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## ”You’ll Never Walk Alone”: On Property, Community, and Football Fans

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# "You'll Never Walk Alone": On Property, Community, and Football Fans

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*The fans of a football club constitute a community. This community of fans is a constitutive attribute of the club. It is part of the meaning of the football club as a resource. However, besides the cases of football clubs that are organized as members' associations, the fans rarely have a meaningful say in the running of the club. As the history of modern football proves, the interests of the fans in the club and in the continuance of their community often come under threat. Introducing the concept of "property as belonging," this Article aims at explaining why the interests of the community of fans merit protection through the recognition of the fans' property interest in the club. The Article analyzes various existing ways of ensuring fans a formal voice in their club, and suggests a new structure of governance of football clubs, one that conceptualizes the fans as the social or moral owners of the club and accords them special decision-making power regarding those incidents that bear a high level of risk to their community. Along with members'-association clubs, this new property institution of the football club will adhere to the idea promoted in this Article, according to which the fans belong to the club and to their community, and the club, at least in part, belongs to them.*

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## INTRODUCTION

A football club fell into dire economic straits. Concerned that the fate of their beloved club was doomed, the fans raised a large amount of money and gave it to the club's owner. The club was saved from liquidation. Not long afterwards, the owner again engaged in actions threatening the economic viability of the club. When the fans protested and demanded a real say in the day-to-day running of the club, they were rebuffed by the owner. Should the fans be accorded legal protection that would enable them to be part of the decision-making processes regarding the club? Should the law limit the right of owners to exclude the fans? And what should happen where fans have not made any such direct large monetary donation to a club, but have, over the years, invested time, energy, and their hearts, while coalescing into a community of fans synonymous with the club?

The supporters of Liverpool FC are an example of such fans. While they remain devoted to their club, singing to it with full conviction that "you'll never walk alone," the controlling interest in the club has passed from hand to hand over the past few years, amidst constant rumors about the sale of the club's shares to new formal owners. In short, the question is: where a club is not incorporated as a members' association in which fans hold ownership, but rather is privately owned by individuals or companies, whether directly or through a majority-holding of the club's shares, are its fans entitled to a property right in it? Should they be recognized as holding such a right? The argument made in this Article is that the answer to these questions should be in the affirmative.<sup>1</sup>

The time is ripe for rethinking the relationship between football fans and their clubs. Millions of people around the globe are passionate about football, and this passion is usually devoted to a specific football club. Fandom of a club is usually a collective enterprise. Since the 1990s, the world of football as fans once knew it has changed dramatically. "Big money" has come into professional elite football, at first mainly through enormous TV deals, but more recently, once it was demonstrated that it could be a profitable source of revenue, football has begun to attract the attention of professional investors whose sole interest in the club is monetary. The

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<sup>1</sup> It is important to note at the outset of this Article that while most of its content may be relevant, to varying degrees, to the whole world of modern football, or soccer as it is known in the U.S.A., it is based on the research on western European football, especially on English football.

new world of modern football is characterized by commercialization and commodification and football has become an actor in the globalized world economy.<sup>2</sup> Market rationality with its perception of football as an industry and of fans as consumers has infiltrated the field, or has significantly intensified where it already existed. Whereas historically football clubs, at least in most European countries, were organized as members' associations, now the most common form of football club is a private or public, even listed, company.<sup>3</sup> There are still members' association football clubs (some of which are among the most prestigious football clubs in the world, such as FC Barcelona and Real Madrid CF) and clubs held in the old patronage-style of ownership where the owner is a genuine fan of the club. But most likely even these clubs are becoming willing actors in the market-oriented world of football.<sup>4</sup>

While the new football, with its globalized cadre of players and highly sophisticated strategy of playing the game, is extremely exciting, the game has lost some of its soul. Moreover, at times, it is the devoted fans who are paying the price for this new market-football, and it is their fandom and resultant communities that the new football endangers. Should fandom and the communities it creates be deemed valuable to society, and should society wish to ensure their ability to survive and preserve some of the essence of traditional football, then it should consider legally protecting the fans' relationship with their clubs. Modern football has become a battlefield between market and community, and where community is not able to prevail,

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2 On the processes of commercialization, commodification and globalization in modern football, see DAVID CONN, *THE FOOTBALL BUSINESS* (1997); Amir Ben-Porat, *The Commodification of Football in Israel*, 33 INT'L REV. SOC. SPORT 269 (1998); DAVID CONN, *THE BEAUTIFUL GAME? SEARCHING FOR THE SOUL OF FOOTBALL* (2005); ANTHONY KING, *THE EUROPEAN RITUAL: FOOTBALL IN THE NEW EUROPE* (2003); Barrie Pierpoint, *"Heads Above Water": Business Strategies for a New Football Economy*, in *THE FUTURE OF FOOTBALL: CHALLENGES FOR THE TWENTY-FIRST CENTURY* 29 (Jon Garland, Dominic Malcolm & Michael Rowe eds., 2000); SIR NORMAN CHESTER CTR. FOR FOOTBALL RESEARCH, FACT SHEET NO. 10, *THE "NEW" FOOTBALL ECONOMICS* (2002); SIR NORMAN CHESTER CTR. FOR FOOTBALL RESEARCH, FACT SHEET NO. 11, *BRANDING, SPONSORSHIP AND COMMERCE IN FOOTBALL* (2002). For an attempt to clarify the correct uses of these concepts, see Liz Moor, *Sport and Commodification: A Reflection on Key Concepts*, 31 J. SPORT & SOC. ISSUES 128, 132-37 (2007).

3 See KING, *supra* note 2, at 121-25; STEPHEN MORROW, *THE PEOPLE'S GAME? FOOTBALL, FINANCE AND SOCIETY* 75-127 (2003).

4 See KING, *supra* note 2, at 120; Jaime Gil-Lafuente, *Marketing Management in a Socially Complex Club: Barcelona FC*, in *MARKETING AND FOOTBALL: AN INTERNATIONAL PERSPECTIVE* 186 (Michel Desbordes ed., 2007).

at a minimum it should be accommodated. The realm of property law is the proper means of achieving this goal.

The perception of fans as having a property entitlement to the club stems from the legal-realism conceptualization of property and is based on Hanoch Dagan's reformulation of property as institutions.<sup>5</sup> At the base of this perspective lies the understanding that property is a social artifact whose aim is to serve social goals. The structuring of property institutions involves recognition of relevant values, choosing or setting priorities among them, and developing an understanding of the unique relevant social context and the specific properties of the resources in question. The outcome is the constitution of detailed, nuanced and contextualized legal relations among persons with respect to resources. This conceptualization allows not only the establishment of new institutions, but also the reshaping of existing ones. Adhering to this perspective, this Article aims at proposing certain contours to the restructuring of the privately-owned football club as a property institution that takes the value of belonging and fans' community as the premise for fans' entitlement to their club.

