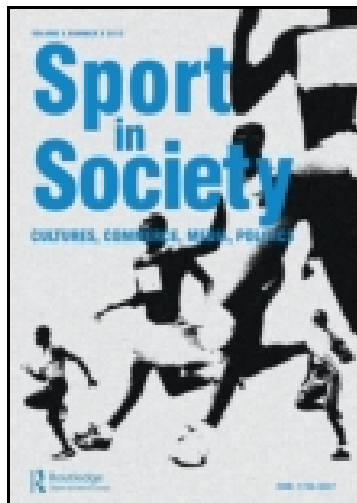


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Heads up: violence and the vulnerability principle in hockey revisited

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Violent play in the National Hockey League (NHL), and in other hockey leagues, has been debated for decades; however, recent discussion has focused on particular actions related to body checking. Due to a concern for player safety, calls for a ban against blindside body checking and shoulder-to-head hits have been voiced. The main argument we critique is based on the vulnerability principle. In this paper, we assess the arguments for and against a ban on these actions. Those against the ban who prefer the status quo refer to ‘slippery slope’, ‘blame the victim’ and rules-based utilitarian arguments. Those in favour of a ban stress player safety, the role of referees, lack of enforcement of current rules, league accountability and declining respect among players. In offering an ethical analysis of blindside checking and shoulder-to-head hits in hockey, this paper offers a convincing basis to condemn morally questionable violent play in the NHL.

Introduction

Violent play in the National Hockey League (NHL), and in other hockey leagues, has been debated for decades; however, recent discussion has focused on a particular action related to one aspect of body checking. The movement in question refers to intentional or unwitting blindside and/or reckless hits to the head. This type of collision has led to a rise in the number and severity of concussions and injury in the NHL ever since the league implemented new rules to open up the game after the 2004–2005 lockout. Players now have more space to skate faster and body check harder, especially against unsuspecting players in open ice and against the boards. NHL general managers (GMs) have studied headshots in earnest over the past two years and recently implemented, with the approval of the NHL Board of Governors and Players Association, a new rule to address and presumably deter lateral, back pressure and blindside hits to the head.

In this paper, we review the debate on headshots leading up to the new rule. Some of this debate has referred to the vulnerability of players, and therefore our probe and critique is informed by an ethical guideline which Simon calls the vulnerability principle or VP.¹ We briefly explain the VP in relation to sport violence and then consider the pros and cons of a ban on hits to the head as a dimension of body checking.

A brief exposition of sport violence and the VP

The issue of violence in hockey generally, and more specifically in terms of hits to the head, is a controversial topic.² Hockey is an immensely popular team contact sport known for its aggressive and violent character. When played as a full body contact game, athletes exhibit a wide range of behaviour. The mix of skills, such as shooting, passing, stickhandling, forechecking, net minding and the speed and precision of skating,

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combined with body checking, often makes for thrilling action. Moreover, organized male hockey particularly in Canada, from youth leagues to the pros, often teaches and encourages violent play such as stick work and fighting. Some violent actions in hockey are sanctioned and institutionalized while others are not, and this often makes it difficult to determine whether behaviour such as hits to the head are ethical or unethical. We also agree with Bergmann Drewe that sport scholars have paid little attention to ethical issues in hockey and we hope to partially fill this void in a modest way.³

We presume that hits to the head in hockey as on-ice conduct between players are subsumed under the category of violent play. But what counts as violence in sport? Parry's definition of violence 'is centrally to do with intentional hurt or injury to others, as well as attempts to harm, recklessness as to harm, and negligence'.⁴ Violence is morally wrong in most social circumstances, even though a distinction can be discerned between legitimate and illegitimate violence, especially in certain political and social realms.⁵

In a discussion paper distributed by the Canadian Centre for Ethics in Sport,⁶ the following definition of violence is offered:

Violence in sport is a physical assault or other physically harmful actions by a player that takes place in a sports context and that is intended to cause physical pain or injury to another player (or fan, coach, game official, etc.), where such harmful actions bear no direct relationship to the rules and associated competitive goals of the sport.

Simon states that violence 'involves the use of physical force with the intent to harm persons or property', and more specifically, 'sports, to the extent that they involve violence at all, generally involve the use or threat of use of physical force to harm opponents . . .'.⁷

Although further sociological and psychological features of sport violence can be raised, we would like to mention one last distinction Parry makes between acts of violence and violent acts.⁸ The latter include actions that are performed with lots of vigour, energy and fierceness, while the former are distinguished by intentional behaviour that causes and results in harm, injury and suffering. Given this distinction, Simon claims that contact sports, such as football, are not necessarily violent because there need not be any intent to harm or injure others for contests to proceed, even though the intent to use physical force applies, and acts of violence can and do occur.⁹ Similarly, Butcher and Schneider maintain that intending to injure is ethically problematic in sport, but not if pain results from legitimate, expected and acceptable violent acts which are not deemed acts of violence.¹⁰ Given this characterization of sport violence, how does the VP figure into this discussion?

