

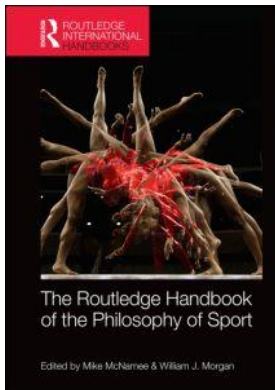
This article was downloaded by: 10.3.98.93

On: 14 Dec 2018

Access details: *subscription number*

Publisher: *Routledge*

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London SW1P 1WG, UK



## **Routledge Handbook of the Philosophy of Sport**

Mike McNamee, William J. Morgan

### **Formalism and Sport**

Publication details

<https://www.routledgehandbooks.com/doi/10.4324/9780203466261.ch1>

Scott Kretchmar

**Published online on: 27 Mar 2015**

**How to cite :-** Scott Kretchmar. 27 Mar 2015, *Formalism and Sport from:* Routledge Handbook of the Philosophy of Sport Routledge

Accessed on: 14 Dec 2018

<https://www.routledgehandbooks.com/doi/10.4324/9780203466261.ch1>

**PLEASE SCROLL DOWN FOR DOCUMENT**

Full terms and conditions of use: <https://www.routledgehandbooks.com/legal-notices/terms>

This Document PDF may be used for research, teaching and private study purposes. Any substantial or systematic reproductions, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The publisher shall not be liable for an loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

## SECTION I

# Philosophical approaches to the conceptualization of sport

This page intentionally left blank

# 1

## FORMALISM AND SPORT

*Scott Kretchmar*

In certain philosophic circles, formalism has something of a bad name.<sup>1</sup> It has been described as narrow, insufficient, inflexible, and counter-intuitive. It is said to be a philosophic position that has implausible implications and one that serves as a home for hidden essentialisms. It is also thought to lack critical resources for adjudicating issues not clearly covered by the rules on which it relies and, partly because of this, has little if any normative potency. Some have argued that a formalist account of sport underplays its aesthetic components by portraying it more as craft than art, as having a grammar and syntax but no semantics. Even for those who argue that formalist perspectives shed some light on games and game playing, such assets are thought to pale in comparison to those found in rival positions – most notably conventionalism or critical ethnocentrism and broad internalism or, as it is also sometimes called, interpretivism.<sup>2</sup>

In this essay, I attempt to argue that formalism does not deserve this fate, or at least not all of it. I discuss the basic tenets of formalism and the logic on which it is grounded, review its putative weaknesses, and finally present arguments that would support my thesis about its often under-appreciated assets. This final section includes what I regard to be a noncontroversial reinterpretation of formalism, one that reduces some of its rigidity but still remains true to its central principles.

### **A definition of formalism**

Formalism is a position attributed to Suits (2005) and others who argued that games are a product of their constitutive rules. That is, these rules jointly create and define the game – its purpose, the means allowed for achieving the purpose, penalties for rule violations, methods for scoring, indications of how the game begins and ends, and methods by which game tests (particularly in parallel or sequential sports) are shared in competitive formats. Constitutive rules, in short, do a lot of work.<sup>3</sup> The work they accomplish, moreover, is regarded by many formalists as sufficient. Nothing is needed that would fall outside the lines drawn by a game's rules. While constitutive rules can be tightened, loosened, or otherwise modified, a game at any point in time is nothing more or less than what its constitutive rules say it is.

This close relationship between the game and its rules has important consequences, including those detailed in the so-called “logical incompatibility thesis.” Here is how Morgan described its implications related to cheating:

The logical incompatibility thesis holds that one cannot win, let alone compete, in a game if one resorts to cheating. This is so, it argues, because in an important sense the rules of a game are inseparable from its goal. That is, the goal of golf is not simply to put the ball into the hole, but to do so in a quite specified way – by using the fewest number of strokes possible. Hence, if one cannot really win a game unless one plays it, and if one cannot really play a game unless one obeys its rules, then it follows that winning and cheating are logically incompatible.

