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# Governance responses to international agreements: The impact of the Kolpak ruling on cricket 1998-2021

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## ABSTRACT

This article investigates the impacts of global legal rulings and political agreements on domestic sport, and charts the responses of national governing bodies to these changes. The article studies rulings and agreements that impacted on employment practices within professional sport. The impact of the 2003 Kolpak ruling and the 2000 Cotonou Agreement on the movement of sportspeople is analysed. Through the context of English county cricket, this article develops Appadurai's conceptualisation of global flows, particularly ethnoscapes and finanscapas, to investigate how these international rulings and agreements particularly impacted South African migration into the UK. The responses of cricketing governing bodies in England and South Africa are analysed, and the response of the England and Wales Cricket Board (ECB) to 'Brexit' is also examined. Longitudinal data were collected on the migration of cricket players within English county cricket from 1998 to 2021 ( $n = 2,192$ ), a period encompassing the duration of which the Kolpak ruling applied. Further data were collected regarding the financial situation of the England and Wales Cricket Board, Cricket South Africa and the domestic cricket teams. We find four distinct periods within the timeframe, influenced by international policy. Despite cricket governing bodies in the UK and South Africa setting mitigating regulations, the Kolpak ruling led South African cricketers of international standard to migrate to the UK. Ultimately, it required Brexit for cricket's governing bodies to control the migration of sportspeople into the UK.

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## Introduction

A core element of 'Brexit' was the debate around the movement of people to the United Kingdom (UK), which is one of the key elements of globalisation. This is the backdrop to the present study, which analyses governance responses to the initial liberalisation and subsequent removal of freedom of movement between the UK and European Union (EU). The migration of athletes has been considered in sport previously (McGovern 2002, Lee 2010, van Bakel and Salzbrenner 2019), with specific studies carried out in various sporting contexts, including athletics (Adjaye 2010), baseball (Chiba 2004), basketball (Gulak-Lipka 2020) and rugby union (Carroll and Bairner 2019). Qualification criteria for various sports have also been examined, with recent studies including Jansen *et al.* (2018), Reiche and Tinaz (2019), van Campenhout and van Sterkenburg (2021) and Oonk (2022).

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Despite the movement of professional athletes being a relatively frequent area of investigation, discussion regarding the impact of Brexit on professional sport thus far has been primarily limited to the transfers of international footballers to the UK. Given the timing of the withdrawal, the impact of Brexit on sport was first noticeable during the January 2021 football transfer window. Since the Premier League's development and subsequent global expansion in the 1990s, English football clubs have become reliant on signing EU nationals. While Brexit limited the movement of European footballers to the UK, it did provide opportunities for the signing of players based in non-European countries. Rather than nationality, 'Governing Body Endorsements' are judged on a range of criteria including minutes played, the quality of the club and the international record of the player in question (The FA 2022). The weighting of South American competitions has allowed players such as the Colombian Yerson Mosquera and the Brazilian Kayky to transfer to Premier League clubs, moves that would have been unlikely under the previous regulations.

However, other governing bodies have taken a stricter approach to regulating the labour market in their sport. In particular, the governing body for cricket in England, the England and Wales Cricket Board (ECB) has tightened regulations in an attempt to prevent European Union rulings from impacting the sport post-Brexit. Of particular relevance to the cricket labour market are the *Bosman* ruling of 1995 and the 2003 *Kolpak* ruling. The *Bosman* ruling is better known than the *Kolpak* ruling and after it was made, sport governing bodies could no longer limit the number of EU nationals, or athletes from countries within the European Economic Area, that could be employed or fielded by sports clubs (Dubey 2005).

It is not immediately clear why or how a decision concerning a Slovakian handball player who was employed in Germany would have a significant impact on the governance of cricket. At the turn of the century, the German Handball Association (DHB) allowed a maximum of two non-EU nationals to be fielded at the same time. Slovak handball player Maroš Kolpak argued that as a national of a country with an Association Agreement with the EU, and with a valid contract to play for a German handball club, he should not be considered as an *Ausländer* (Foreigner). The DHB contended that such a rule was necessary on sporting grounds, to safeguard the opportunities for German nationals, and that the domestic rule did not prevent Kolpak from being employed in Germany (Dubey 2005).

A regional German court ruled in favour of Kolpak, and the nature of the case resulted in the DHB's appeal being heard in the European Court of Justice, which ruled on Case C-438/00 *Deutscher Handballbund (DHB) eV v Maroš Kolpak*, hereafter *Kolpak* (2003).. The DHB's argument was rejected. The European Court of Justice ruled that regulations restricting athletes from participating in their employed activity (in this case, playing handball) were against the principle of non-discrimination in the Association Agreement that Germany, as part of the European Community, had with Slovakia. Thus, the court ruled in favour of Kolpak, but crucially noted that

the prohibition of discrimination on grounds of nationality laid down in that provision applies only to workers of Slovak nationality who are already lawfully employed in the territory of a Member State and solely with regard to conditions of work, remuneration or dismissal

(Kolpak paragraph 42). Ultimately, it was ruled that 'during matches organised by the DHB, clubs are free to field an unlimited number of nationals of EEA Member States' (Kolpak paragraph 56).

As will be seen in the present study, policy decisions made at an international level can have repercussions in domestic sport. Sports governing bodies, who typically favour self-regulation, have fought to retain their autonomy, at least initially (Parrish and McArdle 2004). As García (2007) writes, at the time of the *Bosman* ruling, the EU was viewed by UEFA as a threat. UEFA president Lennart Johansson was quoted as saying that the EU was trying 'to kill club football in Europe', with European Commissioner Karel van Miert retorting that 'if [UEFA] want[s] war, it will be war' (quoted in Hopquin 1995). Ultimately, UEFA had no choice but to accept the *Bosman* ruling, and over time have elected to work with, rather than against, the EU (García 2007). The *Bosman* ruling's removal of nationality restrictions and allowance for out-of-contract players to

freely move clubs, fundamentally altered the European football landscape, obliging domestic governing bodies to rethink policies. For example, the German Football Association took it as an opportunity to expand the rights of EU residents to all 51 member states of UEFA, increasing the number of foreign players in German football, but potentially detrimentally impacting the supply of German talent (Niemann and Brand 2008).

The *Bosman* ruling and its impact have been much studied within the academic literature. However, there has been less focus on the responses of domestic sports organisations to other policy decisions at an international level. Therefore, this article is one of the first to examine the impact of Brexit on sport, and also one of the few to examine the impact of EU membership on the policy and governance of sport in the UK.

The article unfolds as follows: first, we examine the globalisation of sport and present our framework, which develops from Appadurai's five 'scapes'. We then discuss the methodology used to analyse the movement of players into and out of the English cricket system 1998–2021. A case study of cricket allows us to analyse the impact of European Union membership on a high-profile sport and examine some of the early impacts of Brexit on sport, not just in the UK but also in nations outside the EU affected by the *Kolpak* ruling. Finally, we offer conclusions and discuss the theoretical and practical implications of our findings.