It is generally accepted that hockey is an aggressive and highly charged team contact sport, but is it *violent* as such? As with Simon, who argues that football is not necessarily violent because it need not involve the intent to harm, perhaps the same could be said about hockey.¹¹ Many sports use physical force to achieve strategic ends and hockey is no exception. A hard body check in hockey makes use of physical force to achieve strategic ends and does not have to include intent to cause injury. It is also understood that athletes assume a certain level of risk and are susceptible to harm and injury when engaged in sport. But then Simon raises an important issue and example when he states: 'The key ethical question in fair competition may be whether the use of force takes advantage of an opponent's physical vulnerability'.¹²

Based on this observation, Simon presents a formal definition of the VP as follows:

According to the VP, for the use of force against an opponent in an athletic contest to be ethically defensible, the opponent must be in a position and condition such that a strategic response is possible and it is unlikely that injury will ensue.¹³

Acts that violate the VP include a basketball player ‘undercutting’ from behind an opponent who is in the air. While this example appears to be a clear violation of the VP, Simon recognizes that some acts, such as a blindside tackle against a receiver in football, are ‘ethically dubious’.¹⁴ In hockey, it would seem that body checking complies with the VP, but hits to the head may be ‘ethically dubious’. And similar to football, hockey may be condemned for having too much violence or producing too many harmful risks to players, but it need not be by its nature a violent sport. Yet the question of what vulnerability means remains open for interpretation.

According to *Webster’s Collegiate Dictionary*, vulnerable means ‘capable of being wounded’ or ‘open to attack or damage’ and vulnerability refers to the state of being vulnerable.¹⁵ Although one can be vulnerable in a non-physical sense, the VP is clearly talking about wounds and damages of a physical nature and reasonably protecting oneself from physical injury. One can assume that athletes who play football, rugby and hockey know, expect and assume certain risks that sometimes produce wounds and damage. The preceding sports are best described as collision sports because they involve tackling, blocking and body checking, actions that forcefully initiate and mete out physical contact, sometimes to unsuspecting and vulnerable players. But what makes a VP violation indefensible?

In an article entitled ‘What Does Vulnerability Mean?’, Hoffmaster describes three dimensions of vulnerability.¹⁶ The first element is the ‘loss of power that vulnerability imposes and signifies, and the attendant loss of control that ensues’.¹⁷ Second, vulnerability involves contingency and chance, and threatens one’s individualism. According to Hoffmaster, bodily vulnerability has been mostly ignored in moral philosophy, which has developed along rational lines in Western thought. The very need for morality, protection and legal enforcement is based on our biological vulnerabilities. Finally, Hoffmaster points out that ‘vulnerability is a source of our concern for others, but it is a source of our interest in and reliance on others’.¹⁸ When we feel vulnerable, we recognize just how much we need others to protect us from our weaknesses and frailties. The notions of loss of power and individualism, bodily vulnerability and reliance on others for protection are relevant to understand why violating the VP is indefensible. To cite the example above, for a split second, a basketball player in the air gives up a certain amount of power and control, leaves her or his body exposed to potential harm and is at the mercy of her or his opponents for protection. Undercutting such a player from behind, even when there is no intent to harm, is indefensible. Other examples may be less clear.

Taking advantage of the physical weaknesses of opponents, either related to an athlete’s lack of proficient skill, poor reflexes or return to competition after an injury, is generally not considered unethical. Receivers in football often make catches in positions of vulnerability, and no one expects defensive backs to hold back from taking advantage of this vulnerability by not executing a blindside tackle. If such blindside tackles produce too many serious injuries, then rules could be implemented to protect receivers, perhaps similar to those that protect quarterbacks.

The introduction of protective rules to curb VP violations indicates that the VP is partially grounded in the concept of paternalism, in addition to the intent to harm. Certain sport actions that have the potential to violate the VP should either be prohibited or restricted through the enforcement of rules. So, spearing or head tackling has been outlawed in football as being too dangerous, and this form of tackling is no longer taught. In Canada, there is controversy related to the appropriate age for the introduction of body checking in hockey. As a paternalistic notion, the VP is linked to consequentialist concerns such as the incidence, rate and severity of injury, the opportunity to respond strategically

and the unlikelihood that injury will ensue. As we know, paternalism has its limits when it comes to individual liberty among adults who can and do assume greater risks. Adults who enjoy and feel exhilaration in playing team contact sports would likely want few paternalistic restrictions and are willing to be more vulnerable than most. Moreover, they would likely acknowledge that opponents would take advantage of such vulnerability, and this is something they are prepared to accept. The paternalistic character of the VP is needed in some contexts, but in other settings it would face strong opposition.

