



## How Sports Can Remind Americans about the Importance of the Rule of Law

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The controversial presidency of Donald Trump has stirred up elite concern about popular understanding of the civic importance of the rule of law. For example, David Leonhardt of the *New York Times* urged Americans to rediscover the basics by reading (or rereading) thinkers like Aristotle, Montesquieu, and Locke. But this approach may be too high-brow. Without help from the classics, most Americans already have a deep and rich intuitive understanding of the rule of law because they follow sports. If policymakers, journalists, and other civic leaders discussed the rule of law in the widely accessible language of sports, they would likely get through to more of their fellow citizens.

### The Rule of Law in Everyday Life

One of the most important everyday lessons sports can teach is that the rule of law has nothing to do with the moral content or “rightness” of the rules of game. There is nothing morally true about “three strikes and you’re out, four balls and you go to first base.” That is just a rule. A batter cannot disagree with an umpire who declares “Strike three; you’re out!” simply by believing that the call should have been, “Ball four; take your base!” and proceeding to go to first base and stand there obstinately. Fans understand that, if that were allowed, the game would fall apart instantly. Games require that judges, umpires and referees, and players must agree to follow the judges’ decisions about applying the rules – even when they disagree or do not like it.

Beyond this basic point, there are other ways that sports embody the everyday workings of the rule of law.

- *Uncertainty, contingency, and the real possibility of losing* – An exhibition game between the Yankees and your local Little League team is hardly worth watching, but millions watch championship matches in any sport because either side could win. This is what makes these games exciting. And the willingness to accept concrete losses in politics is what makes the rule of law so important.
- *Equality* – To make games exciting there really must be rough equality among or between the players and teams. This is why leagues have player-drafting rules and pools that try to give benefits to the worst teams. To ensure equality, the Yankees share gate revenues with, say, the Mariners. And because of equality, Alabama does not have Yale on its football schedule. By the way, the requirement for relative equality in sports is perhaps the only sports analogy that rings a moral bell, but it tracks closely – or ought to – with the political goal of individual equality and the idea of “a level playing field” in liberal, democratic political systems.
- *Precision of rules* – Rules have to be clear nearly all the time or games will turn into endless legal squabbles. In the larger political system, clarity about rules is why courts need to step in from time to time.
- *Transparency* – To trust that referees and umps are impartial, the fans need to see with their own eyes what is actually going on and trust that they are seeing the same things the judges see. Analogously, in common law legal systems, it is important for appellate judges to explain how they reached the results they did. Explanations are provided in written opinions, and good trial judges also explain rulings from the bench, particularly to the party ruled against.
- *Controlling deception* – For a game to be really good, the game must allow for dealing with deceptions, because human beings cheat when they try to win. In the real time of a game, players foul each other – sometimes thinking they will not get caught, at other times precisely to get caught and stop the clock. But the games depend on referees who can call fouls in transparent ways that players and fans alike can trust. Policemen play a similar role in civic life. When police do not enforce laws reliably or evenly,

trust in the “rules of the game” falls apart. Also, rules committees try to make rules more precise when faced with persistent patterns of players cheating, such as obvious “flops” in soccer. This improves games over time.

## The Larger Lesson about Law Sports Can Teach

These concepts are as essential to political systems as to sports, and it is important for all citizens to understand this parallel, because the U.S. legal system is an “adversarial system” designed like a repeated competitive game. Ensuring opportunities for fair, structured competition is, by far, the most important reason for the rule of law. This offsets human impulses to react violently and brutally when threatened or attacked – even when faced with minor, unfair treatment. If potentially violent and deadly political feuds can be turned into impartially refereed games, the chance of losing can become less threatening, normal and acceptable, because your side will have a chance to win another day. To ensure the political game stays competitive and to prevent the breakdown of the rule of law, the political system must protect and continue to improve the basic rules of the game.

## How to Make U.S. Politics a Better Game

To make our politics as good as football or baseball or basketball, we could do three things:

- *Never choose judges based on their political ideologies and sentiments* as either “liberals” or “conservatives.” We should choose judges as we do umpires and referees, by training them in the judicial craft and promoting them on the basis of competitive professional performance.
- *Insure a level playing field.* Society should deliver the best possible education from early childhood to all children, especially for those who start with the greatest disadvantages. This is the only way to ensure equal dignity and opportunity and get the best results for society.
- *Eliminate gerrymandering and money in politics.* We could finance campaigns publically and drastically curtail the time campaigns take, so people with all kinds of means and schedules, can run for office. Voting can be scheduled on a national holiday to maximize participation, and contests should be structured to ensure that majorities choose the winners.