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'Papa' Jack[1] and US Federal Interventions

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Abstract

After reviewing the significance of race and celebrity in comparative law, this examination details the legal encounters plaguing former world heavyweight champion boxer, Texan Arthur John (Jack) Johnson. On Boxing Day 1908 'Papa' Jack became the first Afro-American to successfully cross the colour line by defeating Canadian Tommy Burns in the unlikely venue of Rushcutters Bay, Sydney. On returning to the United States, and successfully defending his title against 'Gentleman' James J. Jeffries, the federal government commenced a protracted series of legal interventions, virtually ending Johnson's professional sports career. The legal relationships between the federal 'white slavery' and 'fight film' prohibitions are documented, illustrating the combination of paternalistic racial, moral and commercial justifications levelled against Johnson and images of his prize-fighting exploits. Various legal and bureaucratic implications of this multi-faceted purge within and beyond early modern sport, entertainment and film are also discussed.

Keywords

Race - Boxing - Celebrity - Stereotypes - Governance - Law

Race, Celebrity and 'Papa' Jack Johnson

Questions of race and prejudice in Western law involve a complex interplay between elements of individual and structural discrimination. In Australia, for instance, contemporary trends in the over-policing, disproportionate imprisonment rates and the widespread social neglect of Indigenous people are impossible to divorce from over two centuries of cultural displacement and the non-recognition of Aboriginal citizenship, social customs, property rights and difference. A wealth of studies have long-recognised the legal consequences of Indigenous 'otherness' perpetuated by Australian legislatures and courts.[3] 1

Periodic gains are occasionally recognised by common law or statutory reform, yet it remains highly debatable whether Western Parliamentary or judicial dispute resolution practices are capable of rectifying over two hundred years of structural discrimination through periodic instances of seemingly tokenistic legal tinkering.

2 The historical and temporal contexts of legal persecution demonstrate an array of differences in virtually identical institutional settings. It would be a mistake to assert that Australian trends replicate a broader set of discriminatory legal practices against the Indigenous populations of New Zealand or Canada, or the various minority populations of the United States. In short, the immediate context of each reported case is all-important. Nevertheless, contemporary and historical intercultural comparisons offer viable insights into legal developments in similar institutional contexts, providing rich prospects for further inter-jurisdictional theory and research.

3 An important site of comparative historical law involves disputes relating to popular celebrities. This is a particularly revealing element of United States legal development, and appears to be of increasing contemporary global concern. A recent British review questioning the behaviour of several current sports and entertainment celebrities highlights widespread popular disquiet over the growing frequency of reported incidents, and the effects of role modelling in contemporary media and popular culture.[4] A similar review compiled by *cnn.com*, focusing primarily on ongoing paedophilia claims against popular singer Michael Jackson, indicates a broader, yet largely confined, history of legal interventions against popular United States celebrities. During the 1940s Australian-born 'playboy' actor Errol Flynn was subject to unproven allegations of statutory rape. Twenty years earlier popular silent film comic Roscoe 'Fatty' Arbuckle endured three trials for rape and homicide after the highly suspicious death of model Virginia Rappe during a privately hosted soiree.[5] As with Flynn, sexual misconduct was a prominent feature of Arbuckle's prosecution.

4 Significantly, although the allegations levelled against both Flynn and Arbuckle remained unproved in United States courts, the film careers of both performers were damaged beyond repair.[6] More regrettably, the confinement of these controversies to popular crime folklore or contemporary internet tabloid entertainment, serves to trivialise their ongoing impact on important socio-legal processes. As long as celebrity law rests at the fringes of intellectual theory and research, various positive and negative effects of law-making, enforcement, dispute

resolution and popular role modelling in an increasingly global, multi-media society will remain hidden from critical investigation.

5 Perhaps the most audacious series of legal interventions by United States authorities in the early twentieth century involved world heavyweight pugilist 'Papa' Jack Johnson. After defeating Canadian title-holder Tommy Burns in a famed event in Rushcutter's Bay, Sydney,[7] Johnson became arguably the first modern celebrity to cross dominant white colour lines. While allegations of sexual misconduct mirror the legal encounters of Flynn and Arbuckle,[8] complex questions of race added a further dimension of anxiety to fuel 'Papa' Jack's contentious public image.[9] The combination of a brash master of the contentious art of boxing, widespread moral indignation towards Johnson's private romantic affairs, and the additional dimension of race, secured the world champion's status amongst his non-sporting opponents as the ideal scapegoat warranting the full weight of federal or state legal scrutiny during his seven-year title reign.

6 Johnson was by no means the first black sportsman to challenge dominant Western ideals of white, civilised athletic prowess. Early Western fight lore demonstrates a widespread preoccupation with biological, racial, physiological and intellectual difference. The highly publicised fight under bare-knuckle rules between English champion Tom Sayers and United States challenger John Heenan on 17 April 1860, offers a significant precedent to the space occupied by Jack Johnson during the first decades of the twentieth century. Legendary fight historian Nat Fleischer[10] documents a wealth of North American Negro 'invaders' attempting to wrest title honours from more respectable English champions. Images reproduced from English and United States periodicals of the time depict Heenan in a dominant animalistic pose, stretching his subordinate white opponent's neck over the ropes, while angry yet clearly respectable patrons vent their evident ire. As seconds intervened to save their vanquished local hero, several 'thugs' in the crowd severed the ropes with pocket knives. This produced a riotous ending to the fray, and Heenan's inevitable flight. '[J]ustices of the peace', 'brethren of the cloth' and noted 'literati' including William Thackeray and Charles Dickens[11] were all present at the scene, however attempts to secure a re-match failed, and Sayers retained his title with official records documenting a thirty-seven round 'no-result'.

7 Historical fight records overshadow a broader series of challenges to conventional white male dominance in physical, intellectual and scientific cultures of the late-nineteenth century. As

emerging state authorities unsuccessfully struggled to curtail a popular albeit morally contentious sports pastime,[12] and broader notions of biological positivism decried the innate criminality of Europe's 'dangerous classes',[13] civilising doctrine reinforced Darwinian notions of white racial superiority throughout the English-speaking world.

During the 1890s the focus of modern heavyweight boxing shifted from England to the lucrative free-markets of the United States. After a substantial yet similarly unsuccessful intervention to outlaw the popular manly sport of prize-fighting,[14] three noted 'gentlemen' pioneered the modern revolution in gloved professional heavyweight boxing. 'Boston Strong Boy' John L. Sullivan,[15] 'Gentleman' James J. Corbett,[16] and Western journeyman 'Ruby' Bob Fitzsimmons[17] enhanced the public legitimacy of sports fighting through a combination of skill, entrepreneurial showmanship, and widespread popular celebrity appeal. Without their collective efforts to embrace the amateur Queensberry sporting ethos,[18] modern professional boxing may well have succumbed to the force of the outlaw, criminal label. The extensive popularity of these artful, noble practitioners, and numerous associated developments mirrored in contemporary celebrity sports culture, helped to successfully counter widespread political concern over what many considered an inherently amoral, barbaric, disorderly and violent male pastime. 8

As elite athletes and professional entertainers it is not surprising each of these three champions has a place in early United States legal records. Anderson illustrates that Sullivan avoided a summary 'prize-fight' prosecution in Missouri, and a $500 entertainment tax violation in Texas.[19] The latter involved a problematic criminal law distinction between public and private events, and the verdict offers a landmark statement effectively restricting state intervention to clandestine, disorganised, un-ticketed contests. 'Ruby' Bob was charged with manslaughter after the tragic, unforeseen death of sparring partner Con Riordon during a travelling exhibition in Syracuse, New York. Three years before winning the heavyweight title by defeating Corbett, a combination of sincere remorse and insufficient proof of malicious intent guaranteed Fitzsimmons' acquittal. The detailed verdict is significant as an early statement on the applicability of Western homicide laws to modern competitive sports.[20] Corbett avoided legal authorities until his fight management career of the 1920s.[21] Nevertheless, all three champions were named as participants at the Louisiana Olympic Club, where an audacious state claim against the scope of duly conferred licensing 9

powers successfully outlawed this private organisation and all its related sports business. The *quo warranto* claim judicial review procedures using grounds similar to contemporary public administrative law *ultra vires* principles. The ruling permanently dissolved the club with all assets and property granted to the state, and led to the virtual cessation of organised, lawful private fight sports governance throughout this region for the next fifty-years.[22]

The early modern heavyweight championship lineage commencing with Sullivan evolved alongside a highly visible colour line. The 'Boston Strong Boy' in particular is noted for resisting challenges from viable black contenders.[23] Fears of losing title supremacy to biologically 'inferior' opponents in a sport with questionable public moral standing, accompanied various forms of social, political and legally sanctioned race segregation during this volatile era.[24] By the turn of the new century Johnson's arrival on the Western sports pages equally challenged dominant English,[25] Australian[26] and North American[27] perceptions of innate physical, intellectual and behavioural differences squarely predicated on race, as well as the capacity of his opponents to endure his iron fisted athleticism.