The discussion here has shown that some sport actions conform to and others violate the VP. In turning to the recent debate on hits to the head in hockey, we now discuss this action as a component of body checking. Perhaps the VP can illuminate our understanding of headshots in hockey and help distinguish between those actions that are defensible and those that are not.

A genealogy of body checking and hits to the head in hockey

Body checking is a learned skill in male hockey. There is usually nothing unethical about the skill, even when a clean or legal body check results in severe injury. This type of physical contact requires knowing when and how to hit an opponent effectively and also how to receive a hit to minimize injury. However, it is not like tackling in rugby or executing holds and throws in wrestling. Without tackling and holds in these activities, they no longer remain fundamentally the same sports. On this point, we disagree with Bergmann Drewe who claims that body checking is an intrinsic and essential skill.¹⁹ Hockey can be played without body checking, as it is in many recreational, non-contact leagues, and for the moment there is a body-checking ban in girls' and women's hockey in Canada and other countries.

Yet as anyone who has played hockey knows, body checking can be experienced as an extension of the dynamic of the sport. The quickness and strength of the players, the bursts of speed, sudden turnovers, the rapid shifts in momentum, the restricted space, and the power of shots and passes all combine to create an environment where body checking makes sense. It is an effective way to slow down players, make them play with their heads up much of the time, evoke split-second shifts in strategy and dominate others with physical force. Moreover, body checking instills a certain state of consciousness and orientation about adversarial expectations in the game. It creates a particular posture among and towards players, together with a specific set of actions that can be reasonably anticipated in the game.

When body checking is understood as physical force without the intent to harm, it is a legitimate, learned skill that some might describe as a violent act. In adult male hockey, body checking is not a VP violation in most instances because players are taught to absorb full body collisions in various situations to minimize injury. The VP is violated when the intent of players is to harm and/or exploit the physical vulnerability of opponents. On the other hand, perhaps certain aspects of body checking, such as hits to the head, are ethically ambiguous under the VP whether players intend to injure opponents or not.

The issue of headshots in hockey is hardly new. In 2008, the National Hockey League Players Association (NHLPA) called for a ban on hits to the head as a matter of safety to protect players. It addressed the 'unsuspecting player', one who is in a 'vulnerable position' and those whose heads are 'intentionally or recklessly' targeted.²⁰ Throughout 2009, NHL GMs were cautious in altering rules to curtail headshots; however, during the 2009–2010 NHL season, a number of spectacular shoulder/elbow-to-head hits elevated the gravity of the issue to unprecedented levels. The headshot by Mike Richards

(Philadelphia Flyers) against David Booth (Florida Panthers) in October 2009 and the Matt Cooke (Pittsburgh Penguins) blow to the head of Marc Savard (Boston Bruins) in March 2010 are just two recent examples that elicited fierce public debate. The main issues in our survey of articles written about hits to the head over the past several months and whether or not a ban on headshots should be implemented include the following points. Those against the ban who prefer the status quo or remain close to it refer to 'slippery slope', 'blame the victim' and rules-based utilitarian arguments, as well as the incidence and severity of concussions and injuries. Those in favour of a ban stress player safety, declining respect among players, 'crossing the line', the role of referees, and the lack of enforcement of existing rules and league accountability. Let us examine these points.

The 'slippery slope' argument is echoed by those who claim that eliminating headshots will lead to further restrictive rules and make the game less aggressive. After the Richards hit, Colin Campbell, NHL Vice-President for hockey operations and head of discipline, was quoted saying, 'I'm certainly concerned about player safety, but I'm more concerned about taking a play out of the game that is a good, physical part of the game'.²¹ This disingenuous sentiment suggests hits to the head are not qualitatively different than other aspects of body checking and is something the NHL knows appeals to base elements of players and fans. The NHL has institutionalized acts of violence, such as fighting, and it wishes to retain headshots in a similar category. But while fighting has a number of rules and punishments attached to it, there are no such automatic on-ice regulations and penalties for hits to the head. Nevertheless, the 'slippery slope' argument is fallacious for a few reasons. There is no causal connection between the elimination of a particular action such as a headshot and a lack of aggressive physical contact. Professional football has banned specific tackling practices and has protective rules for certain players, yet it is still a highly charged collision sport. The Ontario Hockey League has stiff rules against hits to the head in an effort to ban the practice and it has not seen the level of physical contact diminish. This means that body checking can be executed without headshots yet remain an effective strategic action in the game. Finally, this argument seems contrary to the NHL's own decision-making policies when sweeping rule changes were implemented after the 2004–2005 lockout.

