

## THE ECONOMICS OF THE INFIELD FLY RULE

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*No sports rule has generated as much legal scholarship as baseball's Infield Fly Rule. Interestingly, however, no one has explained or defended the rule on its own terms as part of the internal rules and institutional structure of baseball as a game. This Article takes on that issue, explaining both why baseball should have the Infield Fly Rule and why a similar rule is not necessary or appropriate in seemingly comparable, but actually quite different, baseball situations. The answer lies in the dramatic cost-benefit disparities present in the infield fly and absent in most other game situations.*

*The infield fly is defined by four relevant features: (1) the significant disparity of costs and benefits inherent in that play that overwhelmingly favors one team and disfavors the other team; (2) the favored team has total control over the play and the other side is powerless to stop or counter the play; (3) the cost-benefit disparity arises because one team intentionally fails (or declines) to do what ordinary rules and strategies expect it to do; and (4) the extreme cost-benefit disparity incentivizes that negative behavior every time the play arises. When all four features are present on a play, a unique, situation-specific limiting rule becomes necessary; such a rule restricts one team's opportunities to create or take advantage of a dramatic cost-benefit imbalance, instead imposing a set outcome on the play that levels the playing field. The Infield Fly Rule is baseball's paradigmatic example of a limiting rule. By contrast, no other baseball situation shares all four defining features, particularly in having a cost-benefit disparity so strongly tilted toward one side. The cost-benefit balance in these other game situations is more even; thus, these other situations can and should be left to ordinary rules and strategies.*

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## INTRODUCTION

Legal scholars like to connect sports rules and legal rules—legal analysis sheds light on sports rules and sports rules shed light on legal rules governing other structures and institutions.<sup>1</sup> And no sports rule has garnered as much academic attention as the Infield Fly Rule.<sup>2</sup> As one article put it, “[l]egal scholars simply cannot keep their hands off the infield fly rule—either substantively or as a metaphor.”<sup>3</sup> Commentators have used the rule to illustrate all manner of jurisprudential issues, concepts, developments, and rules.<sup>4</sup>

The Infield Fly Rule is not intrinsic to baseball—baseball without the Infield Fly Rule is still baseball—but rather is a legislative response to some in-game actions that rulemakers simply did not like.<sup>5</sup> Nevertheless, the rule should be defensible and defended on its own terms as part of the internal rules, strategy, ethos, logic, and structure of baseball itself. This Article defends the Infield Fly Rule on its own terms, while arguing that a similar rule is not necessary or appropriate in other baseball situations.

As everyone still reading likely knows, the Infield Fly Rule controls a particular, relatively narrow game situation. If the batting team has runners on first and second or the bases loaded with fewer than two outs and the batter hits a pop fly in fair territory that can be caught by an infielder with “ordinary effort,” the batter is called out, regardless of whether the fielder catches the ball.<sup>6</sup> The rule jumped into the public eye during the 2012 National League Wild Card Game; a controversial infield-fly call helped stymie a rally by the home-team Atlanta Braves, leading to a ten-minute delay as Braves fans threw debris onto the field in

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<sup>1</sup> See, e.g., ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* ix–x, 3 (1998); *BASEBALL AND THE AMERICAN LEGAL MIND* 3 (Spencer Weber Waller et al. eds., 1995); Mitchell N. Berman, “*Let ‘Em Play*”: *A Study in the Jurisprudence of Sport*, 99 *GEO. L.J.* 1325, 1329–30 (2011) [hereinafter *Let ‘Em Play*]; Mitchell N. Berman, *Replay*, 99 *CAL. L. REV.* 1683, 1686 (2011); Ronald J. Krotoszynski, Jr., *The New Legal Process: Games People Play and the Quest for Legitimate Judicial Decision Making*, 77 *WASH. U. L.Q.* 993, 995 (1999).

<sup>2</sup> Throughout the Article, I will refer to the rule as the “Infield Fly Rule” or the “IFR”. All citations to the Official Baseball Rules refer to the 2013 edition of the Official Baseball Rules.

<sup>3</sup> Neil B. Cohen & Spencer Weber Waller, *Taking Pop-Ups Seriously: The Jurisprudence of the Infield Fly Rule*, 82 *WASH. U. L.Q.* 453, 454 (2004).

<sup>4</sup> See, e.g., *id.* at 454–57; Anthony D’Amato, *The Contribution of the Infield Fly Rule to Western Civilization (and Vice Versa)*, 100 *NW. U. L. REV.* 189, 189–90 (2006); John J. Flynn, *Further Aside: A Comment on “The Common Law Origins of the Infield Fly Rule”*, 4 *J. CONTEMP. L.* 241, 241–47 (1978); *Aside, The Common Law Origins of the Infield Fly Rule*, 123 *U. PA. L. REV.* 1474, 1478–79 (1975).

<sup>5</sup> See *Aside*, *supra* note 4, at 1476–77.

<sup>6</sup> OFFICIAL BASEBALL R. 2.00 (Infield Fly); see also *infra* notes 52–55 and accompanying text.

protest.<sup>7</sup> Sports commentary was initially critical of the call,<sup>8</sup> although several commentators later defended it.<sup>9</sup> Right or wrong, the play illustrated how competing principles of statutory interpretation often produce very different results.<sup>10</sup>

Amid discussions of the correctness of this call came broader questioning of the merits of the Infield Fly Rule itself, including suggestions that the rule is unnecessary or unwise and should be eliminated.<sup>11</sup> Criticism rested on two premises: (1) the infield-fly situation does not warrant a special rule and (2) other, purportedly similar game situations are not governed by a special rule, so neither should the infield fly.

Both premises are wrong.

As to the first, the Infield Fly Rule is justified because the game situation to which it applies is defined by four relevant features. Absent a special rule, (1) the play produces an unacceptably significant disparity (or what the rulemakers reasonably could regard as an extreme, significant, and unacceptable disparity) of costs and benefits that overwhelmingly favors the defensive team and disfavors the offensive team; (2) there is a disparity in control over the play, with the defense in total control and the offense powerless to stop or counter it; (3) the cost-benefit disparity arises specifically because the defense intentionally fails (or declines) to perform the athletic skills that baseball's ordinary rules, practices, and strategies expect it to perform—namely catching a playable fair batted ball; and (4) the

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<sup>7</sup> See, e.g., Kevin Kaduk, *Bad Infield Fly Rule Call Mars Cardinals Victory over Braves in NL Wild Card Game*, YAHOO! SPORTS (Oct. 5, 2012, 8:39 PM), <http://sports.yahoo.com/blogs/mlb-big-league-stew/bad-infield-fly-rule-call-mars-cardinals-victory-003924296--mlb.html>.

<sup>8</sup> See, e.g., *id.*; Dan Moore, *Braves v. Cardinals Infield Fly Rule Call the Right Move (Say Contrarians)*, SB NATION (OCT. 6, 2012, 7:03 AM), <http://stlouis.sbnation.com/st-louis-cardinals/2012/10/6/3463688/wild-card-infield-fly-rule-call-wrong>.

<sup>9</sup> E.g., Alex Groberman, *Video: Making Sense of the Braves-Cardinals Infield Fly Rule Controversy*, OPPOSING VIEWS (Oct. 5, 2012), <http://www.opposingviews.com/i/sports/mlb/cardinals/video-making-sense-braves-cardinals-infield-fly-rule-controversy>; Kevin Kaduk, *Harold Reynolds Had a Good Explanation of Why the Infield Fly Rule Call Was a Correct One*, BIG LEAGUE STEW (Oct. 6, 2012), <http://sports.yahoo.com/blogs/mlb-big-league-stew/harold-reynolds-had-good-explanation-why-infield-fly-154426000--mlb.html>; Rob Neyer, *Everything You Always Wanted to Know About the Infield Fly Rule*, SB NATION (Oct. 6, 2012, 8:20 AM), <http://mlb.sbnation.com/2012/10/6/3463338/infield-fly-rule-controversy-braves-cardinals-wild-card#119849037>.

<sup>10</sup> See Howard Wasserman, *The Return of the Infield Fly Rule*, CONCURRING OPINIONS (Oct. 6, 2012, 7:43 AM), <http://www.concurringopinions.com/archives/2012/10/the-return-of-the-infield-fly-rule.html>.

<sup>11</sup> *Id.* (reader comments 8, 12, and 13 by Harold Stones); Howard Wasserman, *In Defense of Baseball's Infield Fly Rule*, ATLANTIC (Oct. 12, 2012, 4:08 PM), <http://www.theatlantic.com/entertainment/archive/2012/10/in-defense-of-the-mlbs-infield-fly-rule/263569/> (reader comment by Lorehead).

opportunity to gain that overwhelming advantage incentivizes the defense to intentionally fail (or decline) to perform those athletic skills.

A game situation defined by all four features and producing such inequitable cost-benefit disparities justifies—or at least leads legislators to reasonably believe that it justifies—a unique, situation-specific rule that I refer to as a limiting rule. Limiting rules impose a more balanced outcome on the play, thereby eliminating (or at least reducing) the opportunity and incentive for a team to intentionally fail (or decline) to make the expected athletic play. The IFR is a paradigmatic example of a limiting rule, one justified by concerns for equity<sup>12</sup> and a fair balance of costs and benefits between opposing sides in the outcome of a given play.<sup>13</sup> Spencer Weber Waller and Neil Cohen sketched this basic policy conception of the Infield Fly Rule several years ago,<sup>14</sup> and this Article elaborates on these features.

On the other hand, game situations in which one or more of these defining features is absent produce a more balanced and equitable exchange of costs and benefits. This undermines the second premise of IFR criticism. Most other baseball<sup>15</sup> situations are not, in fact, comparable to the infield fly; the absence of at least one feature means the inequity in the cost-benefit balance on these plays is not so great as to warrant a limiting rule. And the rare baseball situation that is genuinely comparable to the infield fly along these features is, in fact, subject to its own special, situation-specific limiting rule that functions much like the IFR.

This Article proceeds in five steps. Part I compares sports and legal proceedings and the framework rules for each type of proceeding. This Part also explains when limiting rules are appropriate, discussing the features that define when the cost-benefit disparity in a situation is so unbalanced as to justify a special rule. Part II examines the history of the Infield Fly Rule, explaining the balance of costs and benefits in the infield-fly situation, explaining why it possesses the four relevant features, and showing why that limiting rule is appropriate. Part III considers one baseball situation—an uncaught third strike—that is comparable to the infield fly and that, with little fanfare or notice, involves a limiting rule that similarly restricts one team's strategic options in the name of ensuring a more equitable cost-benefit distribution. Part IV examines a number of other baseball situations, showing why all are missing at least one of the four features that define the infield fly; in particular, the disparity of burdens and benefits is not nearly as great in these other situations, making a limiting rule unnecessary. Finally, Part V responds to arguments that, even accepting everything said in this Article, the Infield Fly Rule still is not worth the effort.

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<sup>12</sup> Aside, *supra* note 4, at 1479–80.

<sup>13</sup> See Ralph Nelson, *Ask the Umpire*, MLB.COM, [http://www.mlb.com/mlb/official\\_info/umpires/feature.jsp?feature=qa2](http://www.mlb.com/mlb/official_info/umpires/feature.jsp?feature=qa2) (last visited August 27, 2013); Cohen & Waller, *supra* note 3, at 458–59.

<sup>14</sup> See Cohen & Waller, *supra* note 3, at 458.

<sup>15</sup> Critics of the IFR often point to purportedly comparable situations in a number of other sports, particularly football and basketball, which lack similar limiting rules. I focus this discussion only on baseball and leave these other sports for a different article.

## I. SPORTS AND DISPUTE RESOLUTION

A. *Sports Rules, Procedural Rules, and Limiting Rules*

We often hear of the analogy between sports rules and legal rules.<sup>16</sup> But a more apt analogy compares sporting events with legal proceedings.

Modern sport is directly comparable to one historic legal proceeding—medieval trial by battle, in which parties to a legal dispute engaged in a competition of physical (athletic) skill, with the better performer winning the battle and thus being said to have the righteous position in the legal dispute.<sup>17</sup> Blackstone recognized (albeit several hundred years after trial by battle had largely died out) that the ceremony of battle bore “a near resemblance to certain rural athletic diversions.”<sup>18</sup> The result of a trial by battle was said to demonstrate the justness of the victorious party’s legal cause, as divine will identified the party in the right and ensured he would prevail in the athletic contest.<sup>19</sup> Modern sports, by contrast, are played for their own sake, although many athletes, coaches, and fans continue to attribute success or failure to the hand and will of God.<sup>20</sup>

Trial by battle long ago was replaced by judicial proceeding; enforcement of legal rules and rights and the determination of the justness of a party’s position follows not from divine determination of the outcome of physical combat, but from proof, interpretation, application, and conclusions of fact and law by an impartial judge or jury.<sup>21</sup> Sport does not resemble modern civil litigation in the way it resembles trial by battle. The purpose of litigation is official interpretation and application of a rule to a set of facts to determine a prevailing party. A judge or jury should decide a case on the merits of the claims and defenses asserted,<sup>22</sup> determining whether, in light of the real-world facts and circumstances at issue and applicable legal rules, defendants breached legal duties and violated plaintiffs’ legal rights resulting in a legal injury warranting a judicial remedy.<sup>23</sup> By contrast,

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<sup>16</sup> See sources cited *supra* note 1.

