of believing the game is "worth the candle," or more simply, that playing is worth the effort (Bourdieu, 1998). Bourdieu explains *illusio* as follows:

When you read, in Saint-Simon, about the quarrel of hats (who should bow first), if you were not born in court society, if you do not possess the habitus of a person of the court, if the structures of the game are not also in your mind, the quarrel will seem futile and ridiculous to you. If, on the other hand, your mind is structured according to the structures of the world in which you play, everything will seem obvious and the question of knowing if the game is "worth the candle" will not even be asked. (Bourdieu, 1998, p 77).

Even those within fields or who want to enter fields to overturn the relations of force within the field has a relationship of *illusio* with the field. Bourdieu wrote that wanting to undertake a revolution in a field is to accord the essential of what the field tacitly demands, namely that it is important, that the game played is sufficiently important for one to want to undertake a revolution within it (Bourdieu, 1998, p 77). Perhaps the football field is one in which *illusio* is easily recognized. Those outside

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<sup>9</sup> Nomos is a socially constructed ordering of experience according to specific rules.

of the field can totally fail to see the importance of whether a team should play a 4-4-2 formation, a player was off-side or Maradona was a better player than Pele. Yet debates over these issues fill countless pages in the press and are subject to hours of debate on the TV, the radio and in homes and bars throughout the world.

The final characteristic of fields is that the fields of power and economics exist “horizontally” across all other fields. As a graphic illustration of this, Bourdieu writes that it is as if the fields of power and economics exert a kind of magnetic pull on all other fields such that they become ordered in a homologous manner. For the football field (as for other fields) this means that football organizations are shaped by the general legal and market frameworks of the countries in which they are based. The field of power and its internal struggles control the “exchange rate” of the forms of capital between the fields themselves. The significance of insolvency to the economic field means that those with insolvency knowledge have a high “exchange rate”. So when analyzing the football field we need to understand the various groups and actors and their “capitals”. We also need to comprehend the *nomos* and the *doxa* of the field.

Therefore, a field is a setting in which agents and their social positions are located. The position of each particular agent in the field is a result of interaction between the specific rules of the field, the agent's *habitus* and capitals (social, economic, cultural and so on) and the field's *doxa* and *habitus* (Bourdieu, 1984). Fields interact with each other, and there is a homologous relation between all social fields and the larger fields of power and class relations and the economic field.

Homology therefore, is basically the similarity between fields. For example, in his consideration of the judicial field, Bourdieu (1987, p850) explains that in order to take full account of the symbolic power of the law, it is necessary to consider the effects of the adaptation of legal supply to legal demand. This adaptation is less the result of conscious transactions than of structural mechanisms such as the homology between different classes of producers and sellers of legal services and different classes of clients. Those who occupy inferior positions in the field (as for example in social welfare law) tend to work with a clientele composed of social inferiors who thereby increase the inferiority of these positions. Social welfare knowledge thus has a lower

exchange rate than (say) commercial law. In short, because of their services to clients with “high” capitals, certain lawyers are higher placed within the legal field. To some extent this means that an homology appears between (for example) the economic field and the legal field such that the concerns of those with high economic capital dominate the higher echelons of the legal field.

Bourdieu is careful to emphasise that the effects that are created within social fields are neither the purely arithmetical sum of random actions, nor the integrated result of a concerted plan. They are produced by competition occurring within a social space. This space influences the general tendencies of the competition. In turn, these tendencies are tied to the assumptions which are written into the very structure of the game whose fundamental law they constitute. Like the functioning of reproducing the juridical field with its internal divisions, and hierarchies, and the principle of vision and division which is at its base, the function of maintaining the symbolic order which the juridical field helps to implement is the result of innumerable actions which do not intend to implement that function and which may even be inspired by contrary objectives. Thus, for example, the subversive efforts of those in the juridical avant garde in the end will contribute to the adaption of the law and the juridical field to new states of social relations, and thereby insure the legitimation of the established order of such relations. As demonstrated by such cases, in which the results produced simply invert what had been consciously intended, it is the *structure* of the game, and not a simple effect of mechanical *addition*, which produces transcendence of the objective and collective effect of accumulated actions.

The field of power in Western economies, especially since the 1980s, has increasingly shifted economic capital into the economic field through transacting more with the economic field (through privatisation for example). Fields like health, education and prisons (or the juridical field) formerly dominated by transactions with the political field are increasingly dominated by transactions with the economic field. This has resulted in the habitus of many fields taking on a “private” as opposed to a “public” disposition. The way in which this can be perceived in the juridical field is through the increase in “private ordering”. This is where rules which impact upon the whole of society are increasingly made in fields outside of the field of government. In the field of insolvency, Halliday and Carruthers (1996) explain how the UK state

privatised insolvency and passed significant amounts of power from the state to Insolvency Practitioners through the 1985 Insolvency Act. For example, post 1985, activities of directors which would have been brought before the criminal court were mainly to be dealt with on the decision of an Insolvency Practitioner and pursued through the civil courts. Private ordering is discussed in the next section.

## **Private Ordering**

Private ordering is the coming together of non-governmental parties in voluntary arrangements – as a central institutional form of law making and law applying<sup>10</sup>. Schwarcz (2002) states that the sharing of regulatory authority with private actors ("private ordering") has a lengthy historical precedent. In some circumstances private ordering appears to be eminently sensible<sup>11</sup>. However, in recent years, private ordering has been rapidly expanding in scope, throughout the world particularly in the commercial, financial and business sector ("commercial private ordering"). An example of this would be the U.S. government handing the task of controlling the Internet domain name system and the assignment of Internet protocol numbers to the Internet Corporation for Assigned Names and Numbers (ICANN), a private non-profit corporation (Schwarcz, 2002). In accounting, the entrusting by the Securities and Exchange Commission to the privately organized Financial Accounting Standards Board the task of setting accounting standards could be seen as another variant of private ordering. These are examples of how the field of economics and political power exist "horizontally" across other fields. The important point here is that people outside of the realm of the private organisations which have been sanctioned to make rules can nevertheless be affected by those rules.

Schwarcz (2002) further argues that whereas traditional private ordering derived its legitimacy from costly procedural safeguards (essentially the same as those protecting

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<sup>10</sup> This necessarily trenches on fundamental questions of class and coercion.