While fewer obstructions and greater speed and flow were welcomed by the NHL, players, media and fans, the new 'norm' included dangerous open-ice hitting such as hits to the head.²² In other words, the 'slippery slope' argument relies on a belief that headshots had always been an accepted component of the game, and a retreat from this expectation will necessarily reduce the appeal of aggressive physical play. Yet the severity of spectacular hits to the head apparently arose due to calculated rule changes, as well as the increased strength, size and speed of players over the years, and newly designed equipment such as shoulder pads that inflict more damage to the head. Thus, the arbitrary starting point of the 'slippery slope' argument is a recent, self-serving creation of the NHL used to retain as much of the status quo as possible.

Another line of defence against a ban on headshots is the 'blame-the-victim' argument, which exploits only one facet of the VP. Let us recall, as VP maintains, that the recipient of physical contact 'must be in a position and condition such that a strategic response is possible and it is unlikely that injury will ensue'.²³ Opponents of a headshot ban often insist that the hockey 'victim' is in violation of a cardinal rule in the game that states one must always have his head up. On this point, Campbell was emphatic: 'I believe there is a responsibility by the player getting hit by a legal check that he has to have his head up and avoid it'.²⁴ Two points are noteworthy in relation to this quote from the fall of 2009. First, whatever is deemed a legal check absolves the person doing the hitting of responsibility to

prevent harm, even blindside checks and hits from behind. Second, shifting the responsibility primarily onto the victim negates or trivializes the concept of player vulnerability. This view presumes that players with or near the puck must be on guard at every moment and position on the ice to avoid injury, have continuous power and control, are immune to contingencies on the ice and do not need protection from others. It is self-evident that in a fast-moving, dynamic and forceful collision sport such as hockey, these presumptions are questionable and more likely untenable.

Finally, headshot apologists make use of another argument that relies on rule utilitarianism, an ethical principle that weighs the rightness or wrongness, permissibility or impermissibility, of consequences that result from the following rules. In the case of hockey, if there are no rules that prohibit headshots, then body checks that involve shoulder or elbow hits to the head are legal, legitimate and perhaps even moral, no matter how severe is the injury that may result from such hits. If one follows the rulebook or judges hits by the rules, then questionable blows such as those of Richards and Cooke mentioned above are clean and not dirty. At the moment and in the near future, there are and will be no rules that will eliminate entirely hits to the head in the NHL.

Yet even existing NHL rules, such as section 43.5 of the charging penalty that includes a game misconduct for 'a foul resulting in an injury to the face or head of an opponent', are rarely enforced during a game.²⁵ Similarly, the boarding penalty makes direct reference to 'the player applying the check to ensure his opponent is not in a vulnerable position and, if so, he must avoid the contact'. This clause is followed by another: 'However, there is also a responsibility on the player with the puck to avoid placing himself in a dangerous and vulnerable position'.²⁶ The latter clause stresses an important difference when compared to the dictum 'keep your head up' at all times. The latter clause of the boarding rule anticipates that players may try to draw a penalty against opponents by deliberately placing themselves in a vulnerable position. Yet the boarding penalty offers little protection or deterrence to unsuspecting players on the receiving end of hits and minimizes the seriousness of player vulnerability. It is no surprise then that with the restricted trapezoid zone behind each goal, the area in the corners where goalies are not permitted to play the puck, slamming defensemen against the boards from behind in a predatory manner is a common occurrence. Such rules therefore encourage unsuspecting hits that result in concussions, head trauma and other severe injuries.

Since rule utilitarianism evaluates the consequences of breaking rules, over the past several years, the NHL has received and reviewed numerous medical and scientific studies related to concussions and the effects of equipment on the rate and severity of hockey injuries, including head injuries. The NHL also knows about and has access to head trauma and dementia studies in other collision sports such as professional football, which has recently become more vigilant in penalizing hits to the head.²⁷ Yet for the past several years, the NHL has not responded concretely to mounting medical evidence about the dangers of head injuries by altering rules and stiffening penalties in relation to headshots. As one writer commented in November 2009, 'the league remains outrageously cavalier about headhunting and the brain damage it causes'.²⁸

Rule utilitarians exploit the inconclusive nature of consequentialist ethical arguments by asking questions such as: what counts as a headshot?; how does one define severe versus mild head trauma?; how many head injuries can the game tolerate?; what about borderline cases?; how does one determine the intention of players?; and what are the long-term effects of head injuries, if any? Rule utilitarians, especially in sport, are often extremely cautious in amending rules or introducing new rules that would alter the nature of games. This is especially true in hockey, which is replete with institutionalized,

gratuitous violence, conduct that would otherwise be deemed criminal in everyday public life. Although the assessment of outcomes is often uncertain and contentious, rule utilitarians know fully well that rules can and do influence behaviour. In other words, rules prohibiting hits to the head could easily be established and enforced if only there was the will to do so.