> Burns was depicted as a clean-cut Spartan with massive head, arms, legs and torso, which were all accentuated by his remarkably small stature (of 170 centimetres) for a heavyweight champion. His boxing brain and courage were the attributes most journalists stressed. "I do not think Johnson is his equal in the all important matter of brains", was a typical comment … On the other hand, racist ideas current in boxing and other circles suggested that black men could withstand more pain at least on the head, because they were less civilized and sensitive than white men. Some even suggested physiological and medical evidence for this. Johnson, who was 185 centimetres tall (and some even alleged 195 centimetres), was said to have massive natural strength, but it was claimed that he trained on women and champagne, when he bothered to train at all … The fight was portrayed as a contest between the brains and dedication of Burns and the brute strength and flashness of

> Johnson. The image was of Beauty and the Beast. It was as much racial prejudice as knowledge that caused ex-champions J.J. Corbett and Jim Jeffries, most of the journalists, and the sporting public to predict (and hope for) a Burns victory.[28]

11 Despite more than half a century of slave emancipation in the United States, formal and informal or cultural segregation was enforced in ways difficult to appreciate through a twenty-first century lens. Recent cinema histories by Dan Streibel[29] and Lee Grievson[30] highlight the convergence of race, law, control and culture, with 'Papa' Jack's influence pivotal in the regulation of emerging multi-media industries of the period. From nicolodeon theatre to early urban cinema, Johnson's significance to other 'fightin' niggahs' appeared to threaten public order at various intersecting sites. This generated a significant moral censorship purge, extremes of linguistic rage among the most eloquent sports literati of the time, including Jack London,[31] organised public 'lynching bees',[32] and calls for expanded legal intervention to put 'Papa' Jack in his rightful subordinate place. Legal questions previously centred on the social (un)desirability of professional fight sports were superseded by a new series of moral issues focusing on Johnson's notorious celebrity and its influences on men of colour more generally. This in turn led to a widespread purge against the champion's right to the heavyweight crown and the associated spoils of his sporting success, which blurred any meaningful distinctions between this new celebrity's public and private lives.

12 Dual legal attacks were directed at the Texan under the Federal Mann and Sims Acts. The champion's autobiography[33] and most subsequent fight histories emphasise these prosecutions as significant career-ending interventions. In the context of United States law-making of the time, Johnson's legal encounters highlight many deeper ramifications of federal governance and enforcement in several lucrative 'outlaw' industries beyond the prize ring. Records of other litigated cases and the range of discursive, linguistic and silenced narratives within documented legal sources illustrate critical elements of symbolic power commonly revealed when individuals are targeted by criminal enforcement agencies. Despite numerous semiotic limitations, reported verdicts act as pertinent written signposts[34] for identifying norms of dispute construction, enforcement and resolution.[35] Within the maze of United States national and regional archives, numerous supplementary sources provide a contextual

backdrop to 'Papa' Jack's white slavery and fight film bans, demonstrating ongoing tensions between federal and state law-making power within and beyond the square ring. However, Johnson's contentious public celebrity remains the principal justification for his status as the law's most prized high-profile target of the period.

White Slavery

13 The investigation undertaken by the Chicago Vice Commission in 1910 disclosed that the average age of the parlor-house prostitute was twenty-three and one-half years, and that the professional life of a girl in the "big-time" resorts was seldom more than five years. After that she drifted downward into the lower-priced houses, then to the streets and the back rooms of saloons, and finally into such houses as those of the Jungle and Bed Bug Row. In consequence of this rapid turnover of what the vice lords callously called "stock", constant recruiting was necessary, and to supply the large demand and keep the brothels filled with fresh and attractive girls was the profitable business of the numerous gangs of procurers and white-slavers which operated, not only in Chicago, but in other large American cities as well. It was never established that a national organization of white-slavers existed, but it was often demonstrated that the gangs of the various cities used the same methods and worked together, and that girls were frequently shipped under guard all over the United States. Except in the cases of a few higher-ups, the protection paid by the brothel-keepers was seldom extended to white-slavers; even the politicians appeared to be horrified by such activities. But despite the efforts of police departments throughout the country the traffic was never brought under even a semblance of control until the federal government entered the fight, operating at first under the immigration laws and later under the Mann Act of 1910.[36]

14 Herbert Asbury's histories of the New York, Chicago, New Orleans and San Francisco underworlds are rife with tales of violence, debauchery, outlawry and fraud. The very foundation of each major city is persuasively

contextualised alongside a range of criminal industries. One example involves the settlements in Louisiana during the 1720s, which were dependent on the importation of vagrant or incarcerated French women known as 'casket girls'.[37] This overcame the notable shortage of unmarried women and the hazards associated with unfettered male socialisation. For almost two centuries prior to 'Papa' Jack's emergence, state and federal authorities grappled with an extensive white slave or prostitution industry embedded in North American civilian culture.

> *The White Slave Trade* – A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the states in the exercise of their police powers in the suppression or regulation of immorality in general. It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.[38]

The unlawful transport of 'any individual' into or within the United States for the purposes of prostitution, or associated unlawful sexual activity thereby, supplemented existing state and local government prohibitions against commercial sex trading.[39] The original 1910 federal legislation expanded existing prohibitions targeting illegal 'aliens' on United States soil. These predecessors to the Mann Act allowed federal authorities to deport any female with less than three years residency 'found an inmate of a house of prostitution or practising prostitution'. The Supreme Court in *United States v. John Bitty* pinpointed the origins of this national felony legislation in an 1875 Act of Congress targeting illegal aliens, as well as prohibitions directly or indirectly aimed at outlawing coerced people trafficking.

15

> … [W]hoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the

> purposes of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, and, on conviction thereof, be imprisoned not more than five years and pay a fine of not more than five thousand dollars … [40]

The sole focus in 'Papa' Jack's prosecution involved 16 an arrangement with Lucille Cameron to travel from Pittsburgh to Chicago. The written verdict commences with the legal term 'Prostitution',[41] and throughout Cameron has no discernible voice to counter this label. Once recognised as a white slave and compatriot to the black fighter, Cameron's character is unquestioned, assumed, and therefore not worthy of the court's additional scrutiny. Equally, Johnson is depicted as the habitual sporting playboy with a well-recognised transgressive sexual appetite, justifying his status as a target of federal enforcement surveillance.

> … [A] suspicion might be entertained that the purpose of the transportation was sexual intercourse. This evidence also is consistent with the theory that defendant had no sexual intent at the time he aided the girl in her travels. And the presumption of innocence would require the adoption of this theory if here the evidence stopped. But the record further establishes that before aiding this girl defendant habitually indulged in promiscuous sexual intercourse; that this girl was a prostitute; that defendant first met her several years before in a brothel; that throughout the period of their acquaintance they maintained sexual relations; and that frequently defendant in his journeys about the country took the girl with him, or had her travel to meet him, and always for the purpose of sexual intercourse.

> This additional evidence furnished a basis from which the jury could justifiably draw the inference of fact that when defendant furnished the transportation he did so for the purpose of having sexual intercourse with the girl after their arrival in Chicago, just as a jury may reject a defendant's protestation of innocence in passing counterfeit when the evidence shows that prior to the act in question he had habitually or frequently passed other similar counterfeits.[42]

17 Evidence of telegraphic communications between Johnson and Cameron sought to prove an illicit agreement for the latter to travel inter-state. Long-distance telephone conversations, a cabled telex message, and a wire service money transfer provided the essential tools for cross-border surveillance necessary to establish federal jurisdictional power under the Mann Act. Any right to privacy associated with these novel communication technologies of the time is sidestepped in the court's analysis, despite evident concerns over the constitutionality of the Act, its enforcement and the evidence obtained to establish the prosecution case. Rather, the emphasis throughout remains on Johnson's celebrity, and his lusts for white women, idle leisure and the excesses of professional fight sports. These factors are of sufficient legal and factual significance to endorse prosecution claims of Johnson's involvement in commissioning an intentional, organised and predominantly immoral journey between interstate borders.