### **Literature review: globalisation, professional sport, and Appadurai's 'five scapes'**

The case study of professional cricket discussed here encompasses globalisation, the impact of political agreements on the flows of finance and migration identified by Appadurai (1990) as central to globalisation, and the impact of globalised labour markets on the primacy of the nation-state. While the globalisation of labour markets represents an increased opportunity for individuals in the economic and social position to benefit, there is also a negative impact on economically weak nations and 'brawn drains' result (Bale 1991). Discussing the work of Ritzer (1983), Sharifonnasabi *et al.* (2020) suggest that globalisation and capitalism are often seen as synonymous, and analyses often involve a model whereby there are two main power hierarchies, the 'centre' and the 'periphery'. In many studies which utilise this approach, the principal global powers at the 'centre' are situated in Western Europe, North America, and Japan. While as Sharifonnasabi *et al.* (2020) discuss, other models have emerged which challenge this approach, the case study we examine has a clear trend of migration from Africa to Western Europe, and specifically the United Kingdom (UK).

A central element of globalisation is the deregulation of labour markets, designed to 'facilitate the unfettered transnational circulation of goods, services, capital and investment' (Giulianotti and Robertson 2012, p. 223). Discussing the increased agency afforded to individuals by deregulation of the labour market, Giulianotti and Robertson (2012, p. 224) suggest that 'neo-liberal ideologies celebrate the choice available to "free-agents" who have shed their residual national allegiances in a "borderless world"'. Neoliberal ideologies stress the primacy of individual choice and, according to Giulianotti and Robertson (2012), also weaken social solidarity, as people are increasingly free to act in their own economic interest.

Appadurai (1990: 229) has argued that globalisation 'extends the earlier logics of empire, trade and political dominion in many parts of the world'. This is certainly relevant to the sport of cricket, spread by British colonists across the globe. Aside from the UK, the sport is most popular in the Indian subcontinent, Oceania, the Caribbean, and Southern Africa. Although the sport is not as popular as football (the most common subject of analysis as far as the globalisation of sport is concerned), it is nevertheless played and watched by audiences of millions across the globe. It is particularly popular in former British colonial possessions. Appadurai (1995) has written about the potential of cricket to be utilised as a decolonising force in India, where it is extremely popular and has become important to ideas about nationhood and development. Relationships between nations are played out in the

context of cricket, and as we will demonstrate, these reflect and illuminate the financial and political situations in the nations examined.

Our framework for examining the case study develops out of the work of Appadurai, whose theories represent an attempt to develop a model of political economy sensitive to the rapidly shifting contexts extant within contemporary society. Appadurai (2000: 3) argues that 'the current workings of capital on a global basis' are 'inextricably linked' to the processes involved in globalisation. Appadurai (1990) has identified five dimensions of global flow which he terms ethnoscapas, mediascapas, technoscapas, finanscapas, and ideoscapas. These five scapes relate, respectively, to the movement of people, developments in media, developments in technology, global finance, and finally to the diffusion of new ideas through globalisation.

Appadurai (1990: 297) argues that these scapes are key to understanding the nature of finance, economics, and politics in a globalised world, suggesting that 'even an elementary model of global political economy must take into account the shifting relationship between perspectives on human movement, technological flow, and financial transfers, which can accommodate their deeply disjunctive relationships with one another'. Given the differences between contexts, it is not possible or methodologically desirable to produce one overarching analysis of these flows; instead, it is important to examine the specifics of flows because relationships between nations, states, peoples and various types of stakeholders 'are not objectively given relations which look the same from every angle of vision' (Appadurai 1990, p. 296). With that in mind, this article will examine flows in a specific context, rather than offering a general overview of multiple contexts.

Although examinations of globalisation are produced relatively frequently and Appadurai's work has inspired scholarly activity across a number of fields, the concept at the heart of his theorisation is under-examined. Attempts to analyse flows of capital between nations are seldom produced, and work that specifically examines the relationships between finanscapas and ethnoscapas is relatively rare. This is surprising given the utility and prescience of Appadurai's theorisation of the foundations of globalisation, the movement of money and people. In 'Disjuncture and Difference in the Global Cultural Economy', Appadurai (1990, p. 297) argues that 'the global relationship between ethnoscapas, technoscapas, and finanscapas is deeply disjunctive and profoundly unpredictable'. Many factors can affect the relationships between the five scapes identified by Appadurai. As he argues, each is 'subject to its own constraints and incentives (some political, some informational and some techno-environmental) at the same time as each acts as a constraint and a parameter for movements in the other' (Appadurai 1990, p. 297). These scapes have formed the basis of studies in sport globalisation, within the contexts of football fans (Conner 2014), international investors in sport (May 2019), NBA broadcasts in the UK (Falcous and Maguire 2006), Brazilian school sport (Seron Kiouranis and Marchi Júnior 2021) and sport in Asia (Cho *et al.* 2012).

Giulianotti and Robertson's (2004, p. 546) argument that sport constitutes a 'vital site for the theorisation and empirical exploration of the multidimensional and long-term process of globalisation' is unimpeachable. Sport has been utilised to provide the context for examinations of processes involved in globalisation, and Giulianotti and Robertson (2004, 2012) have produced wide-ranging analyses of the possibilities presented by the sociological analysis of globalisation both in and through sport. Globalisation is not just something that happens 'to' sport; popular sports such as football, cricket, rugby union and basketball are manifestations of globalisation in terms of the way they are financed, the structure of their labour markets, and the ways in which they have diffused across continents (Giulianotti and Robertson 2004, 2012).

With regard to analysing global flows of playing talent in sport, McGovern's (2002) examination of the labour market in English professional football is particularly useful. As McGovern (2002) argues, international migration is generally considered one of the defining elements of globalisation. The labour market for professional sport in the contemporary era is arguably defined by high profile, high

financial migration. Discussing the labour market in professional football, McGovern (2002, p. 24) argues that 'market transactions are influenced by social and cultural ties, by history and by pre-existing differences in the economic power of buyers and sellers'. As we examine, this is also the case in professional cricket, where strong historical, social, cultural and economic ties exist between the UK as a former colonial power, and the nations which continue to provide elite professional cricketers.

Utilising the work of Granovetter (1985) and Portes (1995), McGovern (2002) argues that patterns of migration in professional football are culturally and socially defined and do not follow the logic of a 'pure' economic market. In support of this, McGovern (2002, p. 24) argues that most markets, including international labour markets, are not 'free' as they are not governed solely by the logics of supply and demand; rather they are 'embedded in specific social situations in ways that both shape and support labour market behaviour'. This follows Granovetter's (1985) argument that an understanding of social structure is key to the analysis of markets. As we examine in detail, there are several important restrictions which prevent the labour market within professional cricket from being entirely 'free', accepting McGovern's definition of what a free market might look like.