(Morgan 1988: 50)

These principles then constitute the bare bones of formalism, the position that I analyze in this essay and, in at least modest ways, defend. This defense rests in part on an appreciation of formalism's roots, a topic to which we must now turn.

### The foundations of formalism

Formalism rests on a fundamental distinction that goes back to Kant and beyond, one that runs between what is given and constructed, the natural and unnatural, brute reality and its conventional counterpart (Searle 1969). Things that are part of the natural world are encountered, known, and dealt with directly in the normal course of living and learning. We come to know these givens of life by bumping up against them (or their bumping up against us) and then learning to negotiate the conditions they impose. We do this through observation, trial and error, listening to our parents, becoming apprentices, learning rules of thumb, reflecting, benefiting from formal education, and so on.

If we encounter a heavy object and need to lift it out of the way, for instance, we are constrained and enabled – whether tacitly or explicitly – by certain rules of biomechanics, physics, metabolism, and the like. We may watch someone carry out this task and mimic his or her behavior. One way or another, however, we learn what works and what does not when trying to remove large rocks from one's path.

Brute reality also includes the normative world. If we want to understand differences between good living and its counterpart, we once again learn this through a variety of means – perhaps by observing the choices of a wise parent, reading good literature, or reflecting carefully on our own life experiences. We are likely to surmise that a life filled with love, friendship, and meaning, for example, is superior to one composed primarily of distrust, alienation, and boredom. Similarly, we learn, through reflection and a variety of other means, about the rights of our neighbors and the kinds of obligations we may have toward them.

While discoveries in the normative domain may be held in more tentative ways than some that come from measuring and observing the physical world, and while cultural norms and historical traditions often cast a different light on these basic human activities, nothing here is constructed through stipulation. We do not establish principles of good living or rules of ethics through conventional agreements, by stipulating that “this counts as good” and “that counts as bad”. Whether through what Habermas (1994) has called “practical reason” or some other method of discourse and reflection, we attempt to see why some thing or some behavior *deserves* to be identified as good or bad.

Institutions, by way of contrast, are second-order, conjured-up, or constructed realities. They are produced out of the dust, as it were, when people agree on stipulated relationships. Both elements are needed – the stipulations and the agreements. Without the stipulations, there would be no second-order reality, no institution. Without the agreements, the institutions could not do their work.

This can be seen by noticing how language functions. When we stipulate that marks on piece of paper that spell “d-o-g-s” mean four-legged, furry, domesticated pets, we have begun to create a language institution. But without agreement from others on this arrangement, the language cannot do its work related to successful communication.

Two different kinds of rules, according to Searle (1969), are associated with natural and conventional behavior, respectively. Encounters with brute reality (like the need to lift a heavy rock out of one’s way or desires to understand the good life and ethical responsibilities) can be codified in what Searle called “regulative rules.” Such rules do not add anything new to the behavior or its meaning. They merely describe what many have already experienced and come to know.

Searle used the example of fishing to make this point. We could describe an act of successful fishing in the following way. “The young boy used barbed steel hooks to catch fish this afternoon.” The corresponding regulative rule might be this: “If one wants to catch fish, it is better to use steel hooks than hooks made out of butter.” This regulative rule adds nothing new to our common understanding of the properties of steel and butter or how fish are effectively caught. Here is how Searle put it:

In the case of fishing the ends-means relations ... are matters of natural physical facts; such facts for example, as ... hooks made of steel hold fish, hooks made of butter do not. [The] conditions [under which] one catches a fish is not a matter of convention or anything like a convention.

*(Searle 1969: 37)*

Regulative rules are primary and cover the larger portion of what might be called day-to-day living. They provide the foundation for both human and nonhuman animal behavior. They include the laws of physics, the characteristics of chemicals, the principles of biology and nutrition, guidelines for safety, and many interpersonal norms of decent behavior, including common rules of etiquette. They may be hard-wired, learned, or a little bit of both. These laws, principles, guidelines, rules of thumb, and norms exist, have their effect, and thus, influence our behavior, whether we articulate and reflect on them or not. In point of fact, we internalize most of these regulations in the normal course of growing up, learning how things work, and developing useful skills and habits. Some are even embedded in our emotional reactions to various life events (Damasio 1999, 2003).<sup>4</sup>

Because we come to embody most of these rules, we no longer find it necessary to consult them. But, once again, if for whatever reason it became helpful to articulate regulative rules, they merely describe brute reality and our behavior as part of it. Nothing new is constructed. No new behaviors like speaking English, hitting homeruns, spending dollars, or voting for presidents are created.