During the 2008 to 2010 time frame, NHL GMs reviewed video clips of many different types of individual body checks with head contact. In some cases, good body checks were judged to involve incidental hits to the head, others resulted in concussions with no contact to the head, some body checks were deemed marginal and undecided and still others involved blindside direct shoulder-to-head hits.²⁹ In assessing various head-related body checks in fall 2009, the GMs decided that only the latter category warranted any possible rule changes or new rules. They also considered helmet and shoulder pad changes to increase head safety to try to avoid rule changes, but these efforts did not pan out. Once a decision was made to reduce blindside hits to the head, the GMs were exceedingly careful with the language and implications of any proposals to alter or introduce new rules. In fact, many players and commentators were and are sceptical that the NHL will enforce rules specifically related to headshots because such enforcement of current rules such as charging and boarding have rarely been utilized to reduce hits to the head.³⁰ Before analysing the first iteration of the NHL headshot rule, we will briefly describe the arguments in favour of a ban on hits to the head.

As mentioned earlier in this paper, the NHLPA and several hockey commentators have called for a ban against hits to the head for a number of reasons. First, there is a concern for player safety that is related to the increased frequency and severity of head injuries. Concussions are usually the short-term consequences of such brain trauma, and the onset of dementia after retirement, as is now being discovered, can be a part of the long-term outcomes of head injuries. Numerous medical and scientific studies related to hockey and other collision sports bear out these findings. Advocates of a headshot ban claim that the physical risks to players are far too great now to be ignored. There is also much greater risk if players return to the ice too soon, and multiple concussions can cut short the careers of players.³¹ A ban on hits to the head would remove a dangerous element of body checking and would signal serious attention to player safety.

Supporters of a headshot ban also claim that there is a lack of respect for players when heads are deliberately targeted as the object of body checking. This reason presumes that avoiding a hit to the head demonstrates greater awareness of player vulnerability and the integrity of players as human beings. Although accidental or unavoidable hits to the head may occur, if a ban were in place, predatory and reckless headshots, the ones that line up unsuspecting players, would likely be eliminated. A ban would raise the level of consciousness of players, alter their motives and behaviour and compel them to seek other strategic ways to body check effectively. It would also replace a kind of callousness between players too often seen in hockey with a mutual respect for others.

Those in favour of a ban point out that headshots, such as the Richards and Cooke hits, would delineate clearly what it means when players 'cross the line'. Even those who judged these blows as clean, legal and within the rules cringed at the viciousness and dire consequences of such hits. The existing rules are far too subjective, inconsistently enforced and lack punitive rigour to ensure that 'crossing the line' has no place in hockey. When Booth's teammate says, 'Richards tried to hurt him' and Richards' GM states, 'he was doing his job', then no standards exist and one gets mired in a kind of vulgar relativism and moral equivalency.³² A ban on hits to the head would at least ensure that a

clearer yardstick is in place to not only demarcate and differentiate the legal from the illegal hits, but also virtually eliminate blows that are ethically intolerable.

In a similar vein, a ban on hits to the head would assist referees to enforce the rules with greater consistency and less ambiguity. Most people are aware that hockey is one of the most difficult games to officiate due to the speed of players and the puck, the confined space, offside rules and distinct strategies, such as dumping the puck, and getting around obstacles such as the net. When body checking is added to the mix, the rules of the game are extremely challenging to enforce fairly and consistently. A ban on headshots would remove one dimension of body checking and perhaps make the detection of other rule violations easier. At the moment, on-ice officials are either unable or reluctant to enforce existing rules because the rules may be too open for interpretation and the ethos of the game is such that violent play is tolerated.

The latter point leads to the final reason why some wish to see a ban on hits to the head in professional hockey. When all is said and done, NHL owners, the commissioner, board of governors and other league officials are the main decisors, policy makers and arbiters in the way hockey is practised. Input from players, fans, the media, manufacturers and specialty groups has some influence on the way the game is played, but ultimately the responsibility for the game rests with those who wield the most power and control, namely, the representatives of the league. A ban on headshots would demonstrate a supreme test of league accountability for the safety of players, engendering respect among players, curtailing and eliminating dangerous play and enforcing the rules in a consistent and fair manner. As we stated earlier, hits to the head can be abolished if those who govern the NHL exercise the will to do so. In the following section, we will examine the new NHL headshot rule and a video report that explains the rule to show the extent to which the league is willing to go to curb headshots.