While McGovern's work forms some of the basis for the present study, it is not the only one to consider the migration of athletes. Indeed, the migration of athletes has been considered in sport previously (Lee 2010, van Bakel and Salzbrenner 2019), and more specifically in athletics (Adjaye 2010) baseball (Chiba 2004), basketball (Gulak-Lipka 2020) and rugby union (Carroll and Bairner 2019). Most notably for this paper, Bale (1991) introduced the term 'brawn drain' to describe athletes attracted by financial motives to migrate from less-developed sporting nations. While Bale first recognised this in American universities, the phenomenon has since been identified in professional team sport, including football (Elliott and Bania 2014), rugby union (Guinness and Besnier 2016) and basketball (Maguire 1994). Perhaps more crucially for the present study, Agergaard and Ryba (2014), Cornelissen and Solberg (2007) and Adjaye (2010) specifically study the implications of African athletes leaving the continent to continue their sporting careers.

Professional sport is generally organised along national lines, and representing the nation is usually considered the pinnacle of a sportsperson's professional career (Giulianotti and Robertson 2004). The organisation of professional cricket is no exception, and each nation has its own governing body and national team. This is one of the key shaping factors that defines the labour market within cricket. As will be discussed below; however, cricketers who chose to utilise the *Kolpak* ruling in order to play in the UK were obliged to give up their right to play at international level. This is due to the nature of the work permits that such players were given.

At a macro level, examining the impact of globalisation can appear daunting due to the apparently disjunctive nature of the process. However, we argue that, at least at the micro level, it is possible to understand the processes involved in particular contexts. Through collecting data on finanscapes and ethnoscapes in a specific labour market which covers a 20-year period, we have found that it is possible to identify clearly defined flows and patterns within the context we identify. We argue that ethnoscapes and finanscapes can be utilised to examine globalisation. However, our data suggest that flows within these 'scapes' form particular patterns which should ideally inform analysis. As we will demonstrate, this case study is apt for the study of global flows of finance and talent, and so we will utilise two of Appadurai's five scapes in our analysis: the ethnoscape and the finanscape. Understanding these scapes can be developed through analysis of the context within which flows of finance and people take place, and this forms a key part of our analysis. We demonstrate that rather than being entirely unpredictable and disjunctive, ethnoscapes and finanscapes can be analysed and ultimately understood through rich and relevant data.

This contribution develops the existing literature on migration and player recruitment in sport, furthering our understanding of the relevance of Appadurai's work to the analysis of sports policy and governance. The ECB believed that the UK's membership of the EU obliged the governing body to allow players to enter the English cricket system whom they would have preferred not to have been recruited. As we will discuss below, therefore, membership of the EU directly affected the way

that cricket in the UK was governed, while Brexit has allowed the ECB to change elements of the way the labour market for cricket is structured. Our work is somewhat unique in analysing the impact of EU rulings and international treaties on the governance of sport over the entire time period that they were in place.

## Methodology

In his discussion of the factors which make professional football a valuable site for the examination of migration patterns, McGovern (2002, p. 24) argues that:

professional football is a unique industry in which the contribution of individual units of labour is unusually transparent. Not only can potential employers observe individual performance during games, they can also obtain a wide range of statistics on the strengths and weaknesses of individual players including the number and level of appearances for club and country (under-age teams, national team) in addition to such physical attributes as age, build, weight and height.

While professional football is unusual in allowing potential employers access to a wide range of statistics and televised footage of potential employees, it is not unique within sport. Similar studies have been conducted in baseball (Chiba 2004, Cotton 2013), and professional cricket also affords the same opportunities. From a methodological point of view, it has a similarly transparent labour market within which it is possible to collect detailed, longitudinal data on patterns and fluctuations in flows of talent.

With this being the case, we constructed a database of every player to have played professional cricket within the English system from 1998 to 2021 ( $n = 2,192$ ) using data from ESPNcricinfo. This time period allows for the measurement of flows of playing talent in the period immediately prior to the *Kolpak* ruling, as well as the measurement of flows of playing talent following the *Kolpak* ruling. Individual player profiles provided information on place of birth but did not specify eligibility criteria. This additional material was sourced from a variety of further sources. News reports on the players were the primary source utilised, alongside interviews in magazines and on websites. Over 2,000 individual sources were examined in order to determine a reliable and valid picture of player eligibility. Details of each source used would make for an unwieldy reference list, but full details for each player can be made available on request. Table 1 shows the different criteria by which players were eligible.

While we do not wish to diverge too much from our core aims for this article, it is useful to note that professional cricket in England was played in three formats during the period of our data collection. A fourth format – The Hundred – was added to the playing calendar after Brexit. Cricketers could represent counties in one, two, or all three formats. These formats are the County Championship (each match is played over 4 days, and there are two innings per team with no theoretical limit on the number of overs a team can bat), and two ‘limited overs’ competitions; the One-Day Cup (each team bats a maximum of 50 overs) and the T20 Blast (each team bats a maximum of 20 overs, and matches take around 3 hours to complete). The players in our dataset who signed *Kolpak* contracts generally signed to play in all three available formats, as they were obliged to make a commitment to their employers. While there are certainly players in our dataset who only signed to play one or two formats, we are examining cricket played across all three formats. Data generated on player eligibility was then analysed to determine the nature of the labour market in English professional cricket. Other data collected on each player relate to their playing experience at the national level and the amount of time they had/have spent playing within the English professional system. Overall, the aim of the data collection process with regard to playing talent was to determine a clear picture of the labour market in English cricket.

In order to analyse the financial landscape and the comparative financial strengths of national governing bodies and professional clubs, additional financial data were collected. The accounts of all 18 professional cricket clubs in England and Wales and the England and Wales Cricket Board (ECB) were gathered from Companies House and the Mutuals Public Register from 2000 to 2021. In addition, further financial information regarding revenues and expenditure was secured from the

**Table 1.** Countries participating in the 2019 Rugby union and Cricket World Cups.

	Rugby Union WC	Cricket WC	Commonwealth of Nations	Cotonou Agreement	EU
Afghanistan		✓			
Argentina	✓				
Australia	✓	✓	✓		
Bangladesh		✓	✓		
Canada	✓		✓		
England (UK)	✓	✓	✓		
Fiji	✓		✓	✓	
France	✓				✓
Georgia	✓				
India		✓	✓		
Ireland	✓		Formerly		✓
Italy	✓				✓
Japan	✓				
Namibia	✓		✓	✓	
New Zealand	✓	✓	✓		
Pakistan		✓	✓		
Russia	✓				
Samoa	✓		✓	✓	
Scotland (UK)	✓		✓		
South Africa	✓	✓	✓	✓	
Sri Lanka		✓	✓		
Tonga	✓		✓	✓	
United States	✓				
Uruguay	✓				
Wales (UK)	✓		✓		
West Indies		✓	✓	✓	

annual reports of Cricket South Africa (CSA) from 2010 to 2021 and professional cricket franchises in South Africa.

