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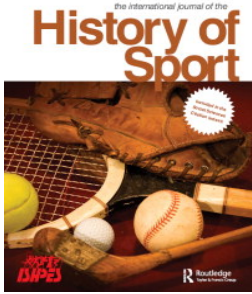
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## Umpires, Referees, Judges and Stewards: Changing Modes of Judgment and Arbitration in English Sport c.1600–c.1900

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## Umpires, Referees, Judges and Stewards: Changing Modes of Judgment and Arbitration in English Sport c.1600–c.1900

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### ABSTRACT

This paper explores the way arbitration approaches developed through the first four stages of rule development, focusing in turn on the ways the popularity of wagering first created more need for formally signed ‘articles of agreement’ for each match, and then the inclusion of arbitration and judgement methods in the emerging early forms of rules. It then shows the way various official roles evolved over time alongside broader rule developments: the need for ‘umpires’ in cricket, pugilism, and some other sports; the role of ‘tryers’, ‘judges’ and ‘stewards’ in horse racing; arbitration through expertise, experience, and status in cockfighting; and the rare attempts to take appeals beyond the immediate game. It then explores how these official roles developed from the early nineteenth century onwards, as national organizations grew in power, and how a new role, the neutral ‘referee’, was created to arrive at a solution when umpires or others disagreed. Changes in later nineteenth-century rugby and soccer illustrate the way the then new forms of football followed earlier processes in moving towards more neutral forms of arbitration.

### ARTICLE HISTORY

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In scholarly work on the history of sport, the evolution of British sports’ internal practices, and the centrality of competition rules and order to their cultures, have often been major themes.<sup>1</sup> A major contribution was made by Wray Vamplew, in a 2007 paper detailing the historical process of rule development in British sport through seven stages.<sup>2</sup> But while standard works on specific sports have often discussed the theoretical and practical emergence of rules in much detail, the focus has commonly been the details of prescriptive and proscriptive rules, such as required equipment and facilities, the formal rules of play, eligibility, and contestants’ behaviour.

In stark contrast, reference to the evolving emergence over time of ‘control agents’ (the arbitrators of the rules, the officials such as referees and umpires whose role was to enforce adherence to the rules of the game and the ways it should be played) has attracted only limited interest and research, largely focused on the modern period.<sup>3</sup> Vamplew’s paper, like others, paid little attention to the roles of those involved in

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arbitrating the rules of sports. Yet over time on-field arbitration over key decisions in competitions has always mattered, affecting the way players and spectators view the game, and has regularly led to discussion and debate, making arbitration a potentially key aspect of the rich field of rule development. This has made it the more surprising that the standard work on eighteenth-century cricket, for example, has no index reference for umpires, despite their importance. A recent cultural history of sport during the Enlightenment similarly did not address the topic.<sup>4</sup> Even standard overviews of nineteenth-century soccer history tend to skip over this process in a couple of paragraphs.<sup>5</sup>

This paper therefore makes its major contribution by tracking the development of the key roles of judges, umpires, and referees in sport, and their approaches to sport arbitration over the period c.1600 to c.1900, something neglected in previous studies of rule development. Such initial exploration of the topic could encourage future debates, and allow further in-depth research, since for reasons of space it can cover only a range of the more popular and commercialized sports of the time.

During these periods, rules more generally were moving, according to Vamplew's model, through four stages:

1. One-off rules for head-to-head contests individually negotiated.
2. Rules for head-to-head and all-comers contests using common features.
3. Rules for contests using standardized rules.
4. Codification of rules by 'national' authorities.

This paper focuses in turn on the ways the eighteenth-century popularity of wagering increased the need for more neutral arbitration; the emerging role of 'umpires' in cricket, pugilism, and some other sports through these early rule stages; the emergence of 'tryers', 'judges' and 'stewards' in horse racing; arbitration through expertise, experience and status in cockfighting; and the rare attempts to take appeals beyond the immediate game. It then moves on to the ways these roles developed in the nineteenth century as national authorities slowly gained in authority, particularly examining the emergence of 'referees' in later nineteenth-century rugby and soccer. This illustrates the way the then new forms of football followed earlier processes in moving towards more neutral forms of arbitration.

An attempt to find neutral officials to give the impression of fairness and avoid potential bias can of course be perceived in contests even in the medieval period across many societies, although detailed study is beyond the scope of this paper. Contests needed judges, but how judging was arrived at was always embedded in culture. Arbitration in medieval jousting and tournaments was highly complex, with spectators often involved. To cite just one example, in the formally laid down statutes of tourney and jousting in the Order of the Band, in c.1330, the appointed judges made their decisions by convening with each other and the spectators, and polling the knights, squires, ladies and damsels who were there, and only then made their judgements on the basis of what the judges themselves saw, taking into account what these other higher-status men and women told them.<sup>6</sup>

## The Role of Wagering in Driving the Need for Arbitration in Eighteenth-Century British Sport

In his recent studies of the eighteenth century, leading leisure historian Peter Borsay has argued that there has been a shift of academic interest from the earlier Marxist-influenced studies of 'popular', 'working-class' or 'mass' leisure towards an often Bourdieuan interest in the leisure culture of 'elites', alongside a recognition of their sporting involvement in gambling and commercial sport, a response to market conditions stimulated by the growing availability of surplus income.<sup>7</sup> Such wagering gave an impetus to the appointment of officials to arbitrate decisions and related wagering issues.