<sup>11</sup> If I decide to set up a book-club and ask each member to pay £1 per week to join in order to pay for tea and cakes, it seems unthinkable that I should have to ask the state to sanction my rules.

the legitimacy of administrative agency rule-making), the purported legitimacy of commercial private ordering derives from separate premises: that the goal of commercial regulation is economic (but not social) efficiency, and that private institutions can operate more efficiently than government by using market incentives to allocate public resources without having to take account of such extraneous matters as the state's legitimacy and the interests of the politicians, legislatures, and special interest groups. Thus, commercial private ordering is thought to be legitimate even when unrestricted by the procedural safeguards by which traditional private ordering derives legitimacy.

Milhaupt and West (1999)<sup>12</sup> note that there is a substantial literature which has exposed the positive side of private ordering (see for example, Ellickson, 1991; Bernstien, 1992; Cooter and Lander, 1984; West, 1997). These papers demonstrate that private ordering provides efficient and effective mechanisms to govern conduct. Although it seems that some private ordering arrangements are subject to the same collective action problems that plague formal lawmaking processes (see for example Cooter, 1996; and Posner, 1996). Milhaupt and West (1999) while taking a rather different theoretical perspective from the one developed in this paper, provide empirical support for the case that in order to be effective, private ordering often requires the participation of intermediaries who possess information, time and skill. In the United States, these roles are typically filled by lawyers and other organisational professionals. From the theoretical perspective of this paper, what Milhaupt and West are arguing is that in the struggle for dominance of fields, social actors (intermediaries) who possess the correct forms of capital (in our case accountants and lawyers) are employed to facilitate private ordering.

The important contribution which Private Ordering makes to our analysis of Gretna FC, is that the “private rules” of the private limited company which regulates Scottish football had serious consequences for many people who have no say in the development of the rules. The next section presents a case study of Gretna FC’s administration and winding up.

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<sup>12</sup> <http://www.isnie.org/ISNIE99/Papers/milhaupt.pdf> (International Society for New Institutional Economics)

## **THE CASE OF GRETNA FC'S ADMINISTRATION AND WINDING-UP**

The research behind this paper involved in-depth interviews with the key actors in the field who were involved with Gretna's administration. These included Gretna's insolvency practitioners, an insolvency practitioner who was in charge of the administration of other Scottish football clubs, an expert in Scottish football finance, the head of the players' union, the Chairman of the Gretna Supporters' Trust, the Operations Director and Company Secretary of the Scottish Premier League, an owner of an SPL club, leading academics in the field of insolvency and football, we also drew from archival sources including the publicly available accounts of the SPL Ltd and the SPL and first division clubs as well as the law reports of insolvent football clubs.

### **The Scottish football field**

To understand the broader social and institutional context of Gretna's demise, it is important to understand the structure of Scottish football. At present Scottish football consists of the Scottish Premier League (SPL) with 12 clubs and three divisions of the Scottish Football League (SFL), each with 10 clubs. The 42 clubs differ markedly in terms of market size, attendance levels, facilities, and so on. Many of the SFL clubs' players are part-time and their matches attract relatively low levels of attendance. However, nearly all the clubs are long-lived institutions with two-thirds of them being formed in the 19<sup>th</sup> century, and in spite of the economic structure of football very few of these clubs have gone out of business (Morrow, 2006).

The economic structure of football is dominated by the fact that there is a very close relationship between the amount of money spent on players and managers (coaches) and success on the football field (Szymanski and Smith, 1997). This reflects a specific feature of the football field in the way in which players (with high cultural capital, in the form of football skills) are acquired (by those with economic capital). Success on the field is related to the players, managers and backroom staffs' cultural

capital. This success is associated with attendance at football matches which in turn creates more economic capital to create more success. The interplay between the distinct capitals defined by Bourdieu is exemplified through the dominance of a few teams in England (for example) as a consequence of massive investment by millionaires.

The structure of the governance of Scottish football is complex with three different bodies controlling various aspects of football. The Scottish Football Association is the main governing body for football in Scotland. The professional leagues are administered by the SPL and the SFL. The direct “rule setting body” for the 12 Scottish Premiership clubs is the Scottish Premier League Ltd. Each of the twelve clubs own one share in the SPL which entitles clubs to participate in League competitions. Thus the ruling body of the premier league of Scottish football is a private limited company. At the end of the season, one SPL club is relegated (normally the club which finished bottom of the SPL table) to the First Division and one club is promoted from the First Division to the SPL (usually the club at the top of the division one league table). SPL rules state that the promoted club must meet certain criteria for example they have to meet regulations concerning the size and facilities at their ground (Morrow, 2006). The relegated club transfers its share to the newly promoted club. EXPLAIN WHY THIS IS IMPORTANT IN THE CONTEXT OF INSOLVENCY TO MAKE IT EASIER FOR THE READER.

The reason why there are two separate bodies controlling the leagues is that the top clubs “broke away” from the SFL and created the SPL in the 1998-1999 season. Thus the SPL is fairly new and is struggling to create and maintain its symbolic capital (reputation). The breakaway was a reflection of the struggle to reach the top of the football field since it was motivated by a scheme to increase the financial rewards of the top clubs particularly through improved television deals. It has been argued that this manoeuvre was led by the two dominant clubs in Scottish football (Celtic and Rangers, the so-called “old-firm”). But other clubs would have joined with the old-firm for at least two financial reasons. Firstly, when matches are played at a club’s ground, that club keeps the ticket revenues from both the home and away supporters. The “away-support” of both Celtic and Rangers can exceed the average SPL club’s home support. This makes it extremely lucrative for the non old-firm clubs to play

against Celtic and Rangers. In addition non old-firm clubs charge higher ticket prices when their teams play either Celtic or Rangers again increasing their revenues on the back of the old-firm. Thus while the motivations of clubs to align themselves with Celtic and Rangers might, in part, be financial, Bourdieu's theories would also suggest that all clubs would wish to climb to the top of their fields and thus would want to be part of the SPL (the top of the Scottish football field).