> ... [T]he girl, in financial straits at Pittsburgh, endeavoured to reach defendant by long-distance telephone. That an employé of defendant answered, and to him she told her plight. That the next day she received a telegram, signed "Jack," asking what she needed for expenses. That in reply to her answer she received a telegram reading: "I am sending you $75. Go to Chicago at Graham's and wait until I get there. Jack." That she drew the $75 from the Postal Telegraph Company, purchased therefrom a ticket to Chicago, and travelled to that city on the Pennsylvania Railroad, and that defendant shortly thereafter had sexual

intercourse with this girl in Chicago.[43]

United States v. Bitty[44] involved a Mann Act predecessor relied on by the prosecution throughout the Johnson verdict. Questions of social morality were less relevant in this case, despite John Bitty's overt ploy to defy the morally intrusive national laws. Bitty claimed the federal law was unconstitutional, as it dealt with a technically legal, voluntary, non-commercial union. Nevertheless, the basis of Justice Harlan's broad ruling was considered essential to sustaining the prosecution against 'Papa' Jack. The federal government's intention in passing the law, rather than any potential undue intrusion into the private lives of its citizens or the character of interpersonal relations between the sexes, is clearly the dominant focus of both verdicts. 18

> … [W]e must hold that Congress intended by the words 'or for any other immoral purpose,' to include the case of anyone who imported into the United States an alien woman that she might live with him as his concubine. The statute in question, it must be remembered, was intended to keep out of this country immigrants whose permanent residence here would not be desirable for the common good …[45]

The regulation of public morals was generally considered the purview of each state legislature. If lawfully enacted, federal police regulations overruled conflicting state or local ordinances. Race, gender, commerce, public order and sexual morality are all at play in Johnson's case. Nevertheless, Supreme Court reports between *Bitty* and 1917 illustrate several male and female protagonists variously contributed to this new era of United States law enforcement focusing on the morality of essentially private human relationships already governed by existing state and local ordinances. 19

> Our dual form of government has its perplexities, state and nation having different spheres of jurisdiction … but it must be kept in mind that we are one people; and the powers reserved to the states and those conferred on the nation are adapted to be exercised, whether independently or concurrently, to promote the

> general welfare, material and moral … if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls.[46]

In *Johnson* the court held that prosecution testimony failed to establish any 'crime against nature'. Proof of unlawful interstate commerce and an overtly immoral relationship were sufficient to outweigh concerns over allied privacy breaches or any procedural irregularities during police investigations or trial. Despite attempts to adduce evidence linking Johnson's pugilistic career with the 'brutish' propensity to beat up white women being declared inadmissible, the conviction was strongly endorsed by the Supreme Court and remitted for sentencing. 20

The facts supporting Johnson's conviction differ markedly from other reported Mann Act convictions of the period. Unlike predatory commercial abductions characteristic of the 1914 prosecution in *Wilson*[47] and subsequent rulings,[48] Johnson's conviction and nine-month prison term involved no evidence of unlawful coercion. Contrast seventeen-year-old Agnes Couch, responding to an advertisement in Georgia to recruit women for the 'Imperial Musical Comedy Company at the Imperial Theatre, Tampa, Florida', who appears far more worthy of the federal government's interstate protection than the world heavyweight champion's consenting partner: 21

> I had never had any stage experience. At lunch they were all smoking, cursing and using such language I couldn't eat. After lunch I went to my room, and about 6 o'clock Louis Athanasaw … came and said to me I would like it all right; that I was good looking and would make a hit, and not to let any of the boys fool me, and not be any of the boy's girl; to be his. He wanted me to be his girl; to talk to the boys and make a hit and get all of the money I could out of them. His room was next to mine, and he told me he was coming in my room that night and sleep with me; and he kissed and

> caressed me. He told me to dress for the show that night and come down to the boxes. I went into the box about 9 o'clock. About that time Louis Athanasaw's son knocked on my door and told me to come to the boxes. In the box where I went there were four boys; they were smoking, cursing, and drinking. I sat down and the boys asked me what was the matter; I looked scared. I told them I was ashamed of being in a place like that; and Arthur Schlemann, one of the boys, said he would take me out. The others insisted on my staying and said I would like it when I got broke in.[49]

Fight Films

> In 1910 William Shaw, general secretary of the United Society of Christian Endeavor, which boasted some four million members, sent out an urgent plea that governors prevent the [Johnson v. Jeffries fight] film from being shown in their states. The racial climate in many areas strengthened the plea. Racial tensions ran so high in Cincinnati, for example, that Mayor Louis Schwab had banned the film by executive order, for fear it would set off a race riot.[50]

Preserving the dominant racial order of the time was equally prominent in public debates over the legality of filmed images of Johnson's contentious heavyweight victories. Kinetoscopes developed by Thomas Edison recorded the first prize-fights in 1894.[51] This important technological development shifted the focus of debate over the legality of professional boxing from the ring to the screen and the sport's visual representation. Again, questions of race, public order and federal legislative power were prominent in regulating the fight film industry, and are widely discussed in contemporary United States film studies literature.[52] Significantly, judicial scrutiny of the Sims and Mann Acts invoke virtually identical grounds to assess the validity of national legislative power. In particular, the dominant classification of 'Papa' Jack's film representations as items of interstate commerce informed Supreme Court analysis, and validated a further series of paternalistic bans targeting an innovative and highly popular entertainment form and its most popular transgressive performer.

> ... I was to take films of the fight and

> exhibit them in South America and Europe, which sections of the globe were to be my exclusive territory. I collected the fight percentage due me just before the fight, but an additional percentage, which Willard's managers owed me if I lived up to my agreement to lie down, was not paid until the fight was almost over. *They tried hard to* renege on payments to me and even went so far as to try and deprive me of the films which were to be given me, according to the contract. Pictures of the fight were made by Mace, and when I learned that the situation was not ripe for my return to the United States, I immediately left Havana for London … I waited for the pictures several weeks and when they did not arrive, I cabled to Curley asking why they had not been sent. He replied that they were on the way. I watched eagerly for their arrival, and when they did arrive, I was astounded to find that they were blank – that they never had been on a spool. I cabled demanding an explanation and in reply was told that the deception was due to Mace, the maker of the films.[53]

Amidst much hyperbole 'Papa' Jack's autobiography24 reveals the surreptitious character of organised fight film trafficking during his title reign. Immense public demand followed Jess Willard's Cuban victory in 1915 to restore the legitimate Western sporting order. Assistant Attorney General Warren claimed the prohibition was a valid exercise of national police powers under the federal constitution. As with principles informing the constitutionality of the Mann Act, this claim justified identical restrictions against the interstate commercial transportation of Johnson's fighting images.

> The act of July 31, 1912 (§1, chap 263, 37 Stat at L. 240, Comp. Stat. 1913, §10,416), makes it unlawful "to bring or to cause to be brought into the United States from abroad, any film or other pictorial representation of any prize fight or encounter of pugilists under whatever name, which is designed to be used or may be used for purposes of public exhibition".[54]

Four reported Supreme Court rulings again 25 illustrate the dominance of the socially divisive

racial morality centred on Johnson's public celebrity over several crucial economic interests at stake in United States popular culture. The first landmark case involved a constitutional challenge to the legality of the Sims Act by film director Lawrence Weber after confiscation of the films by federal authorities in New Jersey.[55] Despite Weber's emphasis on the lucrative commercial value of Johnson's fight films the claim was unsuccessful, and this verdict became the foundation for a series of customs seizures involving originals or copies of the valuable contraband.