### I. THE CLUB, FANDOM AND COMMUNITY

Here the fan shakes his handkerchief, gulps his saliva, swallows his bile, eats his cap, whispers prayers and curses and suddenly breaks out in an ovation, leaping like a flea to hug the stranger at his side, cheering the goal. While the pagan mass lasts, the fan is many.

— Eduardo Galeano<sup>6</sup>

Galeano's prose in his *Football in Sun and Shadow* is perhaps the most beautiful love song ever written in tribute to football. However, as the above-cited short paragraph attests, he did not fully capture the meaning of fandom as a community. The fan is many, not only during the games, but also long before and long after. It is a continuum of the collective experience.

Fandom is a complex social phenomenon that is performed differently in different cultures and countries.<sup>7</sup> The homeland of football has created a

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<sup>5</sup> Hanoch Dagan, *The Craft of Property*, 91 CAL. L. REV. 1517 (2003).

<sup>6</sup> EDUARDO GALEANO, *FOOTBALL IN SUN AND SHADOW* 6 (Mark Fried trans., 2003) (1997).

<sup>7</sup> On the variety of fans' cultures and practices, see, for example, SIMON KUPER, *FOOTBALL AGAINST THE ENEMY* (1994); RICHARD GIULIANOTTI, *FOOTBALL: A SOCIOLOGY OF THE GLOBAL GAME* 39-65 (1999); *FOOTBALL CULTURE: LOCAL*

vast body of literature on its English football fans.<sup>8</sup> While there is academic debate concerning the proper sociological conceptualization of the meaning of fandom and its contemporary transformation,<sup>9</sup> some basic notions are widely accepted. One of these fundamental concepts is that fandom is a community, and that the club forms a unit with the fans.<sup>10</sup> The community of fans has its own culture, rites and rituals.<sup>11</sup> It has a shared history and a sought-after common future. It has a collective memory and on occasion, unfortunately, it shares a collective trauma. At times, but not always, the community is closely

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CONTESTS, GLOBAL VISIONS (Gerry P.T. Finn & Richard Giulianotti eds., 2000); FRANKLIN FOER, HOW FOOTBALL EXPLAINS THE WORLD (2004); Antonio Roversi, *Football Violence in Italy*, 26 INT'L REV. SOC. SPORT 311 (1991); Wolfram Manzenreiter, *Sport Spectacles, Uniformities and the Search for Identity in Late Modern Japan*, 54 SOC. REV. 144 (2006).

- <sup>8</sup> See, e.g., FANATICS! POWER, IDENTITY AND FANDOM IN FOOTBALL (Adam Brown ed., 1998); Anthony King, *The Lads: Masculinity and the New Consumption of Football*, 31 SOCIOLOGY 329 (1997); Rex Nash, *The Sociology of English Football in the 1990s: Fandom, Business and Future Research*, 3 FOOTBALL STUD. 49 (2000) [hereinafter Nash, *Sociology of English Football in the 1990s*]; Rex Nash, *Contestation in Modern English Professional Football: The Independent Supporters Association Movement*, 35 INT'L REV. SOC. SPORT 465 (2000); Richard Giulianotti, *The Sociability of Sport: Scotland Football Supporters as Interpreted Through the Sociology of George Simmel*, 40 INT'L REV. SOC. SPORT 289 (2005).
- <sup>9</sup> A widely debated question regarding English fans is whether there is a difference between the older and more traditional fans, mostly white men from the working class, and the more affluent middle class fans, including also female and family supporters of modern football. For a summary of the debate, see MORROW, *supra* note 3, at 49-51. For a profiling of Premier League club supporters, see SIR NORMAN CHESTER CTR. FOR FOOTBALL RESEARCH, FACT SHEET NO. 3, WHY SUPPORT FOOTBALL? (2002) [hereinafter WHY SUPPORT FOOTBALL?]; SIR NORMAN CHESTER CTR. FOR FOOTBALL RESEARCH, FACT SHEET NO. 13, A PROFILE OF FA PREMIER LEAGUE CLUB SUPPORTERS IN 2000 (2000).
- <sup>10</sup> CORNEL SANDVOSS, A GAME OF TWO HALVES: FOOTBALL, TELEVISION AND GLOBALIZATION 35 (2003).
- <sup>11</sup> It is important to note that fandom has its darker sides. Two of these should be mentioned. First, on many occasions, fans are involved in practices of exclusion regarding women and ethnic minorities. On racism and anti-racism in European football, see KING, *supra* note 2, at 223-43. The second is football hooliganism. On hooliganism, see *id.* at 54-59. At least in Britain, the subject has been extensively researched and the government has taken comprehensive action and succeeded in decreasing the scope of hooliganism and its effects. For a recent assessment of the problem, see Steve Frosdick & Robert Newton, *The Nature of Football Hooliganism in England and Wales*, 7 SOCCER & SOC'Y 403 (2006). It is also worth noting that, while rivalry between clubs and fans' communities is part of the world of sport generally and of football in particular, one can find many incidents of cooperation between fans of rival clubs.

connected to a specific locality. Where a club has many fans, not all fans will know each other personally, though they recognize close friends and those who occupy the same stand year after year. In many cases fans are recruited through social networks such as family, schools, friends and neighborhoods as well as workplace relationships.<sup>12</sup> Sometimes fan relationships are mediated through their imagined community. Nevertheless, the community of fans provides the fan with a sense of belonging and is a source of identification.<sup>13</sup>

Many football fans conform to the old ways of professing their fandom. They hold season tickets to home games and now and then travel to an away game or travel as a group to games taking place abroad. Others have somewhat changed their rituals: while attending games only occasionally, they still prefer to watch games together with fellow supporters, although not necessarily in the stadium itself, and they maintain their close relations with fans' activities. Fans' formal and informal associations are prevalent, and they have their own modes of communication, nowadays mainly through fans' internet forums. These "core fans" invest time, energy and emotion in the club and have the club interest high on their list of priorities. Usually it is these "core fans" who demand an effective say regarding the running of their club.

Should the concept that fandom constitutes a community require any additional evidence, the ultimate proof now exists. Recently, the supporters of the German Hamburg SV succeeded in securing the continuation of their relationship with the club and fellow supporters by establishing a fans' cemetery located a mere 50 meters from the club's stadium. "If you think about people supporting a club for 30, 40, 50 years, it's part of their life," said stonemason Uli Beppler, "so why shouldn't it be part of their death?"<sup>14</sup>

While the concept of community may be highly contested,<sup>15</sup> Mason discerns some elements that may be included in the characterization of the nature of community: shared values, participation in a shared way of life,

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12 See WHY SUPPORT FOOTBALL?, *supra* note 9.

13 See Beth Jacobson, *The Social Psychology of the Creation of Sports Fan Identity: A Theoretical Review of the Literature*, 5 ATHLETIC INSIGHT (2003), available at <http://www.athleticinsight.com/Vol5Iss2/FanDevelopment.htm>.

