

RULES, GAMES, AND SOCIETY

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Abstract

'Game' means 'play within the construction of rules'. The sub-category 'sport' considers *play* as competition (in classical Greek, 'athletos' means 'competition for the sake of victory') where the rules are known to the audience, under the following divide: fundamental constructive rules about the game's structure and less important or flexible rules facilitating and monitoring play. These provide athletes and audience with stable knowledge. The excitement of play comes from the vagaries of the actual engagement of the rules in the action of play. The social order can use this as a metaphor of its ideal of civil law (and less sharply, of cultural custom) in relation to the citizen.

I. Description

Sport is a physical game, but the game structure can be applied to human activities aside from sport; specifically it can be applied to a legal system or order. Therefore, sport's defining characteristics must be given beyond the formal characteristic of being a game or universe of rules within which its activity necessarily takes place; further sport must be considered beyond its efficient characteristic of competition, since that also applies to activity within a legal system and many other systematized social activities. An appropriate characterization of sport should provide what sort of competition it is. A material characteristic is not helpful in this task since it is not the having of equipment that defines use, though it relates to a game in its specificity; but also, the material conditions, including equipment, vary greatly from game to game: Wittgenstein has brought to attention that games have their activity in a variety of formalized conditions, i.e. as board games or on some sort of field, say a track or a ring or a rink: a designed or ordered physical area; and also as composed of various numbers of persons, using living and not living equipment, etc. Consequently, the mentioned characteristics are too wide to define sport since competition within a universe ordered by rules includes other activities aside from sport.

Let us narrow the universe of discourse somewhat by considering sport needs judgments that warrants the action of play. Of course this still seems too large a universe of discourse to merely include sport, it still includes a legal order. The narrowing means that many games like chess or card games are no longer considered, since in such games the rules are known in principle to the competitors and no authority is necessary to judge any action within the game. Further, by the introduction of a judgment for a warranted action of a game, this means that any sport or, better, sport preparatory activity, that does not have a judge is a preparation or an exercise or practice for sport rather than sport in its primary sense as a competition among individuals or teams and let us now add, for the sake of victory, expressed by the superlative, the best, as measured in quantitative term by some measurement in points or a unit of length or time in a specific play of the sport. The Greek etymology of the word ‘athlete’ is competition for victory and it suggests the importance of the addition of the goal of victory to competition. Notably, the rather dull-minded Latin slogan of the Olympics, “*citius, altius, fortius*” (faster, higher, stronger), does not present a more informative value than the betterment of physical performance.

What is important is to differentiate the sort of judgment involved in sport from other judgments in systematic or quasi-systematic activities. The judge in sport is an referee or umpire, whose judgmental task is not primarily qualitative since this person who warrants the play must judge whether a particular play is in concert with the rules that constitute the universe of the sport; only in a secondary sense, when and if penalties are part of the task of the referee may there be a qualitative aspect to his judgments, that is, what “penalty” is deserved for a particular infraction of the constitutive rules. For the evaluation of the normative qualities of a particular sport it is well to apply the principle of John Dewey that means are not to be separated from ends. Consequently, since there are a number of ends that may be related to the mental and physical abilities tested by a sport, within the determination of its universe of rules – its constitutive basis – the means of the sport are the basis for value considerations of various sorts, even beyond the aptness of the sport to test particular natural skills; it is the basis for considering various social goals that the sport might habituate, like cooperation and competition, and it is the

basis for relating its formal understanding of play to the general understanding of mankind as cultural creature.

Preliminarily, it is to be noticed the purpose of sport as a competition between individual or of groups or teams of individuals with a referee to judge the play within an already asserted group of rules is a highly organized or political matter, where the framework for a sport is conventionally accepted conditions. Both sport and the legal order are political contexts which always in their construction rely on society; thus, one may expect the discussion of a particular sport to move to consider the specific culture that has created or adopted it.

But, now, we must proceed with the purpose of sport that differentiates it from other political contexts, including the jurisprudence. This can only the enjoyment of exercising the set of capacities involved in a particular sport, under the specification of competition leading to victory which is warranted by a referee. Games of blind chance are certainly not sport since there is no exercise of ability; on the other hand, card games, chess, etc. do exercise skill capacities, are competitions and have victory as a goal but they are not decided by a referee. Differentiated merely by a consideration of a referee, the similarity of games like chess and card games to sport suggests that they also are pursued under a condition of leisure and for the sake of refreshment. Games and sport are not work; the legal system part of the work of the political order. The reflexive nature of any skill activity should be noted, even when winning is a goal of an activity, the better one is at the play of these the more one enjoys playing them. This is true both of work as it is of entertainment but for entertainment the enjoyment of the activity is its uppermost consideration rather than its social affect; e.g., contrariwise, the work of the legal order is for the sake of the health of the social order: here, the primary or final normative measure is outside the activity itself.

There seems to be evidence for sport as work for professional sports where those so engaged are paid and do it not or primarily not to entertain themselves but as their work? Certainly no sociological classification would discount the business of sport with its various promotional and financial activities. These activities, however, are tangential to the activity itself in the way that being a physician, whatever his personal motivations, is

tangential to being paid. The actors in a sport – and one can even assume human being usually have various motivations for their doing something – may have various “personal” motives for engaging in their sport that are tangential to the exercise of capacity, for example, fame, wealth, social popularity, etc. Nevertheless, they are tangential to the activity like the physician wanting and/or receiving payment or social status is tangential to the activity of doctoring.

This is true in a definition of the activity even when the sport person or physician is engaged in sport or doctoring for the sake of wealth or social status. Other matters can be asserted of sport in a sociological description of its character and tendencies in a particular society that in some way are in tension with an ideal descriptive approach to the activity. The ideal is normative; it provides the best conceptual classification of sport in the essential clarity of what it is in itself and in distinctness from other activities.