> The manager of the *[Kalisthenic Exhibition]* Company testifies that it is his intention to exhibit the positives, made from the film in question, "before clubs, societies, associations and athletic clubs, and their guests"; that the value for such exhibitions would be at least $100,000; that such value would be decreased over 50 or 60 per cent. in three months from now, and 75 per cent. in six months from now, when the contest would be forgotten. He says the company is ready to furnish a bond, if the film be admitted to entry *[from Havana into Maine]* that only such exhibitions shall be given as he has described.[56]

Significant profit estimates as well as persistent assurances of good order at organised private venues were insufficient to convince District Judge Hale of the primacy of individual, private economic rights over the national interest in removing the films from public circulation. Layers of local and state revenue were thus instantly stripped by the overriding federal policing powers. Even unprocessed fight-film negatives could be confiscated under Sims Act precedents. Each Supreme Court ruling supporting the new customs powers consistently subordinates individual economic, travel, property and privacy rights to the highly conservative yet overriding social and moral benefits of prohibition. The net effect is one of the first modern forms of popular cultural censorship authorised under the guise of illicit trade regulation. 26

> ... [A]ll photographic films imported under this section shall be subject to such censorship as may be imposed by the Secretary of the Treasury ... The language of the act is very broad; so broad that it relates to films, not

> only designed, but which may be used, for purposes of public exhibition. The production of a negative film, and its importation, is inevitably only the first step in the final use as a positive film. The whole, from the beginning to the end, is only a development from taking the negative film to the final exhibition of the positive film. The negative film has no practical use of value, as the evidence shows, except to be developed in a positive form and exhibited in connection therewith. The whole is a process in which every step counts.[57]

27 Technological innovation attempted to overcome the prospect of confiscation by an expanded federal customs bureaucracy operating within the United States and around the nation's external borders. The overt defiance of broadly interpreted Sims Act criteria produced some unique attempts to deliberately evade the spirit of the federal ban. Sammons[58] illustrates the innovation of one group of early outlaw film traffickers invoking complex technical measures to outsmart federal enforcement agents patrolling the Canadian border.

> In April 1916 New York authorities uncovered a scheme by which negatives of the fight film were developed into positives without physically importing the film into the United States. … A movie camera was set up on the American side eight inches from the New York-Canada border, with the lens directed to the north. At approximately the same distance on the Canadian side rested a box with an electric light; through this was run an original positive film taken from the negative film made in Havana. Unexposed film was moved along the reel and through the camera on the American side; the two reels were connected in a way that allowed both to turn simultaneously, and thus a negative reproduction was made in America of the positive film in Canada. Pantomimic Corporation then rephotographed from the secondary negative and prepared to distribute positives of the contraband film.[59]

28 Grievson indicates this prohibition takes modern notions of state sovereignty and law enforcement to a new level by 'disciplining the movement of rays of light'.[60] Streibel[61] details extensive

opposition to Johnson's fighting images throughout the nation's south, with local and state authorities campaigning vigorously from the time of 'Papa' Jack's 1908 title victory in Australia to ban fight films for promoting physical brutality, their undesirable effects on child viewers, and the obvious potential for racial violence. Among the plethora of flow-on effects on multi-racial news, theatre and popular culture, the nationwide prohibition also led to new forms of technological innovation to subvert the ban. The production of numerous 'fake fight films' of Johnson's title bouts against Jeffries in 1910 and Willard in 1915, blurred previous distinctions between the real and the virtual,[62] with significant impacts on both the legitimate and outlaw entertainment economies, as well as the credibility of the nationwide bans and their enforcement. Nevertheless, the core basis for validating enforcement actions involving domestic or international cross border trafficking, whether through real or virtual methods, remained squarely in the moral realm. The Supreme Court acknowledged the innovative uses of new entertainment technologies, while unanimously supporting the legislative intention underpinning the bans.

> … [T]his indictment shows on its face that no film, or physical picture, or physical picture representations of a prize fight was actually brought into the United States from the Dominion of Canada, but that by an ingenious arrangement of apparatus, camera, film, etc., a picture of a prize fight was photographed on the United States side of the natural boundary from a film located on the Canadian side, and that such process and operation, even if the moving picture of the prize fight was reproduced on the United States side of the border line between the United States and Canada, does not constitute a bringing or a causing to be brought into the United States from abroad – that is, from Canada – of either a film or other pictorial representation of any prize fight, etc., within the meaning of the section … The brutalizing and pernicious effect, especially on the young, of looking on physical encounters between human beings in the shape of actual fights, where the fight is "to

> the finish" and until the one or the other of the combatants is "knocked out" and rendered physically incapable of further action, offensive or defensive, are well known and recognized almost everywhere ... Therefore, Congress, remembering that "the powers reserved to the states and those conferred on the nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral", saw fit to absolutely prohibit the bringing into the United States of any film or other pictorial representation of one of these prize fights which had taken place in some other country, and which might be used for purposes of public exhibition. Congress has determined by this legislation that, in enacting it, it was promoting the "general welfare, material and moral".[63]

Johnson's loss to Willard triggered widespread suspicions later confirmed in his autobiography that 'Papa' Jack had in fact 'thrown the bout'. This result generated additional fears of copycat violence amongst antagonised fight fans viewing films of the contest. In addition, fears of racial unrest remained prominent to support the Sims Act provisions and the consequent expansion of domestic and international customs enforcement. This replicates the universal endorsement of persistent intrusions into Johnson's private communications under the Mann Act. The seemingly haphazard regulation of public morality and the lucrative film industry at state and local levels also enhanced federal interventionist arguments by regenerating historical debates over the lawfulness of prize-fighting per se throughout the late nineteenth and early twentieth centuries. A range of moral concerns over the legality of professional boxing in the pre-moving-picture-era re-emerged to provide renewed symbolic force for vigilant and expanded national enforcement in preserving civil morality, despite the extensive popularity of professional boxing and abundant evidence of orderly fight film screenings.

> It cannot be put out of view that the exhibition of moving pictures is a business, pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be

> regarded … we think, as part of the press of the country, or as organs of public opinion. They are mere representations of events, of ideas and sentiments published and known; vivid, useful, and entertaining, no doubt, but … capable of evil, having power for it, the greater because of their attractiveness and manner of exhibition.[64]

30 Rather than intricate discussion of the competing and contrasting benefits of wire technologies in an emerging entertainment context, each judicial record examining the Sims Act prohibitions squarely defines fight films as a form of interstate commerce. This mirrors the federal jurisdictional foundation for the prohibitions under the Mann Act. However, the alternate ground of free speech would have invariably shifted the Supreme Court's focus. While this is unlikely to have produced a different series of fight film rulings given the moral imperatives at stake, Grievson indicates the adoption of the commerce clause under the *Mutual Film Corporation* precedent sidestepped crucial technological issues.[65] This ensured private communication and commercial rights remained secondary to powerful national counter-justifications favouring expanded criminal prohibition and powers of seizure to prevent fight film importation and public display. This view was unanimously endorsed in three reported verdicts, which uncritically supported the constitutionality of the 1915 Sims Act upheld in *Weber v. Freed*.

31 The final case involved an appeal against a decision by federal authorities to seize copies of the Johnson v Willard film lodged by James J. Johnson and several others.[66] By 1916 section 37 of the Federal Criminal Code incorporated the original 1912 Sims Act prohibitions, seemingly ensuring beyond doubt the legality and desirability of the bans and their proactive enforcement. As with each previous Supreme Court ruling, the customs powers were emphatically supported by highlighting the 'brutalising and pernicious effect' of fight film screenings. Racial questions are close to the surface of the carefully worded ruling. As with the voices of actual or supposed white slaves, the real targets of prohibition nevertheless remain peripheral to the intricate legalities authorising each enforcement action.

32 By ignoring evidence that proposed and actual screenings were customarily held in orderly, private, ticketed venues, the United States Supreme Court ensured generic objections to fight sports canvassed in a wealth of state judicial decisions entered the fight film debate.[67]

Analogies between disorderly prize-fights and second hand viewing in public or private theatres were supported by the federal Supreme Court. A 1905 verdict highlighting the disorderly character of prize-fights under Massachusetts criminal law[68] indicated any ticketed event with a large audience could be characterised as a public hazard to justify a criminal conviction. However, the ruling in *Johnson* does not reveal *Commonwealth v. Mack* involved a guilty plea after seemingly orderly ticketed affair, with seating provided for 1,000 patrons and a prominent sign stating 'no drunks allowed'. As Streibel and Grievson illustrate,[69] the tendency to misrepresent the nature of analogous prize-fight verdicts was facilitated by the intricacies of recognised Supreme Court procedure, and offered abundant support for a highly contentious form of national media and commercial censorship, despite the inability of fragmented state laws to outlaw prize-fighting during the late nineteenth and early twentieth centuries.

Any novel act of deliberate importation was 'clearly 33
against the spirit and meaning of the statute'. The ruling in *Johnson* provided further unconditional endorsement of federal criminal law over parallel state economic, taxation or commercial film regulations. The combination of an expanded customs bureaucracy at national and domestic borders, and 'Papa' Jack's highly contentious celebrity provided ample fuel to validate a self-fulfilling legal revolution, playing on a moral panic endorsed by formal processes of legislative action, rights classification and judicial decision-making. 'Practically unlimited' repeat audiences, and estimated sale revenues of 'at least' $1,000,000 per film, ultimately provided false justifications to enforce a desirable national moral order equivalent to media censorship under contemporary parlance. The complex melding of public and private legal, philosophic, moral and racial dimensions allowed the Sims Act to be uncritically endorsed through a series of speculative, circular and self-justifying assertions, highlighting vague potential threats to public order maintenance if no paternalistic federal criminal intervention had in fact been instigated.