<sup>17</sup> See 2 JOHN HUDSON, *THE OXFORD HISTORY OF THE LAWS OF ENGLAND* 327–28 (2012); Thomas P. Gallanis, *Trial by Battle*, in 6 *THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY* 6 (Stanley N. Katz ed., 2009); Edward L. Rubin, *Trial by Battle*, *Trial by Argument*, 56 *ARK. L. REV.* 261, 263–65 (2003).

<sup>18</sup> 3 WILLIAM BLACKSTONE, *COMMENTARIES* \*340; Rubin, *supra* note 17, at 264.

<sup>19</sup> See Rubin, *supra* note 17, at 264–65.

<sup>20</sup> See WILLIAM J. BAKER, *PLAYING WITH GOD: RELIGION AND MODERN SPORT* 250–51 (2007).

<sup>21</sup> See Rubin, *supra* note 17, at 268–69.

<sup>22</sup> See Richard L. Marcus, *The Revival of Fact Pleading Under the Federal Rules of Civil Procedure*, 86 *COLUM. L. REV.* 433, 436 (1986).

<sup>23</sup> Howard M. Wasserman, *Prescriptive Jurisdiction, Adjudicative Jurisdiction, and the Ministerial Exemption*, 160 *U. PA. L. REV. PENNUMBRA* 289, 296–97 (2012); Howard M. Wasserman, *The Demise of “Drive-by Jurisdictional Rulings,”* 105 *NW. U. L. REV.* 947, 950 (2011).

sport is governed by what Mitchell Berman calls the “competitive desideratum,” the desire that the “outcome of athletic contests . . . depend (insofar as possible) upon competitors’ relative excellence in executing the particular athletic virtues that the sport is centrally designed to showcase, develop, and reward.”<sup>24</sup> And even if God has a hand in the outcome,<sup>25</sup> no human decision maker does.

Nevertheless, litigation is like sport in several respects. Both are controlled by the participants; players seek to control the outcome of a game by performing relevant athletic skills better than their opponents, while parties in litigation seek to control the outcome through their presentation of proof and argument.<sup>26</sup> More importantly, sport and litigation both operate within a background of procedural rules. Sports rules provide the framework in which players perform their physical skills and to which they must conform in the athletic contest,<sup>27</sup> just as trial by battle was wrapped in elaborate procedures and rituals,<sup>28</sup> and just as modern rules of procedure provide the framework in which legal disputes are resolved.<sup>29</sup> These framework rules are not the focus of either contest, nor should they dictate the outcome of either a ballgame or a trial. They merely regulate the competition so the players can determine the outcome through their relative athletic skill<sup>30</sup> or through their arguments and proofs of the legal and factual merits of the claim.<sup>31</sup>

Of course, any proceeding, whether athletic or judicial, is defined by the framework of governing rules.<sup>32</sup> The rules of baseball define how baseball is played—the object of the game, the size and shape of the playing field and equipment, and the basic game design such as balls, strikes, hits, runs, and outs. Rules of civil procedure define how civil litigation is initiated, how it is structured in terms of parties, claims, defenses, and issues, and how it proceeds.

And decisions must regularly be made about those framework rules. Umpires make calls that affect how players exercise their skills, just as judges make

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<sup>24</sup> Berman, *Let ‘Em Play*, *supra* note 1, at 1358.

<sup>25</sup> See BAKER, *supra* note 20, at 250–51.

<sup>26</sup> See Jay Tidmarsh, *Unattainable Justice: The Form of Complex Litigation and the Limits of Judicial Power*, 60 GEO. WASH. L. REV. 1683, 1744–45 & n.279 (1992).

<sup>27</sup> See Berman, *Let ‘Em Play*, *supra* note 1, at 1358; Krotoszynski, Jr., *supra* note 1, at 1009–10, 1012; Aside, *supra* note 4, at 1476.

<sup>28</sup> See HUDSON, *supra* note 17, at 327; Gallanis, *supra* note 17, at 6–7. Indeed, trial by battle evolved precisely because authorities recognized “these brawls and blood-feuds as a judicial procedure, and subject[ed] them to a modicum of rules whenever possible.” Rubin, *supra* note 17, at 265.

<sup>29</sup> See FED. R. CIV. P. 1; *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1442 (2010) (defining procedural rules as those governing the “process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them” (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941))).

<sup>30</sup> See Berman, *Let ‘Em Play*, *supra* note 1, at 1358.

<sup>31</sup> See FED. R. CIV. P. 1; Marcus, *supra* note 22, at 436.

<sup>32</sup> See Joseph Scott Miller, *Substance, Procedure, and the Divided Patent Power*, 63 ADMIN. L. REV. 31, 45 (2011) (“Procedural choices affect substantive outcomes.”).

procedural decisions that affect how the parties present their cases. An umpire's decision that a pitch is a ball or strike or that a runner is safe or out on a play<sup>33</sup> is comparable to a judge's decision about what information is discoverable<sup>34</sup> or whether a piece of evidence is admissible.<sup>35</sup> None of these decisions dictates the ultimate outcome of the contest, whether the battle of skills in the baseball game or the proof and fact-finding process on the merits in trial. But they do affect how the competitors (teams, parties, or counsel) act within the proceeding and the contest ultimately is fought and resolved in light of those decisions.<sup>36</sup>

Rules of procedure and rules of sport also share a similar purpose: to ensure outcomes are accepted as fair and legitimate, even by a losing party disappointed in the result, because of faith in the fairness and legitimacy of the framework.<sup>37</sup> Rules ensure that parties present their cases<sup>38</sup> on a level competitive field<sup>39</sup>—whether that presentation is by proof and argument before a neutral and detached judge in federal court; by physical combat in the village square during the Middle Ages; or by pitching, hitting, and catching a baseball at Wrigley Field.

The quest for this level field means framework rules should not tip too far in one direction—as between plaintiffs and defendants or between offense and defense. And rulemakers must recalibrate rules, sometimes along arbitrary lines, when a particular situation tilts (or is perceived as tilting) too far in one direction. Consider the current debate over civil pleading standards. The Supreme Court tightened the standard for when a pleading states a claim for relief,<sup>40</sup> believing the prior standard tilted too far in favor of plaintiffs by allowing weak claims to enter court and by subjecting defendants to burdensome and expensive discovery on meritless claims.<sup>41</sup> Critics of those decisions respond that this new calibration swings too far in the other direction, hampering the ability of plaintiffs to get into

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<sup>33</sup> Baseball is regarded as the most rule bound of sports in part because every pitch and every play formally requires a ruling and a call by a neutral arbiter, even if the ruling is routine and obvious. See Waller et al., *supra* note 1, at ix.

<sup>34</sup> See FED. R. CIV. P. 26(b)(1).

<sup>35</sup> See FED. R. EVID. 401.

<sup>36</sup> See Berman, *Let 'Em Play*, *supra* note 1, at 1358.

<sup>37</sup> See Krotoszynski, Jr., *supra* note 1, at 1012–13; Lawrence B. Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 188–90 (2004).

<sup>38</sup> See *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004).

<sup>39</sup> See Arthur R. Miller, McIntyre in *Context: A Very Personal Perspective*, 63 S.C. L. REV. 465, 466 (2012); Arthur R. Miller, *From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure*, 60 DUKE L.J. 1, 102 (2010) [hereinafter *Double Play*]; Seymour Moskowitz, *Rediscovering Discovery: State Procedural Rules and the Level Playing Field*, 54 RUTGERS L. REV. 595, 598 (2002).

<sup>40</sup> See FED. R. CIV. P. 8(a) (providing standard of pleading claims for relief).

<sup>41</sup> See *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007).

court to pursue potentially meritorious claims, obtain discovery, and generally operate on an equitable litigation field.<sup>42</sup>

Baseball history is replete with similar tweaks to framework rules. Between 1880 and 1889, for example, the number of balls required for a base on balls fluctuated from nine down to the current four.<sup>43</sup> Following a 1968 season in which pitchers were perceived as dominant, Major League Baseball lowered the maximum height of the pitcher's mound from 15 to 10 inches, believing that hitters would be better able to hit pitches thrown from a lower mound.<sup>44</sup> In both examples, the goal was to establish (or re-establish) a "delicate balance" between offense and defense when it seemed to tilt too far in either direction.<sup>45</sup> Moreover, it was not enough that both teams would bat at some point, so both sides would benefit from the tilt. An overly dominant defense and overly weak offense was not the optimal way to play the game, even if both teams could eventually and equally avail themselves of that imbalance.<sup>46</sup> Rulemakers sought to ensure the best competitive balance at the level of each play and at the level of the game's overall structure.

At times, however, ordinary framework rules prove insufficient in specific circumstances. In particular, holes in the rules may incentivize actors to behave in an unexpected manner that produces substantial inequity, an unwanted and extreme cost-benefit advantage for one side and against the other. In such a situation, ordinary rules may be replaced or supplemented by limiting rules—situation-specific rules that impose a particular outcome on a dispute, thereby constraining the ability or incentive of a party (in sports or in litigation) to exploit holes or gaps in ordinary rules, practices, and strategies to an extraordinarily imbalanced competitive advantage. Limiting rules level the playing field and the equities of a specific situation, striking a closer, more optimal cost-benefit balance between the parties, where the situation played under ordinary rules would produce too extreme or inequitable a disparity between competing sides.

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<sup>42</sup> See Stephen B. Burbank, *Pleading and the Dilemmas of Modern American Procedure*, 93 JUDICATURE 109, 117 (2009); Lonny Hoffman, *Rule Making in the Age of Twombly and Iqbal*, U.C. DAVIS L. REV. (forthcoming 2013); Lonny Hoffman, Twombly and Iqbal's Measure: An Assessment of the Federal Judicial Center's Study of Motions to Dismiss, 6 FED. CTS. L. REV. 1, 28–31 (2011); Miller, *Double Play*, *supra* note 39, at 9–10; A. Benjamin Spencer, *Pleading and Access to Civil Justice: A Response to Twiqbal Apologists*, 60 UCLA L. REV. 1710, 1714 (2013); Howard M. Wasserman, Iqbal, Procedural Mismatches, and Civil Rights Litigation, 14 LEWIS & CLARK L. REV. 157, 168–69 (2010).

<sup>43</sup> HAROLD SEYMOUR, *BASEBALL: THE EARLY YEARS 176–77* (1960); *see also* THE DICKSON BASEBALL DICTIONARY 77–78 (3d ed. 2009) ("Base on Balls").

<sup>44</sup> See WILLIAM B. MEAD, *TWO SPECTACULAR SEASONS: 1930: THE YEAR THE HITTERS RAN WILD, 1968: THE YEAR THE PITCHERS TOOK REVENGE* 190–92 (1990).

<sup>45</sup> *Id.* at ix.

<sup>46</sup> *See id.* at x.

For example, a party in litigation might refuse to produce evidence requested in discovery, a move that obviously may provide a tremendous benefit to it at a tremendous cost to the other party. Under the Federal Rules of Civil Procedure, one possible consequence of a party's failure to abide by its discovery obligations is that the court will deem certain facts established against the noncompliant party or will prohibit that party from offering evidence to support or oppose certain factual issues or claims.<sup>47</sup> The rule, and the judge's application of it, levels the litigation playing field by ensuring that a party refusing to share discoverable evidence (presumably because it would be adverse to its position) cannot benefit from its refusal and that a party denied access to relevant, potentially favorable evidence cannot be disadvantaged by that denial. The limiting rule functions by imposing an outcome—some fact established as true or more likely to be found as true—that might have resulted had the information been produced as required and had the seeking party been able to use the evidence at trial. That potential outcome, it is hoped, might disincentivize parties from refusing to cooperate in discovery.

Trial by battle utilized similar limiting rules. For example, a man in battle with a woman might “be placed waist deep in a pit with one arm tied behind his back while his female adversary circled around him, unencumbered.”<sup>48</sup> By restricting the man's ability to fight as he would under ordinary circumstances, the rule leveled the competitive field and produced an outcome closer to what would derive from a battle between parties more evenly matched in strength, size, and skill.<sup>49</sup>

### B. Limiting Rules

With that background, we turn to whether and when a limiting rule is necessary and justified; this depends on the presence of four defining features in a game situation. A limiting rule is appropriate when, absent the rule: (1) the play produces a significant disparity of costs and benefits that overwhelmingly favors one team and disfavors the other; (2) there is disparity in control over the play, in that one side has total control and the other is powerless to stop or counter it; (3) the cost-benefit disparity arises specifically because the advantaged team intentionally fails (or declines) to perform the athletic skills that the game's ordinary rules, practices, and strategies expect it to perform; and (4) that extreme cost-benefit advantage incentivizes the benefitting team to intentionally fail (or decline) to perform those expected athletic skills whenever the situation arises.