Therefore, let us return to the character of the referee who as the guardian of the constitutive rules as they are projected into the unclarity of play, translated the essential character of the game into its temporal instantiation. At first sight, the referee may be taken as a minor consideration because he is not a player, especially when the referee is compared with the striving of the competitors in the sport. But he is the ideal spectator; he strives to assert the character of the sport instantiated in the play of a particular game. From the standpoint of general dignity, an individual strives for excellence in whatever he or she does. But athletic excellence, -- at least in the sense of striving to maximize one’s abilities, -- is within the universe of rules of a sport that define allowable competition. The referee – who strives to translate the ideal into a particular instantiation: the game -- is necessary to that universe of rules that determines athletic striving because the referee is the authority that decides what is allowed in the play within those boundary rules; further, he provides penalties.

Penalty, like the western religious concept of sin, involves recognition of a fall from the ideal and, as justice, a return to the continuance of activity despite of this lapse. Sometimes the penalty is implicit in the disallowance of a play and sometimes the referee explicitly imposes a penalty: these matters depend on the sport or some condition within the activity of a sport. They are the details of conceptualizing justice within the conditions

created by the constitutive rules. The referee does not engage in the sport as a competitor yet his judgment can determine how various aspects of the game is characterized and even who has the victory. For the universe created by the constitutive rules he has a divine but not an all powerful or decisive role, in that sense he is a rather like a pagan deity who shares the universe with human actors and, though he can be decisive on an occasion of play, he must allow fateful competition: the total situation includes his role but his role, like that of the competitors, is determined by the ideal whose servant he is.

In this sense, he decides between two contending parties before him; like the judge when the judge is bound by rules. These binding rules assert the obligatory framework for play whereas his decision within that constitution, which has a qualitative freedom, may be called the regulative or particularized determination of a concrete sport's action. The regulative rules are less formal and are a response to the many possible occurrences of an actual game. The referee has a unique relation to the game by being the final authority for interpreting the actual action of play within the constitutive rules, thus his verdict is like that of a supreme court. It is noteworthy that even a photographic replay that shows the referee's judgment to be wrong does not (ideally) change the authoritative force of his decision since, human beings not technology are the instruments of its universe or ideal. (It takes a special pleading to relinquish judgment to instruments as a human product.) In sum, the referee does not determine the constitution of the sport, the constitutive rules, he applies them. But, this application demands a judgment about justice and judgment must have a definite end in the practical application of any system of rules. Noteworthy, for this symbolic consideration, a national legal system, -- except one given by God as claimed by Israel, -- can be considered to be, in a degree, a rather corrupt or distanced assertion of a monotheistic God's justice to a fallen world His creation but, sport justice is determined by a universe of rules created by man and, thus presenting itself as isolated, self-empowered or idolatrous universe, is isolated from political justice which is still within the monotheist God's domain.

From a less symbolic viewpoint, the constitutive rules that create the formal universe of the game are a social adaptation in the manner of a contract. They assume agreement between the parties competing in a game. Thus they must be clear and internally

consistent, like a law code (at least over a part of the jurisdiction of the law, say the matters of divorce or inheritance), setting up the universe within which the skill and competence of the players is exercised. Competition may be called *private* when it is with one's own self as a competition against one's past performance. Even the performance of a team or a player within the course of games, can be a private when it is merely a historical or statistical complementation against the performances of another individual person or team's past performance. Competition against one's own past performance is more an aspect of practice than of play. It is not the competition of an actual game. This is not to say that in some sense private competition may not have a higher value but merely to say that it does not have any value for sport, which is a public competition. *Public* competition is with another individual or team and it needs a referee to make judgments at the time of play. An individual runner, in actual competition, may lose the private competition to better the time of his run but win the race: actual competition is public. The goal therefore of the frame of a contract of play, the constitutive basis of a concrete action of sport, is to win. This is a zero-sum game in terms of outcome of actual games but a mutual benefit of contracting on the ideal level, that is, aside from or before the play, the joy of the play is offered by the ideal without being diminished by the result of victory which necessarily involves defeat. The ideal in this sense offers less to the victor and more to the defeated of the competition.

Supremacy in an instance of the artificial universe of sport is symbolic of human achievement through competition, even where, unlike sport, there are no constitutive rules. The enforcement of rules in many political aspects of society, as in the legal order instills the beneficial socialized habit where competition is responsive to the social will; it is the beneficial ground of a legal contract, where the parties are overseen by and participate in social agreement. The social will is idealized in a sharpened form in the formative contract or constitutive rules of creating government that creates and enforces a derivative legal code; just so, there is a need for a sovereign or referee to judge the non-ideal aspects that are necessary in the play under the original contract within the competition of play. The referee is a sort of "mortal God," in the sense that he can, as a

mortal, make mistakes but for the sake of sustaining the universe of the game he is authoritative in judging play.

Play without authority is warfare or chaos since there can be no settlement of concrete actions in relation to an ideal structure. The contracted structure in such a condition is a normatively inoperative contract or, better, treaty since it has no enforcement to settle disagreements. It is not a game since it has no ideal rules to be enforced but merely an idiosyncratic agreement between parties. It lacks a normative context. What Hobbes called a state of war among individuals is just this: the inability to settle disagreements without an authoritative decision. Also, in Hobbes, rules that define one nation's civil laws can not be applied to another nation: they are so to speak different games or universes; this is a condition of war among states, in principle. Without a referee who is the authoritative power over contracts, there are no operative constitutive rules. Competition continues and may be called mindless because there is no judgment. It is reduced to private practice, a sort of competition with oneself.

How is sport different as a competition than say a musical competition since both have competitors and also judges? The difference is that there are no constitutive rules for the musical contest. Thus even when it is a contest to see who can better play a piece of music composed by Chopin, where the musical score provides something of a constitutive context, there is a creative dialogue between the musical score and the interpretation of the player that escapes the notion of constitutive rules: it is creative within its limits. Here that interpretation is not, as in sport, a matter of action within regulative rules since the interpretation takes the place of regulative rules though it acts somewhat as if it were regulative rules in such competitions. Therefore, competition in the arts is different than in sport. Thus one has a judge but not a referee. Though a referee exercises judgment and in that sense is a judge, the judge has a wider function, as in a musical contest, he has the specific task of judging quality. Depending on the discretion given, a lower court judge in civil matters is either a referee or judge; but, a sovereign or supreme-court, the maker of final decisions is always a judge since quality – the ideal good of the political system or civil game – is his final prerogative.