Competitive elite sports did not always need some form of arbitration, relying on the assumption that both individuals/sides would play fairly. When the first known Rules of Golf were drawn up in 1744 in Edinburgh for the world's first 'open' golf competition at Leith by the Gentlemen Golfers of Edinburgh, the assumption was that players played their ball 'honestly for the Hole'. Later rules of golf, when published from the 1790s, make no mention of any need for arbitration.<sup>8</sup>

But during the eighteenth century many sports, increasingly commercialized, increasingly attracted substantial and ever-growing cross-class betting, a feature which Mike Huggins has argued to be a major driver of sport's spread.<sup>9</sup> Gambling, alongside the emergence of capitalism, greater recognition of market forces in commerce, and ever more sophisticated forms of financial exchange for which wagering offered an ideal training ground, lay at the heart of the major commercial sports. Gamblers wanted to be sure that they had a chance of winning, and that meant rule clarity, ways of enforcing them and arbitrating potential disputes, and officials who could act in a more neutral way.

With far more betting interest, and money at risk, there was ever-increasing pressure for officials to be found to ensure rules were applied. Such moves emerged in the wider context of the sports such as horse racing, cricket or pugilism which flourished in the emerging world of a consumerist society, and their accompanying commercialized eighteenth-century leisure patterns.<sup>10</sup> As Vamplew has recently re-emphasized, people were willing to pay to play and watch sport; there were growing numbers of professional sports persons; and sporting events with ancillary facilities were promoted by innkeepers and others.<sup>11</sup> With the widespread fashion for wagering, popular not just amongst the elite but also the middling and some even lower in status, earlier sports such as cockfighting attracted new interest.<sup>12</sup> New forms of competition began to emerge.<sup>13</sup>

Regular newspaper reports, including both advertising and results, helped sports to become part of a new leisure industry, while horse racing broke new ground with the appearance of specialist periodicals. For the social and political elite, honour code and personal pride insisted that challenges should be met, and their wagering dramatized status and conspicuous consumption. Sports such as horse racing, cricket, and pugilism became more intricately linked with urban and rural elite consumerism, sociability, civility, and commercial recreation. Such sports were in a phase of transition, increasingly well-regulated and organized. English 'society', the titled and gentry group, might avoid being tainted by trade, but their involvement in sport had many

of the same contractual features. Wagering demanded competitive skills, ruthlessness, and self-interest. When head-to-head wagers were entered into, they were individually negotiated, and explained in some detail. Payment came later, as bets were credit bets.

But while honour might expect losing wagers to be paid, the most solid plank in eighteenth and early nineteenth sport was not 'fair play', or honour, but the law of contract, something that has been under-emphasized in the study of sport. In sports involving wagers, drawing up the wager in legal form was the key, especially when gambling was a major motor of sports' development.<sup>14</sup> At this early stage, motivations associated with wagering rather than concerns to suppress violence were the prime reason for creating rules. In horseracing, for example, jockeys at many meetings were not prohibited from crossing, jostling, and striking other jockeys for much of the eighteenth century.<sup>15</sup>

In all these sports, there was some reliance on honour, civility, and worldly sociability in rule observation. But there were also the potential winnings, personal sensitivities and rivalries, and preoccupation with status and position, that made disagreements possible. Honour was an intangible commodity, and in wagering, with its links to contemporary business economics, finding ways to alter the sporting odds to gain financial benefit was an acceptable practice. Even in the early 1700s, high status Newmarket races were notorious for 'the many subtleties and tricks that are used in making a match, the craft of the betters, [and] the knavery of the riders.'<sup>16</sup> Recent studies of match-fixing have shown the complex relationships between key figures in the sport, professional competitors, and manipulations of the betting market. In horse racing, for example, many racehorse owners claimed the right to run their horse as they liked, to win or not.<sup>17</sup> Most insiders were aware that an unknown proportion of contests might be fixed, but even if one was discovered they might well back the expected winner rather than expose the fraud.

Wagering played a central role in the formalization of sports, pervading nearly all aspects of rules and standards. For the numerate gambler, there were increased guides to the use of probability theory to assess odds, like Charles Cotton's *The Compleat Gamester* (1674) or Edmund Hoyle's *Essay on How to Make the Doctrine of Chances Easy* (1754). The morally acceptable level of manipulation of odds, by exploiting the contract's terms, and sometimes pressuring contestants too, quickly became problematic, since exploiting any weakness appeared a sensible strategy. The introduction of new rules about adjudication was often to prevent gamblers disputing and exploiting any earlier weaknesses in the construction of articles. At Ludlow in 1844, for example, new rules were constructed to make more certain that horses entered for hunters' races had only been used for hunting and not for horse racing. At Newmarket by the 1770s the Jockey Club fined jockeys five guineas if they deliberately delayed a start of a race. Previously if their horse had problems jockeys gained time to signal the owner to lay off any money and make fresh bets.<sup>18</sup>

Contractual regulation of wagers, including dispute resolution, made sense. So, it was common for costly wagers on a competitive match to be regulated by 'articles of agreement'. These were legal devices which were already regularly drawn up by notaries and lawyers for transactions concerning a range of topics including lands, buildings, or business, setting out the core terms of an agreement, and negotiated,

concluded, agreed upon and signed by both parties. Their application to sports wagering set out to ensure that the terms and conditions of the match and its funding wagers were clear and could not be exploited, and to make wagering more certain. In part they acted as potential rules, though much here remained a tacit understanding. More was contractual: the place, time, individuals involved, the monetized stakes to be played for, penalties for failure to take part, and so forth. The signatures of the parties concerned legally bound them to this formalized agreement. The tighter the articles, the less latitude there was for any exploitation by cunning gamblers. Initially these articles applied to a specific match and had no wider impact.

'Articles' often also addressed ways of resolving or arbitrating disputes. In all early sports, disputes were problematic. The large amounts of money wagered on contests meant that disputes concerning wagers, especially when unpaid because of disagreement, were relatively common and had potential for violence or legal action.