14 *Hamburg Fans to Get Football Cemetery*, BBC NEWS, Oct. 12, 2007, <http://news.bbc.co.uk/2/hi/europe/7039772.stm>.

15 See Gregory S. Alexander & Eduardo M. Peñalver, *Properties of Community*, 10 THEORETICAL INQUIRIES L. 127 (2009); Amnon Lehavi, *How Property Can Create, Maintain, or Destroy Community*, 10 THEORETICAL INQUIRIES L. 43 (2009).

identification with the group, and mutual recognition.<sup>16</sup> The ethnographic and sociological research shows quite clearly that each of these elements is present in fandom, therefore fans constitute a community. One of the recurring themes in the sociology of modernity and post-modernity is the decline of old communities and the rise of a society of alienated individuals.<sup>17</sup> Though changed in scope and extent, human communities have not ceased to exist. The fans' community is a modern one, and although it has been transformed in some respects, it expresses its wish for continuance. Fandom as community contributes to the wellbeing of the individual fan and to his sense of belonging,<sup>18</sup> but it also has social value. In many cases, especially in the lower divisions, fandom entails a strong connection to locality, thus strengthening local communities at large. Moreover, while fans' communities are still exclusionary in regard to women and ethnic minorities,<sup>19</sup> they do constitute a site for social interaction between people from otherwise different social strata and groups.<sup>20</sup> People from various educational and professional backgrounds share the same passion towards their club, and it is this passion and sense of belonging that unites people who usually do not meet in social circumstances. Thus, the fans' community is, or at least has the potential to be, a site of social solidarity.<sup>21</sup> If we believe in the positive value of communities, there is no reason not to accord the fan community such value and provide assistance when it is threatened.

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16 ANDREW MASON, COMMUNITY, SOLIDARITY AND BELONGING: LEVELS OF COMMUNITY AND THEIR NORMATIVE SIGNIFICANCE 19-25 (2000).

17 For a review, see GRAHAM DAY, COMMUNITY AND EVERYDAY LIFE 1-22, 57-89 (2006).

18 See Otmar Weiss, *Identity Reinforcement in Sport: Revisiting the Symbolic Interactionist Legacy*, 36 INT'L REV. SOC. SPORT 393 (2000).

19 In England, the government as well as football authorities have invested considerable effort to enhance relationships between local communities and football clubs in order to achieve more social inclusion. See ADAM BROWN, TIM CRABBE, GAVIN MELLOR, TONY BLACKSHAW & CHRIS STONE, FOOTBALL AND ITS COMMUNITIES: FINAL REPORT (2006).

20 An example of such social interaction is the case of English supporters' associations. See KING, *supra* note 2, at 174-75.

21 See Garry J. Smith, *The Noble Sports Fan*, 12 J. SPORT & SOC. ISSUES 54, 57-58 (1988).

## II. THE PROPERTY-AS-BELONGING INTEREST OF FANS

What place do fans' communities have in football clubs? In the modern market-oriented football, where most football clubs are incorporated as private or public companies, there is a strong tendency to see fans as mere customers and to treat them as such. This conceptualization may be suitable in regard to some football spectators, those who, using Giulianotti's terms, may be characterized as having thin solidarity with the club and fellow supporters and are satisfied with virtual and nonreciprocal relations with them.<sup>22</sup> But to classify "core supporters" as defined in Part I as mere customers is to undermine the communities of fans and their uniquely strong attachment to their clubs, as well as to ignore the important role they play in the constitution of the social meaning of football clubs.<sup>23</sup> Moreover, recognizing the fans' proper place in the resource that is a football club enables us to rethink the formal modes of organization and legal incorporation of clubs in order to give the endangered fans' communities of modern football the protection they deserve. Such rethinking should be carried out by utilizing the value of belonging as its underlying concept and as a basis for the recognition of fans' property right in their club.<sup>24</sup>

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22 See Richard Giulianotti, *Supporters, Followers, Fans and Flaneurs: A Taxonomy of Spectator Identities in Football*, 26 J. SPORT & SOC. ISSUES 25 (2002).

23 See Sean Hamil, *A Whole New Ball Game? Why Football Needs a Regulator*, in *A GAME OF TWO HALVES: THE BUSINESS OF FOOTBALL* (Sean Hamil et al. eds., 1999), available at [www.bbk.ac.uk/manop/research/seanpublications/agameoftwohalves/Gof2H-chap1.shtml](http://www.bbk.ac.uk/manop/research/seanpublications/agameoftwohalves/Gof2H-chap1.shtml) [hereinafter *A GAME OF TWO HALVES*].

24 If there is a strong connection between fans' community and locality, one may ask why not entrust local government with the role of protecting fans' interests. While at times local government may successfully fulfill this role, there are some issues that need to be taken into account. First, especially in higher divisions, not all of the fans are local or have current local ties besides their interest in the club. Secondly, the interests of the local government may be different from those of the fans, and there is no reason to assume that the local authorities know better than the fans where their real interest lies. Thirdly, local government decision-makers may have personal interests and may be more prone to succumb to the interests of other pressure groups or current and future investors in the local community, so the interests of fans may be easily compromised. Moreover, replacing fans' power with local authorities would undermine the positive value of civic engagement and direct participation in community affairs that would be maintained or even enhanced were we to recognize the collective property right of fans in their club. Also, a serious problem of conflict of interests may arise in cases where there are two or even more clubs that reside in the same municipality, especially if they play in the same division.

### A. Property as Belonging

In both progressive corporate theory and property theory, there are certain formulations of property rights and property values which may prove useful in attempting to find a venue for the protection of the fan community in modern football. Concepts such as the multi-fiduciary model in corporate law<sup>25</sup> or the social responsibility of property owners,<sup>26</sup> the reliance interest in property,<sup>27</sup> and "property and personhood"<sup>28</sup> help in understanding parts of the complexity inherent to the relationships among fans, their community, the club and the club's owner. However, none of these concepts single-handedly and fully captures the uniqueness of this entire specific context. Some emphasize the side of the owner (social obligations and reliance interest), while others are primarily applicable to resources already being held (as in the case of personhood).<sup>29</sup> From the perspective of these concepts, fans are exogenous to the resource. All of them fail to provide a nuanced understanding of community relationships as applied in such a case. Therefore, a new normative basis, or at least another argument for property rights, needs to be introduced — the concept of "property as belonging."<sup>30</sup>

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25 See, e.g., David Millon, *Communitarianism in Corporate Law: Foundations and Law Reform Strategies*, in PROGRESSIVE CORPORATE LAW 1, 11-13 (Lawrence E. Mitchell ed., 1995).