We can consider these four features in greater detail.

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<sup>47</sup> FED. R. CIV. P. 37(b)(2)(A)(i)–(ii); *see also* *Linde v. Arab Bank, PLC*, 706 F.3d 92, 116 (2d Cir. 2013); *Coca-Cola Bottling Co. v. Coca-Cola Co.*, 110 F.R.D. 363, 370–72 (D. Del. 1986).

<sup>48</sup> Rubin, *supra* note 17, at 266.

<sup>49</sup> The rules of battle eventually evolved so, rather than fighting themselves, parties to a dispute selected a (usually professional) champion to fight an evenly matched battle. *Id.* at 266–67.

First, and at the heart of this argument, the particular game situation produces an unacceptably extreme disparity in the distribution of costs and benefits between the sides. Absent a limiting rule, the disparity on the play is significantly unequal in favor of one side and goes well beyond the expected exchange of costs and benefits on the play.<sup>50</sup> One side (whether the offense or defense) receives substantially greater benefits than expected while incurring no costs, while the other side incurs overwhelming costs while receiving no benefits. And the game situation produces that disparity each time—or virtually each time—it arises, regardless of the particulars of the game or players involved.

That disparity and imbalance is measured, and remedied, at the particular situation, not the game as a whole. The argument is not that, because both teams get to bat, a rule overwhelmingly benefitting the batting team is not inequitable because both teams will benefit over the course of a game. The rules of the game are designed to ensure that costs and benefits of individual plays do not tilt too far (or what rulemakers reasonably may regard as too far) in favor of the offense or the defense, but instead maintain that delicate balance between the two.

One additional caveat is required as to this feature. Strategic cost-benefit exchanges are often part of the game. Teams frequently accept less-than-optimal outcomes on plays by incurring some costs (and ceding to the opponent some benefits) while gaining some benefits, with each team hoping to work the exchange to its ultimate advantage. These exchanges are roughly equitable, with each side gaining something and giving up something, and each hoping that what it gains marginally outweighs what it gives up. Limiting rules are not designed for these equitable cost-benefit exchanges. A limiting rule is necessary only where the cost-benefit balance is so significantly or overwhelmingly tilted in favor of one team, such that all benefits run in one direction and all costs in the other and those benefits are substantially greater than they otherwise would be.

Second, there is disparity in the power each team wields in the game situation. One side remains exclusively free to manipulate and control the play to its advantage. The opposing side is helpless and unable to exert any influence over the play; doing what game strategies and practices ordinarily dictate, its players cannot counter or slow the opponent's strategic move. The disadvantaged team can do nothing to avoid or minimize the costs or harms in the situation. The best it can hope for is that the advantaged team makes a mistake or fails in its strategic play, neither of which the disadvantaged team influences in any way.

This feature must be understood narrowly. The problem arises only when the game situation and ordinary rules and strategies affirmatively prevent one side from responding to an opponent's strategic move, where any effort to counter it will fail or impose a different (although equally great) cost. In other words, the disadvantaged side cannot escape. This feature does not apply, however, where it is possible under ordinary rules, strategies, and practices for one side to at least attempt a countermove, even if the countermove does not succeed every time. Nor

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<sup>50</sup> See Cohen & Waller, *supra* note 3, at 458–59.

does it protect a team from costs resulting from its own stupidity or recklessness on a given play. Finally, a team's ability to control or influence a play must be measured once that play has been triggered and is in motion, not before. The response to an overwhelmingly inequitable situation cannot be that a team should not have gotten into the situation in the first place. The issue is how the game should be played once the situation arises.

Third, this cost-benefit disparity arises only because one team intentionally fails (or declines) to perform the expected athletic skills or to do what the game's ordinary rules, practices, ethics, and strategies typically expect or compel. Fourth, the cost-benefit disparity is so great that it creates a strong incentive for the benefitted side to intentionally fail (or decline) to perform those expected athletic skills. The game situation provides a negative incentive virtually every time it arises, regardless of other circumstances of the particular game or play. And for purposes of both of these features, "ordinary" rules and practices are determined at a general level, asking what we typically expect a player or team to do as part of the game or what a player or team typically wants to do as part of the game.

Another way to think about this is that these four features together define a team's willingness to take risks. Intentionally failing (or declining) to make the expected athletic play is likely riskier than making the expected play, as the former is more difficult to execute. But when one side stands to gain substantial enough benefits while incurring no costs, it is more willing to attempt that riskier or more complicated move. On the other hand, when the benefits to be gained are lower or when those benefits are balanced by equivalent costs incurred, the incentive to risk the difficult play is diminished.

When (and only when) all four defining features are present, the equities are so imbalanced (or rulemakers reasonably may conclude the equities are so imbalanced) that a limiting rule becomes necessary and appropriate, superseding ordinary rules and strategies whenever the relevant game situation arises. The limiting rule imposes the outcome that should (or likely would) follow on the play were a team to properly perform its athletic skills and to do what is ordinarily expected under the sport's practices and strategies. By imposing that outcome, the limiting rule removes the incentive for the benefitted team to intentionally fail (or decline) to do what is ordinarily expected or required in the game in search of a substantial cost-benefit advantage. When the outcome of the play is dictated, such that the unique but strategic move will not produce the desired inequitable benefit, there is no reason for a team to take the risk.

On the other hand, when one or more of these features are absent from a game situation, the equities of the play are more evenly balanced and a limiting rule is unnecessary and inappropriate. Play should continue under ordinary rules, practices, and strategies. Ordinary rules will not produce a similarly overwhelming cost-benefit disparity and thus will not offer one team the same negative incentives to intentionally fail (or decline) to perform the expected athletic skill.

## II. DEFENDING THE INFIELD FLY RULE

The first premise of IFR criticism is that the infield-fly situation is not problematic and does not warrant a limiting rule, particularly to the extent the limiting rule constrains the ability of one team to engage in strategic playmaking. Part I identified four features that define when a game situation entails too great a cost-benefit disparity and justifies a limiting rule imposing a particular result on the play and restricting teams' strategic opportunities. This Part considers the infield-fly situation and the Infield Fly Rule in light of those features.

### A. *Origins of the Infield Fly Rule*

The Infield Fly Rule is not inherent in baseball; that is, baseball without the Infield Fly Rule still would be recognizable as baseball.<sup>51</sup> But the rule has been around so long as to become part of the game's fabric, which is precisely why calls to eliminate it seem strange and warrant response.

From the Official Baseball Rules:

An INFIELD FLY is a fair fly ball (not including a line drive nor an attempted bunt) which can be caught by an infielder with ordinary effort, when first and second, or first, second and third bases are occupied, before two are out. The pitcher, catcher and any outfielder who stations himself in the infield on the play shall be considered infielders for the purpose of this rule.

When it seems apparent that a batted ball will be an Infield Fly, the umpire shall immediately declare "Infield Fly" for the benefit of the runners. If the ball is near the baselines, the umpire shall declare "Infield Fly, if Fair."

The ball is alive and runners may advance at the risk of the ball being caught, or retouch and advance after the ball is touched, the same as on any fly ball. If the hit becomes a foul ball, it is treated the same as any foul.

If a declared Infield Fly is allowed to fall untouched to the ground and bounces foul before passing first or third base, it is a foul ball. If a declared Infield Fly falls untouched to the ground outside the baseline, and bounces fair before passing first or third base, it is an Infield Fly.<sup>52</sup>

"Ordinary Effort" is defined as "the effort that a fielder of average skill at a position in that league or classification of leagues should exhibit on a play, with

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<sup>51</sup> Aside, *supra* note 4, at 1476.

<sup>52</sup> OFFICIAL BASEBALL R. 2.00 (Infield Fly).

due consideration given to the condition of the field and weather conditions.”<sup>53</sup> The Rules then provides an interpretive comment:

On the infield fly rule the umpire is to rule whether the ball could ordinarily have been handled by an infielder—not by some arbitrary limitation such as the grass, or the base lines. The umpire must rule also that a ball is an infield fly, even if handled by an outfielder, if, in the umpire’s judgment, the ball could have been as easily handled by an infielder. The infield fly is in no sense to be considered an appeal play. The umpire’s judgment must govern, and the decision should be made immediately.

When an infield fly rule is called, runners may advance at their own risk. If on an infield fly rule, the infielder intentionally drops a fair ball, the ball remains in play despite the provisions of Rule 6.05 (*l*). The infield fly rule takes precedence.<sup>54</sup>

Put simply, when the batting team has runners on first and second or the bases loaded with fewer than two outs and the batter hits a pop fly in fair territory that an average infielder can easily catch, the batter is called out as soon as “Infield Fly is declared” by the umpire.<sup>55</sup> Once called, the batter is out, regardless of whether the fielder catches the ball.<sup>56</sup> If the ball is not caught, it is live and the runners can try to advance at their own risk. If the ball is caught and the runners have strayed too far, they can be thrown out at the previous bases.

The impetus for the rule was a play in an 1893 game between the New York Giants and the original Baltimore Orioles.<sup>57</sup> With a runner on first base and one out, the Giants’ future Hall of Fame shortstop John Montgomery Ward<sup>58</sup> allowed a routine infield pop to drop to the ground, then picked the ball up and put the runner out at second base while allowing the batter to reach first base; by doing so, Ward removed a fast runner from the basepaths in exchange for the batter, who had “the speed of an ice wagon.”<sup>59</sup> Baseball responded the following winter by enacting the “trap ball” rule, which provided that the batter was out on any infield pop-up with

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<sup>53</sup> *Id.* R. 2.00 (Ordinary Effort).

<sup>54</sup> *Id.* R. 2.00 (Infield Fly) cmt.

<sup>55</sup> *Id.* R. 6.05(e).

<sup>56</sup> A distinct rule prohibits an infielder from intentionally dropping a fair fly ball (including a line drive) with fewer than two outs and a force in effect at any base; on such a play, the batter is out and the runners cannot advance. But the rule does not prohibit a player from letting the ball drop to the ground untouched. *Id.* R. 6.05(*l*); *id.* R. 6.05(*l*) approved ruling; *see also infra* notes 133–142 and accompanying text.

<sup>57</sup> Aside, *supra* note 4, at 1477.

<sup>58</sup> Appropriately, Ward was a lawyer, having graduated from Columbia Law School eight years prior to this play. BRYAN DI SALVATORE, *A CLEVER BASE-BALLIST: THE LIFE AND TIMES OF JOHN MONTGOMERY WARD 183–84* (1999).

<sup>59</sup> Aside, *supra* note 4, at 1477 (internal quotation marks omitted).

first base occupied and one out. The new rule prohibited the precise play that Ward had pulled. But it did not eliminate the supposedly unjust double play, which arose only with two base runners, not with the batter and one base runner (assuming the batter runs to first base, as expected, after hitting the pop-up). In 1895, the rule was amended to apply only with the bases loaded or runners on first and second with one out—the situation in which a drop might produce an inning-ending double play. In 1901, the rule was extended to when there were no outs,<sup>60</sup> thereby preventing all double plays. The exclusion of line drives from the rule’s reach was added in 1904.<sup>61</sup>

The IFR removes the incentive for an infielder to intentionally fail (or decline) to catch an easily playable fair fly ball, where not catching it might allow him to turn a double play (and perhaps, although less likely, a triple play) on the base runners. It prevents the “defense from making a double play by subterfuge, at a time when the offense is helpless to prevent it, rather than by skill and speed.”<sup>62</sup> That is, it avoids what one umpiring organization derides as a “cheap” double play.<sup>63</sup>

The rule originates in efforts to promote sportsmanship and prevent deception and trickery; it is born of a sense that there is something unsporting about intentionally failing (or declining) to catch an easily handled ball in order to gain a greater competitive advantage.<sup>64</sup> Teams should not receive the benefit of a double play that is somehow not “deserved.” Of course, conceptions of sportsmanship have evolved since the late 19th century, as sports have moved away from the “attitude of the amateur, of the gentleman, and of the sportsman” into a fully professional environment in which particular and specific rules are necessary.<sup>65</sup> Moreover, the reality is that trickery always has been part of baseball; as one baseball executive put it, “There is a culture of deception in this game. It’s been in this game for 100 years. I do not look at this in terms of ethics. It’s the culture of the game.”<sup>66</sup> And regardless of history, the game now unquestionably accepts and even celebrates all manner of deception and trickery—with hidden ball tricks, infielders bluffing about where a ball is hit to try to slow base runners down,<sup>67</sup>

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<sup>60</sup> THE DICKSON DICTIONARY, *supra* note 43, at 451 (Infield Fly Rule); *Aside*, *supra* note 4, at 1477–78.

<sup>61</sup> *Aside*, *supra* note 4, at 1478; *see also* *A Comparison of Three Rules*, NORTHWESTUMPIRES.COM, [http://www.nwumpires.com/home/index.php?option=com\\_content&view=article&id=39:lg&catid=19:rulesarea&Itemid=7](http://www.nwumpires.com/home/index.php?option=com_content&view=article&id=39:lg&catid=19:rulesarea&Itemid=7) (last visited August 28, 2013).