### The Need for 'Umpires' in Cricket, Pugilism and Other Sports

In cricket, articles of agreement, concluded July 11, 1727, were signed by Charles Lennox, the 2<sup>nd</sup> Duke of Richmond, and Mr. Brodrick, for two cricket matches.<sup>19</sup> The two matches were to be played upon, and determined by, the sixteen rules laid down in the Articles. Two of the rules focused on the application of the rules by 'umpires', early arbitrators of the game. Rule Eleven said that:

there shall be one Umpire of each side; and that if any of the Gamesters shall speak or give of their opinion, on any Point of the Game, they are to be turned out, and Voided in the Match; this not to extend to the Duke of Richmond & Mr. Brodrick.

Rule Twelve said that if

any Doubt or Dispute arises on any of the aforemd (*sic*) Articles, or whatever else is not settled therein, it shall be determined by the Duke of Richmond & Mr. Brodrick on their Honours; by whom the Umpires are likewise to be determined on any Difference between Them.

What did this term 'umpire' mean to contemporaries? It was a legal term already in widespread use in the early Stuart period. In one 1606 dictionary it was defined as one 'chosen by compromise to deal indifferently between two parties.'<sup>20</sup> In common law, by the early 1700s the term 'umperage' was used in legal arbitration cases, to determine matters in controversy, especially in commercial cases. Each party would submit a case and then use discretion to choose an arbitrator who should make decisions 'according to their own minds whether they be matters of law or fact.'<sup>21</sup> Where all matters in dispute were still undecided the arbitrators would together nominate an umpire to make a final decision.

The earliest articles for cricket imply that it was already understood that there was sometimes a need for arbitration. But in sports of the time, including cricket, this was not initially a private action, but a public one, at the match, watched by the spectators and teams and perhaps heard too. The introduction of umpires allowed some element of control over matches, by attempting to ensure that a contest was properly managed, and the rules observed.

What seems clear is that before these early games started each cricket side would select an umpire to act as arbiter. Various sets of rules issued through the eighteenth century by different clubs made the role of umpire slowly clearer. By a published set of laws in 1744 'as settled by the Several Cricket-Clubs, particularly that of the Star and Garter in Pall-Mall', the role of umpire was becoming clearer, at least in London. Umpires were allowed a certain amount of discretion in their judgements, and the 'umpire' was the sole judge 'of all ins and outs, of all fair and unfair play or frivolous delays, of all hurts real and pretended' and that 'his determination shall be absolute'.<sup>22</sup> Further revised laws reemphasized their role, whilst throughout the century also including material on bet adjudication. On Friday, February 25, 1774, the Laws were revised by a committee meeting at the Star and Garter: 'umpires are the sole judges of fair and unfair play, and all disputes shall be determined by them'.<sup>23</sup> In 1788 the cricket club at Mary-le-bone (the future MCC) produced laws emphasizing yet again that 'the umpires are the sole judges of fair and unfair play, and all disputes shall be determined by them, each at his own wicket', albeit still with a large section still on wagering issues.<sup>24</sup>

How far players and teams accepted umpires' judgements is unclear from surviving reports. With money at stake, and an umpire chosen by his club, it was more difficult for all umpires to make an unbiased judgement. Not all players wanted the decisions of an umpire of honest, honourable integrity. Umpires might be over-loyal to their club. They might have made bets that influenced their decision. There could be elements of collusion. The other side might reject an honest decision. The process of appointing umpires meant each team might have their own biased ones of doubtful integrity, and arbitrators were subject to the pressures of gentlemanly opinion, their own sides, and the pressures of gamesters backing a team. Letters to regional newspapers often reveal the pressures they were under. In 1778 at Norwich the 'umpires' (sic) of the opposing team, Yarmouth, refused to play on what they believed was too unsuitable a pitch for their team.<sup>25</sup> In Essex, following a return match between Coggeshall and Maldon, after Coggeshall had paid a 'handsome sum of money' after losing the away game, they were winning at Maldon when Maldon refused to 'abide by the decision of the umpire'.<sup>26</sup> The 1793 rules, published in the popular *Sporting Magazine*, an indication of the MCC's growing power, restated that 'the umpires are the sole judges of fair and unfair play, and all disputes shall be determined by them, each at his own wicket'. They were to judge on issues of timekeeping, catches, replacements, no-balls, but needed an appeal from the opposing side to decide giving out. Over time the MCC rules began to be clearer about the need for integrity. By the 1810s they emphasized that 'the umpires should be disconnected with either party and uninterested in the game ... to whom all disputes should be referred, and their decision acted upon; hence it is obvious that such umpires must be men of integrity and well acquainted with the game'.<sup>27</sup> By this time, articles of agreement, the conditions under which a match took place, sometimes made reference to the printed rules. For example, the conditions for a match between the All-England team and the Nottingham Cricket club, signed on August 1, 1818, eleven against twenty-two, emphasized two 'gentleman umpires' and that 'the match be played according to the last made Mary-le-bone rules'.<sup>28</sup>



With only two umpires, arbitration was difficult, and a third person could occasionally be needed. At a 1773 match between Melton Mowbray and Syston, an umpire at the wicket gave a man run out and there was a dispute. Before the match a clergyman was unanimously chosen by both parties before the game began as an arbitrator between the umpires if a dispute arose but said he had not seen it so decision should rest with the umpire and ‘this decision thereupon must be absolute.’<sup>29</sup>

Boxing followed a similar approach. Boxing pioneer Jack Broughton introduced a set of seven rules in 1743 for bouts at his amphitheatre in Tottenham Court Road. He had apparently taken ‘the advice and approbation of the amateurs’ amongst his following, and his rules to be observed in all battles on the stage seemed to form the basis of most major contests for over a hundred years. Rule VI stipulated:

That to prevent Disputes, in every main Battle, the Principals shall, on coming on the Stage, choose from among the gentlemen present two Umpires, who shall absolutely decide all Disputes that may arise about the Battle; and if the two Umpires cannot agree, the said Umpires to choose a third, who is to determine it.<sup>30</sup>

Sword fighting was then going out of fashion but was still attractive to gamblers. At a 1751 fight upon which ‘great bets’ were depending, to prevent disputes on stage, three ‘gentlemen’ were to be appointed as umpires to determine each of the nine bouts involved.<sup>31</sup>

Even though Broughton’s rules were drawn on, the actual articles of agreement remained important. The articles of agreement might be signed at a boxer’s home, or to boost attendance they might be signed at a tavern or public house.<sup>32</sup> When Johnson fell without a blow in a match against Perrins in 1789 the umpires decided that this was allowable as the Articles did not forbid it.<sup>33</sup> Articles of agreement for pugilistic contests, or extracts from them, were still regularly published in the press, often beginning ‘the following articles of agreement.’<sup>34</sup> Generally, later eighteenth and early nineteenth century accounts of major fights in Oxberry’s *Pancratia* (1812) or Pierce Egan’s *Boxiana* (1824) suggest that each boxer or his patron chose an umpire to represent them. Sometimes at least these men were socially higher in status: perhaps titled, military or aldermen, although other pugilists occasionally took up the role.

This choice was often at the fight itself, to ensure they would be present. In the articles of agreement for a fight between Gully and Gregson made in London in December 1807 they agreed ‘three umpires to be chosen on the ground, viz 2 and one in reference’. In a letter to the *Morning Post* in December 1814, a celebrated pugilist of the time, John Jackson (1768–1845), argued that ‘no decision can properly be given on the subject of any pugilistic contest, except by the umpires appointed on such occasions’ so ‘bets cannot be set aside without their concurrence.’<sup>35</sup> Umpires often acted as timekeepers too. Jackson himself sometimes acted as stakeholder for other pugilists’ fights, and appointed officials. In 1813 he appointed ‘a third umpire, as referee, whose decision shall be final.’<sup>36</sup>

Another martial sport, wrestling, followed a similar pattern. In wrestling practiced in Cumberland and Westmorland, according to ‘old established custom,’ the umpire was normally chosen by a majority of those who provided the prize money for the elimination/knockout competitions common in the region. William Litt, writing in 1823, spelled out what he saw as the criteria: not only competent knowledge of wrestling, but impartiality,

equanimity of temper, sound, speedy and determinative judgement. He felt that one umpire was enough but accepted some competitions had two or three.<sup>37</sup>

Other sports also introduced umpires. Foot-racing, with a clear finishing point, often allowed a crowd judgement, but with close finishes, and money at stake, had introduced umpires by the early nineteenth century. 'An independent gentleman' acting as umpire was mentioned in a *Sporting Magazine* report in 1801.<sup>38</sup> A close-run race in 1809 had two umpires, but while one awarded the race to the runner whose foot he believed was 'the first over the line', the other umpire 'from the pressure of the crowd, was driven from his post, and could not say which won the heat'. There were arguments in the crowd about whether bets should be paid, and finally all bets were declared off.<sup>39</sup>

### Horse Racing: Judges and Stewards

Horse racing had a long history of articles of agreement. Primitive agreements for a match between two owners were already being made and signed in the early 1600s.<sup>40</sup> Yorkshire's Kiplingcote fourteen articles of agreement date from 1619, although the course was of much earlier date.<sup>41</sup> A very lengthy set of articles of agreement between the Mayor and Corporation of Salisbury and Sir Edward Baynton to establish an annual horse race there survives from 1654.<sup>42</sup> By the early 1700s, articles of agreement about the running of races were laid out in full in newspaper advertisements for a race, or referred to as 'made available', perhaps to be signed when the horses were entered, as at Killingworth and Newcastle in 1721, or Wellington in Shropshire in 1723.<sup>43</sup> That race horse owners or their representatives at many meetings just had to sign them when they entered horses before the race, suggests a widespread understanding of their content and nature, and that they were easily available to read. At Newmarket, around 1750, John Pond's *Sporting Kalendar* noted that its account of matches at Newmarket was based on the articles 'deposited there, in the hands of Mr. Harrison, who is appointed to take care of them'.

Horse racing had a range of different types of races: related to age, weight, height, distance, racing success, and so on. More standardized articles for conditions of a particular type of race emerged slowly in attempts to eliminate potential conflicts. Sometimes they also specified which racing rules they would follow, so they might specify the races to be run 'in the Royal manner' and 'subject to articles produced at the meeting'. This led to a slow process of standardization. As other meeting organizers saw them in print, or visited meetings nearby and modified their articles appropriately, articles became more formalized. Standard articles for conditions running in the Royal Plates were provided in Cheny's *Historical List of Horse Races* in 1749. John Pond, in *The Sporting Kalendar*, provided 'Rules for horse racing in General' by 1751, although these were probably of earlier date, and later added rules and orders of the Jockey Club and a standard pattern article for making a Newmarket Match. James Weatherby's *Racing Calendar* from 1772 included rules and orders of the Jockey Club as well as articles for a match, King's Plates, and the Newmarket Cup.