26 See Hanoch Dagan, *Takings and Distributive Justice*, 85 VA. L. REV. 741 (1999); Hanoch Dagan, *The Social Responsibility of Ownership*, 92 CORNELL L. REV. 1255 (2007); GREGORY S. ALEXANDER, *THE GLOBAL DEBATE OVER CONSTITUTIONAL PROPERTY* (2006); JOSEPH WILLIAM SINGER, *THE EDGES OF THE FIELD: LESSONS ON THE OBLIGATIONS OF OWNERSHIP* (2000); and JOSEPH WILLIAM SINGER, *ENTITLEMENTS: THE PARADOXES OF PROPERTY* (2000).

27 See Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 614 (1988).

28 See Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982).

29 See Meir Dan-Cohen, *The Value of Ownership*, 9 J. POL. PHIL. 404 (2001).

30 For an earlier conceptualization of belonging in the context of clubs, see Murray Phillips & John Nauright, *Sports Fan Movements to Save Suburban-Based Football Teams Threatened with Amalgamation in Different Football Codes in Australia*, 21 INT'L SPORT STUD. 23, 33 (1999). Recently, the term "belonging" was used by Davina Cooper as one of five dimensions of property, denoting an orientation that is concerned with a particularly constitutive relationship between part and whole. See Davina Cooper, *Opening Up Ownership: Community Belonging, Belongings, and the Productive Life of Property*, 32 LAW & SOC. INQUIRY 625, 629-30 (2007). While I agree with Cooper that when property relationships do exist, belonging may and often should be a major normative dimension of property, it seems that her assertion that "the first, and most important, aspect of property practice is belonging" is overstated. The conceptualization of property in terms of belonging is applicable to

Three of the various definitions of belonging are relevant here. Something "belongs" when it is an attribute or a part of a person or thing. Moreover, to belong means to be a member of a group or an organization. Finally, belonging also denotes a property relationship — when something belongs to a person, it means that it is the property of that person. But can "belonging" as set forth in the first and second definitions constitute a suitable basis for a claim of belonging in its property sense? I believe the answer is yes, sometimes, and the case of the football club may serve as an example.

Fans are a constitutive attribute of the club. They are part of the meaning of this resource. It is hard to imagine a football club without its fans. It may have assets, employ workers and players, and the game might even be played — but it will not constitute a club until the element of fandom is added to the mix. Therefore, fans should not be viewed as external to the resource but as an endogenous component of the football club. Furthermore, fandom constitutes a community that mediates the relationship between a fan and the club. Fandom is a way of life, a lived experience that is practiced through and by a relationship with others. Being a member of the community of fans is a source of identification and in many cases essential to the fans' wellbeing. Thus, since every fan is both a part of the resource and a part of the community of fans, the term belonging aptly depicts the dual relationship between fan and club. The fans are part of the club and the club, at least in part, belongs to them.

## B. Loyalty, No-Exit and Voice

Albert Hirschman's conceptualization can help explain why this fans' sense of belonging merits protection.<sup>31</sup> Fandom means having no real exit.<sup>32</sup> A fan is a loyal member, and cannot and does not act as a market-consumer exercising

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Cooper's project of thinking about property in a way which will illuminate her case study of the Summerhill school, but the same does not necessarily hold true in other contexts of property relations. My suggested formulation of property as belonging is limited to cases where it is normatively appropriate to accord "belonging" an importance in the formulation of property relations. Moreover, I am concerned here with the question whether "belonging" may be a premise that legitimizes a recognition of a property entitlement.

<sup>31</sup> ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY* (1970).

<sup>32</sup> See Richard Giulianotii, *Sport Spectators and the Social Consequences of Commodification: Critical Perspective from Scottish Football*, 29 J. SPORT & SOC. ISSUES 386, 390 (2005) ("The possibility of changing that way of life by entirely abandoning the team or choosing to support a more successful side is anathema to the supporter's self-identity."). See also MORROW, *supra* note 3, at 89 ("In theory the economic choices of both product substitution and non-purchase exist for football

an option of exit by substituting one club with another. Of course, infrequently a fan may cease to be a fan; at a deeper level, however, a true fan will not be able to find any viable substitute to replace the "old flame" and will be viewed by former friends as a deserter, if not a traitor. In this sense, though not a primordial human grouping, the community of fans and the club do somewhat resemble the family or the state.

Where exit is unthinkable or generates high costs, only a voice option remains, and voice is what fans are truly good at. Fans have many modes of expressing their voice, in and out of the stadium,<sup>33</sup> such as fan gatherings, radio and television talk-shows and internet forums. With regard to some issues, such as the identity of a club's players or manager and strategy of play, while fans' opinions are important, and often very intelligent, having a venue to express such opinions is all that matters. With regard to other issues, however, the question of voice should be taken more seriously.

Fans are part of the club, and as a community they have a real interest in their club's sporting success and in its sound economic base, and their contribution to the club is significant.<sup>34</sup> They also have a strong interest in the continuity of their community. These are also interests of the club owners,<sup>35</sup> so to a large extent fans' interests and owners' interests converge, and both may be termed in the best interests of the club.

However, as the history of modern professional football proves, at times club owners entertain other and private interests which cannot always be classified as in the best interests of the club, for example, where owners have

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customers. In practice, however, no such social choices exist for most football supporters.").

33 An interesting strategy is sometimes employed by fans who do attend the team's games, but express their anger and concerns by changing their rituals of fandom, for example, fans who do not cheer the team or do not wear its replica shirts or colors. By holding their "voice," such fans exercise their voice. This practice may also be perceived as a partial exit.

34 See Sean Hamil et al., *The Corporate Governance of Professional Football Clubs*, 4 CORP. GOVERNANCE 44, 45 (2004) ("Football supporters are key stakeholders who contribute to the club . . . by actively participating in match day support and contributing financially to keep their club afloat.").

35 While it is often argued that owners of major English clubs from the Premier League actively seek to boost the number of fans and attract more affluent crowds with the aim of increasing revenues, it would appear that there is no real option of replacing the active fans who hold season tickets and are truly loyal to the club. Moreover, such a strategy may backfire against the professed aim of the owners since such fans are an integral component of the club and are to a large extent responsible, based upon their history and expression of their fandom, for the club's allure in the eyes of new supporters, especially overseas.

attempted to merge two clubs they owned, or to relocate a club.<sup>36</sup> Both are usually unthinkable options from the fans' perspective.<sup>37</sup> Another example is where the owner borrows heavily in order to purchase the controlling interest in the club, intending subsequently to "milk" the club's revenues or sell off some of its assets (including the transfer of valuable players) in order to service the debt.