The split between the SPL and the SFL has significant implications for the clubs in the SPL which are likely to be relegated, not least because of the wide financial gap between the SPL and SFL. In any case, the finances of Scottish football in 2009 are extremely precarious. The majority of first division clubs as well as some SPL clubs and the SPL itself are technically insolvent, with a deficit of net assets. This makes the struggles of those in the relegation zone of the SPL particularly tough. Relegation would mean a significant drop in revenues to the extent that relegation could do permanent damage to the club. At the very least it means that the staff of relegated clubs would either lose their jobs or have to take pay-cuts or both. Therefore, it is certainly not in relegation zone teams' interests to do anything to help other teams in the same position. The habitus of the football field is extremely tough. While the directors of the relegation zone clubs may smile and make friendly conversation in the hospitality room at half-time, their minds will be tormented by the fear of relegation. While relegation is clearly a financial concern, it is also for the directors and owners of clubs, an issue of the pain associated with losing symbolic capital (reputation) as well as social capital (in terms of the networks enjoyed by being a member of the SPL). Moreover, everyone who is part of the field "suffers from" *illusio* -- being caught up in and by the game, and of believing the game is "worth the candle," (Bourdieu, 1998). Thus the whole staff and support of relegated clubs will suffer both mentally as well as financially in relation to events on the field. Arguably, even if there were no serious financial implications of relegation, the habitus and *illusio* of the field (belief that being on the field is "worth a candle") mean that relegation is extremely difficult for the demoted club.

The nomos of the SPL is not designed to create a level playing field<sup>13</sup>. A rule relating to the size of football ground necessary to participate in the SPL is arguably to suit the interests of the largest clubs at the top of the field who would wish to have enough seats for their vast away supporters<sup>14</sup>. Moreover, at the end of each season, clubs are awarded their share of SPL TV and other revenues. The bottom placed club in the 2007-2008 season received £810,000. Then according to clubs final league positions their payouts went up in £90,000 increments (with the 11<sup>th</sup> club receiving £900,000; the 10<sup>th</sup> club receiving £990,000; and so on) until the top three clubs which received much larger increments such that Celtic received £3.06m and Rangers £2.7m (Halliday, 2009). Arguably, this is fair since Celtic and Rangers have the most fans. But it could also be argued that it reflects the habitus of the field which is dominated by two teams. While many of the interests of Celtic and Rangers appear to be common, there is a massive struggle between these two clubs for dominance of the SPL. The economic motivations for this come in the form of the additional TV revenues which come from playing in European competitions. Entry into the lucrative stages of these competitions is facilitated by winning the SPL. The financial difference can be as much as £10m. There are other motivations too. Everyone involved with Celtic and Rangers enjoy the symbolic capital attached to being “big European clubs” and so on.

As previously observed, football is the most watched and played sport in the world (Gerrard, 2006). Certainly, in Scotland, football is viewed as “the national sport”. The cultural significance of the game is an important element in understanding the habitus of the Scottish football field. For example, although supporters of different clubs are likely to share certain elements of habitus (their love of football), their habitus will also be influenced by the position of their club in the league (the doxic interplay between an individual’s personal interpretation of a situation and the structural constraints of the manufactured football leagues). So the habitus of a Celtic or Rangers supporter is likely to be influenced by their team’s potential to play in the major European competitions, while the habitus of a Gretna supporter is likely to be influenced by their team’s contribution to the local community.

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<sup>13</sup> This is interesting in light of the rhetoric surrounding sport – fair play and so on.

<sup>14</sup> It is sometimes incredibly difficult for ordinary fans to obtain tickets for certain matches.

It is within this context that Gretna football club's rise and demise took place.

### **Gretna football club – the rise**

On 28<sup>th</sup> April, 2007, Scottish football produced its own fairytale when Gretna football club won promotion to the Scottish Premier League with an injury time goal on the last day of the season in front of a crowd of 500 (Coates and Wood, 2007). Gretna is a town of 2,700 people, situated on the Scottish side of the border with England. Its near neighbour Gretna Green is better known as the world's leading romantic wedding venue.<sup>15</sup> Gretna FC had been promoted through the Scottish football leagues for three consecutive seasons mainly due to the funds of its millionaire owner Brooks Mileson. The commonly held view in the popular press was that Gretna under Mileson's ownership (with economic capital) could afford to hire premiership quality players (with high cultural capital) and that this was the dominant factor in Gretna's meteoric rise through the football ranks.

The adaptation of the habitus of Gretna supporters is more doubtful. From our discussions with the Chairman of the Gretna Supporter's Society, the majority of Gretna fans were satisfied to see their team play in the lower leagues of Scottish football. As the club rose through the leagues of Scottish football, it attracted other supporters with a different habitus, those that derived more satisfaction from supporting a team in the top league. However the group habitus of Gretna fans was primarily a product of the long establishment of the club and the important role it played in the community. Within the field of football, the habitus of supporters is largely overshadowed by the accumulation and application of economic and symbolic capital. While we will never know Mileson's habitus, it is certainly clear that he would have enjoyed the prestige associated with being the owner of an SPL club.

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<sup>15</sup> Traditionally, in Scotland, a man and woman over the age of sixteen could be married by declaring themselves husband and wife in front of witnesses. Such marriages were banned in England in 1745 with the result that eloping couples fled to Scotland for their marriages. Gretna Green was the first changing post across the Scottish Border for the stagecoaches on the main London to Edinburgh route, and so began its long association with the romance of the runaways. The ceremonies were often carried out over the anvil with the "Blacksmith Priest" officiating.

The press portrayed Mileson as an intriguing character. In 2005, a football pundit reportedly asked Mileson what would make him die happy. He is reported as replying

What would make me really proud is to see Rowan (*the then manager of Gretna*) take us to the Premier League, but most of all I'd like to see him lead the team out in the Scottish Cup final at Hampden and me standing in the crowd with most of the supporters (Campbell, 2007, p 13).

Gretna achieved both of Mileson's wishes. Gretna did reach a Hampden cup final only to be beaten on penalties and in the 2007/8 season, Gretna began playing in the Scottish Premier League. This short quote may go some way to explaining the motivations behind the millionaires who invest in football clubs. In part, they can be rewarded by significant symbolic capital (the press coverage, adulation of the fans and so on). Those who join the field as owners of clubs also receive social capital in the sense that the directors and corporate hospitality at matches allows participants significant networking opportunities. Arguably, in a small country like Scotland, the social capital acquired through being in the "premier" level of football enables actors to mix with the elite of Scottish society from the fields of economics and power. The economic rewards are much less certain.