In the arts, qualitative judgment involves creativity or some wide awareness of say musicality. Human beings always combine possibilities and this makes it difficult to fit essential definitions to the empirical evidence. In sport quality can be combined with quantity so in gymnastics and some ice-skating competitions there are set points given for certain physical actions combined with more subjective notions of grace, costume, and ingenuity or creativity of the composition of the activity, this last is more important in skating than in gymnastics. It is difficult therefore to consider these either as sport or not sport since the judgment that establishes victory is both referral and a qualitative judgment.

In the legal system as well there is usually a combination of judgments; there is a qualitative discretion of the judge or, in some cases, the jury, – sometimes jury and judge divide qualitative judgments of say guilt and penalty. In sum, the judge always has the referee's responsibilities to exercise a qualitative judgment within the constitutive rules of law, though he usually has a limited discretion in imposing penalties or a limited discretion in making an exception to a procedural or a substantive rule. The more such rules, however, are imposed on a judge by the legal order the more he or she is like a referee. When judgment is open to qualitative considerations beyond the constitutive rules, say the general social welfare or the ethical considerations of bringing a verdict, the judge is less like the referee. In physical competitions like dance-skating without a referee, a judge, though the judge may have some refereeing aspects in terms of a conventional view of performance, primarily assesses qualities in the performance and skills. Such competitions are unclear in principle in what makes for victory, despite broad conventional agreement and, therefore, they are sport only in a secondary sense, despite having the characteristics of competition. Of course, there is some qualitative judgment in sport, say in the assessment of a penalty, but the limited sphere of such judgments allows one to "civilize" the qualitative judgment under the hegemony of the definitional clarity of constitutive rules.

In certain activities taken as sport that especially involve equipment in the outcome of victory, e.g., hunting, car or bicycle racing, etc. the factor of quality shifts to the equipment so that as there is a competition about the superior equipment combined with

the skills in using them, from the essentialist viewpoint, there is a limitation on sport: it is no longer (just) a physical competition of human capacity. This ambiguity also occurs when there is a natural factor that is important in the outcome, e.g., in horse racing, water races in rapid and current filled waters, etc. These combine the fortune of having the best animal or the best natural condition with skill and as such it introduces variables into the ideality of the essential understanding of sport in the classical mode of a physical competition of human capacities, per se. All matters that depend on equipment and natural fortune of the course of the race are modifications of sport compared to the simplicity of a foot-race and most other of the original Olympic competitions.

Considering such “simple” Olympian sports as paradigmatic, if a defining characteristic of sport is having a referee; it seems that not every sport, particularly these quintessential ones, has a referee, e.g. a foot-race. Invariably, group or team sport has a referee. This suggests any organization composed of many individuals needs management in relation to the order for play made by rules, particularly, team play tends to have complex rules and, therefore, is particularly open to the judgment of a referee. This suggests a political principle: complexity demands authoritative determination for stabilizing and containing a determinative order. It also suggests the “gravity” of certainty to be achieved through constitutive rules though not the “gravity” of appropriateness in the political sphere where constitutive rules are related, beyond their own “game,” to fundamental human needs.

In any case, a simple sport like running to arrive first at a goal needs little management. If the race is short, say a dash or a mile run, one might need to have a referee for deciding who in a “split-second” has broken the tape that marks victory. In a longer race, say a marathon, a “split-second” victory is rare to the point of vanishing; here one may need some inspection about the competitors running rather than traveling over some of the course by some other means. Policing action is a part of the referees function; it includes catching inadvertent and intentional breaking of the rules and, in consequence, he gives penalties. Nevertheless, in some very simple sport referral functions are absorbed by the spectators of the play. The community of spectators is usually enough to do the policing function and to monitor a sport where play is obvious; this situation is most

likely to occur when one particular physical attribute is decisive. But even here the referee exists in principle. The referee is the community that polices the play and authorizes the victory, if not a designated person has such authority. This is the democratic referee rather than the autocratic one. In the Ancient Olympics, as a religious ceremony, it is the divinization of democracy.

In sport, some analogies to the political universe of the state are obvious; especially important is the analogy to a legal system in the important and necessary (though not sufficient) condition of working within constitutive rules. One distinguishing characteristics of sport, and other games, however, is that competition within universe of the sport is done for entertainment or enjoyment. The Olympic games of Ancient Greece located the divine power of nature in all activity, including entertainments: sport, comedy, tragedy, musical and rhetorical contests, etc. This suggests that sociological investigation is necessary to understand how a particular society considers entertainment and sport as entertainment; and, further, the value a cultural context to consider competition and victory. Very competitive societies usually emphasize, in their way, the importance of victory and, for sport; this may be dysfunctional in terms of the ideal. Obviously every society needs cooperation. In team sports, there is not only competition between teams but also cooperation among the members of the team for the sake of victory. In a larger sense, a team includes trainers and coaches, as well as players. Preparation for play is an education or training like any preparation for a work task. Cooperation or collegiality, in its widest sense, is not only necessary but, it may be argued, that it can be more valuable as a human quality than victory and more valuable to social stability and even prosperity. Yet, victory is the supreme consideration in terms of sport. Sport reflects much of the heroic culture of Ancient Greece. Consequently, cooperative play and preparation -- team training and care -- enter into a consideration of sport, beyond a team's "Achilles," the outstanding player.

Further, something human is lost if the goal of victory is emphasized in a manner to obscure the fact of the grounding of it in a social order and its value within a range of human activities. Human beings are engaged in sport and, as human beings, as particular individuals, participation in sport is merely one sort of socialized activity expressing

human abilities and qualities. This is true of the state as well; the state relates to human needs but not to all the fundamental needs of human beings. Certainly, the state exists in a more complex and broader universe than sport; the state expresses and manages some aspects of the individual's humanity but it is not a complete determiner of the individual; its universe is not totalitarian in relation to an individual's humanity. Thus, the state ought not to be the referee or judge of all human concerns; similarly, the legal order ought to be interrogated ethical probity or the fundamental normative interest of the individual.