The question, therefore, is whether fans' informal modes of expressing their voice have any effect. Sometimes the cry and unrest of the fans is sufficient to reverse an owner's intentions,<sup>38</sup> but there can be no guarantee of such an outcome. On the contrary, since fans have no credible threat of exit, it is highly probable that their concerns and grievances will be ignored. As the experience in England proves, dialogue between clubs and supporters is problematic, and there is a gap between clubs' and fans' perceptions of the effectiveness of any such dialogue.<sup>39</sup> Also, sponsors have a strong influence over the way the clubs are run, while fans' influence is much weaker.<sup>40</sup>

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36 Unlike the American experience, club relocation is rare in Europe. A well-known case is the relocation of the Wimbledon football club despite the strong protests of the fans. See MORROW, *supra* note 3, at 68-70. On the futile attempts to prevent relocation of clubs in the context of the American National Football League, see Katherine C. Leone, *No Team, No Peace: Franchise Free Agency in the National Football League*, 97 COLUM. L. REV. 473 (1997); Lynn Reynolds Hartel, *Community-Based Ownership of a National League Franchise: The Answer to Relocation and Taxpayer Financing of NFL Teams*, 18 LOY. L.A. ENT. L.J. 589 (1998).

37 The merger of two clubs might gain the approval of fans. An example is the 1992 decision of two old Danish members'-association football clubs to become parent clubs in the newly created FC København. Subsequently the club was listed on the stock exchange. See MORROW, *supra* note 3, at 104-05.

38 An example of an effective exercise of informal voice is the well-known protest by Arsenal fans against a bond scheme proposed by the club's board in order to finance reconstructions in Highbury stadium.

39 While 94% of clubs surveyed in 2003 stated they have little difficulty maintaining a dialogue with fans, only 40% of fans perceived such dialogue to be effective. In 2006, however, 78% of clubs found maintaining dialogue with supporters moderately difficult and 75% of organized supporters' trusts stated that such communication was moderately effective. See Jonathan Michies & Christine Oughton, *The Corporate Governance of Professional Football Clubs in England*, 13 CORP. GOVERNANCE 517, 522 (2005); FOOTBALL GOVERNANCE RESEARCH CTR. AT BIRKBECK, *THE STATE OF THE GAME: THE CORPORATE GOVERNANCE OF FOOTBALL CLUBS 2006*, at 22 (2006).

40 Eighty-eight percent of clubs reported the strong influence of sponsors, while only 63% accorded fan groups such influence. See FOOTBALL GOVERNANCE RESEARCH CTR. AT BIRKBECK, *THE STATE OF THE GAME: THE CORPORATE GOVERNANCE OF FOOTBALL CLUBS 2005*, at 72 (2005) [hereinafter *THE STATE OF THE GAME 2005*].

The case of Manchester United is a good example of the weakness of informal voice.<sup>41</sup> In 2005, U.S. tycoon Malcolm Glazer acquired control of over 70% of the club's shares, de-listed the club from the stock exchange and completed his takeover of the club by acquiring 98% of the shares. The British government professed its concern and urged Mr. Glazer to engage in discussions with the fans, but took no further action. Fans felt that they had been betrayed by the previous shareholders, who had allegedly seen the club merely as an investment. It was estimated that, in order to fund the purchase of the club, Glazer took large loans (a £265 million loan secured against the club's assets and another £275 million in loans), and the fans feared that they would be "expected" to pay for Glazer's borrowing.<sup>42</sup> Initially, fans attempted to protect the club from Glazer by establishing "Shareholders United" — a fan shareholders' association<sup>43</sup> — but to no avail. Later, fans expressed their resistance by calls for boycotting some of the team's games, not buying club merchandise and match-day programs, and not using catering facilities at the stadium. Some fans established a new "genuine" members-owned football club (FC United of Manchester) to play in a lower division, but most fans did not follow. The various plans of resistance were unsuccessful — loyalty to the club and traditional habits of fandom prevailed.<sup>44</sup>

If the fans' informal voice in matters which are crucial to the interests of the club as a whole and to the continuation of their community is not effective, then more formal arrangements should be established. Giving the

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41 *Man United Fans March Against Glazer Takeover Bid*, ABC NEWS, Feb. 24, 2005, [www.abc.net.au/news/stories/2005/02/24/1309725.htm](http://www.abc.net.au/news/stories/2005/02/24/1309725.htm); *Glazer Wins Control of Man United*, BBC NEWS, May 12, 2005, <http://news.bbc.co.uk/2/hi/business/4540939.stm>; *Fans React to Glazer's Takeover of Man Utd*, BBC NEWS, May 12, 2005, <http://news.bbc.co.uk/sport2/hi/football/4542681.stm>; *Manchester United Fans Furious Over Club's Sale*, ABC ONLINE, May 17, 2005, [www.abc.net.au/pm/content/2005/s1370870.htm](http://www.abc.net.au/pm/content/2005/s1370870.htm); *Man Utd Fans Say Battle Continues*, BBC NEWS, May 16, 2005, <http://news.bbc.co.uk/2/hi/business/4099848.stm>; *Glazer Gets 98% of Man Utd Shares*, BBC NEWS, June 28, 2005, <http://news.bbc.co.uk/2/hi/business/4629401.stm>; *Glazer Escape After Fans Protest*, BBC NEWS, June 30, 2005, [http://news.bbc.co.uk/sport2/hi/football/teams/m/man\\_utd/4635727.stm](http://news.bbc.co.uk/sport2/hi/football/teams/m/man_utd/4635727.stm).

42 Paul Kelso, *Glazer Family Loans Soak Up Record Profits at Old Trafford*, GUARDIAN, Jan. 11, 2008, [www.guardian.co.uk/football/2008/jan/11/newsstory.sport1](http://www.guardian.co.uk/football/2008/jan/11/newsstory.sport1).

43 The association launched its own economic plan aimed at accumulating cash to buy part of the club, if and when it was to be sold.

44 The reactions of Manchester United fans are interesting because other English fans mock them as not being traditional fans, but rather epitomizing the new fandom. Fans' reactions prove that, in the long run, at least regarding its practices, the new fandom resembles the traditional.

fans a formal and effective voice in such matters means their accruing a property entitlement in the club. In such fashion, not only do fans belong to the club and belong to their community, but the club, at least in part, belongs to them.

### **C. Property as Belonging and the Plurality of Institutional Arrangements**

In any review of football clubs, even within one's own country, one will find a variety of institutional arrangements differing with regard to the possible expressions afforded to fans in exercising their voice option. In England, for example, a wide range of institutional arrangements may be found — members' associations, private owners who manage the club through patronage but are willing to institutionalize consultations with fans, clubs whose shares are traded so fans may buy shares on the market (either on their own or as part of a supporters' trust) resulting in legally recognized options which are available to shareholders to express their grievances, privately held clubs with informal venues for expressing their fans' voice, and clubs where owners refuse to hear the fans altogether.<sup>45</sup>

Where such a plurality exists, there is a need to address the question whether the mere existence of such a plurality of institutional arrangements provides the solution. From such a theoretical perspective, fans may have their own preferences regarding the scope and extent of exercising their voice, as they have free access to any of the institutional arrangements on the "market" and, thus, may freely choose among them. Moreover, were there to be a special fan demand for one kind of institutional arrangement then, in theory, the market would correct itself and increase the supply of such, or, alternatively, fans would contract for their rights.

