Constrained Consent on the Gridiron

The players interviewed for this book indicated numerous reasons for playing football. In total, the players stated some three dozen different reasons for why they play: “competition,” “brotherhood,” “the personal challenge it creates,” “fans,” “atmosphere,” “scholarship money,” “getting paid,” “a chance to feel important in the community,” “travelling the country,” “a feeling of status,” and “being in the spotlight.” None of the fifty-nine players I spoke to listed violence, hazing, and performance-enhancing drug use as enjoyable aspects of football, or reasons for playing it. One professional offensive lineman remarked, “The actual sport of football is a tough sport to like; all of the practice and hitting your head against people constantly.”

On-field violence, hazing, and performance-enhancing drug use all act as constraints on the enjoyment of playing football: they are understood by the players to be
necessary drawbacks of the sport. Furthermore, the decisions of players to engage in these acts are constrained; they make their decision amid a variety of constraints that limit their freedom of choice.

CONCEPTUALIZING CONSTRAINT

The term “constraint” comes from the field of Leisure Studies, where it is used to denote the less enjoyable aspects of an activity or the restrictions placed on one’s involvement (Scott, 2003). The term is also commonly used in mathematical calculations to denote restrictions on the degrees of freedom to arrive at a particular solution (Irving & Mullineux, 1959). The same definition could be applied to social circumstances. In this discussion, constraint is a descriptive tool used to examine players’ perceptions of the various unpleasant aspects of football. While players enjoy football for numerous reasons, they do not enjoy all aspects of the sport. These non-enjoyable aspects act as constraints.

At present, the concept of constraint is not used in the Canadian legal system or discourse. However, the way in which I developed and used the concept in this chapter overlaps with common legal notions of motive, mitigating factors, mens rea, general intent, specific intent, and coerced consent. While sharing similarities with these legal notions, the concept of constraint has its own characteristics that help to determine how and why particular criminal acts occurred.

In R.v. Lewis (1979), motive was defined as that “which precedes and induces the exercise of will.” Rational
decisions made to alleviate constraints could be understood as motives, intentions to engage in a criminal act. A subtle difference exists between motive and constraint. People can have motives to commit crimes that result from the various constraints that they must negotiate and make decisions within.

Constraint is also similar to (though distinct from) the legal concept of mitigating factors, sometimes termed mitigating circumstances. Mitigating factors, as outlined in *R. v. Johnston and Tremayne* (1970) and *R. v. Shanower* (1972), are circumstances that do not completely exonerate an individual of a crime, but result in a reduced penalty for the offence. Constraints could provide motives for crimes or serve as mitigating factors, but not all mitigating factors are constraints. For example, an athlete who provides community service through a team charity might be given a lighter sentence because of his work in the community. In that case, the community service is a mitigating factor in the sentence. It is not, however, a constraint.

The broad legal term of *mens rea* is also related to the concept of constraint. *Mens rea* is defined as a guilty or culpable state of mind (Verdun-Jones, 2009), and relates directly to the intent to commit a criminal offence. In Canadian law, *mens rea* is typically divided into two categories: general and specific intent. This division was entrenched in Canadian common law by the case of *R. v. George* (1960). General intent requires proof of the intention to commit a prohibited act, while specific intent refers to the mental awareness and aim to commit a known crime. General intent does not require the intent to break a specific law, just commission of an unlawful act (or *actus reus*). Motive therefore relates to why an act was
committed (e.g. revenge), while intent involves the purpose of the act, (e.g. to injure) (Verdun-Jones, 2009). Constraints could lead an individual to develop a general or specific intent to commit a crime; however, they are neither motive nor intent in and of themselves.

The legal notion of coercion also relates to constraint or constrained consent. In *Hodges v. Webb* (1920), the legal notion of coercion was defined as “the use of physical or moral force in an attempt to interfere with the exercise of free choice.” A key feature of coercion is the “attempt to interfere.” Coercion requires a third party who presses an individual, with threats, bribes, and punishments, to consent to a given activity. Constraints could be coercive influences from a third party; however, they are often more subtle than this, without explicit threat or force.