The new NHL headshot rule

Movement towards creating and implementing a specific rule to hits in the head reached a fever pitch in March, 2010, at the NHL GMs meeting before the end of the 2009-2010 season. There was a great deal of speculation that little would be set into place, even though in the fall of 2009, a working committee was struck to investigate headshots and concussions and make recommendations to the league. While the focus of discussion centred on blindside hits and acknowledged player vulnerability, there was concern about diminishing physical play, players putting themselves in vulnerable positions to draw penalties and the height differential between players.³³

Many hockey pundits and players commented on how it was time to establish a clear-cut rule with automatic on-ice penalties and post-game suspensions. They referred to the lack of respect between players, deliberately targeting unsuspecting players and high hits such as those to the head whether in open ice or against the boards. A case was made that taking out headshots did not necessarily 'soften' the sport but would actually make the sport better.³⁴ By establishing a headshot rule, the 'culture of headhunting' would no longer be acceptable and tolerated and would change the orientation and expectations of players during contests. There were also appeals in the media for the NHL to acknowledge that brain trauma resulting from body checks is a qualitatively different kind of physical injury whose short- and long-term effects can be devastating and potentially career-ending.³⁵ With mounting pressure from many sides to create a headshot rule, the NHL's Colin Campbell zeroed in on the central question, 'Do we want to take shoulders to the head out of the game?'.³⁶

After much debate, extensive video reviews and analyses, a report by the concussion committee and three presentations by physicians representing the league, the NHLPA, and an independent two-year study on hits to the head, the GMs unanimously agreed on 11 March 2010 to the following headshot rule:

A lateral, back pressure or blindside hit to an opponent where the head is targeted and/or the principal point of contact is not permitted. A violation of the above will result in a minor or major penalty and shall be reviewed for possible supplemental discipline.³⁷

Initial reactions to the headshot rule were mixed. What is abundantly clear is that the rule does not ban all hits to the head, but only those executed from 'a lateral, back pressure or blindside' position. Some commentators saw the rule as a step in the right direction that at least addressed players in vulnerable situations. Through the remainder of March, league officials made concerted efforts to justify and explain the rule in the media and to teams and players. For example, the rule demonstrated serious concern for player safety, aggressive physical contact would remain intact, on-ice penalties would eventually be enforced and violations would be reviewed for possible suspensions. After receiving significant public scrutiny amidst some controversy regarding the process of implementation, the rule was fast-tracked and made official for the rest of the 2009–2010 season and into the playoffs. The cautious approach taken by the NHL also meant that no on-ice penalties would be enforced that season, only reviews for 'supplemental discipline', but they would be in place for following seasons.³⁸

One criticism of the new rule is whether or not it can be enforced effectively. Referees have to make split-second decisions under extreme pressure when the 'victim' has already released the puck and the play has moved on. They have to immediately raise their hand, gauge the severity of the hit and have no access to video replay. As for the 'supplemental discipline' clause, this continues the pattern of giving too much discretionary power to the Senior Vice President and Director of Hockey Operations of the NHL. During the 2009–2010 season, Colin Campbell served this role and many accused him of making too many arbitrary and inconsistent rulings in relation to many other offences such as fighting.³⁹

Another effort by the NHL to inform and educate teams and players of the headshot rule was the distribution of a professionally produced DVD explaining the reasons for the rule and how it should be interpreted, as well as showing video examples of what will constitute legal and illegal hits to the head under the new rule. From the DVD,⁴⁰ one learns that the rationale for the rule is twofold: (1) to reduce head injuries yet maintain the game's physicality and (2) to address lateral or blindside hits to the head on unsuspecting opponents. As for interpreting the rule, initial contact of a lateral or east–west hit, even from a blindside position, must be through the body and not the head. Also, on a lateral hit, it is entirely the responsibility of the hitter to avoid principal contact with the head of an opponent.

Of the seven examples of such east–west hits that have been deemed illegal, one sees a player applying back pressure and as he passes the unsuspecting opponent laterally usually in open ice either with or near the puck or just releasing the puck, he lowers his shoulder or elbow into the head with a vicious blow that sends the opponent crashing and sprawled on the ice. In each example, the DVD narrator repeats expressions such as 'this hit must go through the body', 'this is a shoulder to head hit and is illegal', 'it is the responsibility of this player to avoid targeting the head' and 'this hit will be reviewed for possible supplemental discipline'.⁴¹

Of the nine examples of legal hits, the main factor is the north–south or frontal position of players and opponents, where the responsibility of being aware not to keep

one's head down still remains with the player being hit, as well as legal blindside blows. Variations of such hits include hits behind the net, hits by players suddenly coming out of the penalty box, hits preceded by a player moving laterally but getting in front of an opponent, targeting the body or the head in a frontal blow and blindside shoulder-to-body and shoulder-to-shoulder hits. The narrator goes into detail to explain why each hit is legal.

The DVD appears in part as an instructor's manual, a warning to teams and players to desist from encouraging and executing illegal hits to the head, and an endorsement of legal hits that target the head and the body and where the latter may be carried out from lateral and blindside positions. The video emphasizes that the standards and conditions for supplemental discipline under existing rules for hits to the head remain in place. These include a player who launches himself, targets the head, hits the opponent late and injures the opponent. The video summarizes the main objectives of the new headshot rule, which are to significantly reduce head injuries and concussions without diminishing the game's physicality and retain north-south shoulder hits that may contact the head because it is the responsibility of the puck carrier to be aware of susceptibility to such hits.