Now with a clear view of sport; it is appropriate to consider the definition of sport in terms of distinctness, even beyond what has been offered in the comparisons of sport with the state and with the arts. We must seek its place in the complete functioning of human beings. One question for this investigation is: can the values in sport of competition and cooperation be replaced by other activities that are superior to it, from a social view and from a view of the best functioning of an individual? Another is that granted sport has qualities useful to a social order how ought it to stand to other social activities? Answering such normative questions is difficult since one must relate sport to a theory of appropriate human action, *per se*. Before offering a few remarks about such normative considerations, since also they will follow an ideal rather than sociological or historical approach, let us consider the primary objections to the method we have employed so far, viz., that it is not empirical enough. In a word: that the analysis has not investigated how sport is pursued and considered in different places at different times by different groups of people. If objections to the essentialist method are weak and alternative methods of approaching sport are shown to be too limited, that strengthens the desirability to search for an appropriate theory of human nature.

Let us begin to respond by some methodological remarks. First, we have approached sport rather than a particular sport to find a conceptual frame to include any activity to be called sport whether it is known to us or not, whether it has existed or might exist. This level of abstraction strives for an essential knowledge of sport. The essentialist approach is a disputable one; it is primarily considered a disadvantage because 1) its generality is a normative abstraction which, aside from the gravity of cultural relativism and, also, the assumed objectivity of the social sciences, seems to halt further empirical

evidence, even for the sake of a descriptive reconsideration and 2) implicitly, its normativity demands the not very practical task of considering sport in relation to a theory of the ideal nature of human beings: such a theory being difficult and itself burdened by numerous if not all of the problems of philosophy.

Nevertheless, to pursue matters in terms of a social perspective (a) would be to accept that the conventional view of what is called sport. There is a loss of formal characteristics for the concept of sport. Consider: the Olympics has recently viewed ball-room dancing as part of its events; should the conventional authority of the Olympics make for the acceptance of ball-room dancing as a sport? Obviously, to give the Olympics such an authority of inclusion, per se, would halt asking for a definition: one would have to accept a social designation for what is called a sport rather than a conceptual ground. Since the conventional differs from culture to culture, a cultural designation would be time and place bound. Indeed, without rising to a level of abstraction that provides a unified conceptual understanding of sport, when questioning a perspective or cultural designation about sport, one encounters either a chaotic or a provincial intellectual condition. This approach soon finds the activities called sports cannot be brought together since they would share some but not all characteristics, and in various combinations, but not in any determinative manner. This precludes the finding of an adequate norm for sport in the activities themselves that are so designated by the culture. Consequently, the inclination is fostered to disregard the ideal or essential classification and to retreat into the particular for some sense of descriptive firmness whether of an activity designated as a sport or a social attitude about it. Ultimately, the avoidance of an essential norm is driven by a value skepticism about identity, an intellectual despair about finding an ideal definition; the social science approach to the identity of the activity, as it is committed to describing some general social reactions or beliefs, becomes a value relativism where the social characterization of sport is not in itself evaluated.

(b) The advantage of an essential definition, however, is to offer a determinative understanding, distilled from empirical material combined with thought about categorization: an essential definition should be seen as provisional rather than unchangeably determinative. But reform is an intellectual task depending upon better

conceptual procedures and an increased understanding of the empirical possibilities, rather than a mere change of conventional opinion. Further, an essential definition operates as a schema that clarifies the meaning of words. Logically, the appropriateness of the schema or system of concepts is tested by a coherent and systematic presentation of the subject. Practically, this is tested by making sense of factual matters. Definitional reform depends on being cautious about entrapment in habitual and socialized considerations; particularly those that are formally asserted. Often a criticism against the essentialist approach argues against it in terms of an overly formal use of abstraction. Yet abstraction is something that always occurs; the opponents of an essential approach also abstract, consequently this criticism is vulnerable. Too much abstraction is often an accusation of the lazy mind. The opponent's position in relation to the essentialist approach is analogous to the method of chaos theory, which recedes to the always smaller until the momentary focus in this infinite process also becomes an "abstraction" whereas the essentialist method is similar to geometry with its firm definitional lines for abstraction. Chaos theory is asymptotic: any presentation of coastal outline, by an exclusionary focus on a detail of the presentation, can be further considered as a whole new geographical region, – what I liken to a new abstraction – and this is open to being done without end. When the empirical is not considered by an essential definition that evaluates and classifies an actual activity this makes a theoretical consideration fragile in its openness to the relativity of choice. Thereby, it is a mere perspective classification that is rudderless in the theoretical sense and such an evaluation is open to skeptical erasure because it is grounded in a subjective viewpoint for the classification. Sociology tries to avoid this skepticism by a conventional or statistical attitude of sport in terms of some choice of a "universe" or group; large or small. But because the choice is arbitrary in a larger sense than a nominal essential definition by not seeking a coherent and consistent presentation possible to its subject, it can always be disputed by an alternative selection or subjective fiat: there is no stable conceptual norm to determine any choice.

How sport has a relevance to society is a legitimate question; it asks for the norms properly to consider sport within a social context. This provides the temptation for sociology to take a specific cultural universe and find classifications merely in the

conventions of that universe. It is like taking merely the sociology of jurisprudence in a particular state to stand for justice in an ideal sense. The question of the relation of sport to a specific culture is better answered when one has an essential definition of sport since that avoids merely measuring social attitudes. Yet, when one probes the relation of sport to other social and human concerns, one must be content for a preliminary reasonable rather than a rational determination. The enormously complex task of essential definitions of culture or of the political order or of human activity in relating these to sport moves one toward provisional assertions. Provisional and incomplete in terms of an adequate discussion, yet the essential characterization of sport provides some observation on culture and the human.

Some sports depend primarily on physical endurance and others on physical dexterity. In fact, the simpler competition, the testing of a particular physical capacity, the closer the competition is to the ideal of sport. From the point of view of exhibiting and perfecting some quality or skill each sport must be considered in terms of its demands upon players. Yet, considering the characteristics that have been described of sport there is some psychological matters that are general to sport. One is competition for the sake of victory. Of course a person may engage in a sport and not care if he is victorious. Under our characterization of sport as competitive, the individual is taking the activity as a sort of practice, whether or not the activity results in victory for him or her.