The other teams in the SPL had less reason to applaud Gretna's promotion especially when the financial implications to them were considered – Gretna's supporters were too few in number to supply much revenue. Arguably, the match on 28<sup>th</sup> April was the most important one in Gretna's history, yet only 500 fans were at the match (and this was a home match and so easier to travel to). While 500 is a large proportion of the Gretna population, in SPL terms, it is a small number. As outlined earlier, SPL clubs keep the ticket revenues for their home games (this means tickets sold to both home and away fans)<sup>16</sup>. Thus SPL clubs would hope that the team promoted from the first division would have a large "away" support.

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<sup>16</sup> Outside of matches which involve Celtic and Rangers (the two largest SPL teams), there is normally spare capacity at all SPL grounds

One SPL club that was to benefit financially from Gretna's promotion was Motherwell. Motherwell benefitted because Gretna's stadium was not of the standard required by the SPL so it had to "ground-share" with a club which had the correct facilities. The club chosen was Motherwell FC whose ground is 75 miles north of Gretna. Different sources estimated the cost of the groundshare as between £228,000 and £600,000. Even the lower figure meant that the club would have to have 800 or so fans at every match just to cover the cost of the ground (clearly there are many other costs which would have to be met, not least, players wages). There are other revenue streams available to football clubs for example the SPL pay-outs outlined above but the dominant income stream for SPL clubs is from ticket sales.

Considering the fan base and the lack of a suitable ground, the issue of sustainability of Gretna in the Premier League upon its promotion appears to have attracted little concern from the SPL. It was reported that some clubs had complained to the SPL that the SPL's own rules on ground-sharing which state that date-limited stadium plans have to be in place were being breached by Gretna's promotion (Broadfoot, 2007). The SPL rejected these concerns. Having a millionaire on the field would serve to enhance the social and symbolic capital of the SPL. The amounts which Mileson invested in the club (and therefore on the field) were significant. The latest available accounts for Gretna were for the year ended 31 May 2006. These show a net liability position of £4,085,000 (Gretna FC Ltd, 2006). An amount of £4,949,840 (Gretna FC Ltd, 2006) is due to Heartshape Limited, which is Gretna's ultimate holding company and which Mileson owned. Mileson was also owed £402,040 (Gretna FC Ltd, 2006) directly from Gretna. Thus in the space of approximately three years, if we assume Mileson had not taken any sums back from the Club, Mileson invested £5,351,880. A figure closer to £6.8m was suggested by David Elliot, one of the Joint Administrator's for Gretna FC, with a weekly cash injection in the region of £40,000.

The accounts of Gretna showed that there were letters of support from Mileson and Heartshape Limited which stated that the sums due to Mileson will not be recoverable before 31 March 2008 and Mileson pledged to continue to provide additional financial support until this date to enable Gretna to continue to trade. These accounts would have become public knowledge by 31 March 2007.

From our interviews, the SPL stated that they were satisfied with the promotion of Gretna to the SPL since the club came with a clean audit report and accordingly felt that no action was required on their part. USE OF PROFESSIONALS IN PRIVATE ORDERING. *The SPL were cited in one newspaper as saying there is nothing they can do to stop a wealthy man taking a run at investing in a club. Recent changes to the SFA licensing programme provide a warning of impending doom and increased scrutiny but there is nothing to prevent a rich man bankrolling a club.* Lex Gold (Chairman of the SPL) is quoted as saying “we are not an organisation that goes in and audits our clubs, in a financial sense.” (Smith, A., 2008).

The *nomos* of the football field specifically accepts and sanctions the introduction of actors like Mileson into the field. It has become the *habitus* of the field. This is not to say that the SPL would be unconcerned by a club not surviving the season. A club folding mid season would have disastrous implications for the SPL, particularly in terms of the SPL’s credibility in the football arena (symbolic capital) and the mechanics of sorting out the league table minus one team which would have thrown the *nomos* of the field into crisis. The SPL have suggested that they are now considering extending their admission criteria and in particular enhancing requirements relating to a club’s financial strength. For this to be other than symbolic would perhaps require a change to the field’s *habitus*. The SPL could in all likelihood provide enough funds for any club to see out a season (albeit with a skeleton team of lower calibre players). This would suit the other 11 member clubs since for that year at least there would be little or no threat of relegation. The upside is that the glamour of football could be enhanced by the entrance onto the field of a multi-millionaire.

### **Gretna football club – the fall**

In part due to the ground-share and in part due to the low population of Gretna, without Mileson’s financial input, Gretna FC’s finances could be considered to be precarious. By February 2008 Gretna FC was at the bottom of the league (9 points adrift) and it was announced that its two senior coaches (David Irons and Derek Collins) were leaving Gretna to take up posts at Morton, a lower division club.

Football managers resign from their posts, but rarely voluntarily to join a club in a lower league (Aitken, 2008). The loss of the coaches was highly suggestive that there were severe problems at Gretna. Worse, Brooks Mileson was reportedly lying seriously ill in hospital. While he was in hospital there appeared to be no-one else to write the cheques and so around 60 players, coaches, administrative staff and other members of Gretna's staff went unpaid. *Rumours began that Gretna was heading for formal insolvency proceedings. The club's chief executive Graeme Muir responded to this suggestion by saying: "We hope that's not the case. You never say never in football. There's always a danger of going into administration but we've had these kind of rumours before (Aitken, 2008, p 67)." On 7<sup>th</sup> March 2008, the Gretna board resolved to call in administrators after a day of meetings with debt advisors and on 10<sup>th</sup> March, filed a formal notice of intention to move into administration in the Court of Session in Edinburgh (Gray, March 29 2008). Interestingly, this would have meant that any bank holding a floating charge over the club's assets would have given their consent to the administration order, effectively giving up their right to appoint a Receiver. From a bank perspective this probably made sense. The bad publicity that would be engendered by being the bank to close Gretna FC would be significant. Moreover, proportionately, the amount loaned to football clubs by banks is, for them, small.*

Insolvency Practitioners, David Elliot and Lisa Hogg, from Wilson Field were appointed formally on the 12<sup>th</sup> March to take over the running of Gretna FC (Edinburgh Gazette, 2008, p 1029). From our discussions with David Elliot, Wilson Field had previously conducted a review of the club's financial position as instructed by Mileson. Although we do not know the recommendations or outcomes from this review, two conclusions seem apparent. Firstly that the review is likely to have highlighted the club's financial predicament and hence the real likelihood of insolvency. And secondly Wilson Field having conducted a pre insolvency review would lend themselves as obvious choice to be the appointed Administrators<sup>17</sup>. Thus a decision was made to place the club into Administration. The appointment of a Receiver by the holder of a floating charge would have created a different set of

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<sup>17</sup> The potential conflict of interest associated with a firm of accountants performing a pre-insolvency review and then subsequently accepting appointment as Insolvency Practitioners has been discussed in Cousins et al (2000).

priorities compared with administration. The Receiver's primary duty is to maximise recoveries to the floating charge holder. Whilst this may be achieved by selling the undertaking of the company to a new owner, the Receiver may also sell off assets and effectively dissolve the business. This is in contrast to administration where the primary objective is to rescue the company. The decision of Gretna's bank not to appoint a Receiver would serve as an interesting topic for further investigation and perhaps reflects another aspect of the doxa of the football field -- ensuring a football season is completed.