> Calling an exhibition "private" does not make it so. An exhibition cannot be said to be private, or "characterized by freedom from observation", if such masses of people are to be invited to see it as intended by the plaintiff.[70]

Legacies

A young man named A. Weil, who now 34
lives in Chicago, appeared on the scene to claim the films. When they were transferred to him, I snatched

> them from him and obtained possession, though not until after a heated argument and various attempts to get them from me had taken place. I contracted with Barker & Company, one of the largest film firms in England to make prints of the films, and these I put on exhibition throughout England. I also sold the rights to the pictures to a South American company and with the proceeds from this sale and the display of the pictures in the United Kingdom was able to realize very satisfactory returns – returns which were ample enough to make me feel somewhat repaid for the manner in which Curley and his partners had bilked me. I also sold the Australian rights to the pictures to Rufe Nailor.[71]

Without the Australian connection the legend of ‘Papa’ Jack would be reduced to one of many failed attempts at twentieth-century sporting greatness.[72] In the shadows of other more culturally palatable gentleman practitioners of the noble art, Johnson continued a complex United States legal legacy targeting elite heavyweight professional boxers. Late-nineteenth and early twentieth-century developments represent a significant turning point in the evolution of a highly contested Western professional sports ethos. Nevertheless, an array of novel legal issues stem from this landmark period of Western entertainment, commercial and social history. 35

On returning to the United States from a period of self-imposed exile to avoid serving the Mann Act imprisonment term, the deposed champion finally succumbed to his outlaw reputation. Leavenworth Penitentiary hosted the former champion for nine-months, and witnessed a memorable Thanksgiving Day victory over ‘Topeka Jack’ Johnson and 227 pound Chicagoan George Owen. According to ‘Papa’ Jack’s autobiography published in 1927, it was a festive event compared to the harsh routines of prison life, with ‘more than a thousand’ prison inmates and state officials from Kansas and Missouri in attendance. A band ‘played march tunes’ and well-known sportsmen and newspaper writers reported on the proceedings.[73] The battling black gentleman, who was no stranger to the infamous Texan battle royale,[74] continued a mediocre travelling sparring career, forever tarnished by the impact of federal legislative morality. 36

> While the commerce clause empowered Congress to regulate

> commerce not public morals, the second may, nevertheless, be incidental to the first. It is no objection to the validity of Congressional legislation than an article prohibited by Congress in the legitimate exercise of its commerce power might also be prohibited by the states in the exercise of their police power … The white slave law, so far as it is directed against transportation of women for use as a source of profit, is analogous to the statute at bar; for in both cases the object of the transportation is the use of the thing or person transported, as capital from which income is to be derived rather than as an object of sale.[75]

All Supreme Court verdicts analysing the Mann and 37
Sims Act prohibitions endorsed the supremacy of federal bureaucratic powers over alternative state, local and private legal, proprietary or civil rights. The preservation of national public morality endorsed the infiltration of federal customs inspection, seizure and confiscation powers into state enforcement territory. As with the bureaucratic administration of the New York State Athletic Commission, established in 1911 to create a public monopoly over professional boxing in that state, the combined effects of national criminal law making significantly transformed recognised law enforcement methods under United States public law. By targeting Johnson and his image, highly politicised inter-jurisdictional tensions over individual and social rights were laid before the Supreme Court. Vast financial rewards stemming from an otherwise haphazardly regulated state industry, encouraged private technological innovation to defy perceived federal interference with individual privacy and economic rights. Paternalistic motives incorporating strong moral denunciation towards professional fight sports supplement this body of uniformly conservative judicial rulings, to ultimately ensure ‘Papa’ Jack’s actual and virtual exile throughout the United States.

> … [P]roviding of interstate transportation for the mere purpose of attempting to lead a chaste girl into unchastity is a felony without proof that the defendant intended to be the debaucher, or that he expected to profit by the girl’s hire if she should become a prostitute. So it

> becomes apparent that "commercialized vice" or "the traffic in women for gain" is not the common ground, that the nexus indicative of the genus is sexual immorality, and that fornication and adultery are species of that genus.[76]

38 By classifying Johnson's private affairs within the 'genus' of amoral sexual conduct, the Supreme Court subordinated individual freedom of choice to more dominant and highly conservative notions of appropriate, desired private relations between the sexes. Throughout, Lucille Cameron's inability to consent to such an undesirable arrangement is inferred by the exclusive focus on Johnson. Adversarial procedure customarily restricts the range of stories or truths open to a court's legal consideration. As such, Johnson became the victim of a targeted enforcement purge and was labelled a predatory white slave trader, while Cameron, the main subject of the Mann Act's protection, had no voice as a mere young woman legally incapable of exercising a rational, or desirable, choice to associate with the flamboyant celebrity.

39 Similarly, novel technologies were subject to the rigours of adversarial method with little concern for the relevant policy issues associated with an emerging popular entertainment medium. The Sims Act verdicts also highlight limitations inherent in rationalised Western democratic governance and judicial procedure. Rather than developing agreed models of enforcement with existing state or local agencies, the process worked in reverse. In response to several legal challenges instigated by individual citizens, the Supreme Court simply validated expanded national and domestic border controls by creating a hierarchy of constitutionally sanctioned individual and structural rights. Conventions of judicial method, document production and rational doctrine simultaneously identified and reinforced a range of prospective national harms, as individual cases were routinely pigeonholed into a narrow range of pre-determined and highly questionable legal criteria.

> *§67. Prize Fight Films*
>
> A former federal statute forbidding the importation of prize fight films was held valid.
>
> ...
>
> Commerce
>
> A former statute which made it unlawful to bring, or cause to be brought, into the United States

> from abroad, any film or other pictorial representation of any prize fight or encounter of pugilists, under whatever name, which was designed to be used, or could be used, for purposes of public exhibition, was held to be within the power of Congress over foreign commerce and its authority to prohibit the introduction of foreign articles, even though it was contended that the primary purpose of the statute was to prohibit the public exhibition of the films after they were brought in. The prohibition of the act extended to negative films from which positive films were to be developed and to films which were designed to be used, or could be used, for an exhibition which was in fact "public", although called "private".[77]

40 *Corpus Juris Secondum* acknowledges the prohibitions under the legal headings of federal interstate commerce and customs duties.[78] This authoritative legal source, along with contemporary cinema histories, generally omits reference to a further series of six federal[79] and two state[80] fight-film verdicts renewing these interventionist trends during the prohibitionist era of the 'roaring' twenties.[81] Representations of the legendary battles between New Yorker Jack Dempsey and former serviceman Gene Tunney[82] renewed moral anxieties over the effects of professional boxing and its popularity amongst theatre audiences. However, unlike the Johnson bans a decade earlier, permissive white recreational culture appears to be the principal target of this second federal enforcement blitz against the lucrative prize-fight film industry.

41 Supreme Court doctrine endorsed proof of *any* interstate transport to validate a Mann Act conviction. Rulings interpreting and applying the 'white slave' Act were broad enough to incorporate 'sexual debauchery' as well as any truly commercial 'profit sharing' arrangements. The monitoring of genuinely exploitative and premeditated, outlaw interstate trafficking in turn validated the national policing of morality as commercial, anti-social, criminal vice. Similarly, lists of complex photographic mechanisms sought to confront novel commercial film and transmission industries. Supreme Court verdicts of the 1950s used similar grounds to validate federal legislation outlawing the deposit of 'obscene, lewd, lascivious, or filthy' publications in national mail services,[89] and

unlawful mob-based monopolies plaguing national fight-sports governance.[90] Throughout the twentieth century, contested racial, cultural and economic tensions underpinned most federal interventionist precedents, endorsed by conformity to standard democratic processes of legislative reform, executive law enforcement expansion, and Supreme Court doctrine. However, the latter in particular were faced with numerous alternative choices under a malleable rights-based constitution.