### The labour market in English professional cricket: ethnoscaping and the importance of the nation

Cricket in England is governed by the England and Wales Cricket Board (ECB), responsible for managing the national team, and governing domestic cricket. As in most professional sports, the dominant culture in professional cricket is that the nation remains the most important level of identity (Giulianotti and Robertson 2004), and thus the priority of the ECB is cricket at the national level. The governing body views the purpose of professional cricket at the domestic level to be the production of players who will be good enough to represent England, as laid out in its latest Memorandum of Understanding with the professional clubs and documented in the ECB's 2020–24 strategic plan (ECB 2018).

To that end, the ECB attempts to limit the pool of talent from which clubs can recruit and places restrictions on the number of overseas professionals that employers are allowed. Eighteen clubs compete in professional cricket in England and Wales. Of the 2,192 players to have played professional cricket over the period 1998–2021, the majority (1,519) are 'local', and therefore qualified to play for England (please see Table 1). Clubs are currently allowed to select a maximum of two players who do not qualify to play for England by birth, residency, or parentage. This is a much tighter restriction than most professional sports utilise, and so the cricket labour market cannot be considered 'free', as per McGovern's (2002) study of professional football.

The ethnoscape within English professional cricket is therefore defined by nationality. While there is international migration, this is limited by governing bodies, affording the local player a somewhat protected status, which accords with the aims of the sport's governing body in England. Despite these aims, there are relatively limited flows of playing talent from outside the UK into the labour market. In the time period we examine, of the 672 players not designated 'local', 388 had 'overseas' player status (it should be noted that some players changed status up to three times during their

time in English cricket), and of these, 368 have represented their country in international competition. The signing of these players is specifically designed to strengthen teams and improve their overall quality. The diffusion of cricket across continents has led to the sport becoming a global one, although one that is played at the highest level in fewer nations than football.

This means that the ethnoscape within English professional cricket contains flows of players from outside England but at a level tightly regulated by the sport's governing bodies. The contracts that overseas players sign are dictated by their availability for cricket at the national level. Players are typically expected to prioritise the national team they play for over contracts at the domestic level, even if club contracts might be more lucrative. This is a critical factor as, unlike elite-level professional football, domestic and international cricket matches often have conflicting schedules. Our results show that the dominant pattern of flows of playing talent into English professional cricket is primarily one of the short-term economic migration, within the strictures embedded within the way the sport is governed.

As with many studies of globalisation, however, there are certain exceptions to the dominant trend. One notable element of the ethnoscape is that the most common longer-term migrant within English professional cricket is South Africa. During the period we examine, 196 professional cricketers who were born in South Africa played in the English system. Of these, 81 qualified either through residency or through holding a UK or EU passport via ancestral ties. A further 51 have been able to get a contract in England via the *Kolpak* ruling (three players – Charl Willoughby, Neil Dexter, and Richard Levi later gained residency). As Greenfield *et al.* (2016) note, keeping track of some of the methods by which players qualified to play in English cricket can be difficult). Migration from South Africa to England to further professional careers in cricket is frequent and high profile. McGovern (2002) notes that migration tends to follow wider societal structures and cultures, and the majority of South African cricketers will already speak English either as a first or second language and many have family ties. These factors make migration easier for those who choose to take contracts in England. As a result, the flow of talent from South Africa to England is one of the most noteworthy features of the labour market in professional cricket. This seldom benefits South Africa, however.

In 2000, the EU signed the Cotonou Agreement with the African, Caribbean and Pacific Group of States (ACP), which came into place in 2003. This agreement sought to reduce poverty in the ACP by supporting the economic, social and cultural development of these states and promoting the integration of ACP into the world economy. Crucially, Article 13 ruled that:

The treatment accorded by each Member State to workers of ACP countries legally employed in its territory, shall be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals (Cotonou Agreement Article 13)

As a result, the 2003 *Kolpak* ruling that workers employed within the EU by member states could not be prevented from fulfilling the primary function of their job applied not only to states with Association Agreements but also those within the ACP. The *Bosman* ruling had little impact on English cricket; in 2003, the Netherlands was the only other EU country to have played international cricket, and it was not until 2017 that Ireland became the second EU nation to play an international Test match. Thus, the England and Wales Cricket Board (ECB) could control the nationalities playing in English domestic cricket and limit the number of 'overseas players' (theoretically non-EU, but in reality, non-UK) to two per team (Gough 2004). However, the *Kolpak* ruling, which forbade such restrictions from applying to nationalities with Association Agreements, now encompassed South Africa, Zimbabwe and the West Indian nations, three cricketing nations.

The *Kolpak* ruling itself does not directly address the issue of player migration and certainly does not discuss cricket. The consequences of the ruling have been a matter of legal interpretation and the ECB interpreted *Kolpak* as facilitating freedom of movement for cricketers from outside the UK. In 2008 Giles Clarke, the then Chairman of the ECB, gave evidence to the House of Commons Culture, Media and Sport Select Committee, saying:

That decision in the European court [*Kolpak*] following a trade treaty known as the Cotonou Agreement, whose participants had little understanding of what the consequences would be – that was drawn by a certain group of lawyers to have a definite conclusion that it provided the right of free movement of labour from citizens of a country signing the Cotonou Agreement – is where our *Kolpak* problem, which you have correctly analysed, comes from (Clarke, quoted in House of Commons Culture, Media and Sport Committee 2008, p. 38)

In evidence to the same Committee, Giles Clarke also said ‘we [the ECB] do not believe it is the purpose of a governing body to spend its time and money trying to establish legal test cases’.

Both Greenfield *et al.* (2016) and Parrish (2022) suggest that the ECB’s understanding of *Kolpak* was one of resignation. The ruling arguably did not mean ‘free movement of labour from citizens of a country that signed the Cotonou Agreement’ (Clarke, quoted in House of Commons Culture, Media and Sport Committee 2008, p. 38), or what Parrish (2022, p. 136) refers to as ‘a general right of market access to third country nationals’. Greenfield *et al.* (2016, p. 1760) suggest that the ECB misunderstood the implications of *Kolpak* and argue that ‘the outcome was not and never was freedom of movement from ACP countries akin to *Bosman*’. It appears possible that significant stakeholders in cricket – the ECB, PCA, and numerous countries – were not entirely clear on what *Kolpak* actually meant for cricket from a legal perspective.