Such an assertion is deeply flawed, as there is no real market for institutional arrangements. Even if there were no legal limitation on modes of incorporation or of structuring the relevant rights and duties within the club, such a market would not emerge. The reason is simple. As noted in Part I, one usually becomes a fan through personal relations with other fans. Family relations, friends from an educational institution, the neighborhood

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<sup>45</sup> On the structures of ownership and fans' involvement in clubs' affairs in England, see STEVE GREENFIELD & GUY OSBORN, *REGULATING FOOTBALL: COMMODIFICATION, CONSUMPTION AND THE LAW* 48-72 (2001); *Special Issue: The Changing Face of the Football Business*, 1:3 *SOCCER & SOC.* 1 (2000); SIR NORMAN CHESTER CTR. FOR FOOTBALL RESEARCH, *FACT SHEET NO. 7, FAN "POWER" AND DEMOCRACY IN FOOTBALL* (2002).

as well as workplace relationships are the most common springboards to becoming a fan of a particular club. Therefore, while fan community is not a primordial community, belonging to it is not a preference. It is this common mode of enlisting new fans that strengthens the "sense of belonging" among fans. Once one becomes a "core fan," exit becomes highly improbable. And where there is no real option of exit, there can be no market.<sup>46</sup> Therefore, the solution should be sought instead in the reconstruction of existing football clubs.

### III. IMPLEMENTING PROPERTY AS BELONGING

When thinking about the corporate form that may best suit the property-as-belonging interest of the fans' community, we turn to the law. The law on forms of legal incorporations defines certain types of formal structures by which organizations can be incorporated, for example partnership, private and public companies, and cooperative societies. Using Ann Swidler's concepts, it can be said that each of these legal structures constitutes a cultural "strategy of action," a way of organizing collective action. According to Swidler, culture is "a tool kit" or repertoire from which actors select different pieces for the construction of lines of action.<sup>47</sup> Thus law, as part of culture, contains a repertoire of different forms of organization from which the legal subjects choose, but, at the same time, the choice of possibilities of organization and incorporation is limited. The different forms of legal organization differ from one another not only in the mechanism of their operation but in worlds of meaning and identity. The formal-legal structures of a company and a members' association may have some similarities in their behavioral aspects, but the meaning attached to such behavior is different in each of these organizations, in part due to the legitimacy given by the law to the "tenets" of these structures. Moreover, the law that regulates a certain kind of legal organization must be perceived in its broader cultural and social context, for example in connection with its history and its relationship with the structural aspects of the society in which it operates. This socio-cultural context is part of the organization's culture. However, when the current

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<sup>46</sup> See MORROW, *supra* note 3, at 89.

<sup>47</sup> See Ann Swidler, *Culture in Action: Symbols and Strategies*, 51 AM. SOC. REV. 273, 276-77 (1986).

repertoire of modes of incorporation does not provide an optimal form, it is the duty of the law to construct a new form, a new property institution.<sup>48</sup>

Most property institutions can be characterized as either more economic or more social in nature.<sup>49</sup> It is a common observation that one unique feature of football clubs is their dual mission — to achieve sporting success and to run as a business. At times, these missions conflict with each other.<sup>50</sup> More socially inclined observers view football clubs as economic in basis but social in nature, with greater responsibilities towards their various stakeholders—shareholders, fans, local community, sponsors and creditors, etc. It is the social and community significance of football clubs that distinguishes them from other business enterprises.<sup>51</sup> Some football clubs are indeed attentive to the needs and interests of various stakeholders, including local communities and fans, but this is not necessarily the general rule. As the case of English football proves, football clubs have not fully internalized the need to accommodate fans' interests.<sup>52</sup>

There is therefore a need for a new look at the nature of football clubs. The view suggested in this Article has the interest of fans' community as its underlying concept and sees a football club as a mixture of the social — on the side of the fans — and the economic — that is, the owner's interest to maximize his revenues. In line with the proposed recognition of the property-as-belonging interest of fans, the ownership structure of a football club should be designed in a way that allows fans to exercise their property interest in the social realms of the club,<sup>53</sup> while allowing the economic owners to pursue their material interests, although only in ways that would not endanger the continued existence and wellbeing of the club. The search is for a property institution that would best accommodate these goals, namely determining when each interest should prevail and who the decision-maker should be.

Translating the abstract concept of property as belonging into the concrete

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48 Due to the many differences between modes of incorporation in various countries, the treatment of such organization will be made only in the most general terms.

49 See Hanoch Dagan & Michael Heller, *Conflicts in Property*, 6 THEORETICAL INQUIRIES L. 37, 45-48 (2005).

50 See Hamil et al., *supra* note 34, at 45-46.

51 See MORROW, *supra* note 3, at 43, 56.

52 See *supra* notes 39-40 and accompanying text.

53 Fans have an interest in the sporting success of their club and in the sustainability of their community. Most of them understand that there is a need for rational economic management of the club and certain commercial practices that will ensure clubs' revenues. See KING, *supra* note 2, at 341.

dictates of practice proves to be a challenge. Several important issues need to be addressed and resolved in the reconfiguration of a football club as an institution which accommodates the fans' voice. In what follows, three possible modes of football club organization are examined.

### A. Members' Associations

The best possible option might be to transform all football clubs into members' associations<sup>54</sup> that would function internally as a non-market enclave while operating outwardly as a market entity. Members' associations are democratic in nature and typically adhere to the value of equality through the one person-one vote rule. Ownership is based on active participation rather than financial interests, and the members cannot enjoy capital or other material gains from their membership.<sup>55</sup> Some examples are the leading Spanish football clubs, FC Barcelona and Real Madrid CF,<sup>56</sup> as well as several German Bundesliga clubs.

This option is tempting since this form of incorporation best embodies the notion of property-as-belonging and combines both the social and the economic interests.<sup>57</sup> However, several issues crop up here. First, as the history of these clubs proves, even in members' associations serious agency

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54 "Members' association" is used here as a general term for all modes of incorporation where the fans have full ownership of the club.

55 See Jonathan Michie & Shay Ramalingham, *Whose Game Is It Anyway? Stakeholders, Mutuals and Trusts*, in *A GAME OF TWO HALVES*, *supra* note 23, available at <http://www.bbk.ac.uk/manop/research/seanpublications/agameoftwohalves/Gof2H-chap8.shtml>.

56 On the regulation of incorporation modes of football clubs in Spain, see Guido Ascari & Philippe Gagnepain, *Spanish Football*, 7 *J. SPORTS ECON.* 76, 78-79 (2006).