Six kinds of constraint emerged from the interviews: (1) unpleasant aspects of work or leisure activities; (2) time, space, and other limiting factors that affect work or leisure activities; (3) limitations on free choice or consent; (4) obstacles that prevent one from attaining a goal or goals; (5) coercive influences from a third party; and (6) motivations for behaviours, deviant or criminal, to alleviate constraints.

The concept of constraint developed and applied in this chapter is closely related, even complementary, to the common legal terms that have been discussed. While not a concept used in the legal system, the notion of constraint does appear to be a viable way to help explain the various pressures that may lead some individuals to choose to commit a crime or consent to have a crime committed against them in Canadian football and broader social contexts. Constraints limit consent and provide motives for crimes,
yet they also allow for autonomous decision-making that is often, although not always, free of third-party coercion.

Players reported numerous constraints in Canadian football. On one level, the majority suggested that on-field violence, hazing, and performance-enhancing drug use could all be considered constraints. As I indicated in the opening paragraph of this chapter, none of the fifty-nine players whom I interviewed reported violence, hazing, and performance-enhancing drug use as reasons for why they play and enjoy football. For the majority of players, these are unpleasant aspects that they engage in to be able to experience what they defined as the joys of the sport, such as building friendships, gaining status, and being in the spotlight.

On another level, football players must negotiate a variety of constraints when consenting to engage in on-field violence, hazing, and performance-enhancing drug use, as both perpetrators and victims of these acts. As such, their consent can be understood as constrained. In some instances, these constraints result from the coercive influences of a third party. In others, players are not coerced, but they act under conditions where the only other options are unappealing.

**CONSTRAINS ON VIOLENCE**

A number of constraints contribute to how and why players both consent to and participate in different forms of violence on the field of play in Canadian football. These include a competitive work environment, league tolerance, the threat of being labelled feminine, and expectations
from fans. Some players use painkillers and steroids to alleviate the pressure of these constraints.

The competitive work environment of football requires that players act aggressively on the field at all times, or risk facing a number of formal and informal punishments. First, players who avoid hitting hard will likely never be selected for a football team. Once players are on a team, they must constantly compete for playing time. Few players want to be on the special teams line, responsible for kicks and kickoff returns. Because of the speed at which the play is moving, it is during these plays that athletes typically receive the greatest number of injuries on the field, as well as the most severe ones. Many players thus describe special teams as the “suicide squad.” There is constant competition among team players to be on offensive and defensive teams, rather than special teams. For players who are not willing to hit hard and consent to violent hits, their playing time could be relegated to the special teams line.

Those who are not skilled enough for special teams, or who do not play a position suitable for this line, can be cut from a team for not making violent tackles or consenting to hard hits. A CFL player remarked that if he were to take a single day off from playing with violent intensity, he might as well start looking for another job.

Beyond making teams, earning playing time, and remaining on teams, the competitive constraints of football also place players in competition with one another for scholarships and higher wages. According to one CFL defensive lineman, the more tackles he makes during a season, the higher his salary becomes. He benefits directly from the performance incentives in his contract: if he can
reach a certain number of sacks (tackles on the quarterback) then he receives a financial bonus. Indirectly, the more tackles he makes, the greater his salary will likely be in the subsequent season. According to two CFL agents whom I interviewed, most players’ contracts are performance-laden: they have a low salary, typically around $40,000 a year, and then receive bonuses for accomplishments on the field. Players on a team are then competing with one another to gain the performance incentives within their contracts.

Teams also receive performance incentives from the CFL based on their success. According to one agent, under the current collective bargaining agreement, CFL players were paid $20,000 as a bonus by the league if they were on the active roster of the team that won the Grey Cup in 2008. For the majority of players in the CFL, $20,000 represents a significant increase in their yearly salary. As a result, each game, point, and yard is important in the drive to win a league championship. This heightens the constraint of competition to the point where players are more willing to deliberately commit injurious violence on the field, and consent to the possibility of having these acts perpetrated against them. An offensive lineman expressed concern over this constraint, and indicated that players might deliberately injure important opponents with the idea that the financial compensation of winning would far outweigh the light penalty imposed by the league. The system of rewards and punishments in Canadian football that encourage violence on the field create a constraint of competition contributing to the perpetration and consent to on-field violence.
The league’s promotion and tolerance of violence on the field is an additional constraint on consent in Canadian football. League officials at the junior, university, and professional levels have done little to prevent and penalize excessive on-field violence. While league administrators do not directly require players to engage in violence on the field, they reward on-field violence by providing incentives for winning games with violent tactics. Furthermore, team and league administrators benefit by selling tolerable violence to fans. Players have no grounds to refuse to take part in this violence on the field, apart from leaving the sport.