These latter kinds of actions require conventional agreements, and such agreements require constitutive rules. Conventions and the institutions they create literally come into existence on the backs of their own rules. Where no constitutive rules exist, in other words, no conventions (and thus too, no institutions) will be found. None of our common institutions – not the English language, baseball, money, or democratically elected heads of state – existed until constitutive rules fleshed out the conventions that brought them to life and allowed them serve the functions they were created to serve.

Human needs predate convention-grounded institutions and serve as their sufficient cause. Thus, prior to the development of conventions, such needs had to be met with greater or lesser success by other means. Functions related to successful communication, for instance, were and

are carried out with varying degrees of efficacy in the absence of any conventions. Animals, for example, communicate in fairly sophisticated ways by employing what Tomasello (2008) has called a proto-language via a variety of gestures, body postures, and sounds. Natural communication, in other words, preceded more powerful and complex forms of conventional communication such as English, Russian, and Chinese, or computer languages like XML, HTML and XSLT.

According to Searle, most constitutive stipulations can be converted into the following formula: “X counts as Y in context C.” As noted, the word “dog” (X) counts as a certain furry, four-legged animal (Y) in the context of the English language (C). By agreeing to a number of such stipulations, we end up sharing vocabularies, grammatical constructions, and rules of syntax that allow us to say more than we could say by using regulative rules and their pre-conventional methods of communication – once again, methods such as grunting, pointing, or drawing pictures.

Human needs also generated convention-based institutions called sport – perhaps needs related to improved forms of play, better pastimes. Thus, sport stands in the same relationship to its constitutive rules as language. A ball that passes over the net, hits the table, and is not returned (X) counts as one point (Y) in the context of table tennis (C). By agreeing to a number of such stipulations, we benefit from a challenging game that provides a richer pastime than we would have if we used regulative rules and their pre-conventional methods of promoting intrinsically satisfying experiences through, for instance, simple physical play.<sup>5</sup> Thus, just as language conventions permit superior communication in comparison to proto-language, so too do games produce superior problem-based pastimes in comparison to the occasionally enjoyable and less reliable challenges found in work or some natural forms of play.

This reasoning provides the central warrant for formalism – both its logic and its utility. Table tennis and other game institutions are simply the sum of their constitutive parts, and those parts are joined to effect certain ends, to meet certain human needs and interests. In games, arguably, those needs and interests are related to confronting and solving valid problems. These ends can be achieved and these functions served only if the institutions are built well.

Consequently, building game tests is not a random process. Conventional agreements codified in constitutive rules are not arbitrary arrangements. Constitutive game rules perform a number of functions and they have to perform them effectively. Some of these functions are more foundational, others more culturally relative. But all of them have plausible roles to play in producing high quality games. I listed some of these at the start of the chapter and provide clarifications of these functions below:<sup>6</sup>

- The modulation of means and ends to create a good problem, one that is neither too hard nor too easy, is durable and does not lose its charm after being played only a few times, one that is flexible enough to be played by people of different ages and skill levels, one that has good symbolic potential or otherwise fits the culture in which it is to be played.
- The restoration of games that have gone awry, indications of what counts as a violation, which violations deserve penalties, how to make sure penalties effectively compensate for unearned or illegal advantages gained, how to mimic or otherwise respect the constitutive skills of the game in the restoration process, how to promote restorative efficiencies so that players do not spend more time restoring the game (e.g., taking foul shots in basketball) and less time playing it (e.g., experiencing the full five on five challenge of the game).
- The establishment of effective methods for scoring, for accurately and fairly marking achievements in the face of the game test and noting relative or comparative levels of

achievement in contests; the determination of how subjectively scored games (e.g., diving, figure skating) can achieve acceptable levels of reliability and validity.

