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FUNCTIONALISM AND THE INFIELD FLY RULE

Mark A. Graber*

Howard Wasserman's *Infield Fly Rule Is in Effect: The History and Strategy of Baseball's Most (In)Famous Rule*¹ provides a wonderful functionalist explanation and justification of the Infield Fly Rule that is subject to the conventional critiques of functional explanations and justifications. Functional explanations and justifications claim that "law always is, or at least ought to be, functionally adapting to evolving social needs."² Wasserman claims that the Infield Fly Rule was adopted because and is justified by the need to prevent fielders from gaining unfair advantages by refraining from exercising the ordinary skills necessary to catch a pop fly.³ The conventional critique of functional models is they confuse needs with interests and ignore the contingent politics and policy choices that explain why law took one path rather than another.⁴ Reconceptualizing the Infield Fly Rule as preventing infielders from exercising certain skills and encouraging batters to swing for the fences provides reasons for thinking that edict may reflect the interests of less skilled fielders during the nineteenth century and long-ball hitters during the twentieth and twenty-first century. That reconceptualize also suggests the Infield Fly Rule may be partly a consequence of the politics of teams with less skilled fielders and long-ball hitters, rather than simply being a neutral principle of baseball law and lore.

Wasserman provides a classical functionalist explanation and justification of the Infield Fly Rule. He maintains that the rule "continues to make sense as a way of avoiding uniquely inequitable cost-benefit disparities and perverse incentives within the game."⁵ Neither interests nor politics play an explanatory or justificatory role. By dropping an infield fly that any major league baseball player (or high school athlete) could easily catch with ordinary skill, the defensive team puts themselves in the position of being able to obtain two outs rather than one, an outcome the offensive team is powerless to prevent. The practice of not catching a simple infield pop-up

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¹ HOWARD M. WASSERMAN, *INFIELD FLY RULE IS IN EFFECT: THE HISTORY AND STRATEGY OF BASEBALL'S MOST (IN)FAMOUS RULE* (2018).

² Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 68 (1984).

³ WASSERMAN, *supra* note 1, at 15–20.

⁴ Gordon, *supra* note 2, at 71–74.

⁵ WASSERMAN, *supra* note 1, at 185.

violates four objective conditions of a good game, the violation of all four of which justifies banning the practice.

1. "Intentional failure to perform expected athletic skills in the expected manner;"⁶
2. "One-inequitable-benefit cost disparity;"⁷
3. "One-sided disparity in control or influence on the play;"⁸
4. "Perverse incentives."⁹

Functionalists explanations and justifications are vulnerable because their underlying conditions are usually more subjective than objective. Irrational behavior from one perspective can be reconceptualized as rational behavior from another. Social needs can be reconceptualized as interests. Consider claims that free markets obviate the need for anti-discrimination laws because racial discrimination is inefficient.¹⁰ If, however, we reconceptualize the goals of business enterprises and customers as maximizing the benefits of being members of a superior race rather than needs to make a profit,¹¹ the laws banning race discrimination are necessary market correctives.

Reconceptualizing the skills needed for catching and dropping infield fly balls suggests politics rather functional adaptation better explains the rule. Fielders who convert an intentionally dropped pop-up into a double play are demonstrating greater athletic skills than those who catch the ball. The former is not merely "intentional[ly] fail[ing] to perform expected athletic skills in the expected manner."¹² Most amateurs can catch an infield fly. Many, I suspect, cannot easily convert an intentionally dropped pop-up into a double play. Thus, the crucial issue underlying the Infield Fly Rule is when athletes should be allowed to refrain from exhibiting an ordinary skill in order to perform a somewhat more difficult task. The analogy is with the basketball player who disdains an uncontested two-point layup for a more difficult uncontested three-point shot rather than with the football quarterback who takes a knee at the end of the game to run out the clock rather than risk a fumble by attempting the more difficult task of gaining yards. This reconceptualizing of Wasserman's first condition may have been particularly pertinent to the turn of the twentieth century when both fielders and fields

⁶ *Id.* at 57.

⁷ *Id.* at 59.

⁸ *Id.* at 60.

⁹ *Id.* at 64.

¹⁰ See generally RICHARD A. EPSTEIN, *FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS* (1992).

¹¹ See generally Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1709 (1993).

¹² WASSERMAN, *supra* note 1, at 54.

were worse. Given the probability of significant variation in team capacity to convert easily an infield pop-up into a double play, the possibility exists that underneath the mask of “poor sportsmanship” or “undue gaming” was an effort by the less gifted or the owners of less gifted to prevent better fielders from gaining another competitive advantage.

Reconceptualizing when a play begins suggests the Infield Fly Rule may privilege some interests rather than others. The Infield Fly Rule prevents “one-sided disparity in control or influence on the play” only if, as Wasserman insists, the play begins when the batter hits the infield fly.¹³ The imbalance of power vanishes if the play begins with the pitch, with the batter or with the line-up card. A skillful batter can reduce the probability of an infield fly by stopping the swing at the last minute. Batters by attempting to bunt or cutting down on their swings similarly reduce the probability that they will hit a pop-up to the infield. Managers can reduce the probability of an infield fly by substituting a line-drive hitter for a slugger either in an infield-fly situation or at the beginning of the game. Of course, the same strategies that reduce the risk of an infield fly reduce the possibility of a sacrifice fly, a booming double or, if the bases are loaded, a grand slam. The point is that treating the batting team as a bystander fails to grasp the entirely strategic context. Fielding teams are often in the position of deciding whether to drop an infield fly intentionally because the batting team and batter adopted strategies likely to increase the probability of an infield fly. The Infield Fly Rule from this perspective reduces the cost of batting the long-ball hitter who is prone to pop-ups (and strike outs) while weakening the position of contact hitters who have a greater tendency to hit line drives and groundballs.

My concern that this functionalist account of the Infield Fly Rule does not hold up reflects more on functionalist accounts rather than on Wasserman. Wasserman has done a magnificent job chronicling the history of the Infield Fly Rule, the justifications of that Infield Fly Rule the influence of the Infield Fly Rule and the structure of professional sports rules more generally. There is both insight and elbow grease in every chapter. He has demonstrated the best functional explanation and justification of the Infield Fly Rule. The criticisms below should be read to highlight longstanding problems with even the best functionalist explanations and justifications and do not demonstrate any distinctive flaw in Wasserman’s functionalist account.

¹³ WASSERMAN, *supra* note 1, at 63.