Even early articles had rules relating to decision-making: how to decide who had won, and how any disputes might be arbitrated and resolved. Articles of Kiplingcotes,

Yorkshire, race in 1619, implied that the owner of every horse that ran should 'have his judge or trier' and the stake-holding course clerk should receive 'a record from the judge [of] every horse's place at the end of the course'.<sup>44</sup> The role of 'judge' was widely understood in civil society. At the assize courts in county towns, judges conducted trials dealing with serious criminal offenders and civil disputes, with the assistance of jurors. County towns often laid on horse races after the assizes, so it was unsurprising that the role of judge, situated at the winning post, to determine the placings of horses at the finish appeared early. The Newmarket Town Plate articles of 1666 mentions 'judges' who are 'to be selected by the major part of the contributors that are there present' and then stated that 'any difference shall be about riding for this plate, which is not expressed in these articles, it shall be referred to the noblemen and gentlemen which are then present, and being contributors'.<sup>45</sup> Here contributing to the funding allowed involvement in decision making.

During racing's earliest stages, owners rode and raced against each other, deciding the result between themselves, which they continued to do when watching their grooms riding. Once owners were not always present in person, they needed other ways of settling placings and resolving disputes. At many northern English racecourses in the decades around 1700 each horse's owner chose a 'tryer' to represent him as judge and dispute settler, and check that all articles had been observed. Dispute methods evolved over time. At Manchester in 1738 its articles allowed 'disputes to be determined by the majority of subscribers' contributing to the race fund, following 'unfair and scandalous methods' used by two Cheshire owners to 'evade the plain meaning' of the articles the previous year.<sup>46</sup> The process, as with sports such as cricket, could be a very public one, on the course, in the open air, although the contributors might have been assembled in a higher temporary judge's stand and viewing point at the finishing post. Generally, money talked. It was amongst those who contributed to the annually collected race fund, or to specific races, that a majority view usually emerged. If it was a 'county' meeting, it might be the county gentry attending who decided. This became less common later in the century, although Ascot in 1784 still had disputes determined by the vote of the subscribers attending. If a leading local magnate made major contributions to the race meeting, he might claim the right to settle disputes, or choose an appointee, a representative to do so.

At some courses there could be different forms of dispute settlement for each race, dependent on the articles. At some courses 'stewards' had an official position, settling disputes, offering oversight over the race week, appointing officials, and controlling funding. In broader society, stewards organized and chaired a variety of social functions or looked after gentlemen's estates. Race stewards were generally men of status and position, chosen annually at the previous meeting by subscribers, gaining kudos and social, political, and other opportunities from the role, but usually expected to encourage subscriptions and cover any deficits. At Thetford in 1698 a single steward was responsible for selecting two judges.<sup>47</sup> References to single stewards survive from early in the 1700s at some northern and eastern racecourses. When the Jockey Club revived Newmarket racing in the early 1750s Lord Harrington was made steward, collecting money, judging ages, and placing horses for specific races. Lichfield already

had two stewards in 1748.<sup>48</sup> By the 1760s many meetings likewise appointed two stewards, perhaps to increase revenue stream. In the 1770s the Jockey club at Newmarket had three stewards, with limited tenure, chosen by lot, with a senior steward. They managed the racing but also determined disputes, alongside two ‘referees’ chosen by the parties concerned.<sup>49</sup>

With so many wagers made between the county titled, the gentry, and wealthy urbanites judgement about a race result could be difficult with a close finish. At Durham in 1733, which had six ‘tryers’ in the judges’ box, three awarded the race to one horse and three to another.<sup>50</sup> At Newmarket, the most high-status racecourse of the time, with up to six or seven meetings a year, rather than the single race week elsewhere, the Jockey Club began to appoint a single judge at some date in the 1750s. It appears that increasingly judges were chosen by the steward.

Judges were drawn from the middling group in society, and required to act alone, even though a single judge was vulnerable to accusations of bias. In the famous 1750 carriage match at Newmarket there were three ‘umpires’ who judged distance and time, but it was William Deard, the coffee house owner and London toymaker, who acted as judge, as well as ‘keeper of the match book’, and he also did so for races there in the 1750s.<sup>51</sup> At Epsom in 1754 the appointed judge was a local linen draper, and when his judgement was questioned he was forced to swear an affidavit that he was sure of his judgement, had no bets depending and had gained no advantage from it.<sup>52</sup> The *Racing Calendar* of 1770 mentioned that ‘two judges’ decided at Newmarket, but from then on its orders began referring consistently to ‘the judge’. Deard was followed by John Hilton, general overseer and collector of taxes at Newmarket, and in time he also judged at Epsom and Bibury. His obituary stated that he was ‘greatly and justly esteemed by all ranks on the Turf, being a man of inoffensive manners and strict integrity.’<sup>53</sup> Henry Warner also served as judge around this time, until his death in 1793.<sup>54</sup> By the 1780s there were single judges at other high-status courses such as York, Doncaster, and Nottingham, and this soon became the general pattern.

### **Cockfighting: Arbitration through Expertise, Experience, and Status**

Cockfighting matches, like the other sports above, arranged its major contests, the ‘mains’, through articles of agreement, which sometimes survive in county archives.<sup>55</sup> By later in the eighteenth century, approaches had become more standardized and available in magazines such the *Sporting Magazine* or James Weatherby’s *Racing Calendar*, and rules were variously referred to as ‘practiced in London and Newmarket’, where horse racing and cocking attracted Jockey Club members, or ‘the cock-pit Royal Westminster’. But there was no leading organization, and whilst the sport was a national one, it operated at local and regional levels. Articles were more concerned with practical matters than rules.