57 In Germany, the German Football Association has established limitations on private holdings of football clubs, and thus the football culture in Germany extends broad support to the members' association form. The rule is that 50% of shares in a floated company plus one share must be owned by a members' association, allowing for outside investments. On the German system, see Uwe Wilkesmann & Doris Blutner, *Going Public: The Organizational Restructuring of German Football Clubs*, 3 *SOCCER & SOC'Y* 19 (2002); Helmut M. Dietl & Egon Franck, *Governance Failure and Financial Crisis in German Football*, 8 *J. SPORTS ECON.* 662 (2007); see also Stuart Dykes, *Commercialisation and Fan Participation in Germany*, in *FOOTBALL IN THE DIGITAL AGE: WHOSE GAME IS IT ANYWAY?* (Sean Hamil et al. eds., 2000), available at <http://www.bbk.ac.uk/manop/research/seanpublications/footballinthedigitalage/FITDA-chapter14.shtml>.

problems can arise.<sup>58</sup> While the board of directors and the president of the club are democratically elected, there is a need to ensure that they will act in the best interests of the club during their term in office. The concern here does not differ greatly from that which arises in companies with dispersed share holdings or in a democratic political regime. In these contexts, law and other sources of norms provide a repertoire of mechanisms for proper corporate governance which may be applied, *mutatis mutandis*, to the structure of the members' association football club. Second, the problem of exclusion should be reviewed. Where not all willing fans are able to become members of the association, there is a need to guarantee their voice through a property entitlement within the structure of the association in such a way as to overcome the practices of exclusion. A third and significant issue is the transition of the club from a privately-held company to an association. Solutions may be found, for example, in the form of fans' mandatory right of first refusal in the purchase of shares and the establishment of public funding which would help fans finance such a purchase.

### **B. Co-Ownership of Clubs' Minority Shares**

Where the ownership of a club by its fans through the incorporation of a members' association is not possible, there is a need to find solutions within existing clubs' structure of ownership. As most football clubs are incorporated as private or public companies, it is not uncommon for fans to acquire clubs' shares. Such holding of usually an insignificant number of shares by individual fans is of no interest to the search for a community mode of voice in football clubs. What is of interest here is the opportunity for fans to hold a portion of clubs' shares collectively, either as direct co-owners or through a fans' association. One example of such an endeavor is provided by the British institution of supporters' trusts.

In the history of British football there have been several cases of co-ownership of shares by fans, and this mode of fans' operation was adopted as a leading strategy by the Labor government. In 2000 the governmental unit of Supporters Direct in England and Scotland was established.<sup>59</sup> The mission of this unit was to provide fans with legal and financial aid in order for them to

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58 Joseph Lluís Nuñez' reign of more than 20 years as president of the Barcelona football club may serve as an example of the grave agency problems to be found in members' association football clubs. See JIMMY BURNS, *BARÇA: A PEOPLE'S PASSION* (1999).

59 On the political context and agenda of Supporters Direct, see David Kennedy & Peter Kennedy, *Preserving and Extending the Commodification of Football*

establish supporters' trusts that would hold clubs' shares. The outcome of this effort has been the establishment of supporter's trusts in most football clubs.<sup>60</sup> However, with the exception of several lower division clubs, the supporter's trusts have only been able to acquire a small portion of clubs' shares.

There are some positive outcomes to becoming co-owners of a club's shares, even if only as a minority holding. First, it enables fans to enjoy all the rights and privileges of shareholders as provided in the relevant laws and regulations applicable to the club. Typically this enables fans to get access to information not otherwise communicated to the public, to have a formal right to participate and vote in the general assemblies of shareholders, and to enjoy the possibility of having their representative on the club's board or other committees.<sup>61</sup> In other words, it enables the community of fans to exercise a formal voice regarding the running of their club. Secondly, as co-owners or members in an association that owns a club's shares, fans will be able to democratically participate in decision-making regarding the ways their formal holding in the club will be exercised. It is an important venue for civic engagement in keeping with the spirit of fans' community.

While the abovementioned positive values attached to supporters' ownership of shares should not be entirely overlooked, other issues should be dealt with as well. Owning only a minority stake in a club's shares usually leads to having no significant opportunity to influence the running of the club and to reform its practices regarding the fans.<sup>62</sup> It is therefore questionable to what extent such a formal voice is better than the informal venues of expressing the fans' voice in protecting their community. Moreover, when a hostile takeover is a possibility, fans may lose their holding in the club altogether, and the fate of Manchester United fans' shareholding is real-life proof. Such drawbacks are recognized by fans and may be part of the explanation why only relatively small numbers of fans are involved with supporters' trusts, raising questions as to their right to representation.<sup>63</sup>

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*Supporter Relations: A Cultural Economy of Supporters Direct*, 12 SOC. RES. ONLINE, <http://www.socresonline.org.uk/12/1/kennedy.html>.

60 Currently there are over 150 supporters' trusts and more than 50% of them have a shareholding. See Supporters Direct, Facts and Figures, <http://www.supporters-direct.org/page.asp?p=2225> (last visited June 1, 2008).

61 In 2005 there were supporters' trusts in only 7 out of 20 clubs participating in the Premier League, and none of them had any representation on a club board. Fans had such representation in only one club, but that club had no supporters' trust. See THE STATE OF THE GAME 2005, *supra* note 40, at 52.

62 See Nash, *Sociology of English Football in the 1990s*, *supra* note 8, at 51.

63 See MORROW, *supra* note 3, at 52-54.

Of great importance is the cultural meaning attached to fans' shareholding. Although the fans hold clubs' shares in common and for the social cause of their community, they are nevertheless owners of regular shares in a market-oriented business firm. As Kennedy and Kennedy rightly observe, moral ownership of a club can "become blurred by the diktats of economic ownership," thus resulting in the commodification of fans' community.<sup>64</sup> Holding a minority interest in a club may therefore result in according unwarranted legitimacy to the prevailing modes and practices of private ownership of clubs.

### C. The Social Property Interest of Fans

Since fans' collective ownership of a minority share does not fully meet the need to protect the property-as-belonging interest of fans' community, and where the transformation of football clubs into members' associations is not a feasible option, there is a need to find another way to incorporate fans' interests into the organization of the private or public companies that are football clubs. If the interests of fans that merit protection are different in nature from those of the financial owners, a possible solution may be to divide the ownership of the club between them according to their pertinent interests. The fans would be the social or moral owners with an effective formal voice regarding matters most pertinent to their community, while the financial owner would be able to manage the day-to-day economic affairs of the club and extract dividends or other material gains from it. Such a mode of organization captures more fully the dual nature of football clubs as both economic and social institutions. It also keeps fans' involvement in the running of the club within the boundaries of the interests of fans as a community, namely those interests that merit legal protection from the perspective of property-as-belonging. Moreover, as the fans would exercise their social-property interest in the club as a group, this solution maintains the spirit of community.

In attempting to accommodate the entitlement, suggested above, derived from property-as-belonging to the structure of privately held football clubs, many urgent questions come to the fore. The following is a short yet by no means exhaustive list.<sup>65</sup>

First, we need to set a criterion that delineates the boundary of fans'

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<sup>64</sup> See Kennedy & Kennedy, *supra* note 59, para. 4.2.