<sup>62</sup> SEYMOUR, *supra* note 43, at 276.

<sup>63</sup> *A Comparison of Three Rules*, *supra* note 61.

<sup>64</sup> *See* *Aside*, *supra* note 4, at 1478–79.

<sup>65</sup> *Id.* at 1476.

<sup>66</sup> JASON TURBOW WITH MICHAEL DUCA, *THE BASEBALL CODES* 184 (2010) (quoting then-team executive Andy MacPhail).

<sup>67</sup> *See, e.g.*, Ralph Warner et al., 18. *Chuck Knoblauch Sons Lonnie Smith*, in *The 25 Biggest Fails in MLB Playoff History*, COMPLEXSPORTS (Oct. 4, 2012, 12:21 PM),

runners pretending to fall down to draw a throw and allow another runner to advance,<sup>68</sup> stolen signs,<sup>69</sup> and fake pick-off throws.<sup>70</sup> Baseball's modern ethos places the onus on the opposing team to avoid being deceived.<sup>71</sup>

### *B. Infield Fly Rule as a Limiting Rule*

The better justification for the IFR derives from concerns for equity<sup>72</sup> and a fair balance<sup>73</sup> of costs and benefits between opposing sides. Just as the rules of procedure should not allow too great a disparity between parties to litigation, the rules of baseball should not allow too great a disparity between opposing teams on a given play within a game. Limiting rules become necessary when that balance is lost; the balance is lost when the four relevant features define a particular play. And it is clear that the infield-fly situation is defined by all four features, making the IFR an appropriate and necessary limiting rule.

First, the infield-fly situation produces a significant cost-benefit disparity; the exchange goes entirely in one direction and it goes well beyond the level of costs and benefits that result if the infielder makes the expected athletic move of catching the ball.<sup>74</sup> The defense incurs no costs and receives substantially greater benefits by not catching a fair fly ball. Conversely, the offense suffers substantial costs while gaining no benefits whatsoever, subject only to the chance that the defense might commit an error. As a result, absent the IFR, the fielding team might be expected to fail (or decline) to catch the ball and get the double (or triple) play a substantial percentage of the time.

Consider what happens absent the IFR. The defense likely gets two outs by not catching the ball by doubling two base runners on force outs (at home and third, third and second, or home and second, depending on the situation and where the ball is hit), as opposed to one out on the batter by catching the ball. And a triple play (if the bases were loaded with no outs) is not out of the question if the ball is hit in the right spot on the field. The best outcome for the defense is that it gets out of the inning (a double play where there had been one out or a triple play where

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<http://www.complex.com/sports/2012/09/the-25-biggest-fails-in-mlb-playoff-history/chuck-knoblach-sons-lonnie-smith>.

<sup>68</sup> See GEORGE WILL, *MEN AT WORK: THE CRAFT OF BASEBALL* 70 (1988).

<sup>69</sup> JOSHUA PRAGER, *ECHOING GREEN: THE UNTOLD STORY OF BOBBY THOMSON, RALPH BRANCA, AND THE SHOT HEARD ROUND THE WORLD* 31–32 (2006).

<sup>70</sup> A rule change effective in 2013 outlaws one such fake, where, with runners on first and third or the bases loaded, a pitcher fakes a pick-off throw to third base, then turns and tries to pick the runner off at first. Jayson Stark, *Sources: Interpreters OK on Mound*, ESPN.COM (Jan. 14, 2013, 9:13 PM), [http://espn.go.com/mlb/story/\\_/id/8844122/interpreters-able-approach-mound-help-foreign-born-pitchers-sources-say](http://espn.go.com/mlb/story/_/id/8844122/interpreters-able-approach-mound-help-foreign-born-pitchers-sources-say).

<sup>71</sup> Flynn, *supra* note 4, at 244–45.

<sup>72</sup> See *Aside*, *supra* note 4, at 1479–80.

<sup>73</sup> See Nelson, *supra* note 13.

<sup>74</sup> See Cohen & Waller, *supra* note 3, at 458–59.

there had been no outs) and gets its next opportunity to bat—and to score runs. The worst outcome for the defense is a double play leaving it with two outs and runners on first and second (if the bases previously were loaded) or only a runner on first (if there previously had been runners on first and second). And assuming the team executes the play correctly—meaning the ball does not take a bad bounce when it hits the ground and the fielders do not commit throwing errors—it does all this at no cost.

Conversely, the offense experiences everything described above as substantial costs—multiple outs instead of just one, loss of base runners and runners in scoring position, and perhaps the end of one of its nine precious opportunities to score runs. And it receives absolutely no benefits on the play.

Contrast that with the relatively equitable cost-benefit distribution if the infielder does what is ordinarily expected and catches this easily handled fair fly ball. The defense gets one out, bringing it closer to the end of the inning (a benefit), although it cannot get out of the inning on the play and still faces a bases loaded or first-and-second situation (a cost). The offense loses an out (a cost), but its turn at bat (and thus its opportunity to score runs) remains alive and it still has two or three men on base, with at least one in scoring position (a benefit).

Second, there is a wide disparity in the control each team exercises over the situation. If we imagine a world without the IFR, the defense would be in complete command on the play, while the offense would be helpless to respond or counter it. The IFR applies to a fly ball that is catchable by an infielder with “ordinary effort,”<sup>75</sup> meaning the ball is easily caught by a Major League infielder of average skill, accounting for field and weather conditions.<sup>76</sup> Because the ball is hit straight up in the air and not very hard or far, the play unfolds slowly. The fielder has time to settle under the ball; indeed, it typically becomes apparent that a ball is playable by the infielder with ordinary effort (triggering an infield-fly call)<sup>77</sup> when the fielder is standing under the ball and waiting for it to come straight down into his glove. The ball is likely hit in or near the infield (or at least a spot where the infielder can play it fairly easily),<sup>78</sup> so the infielder does not have to run very far to get into position to catch the ball. He can stand and wait, think the play through, know where the runners are and what they are doing (whether they are running or staying put), allow the ball to drop to the ground in a way that he can easily

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<sup>75</sup> OFFICIAL BASEBALL R. 2.00 (Infield Fly).

<sup>76</sup> *Id.* R. 2.00 (Ordinary Effort).

<sup>77</sup> *See id.* R. 2.00 (Infield Fly) cmt.

<sup>78</sup> The official comment to the Infield Fly Rule states that umpires should not feel limited in calling infield fly by arbitrary limits such as the outfield grass or the foul lines. *Id.* The IFR call in the 2012 National League Wild Card Game was controversial in part because the ball was hit into shallow left field, arguably too deep to be playable by an infielder with “ordinary effort.” That ball was hit deep enough that the runners were able to go halfway to the next base (the typical play on a fly ball to the outfield) and advance easily when the ball dropped to the ground, such that a double play would have been impossible. *See supra* notes 7–10 and accompanying text.

surround and control,<sup>79</sup> and quickly pick it up and make the throws for the double play.

The other infielders also have time to become part of this slow-developing play. While the ball is in the air, they can move to their proper positions for the double play. They also can communicate with their teammate as to what the runners are doing, whether or not he should catch the ball, and where he should throw it when it falls to the ground. Moreover, the two throws to force the runners may be fairly short and quick, especially on a ball hit to the left side of the field or on the infield grass. The only risk for the defense is that the ball takes a bad or unexpected bounce when it hits the ground, such that the infielder cannot easily pick it up, or that the fielders make bad throws—all of which remain largely within the fielding team's control.

On the other hand, the base runners are trapped, entirely reactive, and, one could say, "helpless."<sup>80</sup> All the runners are forced to run when the ball hits the ground. But if they run and the ball is caught on the fly, they will be thrown out at their previous bases. So they must wait to see whether the infielder catches the ball. Because the ball is hit in or near the infield, however, the runners cannot move too far from the base while they wait (lest they be thrown out at the current base if the ball is caught); they must stay within two or three steps of the base, meaning that once the ball does drop to the ground, they must run approximately 80–85 feet from a standing start and try to outrun two throws within the infield. Their only hope is that the ball bounces away from the fielder or that there are errors on the throws—neither of which is within the batting team's control.

Moreover, the softness of the hit means the infielder can wait until the last instant to decide whether to catch this easily playable ball or let it fall at his feet, thereby stripping the runners of the option of guessing or gambling on the fielder's move. In a world without the IFR, an infielder might be tempted to catch or not catch the ball at random, and the runners might be tempted to take a chance and run on some plays, hoping to pick a play on which the fielder drops the ball. Each side is trying to guess what the other is going to do in search of a competitive edge. But the infielder retains first-mover advantage, because his decision (catch or not catch) dictates what the base runners are permitted to do under the rules and he can try to disguise and delay his intentions until the last instant. When the fielder knows the runners are running, he catches the ball and doubles them off at their prior bases; when he knows the runners are waiting, he lets the ball drop and doubles them off at the next bases. Given the nature of the batted ball, the defense retains all control and the base runners incur a cost no matter what they choose.

One might argue, of course, that the offense could avoid the double play if its players did not hit pop-ups that were catchable by infielders with ordinary effort—that is, if the batter had done a better job of hitting, his teammates would not be

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<sup>79</sup> Compare this situation with the Intentionally Dropped Ball Rule, explained *supra* note 56 and accompanying text.

<sup>80</sup> SEYMOUR, *supra* note 43, at 275–76.

trapped on the bases. But control over a play must be measured once the play has begun, not before. Easily playable fly balls happen in a baseball game; the issue is what happens after the easily playable fly ball is hit—who controls the play from that point forward, the expected outcome of the play, and the equities of that outcome. Otherwise, this could play in an infinite regression: if the two base runners had done something different in their turns at bat (such as both hitting home runs or both getting out), the batting team would not have runners on first and second with fewer than two outs and would not risk a double play on the uncaught pop-up. The focus must be on what can happen once the ball is hit. Once the ball is hit in the infield-fly situation, the defense wields all control and the offense wields none.

Finally, the double play arises only because the defense intentionally fails (or declines) to perform the athletic skill that a team ordinarily tries to perform and that we ordinarily expect it to perform—catching an easily playable batted ball hit in fair territory. And the opportunity for the double play provides a strong incentive for the defense to intentionally fail (or decline) to perform that skill in many (or most) cases. The cost-benefit imbalance resulting from a double play—high benefits and no costs to the defense, high costs and no benefits to the offense—is sufficiently great that it becomes worthwhile for the defense to ignore the simple play and attempt the more complicated move of letting the ball drop to the ground and throwing the runners out, even at the risk of bad bounces or throws.

In fact, the infield fly presents the only baseball situation in which, absent a limiting rule, the defense consistently could achieve a more optimal outcome and make itself substantially better off by not catching a batted ball in fair territory than by catching it. The incentive to not catch it is present most times the situation arises, regardless of circumstance<sup>81</sup> and regardless of who is involved in the play for the batting team. Even if the batter is faster than the base runners, the defense still would rather get two outs and have the fast man on first than only get one out and still have two or three runners (even ones with “ice-wagon speed”) on base and in scoring position.

Enter the Infield Fly Rule as a limiting rule, responding to what baseball’s legislators identified as an unacceptably inequitable cost-benefit imbalance. The IFR corrects the cost-benefit disparity by preventing the defense from exploiting holes created by ordinary rules, practices, and strategies. It imposes the expected outcome, and the expected allocation of costs and benefits, that would result if the

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<sup>81</sup> There is one scenario in which the incentive might be absent. With the bases loaded and none out, a pop fly into the outfield may produce a third-to-second double play (putting out the runners who were on second and first, respectively) but allow the runner on third base to score. Even without the IFR, the infielder there may decide that getting two outs is not worth having the run score; it may be better to take one sure out by catching the ball, keep the runner from scoring, and hope to get the next batters out. Much depends on the score and how many innings remain in the game. A team leading by five runs in the ninth inning will take the double play and allow the run to score, while a team in a tie game might take the easy single out and keep the runner on third base.

infielder does what is expected and catches an ordinarily playable fly ball. It gives the defense one out—the batter is out, just as if the ball had been caught—and keeps the offense at bat with the same number of runners on the same bases. By imposing that outcome, the IFR eliminates the incentive for the defense to intentionally not catch an easily playable fair ball in search of greater advantage; because there is nothing to be gained by failing (or declining) to catch the ball, there is no reason for the infielder to fail (or decline) to catch it.

Like a good rule of procedure, the IFR ensures a level playing field on which the participants contest the game situation on relatively equitable cost-benefit terms.<sup>82</sup>

### C. Double Plays and the Infield Fly Rule

Although the batter is called out under the IFR, the ball remains live, so the runners can try to advance if the ball is not caught.<sup>83</sup> A double play thus remains possible, even with the limiting rule, if one of the runners attempts to advance on an uncaught ball. But instead of the inequitable double play on two base runners forced to run and put out trying to get to the next base, as would result absent the IFR,<sup>84</sup> this double play is on the batter (called out under the IFR) and an unforced base runner thrown out attempting to advance.