### **Gretna FC's administration, private ordering and the nomos of the field**

#### *The Administrators, the SPL and the creditors*

The appointment of administrators rather than placing clubs into liquidation (and hence immediately winding the club up) is part of the doxa of the field of football, since it would have been extremely problematic for the SPL if a club failed mid-season. The insolvency practitioners would have to comply both with the rules of the field of football and the somewhat opposing legislation of the Insolvency Act. Thus when the administrators arrived on the 12<sup>th</sup> March, it was reported that there was a stalemate between the administrators and the SPL (Pattullo, 2008). According to the press, an immediate injection of £30,000 was needed to pay the wages and fund the next match. The SPL offered to fund the immediate £30,000 shortfall, but there was a potentially fatal stalemate when the SPL said it would only cover the required amount if an assurance was provided by the administrator that Gretna would complete their ten remaining fixtures - a guarantee that the administrator could not give. However, eventually an agreement was made and the administrators were given sufficient funds from the SPL to ensure that Gretna survived until the end of the season. The SPL minimised any loss of their symbolic (reputational capital) in the eyes of football leagues around the world, and the threat to their position in Scottish football.

The nature of funding provided is unclear, in terms of whether the amount provided was money that would have been due to Gretna in any case at the end of the season or whether it was additional funding. Clearly if it was the former, then the

continued trading of Gretna to the end of the season would have had an adverse impact on the amounts recoverable by the creditors. Although this point is clearly of economic interest to those concerned, it perhaps demonstrates the closed structure and lack of transparency on both the football field with its private rules and on the accounting/insolvency field, through the application of the Insolvency legislation by Insolvency Practitioners.

Furthermore, rescuing Gretna as a going concern would have been a difficult challenge for anybody, given their fan base and cash outlays, except perhaps for a millionaire who wanted to invest in the club. Yet the Administrators incurred trading expenses for 83 days between the date of their appointment and putting the grounds up for sale. Allegedly, the Administrators charged fees of £253,000 in their first five weeks at Gretna (Smith, 2008, p 24). As Administrators are paid after any administration expenses incurred but before any creditors are paid, the longer the club traded for, the less money there would be available to the creditors. Elliot said that he too felt that there was little that could be done to rescue Gretna. However, due to the funding provided by the SPL, the Administrators were not incurring any trading losses. The ability to place a club into administration rather than liquidation possibly against the interests of the creditors demonstrates quite clearly where the effect of private ordering and the nomos of the field of football have had an impact on those in society who have not necessarily subscribed to the field of football.

In April the administrators published a list of 139 known creditors. They called them to a creditors meeting in early May. One of the attendees at this meeting, Alastair Barron, a director of Dumfries-based construction company, The Barron Wright Partnership, which claimed to be owed £23,500 for preliminary works on the redevelopment of Gretna's new football stadium, was so incensed with the state of the affairs that he called on the administrator to close the club on the spot (Smith, 2008). Barron said his reasoning for seeking immediate closure was to "wave two fingers at the Self Preservation League [SPL]" which he believed had helped prolong the agony at Gretna to avoid the chaos which would have ensued had they not been able to fulfil their fixtures (Smith, 2008). Barron also voiced his displeasure that Wilson Field Ltd had charged fees of £253,000 in their first five weeks at Gretna. The administrator is quoted as replying: "I was asked by one irate creditor to stop and wind the club up

now, but I said having gone this far I was not prepared to do that. I am not going to stop and not give Gretna the chance of keeping its football club. We go to the end of the season." The challenges presented to those tasked with trying to rescue an insolvent football club are amplified through the difficulty of balancing the legislative requirements of the Insolvency Act with the private ordering of the SPL. The outcome of such application and negotiation of rules ensures that certain actors on the field are essentially protected at the expense of others.

### *The players and other employees*

In spite of payments made by the SPL, on 26<sup>th</sup> March, 28 staff were made redundant.<sup>18</sup> The senior team players would have been subject to FIFA (the Federation of International Football Association) private ordering (player transfer rules). These players were confronted by a deadline of 5pm on 27<sup>th</sup> March to move to an English club and 31<sup>st</sup> March to move to another Scottish club. If they could not meet these deadlines they would have been unemployed until the summer opening of the next "transfer window". Each player had to contact FIFA with a copy of their redundancy notice and an offer from a new club in order to be considered for special dispensation to breach FIFA's rules regarding transfers outwith transfer windows. It was reported that to avoid this problem some of the more highly paid players had asked the administrator to be released two weeks previously in order to look for another job. Other players at the club would have been reluctant to consider moving because they would have been unsure of FIFA's decisions.

The six community coaches who were made redundant had carried out an important social function, coaching children from five years old as well as disabled people. They were reported as being under the impression that their jobs were safe until the end of the season and felt that there had been no consultation with Wilson Field (Gray, March 26 2008).

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<sup>18</sup> Nine senior players, 13 youth-team players and six community coaching staff.

### *The local community*

From our interviews with Elliot and the Chairman of the Gretna Supporter's Society, we understand there is a dispute over legal ownership of Gretna's football ground (Raydale Park). For the local community this is an important issue since as well as housing the football stadium, the ground also houses a social club which is at the centre of many of the local community's activities. If the land was to be sold then the social club would have to close. Moreover, the former supporters of Gretna FC have set up a new club Gretna 2008, which although an amateur outfit fulfils many of the community functions of Gretna FC. The trustees of the new club believe that they have enough support to be able to pay for the running costs of Raydale Park and would be delighted to be able to play there.