- The determination of how games start, continue, and stop, what counts as too long or short a game, how to guarantee skill-based action in time-regulated games where stalling can undermine the integrity of the contest, how to assure that methods for starting and stopping games do not provide unfair advantages to any of the competitive parties.
- The adjudication of how games will be shared in competitive situations,<sup>7</sup> the order of performance in serial competitions (e.g., downhill skiing where fairness is affected by racing order), indications of how parallel contests are to be conducted (e.g., in races around a track, staggered starts designed to promote fairness, rules about sharing space, when and how a runner can cut in), and the allowances and limitations for interactive contests (e.g., in basketball who gets the ball first, how offensive and defensive opportunities are regulated).

Constitutive rules are the tools used by mortal gamewrights<sup>8</sup> to carry out these various functions. I mention that gamewrights are mortal to underline the sheer difficulty of meeting the aforementioned requirements effectively, let alone, perfectly or ideally. All games have flaws – chess, Sudoku puzzles, baseball, even soccer – the so-called “beautiful game” (see, e.g., Kretchmar 2005b). Rule makers sit down at the end of every season (sometimes even in the middle of a season) and revisit their game’s constitutive rules. They tinker; they amend; occasionally they make dramatic changes. Sometimes they agree that the game needs to be subdivided – racquetball separating from paddleball, motorcycling emerging from cycling, and possibly “drug-free games” complementing “enhanced” versions of the same basic activity (Gleaves 2011).

The admission that game rules are flawed, vague, and variable, raises important questions about the sufficiency of formalism. Games, it would appear, need something that goes beyond the rules, both to enhance or assure game quality and to provide guidance for reformation or other adjustments. This leads us to the criticisms that have been leveled at formalism and common preferences expressed for alternate theories – either broad internalism/interpretivism or some brand of conventionalism.

### **A critique of formalism**

A basic criticism leveled at formalism is epistemological in nature and it is a strong one. Rules are commonly open to interpretation, and rules cannot interpret themselves. That is, the people who play the games must decide, for instance, what “non-contact” means and whether or not a prohibition against fouling really applies at the end of a game when the other team is stalling and no other game-related methods exist for advancing one’s competitive commitments. These decisions and interpretations become part of the ethos of the game, a more-or-less common understanding of how the game is interpreted, how the rules are to be applied, even when rules can and should be ignored (D’Agostino 1995).

Broad internalists have made much of this concern and for good reason. They have rightly observed that game rulebooks are never complete. This insufficiency can be traced to specific causes including: a) actions that were never imagined by rule makers (e.g. Wilt Chamberlain once dunked foul shots legally when he realized he could run from midcourt, leave the ground at the foul line, and slam the ball through the basket before touching the floor); b) actions that are variably significant depending on context (e.g. in basketball, a push near the basket may confer a clear illegal advantage or, in other cases or locations on the court, have no appreciable



effect on the game at all); c) actions that may be intentional or accidental and where this difference is important to the integrity of the game (e.g. a baseball pitcher who has a history of control problems hits a batter with a fast ball – third parties, like umpires, cannot always tell for sure if the pitch was thrown intentionally); d) actions for which there are no rules and for which rules would not even be helpful (e.g. the common maxim “you should play hard” cannot be usefully stipulated in rulebooks; Reddiford 1985). For these reasons and others, it seems clear that the formalist account is insufficient: games *are* more than their constitutive rules say they are.

Other criticisms are related to logical conundrums created by formalism and the logical incompatibility thesis. For instance, if a game is literally the sum total of its many constitutive rules, and if one is no longer playing that game when any one of these rules is broken, and if it is certain or likely that at least one rule will be broken during the course of any game, then it follows that players will certainly or likely never complete a game. To say the least, this is an odd conclusion. It is odd because most games, even those that include multiple rule violations, almost always appear to be successfully completed.