The possibility of this double play might be sufficient to still give the defense an incentive to intentionally fail (or decline) to catch the ball, knowing the batter has been called out under the IFR and hoping the runners might try to run. One thus might argue that the IFR fails as a limiting rule, since it does not entirely eliminate the negative incentive. For example, imagine a pop-up hit in fair territory close to home plate with the bases loaded. The catcher, settled under the ball and waiting for it to come down into his glove, knows that infield fly has been called and the batter is out; he now lets the ball fall to the ground, hoping to entice the (unforced) runner on third to try to beat him to the plate and run himself into a double play.<sup>85</sup>

But the limiting rule successfully eliminates the second defining feature—a disparity in control over the play, specifically the inability of the reacting team (here, the offense) to influence the play. Because the batter is out, the base runners are not forced to run. Choosing whether to advance—and thus to risk incurring the cost of a double play—rests entirely and exclusively with them. And they can avoid this double play simply by making smart choices about if and when to run. Moreover, a typical infield fly is hit in or near the infield; there is seldom a real opportunity or incentive for the runners to try to advance if the ball is not caught, meaning there is rarely, if ever, any incentive for the fielder to intentionally not

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<sup>82</sup> See *supra* notes 26–39 and accompanying text.

<sup>83</sup> OFFICIAL BASEBALL R. 2.00 (Infield Fly).

<sup>84</sup> See *Aside*, *supra* note 4, at 1478.

<sup>85</sup> See *A Comparison of Three Rules*, *supra* note 61.

catch the ball. To the extent some incentive remains, it is only because the runners might attempt the risky play and an infielder believes he might fool them into doing something unwise. Again, however, limiting rules are not designed to save players from their own stupidity or recklessness. So long as both sides exercise equal levels of choice and control in the situation, the playing field has been sufficiently leveled, even if the outcome of one particular play strongly favors one side.

### III. COMPARABLE BASEBALL SITUATION: UNCAUGHT THIRD STRIKE

The second premise of IFR criticism is that the infield-fly situation is not unique—that there are other comparable baseball situations and plays that raise similar cost-benefit concerns. Because other situations are not subject to comparable limiting rules dictating preferred outcomes on the play, the argument goes, then neither should the infield fly.

This premise merits two responses. The first, discussed in this Part, is that there is one baseball situation comparable to the infield fly in terms of the four relevant defining features and the associated cost-benefit imbalance: the uncaught third strike. But that situation is, in fact, subject to a limiting rule that looks and functions very much like the Infield Fly Rule.

Imagine the following situation. Bases are loaded with one out; the batter swings and misses at strike three, but the catcher drops the ball, which lands at his feet behind home plate. Prior to the 1880s, the batter was not out on strikes; the ball was live and the batter had to run to first base, in turn forcing the base runners to try to advance.<sup>86</sup> Catchers could intentionally drop the third strike in this situation, then pick the ball up, step on home to put out the runner forced to advance from third, and throw to first base to complete a double play on the batter. (And once again, if there were no outs, a triple play was likely—by stepping on the plate, throwing to third, then throwing to first). The base runners, who were not running on the pitch and not expecting to run on a ball that was not hit in play, had no chance of beating these throws—and the runner on third certainly had no chance of running home before the catcher picked up the ball and stepped on the plate. A team could thus get out of a bases-loaded-one-out (and even a bases-loaded-none-out) jam on strike three.

Like the infield fly, this situation is defined by all four of our relevant features.

There is the same overwhelming cost-benefit disparity favoring the defense at the expense of the offense, as the benefits to the defense from not performing an athletic skill dwarf the benefits of performing it. The defense gets two—and possibly three—outs and perhaps gets out of the inning if the catcher does not

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<sup>86</sup> *A Comparison of Three Rules*, *supra* note 61; David Wade, *Inside the Rules: It's Not a Dropped Third Strike*, THE HARDBALL TIMES, (Nov. 16, 2010), <http://www.hardballtimes.com/main/article/inside-the-rules-its-not-a-dropped-third-strike/>.

catch the third strike, as opposed to getting one out and still having runners on base (and in scoring position) if he catches it for the strikeout. The defense incurs no costs in making this play, so long as the catcher controls where the ball lands and everyone makes good throws. On the other hand, the offense experiences all of this as high costs—multiple outs instead of one, a loss of one or more runners in scoring position, and perhaps the end of its turn at bat and opportunity to score runs—while gaining absolutely no benefits.

Second, there is disparity in power over the play, as the defense is in total control and the offense lacks any influence. The catcher can choose at the last instant whether or not to catch the ball; he can let the ball hit his glove and fall right in front of him, then easily pick the ball up, step on home, and throw to his teammates covering the bases. The base runners are trapped and helpless to prevent or counter the play. They remain near their respective bases and cannot start running until they see the ball dropped, at which point it is too late to make it to the next base (especially that runner on third). To run earlier in anticipation of a dropped third strike could result in them being caught stealing (again, especially that runner on third) if the catcher decides to hold onto the third strike.

Third, the catcher is intentionally failing (or declining) to perform the athletic skill he is ordinarily expected to perform and ordinarily wants to perform—catching a catchable ball thrown by the pitcher. And the extreme cost-benefit imbalance gives him a strong incentive not to catch the ball, but instead to let it fall to the ground in a way that allows him to get multiple outs on the bases. This again would mark the only time the catcher is better off not catching a pitch than catching it.

Recognizing this wide cost-benefit disparity, baseball's legislators enacted a limiting rule prohibiting the strategic and intentional uncaught third strike. The amended rule redefines when a batter is out on strikes to include when a "third strike is not caught by the catcher when first base is occupied before two are out."<sup>87</sup> In other words, the batter is not out on strikes and can run to first base only if (1) first base is unoccupied, in which case the base runners are not forced to advance and need not run even if the batter does; or (2) there are two outs, in which case the outcome of the play is the same—one out—whether the catcher catches the ball for the strikeout or drops it and throws to a base. If there is any force out in effect on the bases with fewer than two outs (such that the base runners would be forced to run and become susceptible to a double play), the batter is out on strikes, even if the catcher does not catch the ball.<sup>88</sup>

Like the IFR, this limiting rule prevents the defense from exploiting a hole in the ordinary rules to gain an overwhelming cost-benefit advantage. It imposes the

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<sup>87</sup> OFFICIAL BASEBALL R. 6.05(c); *see also id.* R. 6.09(b) (providing that a batter becomes a base runner when a third strike is not caught, provided first base is open or first base is occupied with two out).

<sup>88</sup> *See A Comparison of Three Rules*, *supra* note 61; Wade, *supra* note 86.

same outcome—one out on the strikeout of the batter, runners able to remain on the same bases—that would occur if the catcher did as expected and caught the ball. The rule thereby removes any incentive for the catcher to intentionally fail (or decline) to catch the ball. With fewer than two out, the base runners are not forced to run, so a double play is unlikely. With two out, the defense only needs to get one out, and the simplest, least risky way for it to get that out is for the catcher to hold onto strike three, rather than risking bad bounces or throws—call it Occam’s Razor for baseball.

At the same time, as under the IFR, the uncaught ball remains live; although the batter is out on strikes, the runners can advance at their own risk. They might take advantage of an unintentional uncaught third strike (if, for example, the catcher allows the ball to roll far behind him) that gives them a genuine chance to advance. Conversely, the defense still might be able to get a double play off an uncaught third strike. Imagine that, with a runner on first base and one out, the catcher fails to catch strike three and the base runner tries to steal second or to advance when the ball hits the ground. The batter is out on strikes, because first was occupied; the catcher can throw the runner out at second to complete the double play and end the inning.<sup>89</sup> Critically, the runner was not forced to run in that situation; any double play results from him voluntarily making an unwise base-running decision. The teams share influence and choice over such a play and its outcome.

Despite the obvious overlap between the infield fly and uncaught third strike situations and the similarity of the resulting limiting rules, no one argues for a return to a pre-1880s world where catchers can get double and triple plays by intentionally failing (or declining) to catch third strikes. Yet those urging repeal of the IFR seem willing to accept infielders getting double and triple plays by intentionally failing (or declining) to catch routine pop-ups.

The difference in perception perhaps reflects differences in how these rules operate. Baseball’s rulemakers addressed the problem of the uncaught third strike by broadening the definition of when a batter is out on strikes, thereby narrowing the circumstances in which he must run on a dropped third strike and eliminating the circumstances in which a base runner will be forced to run into a double play. The rule operates in the background: unless first base is empty or there are two outs, the batter simply is out on strikes, without the need for a special announcement that any special rule (besides “three strikes you’re out”<sup>90</sup>) is being applied. Most observers likely are not even aware that any limiting rule is being enforced. Moreover, the uncaught third strike does not require the umpire to make a judgment call; no real judgment is necessary to determine whether fewer than two are out, whether first base is occupied, or (typically) whether the catcher has caught the pitch on the fly.

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<sup>89</sup> *A Comparison of Three Rules*, *supra* note 61.

<sup>90</sup> JACK NORWORTH & ALBERT VON TILZER, TAKE ME OUT TO THE BALL GAME (York Music Co. 1908).

On the other hand, the IFR introduced a new concept into baseball's rules. The rule operates in the foreground and is highly visible when put into effect. An umpire must affirmatively apply the rule by determining that a ball is a nonline drive or nonbunt fly ball that can be handled by an infielder with "ordinary effort," and then "immediately declar[ing]" an infield fly and calling the batter out.<sup>91</sup> It also requires multiple judgment calls—whether the ball is catchable by an infielder with "ordinary effort," whether it could ordinarily have been handled by an average infielder, and whether and when that has become apparent<sup>92</sup>—that commentators and fans can see and disagree with. Ironically, in other words, the IFR is a richer target for fan criticism and for calls for repeal precisely because it is more familiar to fans and a more obvious and visible part of baseball's fabric.

We thus have identified one baseball situation that matches the infield fly with respect to our four defining features. And that situation is subject to a limiting rule very much like the IFR. Rather than undermining the IFR, the truly comparable baseball play reinforces the need for it. The IFR and the uncaught third strike rule both operate as limiting rules that impose a particular, ordinarily expected outcome on the play, eliminate incentives for one side to intentionally act contrary to baseball's expectations, and prevent any wildly inequitable distribution of costs and benefits.

#### IV. NONCOMPARABLE BASEBALL SITUATIONS

The second response to the argument that the infield-fly situation is like many other baseball situations is that, in fact, it is not. No other plays are genuinely comparable, considered in light of the four relevant features. Some plays may include one feature (such as incentive to intentionally fail (or decline) to perform the expected athletic skill) or another (such as producing an overwhelming cost-benefit disparity), but none is defined by all four. No play produces the same overall inequity or unfairness, therefore none demands a limiting rule akin to the IFR. And because these other plays are not truly comparable to the infield fly, the absence of limiting rules in these situations does not undermine the IFR itself.

Many of these are typical baseball situations, involving a mutual jockeying for advantage within ordinary established rules, practices, and strategies. Each team willingly accepts a less-than-optimal outcome on a play, gaining some benefits, incurring some costs, and surrendering some benefits to the opponent. Each hopes to work the exchange to its ultimate advantage, but the cost-benefit trade-off remains roughly equitable and balanced.<sup>93</sup> And even if some plays do produce a significant cost-benefit disparity, it is one that follows from competing players all performing expected athletic skills in the expected manner and able to influence or control the play and its outcome.

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<sup>91</sup> OFFICIAL BASEBALL R. 2.00 (Infield Fly).

<sup>92</sup> See *supra* Part II.A.

<sup>93</sup> See Cohen & Waller, *supra* note 3, at 458–59.

Whether the benefits gained are worth the costs incurred or the risks required is questionable in many of these situations.<sup>94</sup> And this perhaps reduces the incentives for teams to attempt the trade-off. The point is that each team is able to make choices and to balance what costs or risks are worth the possible benefits and when.

### A. *Infield Flies and Flies on the Infield*

The Infield Fly Rule applies only where: (1) there are runners on first and second or the bases are loaded; (2) there are fewer than two outs; (3) the hit is a fly ball that is not a line drive or bunt; and (4) the ball can be caught by an infielder with “ordinary effort.”<sup>95</sup> The rule does not apply to fly balls on the infield in five other situations, involving: (1) runner on first base only; (2) line drives; (3) bunts; (4) two men out; and (5) a ball that is not playable by the infielder with “ordinary effort.”

One way to demonstrate the uniqueness of the IFR, and thus the uniqueness of situations that warrant limiting rules, is by considering those situations where it does not apply. We can see that the IFR has the appropriate scope, as the plays outside its reach all lack one or more of the four defining features and thus lack the inherent inequity that justifies a limiting rule. These situations properly can remain within the game’s ordinary rules, strategies, practices, ethics, and incentives.