Late twentieth century interdisciplinary socio-legal theories[91] add layers of complexity to historical arguments on difficult social questions and their negotiation by governmental and political institutions in their context. Nevertheless, revisionist arguments contesting the legitimacy of recognised law-making power highlight the limits of rationalised decision-making, and the inevitable reduction of complex social issues to contests over procedural fairness, power and consequent social discipline.[92] The cumulative effects of each unsuccessful power struggle throughout modern United States history perpetuates racial discrimination in the face of isolated and periodic legislative or judicial gains. Williams Crenshaw discusses the commercialised misogyny of Afro-American rappers *2 Live Crew*, and political debates involving conservative white politicians championing censorship and paternalistic cultural liberation on behalf of all black women. These questions of racial censorship could be appropriately transposed over the legal suppression of 'Papa' Jack's celebrity eight decades earlier: 42

> Apparently, the 'social cohort' that is most likely to engage in racial violence – young white men – has sense enough to distinguish ideas from action whereas the 'social cohort' that identifies with *2 Live Crew* is made up of mindless brutes who will take rap as literal encouragement to rape.[93]

In a virtually identical context separated by time, the abstract, rationalised arguments of the democratic process impose a moral value on minority communities through the sheer power of legal decision-making. While free speech debates in contemporary popular culture replace commercial trade restrictions of the past, the essence of the problem remains virtually identical. 'Papa' Jack's confronting celebrity and more recent questions of music, art and cultural censorship involve paternalistic legal interventions, which are highly distanced from their immediate cultural sources. 43

The credibility of legal procedures invoked in each case ensures the 'correctness' of any intervention regardless of the outcome. Those least able to play a meaningful role within these institutions are generally the most suppressed by the formalities of lawful morality-based governance.

Johnson was the first of several generations of black heavyweight champion boxers tainted by the interventionist power of United States law. Within the square ring, only the 'Brown Bomber' Joe Louis during the 1940s wartime era,[94] and 'The Greatest of All Times', Cassius Clay or Muhammad Ali, surpass 'Papa' Jack's seven-year heavyweight title reign.[95] Studies informed by the Chicago School of Criminology during the 1950s demonstrate boxing provided a rare legitimate outlet for displaced young Afro-American men living with entrenched poverty and social dislocation during the post-war era.[96] For these youngsters, the iconic fame, wealth and celebrity associated with world title status represented one of few accessible goals to succeed in an environment presenting few legitimate or meaningful employment opportunities. For these young men, 'Papa' Jack Johnson, Joe Louis and Muhammad Ali were exceptions to the general rule of modern civilisation decreeing black men were unable to succeed in a white, male dominated, bureaucratic world. 44

The downsides of this celebrity status involve the concerted interventions of state and federal law. All modern elite fighters of colour share elements of Johnson's contentious yet pioneering template. While each individual champion's life story is fraught with a myriad of truths, the inevitable connections with 'Papa' Jack's career ending legal interventions appear to have inter-generational filter effects on various contentious minority public celebrities. Joe Louis is one of few black heavyweight icons seemingly immune from the power of authorised state intervention and effects of the criminal label. Ali's career is most illustrative, disrupted at its prime during the height of the Vietnam War. A persuasive conscientious objection argument, combined with evidence of the discriminatory practices of United States draft boards, were insufficient to avoid a federal conviction and subsequent professional licensing ban for failing to accept military induction.[97] 45

'Iron' Mike Tyson completes a problematic outlaw equation with a highly publicised rape conviction and barrage of unsuccessful parole appeals. Tyson's animalistic excesses reinvigorate the outlaw prize-fighter stereotype in an extreme, late-century racial form. Like a terrier snapping at the heels of 'everlasting' entrepreneur Don King, Tyson has created his own notoriety through a 46

persistently violent, catastrophic and self-destructive celebrity. Nevertheless, Tyson demonstrates elements of extreme vulnerability, and while allegations of violent sexual misconduct must be considered seriously, Tyson is a problem child, and the perfect target for any trumped-up legal interventions.[98]

47 Contemporary media technologies continue to confound the artificial limits of state and national jurisdictional borders.[99] Ongoing concerns over global media regulation and censorship involve highly malleable and morally laden terms such as 'offensiveness',[100] and 'hate speech',[101] or contentious forms of protest including effigy and flag burning.[102] Encoded and decoded within text and historic celluloid,[103] and reinforced by each new censorship controversy, the melding of racial, media and commercial issues transcends rigid, legal constructed public and private boundaries. The wealth of accumulated knowledge in conventional legal fields demonstrates periodic cycles of well-rehearsed historic justifications to endorse the unlawful characterisation of Western professional boxing.[104] Beneath the surface, many important and highly relevant stories illustrating the discriminatory character of modern legal process warrant further excavation. Racial, sexual and violent celebrity personalities provide one pertinent lens in the foreground of modern legal history. However, silenced voices, such as those of Anges Couch[105] and other white slave women, are only ever viewed through the enormously dark shadow of accused traders such as Johnson and other prosecuted men. These untold stories warrant further investigation and innovative reconstruction beyond the strictures of the formal written legal record.[106]

48 Predatory environments increasing female vulnerabilities defy legitimate norms of free recreational movement central to all civic communities. Sexual politics abound in each of the above examples, legitimising feminist concerns over extremes of violence by celebrity male athletes and the silenced voices of individual victims.[107] Recent controversies involving elite Australian Rules and Rugby League footballers during an *annus horribilus* for male team sports in 2004,[108] emphasise the currency of sexual politics and associated limitations of Western adversarial criminal investigations.[109] Uncontrolled excesses of collective male recreation, fuelled by alcohol and cultural largesse, highlight the ongoing problems of male group sexual morality and its complex links with contemporary sports cultures. Unlike the strongly interventionist traditions of United States federal and state legal institutions targeting the non-sporting behaviour of heavyweight prize-fighters, recent Australian investigations into

youthful, male, multi-racial sexual misconduct produced no sustainable criminal prosecutions. This might be a legacy of the different legal cultures in each nation, or the hegemony of Australian footballers compared with black boxers in the United States. Regardless of potential causes, the relationships between celebrity, law, violence, race and sexuality are extremely complex, and long neglected by critical Western theoretical and empirical research.

The multi-layered legal equation demonstrated here conflates several variables. Popular reverence for male celebrities converges with a hyper-aggressive, inter-racial and sexually charged series of gendered legal relations. Overt, covert and implied references to stereotypes of black and white hopes and their questionable character within modern fight-lore are largely hidden in the voluminous, technical mass of United States legal records. Within a template emphasising the innate historical dangers of the contentious morality of professional boxing, race, technology and fear generate highly confined methods of defining and reinforcing the modern black professional boxer's outlaw status. Rational judicial review procedures demonstrate complex inter-jurisdictional law-making and enforcement tensions, and are resolved within confined methodological parameters producing highly questionable outcomes. These sites of jurisdictional uncertainty provide numerous themes for ongoing and imaginative historical and cross-cultural investigation to tease out consistent patterns in the modern development and enforcement of biased, discriminatory and morally centred laws.

NOTES

[1] This moniker is taken from R. Roberts, *Papa Jack: Jack Johnson and the Era of White Hopes* (London: Robson Books, 1992).

[2] Ian Warren is a research officer with the Centre for Aging, Rehabilitation, Exercise and Sports Science (CARES) at Victoria University, Melbourne. Manny Nicolosi, Dr Dennis Hemphill, Bob Petersen and two anonymous referees all provided valuable comments on various aspects of this paper. A version of this paper was presented at the Australian History Association Conference, University of Newcastle, July 2004. Without the wonderful United States law collection at the Legal Resource Centre, University of Melbourne, and the support of the School of Human Movement, Recreation and Performance at Victoria University, Melbourne, the doctoral research condensed in this piece would not have been possible.

[3] See generally Council for Aboriginal Reconciliation, *Reconciliation and Social Justice Library* (Canberra: The

Council), http://www.austlii.edu.au/au/other/IndigLRes/car/ and related links, retrieved 28 May 2005; C. Cunneen, *Indigenous People and the Law in Australia* (Sydney: Butterworths, 1995); G. Bird, G. Martin and J. Nielsen, (eds) *Majah: Indigenous Peoples and the Law* (Sydney: Federation Press, 1996).

[4] See http://news.bbc.co.uk/cbbcnews/hi/teachers/citizenship subject_areas/criminal_justice_system/newsid_241600(retrieved 28 May 2005. For a critique on role models in contemporary sports media see G. Whannel, *Media Sports Stars: Masculinities and Moralities* (London: Routledge, 2002).

[5] This incident is widely reported in popular true crime histories. For an example see http://www.crimelibrary.com/notorious_murders/classics sect=13, retrieved 28 May 2005.