There were already cockpits in London in the Tudor and early Stuart period, attracted by its drama, violent gladiatorial battles, the opportunities of wagers, and wide appeal across social boundaries. Public interest, organization and structure grew from the accession of Charles II, who followed the activity. In the context of the

cockpit, with the centrality of wagering before and during a match, there was clearly a need for rules and arbitration. The published rules that survive varied to a certain extent, though with some common features, and seem to have been already widely understood and followed in particular areas. In a County Durham court case at the Exchequer in 1746 arguing over the application of cockfighting rules, when questioned, one cock-feeder said he had known the rules 'many years past' and quoted both the 'long rule' and normal rule versions. Another experienced witness claimed 'that the rules, orders, and methods of cockfighting was truly observed' and that they were the same rules by which all mains were determined wherever 'he, this deponent, hath in any manner been concerned', and a third said the match had been fought 'according to the usual and known rule'.<sup>56</sup>

In this case the evidence was given by witnesses who had experience of rule application, but in 1749 John Cheny, in his *Historical List of Horsematches Won* also provided eighteen detailed rules of cocking, including rules about control and adjudication, since cockfights were often a feature of major horse race meetings like Newmarket. In matches the Masters of the Match were in charge; the Master of the Pit allocated seating according to status; while 'all controversies that arise ... shall be determined by the Master of the Pit where the said controversy did arise with six or four of the ancient and best experienced gamesters there being called by the consent of both parties, to assist him'.<sup>57</sup> Here there were no umpires. Any arbitration drew on those with earlier experience of the rules.

Over time arbitration, at least as reported in leading 'mains', became clearer. Only five years later, in 1754, John Pond's *Sporting Kalendar* provided rules of cocking that said matches were run by Masters of the Match, with help from 'person appointed by the masters to tell the law', and 'it is recommended that all disputes be finally determined by the Master(s) of the Match and two other gentlemen that they shall appoint, and in case they cannot agree, then they four to agree on a fifth whose determination shall be final'.<sup>58</sup> Such judges were vital to the success of a well-run main. A 1754 handwritten set of rules used at the prestigious St James Park cockpit in London has nineteen rules, some covering more formalized betting, and there was a Master, chosen by ballot, and two wardens who had to agree the result.<sup>59</sup> In 1757 an advertisement for a main in Dudley, which offered silver plate instead of guineas claimed to follow 'the common rules of plate fighting'.<sup>60</sup> In the later eighteenth century, printed rules were more focused on the formal procedures of the cock-fighting mains, and made no mention of arbitration issues, or individuals chosen to adjudicate. Instead, they went back to a recognition of the crowd's judgement, the gamesters involved. Those printed in the *Sporting Magazine* in 1792, for example, argued that 'all disputes about bets or the battle being won or lost should be decided by the spectators'.<sup>61</sup> The reasons for this remain unclear, since whilst appearing democratic, crowd decisions had been left far behind by other sports, almost certainly because crowd pressure, potentially influenced by local, regional, ethnic or class loyalties and betting patterns, could lead to clearly biased decisions. Cockfighting had no emerging overarching organization like the Jockey Club. It struggled to survive against growing public opposition.

## Taking Appeals Further

Taking appeals further in a period well before the emergence of ruling bodies, usually meant going to law. In horse racing, studies of the Jockey Club show it had little influence in the eighteenth century beyond its immediate jurisdiction, although it did control Newmarket races, and its rules were regularly published.<sup>62</sup> In cricket, in 1816 one leading player pointed out that there were many 'respectable' cricket clubs in the counties outside London, and though the Mary-le-bone cricket club had members of the 'highest class' at Lords, it had no wider control except through its role in issuing the 'laws of cricket, alterations and corrections' which other clubs could choose to follow.<sup>63</sup> Pugilism likewise had no ruling body, and no control over rules, though the Pugilistic Club, formed circa 1814, with a membership of around 120 noblemen, gentlemen, and leading pugilists, collected subscriptions to fund contests and attempted to expose the regular 'crosses' (match-fixing).<sup>64</sup> Cockfighting had recognized rules, and was a well-organized, structured sport, but had no centralized body.

Going to law was costly, outcomes unsure, especially if judge and jury knew little about the sport, and such appeals were very rare. There were occasional appeals to the leading clubs. In one 1788 case, in a match between Leicester and Coventry, the Leicester captain, when losing badly, cursed his own umpire, who left the field, and on the second day was replaced by a man of reportedly 'less integrity'. After a further dispute when the Coventry umpire gave a man out for playing the ball twice, the game was postponed to obtain a higher judgement from the MCC, who judged the batsman not out, but after playing some further time the Coventry team refused to continue and left the ground, and the stakeholder, looking at the written articles of agreement paid the stakes over to Leicester.<sup>65</sup> Appeals to the Jockey Club at Newmarket were also rare. The Curragh asked for advice from the Club in 1757; and when in 1807 the Club provided a list of seven cases which had been referred to the Club Stewards for arbitration, the first was in 1776, and the last was in 1793.<sup>66</sup>

## Nineteenth-Century Officials and Emergence of the Referee

Changes in official arbitration came slowly, even as Vamplew's fourth stage, national organizations, began to emerge. In 1843 the MCC insisted that those umpires who were involved in matches involving the MCC must pass a test to show that they were familiar with cricket's laws, and from 1848 the MCC extended their jurisdiction by agreeing to arbitrate disputes.<sup>67</sup> For much of the nineteenth century, cricket sides provided their own umpire even in more important matches, which could lead to partisanship and dispute, as in applying the laws about 'throwing'. There was increased recognition within the game that umpires were over-dependent on their clubs. As one leading commentator observed, there were strict and lenient, fair, and unfair umpires all exercising discretion in different ways.<sup>68</sup> In an 1862 match between England and Surrey a team walked off following a no-balling, there were crowd disturbances, and the umpire who had tried to enforce the law about such bowling resigned. When in 1868 an American side toured England, they argued that the English umpires were ex-professionals and 'in the pockets' of the English amateurs.<sup>69</sup> For county matches, in 1883 the MCC finally introduced a system where each county side sent in two

umpires' names, and the MCC appointed two neutral umpires to each county match, nearly all ex-professional players. Since application of many cricket laws remained a matter of umpire judgement, much dispute about decisions from players continued thereafter.<sup>70</sup>