According to Elliot, Gretna FC Ltd owns the land, and therefore the Administrators are entitled to sell the land. However, according to the Gretna supporter's society Chairman, there are doubts over the legality of the signing over of the land from the members of the club to Gretna FC Ltd. However in order to get closure on this point, the supporters require a substantial sum of money (£50,000) to go to court. Whether or not there are any grounds for dispute over legal ownership of the land, the matter is unlikely to be heard due to the financial cost of going to court. This is a clear example of those without economic capital not having enough power in the field to challenge those with economic, cultural, social and symbolic capital (like insolvency practitioners).

On the 29th March, Gretna's relegation from the SPL was confirmed as they lost 2-0 to St Mirren. The demotion was in part caused by the SPL deducting 10 points for the club entering administration (this is discussed later). On the 3<sup>rd</sup> June 2008, the football club's grounds, Raydale Park, were put up for sale and the Administrators resigned Gretna from the Scottish Premier League (SPL). Brooks Milesen sadly passed away on 3<sup>rd</sup> November 2008. As previously explained, the former financial advisors of Gretna became their insolvency practitioners. The following section considers the private ordering insolvency "rules" of the SPL, how these were applied by the insolvency practitioners and how the SPL rules could be considered to be at odds with the Insolvency Act.

## Private ordering and the “Super-Creditor” rule

England and Scotland have always operated independently with separate leagues and separate voices (Morrow, 2006)<sup>19</sup>. However, notwithstanding this independence, the field of English football has had a strong influence over the Scottish football field. The economic field exerts a powerful force over both fields. So, as in England, the majority of Scottish football clubs have adopted the structure of limited liability companies, granting the founders and officers of the clubs protection from personal liability. This has served to create a division between those who owned and ran the clubs and those who supported them. To this day most Scottish clubs remain structured as private limited companies (Celtic plc being an obvious exception). Thus there is homology between the English and Scottish fields of football (if they are to be theorised as different fields) and one can discern the horizontal layering of the economic field across the field of football.

English football also has had an impact on Scottish football in relation to football’s insolvency rules. It is on the issue of insolvency that the operation of private ordering becomes most apparent. The English Football League (the “League”) has specific rules which come into effect when a club enters insolvency proceedings. These rules are contained both within their Articles of Association (AA) and the “Insolvency Policy” document, which was created by the League to have effect as soon as one of their clubs enters insolvency proceedings. *The main provisions from these sources are discussed below. An understanding of their content facilitates a richer insight into the nomos of the football field.*

When a club enters insolvency, the League is entitled to serve a Notice on a club, thereby withdrawing the club’s membership of the League. They also have the power to withdraw a Notice, so that a club can continue its membership of the League, in certain circumstances. The League’s Current Insolvency Policy document states that a Notice will only be withdrawn if :

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<sup>19</sup> This is in some ways akin to the way in which the accounting profession operates in the two countries (with ICAS and ICAEW operating separately).

- A member club has completed arrangements satisfactory to the Board for exit from the relevant insolvency proceedings<sup>20</sup>; and
- *All football creditors* are paid in full or payment in full is secured to the satisfaction of the Board. (*Italics added*)

This document further stipulates that where the assets of the club are transferred to a new company as part of the insolvency procedure, the League will only register the club's Share if the new company "complies, performs, observes and satisfies any conditions imposed by the [League] Board." One of these conditions is that the new company pays in full all "football creditors" or "football debt".

The term "super-creditors" refers to certain categories of football debt which are essentially granted pre-preferential status under the rules of the Football League. At first glance, it would appear as though the Football League's Insolvency rules contradict the provisions of the Insolvency Act 1986 relating to settlement of creditor claims. In other words, football debts are paid even before preferential creditors<sup>21</sup>, the bank (as a floating charge holder) and other unsecured creditors. "Football debts" are sums due to football players (including their pensions), management and coaching staff and debts due to football clubs and footballing bodies (Ward, 2002). This would include sums due to the Football League, the Football Association, the Professional Footballers' Association, current and former team managers and any arrears and future entitlements for players. Private ordering serves to establish an additional layer of power relations over the football field – one in which certain agents are privileged with a superior economic position over other agents. It also ensures that new entrants onto the football field understand and accept the nomos of the field.

Legal precedent for the super-creditor rule was set in the case of Wimbledon FC<sup>22</sup>. Her Majesty's Revenue and Customs<sup>23</sup> (HMRC) (a preferential creditor of

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<sup>20</sup> Through private ordering again, the League insists that clubs exit Administration via a Company Voluntary Arrangement (CVA).

<sup>21</sup> Preferential creditors primarily include unpaid employee wages in respect of the fourth month period prior to the date of insolvency (capped at an amount set by the secretary of state, which is currently £800 per employee), accrued holiday remuneration, any sum advanced for the purpose of paying wages and outstanding contributions to occupational and state pension schemes

<sup>22</sup> Inland Revenue Commissioners v The Wimbledon Football Club Ltd

<sup>23</sup> The UK's tax raising authority. This was formerly known as the Inland Revenue. In this paper to avoid confusion we will use the term HMRC.

Wimbledon, as this was a pre-Enterprise Act 2002 case) opposed the voluntary arrangement<sup>24</sup>. The basis of their challenge was simply that football creditors were being paid in full before preferential creditors, who were only receiving 30p in the £. The HMRC argued that the Company Voluntary Arrangement<sup>25</sup> (CVA) which was subsequently entered into should not have been approved because the proposal (approved at the creditors meeting) resulted in a breach of S 4 (4) (a) of the Insolvency Act, whereby non preferential debts were being paid in priority to preferential debts. The Court considered a number of factors in reaching their decision that preferential creditors were not being unfairly prejudiced by the prior payment of football debts.

In this particular case, a Sale agreement was entered into between the Administrators and the buyer (as well as the proposal being agreed at the creditors meeting). The Court held that there was nothing to prevent a buyer from paying non preferential debts out of their own “free money” (as opposed to out of the insolvent company’s assets). So a third party can settle non preferential debts in priority but the company would not be able to do this under the provisions of the Insolvency Act. Therefore in this case, the CVA was lawful.

The Court commented that if the Sale agreement was a “sham” to enable the company to pay non preferential debts in priority to preferential debts, then this would be a different matter. So for example, if an artificially low price was agreed for the insolvent company’s assets to enable the buyer to pay off non preferential debts, then this would be looked upon differently. The Court held that in this case, the fact that the Sale agreement included a provision to pay off the football debts (which were in the region of £400,000), did not result in a lesser sum being offered for Wimbledon’s undertaking and assets. If there was a reduction in the consideration payable for Wimbledon, then this would be seen as unfairly prejudicial to the other creditors. Based upon this interpretation of the League’s rules, it would appear to be extremely

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<sup>24</sup> HMRC appear to be challenging the super-creditor rule more now than they ever did before. See for example, Wimbledon FC and also Exeter FC.