League administrators and to a lesser extent the Canadian legal system have created an arena of tolerance in football where players have no recourse and receive no compensation for injurious acts of violence on the field. This tolerance constrains the players, who are not being directly coerced into committing and consenting to violence on the field, but their success in the sport will be limited if they do not do so. Furthermore, players have limited freedom to decide the extent to which they will consent to acts of violence on the field, as their perspectives on the limits of consensual violence are disconnected from the actions of league officials.

The threat of being labelled feminine, or as “not a real man,” forms an additional constraint on consenting to violence in Canadian football. Beyond making a team and earning the financial incentives of scholarships and bonuses, players must contend with the constant threat of being labelled by coaches and other players on their team as lacking sporting masculinity. Sporting masculinity, and its ideals of violence and aggression, are constraints
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on a player’s decision to commit or consent to violence on the field.1 To not consent to or engage in on-field violence could lead to criticisms of one’s masculinity and identity. Men who do not live up to masculine rules on the football field are labelled, or threatened with labels that denote femininity, a serious insult in the hyper-masculine realm of football.

Violence in Canadian football has become a commodity. Paying spectators expect to see violent tackles on the field. Fans often cheer louder for a hard tackle than they do for a brilliant pass or running play. Likewise, televised football games often repeat hard tackles in slow motion, rather than highlighting exceptional athletic feats. In so doing, the media is able to heighten the dramatic appeal of on-field violence. The majority of players interviewed also indicated that spectators encourage violence on the field, even in amateur settings. As such, the expectations of fans can place a constraint on players’ degrees of freedom to choose to engage in and consent to violence on the field.

As I noted at the start of the chapter, constraints often lead to behaviours perceived as criminal or deviant in order to alleviate restriction. To address the constraints of violence on the field, some players use illicit steroids to gain size and strength, allowing them to be more aggressive and violent, and take painkillers to numb the pain of injuries caused by on-field violence. Furthermore, some players believe that steroids help to aid in the recovery of injuries that result from the perpetration and victimization of excessive on-field violence.

1 For a more detailed discussion of sporting masculinity in Canadian football, see Fogel (2011).
Like steroids, painkillers represent a way to alleviate some of the constraints of on-field violence. By temporarily numbing the physical pain associated with such acts, painkillers can lessen a player’s concern about on-field violence. According to the majority of players I interviewed, using painkillers is perceived as a masculine response to injury. Those who do not use painkillers, and instead opt to miss plays and games, are labelled as “soft” and “weak.” Like steroids, the use of most painkillers is not illegal with a medical prescription; however, some players acquire them in illegitimate ways.

HAZING CONSTRAINTS

Several constraints contribute to how and why players consent to and perpetrate hazing in Canadian football: the team’s tradition, being part of the team, the threat of feminine labels, the secrecy of the act, and the tolerance of team coaches.

Several players noted that hazing is a cyclical process where the hazers’ experiences as rookies leads them to feel justified in hazing subsequent generations of players. One of the problems with this attitude is that it leads players to come up with initiation rituals that are more severe than those used the year before. As one player suggested in chapter 3, each year the hazing ritual becomes more severe, until it gets to the point where a group of veterans thinks things have gone too far, or an outside party steps in, such as a university administration.

Traditions of hazing extend well beyond acts within a particular football team from year to year. It has a long
history in North America,\(^2\) and has become so ingrained that it exists in religious organizations, fraternities, the military, high schools, dormitories, and athletic teams (Nuwer, 1990, 2001, 2004). The athletic teams that engage in hazing are not only comprised of men in masculine sports. Bryshun and Young (2007, p. 308) described a hazing ritual on an adolescent girls’ soccer team termed a “kidnap breakfast.” It involves team coaches entering the homes of rookie players, cajoling them out of bed at 7 a.m., and placing them in the back of the coach’s minivan, where they presumably then go out for breakfast with the team. Hazing in Canadian sport is pervasive, found across all levels and types. To stand against these rituals is to stand against long-established traditions of hazing on one’s team and in Canadian sporting culture more generally. As such, this history places a constraint on players’ freedom to choose to engage in and consent to hazing rituals.