#### 1. *Runner on First Base Only*

With a runner on first base only (or runners on first and third, where the runner on first is forced to run but the runner on third is not), an infielder can let a pop-up fall to the ground untouched and get the force out at second while allowing the batter to reach safely, thereby trading a fast base runner on first for a slower one. This is the play that triggered enactment of the original “trap ball” rule.<sup>96</sup> Only when baseball’s rulemakers realized that the trap ball rule did not address the real problem—a double play involving multiple base runners—did that evolve into what we now recognize as the IFR.<sup>97</sup> They instead left this situation to ordinary rules and the possibility of strategic play, subject only to a separate rule generally prohibiting infielders from intentionally dropping any fair fly ball (including bunts and line drives) when there is a force out at any base with fewer than two out.<sup>98</sup>

Three features are absent here. First, the incentive to intentionally not catch the ball is not as strong or always (or even mostly) present. The defense generally cannot get a double play (assuming the batter runs to first base, as he is expected to

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<sup>94</sup> See *id.* at 458.

<sup>95</sup> OFFICIAL BASEBALL R. 2.00 (Infield Fly); see also *supra* Part II.A.

<sup>96</sup> Aside, *supra* note 4, at 1477–78.

<sup>97</sup> See *id.* at 1478; *supra* notes 57–60 and accompanying text.

<sup>98</sup> OFFICIAL BASEBALL R. 6.05(l); see also *A Comparison of Three Rules*, *supra* note 61; *infra* note 142 and accompanying text.

do), so it gets the same number of outs—one—by catching the ball (putting the batter out and leaving the runner at first base) or not catching the ball (putting the runner out on the force at second base and allowing the batter to reach first base). Not catching the ball does nothing more than replace one runner on first base (nonscoring position) with a different runner. And it will not end the inning for the defense.

Second, this play does not produce the overwhelming disparity of costs and benefits that demands a limiting rule. The play yields the same outcome whether the ball is caught or not—one out on the play, batting team still batting with a runner on first (or first and third). The offense's turn at bat does not end, nor is it going to lose multiple base runners or runners from scoring position.

This means a third feature is missing—the incentive for the infielder to intentionally not catch the ball. Only where the difference in speed between the fast runner on first and the slow batter is overwhelming—a rare occurrence—will the infielder turn a simple play (catching a routinely catchable fly ball) into a more difficult play, given the risk of a bad bounce or throw. Any runner on first, especially with two outs, is relatively unlikely to score,<sup>99</sup> so leaving the faster runner on first base does not impose a substantial cost on the defense or provide a substantial benefit to the offense. The defense might in rare cases gain some slight advantage of having a slow runner on first base, otherwise no fielder ever would bother to try it. But the cost-benefit imbalance, and therefore the incentive for infielders to try this play, is nowhere near that of the infield-fly situation.

Of course, a double play is not out of the question on this play. If the batter fails to run hard to first base, the defense could let the ball fall, get the force out at second, and then turn the double play on the slow-moving batter. Alternatively, if the runner on third tries to score when the ball hits the ground, he could be put out at home (although it would be a tag play). But the batting team is not without control in either situation. The batter avoids that double play by running hard to first base; the runner on third avoids the double play by making smart baserunning decisions. In other words, both avoid the double play by performing the athletic skills expected of batters and runners. Again, a player's failure to do something to counter the opponent's strategy is not the same as ordinary rules or strategies preventing him from doing something to counter that strategy. Limiting rules do not bail players out from their own on-field stupidity and teams must accept the consequences of their unwise decisions.

## 2. *Line Drives*

An uncaught line drive in an infield-fly situation famously occurred in the bottom of the sixth inning of Game 4 of the 1978 World Series between the Los

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<sup>99</sup> See *Sabremetrics 101: Run Expectancy Matrix, 1999–2002*, TANGOTIGER.NET, <http://www.tangotiger.net/RE9902.html> (last visited August 28, 2013).

Angeles Dodgers and the New York Yankees.<sup>100</sup> The Yankees had runners on first and second with one out. A low, sinking line drive was hit to the left of the Dodgers shortstop; he moved to his left, caught the ball just above his ankles, dropped it, chased it down as both he and the ball continued moving to the left, stepped on second for the force out, and tried to relay to first for what would have been an inning-ending (and rally-killing) double play.<sup>101</sup>

At best, one feature is present here. Not catching the line drive obviously could have produced an extreme cost-benefit disparity—the Dodgers would have turned an inning-ending double play (but for the relay hitting the runner) because the shortstop did not catch the ball, whereas they would have gotten only one out had he held onto it. But the remaining features are absent. And when we consider the overlap among all four, even that first one may not be present.

First, the fielding team cannot control a line drive to the same degree as a pop-up. The infielder is prohibited from intentionally dropping a line drive,<sup>102</sup> so he only can allow the ball to drop to the ground untouched. But unlike a pop-up, an untouched line drive does not fall straight to the ground at the infielder's feet to be easily picked up; a line drive continues flying into the outfield for a hit.

Moreover, line drives are frequently not catchable with the same “ordinary effort.” They often are hit harder and always are hit lower and with less arc than pop-ups, giving infielders less time to settle underneath the ball and wait for it to come down to them. The fielder may have to move quickly in one direction and jump, reach, or dive to make a play on the ball. He may be less able to control how the ball bounces or rolls once it hits the ground. Even if he unintentionally drops or knocks the ball down, it may not sit easily on the ground to be picked up; it may require him to scramble after it (the Dodger shortstop had to do just that), play a difficult bounce off the ground, or make a difficult throw on the move.

Second, the incentive to fail (or decline) to catch the ball is typically absent, or at least diminished, with a line drive. It is far riskier for the defense to fail to

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<sup>100</sup> See *New York Yankees 4, Los Angeles Dodgers 3*, RETROSHEET.ORG, <http://www.retrosheet.org/boxesetc/1978/B10140NYA1978.htm> (last visited August 28, 2013).

<sup>101</sup> See Howard Wasserman, *Not Just Balls and Strikes, Redux*, PRAWFSBLAWG (Dec. 19, 2012, 10:40 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2012/12/not-just-balls-and-strikes-redux.html> (video of play embedded). The double play was thwarted, and the play became infamous, when the relay throw hit the base runner standing between first and second (he already had been called out at second) and caromed into right field, allowing the batter to reach first base safely and the runner on second to score. The umpires ruled that the runner had not interfered with the throw, although had the throw not hit the runner, the Dodgers almost certainly would have completed the double play. See *id.*

<sup>102</sup> See OFFICIAL BASEBALL R. 6.05(*l*). The first decision the umpires had to make on the play in the 1978 World Series was that the shortstop had not intentionally dropped the ball, likely by observing his body language, how far the ball rolled away from him after he dropped it, and the way he scrambled to recover the ball, all of which suggested lack of intent to drop the ball. See Wasserman, *supra* note 101.

catch a line drive in search of a double play, since the ball will sail past the infielder and into the outfield for a hit if untouched. It therefore is far less likely that the defense will attempt this move on a regular basis. The play from the 1978 World Series was unique. The momentum of the shortstop and the dropped ball both happened to carry toward second base, actually placing the fielder and the ball in better position for the double play. Had the ball bounced in a different direction, the double play would not have been so likely.

Rules are made at a categorical, rather than case-specific, level. They must address all line drives in the infield-fly situation, not only this particular dropped line drive that happened to work out significantly better for the defense (but for the throw hitting the runner). That an unintentionally dropped line drive might, in some unique case, produce a double play and a great cost-benefit inequity does not mean a double play—and the associated cost-benefit imbalance—is so likely as to incentivize the defense to intentionally not catch line drives in most or all cases. The IFR accounts for what typically happens with line drives that the infielder intentionally fails (or declines) to catch; because most will not bounce in a way likely to produce an easy double play, the incentive to fail (or decline) to catch them on a regular basis is eliminated. This, in turn, renders a limiting rule unnecessary.

### 3. *Bunts*

The fielding team could allow a popped-up bunt to drop to the ground untouched (although it still could not drop it intentionally) and turn a double play on the base runners or on one base runner and the batter. But it is unlikely to try this. A bunt with runners on first and second and fewer than two outs is likely a sacrifice.<sup>103</sup> The batter simply wants to bunt the ball softly on the ground, somewhere between home plate and the pitcher's mound, rather than taking a full swing and trying to hit the ball hard or far or to get on base. The runners, knowing this play is on, are expecting and waiting to run as soon as the ball is bunted in play. The hope and expectation is that the batter will be thrown out at first base while the runners advance to the next bases.

The teams' incentives and desires thus are flipped from a typical fly ball in the infield-fly situation. The offense wants the ball to drop to the ground close to home so the runners can advance, while the batter is willing to be put out. By not catching the ball in the air, the defense does precisely what the offense wants. The fielding team thus is better off catching the ball, thereby thwarting the offensive strategy of giving up the out on the batter to advance the runners. In fact, catching

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<sup>103</sup> See OFFICIAL BASEBALL R. 10.08(a); *id.* R. 10.08(a) cmt.; see also EARL WEAVER WITH TERRY PLUTO, *WEAVER ON STRATEGY: A GUIDE FOR ARMCHAIR MANAGERS BY BASEBALL'S MASTER TACTITIAN* 38–41 (1984) (explaining why sacrificing an out by bunting is rarely worth the trouble); *infra* Part IV.D.

the pop-up may allow the defense to get a double play on a base runner who is too quick to start for the next base.

Moreover, a bunted ball does not travel as high in the air or with the arc umpires look for in calling IFR, compared with a pop-up off a full swing. A bunt does not develop as slowly or allow the defense to manipulate the play in the same manner. As with a line drive, the defense has less time to set-up the double play—infielders have less time to settle under the low-flying ball and wait for it to come straight down or to control how it hits the ground, and less time to get into position to make the two throws needed for the double play.

#### 4. *Two Outs*

With two outs, the defense only needs one more out to end the inning, meaning the outcome of the play will always be one out. From the offense's standpoint, it incurs the same cost—one out and the end of its turn at bat—regardless of whether that out is obtained by the fielder catching the ball to get the batter out or not catching it to put out one base runner. From the defense's standpoint, it only wants one out. And the simplest, least risky way to get that is to catch the fly ball, rather than risk bad bounces or throws—again, Occam's Razor.

The defense gains no additional benefit by not catching the ball and the offense incurs no additional costs. In fact, the defense not catching the ball may benefit the offense. Base runners run immediately on any ball put in play with two outs; because they are not forced to stand close to the base and wait, they likely can reach the next bases safely before the ball lands on the ground or the fielders can make the throws. As a result, with two outs, the fielding team has absolutely no incentive to intentionally fail (or decline) to catch an easily playable fly ball. Rather, not catching the ball may result in the defense getting no one out on the play.

#### 5. *Not Catchable with "Ordinary Effort"*

The IFR only applies if the umpire determines that the fly ball can be "caught by an infielder with ordinary effort,"<sup>104</sup> defined as "effort that a fielder of average skill at a position . . . should exhibit on a play," taking into account field and weather conditions.<sup>105</sup> The limiting rule thus does not apply to difficult plays or fly balls that are not easily catchable by the average infielder—for example, if the ball is hit in a swirling wind, if the infielder has to catch the ball on the run, or if the ball is not hit high enough or with enough arc for the fielder to settle under it.

The cost-benefit advantage to the defense in the infield-fly situation derives from the ease of the catch—the infielder's ability to settle directly under the ball, to wait for it to drop at his feet, and to control how it lands on the ground; his

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<sup>104</sup> OFFICIAL BASEBALL R. 2.00 (Infield Fly).

<sup>105</sup> *Id.* R. 2.00 (Ordinary Effort).

ability to wait until the last instant to decide whether or not to catch the ball, based on a sense of what the base runners are doing; and his teammates' abilities to get to their positions and make the double-play throws.<sup>106</sup> That changes when the fly ball cannot be caught with ordinary effort. No longer is the defense "intentionally" failing (or declining) to make an ordinary, expected play; because an average fielder could not easily catch this ball, failing to catch it cannot be labeled intentional or something the defense has incentive to do on purpose.

There also is no disparity in control over the play when the ball is not easily playable, because the defense no longer dictates the action. If the ball does drop to the ground, it may not be as easily handled by the fielder, who is not settled under the ball or as ready to play it on the bounce. And it is more difficult to pick up the ball and make the throws for the double play, giving the runners a better chance to advance safely. A base runner thus may be more willing to run on a hard-to-play ball, gambling that the infielder will not make a tougher play and will be unable to throw him out at the next base. And to the extent the infielder makes this difficult catch and doubles that runner off at the previous base, that outcome results from the runner's voluntary choice to challenge the fielder's ability to make the play—a battle of strategic moves and athletic skills that both players control.

#### *B. Foul Fly Ball with Runner on Third*

Imagine the following game situation. The tying, go-ahead, or winning run is on third base with fewer than two outs late in the game; the batter hits a fly ball into foul territory down the outfield line, deep enough or in a spot on the field where the runner likely will tag up and score if the outfielder catches the ball.<sup>107</sup> The outfielder in this situation might not catch the ball, allowing it to fall to the ground in foul territory; while the defense loses the out, the runner cannot advance on a ball that lands in foul territory, so the run does not score.<sup>108</sup>

This play shares three features with the infield fly. The outfielder is intentionally failing (or declining) to catch a playable batted ball (albeit one in foul rather than fair territory), the athletic skill we ordinarily expect him to perform and the thing he ordinarily tries to do on the field. And the outfielder has a strong incentive to fail (or decline) to catch the ball—to prevent the run from scoring, at least where that run might tie or win the game. The defense also exclusively controls the play; the outfielder chooses whether to catch the ball and everything

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<sup>106</sup> See *supra* Part II.B.