<sup>25</sup> A Company Voluntary Arrangement is an agreement between the insolvent company and its creditors; this arrangement places a ringfence around the company to protect it against further action by creditors. It allows a viable but struggling company to repay some, or all, of its historic debts out of future profits, over a period of time to be agreed.

difficult to challenge the super-creditor rule. Private ordering in the football field was sanctioned by the judicial field.

The Court, took a “market-based” perspective by considering what it described as “the commercial reality” of the situation. It argued that the value of a football club depends upon players’ contracts, which in turn depend upon the ability of the club to continue as a going concern and compete in the League. If the football debts were not paid off in full, the League would not transfer the Share to the buyer and hence the Club would have no future prospects. The alternative of liquidation would result in the creditors receiving even less. So in order for a potential buyer to maintain the value of the football club, they must satisfy the League’s rules and settle football debts. Private ordering on the football field thus has very clear implications for the survival of a football club and could be considered to be an obstacle in restructuring insolvent clubs in the sense that the share will only be transferred to a buyer or buyers who can pay the football debts in full. Thus the nomos of the football field is very clearly in contrast with the objective of the Enterprise Act, which was intended to promote a rescue culture of business. As was explained in the case of Gretna, while the demise of one of its clubs might be damaging to the symbolic capital of a football league, the members of the league (the other clubs) may secretly welcome the fact that it has improved their own “survival” chances.

Whilst the Judge in this case concluded that the Sale agreement and CVA were lawful and fair *within the context of the League’s rules*. This does not mean that the Judge accepted these rules as equitable, but simply that within the context of the League’s Articles of Association and the Insolvency Policy, HMRC had no grounds to challenge the CVA and consequent payment of football debts<sup>26</sup>. Higgins (2005), noted that the Judge in this case did find the League’s rule to be “objectionable.” He referred to fact that the All Party Parliamentary Group “recommended its abolition” on the grounds that it “can be iniquitous to other suppliers to football clubs and other

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<sup>26</sup> The issue of “preferences” (under S239 of the IA86) is also considered by the court. S239 states that the company cannot do anything that would result in a creditor being put in a better position than the one they would be in if the company is insolvent. Again, because the payment of non preferential debts is made by a third party and not the company, the court’s opinion was that this section could also not be applied in this case.

nonplaying members of staff such as cleaners, shop assistants and stewards, etc” (as quoted in Higgins, 2005, p16). The horizontal layering of power described by Bourdieu across the football field is so clearly illustrated here. From a strict legal interpretation of the Insolvency Act 1986, there is nothing illegal about the League’s own rules and regulations and their application. However, the nomos of the field is so clearly framed and the effect of the League’s rules spread way beyond those agents who have not necessarily subscribed to the field. Moreover, those without much capital (cleaners, and other workers) at the lower echelons of the field are not protected by the nomos of the field in contrast to the football players and clubs.

Higgins (2005) refers to a case similar to Wimbledon, that of Exeter City FC, who challenged the super-creditor rule of the Football Conference (another English football league). According to Higgins (2005), Exeter City claimed the rule was an “unreasonable restraint of trade and that it was anti-competitive”. The response from the Football Conference<sup>27</sup> provides the insight and logic (the nomos and the habitus of the field) behind the rule from the perspective of the footballing bodies. The Football Conference stated that essentially the success of a competitive league lies in preserving uncertainty of results between members and a competitive balance. They further argued that without the super creditor rule, it would be possible for a team to overspend on players without bearing the consequences of financial mismanagement, as the team could simply default on its debts to other clubs (putting their financial position in jeopardy) and start again post insolvency proceedings without all the debt. Higgins (2005) further comments that the Football Conference claims that the rule is designed to protect the “interest of the sport, players, clubs, and the other parties involved in the closed structure in a proportionate manner”. Milsom and Daneshku (2004) suggest that players are categorised as super creditors as otherwise they may not join other clubs considered to be financially insecure, resulting in a breakdown of the transfer market. Additionally, this would weaken player bargaining power due to fewer clubs being able to participate in the transfer market.

The super-creditor rule was also examined in the administration of Leeds United football club. In the Arbitration between Leeds United and the Football League, the

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<sup>27</sup> The football conference is a fairly “low” level of the English league structure.

Arbitration document states that the purpose of the Insolvency Policy of the Football League is to “protect the integrity of the competition and the image of the League”.

This is achieved through three objectives:

- 1) Survival of the club in membership of the League, where possible;
- 2) Satisfaction of the football creditors, by preventing the club defaulting on their contractual obligations to their players even in insolvency;
- 3) Protecting the interests of other creditors, giving them the opportunity to determine their own financial settlement, by requiring the approval of creditors to a formal CVA or Scheme of Arrangement, save in the most exceptional circumstances.

The arbitration document goes on to say that the requirement of a CVA is very important to the public perception and credibility of the League. In the case of Leeds United, the CVA was brought to an end within approximately one month, leaving the Football League with the situation of how to protect the interests of the unsecured creditors without a CVA. The Board of the Football League made a decision that in the absence of a CVA, the Board would authorise the transfer of the Share to Leeds United if they accepted a 15 point penalty. This aspect of private ordering is discussed further below.

In summary, it would seem that the super creditor rule serves to protect the financial interests of the most powerful within the field in their struggles for ascendancy, and not individual football clubs. Next the situation in Scotland is considered.

### **The super-creditor rule in Scotland**

The situation in Scotland with respect to the “super-creditor” rule is unclear. In our in-depth interview with Iain Blair (Operations Director and Company Secretary of the SPL), he stated that in Scottish football, there is a “super-creditor” rule and “football debt”, but there is no equivalent “Insolvency Policy” document of the SFL or SPL. “Football debt” is defined as unpaid ticket revenue, unpaid transfer revenue and unpaid elements of player contracts. It would thus appear to be more narrowly defined in Scotland compared with England. According to Blair, clubs become in breach of the SPL rules if an Administrator breaches player contracts, for example, by cutting

player wages or making player redundancies. Blair summed up the position in Scotland by saying that the “super-creditor rule has not been as tested in Scotland as it is in England, but it still exists”. Elliot substantiated this by saying that in his opinion, the rule is not as strictly monitored or policed as it is in England – “some clubs in Scotland have got away with it. Some haven’t.” This is consistent with what we were told by Bryan Jackson, an Insolvency Practitioner with PKF in Scotland. He advised us that the super-creditor rule was not applied by himself during his work on Scottish insolvent football clubs<sup>28</sup>. The super-creditor rule is not part of the Insolvency Act and to the best of his knowledge not part of the Scottish footballing authorities’ articles of association. The lack of transparency in the fields of football and accounting is once again illustrated by the ad hoc application of rules.