To become part of a football team, players must go through some form of initiation. None of the fifty-nine players to whom I spoke reported avoiding an initiation process when they joined their current teams. According to them, there is really no way to get out of it. Players perceive initiations as a process that they “have to go through” to “be part of the team.” They suggest that they can resist certain rituals, but they must undergo some form of initiation before they can be fully accepted on a team. While players might consent to certain acts of hazing, they do so under the constraint that they must in order to become full members of their team.

\(^2\) For a detailed history of hazing, see Trota and Johnson (2004).
A mark of masculinity in Canadian football is the extent to which players are able to comply with various initiation rituals. Several indicated that compliance with them shows “guts,” “courage,” and “real balls.” Many described by players involve embarrassing tasks, such as singing in front of large groups of people. The aim of an embarrassing initiation ritual is to have rookie players put their pride aside for their team; to do so is perceived by teammates as a courageous act. According to several players, refusing to take part in such a ritual could lead to labels of “sissy” or “pussy,” and their teammates’ loss of respect. Several players also indicated that a mark of manliness was to win initiation competitions. For example, one junior player indicated that being able to chug the most syrup was “the sign of a real champ.” Others indicated that the consumption of alcohol was often a central feature of hazing competitions. According to the players, rookies who are able to consume large amounts of alcohol are deemed manly. Those who are not able or willing to consume copious amounts of alcohol are labelled “girls.”

According to Young (1983), perpetrating extreme forms of hazing can result in masculine valorization on a team. Quoting a team rugby newsletter, Young wrote,

The man who decided to place the red-hot marshmallows on the top of the beer bottle for better penetration will be elected to the M________ Rugby Hall of Fame. For many of the lads it marked the first time in their lives that their arseholes were really on fire! (1983, p. 131)

Players willing to put rookies through harsh initiations are perceived as team leaders with traits of superior
masculinity compared to other members on the team. Their acts of hazing are deemed worthy of admittance to their team’s “Hall of Fame.” This celebration of hazing is a further constraint on players’ decisions to engage in it, as doing so is to be labelled masculine, and failing to do so is considered feminine.

Hazing often occurs behind closed doors, outside the purview of non-team members (Kirby & Wintrup, 2002). The privacy of the act could be considered a space constraint that influences players’ decisions to consent to it. Since there is no one to witness the act, players know that they will likely not face any sort of penalty for engaging in hazing. If one player spoke against the team, it would be his word against the rest. Players are not, however, likely to report incidents of hazing because it would damage team cohesiveness. As I discussed earlier, team cohesion is considered important to the informal economy of protection on the field, and to becoming a well-functioning unit.

The privacy of the act also makes it a shared secret for a team. The secretive aspects of hazing add constraints to players’ decisions to haze and be hazed, as team members are the only ones present and are not likely to go against the demands of their teammates. To do so would limit the trust that players have for one another when they step out onto the field.

Many incidents of hazing in junior and university football in Canada take place either in the presence of coaches or with their knowledge. This diminishes the privacy of the act to some extent, but it does not appear to provide much relief from constraints. The coaches’ tolerance of hazing lends some legitimacy to it, reinforcing notions of building cohesion. The presence of a coach
Game-day Gangsters shifts the act from being a hazing to merely being a form of team bonding, and then constrains a player’s free choice to participate in initiation rituals. With a coach supporting and supervising the acts, players are less likely to withdraw their consent for fear of appearing uncommitted to a team, just as they would if they failed to follow a coach’s directions on the field of play.

PERFORMANCE-ENHANCING DRUG USE CONSTRAINTS

Various constraints on Canadian football influence players’ decisions to consent to performance-enhancing drug use. These include the demands of the sport, the need to keep up, the paradox of performance-enhancing drug use, and the tolerance league administrators and the Canadian legal system demonstrates for the act.