[6] See http://edition.cnn.com/interactive/entertainment/0211/c retrieved 28 May 2005. Other recent examples involve proven charges of theft against actress Winona Ryder, persistent drug related crimes enforced against 'brat pack' celebrity Robert Downey Jr., and unproven domestic homicide charges against William Blake, otherwise known as television cop 'Columbo'.

[7] J. Wells, *Boxing Day: The Fight That Changed the World* (Sydney: Harper*Sports*, 1998).

[8] For legal theories on gender and the law see generally D. Patterson (ed.) *A Companion to Philosophy of Law and Legal Theory* (Malden MA: Blackwell Publishers, 1999) and especially the chapter on 'Feminist jurisprudence' by P. Smith; R. Graycar and J. Morgan, *The Hidden Gender of Law* 2nd ed. (Sydney: Federation Press, 2002); W. Morrison, *Jurisprudence: from the Greeks to post-modernism* (London: Cavendish Publishing, 1997) chapter 17.

[9] For the complexity of social theories of race see generally J. Rex and D. Mason (eds) *Theories of Race and Ethnic Relations* (Cambridge: Cambridge University Press, 1989). For legal theories see generally D. Patterson (note 8) and especially chapters on 'Legal realism' by B. Leiter, 'Critical legal studies' by G. Binter, and 'Postmodernism' by D. Patterson. For contemporary views on the role of law in contemporary United States popular culture see K. Williams Crenshaw, 'Beyond Racism and Misogyny: Black Feminism and 2 Live Crew', in M.J. Matsuda, C.S. Lawrence III, R. Delgado and K. Williams Crenshaw, *Words that Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (Boulder: Westview Press, 1993).

[10] S. Andre and N. Fleischer, *A Pictorial History of Boxing*, (revised and updated edition) (London:

Hamlyn, 1975).

[11] Andre and Fleischer (note 10), 46-47; c.f. H. Downes Miles, *Pugilistica: The History of British Boxing containing lives of the most celebrated pugilists; full reports of their battles from contemporary newspapers, with authentic portraits, personal anecdotes, and sketches of the principal patrons of the prize ring, forming a complete history of the ring from Fig and Broughton, 1719-40, to the last championship battle between King and Heenan, in December 1863,* vols 1-3 (Edinburgh: John Grant, 1906), vol. 3, frontispiece, depicting a sedate, orderly, 'balanced' contest of equals or the ideal pre-fight advertisement.

[12] J. Anderson, 'Pugilistic Prosecutions: Prize Fighting and the Courts in Nineteenth Century Britain', *The Sports Historian* 21/ 2 (2001), www.umist.ac.uk/sport; M. Gunn and D. Omerod, 'Despite the Law: Prize-Fighting and Professional Boxing', in S. Greenfield and G. Osborn, (eds) *Law and Sport in Contemporary Society* (London: Frank Cass, 2001), 21-50.

[13] D. Pick, *Faces of Degeneration: A European disorder, c. 1848-c. 1918* (Cambridge: Cambridge University Press, 1989); see generally M. Fitzgerald, G. McLennan and J. Pawson, (eds) *Crime and Society: Readings in History and Theory* (London: Routledge and Kegan Paul and Open University Press, 1985).

[14] Anderson (note 12); Gunn and Omerod (note 12); E.M. Million, 'The Enforceability of Prize Fight Statutes', *Kentucky Law Journal* 28 (1939), 152-168. Notably, little evidence of direct statutory or judicial suppression of prize-fighting exists in Australian or New Zealand legal records, although fight lore indicates occasional prosecutions for aiding and abetting by colonial police. See B. Petersen, 'Early Australian Audiences for Boxing', unpublished paper presented at the 14th biennial Australian Society for Sports History Conference, Australian Catholic University, July, 2003, documenting the fatal and 'clandestine' prize-fight between Alex Agar and James Lawson held at dawn on 17 April 1884 behind Sydney's Randwick racecourse. Agar was killed in an event witnessed by around 100 keen patrons, and Petersen provides evidence of four prosecutions laid against: '*tinsmith aged 23, laborer aged 24, no occupation 29, and no occupation period*'. A notable contributor to the racial climate of the sport in Australia was West Indian born heavyweight Peter Jackson. The bare knuckled Australian champion ventured to the United States as a viable contender for John L. Sullivan and stretched the ability of 'Gentleman' Jim Corbett after a closely fought sixty-one round draw, but the colour line ensured Jackson would die penniless, prematurely, and without world title glories. See P. Brooke-Ball, *The Boxing Album: An Illustrated History* (London: Hermes House, 2001), 26-27.

[15] Andre and Fleischer (note 10), 57-70; Brooke-Ball (note 14), 30-31.

[16] P. Myler, *Gentleman Jim Corbett: The Truth Behind a Boxing Legend* (London: Robson Books, 1998).

[17] D. Webb, *Prize-fighter: The Life and Times of Bob Fitzsimmons* (Edinburgh: Mainstream Publishing, 2000); P. Tobin, *Fitzsimmons: Boxing's First Triple World Champion* (Timaru NZ: D. A. Jack and C.P. Tobin, 2001). 'Ruby' Bob was born in England, raised in New Zealand, pursued early fighting success in Australia and subsequently ventured to the United States where he attained financial security in professional travelling sparring exhibitions before defeating Corbett for the world heavyweight title in 1897. Fitzsimmons proceeded to win the championship in two lower weight divisions before a permanent ban by the New York State Athletic Commission in 1914 due to age and ill health. See *Fitzsimmons v. New York State Athletic Commission et al.* (1914) 146 NYS 117-123; *Fitzsimmons v. New York State Athletic Commission et al.* (1914) 147 NYS 1111.

[18] Anderson (note 12); Gunn and Omerod (note 12).

[19] *Sullivan v. State* (1890) 7 S 275-278; *Sullivan v. State* 22 SW 44.

[20] *People v. Fitzsimmons* (1894) 1894 NYS 1102-1114; (note 10); W. Hechter, 'The Criminal Law and Violence in Sports', *Criminal Law Quarterly*, 19 (1976-77), 425-453.

[21] *People v. Corbett* (1922) 209 P 808-809 involving a prize-fight conviction under Colorado law.

[22] Anderson (note 12); *State v. Olympic Club* (1894) 15 S 190-199. None of the athletes listed in the 17 unlawful contests were charged. The State's claim failed at first instance but was overturned in an unreported appeal: see J.T. Sammons, *Beyond the Ring: The Role of Boxing in American Society* (Urbana: University of Illinois Press, 1988).

[23] Roberts (note 1); Andre and Fleischer (note 10). See also note 14.

[24] D. Streibel, 'A History of the Boxing Film, 1894-1915: Social Control and Social Reform in the Progressive Era', *Film History*, 3 (1989), 235-257 at 243, citing the landmark Supreme Court ruling in *Plessy v. Ferguson* (1896) 163 US 573 involving the rights of a Louisiana citizen 'of seven eighths Caucasian and one-eighth African blood' and no discernible 'mixture of coloured blood' to occupy first-class seats on the East Louisiana Railway: copy retrieved on http://caselaw.lp.findlaw.com, 25 May 2004, 1-14. See also D. Streible, 'Race and the Reception of Jack Johnson Fight Films', in D. Bernardi, (ed) *The Birth of Whiteness: Race and the Emergence of US Cinema* (New Brunswick: Rutgers University Press,

1996), 170-200.

[25] J.P. Green, 'Boxing and the 'Colour Question' in Edwardian Britain: The 'White Problem' of 1911', *The International Journal of the History of Sport*, 5/1 (1988), 115-119.

[26] R. Broome, 'The Australian Reaction to Jack Johnson, Black Pugilist, 1907-9', in R. Cashman and M. McKernan, (eds) *Sport in History: The Making of Modern Sporting History* (St Lucia: University of Queensland Press, 1979), 343-363, 352-353; Wells (note 7).

[27] A.T. Gilmore, 'Jack Johnson and White Women: The National Impact', *The Journal of Negro History* (1973), 21 citing *Police Gazette* quoted in *Minneapolis Tribune*, 10 November 1912, 7.

[28] Broome (note 26), 352-353.

[29] Streibel (note 24).

[30] L. Grievson, 'Fighting Films: Race, Morality, and the Governing of Cinema, 1912-1915', *Cinema Journal*, 38/1 (1998), 40-72.