There is a distinction, however, between competition and rivalry. Rivalry, as I contrast it to sport competition is an outdoing of competitors without any appreciation of them, that is, an attitude of considering them to be an enemy. Roman gladiatorial contests because there is a seriousness involving extreme bodily injury or death certainly and appropriately falls under the consideration of enemy. Interestingly, it was engaged in by slaves rather than free men whereas the requirement in Greek athletic contests was that one must be free. In a gladiatorial mode of rivalry one can appreciate the competitive skills and capacities of the opponent but that appreciation is overwhelmed by the awareness of the possibility of serious harm to oneself. Rivalry is such a competition or battle but a vice when it occurs in sport. It is a vice of the extreme sort by overemphasizing the worth of the outcome. Yet not caring at all about the outcome is

when competition is abrogated; an attitude of exercise is the “vice” or limit on sport in the opposite direction. Here there is no concern with victory through competition, which under emphasizes the worth of the outcome from the viewpoint of sport.

The psychology of competition must therefore be examined. Proper sport competition appreciates the skills of the opponent and, further, appreciates the activity; thus, a sport person forms a bond with the opponent in the sense that both engage in the sport with its particular difficulties and demands upon one’s skills and qualities. Indeed, there is usually a community formed for a sport that includes in the first instance other participants, including trainers and coaches as well as the athletes. And second, followers of the sport, particularly knowledgeable ones like those that report about the preparation for and the action of sport. Thus there are various communal and cooperative endeavors for sport. The competitive attitude is modified within these contexts. Further, the social psychology of the audience in terms of competition is a factor that stands aside from the formal order of a sport. How is soccer received in Afghanistan or baseball in Japan?

A competitive attitude is a habit that relates to a social context that encourages or discourages the habit, competition must be considered in a cultural context and this consideration must be examined in relation to such aspects as appreciation of physical skills, entertainment and, especially, the social view of cooperation and community. It should also be considered in terms of a societies appreciation of sport as a symbolic activity, that is, the sophistication of appreciating activities as an expression of some other value, whether it is nature or – obviously as it has been the origin of many sports with its training and honor codes – war. In a sociological description of a particular sport, the habit of competition is encouraged in preparing the individual for competition but also there are habits and attitudes about cooperation and community that actually limit what a culture considers sportsmanlike behavior. It may be that some cultures only have a sense of rivalry and no sense of sport; here competition has the gravity of victory at any price. Indeed, as social honors and wealth for the victor become unbalanced in their importance to the activity relative to other activities in a culture, rivalry takes the upper hand; sport becomes serious “business” in terms of the appropriation of social goods. On the other hand, there are cultures where sport is not considered at all because of a general non-

competitive ideal or a dismissal of the “non-serious” character of such activities; here the activity of sport, if any such exist, is considered to be something like exercise.

Many benefits in life seem determined by competition and the habit of competition fostered or strengthened by sport is valuable. Aristotle put it: “The race does not go to the swiftest, but to the swiftest of those that compete.” Further, the cooperative and community aspects of sport obviously have a preparatory social benefit as well. Certain skills and physical strengths were as well particularly useful for societies that often fought wars in terms of hand to hand combat and especially primitive weaponry. In conclusion, by a preliminary understanding of the relation of sport to culture, it seems that sport provides a balance between the individual as a person who strives for victory and an appreciation of the social context of that striving, especially the elements of cooperation and the rules of the game. The latter especially institutes an appreciation of lawful behavior under some form of governance.

II. Sport: Society and the Law

Let us keep in mind a useful distinction about sport competition, as victory depends on the lawful condition of constitutive rules that define a game within which one strives against other human beings. Unlike sport, there is no lawful attitude in rivalry. I call rivalry, the striving against others, even animals, for victory at any cost, even outside rules of play, if there are any. This distinction presents two opposing directions toward proper and improper concepts of sport. Rivalry is broadly exemplified by the gladiatorial contests of Rome¹, where the gladiators were slaves, formally owned by the Emperor. These gladiatorial contests were embellished by increasingly extravagant confrontations, even men against animals. Here competition is against the rawness of nature, even ending in death, and reminding one that death is what in the end defeats all human aspirations. It is the clown-show of tragedy in a culture molded by the tragic sense of life, though its presentation may be in the direction of a circus extravaganza. It suggests an aspect of

¹ The *numera* (contests) first appeared in 246 BC when Marcus and Decius Brutus, in honor of their father, had three duels. Julius Caesar in 65 BC to celebrate his aedileship had 320 duels. The Flavians, Vespasian and Titus, with the gold taken from Jerusalem, built the Coliseum in 80 AD, seating 50,000 and held contests for 100 days. Occasionally freeborn men participated in the duels but that was relatively rare.

culture that is in opposition to the cooperation and appreciation of free men in the qualities that are open to the vigor of life. Free men, even in the Roman period, were the only permitted competitors in the Olympics. Freedom is the moment of power in its exercise and competition is a demand of community, symbolized by the referee, the enforcer of the rules or laws of the game, especially in team sport where cooperation is necessary in the play for victory. Competition, to assert skill and human physical strength that has been trained or cultivated, is the endeavor of nature combined with artifice in harmony. The distinction between sport competition proper and rivalry suggests the difference between a culture of freedom and a culture of slavery, between a celebration of human power within its limits and a direction toward brutality.

Sociologically, this conceptual tidiness is merely a cultural direction; actual sports are not so clearly distinguishable. Yet, it is a helpful measure for understanding even today's actual sport situation, one not attached to the ancient Greek or Roman pagan religion. For the modern spectator of sport, the spectator that leans toward rivalry is moved by the gravity of a fanatic fan where victory is everything and taken to be a personal triumph. Perhaps one that "spits in the face" of loss and destruction: that asserts the battle of man against the forces that oppose his continuance, especially nature. And, it takes the completed game, its victory as triumph. But also there is the other sort of fan, I shall call this spectator the connoisseur, to whom the competition is appreciated in the skill and qualities of those that engage in the sport. Interestingly he actually must watch the sport event rather than merely get a report of its result; this suggests intelligence rather than emotion.