<sup>107</sup> See OFFICIAL BASEBALL R. 7.08(d). Many retro ballparks contain strange nooks and crannies along the foul lines. For example, the right field corner at Baltimore's Oriole Park at Camden Yards houses the grounds crew shed in a cut-out alcove hidden behind the grandstand. An outfielder who catches a foul ball in that alcove would have to throw the ball over the grandstand to get it to home plate. See *Oriole Park at Camden Yards*, CLEM'S BASEBALL <http://www.andrewclem.com/Baseball/CamdenYards.html> (last updated June 2, 2013).

<sup>108</sup> OFFICIAL BASEBALL R. 5.09(e).

follows from that decision, leaving the offense only to react to the defense's actions.

But the fielder's intentional failure here does not produce anywhere near the extreme cost-benefit disparity, the key feature that justifies limiting rules. This play instead reflects an ordinary, balanced strategic exchange of benefits and costs. By not catching the ball, the defense incurs and accepts the costs of losing a likely out and still having to face the batter with a runner on third base with fewer than two outs, while gaining the benefit of not having the run score. The offense incurs the cost of not scoring that run but gains the benefits of not losing an out, giving the batter an opportunity to continue hitting and retaining a prime scoring opportunity with a runner on third base with fewer than two outs.

Neither team achieves an optimal result on the play, but each gains something and gives something up in a roughly even exchange; who ultimately benefits more depends on what happens on subsequent plays. The point is that a limiting rule is not necessary or appropriate because the ultimate cost-benefit balance on the play, governed only by the game's ordinary rules, is fair and equitable.

### *C. Intentional Walks and Semi-Intentional Walks*

At times, a pitcher may allow a batter to reach first base by throwing four pitches out of the strike zone. He may issue an "intentional base on balls" by obviously and openly throwing the ball well wide of home plate and outside the catcher's box.<sup>109</sup> Or (in what we might call a semi-intentional walk) he might "pitch around" a batter, throwing the ball outside the strike zone, such that if the batter does not swing the pitches will be called balls, but close enough to the strike zone that he might swing.

While formally distinct, these plays share two features. The defense controls the play, exercising first-mover advantage by making the initial decision on how to pitch to the batter and leaving the batter in a purely reactive position. More importantly, the defense is intentionally not performing the athletic skills we ordinarily expect it to perform. The pitcher is not trying to get the batter out or even throw the ball in the strike zone; he is not expecting or wanting the batter to swing and he is allowing, or at least enabling, the batter to reach base. The difference between an intentional walk and a semi-intentional walk is how obvious and open the pitcher is about his intent. In the latter, the pitcher throws close enough to the strike zone that he might induce the batter to swing at a bad pitch; while the primary intent is to put the batter on base, a secondary effect is that he might get an overeager batter to swing at bad pitches.

But neither produces the necessary overwhelming cost-benefit disparity. Intentional and semi-intentional walks are the quintessential baseball plays in which the defense makes a less-than-optimal move, accepting some costs (and granting the offense some benefits) in exchange for other benefits. The defense

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<sup>109</sup> *Id.* R. 10.14(b).

allows another runner to reach base (a cost to the defense and benefit to the offense) in exchange for several possible benefits—avoiding having to face a great hitter, gaining an opportunity to face a weaker hitter, or simply putting a runner on first base and setting up better defensive options (notably force outs on the bases) when facing the next batter. It probably seeks all of these benefits simultaneously.

Importantly, and unlike the infield fly or the uncaught third strike, the offense benefits from an intentional or semi-intentional walk—an additional base runner and an additional opportunity to score a run without giving up an out. This reflects one of the central *Moneyball* insights—having base runners, however they reach base, and surrendering fewer outs together mean more opportunities to score runs.<sup>110</sup> Of course, a walk may not be the optimal outcome for the batting team and may even constitute something of a cost; it no doubt would prefer that its best hitter have a chance to hit with runners in scoring position.<sup>111</sup> But the outcome is at least somewhat beneficial, not the least optimal, and certainly preferable to the batter getting out.

There also is no significant disparity in control over the play; while the batting team is reactive, it is not helpless in the face of the pitcher's strategy. A batter determined to get a hit can refuse the semi-intentional pass and thwart the pitcher's strategic move by swinging at pitches in the hopes of getting a hit off a pitch that, while not a strike, is close enough. Of course, the batter's efforts might fail and he might get out, thereby losing even the small benefit the pitcher was willing to surrender. But the offense still influences the game situation. It incurs the cost only through its own, perhaps unwise, strategic actions, from which limiting rules should not protect it.

#### D. "Productive" Outs

Our focus thus far has been on strategic efforts by the fielding team to control the allocation of costs and benefits. Sometimes, however, the batting team makes its own strategic moves in search of a cost-benefit edge. The paradigmatic example is the "productive out," meaning any play in which the batting team willingly surrenders an out, or at least a complete effort by the batter to get on base, in exchange for scoring a run or moving a base runner into better position. Productive outs include sacrifice flies,<sup>112</sup> sacrifice bunts,<sup>113</sup> hit-and-run plays (in which the runner runs on the pitch and the batter tries to put the ball in play to allow the runner to advance to the next base),<sup>114</sup> and the batter hitting the ball to the right side of the field to advance a runner from second to third with fewer than two outs.

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<sup>110</sup> See MICHAEL LEWIS, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME* 58–60, 127–29 (2003); WEAVER, *supra* note 103, at 39, 41–44.

<sup>111</sup> See WEAVER, *supra* note 103, at 41–44.

<sup>112</sup> See OFFICIAL BASEBALL R. 10.08(d).

<sup>113</sup> See *id.* R. 10.08(a); 10.08(a) cmt; WEAVER, *supra* note 103, at 38–41; *supra* Part IV.A.3.

<sup>114</sup> See WEAVER, *supra* note 103, at 46.

In each of these, the batter is intentionally not doing what we ordinarily expect him to do and what he ordinarily wants to do—find the best pitch and try to reach base. Instead, he is openly foregoing a full effort to get on base, hitting the ball in a way that likely will result in him getting out. He is bunting rather than swinging; he is trying to hit the ball to a certain area of the field even though it is likely to be caught; he is swinging at pitches outside the strike zone to protect the base runner.<sup>115</sup> And he likely approaches the at-bat differently than if he were trying to get on base by a hit or walk, making different choices about how and when to swing.

As with intentional or semi-intentional walks, two defining features are absent here. Control over the play and its outcome do not rest entirely with the offense, because the defense can counter and try to thwart the strategic move. The pitcher can throw high pitches or pitches outside the strike zone that will be difficult for the batter to bunt on the ground; he can throw pitches that will be harder to hit to the right side of the field. The fielders also can try to catch a bad bunt on a fly to prevent the runners from advancing<sup>116</sup> or try to throw out the lead runner rather than taking the sure out at first base on the batter who is willingly giving himself up. While risky, these options show that the defense is not helpless in the face of the offensive strategy. The play reflects baseball's typical move/counter-move battle and the outcome depends on how well each team performs the expected athletic skills.

More importantly, productive outs involve an equitable exchange of costs and benefits between competing sides of the play. Each team accepts a suboptimal result, with each gaining something and each losing something on the play. The offense accepts the cost of an out in exchange for the benefit of scoring a run or moving a runner into better scoring position; the defense incurs the cost of the run scoring or the runner moving into better position, but receives the benefit of another out, bringing it closer to the end of the inning.<sup>117</sup> Subsequent plays then determine which team got the better of this cost-benefit exchange.

Whether it is worthwhile for the batting team to surrender productive outs is a separate question; many baseball strategists and analysts insist it is unwise for the batting team to give up one of its precious outs for a relatively small gain.<sup>118</sup> The point is that this remains a balanced baseball play which both teams can influence—each team trying to obtain a marginal benefit outweighing the costs surrendered—rather than an overwhelmingly imbalanced one demanding intervention by a limiting rule.

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<sup>115</sup> *See id.*

<sup>116</sup> *See supra* Part IV.A.3.

<sup>117</sup> *See* Cohen & Waller, *supra* note 3, at 458.

<sup>118</sup> LEWIS, *supra* note 110, at 77–78, 153–54 (discussing criticisms of sacrifice bunts); WEAVER, *supra* note 103, at 38–41, 46 (criticizing use of sacrifice bunts and hit-and-run plays as leading to outs); Cohen & Waller, *supra* note 3, at 458–59.

*E. Ground-Ball Double Plays*

Finally, one might suggest<sup>119</sup> that a double play off an uncaught infield pop-up in the infield-fly situation is no less unfair or inequitable than a double play off a routine ground ball to an infielder. That routine ground ball is no more onerous or difficult a play for an average infielder and it is as (if not more) likely to produce a double play as not catching an easily playable fly ball. The strong benefit in favor of the defense—two outs, ending the inning or at least killing a rally by removing runners from the bases—is the same, as is the high cost to the offense. Yet no limiting rule prevents double plays off infield ground balls, which are a common part of baseball; it follows, one might argue, that we do not need a limiting rule preventing them off infield fly balls.

The ground-ball double play certainly produces a substantial cost-benefit disparity, as do all double plays. But great cost-benefit disparity in the outcome of a single play does not end the inquiry. Many baseball plays end with one team enjoying an advantage, even a significant one. The disparity becomes problematic, and a limiting rule becomes appropriate, only when accompanied by the other defining features.

Importantly, a ground-ball double play cannot result from the defense intentionally failing (or declining) to perform the expected athletic skills in the expected manner, meaning infielders in search of a double play have no incentive to intentionally fail (or decline) to perform those expected skills. Quite the contrary. The ground-ball double play happens only if the fielders make the ordinarily expected move of catching the batted ball and making good, accurate throws. In other words, the ground-ball double play—and the overwhelming cost-benefit advantage—results only because the fielders try to, and do, successfully perform the athletic skills that they ordinarily want, and are expected to perform. Regardless of the degree of cost-benefit disparity a play produces, a limiting rule is unwarranted where the outcome of a play depends on both teams behaving as the game's ordinary strategies, ethics, and practices expect.

Moreover, the base runners are not as powerless on a ground ball. The rules affirmatively prevent the runners from running on a fly ball; they must wait, helplessly standing close to the base, for the fielder to decide whether to catch the ball, at the risk of being thrown out at the previous base if they run too soon.<sup>120</sup> On a ground ball, by contrast, they run as soon as a batted ball hits the ground, and if they were running on the pitch they can keep running. So the runners potentially can beat the force play to the next base or at least disrupt the double play with a hard slide. In other words, the base runners on a ground ball have a realistic chance to counter the defense within the game's ordinary rules, strategies, and practices.

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<sup>119</sup> I thank Rodney Fort for suggesting this example.

<sup>120</sup> See *supra* notes 75–80 and accompanying text.

## V. IS THE INFIELD FLY RULE WORTH THE EFFORT?

One might accept everything that has been said to this point but still reject the Infield Fly Rule as not worth the effort. Infield fly is not called very often, meaning there are not so many fair fly balls playable by an infielder with ordinary effort with the bases loaded or runners on first and second and fewer than two outs. And many of those would not produce an easy or obvious double play if there were no IFR and the ball were not caught.<sup>121</sup> For example, a fly ball that drops in the outfield behind first base would require a throw across the infield to get the lead runner, a long throw that may not allow for a second throw to complete the double play. And if the potential double play is rare, difficult, or practically unlikely, the infielder has less incentive or temptation to intentionally fail (or decline) to catch the ball. The IFR is a blunt instrument, a rigid and absolute response to a flexible and variable game situation that does not always threaten the harm (the cheap double play on an uncaught fly ball) that the rule purportedly is designed to prevent.

Moreover, even if the double play might be easy to turn (for example, on a ball that lands on the infield grass), defenses still might choose to catch the easily playable ball, eschewing the potential double play opportunity in favor of the “sure” one out on the batter. Letting the ball drop to try for a double play still entails risks—bad bounces or bad throws—that perhaps are not worth the reward. In other game situations in which one team willingly surrenders a benefit for a slight percentage advantage, the opposing team generally accepts that benefit. For example, on sacrifice bunts, defenses typically accept the out at first base and allow the lead runner(s) to advance rather than risk targeting the lead runner and getting no outs on the play.<sup>122</sup> Similarly, batters always accept the intentional walk and never swing at pitches intentionally thrown that far out of the strike zone.<sup>123</sup>

These arguments prompt several responses.