The head of the Players Union (Fraser Wishart) said that a plausible interpretation of the inconsistent application of the super-creditor rule in Scotland is that it has served the interests of the rich owners of Scottish football clubs at the expense of the footballers and perhaps other staff of the clubs. He said that in one case of administration in Scotland, it was the owner, who as in many clubs was also the main creditor, who put the club into administration. In this case the “super-creditor” rule was not applied and players’ contracts and wages were not honoured in full. In many ways this is parallel to the (ab)use of Chapter 11 in the US by companies who have used Chapter 11 as a way of abrogating employment contracts, employee health insurance liabilities, as well as liability claims by those who have been injured by companies (Tweedale and Warren, 2004).

The interpretation and application of private ordering thus depends upon the conflicts between different players in a field and their relative accumulated capital (in its various forms). Furthermore, the high exchange rate of insolvency practitioners (in terms of their symbolic and cultural capital) can move the goal posts within a given field to enable those who are dominant in the field to maintain their dominant positions.

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<sup>28</sup> Jackson has been appointed to three formal insolvencies of Scottish football clubs: Clydebank Football, Motherwell Football and Clyde Football.

The final SPL insolvency rule which we will consider is the rule relating to the deduction of points for all clubs which enter administration or other insolvency proceeding.

### **The imposition of the 10 point penalty for clubs entering insolvency**

The Scottish Premier League Rules state that “where a club is subject to an Insolvency Event, the club will suffer a ten point penalty”. The official rationale behind this is similar to the objectives of the super creditor rule: to prevent clubs gaining an unfair advantage through overspending on players and not bearing the consequences of financial mismanagement.

The point deduction may however lead to relegation and consequent reduction in income from reduced broadcasting revenue and gate receipts. The ten point penalty thus assists in demoting clubs and reducing cash flows even further to clubs which have recently entered insolvency. Furthermore, this rule is at odds with the Enterprise Act reforms, which are intended to promote a rescue culture. The process of administration is intended to provide distressed companies with a breathing space in which to sort out their financial woes. The ten point penalty is likely to do the opposite.

According to Milsom and Daneshku (2004), banks have raised concerns over the point deduction, resulting in an unwillingness on their part to support distressed clubs, where there is a risk of the club entering formal insolvency proceedings. Milsom and Daneshku (2004) also highlight the issue that Club directors may trade for longer than their cash flow permits, rather than admitting failure and calling in the Insolvency Practitioner. This results in the club incurring even more debts that cannot be settled<sup>29</sup>.

The ten point deduction imposed on Gretna would have been a huge relief to the other SPL clubs at the lower end of the league table. While the official line is that the rule is designed to make the field more equitable, it could also be seen as part of the

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<sup>29</sup> It also raises the probability of directors facing personal liability for wrongful trading.

habitus of the actors within the football field which is to do everything possible to ensure that they reach (and remain at) the highest level of the field possible.

## **Summary and Conclusions**

The supporters of Gretna FC were taken on a tremendous journey (whether or not they wanted to) following the arrival of Brooks Miles on at their club. The club employed local people as groundsmen, cleaners, administrators and so on. Some of these (like the groundsman) had been employed by the club for many years. For a town of its size, Gretna had a strong football support and several generations of local people obtained immense pleasure from the club. Following the demise of Gretna FC many people have lost their jobs, some decent footballers' careers have been (at best) disrupted, a local community facility has almost been lost, small creditors have lost significant amounts of money, local people have been deprived of the pleasure which a local team brings, insolvency practitioners have been well rewarded and the SPL continues. One has to ask the question (as we did in all of our interviews) whether or not it would have been better for all concerned if Gretna had never been promoted to the SPL.

This was a key question which we posed to the SPL. As far as the SPL is concerned, if a club is in distress, the SPL will assist that club to ensure it continues to the end of the season provided this is the value maximising (in terms of economic and cultural capital) option for the SPL. The SPL operates within the terms of its articles and memorandum of association and was keen to emphasise that they have no direct role to play in assisting distressed clubs. They informed us that that is the job of the Insolvency Practitioners. Whilst this is so obviously true, such a narrow interpretation of responsibility fails to consider the "negative assistance" provided by the SPL in the form of its super-creditor and 10 point deduction rules.

As an autonomous field, the football authorities want to be able to make their own laws and in doing so, the private ordering within a field impacts upon those outside of the field. The football field thus clearly depicts the struggles within the social arena that Bourdieu articulates and the positioning of players dependent upon their capitals.

In the case of Gretna FC's insolvency, the struggles were and still are (in some cases) apparent for the SPL, for Brooks Miles, the staff at Gretna FC, the creditors, the Administrators, the supporters, the local community and the players. While everyone on the field from the directors, through the players, down to the supporters have an "illusio" relationship to the field, the horizontal layering of power and economics mean that the majority of participants on the field have very little power. Private ordering within the football field assists in maintaining the status of those at the top of the field and in the absence of government intervention, this is permitted to happen. As Bourdieu so clearly articulated, the fields of power and economics exist horizontally across the football field. The corporate structure of the clubs within the field attests to this.

As the SPL was keen to emphasise, the clubs are private businesses and how they are run is a matter for their shareholders. Blair (Operations Director and Company Secretary of the SPL), said that the SPL manage their company just like any other private profit maximising commercial business and expect their clubs to do the same. And yet, the SPL does not wish to be subject to the same legislation from the Company's Act and the Insolvency Act which applies to any other commercial business. Paradoxically, the "sporting nature" of the clubs and the SPL is a factor then referred to in the justification for their private ordering rules. This is not to suggest that the illusio of the field can in any sense be reduced to or explained by economics. Regardless of economics there are many people in Scotland who, come hail or shine, support their teams and believe that the game is worth a candle.

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