Though what is called a sport may lean toward one or the other sort of spectator, soccer provides an instance of both sorts of fan; some of the audience behavior recalls a gladiatorial contest and yet the game itself is highly cooperative under constitutive rules, without much openness toward brutality. With the rival partisan and brutal spectator, we have an example of a cultural assertion toward violence to even law-bound activities. When victory is the primary aspect of success, say also in such social activities as politics or business, then in the atmosphere of rivalry one is open either to break the law, the Mafia response, or corrupt it in one's favor, the "special interest" or advertising response.

In rivalry the referee, as a guarantor of the constitutive laws in relation to the games action is diminished in importance. When the games rule limitations is not important, which is a contradiction to play, it is used as the mere momentary condition for victory at any price. Of course, as I shall discuss it further, the culture or the social order's relation to the legal order is essentially more open and ambiguous than the constitutive basis of a sport game but the psychological attitudes between excelling within rules and winning at any price may be a social psychological atmosphere of all human activities.

Should one consider culture's where sport does not exist or where it is given a very marginal value as poorer because of that? This is not an easy question to answer. There are many who argue that sport is a catharsis for emotions or a preparation for life or war in a variety of ways or an artistry of the skilled body, etc. These can be considered in terms of social usefulness. The body of course is a condition of human life and, therefore, an aspect of our humanity open to deep consideration and sport is captured by the evaluation of the natural and supernatural descriptions of value. In Indian culture, yoga involves discipline of the body but it is not competitive and consequently is not sport; the culture of yoga is discipline to evolve the individual consciousness to grasp the unreality of embracing the self as a competitor. Hebrew Biblical culture is not opposed to sport but it certainly is considered not to be a serious matter and hardly mentioned: Solomon Schechter writes a book called *The Jew and the Gentleman* which contrasts the English Eton sport attitude with Jewish seriousness about rules as God's commandments. The holiness of the person asked by monotheistic Western religions denigrated the pagan elevation of sport within its natural religious orientation. Origen, living in the sphere of Roman culture, (d. 257) used the notion of rivalry in a Christian opposition² to Satanic and natural bodily temptations, calling the martyr "God's athlete." For the most part, Christian cultures as they now exist in the West give a greater allowance toward sport and

² The Christian position was expressed by Tertullian in *De spectaculis* which condemned the gladiatorial contests for its cruelty and its pagan religious association. Novatian called it "*Idolatria . . . ludorum omnium mater est.*" The gladiatorial schools were closed by Honorius in 399 A.D. Among the Romans Cicero favored them for encouraging fortitude among the audience and Ovid for their beauty but Seneca wrote of them that they were "*crudelior et inhumanior.*"

therefore are culturally more dependent on the pagan attitudes of the Greek Olympian³ and the Roman Gladiatorial traditions. A delicate sociological appraisal cannot dismiss these historical strains as they affect modern cultural attitudes toward sport in their diverse and tidal presence.

The pagan religious culture of Greece and Rome made nature divine and consequently elevated the possibilities of the human body. Like its sculpture it saw in sport an ideal of the functioning of man's natural capacities; further, nature provides much evidence of competition, especially of rivalry. As I have suggested, rivalry is more appropriate for the animal world, despite striking instances of social cooperation in species like the bees and the ants, and sport competition is uniquely a possibility for a rational being that understands competition and cooperation within the lawful as he creates it for himself. As said, it is the realm of free men; its ideal is open to rationality qua autotelic orientation. Yet, some religious cultures denigrate the natural by subordinating it to a supernatural creation and a supernatural and/or an extraordinary spiritual destiny for the individual. In such a culture sport is at best tolerated as a natural aspect of man. But also it can be considered a distraction from more serious "spiritual" pursuits or even a secular expression of psychological energy and the loyalty that follows the ebbing of the supernatural religious orientation.

The rules of sport are after all invented by men and this may be seen as a rivalry with say the laws given by God in the Hebrew tradition or the divinity even of the laws of nature as they are imputed to be God's instrument. For the Christian the competition of sport is a pride of self and in opposition to the love among human beings; certainly a life in "imitation of Christ" seems at best tangential to sport: though Christian Universities in America have sport teams, religious orders and monks do not. That the rules are invented by man may be seen as speaking for a certain sort of secular humanism; a respite from nature and an expression of the capacity to organize and direct one's human capacities, in their testing. It can be seen as a paradigm for a rather Hobbesean politics where agreement to play is an agreement to obey or abide by the referee's interpretation of the

³ In the *Iliad*, games are given in honor of Patroklos at his funeral. However subdued, there is a religious quality to sport among the Romans and the Greeks; noteworthy, as well, is the ritual sacrifices after the ball games of the Aztecs and Mayas.

rules that constitute the realm of the game. Sport is fundamentally a secular condition, though since nature beings engage in it, so by an interpretation of man's natural capacities, sport can come into a relation to some sort of view of the divine.

To speak in a general way, within Western Culture, with its tension between a secular naturalism and a supernatural religious orientation, sport is taken seriously and not seriously by in some measure reflection deeper cultural tensions. When it is not taken seriously, but allowed, its gravity is toward entertainment. Perhaps in the wide sense of Aristotle's view of art as a catharsis of certain emotions or a sort of social training. This viewpoint arises from time to time but is psychologically dubious; for example, the famous ethnologist Konrad Lorenz writes in 1966: "While some early forms of sport, like the jousting of knights, may have had an appreciable influence on sexual selection, the main function of sport today lies in the cathartic discharge of aggressive urge."⁴ Yet, in 1974 Lorenz is quoted as saying something quite other, "Nowadays, I have strong doubts whether watching aggressive behavior even in the guise of sport has any cathartic effect at all."⁵ The psychological value of sport seem to me to be insecurely considered because it does not distinguish between sport in the proper sense of competition as a proper function of the individual in his relation to society and sport in the improper sense of rivalry, with its outer edge of brutality. Consequently, without such a rather Aristotelian distinction in mind, that of proper functioning from a naturalistic view, the social sciences commit themselves to describe the values of that arise from a variety of improper social functioning. It is the same reason that if one takes merely the workings of any legal system as all there is to define justice; one cannot speak about unjust laws, except in the trivial sense of being not properly forged and promulgated. But, if it is appropriate to speak about the "unjust legal laws" in terms of another sense of justice, as well it is appropriate to speak about certain sport or a certain reaction to sport as not defining the proper functioning of those sorts of things.