In horseracing, a judge was usually chosen by the local race committee, while local amateur stewards provided an overview, with all matters of dispute or objections referred to them, though they could refer issues to Jockey Club stewards if they wished. At the larger meetings the same judges' names began to appear again and again. John Orton (1802–45), a York bookseller and racing journalist was judging across many northern English and Scottish meetings from 1830 to 1844. Richard Johnson, another York racing journalist, judged across a wide range of race meetings, most especially in northern England, from 1841 through to the 1880s.<sup>71</sup> Weatherby's annual *Racing Calendar* provided rules for racing in general, albeit influenced by Newmarket ideas, but with little reference to judging. By 1858 when they were first altered, the thirty-eight additional Jockey Club Rules applied mainly to Newmarket, where the three stewards appointed judges, and at those courses such as Ascot and Epsom to which they were closely linked. The Clark family took official roles there and elsewhere regularly from 1805 to 1899. In 1870, judges could only officiate at meetings recognized by the Club, and in 1879 the introduction of annual licenses for officials, with the right to revoke or refuse them reserved, tightened control further.<sup>72</sup>

During the eighteenth century the term 'referee' was rarely used in a sporting sense. In legal terms it meant an arbitrator to who a law business in referred.<sup>73</sup> A referee was someone referred to in general social and economic contexts when decisions needed arbitration. For most of the eighteenth century, the term was used more commonly in France. As we have seen above, there were only occasional mentions of a 'referee' in British sport at that time.

The term first started to appear in more general use in English pugilism as a term describing a mutually-chosen third arbitrator at a contest for situations when the umpires disagreed in the 1810s. By the 1820s, Pierce Egan was using the term regularly in that sense in his writings. Likewise, articles of agreement began to include phrases such as 'an umpire to be chosen by each party and a referee appointed on the ground'.<sup>74</sup> Many betting disputes were about whether a damaging blow had been 'foul', an unfair one struck after the fighter had dropped to the ground, and in several reports the views of the two umpires and the 'referee' were given before bets were settled.<sup>75</sup> The term also began to be used in other sports. In a Cumberland wrestling match in 1829, for example, the two umpires differed but the referee ... gave the fall.<sup>76</sup>

A new code of almost thirty London Prize Ring rules, for bare-knuckle fights, was introduced by a loosely-structured Pugilistic Association in 1838 and redrafted in 1853. According to rule 4, two umpires were chosen by either the seconds or backers to watch the fight and take exception to any breach of the rules. A referee was:

chosen by the umpires, unless otherwise agreed on, to whom all disputes should be referred, and the decision of the referee, whatever it is, shall be final, and strictly binding on all parties ... The referee shall withhold all opinion until appealed to by the umpires.<sup>77</sup>

The so-called Marquis of Queensbury rules, which eventually became the standard form for contests with gloves, with timed rounds, were published in 1867, but kept the officials' guidance. Its rules for the English Challenge Cup, for 'gentlemen amateurs', had three judges appointed by a committee. There was an increased expectation that referees and judges should have boxed themselves and be amateur, as less likely to be prejudiced or influenced by party feeling.

The term finally came into wider common use in the two new English amateur forms of team sport, rugby and football (soccer), emerging in the later nineteenth century. A new attitude to 'fair play', in the amateur sense, had by then begun to emerge, one in which at least in theory, the rules that enforced it were internalized by the competitors themselves. In fact, even then, there needed to be a way of managing three key issues: the rules still needed to be applied, the game had to be managed, and on-field disputes over the application of the rules had to be settled.<sup>78</sup> The 'modern' forms of English soccer and rugby evolved the roles of referees, despite their potential fallibility, to carry out these tasks.

Earlier forms in towns, villages and public schools had a quasi-democratic onus on the players themselves, to come to decisions, to agree any disputes on the field of play, with a recognition of the cultural pressures of tradition and the local community. Adrian Harvey, in his study of early football, shows that by the 1840s early public schools were beginning to introduce an umpire agreed by each side to settle any dispute, sometimes also found in some Shrove Tuesday matches.<sup>79</sup> Amongst those clubs which were members of the London-based Football Association in the 1860s, with their generally middle-class membership, 'umpires' also began to be informally chosen. One would be chosen from each side but they only ruled when appealed to by players, most of whom seemed to have followed an unwritten but mutually understood and shared code of gentlemanly moral behaviour regarding the early rules. This modelled the earlier forms of sport such as cricket.

In the North in 1868 the Sheffield Football Association Rule 14 laid down that, 'An Umpire shall be appointed by each side, at the commencement of the game, to enforce the proceeding rules, whose decision on all points during the game shall be final. Each Umpire to be referee in the half of the field near the goal defended by the party nominating them.'<sup>80</sup> Somewhat later, in 1874, 'umpires' were first mentioned as part of the English FA's laws of the game: 'In the event of an infringement of rule 10, the Umpire, upon an appeal by the Captain of the opposite side, shall rule the player so offending out of play so long as the infringement continues, and no other player shall take his place.'

The inauguration of the English FA Championship Cup competition in 1871 saw more stress on results, and as regulation of play through informal codes broke down, issues where the two umpires disagreed about applications of rules were more difficult to address. Discussions about the now familiar roles of umpires and other officials focused, just as in the past, on key issues such as impartiality, neutrality, the absence of corruption, competence, trust in judgement, and moral character. Through the 1870s a third official, a neutral 'referee', began to appear in match reports, especially in the increasingly bitterly fought cup matches, to settle disputes between the two umpires. This was the same process seen earlier in pugilism.