<sup>65</sup> Other questions that arise include: should the solution be implemented only with regard to lower divisions, where there is a closer nexus between locality, community and the football club? Would it be suitable to condition the formalization of fans'

community. Modern football has brought with it new types of fans: for example, a person who only watches games on television and feels no need for face-to-face interaction with other fans. Others are even longer-distance supporters. With the opportunity to stay at home and view matches from around the globe, and with the affordability, at least for some, of occasional travel abroad, there has been an increase in the numbers of overseas fans.<sup>66</sup> It seems that the fans that deserve to gain a formal voice in the club are those whose interests as members of the fans' community are most likely to be endangered in the absence of such a voice. These are the fans who are actively involved with the affairs of the club and fan activities and have a thick solidarity with both club and fellow supporters. Therefore, fans who are season-ticket holders, those that occasionally attend games but watch them in the company of other fans (such as in pubs and similar forms of fan gatherings), and those who invest time and money in the promotion of the club and the fans' community interests should be those included in the community-of-voice.

Secondly, there is a need to decide how the fans' voice should be expressed. For example, is it better to accord each individual fan a direct voice at club meetings, should it be mediated through fan associations where there is a chance for a more elaborative discourse, or should it be exercised by a representative of the fans on the club's board? The British supporters' trusts and the lessons learnt from their internal operation may serve as a good starting point for an examination of these questions.

Thirdly, the more exacting task is the formulation of the new governance of clubs according to the suggested ownership structure. Under which circumstances is it justified to consider the fans' voice as mandatory? A general answer might be — concerning those matters which are crucial to the interests of the club as a whole and to the continuation of the fans' community. To begin with, the long list of matters that need to be decided upon in the running of a club should be divided into several groups according to the degree of their potential threat to the fans' community — its culture and identity — from low to high risk. A different rule of governance is to be applied to each of these categories. Determining the rules of decision-making in the mode suggested above is a difficult task, and need not be elaborated fully here. The following are a few examples aimed at demonstrating the structure of decision-making in the

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voice upon a proven fan plan to combat the negative sides of fandom such as violence, racism, "machoism" and other forms of exclusion?

<sup>66</sup> See Amir Ben-Porat, *Overseas Sweethearts: Israeli Fans of English Football*, 24 J. SPORT & SOC. ISSUES 344 (2000); Hans K. Honestad, *Transnational Passions: A Statistical Study of Norwegian Football Supporters*, 7 SOCCER & SOC'Y 439 (2006).

newly suggested structure of football clubs. Some matters in the running of a football club pose only a low risk to the fans' community, such as the appointment of a coach/manager or decisions regarding the club's merchandise. This realm of decisions should be entirely within the "sole and despotic dominion" of the financial owner. Other matters have potential to endanger the interests of core fans and therefore entail the need for their involvement, either by having representatives on the club's board or in any other way by which their interests would be seriously taken into account and accommodated. Examples of such matters are changing the team's colors or symbol, renovating the stadium or any other major economic decision that might have a long-lasting effect on the economically-sound base of the club. Issues such as the transfer of a controlling or decisive interest in club ownership, relocation of the club, major monetary investments such as the building of a new stadium and decisions to establish or close a club's youth football academy all easily come under this classification as being in the high-risk category. It is here where fans' communities' need for a strong formal voice is most evident, and therefore they should be accorded a strong voice, if not decisive decision-making power.<sup>67</sup>

Investing such powers in the hands of fans gives full credit to their ability to reach the correct social and economic decisions. It is based on visualizing the fans as those who can see most clearly what the real interests of the club are, since what is best for the club in its entirety is best for them. It is expected that giving the fans a formal voice would make them a responsible decision-maker.

Moreover, by splitting, in the manner stated above, the decision-making power between the financial owner and the fans, the financial owner would still have an incentive to invest in the club, as this division still assures him fair potential to reap the economic benefits. At the same time, it would ensure that only the "right kind of investors" find football clubs to be an attractive economic activity — namely, community-minded owners.

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<sup>67</sup> With regard to other issues, classification is not necessarily simple. For example, what is the classification of a managerial decision to terminate or not to renew a contract with a player who either grew up in the club or played for it for many years, where the fans view him as one of the club's symbols? And what about a decision to sign a player whose behavior, on or off the pitch (for example, aggressiveness or abusiveness, towards a partner or otherwise), or professed worldview, constitutes what fans perceive to be offensive or contradictory to the club's spirit (racism, for example)? See Andy Ruddock, *Let's Kick Racism Out of Football and the Lefties Too! Responses to Lee Bowyer on a West Ham Web Site*, 29 J. SPORT & SOC. ISSUES 369 (2005).

Fourthly, there is the problem of transition. In comparison with the aforementioned option of transforming football clubs into members' associations, the costs of transition by establishing a mandatory formalized fans' voice are relatively low. However, with the justification for implementing such a scheme comes the need to decide whether — and if so, to what extent — the current property-rights holder should be compensated.

#### IV. PROTECTING FANS' COMMUNITY

Current ownership structures of football clubs allow owners to engage in practices which may endanger the interests of the club as a whole, and, as a consequence, the wellbeing and the continuance of the community of fans. If we view the fans as a constitutive component of the club, and recognize the merits of fandom as a community, not to mention cherish the world of football at large, it is necessary to take measures to ensure the best interests of both clubs and fans. As argued in this Article, the way to achieve this purpose is by means of the formalization of fans' voice in the running of the club, through a property entitlement. The best option is the members' association form of incorporation, where fans are the full owners of the club and run it through a participatory democratic system of governance. A second-best option is to maintain some features of the company form, while transforming it. This new property institution would put the social ownership of the club in the hands of the fans as a community, while maintaining the financial incentive of the economic owners. Splitting the decision-making regarding the running of the club between these two groups of owners would enable fans to enjoy some of the benefits inherent in a members' association while securing their interests in the club and in the continuance of their community. Both modes of incorporation adhere to the idea promoted in this Article, according to which the fans belong to the club and to their community, and the club belongs to them.

Before, during and after matches, supporters of Liverpool FC pledge their allegiance to their club. Win or lose, they promise their team it will "never walk alone." In return, the supporters should be promised that they will never be left alone. As one of Liverpool's past legends, Bill Shankley,<sup>68</sup> famously once said, "Some people think football is a matter of life and death.

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<sup>68</sup> On Bill Shankley, see Shankley.com, <http://www.shankley.com> (last visited June 1, 2008).

I assure you, it is much more serious than that."<sup>69</sup> It is our duty to treat the property-as-belonging interest of the fans with an equal degree of seriousness.

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<sup>69</sup> See Thinkexist.com, Bill Shankley Quotes, [http://thinkexist.com/quotation/some\\_people\\_think\\_football\\_is\\_a\\_matter\\_of\\_life/199519.html](http://thinkexist.com/quotation/some_people_think_football_is_a_matter_of_life/199519.html) (last visited June 1, 2008).