Conclusions

The time that has transpired since the 2009–2010 season is still too brief a period to draw conclusions about the NHL's new headshot rule in relation to the VP without the details of the on-ice penalties and how they are enforced, and the considerations that will inform the meting out of supplemental discipline. Immediate implementation of the new rule during the 2009–2010 season, which is almost unheard of in the NHL, certainly quieted the critics among players and fans to some extent and diverted attention away from the rash of brutal hits to the head that plagued that season. During the 2011–2012 NHL season, a reported 90 players and 1700 man games were lost to head injuries and concussion-related symptoms.⁴² This statistic offers some indication of the trend following the new headshot rule, but since the full impact of the new rule and whether or not it will fulfil its objectives is still unclear, we would like to offer three tentative conclusions about the headshot rule.

First, there is an acknowledgement that hits to the heads of players from the side, the back and/or blindside take advantage of players who are most vulnerable and have virtually no means to protect themselves to avoid injury. That the new rule is interpreted to mean the onus of responsibility to avoid such hits rests squarely with the player doing the hitting is a relevant advance. One is hopeful that players will be aware of and understand this prohibition and demonstrate restraint when presented with illegal-hit conditions. Similarly, the officials must be trained and educated sufficiently to enforce the rule fairly and consistently if such narrowly defined blindside hits to the head are to be eliminated. These then are positive elements of the new headshot rule.

Second, the rule makes clear what is not proscribed, namely, north-south or frontal hits to the head and body and blindside hits to the body. Such hits are legal, and responsibility shifts almost entirely to the player being hit because of the maxim 'keep your head up'. Players therefore are still able to line up unsuspecting opponents, target their heads and send them crashing to the ice or boards with the possibility of incurring serious head injuries and concussions. But why should a north-south positional orientation automatically rule out player vulnerability? Should a momentary and slight glance downward by a player with the puck give license to an opponent to target the puck carrier's or shooter's head? One has to question if the 'keep-your-head-up' axiom sufficiently outweighs the goal of reducing head trauma, and whether or not the elimination of all headshots would necessarily and significantly diminish physicality in the

game. Some of these considerations are empirical matters to be sure, but we find this aspect of the new headshot rule to be suspicious because it turns player vulnerability into an all-or-nothing, black-and-white calculation. In other words, it is too much to ask of players in a sport with continuously changing circumstances that they be on constant high alert of their opponents' designs to target their heads. We would argue that frontal headshots do not by definition remove the blindside character of hits and the overplayed 'keep-your-head-up' adage would still be strategically vital even if all hits to the head were prohibited. Moreover, the north-south interpretation of the rule will not help in judging borderline cases.

Finally, while we welcome, like most in the hockey community, the NHL's effort in curbing some hits to the head, we still argue that the issue of player vulnerability is at the heart of the matter. What player wishes for or asks to be hit in the head and suffer possible head trauma regardless of the direction of the compass' needle? The fear that players will deliberately place themselves in vulnerable positions and expose themselves to blows to the head in order to draw penalties is unfounded, perhaps obscene, given all the other ways violent play permeates the league. Here, the NHL tips its cynical hand by continuing to place a premium on promoting sensational and gruesome hits to the head. And why not? It is good for business. Without a total ban on headshots, the NHL is saying that reckless and callous behaviour will remain in the game, any frontal collisions targeting the head is the fault of the player who gets hit, and a certain level of head injuries and concussions can be tolerated. Perhaps in this sense, the NHL's power brokers ought to have their own heads examined.

Notes

- ¹ Simon, *Fair Play*.
- ² Some of the information in this section is taken from Rosenberg, 'Banality of Violence'.
- ³ Bergmann Drewe, *Why Sport?*
- ⁴ Parry, 'Violence and Aggression in Contemporary Sport', 209.
- ⁵ Arendt, *On Violence*.
- ⁶ Canadian Centre for the Ethics of Sport. 'What about Violence?' *Building a New Brand of Sport* discussion paper. Ottawa: Government of Canada, 1999.
- ⁷ Simon, *Fair Play*, 93.
- ⁸ Parry, 'Violence and Aggression in Contemporary Sport'.
- ⁹ Simon, *Fair Play*.
- ¹⁰ Butcher, R. and Schneider, A. 'Fair Play as Respect for the Game'. *Journal of the Philosophy of Sport* XXV (1998): 1-22.
- ¹¹ Simon, *Fair Play*.
- ¹² *Ibid.*, 104.
- ¹³ *Ibid.*
- ¹⁴ *Ibid.*, 105.
- ¹⁵ *Webster's Seventh New Collegiate Dictionary*, 999.
- ¹⁶ Hoffmaster, 'What Does Vulnerability Mean?'.
- ¹⁷ *Ibid.*, 41.
- ¹⁸ *Ibid.*, 44.
- ¹⁹ Bergmann Drewe, *Why Sport?* 162-3.
- ²⁰ *Associated Press*, 'NHLPA Chief Seeks Ban on Hits to the Head', *Sporting News*. <http://www.sportingnews.com/nhl/article/2009-03-09/nhlpa-chief-seeks-ban-hits-head> (accessed December 1, 2009).
- ²¹ S. Hackel, 'The Morning Skate: N.H.L. Ducks on Head Shots', *New York Times*, 4. <http://slaps.hot.blogs.nytimes.com/2009/10/27/the-morning-skate-nhl-ducks/on-headshots/> (accessed December 1, 2009).
- ²² J. MacKinnon, 'Head Shots, Trapezoids and the NHL', *The Edmonton Journal*. <http://communities.canada.com/edmontonjournal/print.aspx?postid=407293> (accessed December 1, 2009).

