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DE-LIMITING RULES

Peter B. Oh*

Baseball is a game governed by a delicate equilibrium of complex rules.¹ But no rule incites more confusion or controversy than the Infield Fly.² This is perhaps because the rule embodies a greater tension: between a constantly evolving game that is steeped in revered traditions, and a rule that has become part of popular lore but whose original impetus was premised on a notion of fair play that hails from a bygone era.³

A modern justification for the Infield Fly may lie in its architecture. This is the approach taken by Howard Wasserman, who has skillfully sought to reverse-engineer the Infield Fly through something he terms a “limiting rule,” which can be expressed formally in two statements:

(1) A rule is limiting if and only if it constrains a team’s ability to gain an inequitable competitive advantage from an intentional act that is contrary to ordinary athletic expectations; and

(2) A limiting rule is necessary and appropriate if and only if a situation exhibits a combination of defined characteristics.⁴

According to Wasserman, the Infield Fly is justified because it is a unique situation that is subject to a limiting rule. That conclusion, however, rests perilously on a near-tautology. This is because the characteristics that warrant a limiting rule (2) are essentially the same as those that a rule must

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¹ See Owen Fiss, *The Best of All Games*, BOS. REVIEW (Mar. 2008) <http://bostonreview.net/archives/BR33.2/rawls.php>, (referencing a 1981 letter by John Rawls to the author).

² Unless one considers not a rule, but an exemption, of the game—from the antitrust laws. See, e.g., STUART BANNER, *THE BASEBALL TRUST: A HISTORY OF BASEBALL’S ANTITRUST EXEMPTION* xi (2013) (describing the exemption as “one of the oddest features of our legal system,” which “[s]carcely anyone believes . . . makes any sense.”).

³ See generally Richard Hershberger, *Revisiting the Origin of the Infield Fly Rule*, 47 *BASEBALL RES. J.* 83 (2018). But see, e.g., HAROLD SEYMOUR, *BASEBALL: THE EARLY YEARS 187* (1960) (observing that, during the 1880s, “[t]he professionals were out to win, and were not overly scrupulous about their methods. . . . The most observed rule seemed to be that everything is fair in baseball.”).

⁴ HOWARD M. WASSERMAN, *THE INFIELDFLY RULE IS IN EFFECT: THE HISTORY AND STRATEGY OF BASEBALL’S MOST (IN)FAMOUS RULE* 11–12, 54–55 (2019).

exhibit to be of the limiting sort (1). Moreover, these characteristics are causally interconnected: whenever a player intentionally fails to exert ordinary effort, a team gains an inequitable competitive advantage, which in turn generates incentives to attempt an intentional misplay.⁵ Limiting rules—such as the Infield Fly—thus appear to be justified, by definition.

Buried within this, though, is a potentially intriguing question. Even if limiting rules are a tautology, why must the continued vitality of the Infield Fly turn on whether it has a unique status? One response might be that, if the Infield Fly is not unique, then it simply can be absorbed within the rules that handle other comparable situations.⁶ This response rests on certain premises, which I want to explore briefly here. Specifically, what situations are comparable to the Infield Fly? And can all these situations be threaded together by one simple rule? By examining these questions we might determine whether limiting rules are necessary for the Infield Fly or whether it is part of a group of rules that may be justified in another way.

Within the Official Baseball Rules the Infield Fly is one of fifteen discrete ways to retire a batter under Rule 5.09.⁷ Two other sub-provisions within that rule are salient here: Rule 5.09(a)(3) (“Uncaught Third Strike”) and Rule 5.09(a)(12) (“Intentional Drop”). “All three of these rules were put in place for the purpose of preventing the defense from gaining the unfair advantage of earning a ‘cheap’ double play.”⁸

Start with the Infield Fly. The core rule and definition can be expressed formally:

(R₁) A batter is out if there is a fair fly ball (not including a line drive or an attempted bunt) that could be caught by an infielder with ordinary effort when there is a force play at third base with less than two outs.

The definition proceeds to elaborate that the “pitcher, catcher, and any outfielder who stations himself in the infield” also can be deemed an “infielder” within this rule.⁹ But this elaboration is incorrect. The Infield Fly is not restricted to only the “fair” infield; any qualifying “fly ball,” even one that falls into the outfield, can be subject to the rule. Moreover, any player can be stationed anywhere, because the relevant inquiry is entirely

⁵ *Id.* at 54–55.

⁶ *Id.* at 12.

⁷ See MAJOR LEAGUE BASEBALL, OFFICIAL BASEBALL RULES 5.09(a) (2018) [hereinafter OBR].

⁸ Larry Gallagher, *A Comparison of Three Rules*, NW. UMPIRES: LARRY’S CORNER, <http://www.nwumpires.com/home/index.php/laryscorner/19-rulesarea/39-1g4> (last visited Mar. 21, 2019).

⁹ OBR, *supra* note 7, at 145.

subjunctive, that is, whether the ball could be caught by an infielder with ordinary effort.