Although understanding of the legal background is useful for the case itself, our interest here is less in whether *Kolpak* should, legally speaking, have led to an influx of players from outside the UK. For discussion of this, we can recommend Greenfield *et al.* (2016) and/or Parrish (2022). Rather, our main concern is with what – if any – measurable impact *Kolpak* did have. One thing that is clear is that the ECB believed that Brexit would allow the governing body to control the signings of overseas players.

In February 2020, the ECB announced that the *Kolpak* rule would not apply once the UK left the EU. The sport’s governing bodies were strongly opposed to the effects of the *Kolpak* ruling on employment patterns within cricket, and as soon as it was legally feasible to do so, the ECB cancelled the registrations of all players who had signed contracts under the *Kolpak* ruling (Cracknell 2020). This approach contrasted with other major sports in the UK. In total, the *Kolpak* ruling impacted English cricket for 17 years, from 2003 to 2020. This provides researchers with a unique opportunity to view the impact of a governance change on a sport for the full duration of its existence. The article therefore investigates the impacts of global treaties on domestic sport, and charts the responses of governing bodies to cricket in nations affected by those treaties. The nations most notably affected by the *Kolpak* ruling and the Cotonou Agreement were England and South Africa, so this is the particular focus of our research. This has the further advantage of allowing the examination of the impact of the *Kolpak* ruling for the entirety of the time period that it applied to the governance of sport in the United Kingdom.

As Giulianotti and Robertson (2012) discuss, European laws on freedom of movement and the restriction of trade have led to market deregulation. While the more well-known *Bosman* ruling greatly impacted English football, it had limited impact on English cricket. By contrast, the *Kolpak* ruling has had a far greater impact on flows of labour and finance in professional cricket. As the results show, a total of 74 players have utilised the *Kolpak* ruling to sign contracts with English counties (please see Table 1). Of these 74, 57 had played cricket at international level for a nation other than England, indicating that the *Kolpak* ruling has allowed a significant number of high-quality professionals to take up contracts that would not have been available otherwise. By the end of the 2020 season, all 18 clubs within the English professional cricket system had employed cricketers on *Kolpak* contracts. As none of these players were qualified to play at a national level for England at the time they signed, it is clear to see how the *Kolpak* ruling goes against the ECB’s aims of prioritising the English national team.

In 2004, 10 months after the *Kolpak* ruling, South African Claude Henderson became the first player to sign for a UK domestic team through the *Kolpak* ruling. In the years following, English cricket’s governing body, the ECB, enacted a series of deterrents to discourage cricketers from utilising the *Kolpak* ruling to move to England. However, they did so with

limited success. The first regulation stated that no club was allowed to sign a player on a *Kolpak* contract if he had played international cricket in the previous calendar year. This rule change aimed to limit the quality and quantity of available *Kolpak* signings. As a result, by the end of 2006, 19 players had signed *Kolpak* contracts. Of these players, 16 had played fewer than 10 Tests and eight had never represented their country, indicating that they were not of an international standard. All three experienced international players were Zimbabweans, and this was a period when Zimbabwean cricket became increasingly politicised.

The 20<sup>th</sup> *Kolpak* signing, Jacques Rudolph, successfully challenged the ECB's ruling when signing for Yorkshire in March 2007. The move was welcomed by CSA, whose chief executive, Gerald Majola, said

the county experience would make him a better player at this stage of his career ... the general view is that with this added experience in county conditions he will become a more rounded player. We wish him all the best and are confident that he will return as an even better cricketer (Majola, quoted in IOL 2007)

In relation to Rudolph's signing, Yorkshire argued that the rule that any player from outside the UK who wished to sign a contract with an English team should not have played international cricket at Test level in the previous 12 months was a 'restraint of trade' and in contravention of European employment law (Yorkshire Post 2007). However, the then Yorkshire Chief Executive Stewart Regan said:

It is an ECB regulation but the ECB have informed the county [Yorkshire] it is not enforceable. We understand it is linked to the whole area of restraint of trade. The *Kolpak* ruling allows him to play and we are following that procedure. Jacques played international cricket last August but, having asked ECB advice, we have been told that rule cannot be enforced. (Regan, quoted in Birmingham Post 2007)

The ECB decided not to legally challenge Yorkshire's signing of Rudolph, which the county understands to be legally acceptable following *Kolpak*. The Professional Cricketers' Association (PCA) opposed the signing but also decided they were not in a position to challenge it (Birmingham Post 2007). By the end of the following summer, 23 new *Kolpak* contracts were signed, resulting in a record 37 *Kolpak* players featuring in the 2008 English season. Both the ECB and CSA acted in response. The ECB started charging fees to counties that selected more than two players on *Kolpak* contracts for competitive fixtures. The CSA sought to entice South Africans to turn down *Kolpak* contracts, through signing a memorandum of understanding with the South African Cricketers Association, which saw players sharing 15% of CSA's financial surpluses. In return, CSA would oversee every *Kolpak* contract signed by a South African cricketer (Irish 2007). These steps failed to stem the tide. For example, in one match between Northamptonshire and Leicestershire in 2008, 12 of the 22 players selected were South African players on *Kolpak* contracts. Bull (2016) later described this match as 'infamous', providing a catalyst for another rule change.

In October 2009, the ECB adopted new rules that remained in place until the UK's exit from the EU. This followed an answer to questions on the ramifications of the Cotonou Agreement (2000), submitted to the European Parliament by Robert Sturdy and Sir Robert Atkins in 2008 (European Parliament 2008b; European Parliament 2008c). In the answer, the following is stated:

The Commission confirms that neither the Cotonou Agreement nor EC association agreements with third countries provide for a right of free movement within the European Economic Area (EEA). These agreements do, however, contain provisions on non-discrimination on grounds of nationality (equal treatment clauses) as regards working conditions and the remuneration of workers who are legally employed in the Member States. Following the Court judgment in the *Bosman* case, professional sportsmen and sportswomen originating from those countries and who are legally employed should not be discriminated against when employed in the EU by comparison with nationals of the EU or EEA Member States.

However, the answer also states

access of the above third-country nationals to the labour market of Member States is a matter for domestic law. Decisions whether to allow access to employment in sports clubs in Member States are, therefore, the responsibility of the competent national authorities

(answer to questions given in European Parliament 2008a). In essence, what the answer appears to state is that once an individual is legally employed in an EU member state, it is not legally acceptable to discriminate against that individual by restricting them from competing. However, 'competent national authorities' have the right to restrict access to the labour market for individuals whose nations were signatories to the Cotonou Agreement.

The ECB chose not to restrict access completely but rather to introduce certain criteria regarding qualifications, after reportedly lobbying the UK Home Office in order to make changes (Hopps 2008, Brett 2009). Players who wished to sign contracts with counties as a consequence of the *Kolpak* ruling and the Cotonou Agreement had to meet at least one of the following criteria:

- (a) A valid work permit in the UK for at least 4 years; or
- (b) Have played one international Test match in the 2 years prior to the contract being signed; or
- (c) Have played five international Test matches in the 5 years prior to the contract being signed.