Further, this holds true for any entertainment; an entertainment often is related to the sport simply or to some aspect of it, especially in activities that are marginally sports, like costumes and musical choices in dance-skating competitions. Entertainment from a social

⁴ Lorenz (1966:242)

⁵ Evens (1974:93)

description of some activities, in some cultures, suggests a directional emphasis on spectacle; the gladiatorial combat as circus, which now is represented by “commercial” wrestling and mixed forms of fight competitions. The sport of rivalry is quick to attack entertainment in this sense to what it considers sport. Entertainment, in the Aristotelian sense as a respite and preparation of the emotions for work is open to various interpretations yet, conceptually, it is other than work. It is unclear whether sport, in the aspects of rivalry, is a catharsis of certain emotions or a practice for them, if it releases anti-social energy or it is a practice of that energy, perhaps it is both in the sense of disciplining aggressive energies for war. Confusingly for a clear line between sport and rivalry, the commercialization of entertainment has made it a work for those that engage in it. In the sense of livelihood its participants become inclined, say as in soccer, to have an appetite, like some of its audience, for victory at any price. The activity becomes orientated to the collection of statistics as an indication of job performance rather than toward the game’s aesthetic.

When work in a culture is or is considered drudgery entertainment has a heightened value, however, when work is considered a “*Beruf*” or “*confessio*” that is, some secular or a religious expression of the way the individual defines himself or herself, than entertainment is taken less seriously or confusedly considered to be a sort of work. In any case, there is certainly some truth in the Marxian viewpoint, historically evidenced by the Imperial Roman use of physical contests, that, for the same reason of social control, sport like religion can be considered the opiate of the people. These are overarching cultural considerations that need a fine analysis, but I simply say that the characteristics of sport in general and particular sports indeed have many interesting relations to culture. And here I take culture not in an ideal or essential sense, which is possible yet very difficult, but merely in the historical and sociological sense.

The relation of sport to the legal order is an aid to understanding how modern culture takes sport because it shows certain limits that respond to sport situations, especially aspects of violence. Hannah Arendt says, “our terminology does not [often] distinguish between such key words as ‘power,’ ‘strength,’ ‘force,’ and finally ‘violence’

–all of which refer to distinct phenomena.”⁶ This reminds us to carefully segregate the concept of violence from other assertive concepts. In practice this can be difficult in sports like football, hockey, and boxing where the very action of the sport involves highly aggressive behavior. In these “contact” sports the concept of violence seems an aspect of play. It seems to relate this to the legal sphere one must think of a further distinction where violence degenerates to something aside from what is acceptable to the sport, where it degenerates to brutality. It is here that revocation of a license to play and criminal penalties can be best considered; and, less seriously, where the prerogatives of a referee exists to sideline players for a period of time or to impose fines on the team.

Let us consider some actual legal decisions in relation to this matter. In the case of *Regina v. Bradshaw*, in 1878, a British soccer player was charged with manslaughter when after charging and colliding with an opposing player the man died. The defendant was acquitted but Lord Justice Bramwell instructed the jury in a way that was cited in similar cases. He said, “No rules or practices of any game whatever can make that lawful which is unlawful by the law of the land; and the law of the land says you shall not do that which is likely to cause the death of another. Therefore, in one way, you need not concern yourselves with the rules of football.”⁷

Interestingly, the orientation of Lord Justice Bramwell does not take into account the cultural allowance for a measure of violence that can cause harm in terms of “contact” sports. A short time later, in 1894, in the United States’ city of Syracuse, Robert Fitzsimmons in an exhibition match struck his sparring partner with a blow from which the man died. The judge in this case directed the jury quite differently than in the previous British case: “if the rules of the game and the practices of the game are reasonable, are consented by all engaged, are not likely to cause serious injury, or to end life, if then, as a result of the game, an accident happens, it is excusable homicide.”⁸ Fitzsimmons was acquitted. This brings forward the issue of consent involved in the engagement of such sports. With this in mind, it is a practical measure which was adopted as a principle of law rather than the previous British example. Of course this seems apt if the culture

⁶ Arendt (1969:7)

⁷ Hechter (1977: 425-33)

⁸ Ibid.

tolerates the sort of sport that allows the possibility of serious injury. On the other hand, the notion of accident is the key concept and it limits the aggressiveness of play aside from an intentional criminality or uncustomary brutality coupled with the intention to maim or kill.

Sometimes there is a policing by a sport association to change rules that seem excessively brutal or leading to serious injury, for example, the rule change outlawing the V-formation in American football. This reflects a cultural pressure on sport. Yet, the cultural relation to the sport often allows a certain measure of brutality, which certainly is the case of Canadian ice-hockey. A few extra-play punches are tolerated. Yet in the 1969 game in Ottawa when Wayne Maki assaulted Ted Green with his stick injuring him to the point of near death there was something of an outcry which nevertheless did not result in a criminal penalty. That is evidence that the cultural strand I have called the gladiatorial attitude has particular force in sports like hockey.

Another legal aspect involves responsibility. In 1979, Rudy Tomjanovich of the Houston Rocket basketball team was seriously injured by a punch given by Kermit Washington of the Los Angeles Lakers. Not only was Washington suspended for 60 days and fined \$10,000 but the Lakers as an organization was deemed negligent because they failed to adequately supervise Washington while knowing his tendency toward violence and they had to pay Tomjanovich 3.3 million dollars.⁹ This asserts there are considerations that present responsibility for violence beyond play or the players.