While the revised laws of 1881 continued reference to the role of umpire, they also finally formally recognized the role of the 'referee', stating in Law 15 that:

By mutual arrangement of the competing clubs in matches a referee shall be appointed, whose duties will be to decide in all cases of dispute between the Umpires. He shall also keep a record of the game, and act as timekeeper, and in the event of ungentlemanly behaviour on part of any of the contestants, the offender or offenders shall, in the presence of the umpires, be cautioned, and in the case of violent conduct, the referee shall have the power to rule the offending player or players out of play, and order him or them off the ground, transmitting name or names to the committee of the association under whose rules the game was played, and in whom shall solely be vested the right of accepting an apology.

Such concerns about violent conduct and ungentlemanly behaviour often had underlying social class implications. Even so, in the 1883 Laws it was still the two club-chosen umpires who normally decided in disputed points when appealed to, and it was only by mutual arrangement that a referee might be chosen.

With more cup competitions appearing across the country there was ever more need for neutrality and the Laws slowly reflected that. In 1891 a new law made the referee sole judge, and the 'linesmen' chosen by the two clubs concerned were only assistants. Neutral linesmen, rather than locally chosen ones, finally emerged in the 1899/1900 season.<sup>81</sup> This was a significant change from the pattern seen, for example, in early modern cricket rules.

Rugby followed a similar pattern. As Collins has made clear, early rugby players often had a common set of values, and a shared social and moral outlook which allowed them to run the game themselves, through their captains, or with umpires who were the representatives of the two teams involved. By the 1870s, disinterested discussion was increasingly overtaken by gamesmanship and constant disputes.<sup>82</sup> As rugby found more industrialized workers in the North taking part in the games, the Rugby Football Union tried even quicker than soccer to shift control of games out of the hands of umpires who might be biased, fail to deal with the violent behaviour of their team, or allow more working-class players to question an umpire's authority. In 1881 it decreed that umpires should be neutral rather than representatives of the two teams. In 1885 a referee had to be appointed to a match with the mutual consent of both teams. The role of the referee at this time was mainly confined to arbitrating on disagreements between the two umpires, but, crucially, he could intervene in cases of violent play or players disputing the officials' decisions. In 1889 the RFU gave the referee the power to send-off from the field any player disputing his decisions.

## Final Discussion

This study has perforce been limited in its coverage of sports, largely using examples from horse racing, cricket, pugilism, cockfighting, soccer and rugby as exemplars, and further studies to widen this limited data base are still needed.

What nevertheless seems clear is that the basic patterns that emerged over time were similar in many respects. In many contests the two contestants initially agreed matters between themselves, but as results became more meaningful, especially in betting terms, each contestant would select an 'umpire' or 'tryer' to represent them in

disputes or assessing results. These individuals were usually chosen on an ad hoc basis, at the event itself, and such approaches emerged in horse racing, cricket, and pugilism. Eventually, when there were still disagreements, a third supposedly neutral umpire would be appointed.

Despite the growing but still often limited power of national authorities like the MCC or the Jockey Club, which extended their rule developments over the period, there was only slow change in the roles of officials and arbitration approaches. Cricket decisions were often a matter of fine judgement, and with each side providing an umpire neutral umpires remained rare. It was only in 1883 that the MCC finally introduced a system which allowed the appointment of two neutral umpires to each county match, while other matches continued as before. In horse racing, increased consistency was eventually provided by more regularly employed judges, officiating over longer periods of time. These first emerged at Newmarket, certainly from the 1770s if not before, and were chosen by the Jockey Club stewards rather than the racehorse owners. Elsewhere, from the early nineteenth century judging became more professional as leading judges were appointed at more courses. In the later nineteenth century, the Club grew in power as a national authority and slowly gained more control over judge selection. Amateur stewards settled any further disputes.

Cockfighting had Masters of the Pit or Match operating with experienced gamesters to make judgements in the eighteenth century but was never able to make further progress. 'Referees' began to be used in sports such as pugilism from the early nineteenth century, and after the Queensbury rules were introduced later in the century there was an increasing emphasis on the appointment of experienced amateur referees. When the modern forms of soccer and rugby emerged, they followed the same stages, beginning with joint agreement by the two sides, then one umpire for each side, the introduction of a neutral referee, as their national authorities gained in power, and finally a new step, with the two umpires becoming linesmen.

What this study has also shown have been the difficulties and challenges faced by these rule makers in ensuring the neutrality, impartiality and the objective decision making of sport officials, which is something still found a challenge today. Modern technologies, including various off-field decision review systems, television replays, Hawk-eye in tennis, alongside Hotspot and Snick-O-Meter in cricket, VAR in soccer, or photo-finishes in horse racing and athletics have all attempted to help officials make fairer decisions, but are still the subject of debate.<sup>83</sup> This study of the earlier period provides a starting point and offers the exciting prospect of being carried forward from 1900 up to the present.

## Notes

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9. Mike Huggins, 'Associativity, Gambling and the Rise of Proto-modern British Sport 1660–1800', *Journal of Sports History*, 47, no 1 (2020): 1–17.
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11. Wray Vamplew, 'Early Commercialisation in Sport; Looking for Evidence and Searching for Meaning' *Idrottsforum*, October 18, 2021.
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13. Mike Huggins, 'Forms of Competition in Proto-modern Eighteenth-Century English Sport: A Tentative Typology', *Sport in History* 41, no. 1 (2021): 469–95.
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### Disclosure Statement

No potential conflict of interest was reported by the author.

### Notes on Contributor

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