By 2014 the ECB levied a fine of £1,100 per match for every club that selected a player who was not playing as an overseas player but was also not qualified for England (Hoult 2017). This was, in effect, a levy aimed at clubs employing players on *Kolpak* contracts. These rules were largely successful in preventing new players from being signed; from 2009 to 2016, just 18 new *Kolpak* contracts were signed and the number of *Kolpak* players in English cricket fell to 11 in 2016. However, the ECB's criteria had the consequence of limiting *Kolpak* signings to international players. Ten of these 11 new *Kolpak* players had represented their country, averaging 77 international caps each. Five of these were South Africans and effectively ended their international careers in order to move to England. The terms of the contracts specified that players had to be available for their clubs or breach their work permit agreements.

As Giulianotti and Robertson (2012) suggest, there are elements of globalisation that are ideologically neoliberal in terms of stressing the freedom of individuals to choose where to ply their trade for maximum financial advantage. Cricket South Africa (CSA) had become increasingly frustrated with a situation whereby a legal ruling in a jurisdiction it cannot control saw it fall victim to a talent drain. This was exacerbated in June 2016, as the UK voted to leave the European Union. With the prospect of South African, Zimbabwean and West Indian cricketers potentially losing the legal right to play in English county cricket, several high-profile international players have signed *Kolpak* contracts. The eight new *Kolpak* contracts signed in 2017 were as many as the previous three seasons combined, with five more signings in 2018 and 2019.

As with previously, it is important to consider not only the number of players signing *Kolpak* contracts but the quality of those players. On 5<sup>th</sup> January 2017, Kyle Abbott and Rilee Rossouw both announced that they were signing *Kolpak* contracts for Hampshire, turning their backs on the South African national team. Aged 27 and 29, respectively, both were regulars for South Africa and world top-40 ranked cricketers. Following Rossouw's signing, CSA issued a statement outlining its investment in the player:

From CSA's perspective it [Rossouw's decision to leave] is a loss as we invest immeasurable amounts which include premium time, finance, technical, high performance coaching followed by development tours and providing general player welfare over a long period of time. By way of example, Rilee has spent a lengthy period on the injury list while we spared no expense in providing him with the best medical support. (ESPN Cricinfo 2017)

The CSA responded to the loss of Abbott and Rossouw by placing restrictions on the number of *Kolpak* players eligible to play in South African domestic cricket. Unlike in football, it is common for cricketers to play domestic cricket for different teams in multiple countries in one season. Each South

African franchise would be limited to playing two *Kolpak* players, with their salaries being paid by the franchise, not the central allocation. Further, South Africans on *Kolpak* contracts would be classed as 'overseas' players in the new South African T20 League; teams were allowed a maximum of four overseas players named in a 16-man squad (Cricket South Africa 2018). Thus, South Africans signing *Kolpak* contracts would potentially turn their back on playing any cricket within the South African system. However, in 2018, Morné Morkel, ranked as the sixth best Test bowler in the world, signed on a *Kolpak* basis for Surrey. While Morkel was 33 at the time, this is not an old age for a cricketer; indeed, 12 of the current top-20 Test bowlers are 32 or older at the time of writing.

Finally, 2019 saw perhaps the highest-profile decision by a player to leave the national team. Duanne Olivier was considered a highly promising player for the South African team, and aged 26, potentially had a long international career ahead of him. However, in February 2019, Olivier left South Africa to join Yorkshire. CSA's reaction to this was revealingly emotive, as the governing body suggested that Olivier had given up the opportunity to 'live his dream of being an international cricketer' (Brickhill 2019). CSA had offered Olivier a two-year contract, but Yorkshire offered him a longer contract, and he took that option.

There are strong financial factors involved in cricketers choosing to sign *Kolpak* contracts, and the Olivier case is instructive. The movement of South African cricketers to England can be explained using Appadurai's (1990) concept of the finanscape. There are two influences on the flow of talent out of South Africa, the comparative wealth of English cricket in comparison to South Africa and the decline of the South African Rand to the Pound.

The first global trend over the past 20 years is the weakening of the South African Rand, particularly when compared to the Pound. At the time of writing, there are 22 Rands to the Pound. In 2003 (the first year of the *Kolpak* ruling), this was around 12 Rands to the Pound. This is a crucial factor; Duanne Olivier's contract was said to be £150,000 per year or 2.7 million Rand (Martin 2019). In 2010, £150,000 was worth around 1.5 million Rand. The broader economic contexts play a role as well. The OECD (n.d.) estimate that South Africa's purchasing power parity compared to the UK has increased from 4.7 in 2003 to 10.5 in 2021. As Myburgh (2004) noted, real wage differentials played a large role in explaining the migration of South Africans to developed nations such as the United States, the UK, Australia and New Zealand, and this trend appears to have continued within cricket.

The second factor in the finanscape that has led to an increase in South African cricket migration to the UK is the comparative wealth of English cricket compared to South Africa. Figure 1 shows the comparative revenues of the ECB and Cricket South Africa.

The disparity in incomes was at its greatest between 2012 and 2015. In 2014, the International Cricket Council (ICC) changed its financial model, acquiescing to demands from the ECB, Cricket Australia and the Board of Control for Cricket in India for a larger share of revenues (ESPN Cricinfo 2014). These were already the three richest governing bodies in world cricket, so exacerbated already existing disparities. In 2017, a more equitable distribution of revenue was implemented; during the 2016–2023 cricket cycle, the ECB received US\$143 million from the ICC, compared to \$132 million for Cricket South Africa (Brettig 2017).

The financial structures of professional cricket in both England and South Africa mean that professional clubs in both nations are reliant on grant payments. The market is not 'free' but largely controlled by national governing bodies, whose wealth (or lack thereof) influences the nature of the contracts that clubs can offer. Both governing bodies make payments to domestic cricket clubs. In 2019, the ECB distributed £53.7 million to domestic cricket in England (England and Wales Cricket Board Limited 2020). The 13 counties who disclosed this information received on average £2.7 million, accounting for 28% of their revenues. Indeed, for some, this accounted for over half of their revenue. In comparison, Cricket South Africa distributed 720 million rands in the same year, around £1.6 million per franchise (Cricket South Africa 2020).

This additional revenue provides UK cricket clubs with an advantage over South African clubs to attract players. Staff costs of county cricket clubs in 2019 were twice that of South African franchises.