First, the relative rarity of infield flies that might produce a double play absent the IFR does not undermine the rule. A prohibition on unwanted conduct is justified, even if that conduct and the feared harm does not occur often or regularly, so long as the costs of having the prohibition do not exceed the benefits.<sup>124</sup> If a double play on an intentionally uncaught ball is considered unjust or disproportionately harmful within the structure and ethos of a baseball game, it is worth prohibiting, even if the harm occurs only rarely. The key is that the IFR imposes no countervailing costs. There are no beneficial or nonharmful instances of an infielder intentionally failing (or declining) to catch an easily playable fly

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<sup>121</sup> The next phase in this project will undertake an empirical study of how frequently the infield-fly situation arises, how frequently the Infield Fly Rule is invoked, and how frequently a double play might result absent the limiting rule based on where the ball is hit.

<sup>122</sup> See *supra* Part IV.D.

<sup>123</sup> See *supra* Part IV.C.

<sup>124</sup> See, e.g., Richard A. Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29, 32–33 (1972).

ball in the infield-fly situation. Thus, no desirable conduct is chilled or deterred by having a broader prohibition. The best legislative move is therefore a broad rule that entirely eliminates any incentive for the defense to intentionally fail (or decline) to make the expected athletic play.

Second, legislative rules are naturally overinclusive.<sup>125</sup> In trying to prohibit some harmful conduct while also trying to create an administratively manageable rule, rulemakers often paint with a broad brush, prohibiting the target conduct in all circumstances, even those that do not necessarily create the harm that the rule seeks to alleviate.<sup>126</sup> To take a simple example: the speed limit on a residential street is low out of concern for the safety of people (especially children) in the street or in adjacent yards, sidewalks, and driveways. But that slow speed limit applies even at 4 a.m., when there is virtually no chance that any child is playing or walking in or near the street. The overinclusive rule is easier to administer. The enforcing official (police or courts) need not make a subjective, and often speculative, inquiry into whether children were endangered in the particular circumstance; that children could be endangered in some circumstances is sufficient to support a lower speed limit that is generally applicable and generally enforceable in all circumstances.

So, too, with the infield fly. That not catching the batted ball in some infield-fly situations could, absent the IFR, produce an unjust double (or even triple) play makes it rational to enact and enforce the limiting rule and to eliminate (or at least disincentivize) intentionally not catching the ball in all instances. Even where the particular failure to catch the ball might not obviously produce the extreme cost-benefit disparity that the rule is designed to eliminate.

Third, it is impossible to know how players might behave in a counterfactual universe without an Infield Fly Rule. It is true that defenses typically do not resist productive outs and batters do not refuse intentional and semi-intentional walks. Recall, however, that these plays are defined by equitable cost-benefit exchanges; each team gains something and each team gives up something and the evenness of the exchange reduces the incentive for the benefitted team to counter the play with a riskier move.<sup>127</sup> The simplest play is to accept the equitable, if suboptimal, result. The infield-fly situation is unique precisely because of the uniquely overwhelming cost-benefit imbalance in the fielding team's favor; the play awards significantly greater benefits while imposing no costs, thus offering significantly greater incentive for an infielder to intentionally fail (or decline) to catch the ball.<sup>128</sup> The greater reward for the defense in the infield-fly situation, and the greater cost

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<sup>125</sup> See Adam F. Scales, *Against Settlement Factoring? The Market in Tort Claims Has Arrived*, 2002 WIS. L. REV. 859, 926; Mark Tushnet, *New Forms of Judicial Review and the Persistence of Rights—and Democracy—Based Worries*, 38 WAKE FOREST L. REV. 813, 835 (2003).

<sup>126</sup> See Michael T. Cahill, *Attempt by Omission*, 94 IOWA L. REV. 1207, 1221 (2009).

<sup>127</sup> See *supra* Part IV.C–D.

<sup>128</sup> Cohen & Waller, *supra* note 3, at 458–59.

imposed on the batting team, may justify the riskier play, unlike in those other, more evenly balanced game situations.

Moreover, absent the IFR, the infield-fly double play would become a greater part of the game, something teams will be more willing to attempt, in light of the greater rewards and incentives. Teams would practice and plan for the play, devising strategies on when and how to attempt it. Infielders would hone the skills involved; they would perfect how to wait until the last instant to decide whether to catch the pop-up, how to let the ball drop to the ground in a way that is easy to control and throw, and how to hide intentions and keep the base runners guessing—all skills they do not need, and thus do not practice, in the current world of the IFR. And while teams also would devise strategies for what base runners should do to avoid the double play, the defense retains first-mover advantage—everything depends on the infielder's choice whether to catch the easily playable ball in the air and his ability to disguise that choice, and the base runners can do nothing but react to that.

Nevertheless, it might be possible to achieve the IFR's goal of avoiding the unjust double play via a less overinclusive rule.

One solution is a narrower IFR limited to when a double play is a likely—or plausible or some other standard—outcome if the infielder fails to catch that particular fly ball. This would align the text of the rule with its purpose of preventing the “cheap” double play, limiting the rule's reach only to situations that actually implicate the targeted harms.<sup>129</sup> This narrower IFR might not reach the pop-up described above, which requires long or difficult throws for the double play. It also would not reach the play from the 2012 National League Wild Card game; that ball was hit into shallow left field, deep enough that both base runners were halfway to the next base by the time the ball landed on the ground, making a double play impossible.<sup>130</sup>

But administrative ease is an appropriate consideration in evaluating a rule's rationality<sup>131</sup> and this narrower rule would be difficult to administer and apply. The umpire would have to determine whether a double play is possible on the play at the time she declares (or does not declare) infield fly. That call would involve nothing more than speculation—guessing—about what might hypothetically happen if the fly ball is not caught, the runners run, the infielder picks up the ball, and the defense makes two throws. The umpire would be doing this based on no actual information before the play has really begun—while the fly ball is still in the air, before the infielder has caught or not caught it, before anyone knows where the ball will land or bounce, before any throws are made, and before the runners move. Such guessing, based on no actual facts, would be impossible, as well as

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<sup>129</sup> *A Comparison of Three Rules*, *supra* note 61; Wasserman, *supra* note 10.

<sup>130</sup> *See supra* note 78 and accompanying text.

<sup>131</sup> *See Davoll v. Webb*, 194 F.3d 1116, 1146 (10th Cir. 1999).

unprecedented in baseball's rules.<sup>132</sup> Baseball's legislators could rationally prefer a simpler, albeit broader, rule that is easier to call and does not require umpires to speculate or delve into the hypothetical.

Alternatively, baseball might rely on the general intentional drop rule, which prohibits infielders from intentionally dropping any fly ball (including bunts and line drives) with a force out in effect at any base and fewer than two outs.<sup>133</sup> That rule covers the infield-fly situation (as well as other game situations), except to the extent it is superseded by the more-specific IFR.<sup>134</sup> Perhaps the general rule sufficiently achieves our goal of deterring infielders from intentionally failing (or declining) to catch a playable fly ball in search of an inequitable cost-benefit advantage, rendering the specific limiting rule unnecessary.

But this does not work for several reasons.

First, the intentional drop rule does not necessarily prevent the double play on the base runners. That rule still allows the infielder to intentionally let a pop-up fall to the ground untouched.<sup>135</sup> But the base runners remain in the same bind on that ball as on a ball that is intentionally dropped. They still must wait to see whether the infielder catches the ball or lets it fall to the ground, they still must remain close to the base while they wait, and they still cannot run until the ball lands; at that point the infielder has picked the ball up and is triggering the double play on the runners.<sup>136</sup> In other words, the evil the Infield Fly Rule prevents is not infielders intentionally *dropping* a fair fly ball, but infielders intentionally *not catching* a fair fly ball. A specific rule applicable only to the infield-fly situation

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<sup>132</sup> Baseball's rules generally do not require or permit umpires to guess, even when they have more information on which to base their conclusions. Consider a play in which a batted ball lands in fair territory beyond third base, then bounces out of play; the ball is dead and the batter and all base runners are awarded two bases, meaning the batter goes to second base with a ground-rule double and the base runners advance two bases from where they started the play. OFFICIAL BASEBALL R. 7.05(f). The rule awards the batter a double because a ball hit into those spots in the outfield often produces a double and it awards the runners two bases because runners often advance two bases on doubles (i.e., a runner on first typically will end up at third). But we do not know what would have happened had the ball remained in play. Sometimes the batter might not have reached second, just as sometimes the runner might have scored from first base—because of the particular player's speed, because the runner was running on the pitch, because of where or how the ball was hit or bounced, etc. And many times it all will be obvious to the umpires watching the play. Nevertheless, two bases always are awarded, even if a slow batter unquestionably could not have reached second base had the ball not gone out of play or even if the fast runner unquestionably would have scored from first had the ball not gone out of play. Rulemakers chose not to rely on any additional, hypothetical judgment calls about what might have happened on the play, opting instead for an overinclusive rule, but one that does not require umpires to predict the future of the play.

<sup>133</sup> See *id.* R. 6.05(l).

<sup>134</sup> See *id.* approved ruling.

<sup>135</sup> *Id.* R. 6.05(l) approved ruling.

<sup>136</sup> See *supra* Part II.B.

(when a double play is possible) thus remains a necessary supplement to the general intentional drop rule.

Second, it is not clear why the intentional drop rule is better than the IFR. The IFR certainly can be criticized for turning on vague and subjective legal standards, such as whether a ball “can be caught by an infielder with ordinary effort”<sup>137</sup> and “could ordinarily have been handled by an infielder”;<sup>138</sup> some of the criticism of the call in the 2012 Wild Card targeted the umpire’s perceived misapplication of these ambiguous standards.<sup>139</sup> But the intentional drop rule requires the umpire to decide similarly vague and difficult issues involving the fielder’s state of mind and whether he intentionally dropped the ball. There is no point in trading one uncertain standard for another.<sup>140</sup> In any event, we might read the IFR as already incorporating intent by proxy—if a fair fly ball truly can be caught by a Major League infielder of average skill with typical effort, there is a roughly 98% chance<sup>141</sup> that the failure to catch the ball was, in fact, intentional.

Third, the Infield Fly Rule benefits and protects the batting team more than the intentional drop rule does standing alone. An intentionally dropped ball is dead and the runners must remain at their current bases; an uncaught ball under the IFR is live, giving the runners the opportunity to try to advance at their own risk.<sup>142</sup> This difference makes sense. An umpire invokes the IFR as soon as she determines that a ball is catchable by an infielder with ordinary effort, typically while the ball still is high in the air and as soon as the fielder has settled under it; this provides the runners notice and an opportunity to decide whether to run if the ball is not caught. On the other hand, an intentional drop cannot be called until the infielder has actually dropped the ball and the umpire can determine the player’s intent in dropping it, typically based on the movement of the ball and the player’s body language after the drop. By that point, of course, it is too late for the runners to run even if they want to.

Both rules are designed to protect base runners against confusion and a cost-benefit disparity. But the IFR offers strategic benefits if the defense makes a mistake. If the batter is called out in either situation, it is more advantageous for the base runners if they know that immediately, as under the IFR.<sup>143</sup> They now

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<sup>137</sup> OFFICIAL BASEBALL R. 2.00 (Infield Fly).

<sup>138</sup> *Id.* R. 2.00 (Infield Fly) cmt.

<sup>139</sup> See *supra* notes 7–9 and accompanying text.

<sup>140</sup> Thanks to Spencer Weber Waller for identifying this point.

<sup>141</sup> In 2012, the average fielding percentage for all Major League Baseball teams was .983. 2012 Major League Baseball Team Statistics and Standings, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/MLB/2012.shtml> (last visited August 28, 2013).

<sup>142</sup> Compare OFFICIAL BASEBALL R. 6.05(*l*), with *id.* R. 2.00 (Infield Fly), and *id.* R. 2.00 (Infield Fly) cmt.

<sup>143</sup> The IFR supersedes an intentional drop; the batter is out under either rule, but the IFR controls its realm and any dropped ball remains live, with the runners allowed to advance at their own risk. *Id.* R. 2.00 (Infield Fly) cmt.

have the opportunity and freedom to advance to the next base (although no longer compelled to do so) if the ball hits the ground and bounces the right way. Those countervailing advantages to the runners under the IFR should remain as additional deterrence against the defense intentionally failing (or declining) to catch the ball.

#### CONCLUSION

Legal scholars love the Infield Fly Rule, as the body of scholarship on the rule attests.<sup>144</sup> The reaction to the infield-fly call in the 2012 postseason, and to the Infield Fly Rule itself in the wake of that call, suggests that the love is not universal.

The point of this Article is to show that the IFR is justified—compelled, in fact—by the internal rules, structure, ethics, and strategy of baseball itself. While baseball without the IFR would still be recognizable as baseball,<sup>145</sup> it would be a much less balanced and equitable game, at least in some situations. Having defined when a play produces a significantly overwhelming cost-benefit imbalance as to warrant a limiting rule, we see why the IFR is proper and justified. At the same time, we also see that the infield fly remains unique, almost singular, among baseball plays. For that reason, the absence of similar limiting rules in a multitude of comparable, but actually very different, game situations does not undermine the logic, wisdom, or necessity of the Infield Fly Rule.

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<sup>144</sup> See sources cited *supra* notes 3–4.

<sup>145</sup> See *Aside*, *supra* note 4, at 1476.