Indeed, much violence occurs by fans and this extends the involvement of the legal system because of sport. Though there is no attempt, as is usual with such typologies, to discriminate between proper and improper reactions, the following typology given by Vamplew¹⁰ is suggestive: violence may result from (1) frustration, for example with a referee's verdict, (2) criminality from anti-social activities, (3) remonstrance or the crowds use of a sport event for expression of political grievances, (4) confrontation where rival religious, ideological or ethnic groups riot, and (5) expressiveness due to intense emotional arousal, as in defeat. Since these are the behavior of non-players the anti-social behavior is not related specifically to the play of sport but rather to the cultural and moral

⁹ Horrow (1981:9-18)

¹⁰ Vamplew (1980:5-20)

standards of a specific cultural order. Yet, naturally there arises a query from sport crowd violence, i.e., does the specific sport, at least in terms of some of the above typologies, exemplify a culture's social psychology for this behavior or even promote it. This is a question from a descriptive social science viewpoint and not from the ideal position that discriminates between sports properly so called and not properly so called on the basis of a view of human psychology and society that has a decisive value measure. In this perspective, the application of rules, whatever they are, whether in sport or in other aspects of society may not be or appear to be fairly applied. How a culture responds to the frustration of perceived injustice is always an interesting issue. In the case of sport, the emotional stake may be related to betting on the outcome, adding a financial loss to other enthusiasms such as a fan's association with the destiny of a team. Financial loss is a thread that reaches throughout professional sports both to the players, teams and sport associations and, consequently, relates them in this aspect to many of the workings of a particular society, which involves the supervision of a state's legal system.

Despite that they seem open to being schematized either to universal or to socially specific conceptions, consent and responsibility or obligation are concepts that are not only important to define in terms of the legal system, as we have seen in the cases presented above, but in any human activity and so both in sport and society. These concepts have a greater firmness for players under the constitutive rules of sport. In sport the playing of the game is unambiguously the consenting to obey the rules of the game. Since the game is constructed through such rules – they are constitutive rules – doubt occurs merely in terms of the application of those rules as in the case of a referee's verdict. Those rules are presumed clear to all players and they are almost always relatively simple. This approaches the notion of rules formally but not functionally in the hypothesis that there can be an ideal of human functioning. This suggests for the legal system as it is involved with sport that it is clear that if the law allows the game it is committed to allow the result of play. Further, it has a possible role in relation to play when the rules of the allowed sport are broken. Of course, that involves a seriousness, – which is a social understanding – that goes beyond the jurisdiction of the referee who properly awards ordinary penalties that inevitably arise in the play of the sport; for

example, the use of a dangerous implement not allowed in play which causes harm is a criminal matter to be tried by the civil law. The responses of crowds to a sport event is purely within the legal jurisdiction of the civil law, since citizens consent and are obliged to avoid anti-social behavior and any excuse is merely to be taken within the openness of the civil law to the excuses that can be given by circumstance.

In terms of the legal system, from the formal notion of rules there is an important difference, in comparison to the rules of a game, of an openness to change that makes the decision less straightforward, and when considering the forces within the society to which the legal rules are applied, the laws of a state are occasionally quite ambiguous in terms of the perceived social goals for the legal system. A modern state's legal system is complex because the social action is complex and, moreover, open to changes that demand the transference of the intention of say a constitution, written many years before to an unanticipated circumstance. It has some of the qualities of a closed system, as in a game, but its function to protect social order, has openness. Thus there is a tension between its attempt to impose immobility on what is essentially a moving and changing reality. Further, since the legal system is responsive to social attitudes, whatever the form of legislative power, whether, to put it in logical formality, in the hands of one, some, or all of the adult members of society, these attitudes change with time because of internal development or external circumstances.

Consent to citizenship is an obligation to obey the law, whether proper or not by some ideal standard of evaluation, but unlike in sport, there is substantial difficulty in knowing the law. The complexity of tort law is notoriously obscure for the average person. Thus it is not the equity of application that is the only issue but the very understanding of the constitutive structure and, frequently, even the jurisdiction that a matter falls under. Sport may respond to the taste of an audience to change rules, say from an allowance of a dangerous strategy, like the V-formation in American football, but the legal orders relation to social pressure is more multifaceted. It is not only in the interpretation of rules but the jurisdiction of cases, the assessment of penalties, understanding liability, etc. and the transformation of the legal order in terms of disregarding certain laws, even when formally in place, and in making new laws.

Therefore consent and obligation for the citizen is divided between the actual civil law and a perception of justice or a proper perception of justice. This complexity indeed, allows the argument for civil disobedience. But there can be no such notion for sport: the referee is sovereign and to use the phrase of Thomas Hobbes, a sort of “mortal god” of the game in the sense that his ruling is decisive no matter any contrary evidence about the play. Therefore, if sport is symbolic of society, as many have argued, say in terms of certain socially perceived aspects of competition and cooperation, it is not to be considered quite like society: either society as an ideal or from the descriptive viewpoint of the social sciences. The problem of the legal system’s attempt to conserve the social structure by rules, even in a conservative society, is open to the tension of change in social life facing often new or a rearranged emphasis on one or another competing value and, by time, new conditions to which the law must respond. Games also may change, but their constitutive rules are clear and distinct at any time whereas society reflected in the law has a measure of ambiguity at any moment. Indeed, the jury system is a technical device that recognizes this difficulty for a socially appropriate verdict since it is a compromise between the formality of law – some procedural aspects being quite clear – and an informal grasp of social equity.

The difference between conservative and liberal attitudes among one’s fellow citizens is reflected in how the law is viewed in its constitutive aspect as a system that serves society. Therefore, as well, consent and responsibility in terms of the law becomes a political question. It is a question of how the constitutive aspect of the legal order fulfills the necessary conditions of equitable cooperation, under an ideal or a culturally oriented norm of competition, and is open to the reasons for cooperation in the first place. This may be called a search for justice; which involves middle ranged abstraction in terms of social consensus and, possibly, the higher abstraction of a universal ideal for human beings. There is no analogue for this in sport. In sport the striving for victory is the clear value and the constitutive rules are agreed to. The existential character of society is more ambiguous. After all one is thrown by fate into a certain situation to which one must respond: one is not an athlete within a range of competence for the playing the economic and social “games” of one’s society. As Anatole France put it in 1907: “the law, in its

majestic equity, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”

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