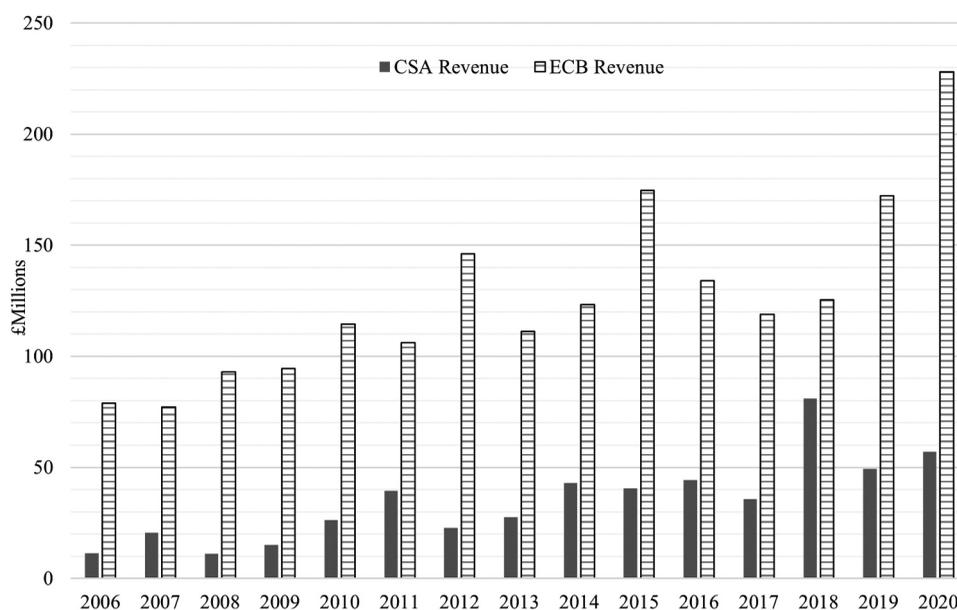


Figure 1. CSA v ECB revenue 2006–2020.

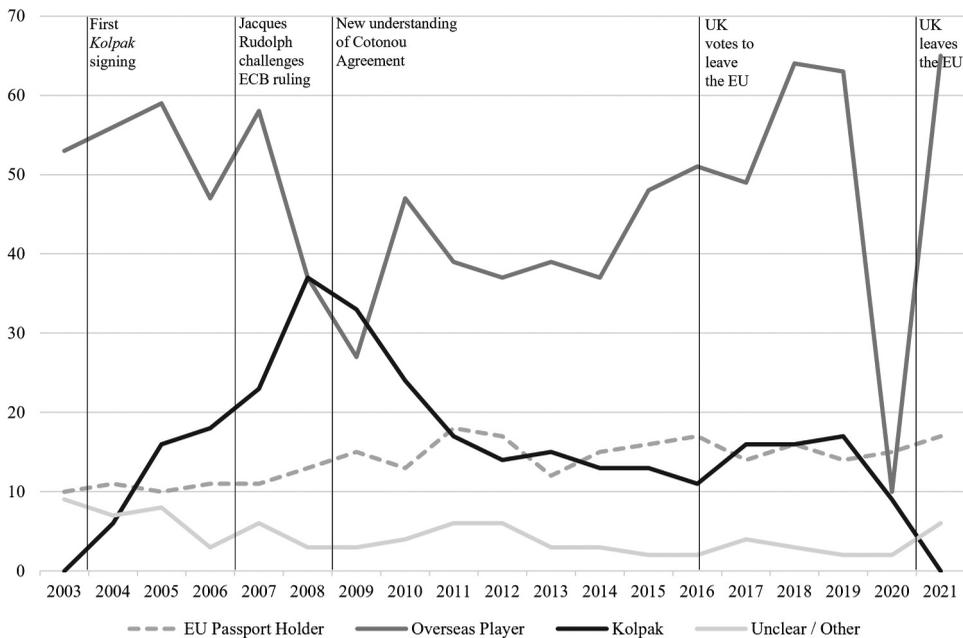
Further, the salary disparity goes beyond that of domestic wages, as international cricketers are typically contracted to the national team and paid a retainer. CSA divides its contracts into three grades, with top tier players earning approximately £287,000 per annum, middle-tier players earning £175,000 per annum and bottom tier players earning around £115,000 per annum (Samiuddin *et al.* 2017). These payments are reliant on a player's form and fitness, leading to national selection, and so the reported guarantee of a multi-year contract worth £150,000 per year to play in England may seem attractive to a player whose place in the international team is not guaranteed.

While it is clear that neither CSA nor domestic franchisees have the financial resources to compete with English cricket, the continued decline of the Rand has further intensified financial disparity. The financial landscape is advantageous to English professional cricket clubs and certainly disadvantageous to Cricket South Africa.

## Conclusions

This article has identified four clear periods in which international law changes significantly altered cricket players' migration to the UK. These can be seen in Figure 2. Despite the ECB and CSA's best efforts, it was policy changes at an international level that ultimately influenced the number of players able to join English cricket via the *Kolpak* ruling. First, following the initial introduction of the *Kolpak* ruling, the ECB successfully limited the quality of players eligible to sign players on a *Kolpak* basis, thus dissuading English counties from pursuing these players. However, a legal challenge to these restrictions saw an increase in both the quality and quantity of players signing *Kolpak* contracts.

The following year, a new understanding of the Cotonou Agreement following questions asked to the European Parliament allowed the ECB to place new restrictions on *Kolpak* signings. The number of players eligible for contracts was limited, but the high barriers to entry resulted in these players typically being of an international standard, with the unintended consequence of reducing the availability of these players for the South African national team. Finally, the 2016 referendum on the UK's position in the EU increased the number of players seeking a *Kolpak* contract. However, the



**Figure 2.** Non-UK cricketers in English County Cricket, 2003–2021.

ECB's high barriers remained in place, resulting in both high quality and quantity of players entering English county cricket, and in doing so, becoming unavailable for international cricket.

Since Brexit, the ECB has been able to reinstate nationality restrictions on domestic country cricket teams. Following the 2016 vote, the number of players on *Kolpak* contracts in English professional cricket rose. However, the overall number of overseas players fell during this time, suggesting that Brexit played a significant role in the decision to sign *Kolpak* contract. The impact of COVID-19 severely restricted the number of non-UK-based cricketers in 2020, the final season in which *Kolpak* contracts were allowed. However, the following season, the number of overseas players in English cricket was 65 – the largest number in our sample. This figure includes seven players who had *Kolpak* contracts in 2020, who subsequently played as overseas players.

The ECB's approach appears to be at odds with the levels of globalisation that have been at the heart of the growth of many sports. However, this is not alien within international cricket. The aforementioned 2014 redistribution of ICC finances saw a greater proportion of revenues remaining with the richest cricketing nations. Similarly, until recently, the ICC has been reluctant for cricket to feature in the Olympic Games, and has actively restricted growth by limiting the number of World Cup qualification places. The 2003 World Cup saw Kenya reach the semi-final, and 4 years later, Ireland progressed at the expense of Pakistan. Rather than embracing a growing sport, the ICC reduced the number of qualifiers from 16 to 14, and then to 10, effectively limiting participation to Test-playing nations. Rather than sport being a manifestation of globalisation (Giulianotti and Robertson 2004, 2012), cricket appears to follow at least some of the ideals behind 'Brexit'. The ECB pursues some policies that are restrictive and arguably isolationist, with the primary focus being the development of players who qualify for the national team.