- ²³ Simon, *Fair Play*, 104.
- ²⁴ Hackel, 'Morning Skate', 4.
- ²⁵ Charging, 'Official Rules-Rule 43-Charging', National Hockey League, 2. <http://www.nhl.com/ice/page.htm?id=26331> (accessed December 1, 2009).
- ²⁶ J. MacKinnon, 'Keep Your Head Up—In the NHL', *Face Off*, 2. <http://www.faceoff.com/hockey/columnists/story.html?id=c0db6878-acb7-4c49-9d10-5fc419b8b6466> (accessed December 1, 2009).
- ²⁷ J. MacKinnon, 'Time for a Conscious Effort', *The Edmonton Journal*. [http://www.edmontonjournal.com/story-print.html?id=2169401&sponsor =](http://www.edmontonjournal.com/story-print.html?id=2169401&sponsor=) (accessed December 1, 2009).
- ²⁸ *Ibid.*, 1.
- ²⁹ B. McKenzie, 'NHLPA's Kelley Says Hits to Head Top Issue', *TSN*. http://www.tsn.ca/columnists/bob_mckenzie/?id=270499 (accessed December 1, 2009).
- ³⁰ G. Wyshynski, 'Can We Trust the NHL to Enforce its Own Head-Shot Rules?' *Yahoo*. http://sports.yahoo.com/nhl/blog/puck_daddy/post/Can-we-trust-the-NHL-to-enforce-its-own-rules.html (accessed December 1, 2009).
- ³¹ C. Custance, 'NHL Must Address Increasing Danger of Hits to Head', *Sporting News*. <http://www.sportingnews.com/nhl/article/2008-10-29/nhl-must-address-increasing-danger-hits-head> (December 1, 2009).
- ³² Hackel, 'Morning Skate', 1.
- ³³ D. Shoalts, 'A Shot to the Head', *The Globe and Mail*. <http://www.theglobeandmail.com/sports/hockey/a-shot-to-the-head/article1493156> (accessed March 9, 2010).
- ³⁴ M. Brophy, 'Time to Take Action', *Sportsnet*. http://www.sportsnet.ca/hockey/2010/03/08/brophy_column (accessed May 4, 2010).
- ³⁵ J. O'Connor, 'Headshot Concerns Reach Fever Pitch Around NHL', *National Post*. <http://www.nationalpost.com/sports/story.html?id=2659034> (accessed March 9, 2010).
- ³⁶ B. Arthur, 'Up to the NHL to Lay Down the Law on Headshots', *National Post*, 1. <http://www.nationalpost.com/sports/story.html?id=2659034> (accessed March 9, 2010).
- ³⁷ Cited in J. Kelley, 'Head Shots Proposal is Latest Example of NHL's Fuzzy Thinking', *Sports Illustrated*, 1. http://sportsillustrated.cnn.com/2010/writers/jim_kelley/03/11/headshots.rule/index/html (accessed May 4, 2010).
- ³⁸ C. Stevenson, 'Headshots Hijack NHL Agenda', *The Toronto Sun*, http://www.torontosun.com/sports/columnists/chris_stevenson/2010/03/17/13266521-qmi.html (accessed March 4, 2010).
- ³⁹ Kelley, 'Head Shots Proposal'.
- ⁴⁰ B. Condor, 'Bettman on Rule's Effect on Play, Injury Prevention', National Hockey League. <http://www.nhl.com/ice/news.htm?id=522722> (accessed May 25, 2010).
- ⁴¹ *Ibid.*
- ⁴² T. Wharnsby, 'Concussion Numbers were Staggering in NHL 2011–2012', *CBC Sports*, <http://www.cbc.ca/sports/hockey/opinion/2012/04/concussion-numbers-in-the-nhl-were-staggering-in-2011-12.html> (accessed June 15, 2012).

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