And this inquiry includes balls that could be caught by a catcher. If the Infield Fly and Uncaught Third Strike truly feature an “identical structure and logic,”¹⁰ then parsimony would seem to point towards consolidating (R₁) and Rule 5.09(a)(3). The scope of these rules, however, differs in at least two material respects. Unlike the Uncaught Third Strike, the Infield Fly is confined to a narrower range of situations, involving only “fair fly balls” and a force play at third base. A consolidated rule thus would entail either reconciling these variations or redesigning the universe of applicable situations.

There is another option. Eliminate Rule 5.09(a)(3). Nothing would be lost as a result, because the content of that rule concurrently exists in the form of Rule 5.05(a)(2):

Rule 5.05(a)(2): “The batter becomes a runner when . . . [t]he third strike called by the umpire is not caught, providing (1) first base is unoccupied, or (2) first base is occupied with two out....”

Rule 5.09(a)(3): “A batter is out when . . . [a] third strike is not caught by the catcher when first base is occupied before two are out....”

When either of these rules is read in conjunction with Rule 5.09(a)(2),¹¹ the Uncaught Third Strike remains intact. One might be tempted to think that the decision about which rule to eliminate is a case of Buridan’s Ass, but it is actually a case of Occam’s Razor. To eliminate Rule 5.05(a)(2) would track back to the task of reconciling 5.09(a)(3) with (R₁), and so *ceteris paribus* the simpler path is just to eliminate Rule 5.09(a)(3), which would entail no further work.

This leaves the Intentional Drop. In its original form this rule applied to the same situations as the Infield Fly but only to outfielders.¹² Over time the Intentional Drop has been expanded to include both line drives and fair fly balls, as well as force plays at both second and third base. In these respects the Intentional Drop and Uncaught Third Strike share the same kinds of differences with the Infield Fly, whose narrower scope suggests that it may be the outlier within the triad.

¹⁰ WASSERMAN, *supra* note 4, at 92.

¹¹ Rule 5.09(a)(2) provides that a batter is out when “[a] third strike is legally caught by the catcher....” OBR, *supra* note 7, at 40.

¹² See Gallagher, *supra* note 8.

A closer inspection of the Infield Fly only reinforces this impression. Unlike the Uncaught Third Strike, the Infield Fly excludes bunts and line drives; and, unlike the other rules, the Infield Fly applies only when there is a force play at third base with less than two outs. In both cases the limitations suffer from the same weakness: their rationales are grounded in probabilities and not principles. Within Wasserman's cost-benefit framework, for instance, bunts and line drives should be set aside from the Infield Fly because they may be too hard or easy, respectively, for an infielder to drop the ball and then turn a double play;¹³ similarly, the argument against extending the Infield Fly to force plays at second base largely rests on how difficult a double play might be if an ordinary batter properly hustles to first.¹⁴ But in either case, whatever the chances might be for a double play, a successful one still will be "cheap" and militate towards some form of redress.¹⁵

One might try to distinguish the Intentional Drop on the basis that it results in a dead ball. But for years, like the Infield Fly and the Uncaught Third Strike, an intentionally dropped ball was still live;¹⁶ that rule eventually was changed because baserunners frequently were confused about whether they had to advance, which in turn left them exposed to a potential "cheap" double play.¹⁷ So what seems to set the Intentional Drop apart actually reflects its shared purpose with the Uncaught Third Strike and the Infield Fly and suggests a potential avenue towards consolidating all of them into one rule:

(R₂) A batter is out if a fair or live ball could be intentionally dropped by an infielder with ordinary effort in order to attempt a double play with less than two outs.

Whether this formulation truly captures the essence of all three rules, or whether no amount of additions or refinement could ever achieve that goal, is something that certainly can be argued further. Regardless, the object of this exercise is to suggest that the Infield Fly is hardly unique; it reflects a concern that is mirrored by the Uncaught Third Strike and the Intentional Drop, and yet does not necessitate a limiting rule.

¹³ See WASSERMAN, *supra* note 4, at 69–74.

¹⁴ *Id.* at 66–68.

¹⁵ This would be even more so if rules such as the Infield Fly were viewed through the prism of unjust enrichment and not perverse incentives. *But cf.* RIGHTEOUS KILL (Grosvenor Park Productions 2008) (Al Pacino as Rooster: "I love [the Infield Fly] rule. It assumes the worst in everybody.").

¹⁶ In 1939, for instance, Rule 32 defined when "The Ball is Dead and Not in Play." Neither the Infield Fly, Uncaught Third Strike, nor the Intentional Drop falls within this Rule. See MAJOR LEAGUE BASEBALL: FACTS AND FIGURES AND OFFICIAL RULES 218 (Bob Elson ed., 1939).

¹⁷ See Gallagher, *supra* note 8.

But this is not my ultimate point. What truly matters is that the ongoing debate about the Infield Fly presents another opportunity, if not another reason, for fans to congregate and celebrate this wonderful game. Baseball has been enriched by the contributions from Howard Wasserman in all these respects.