### **Theoretical implications**

The case study allows insight into the impact of globalisation on the labour market in professional sport. As Bailey and Winchester (2012) indicated, discussion of the extent to which globalisation

impacts upon the national level of identification can be abstract, without reference to practical case studies and empirical evidence. One advantage of examining professional sport is that it allows for a practical, real-world analysis of the extent to which the organisation of society is truly globalised. At a practical level, the organisation of professional cricket remains centred around national governing bodies and national representative teams, and the extent to which 'pure' globalisation can take place is highly limited, as McGovern (2002) indicates. The organisation of professional sport renders nationalism 'banal', to utilise Billig's (1995) term. Even where there is an international labour market, it is expected that professionals will adhere to a structure within which the nation is embedded as the dominant level of identification. Qualification to play in many competitions is defined through nationality, and governing bodies continue to protect this situation as long as they legally can.

Bailey and Winchester (2012) suggest that discussions of globalisation can be abstract, but through our empirical data we can clearly determine that the dominant organisational culture in professional cricket has the primacy of the nation embedded within it. Qualification to play in English professional cricket is defined through nationality, and the ECB continues to protect this situation. The ethnoscape within English professional cricket is therefore largely defined by nationality and the extent to which 'pure' globalisation can take place is limited as per McGovern's (2002) study of English professional football.

One element of the ethnoscape we examine is a notable volume of migration from South Africa. Appadurai (1990) discusses the fact that flows of finance and the wider finanscape of any case can be difficult to analyse, but in this case study the finanscape can be discussed with a degree of confidence. Until recently, professional cricketers from South Africa have been giving up careers at the international level to bring attractive and relatively secure financial packages to English cricket. The comparative wealth of English cricket and the decline of the South African Rand to the Pound are contributory factors within this.

The social, cultural and political context of the case study allows some South African cricketers to act according to their own economic interests. Strong cultural and social links between the UK and South Africa make migration more attractive and feasible. As per Granovetter (1985), where the needs of an employer do not accord with the needs of an employee, the latter is capable of acting in their own interests, even where the hierarchy of their industry is opposed to this. However, this is not a 'pure' free agency; actions are determined by and embedded within the structure of the market.

In addition, the deregulation of the labour market via the *Kolpak* ruling and the Cotonou Agreement also made migration a more feasible choice during the period of our data collection. Overall, Appadurai's (1990) argument that the nature of scapes is difficult to predict and complex remains fair at a macro level, but through the collection of rich, longitudinal and relevant data, it is possible to gain a greater understanding of the factors that influence finanscapes and ethnoscapes within specific markets. Thus, the cultural relationship between South Africa and the UK, the deregulation of labour laws related to professional sport, and the willingness of clubs to act in their own interest and not those of the sport's governing bodies are all factors embedded in the decisions of players to sign *Kolpak* contracts and impact upon the sport's ethnoscape. Ultimately, we have found that flows within the ethnoscape we examine are defined by the social, cultural, and political context within which they occur.

### **Managerial implications**

Finally, this article is one of the first to offer a detailed analysis of the impact of Brexit on professional sport, based on reliable data. Brexit provided the ECB with the opportunity to reinstate restrictions on nationalities within domestic cricket. Despite this route now being closed, 65 overseas players played in the 2021 season. It appears that although the *Kolpak* route is no longer open, players will still accept contracts in English professional cricket through other routes. We can conclude that the potential financial gains to be made remain appealing, despite changes in the landscape for professional cricketers post-Brexit. The nature of the

international labour market is constantly changing and although governing bodies can restrict the movement of players, the current trend for T20 leagues with high numbers of 'overseas' players may lead to further changes in policy. The ECB's new competition, The Hundred, has different regulations to the County Championship, and three overseas players are allowed (Fletcher *et al.* 2023). This is largely because high-profile overseas players are considered essential to marketing a brand-new tournament.

Deregulation of the labour market in Europe had a significant impact on Cricket South Africa. The CSA invests significant resources into elite-level professionals, but it has been powerless to prevent them from leaving South Africa. The freedom to move employers is a central part of the labour market in most developed and developing countries. However, in this case, there is an extra, more emotive factor – the employees involved are representatives of the national team and are prioritising their own financial future over the opportunity to represent their nation. In professional sport, this is unusual and goes against the dominant trend (Giulianotti and Robertson 2012). The decision to utilise the labour market rather than accepting what is normally seen as the privilege of playing at the national level is noteworthy and unusual.

Discussing the labour market for South African intellectual workers, Connell (2007, p. 24) states that 'middle-class incomes in South Africa do not compare with salaries available in the metro-pole. Consequently, there is talk of a brain drain'. Between NaN Invalid Date (the date of the first *Kolpak* signing) and the UK leaving the EU, 116 players have represented South Africa at international level. Thirty-seven (31.9%) of these players have signed *Kolpak* contracts in England in preference to playing international cricket for South Africa. Therefore, we might reasonably widen 'brain drain' to 'talent drain', similar to the 'brawn drain' initially identified by Bale (1991) and further discussed by Adjaye (2010) and Agergaard and Ryba (2014) who recognise the migration of athletes from the African continent. Indeed, this issue is not confined to South African cricket; rather, it reflects a wider societal issue. In this case study, however, it is possible to identify exact rulings and agreements that have deregulated the labour market and made talent flows out of South Africa possible.

### **Limitations and directions for future research**

The present research identifies the 'talent drain' of South African cricketers into English cricket. However, it does so from an anglicised perspective. Future research could further the impact that such a migration has on South African domestic cricket, while considering the political and social contexts from which players are departing. For example, during the period in question, Cricket South Africa (2017) introduced regulations to support cricketers who were 'previously disadvantaged' under Apartheid; six non-white players must be selected for any first-class fixture. While the social transformation aims of Cricket South Africa are linked to the nation's past and can be seen as social justice in action, players who may perceive themselves as being disadvantaged by the quota system have been able to leave South Africa and take up secure contracts in England (English *et al.* 2018).

Further, this research covers 1 year of athlete migration post-Brexit. While it is understandable that attention over the past 2 years has been focused on the impact of Covid-19, it is possible that the impact of Brexit on UK sport has not yet been afforded academic attention. While the ECB clearly used Brexit as a pretext for tightening migration into English cricket, not all governing bodies have taken this approach. As such, we call for more research into the impact of Brexit on UK sport, not least for studies investigating whether Brexit will reinforce the migration of athletes from more-developed sporting nations, while prohibiting migration from developing sporting countries.

### **Disclosure statement**

No potential conflict of interest was reported by the authors.

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