The competitive and masculine demands of the sport of football require players to be big, strong, fast, and athletic. Through the chemical augmentation of steroids, players can achieve athletic feats that they would not otherwise be able to do. Steve Courson (1991) asserted that he was able to gain over thirty pounds of muscle mass in a single month while on a steroid cycle, and they helped him to drastically increase his running speed. Constraints from the demands of the sport are limitations on the free choice to engage in steroid use. A CJFL running back affirmed that for some players, “steroids become a way to realize their dream.” Courson (1991) calls this type of steroid use, done to meet the demands of the sport, “vocational drug use” because athletes use them to become more productive at their jobs.
The demands of the sport of football can be particularly difficult for players who face the limitations of genetics, injuries, age, and training time. Some men are able to grow muscle mass with little effort, while others can spend hours lifting weights and eating high-calorie meals without gaining a pound. As such, some men’s physicality allows them to access the sport of football more readily than others. Some men who do not have that genetic potential turn to steroids to achieve the strength and weight gain of their genetically gifted counterparts.

Likewise, some feel constrained to use steroids because other players are using them. Non-steroid users are then at a disadvantage, and must use the drugs to level the playing field in the tough competition for jobs, playing time, status, and masculine identity. Players who are aging or who have experienced injuries may also turn to steroids to compete with younger men who have healthier bodies. Some see steroids as a way of gaining the strength of their more youthful playing days.

One professional running back suggested that steroid use in the CFL was not as prevalent among the star players as it was among those attempting to make teams from year to year. According to this player, steroid use in the CFL is largely a result of the pay structure that forces many players to take jobs during the off-season to earn a reasonable living and to support their families. The limitations of time and the need to keep up in a highly competitive and physically demanding sport create multiple constraints for players to consider.

According to several players, if no one was using steroids, then the risk of injury caused by larger, heavier men and muscles that grow too quickly would be much less
pervasive. However, as long as players are using steroids, this paradox will continue to exist, creating a further constraint for Canadian football players to negotiate when deciding whether to use performance-enhancing drugs. Players are pulled in one direction to be bigger, stronger, and less vulnerable to injuries from other men on the field; yet simultaneously they are pulled in another, toward damaging health consequences and the increased risk of certain injuries attributed to steroid use.

While no player indicated that a coach had ever directly suggested that he use steroids, their use is tolerated by officials in Canadian football. For example, a football coach at Mount Allison University allegedly knew that two of his players were using steroids, but continued to let them play without notifying any league authorities to have them tested. The players were subsequently tested, and failed. The coach, Marc Loranger, was fired. However, in a civil suit following the incident, he made the case that he had been wrongfully dismissed and was awarded five-sixths of his salary for the year (Loranger v. Mount Allison University, 1998).

Dealing with constant encouragement to be bigger, stronger, and better at their jobs, and the need to keep up with others in a competitive work environment, players are faced with a number of constraints when deciding whether or not to use performance-enhancing drugs. The apparent tolerance of steroid use by coaches, league officials, and the Canadian legal system adds to this constraint, further limiting the degrees of freedom that each player has when making this decision.

Donnelly (2008), while not specifically using the term constraint, lists a number of pressures that lead some
athletes to use performance-enhancing substances. He includes a “culture of excellence” that only values winning, the “medicalization” of society that emphasizes drug use, the “rationalization of the body” that treats bodies as trained objects distinct from personhood, the “professionalization of sport” that adds extra incentive to excellence, and the “demand for records” that expects athletes to be stronger and faster than their counterparts from previous eras (Donnelly, 2008, p. 20). All of these pressures could be considered constraints, as I have defined them.

**SUMMARY**

Numerous constraints limit the degrees of freedom by which Canadian football players are able to consent to on-field violence, hazing, and performance-enhancing drug use. The legal issue of discerning consent in Canadian football fails to take into account these and other possible constraints. As I revealed in this chapter, players are not able to provide free and informed consent, because it is invariably constrained by a number of factors.

The concept of constraint is important in determining the extent to which individuals freely choose to engage in particular criminal acts. Free and informed consent is not possible in this context, as consent is always constrained by factors that limit the degrees of freedom that an individual has. When individuals commit crimes, they do so with numerous factors pushing and pulling them, constraining their culpable intent. Despite the clear importance of constraints, especially in this examination of Canadian football, the notion remains largely absent from legal discourse and scholarship.