[31] Gilmore (note 27); J. London, 'On the fight', in P. Corris and B. Parish, (eds) *Ringside: A Knockout Collection of Fights and Fighters: The Winners, The Losers, The Legends* (Sydney: Random House, 1996), 345-346.

[32] Roberts (note 1), 109.

[33] J. Johnson, *The Autobiography of Jack Johnson In the Ring and Out* (New York: Carol Publishing, 1992: 1927).

[34] I. Hodder, 'The Interpretation of Documents and Material Documents', and P.K. Manning and B. Callum-Swan, 'Narrative, Content and Semiotic Analysis', in N.K. Denzin and Y. S. Lincoln, (eds) *Handbook of Qualitative Research* (Thousand Oaks: Sage, 1994), 393-402 and 463-477.

[35] A. Hunt, 'Marxist Theory of Law', in Patterson (ed.) (note 8), 355-366.

[36] H. Asbury, *The Gangs of New York*, *An Informal History of the Underworld* (London: Arrow Books, 2002: 1927), 266-267. See also by the same author *The Gangs of Chicago: An Informal History of the Chicago Underworld* (London: Arrow Books, 2003: 1940), *All Around the Town: Murder, Scandal, Riot and Mayhem in Old New York* (New York: Thunders Mouth Press, 2003: 1929) and *The Gangs of San Francisco: An Informal History of the San Francisco Underworld* (London: Arrow Books, 2004: 1933).

[37] H. Asbury, *The Gangs of New Orleans: An Informal History of the French Quarter Underworld*, (London: Arrow Books, 2004: 1936), 12.

[38] *Caminetti v. US* comprising *Caminetti v. United*

States; Diggs v. United States and *Hays v. United States* (1917) 242 US 470 per McKenna J dissenting with Clarke CJ concurring, citing the legislative intention of the White Slave Act: copy retrieved on http://caselaw.lp.findlaw.com, 26 May 2004, 8-9 of 12.

[39] See USA Department of Justice, *Criminal Resource Manual*, s. 2027, www.usdoj.gov/usao, retrieved 8 June 2004.

[40] *US v. Bitty* (1908) 208 US 393, http://caselaw.lp.findlaw.com, retrieved 26 May 2004, at 2 of 4 citing the Act of 1907 amending the original law found in chapter 141, March 1875, 3d.

[41] *Johnson v. United States* (1914) 215 F 679-687, 683. Circuit Court Judges Mack agreed with Baker, and Seaman, the latter replacing Judge Kohlsaat to prompt a re-hearing as recorded in the transcript.

[42] *Johnson v. US* (note 41), 682, per Baker CJ.

[43] *Johnson v. US* (note 41), 681, per Baker CJ.

[44] *US v. Bitty* (note 40).

[45] *US v. Bitty* (note 40 at 4 of 4).

[46] *Hoke v. United States* (1913) 227 US 308, http://caselaw.lp.findlaw.com, retrieved 26 May 2004, 4 of 6.

[47] *Wilson v. United States* (1914) 232 US 563, http://caselaw.lp.findlaw.com, retrieved 26 May 2004.

[48] *Caminetti v. US* (note 38).

[49] *Althanasaw v. United States* (1913) 227 US 326, 2 of 4, http://caselaw.lp.findlaw.com, retrieved 26 May 2004.

[50] Sammons (note 22), 40-41, references omitted.

[51] Streibel (note 24); Grievson (note 30). The famous inventor was also instrumental in developing humane electric technologies for inducing death: see M. Essig, *Edison and the Electric Chair* (Melbourne: Penguin, 2003).

[52] Roberts (note 1); Sammons (note 22); Streibel (note 24); Grievson (note 30); E, de Grazia and R.K. Newmann, *Banned Films: Movies, Censors and the First Amendment* (New York: R.R. Bowker Co, 1982).

[53] Johnson (note 33), 200.

[54] *Weber v. Freed* (1915) 239 US 308-310, 310 per White CJ.

[55] Streibel (note 24); *Weber v. Freed* (note 54).

[56] *Kalisthenic Exhibition Co. Inc. v. Eammons (collector of customs) #1* (1915) 225 F 902-905, 903.

[57] *Kalisthenic Exhibition Co. Inc. v. Eammons (collector of customs) #2* (1916) 229 F 124-127 per Putnam J., 125 and 126.

[58] Sammons (note 22).

[59] Sammons (note 22), 45, references omitted.

[60] Grievson (note 30), 41.

[61] Streibel (note 24).

[62] Streibel (note 24). Streibel's combined works indicate the production of fake fight films served various purposes along with the subversion of legal measures aimed at regulating the entertainment industry. Ultimately, economic incentives were a principal rationale for this innovation, but audiences became wise consumers, and the blurred distinction between real and faked images equally diminished the commercial value of any originals in circulation within the United States black market film industry.

[63] *United States v. Johnson et al* (1916) 232 F 970-978 per Ray D.J., 975-976.

[64] *Mutual Film Corp v. Industrial Commission of Ohio* (1915) 236 US 230, http://caselaw.lp.findlaw.com, retrieved 6 May 2004, 1-8, 6 per McKenna J on behalf of the court.

[65] *Grievson (note 30).*

[66] *US v. Johnson et al* (note 63).

[67] *Million (note 14).*

[68] *Commonwealth v. Mack* (1905) 73 NE 534-535; Million (note 14).

[69] *See Streibel (note 24) and Grievson (note 30).*

[70] *Kalisthenic Exhibition Co #2* (note 57).

[71] *Johnson (note 33), 201.*

[72] *Broome (note 26); Wells (note 7).*

[73] *Johnson (note 33), 123-139.*

[74] http://www.famoustexans.com/jackjohnson.htm, accessed 27 May 2004. For a wonderful literary depiction of the racial character of the twentieth century battle royale in the United States deep south see R. Ellison, *Invisible Man* (London: Penguin, 1965: 1947), 19-32.

[75] *Weber v. Freed* (note 54), 309 citing arguments endorsing prize-fight film prohibitions.

[76] *Johnson v. US* (note 41), 683 per Baker with Kholsaat and Mack in agreement defining the proof required to sustain a conviction under the Mann Act, 1910.

See Rex and Mason, (eds) (note 9).

[77] *Corpus Juris Secondum*, 15, ? 68, 632, references omitted, citing *Weber v. Freed* (note 54), *US v. Johnson* (note 63); *United States v. Wilson et al.* (23 F 2d 112) and *Kalisthenic Exhibition Co v. Eammons #1-2* (notes 56-57). See also 864-866 of the same volume.

[78] *Corpus Juris Secondum*, (note 76), 25, ? 30, 234-237.

[79] *Consolidated Amusements Inc. v. Gober* (1927) 22 F 2d 296-298; *Cullen v. Esola et al.* (1927) 21 F 2d 877-880; *United States v. Wilson et al.* (note 76); *Atlanta Enterprises Inc. v. Crawford et al.* (1927) 22 F 2d 834-837; *In re. Film and Pictorial Rep. of Dempsey-Tunney Fight* (1927) 22 F 2d 837-840; *Rose et al. v. St Clair* (1928) 28 F 2d 189-192.

[80] *Dane v. United States* (1927) 18 F 2d 811-813 involving a federal prosecution in Washington DC; *Noall v. Dickinson et al.* (1930) 292 P 219-220.

[81] See generally L.T. Beman, *Selected Articles on Prohibition: Modification of the Volstead Law* (New York: H.W. Wilson Company, 1924); J. Dos Passos, *USA* (London: Penguin, 1966) and *Midcentury* (Boston: Houghton Mifflin, 1961).

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[83] See *Dunbar v. US* (1895) 156 US 185; *Brolan v. US* (1915) 236 US 216, http://caselaw.lp.findlaw.com, retrieved 26 May 2004.

[84] *Reid v. People of State of Colorado* (1902) 187 US 137, http://caselaw.lp.findlaw.com, retrieved 26 May 2004, 1-9.

[85] *Champion v. Ames* (1903) 188 US 321, http://caselaw.lp.findlaw.com, retrieved 26 May 2004, 1-20.

[86] *Hammer v. Dagenhart* (1918) 247 US 251, http://caselaw.lp.findlaw.com, retrieved 26 May 2004.

[87] Taken from D. Foster Wallace, *Brief Interviews with Hideous Men* (London: Abacus Books 2000).

[88] See Grievson (note 30); *Mutual Film Corp* (note 64).

[89]See *Roth v. United States* (1957) 354 US 476, http://caselaw.lp.findlaw.com, retrieved 26 May 2004, 1-21.

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