Similarly, it has been argued that formalism cannot account for game penalties (D’Agostino 1995). The argument might go as follows: If penalties in baseball, for instance, are designed to levy fines on players who violate rules of the game; and if those who violate baseball rules are by definition no longer in the game, it follows (oddly) that baseball penalties are levied on those who are no longer playing baseball. A consequence of this line of reasoning is the effacement of the well-known distinction between playing fairly and unfairly.

A third criticism of formalism is related to its putative rigidity (D’Agostino 1995). In its worst form, this can appear as a kind of Platonism. What seems to be a pragmatically constructed and revision-prone activity known as baseball becomes Baseball, an ideal game. This promotes a rigid and most likely traditionalist reading of game rules. It would have baseball gamewrights at the table arguing for honoring and preserving a certain essence of the game. Conventionalists and broad internalists alike rightly criticize both the ambitious epistemology behind such a position and the metaphysical inflexibility it produces.

A formalist, however, does not have to be a Platonist. One can argue that a game at any one point in time is nothing more than its rules, but also agree that those rules are imperfect and open to revision. But this raises another question. On what grounds, if any, can and should a game be changed? This leads to a final important criticism of formalism – namely, that it lacks critical resources for making just these kinds of decisions (Simon 2000).

This very question bothered Ronald Dworkin (1986), a philosopher of law. In the domain of jurisprudence, he argued that legal precedent rather than inherited game rules presents reformation and adjudication problems. How much weight should precedent carry? How should it be interpreted? On what grounds can precedent be redefined or even ignored? In effect, Dworkin asked the same question that thoughtful gamewrights ask. How can we duly respect antecedent rules while not being bound blindly or inexorably to them?

Dworkin suggested that thoughtful individuals can come to understand what the law is about and that principles emerging from such reflection can provide guidance for both the interpretation of precedent and warranted deviations from it. This led to his conclusion that precedent, even good precedent, is not sufficient and Russell’s (1999) similar claim that “rules are not all an umpire has to work with.”

The bottom line, from this particular critical perspective, is that formalists lack a rational foundation for determining the merits of the current version of any game or reasons for reformation where it is needed (Simon 2000). Something in addition to the constitutive rules of games is needed to account for the games themselves, permit effective or fruitful game playing, and guide any efforts related to game modifications. This something else is either the

principles of the broad internalists (and the realist commitments that go with them) or well-conceived “deep conventions” (and the anti-realist commitments that go with them) (Morgan 2012). But this is another story. For purposes here, formalism is seen as flawed on either account. Formalist interpretations need to be fortified either by rational insight and a consensus regarding what sport is about (broad internalism) or by thoughtful discourse on variable social practices and traditions and an agreement that epistemological certainty will never be achieved (conventionalism or critical ethnocentrism).

### **A defense and revision of formalism**

After reading these criticisms, it may sound odd to claim that most everyone agrees that formalism is, partially, true. But this, in fact, is the case. Nearly everyone agrees with Searle and Suits that games are institutions and that institutions are products of their constitutive rules. Even more importantly, there is general agreement with the tenets of the incompatibility thesis. At some point – albeit perhaps a difficult-to-define-point – a failure to follow game rules is a failure to play the game. Many also agree that the most direct and efficacious route to game reformation is taken when individuals consent to formal rule changes, and not rely on vague game principles or a commonly held ethos. Clearly articulated game rules would seem to be the best means we have for knowing how to play a game and for assuring a level playing field (Fraleigh 2003).

Without courting essentialism or Platonic idealism, one can make an even stronger argument. Some longstanding games and their constitutive rules are not only efficacious. They also deserve a degree of respect. Dworkin (1986) made just this kind of argument in trying to balance legal needs for predictability, on the one hand, with flexibility, on the other. Predictability comes when “people accept that they are governed not only by explicit rules laid down in past political decisions but by whatever other standards flow from the principles these decisions assume” (1986: 188). By analogy, we can say that athletes and spectators should respect morally defensible games that have withstood the test of time, honor their constitutive rules and the principles that went into their development, and counsel caution when anyone would tinker with their defining characteristics. If these games are to change, they should be modified with care.

While Dworkin is considered a liberal philosopher, there is a high degree of conservatism in his work as well. Some of this conservatism comes to the fore when he acknowledges the wisdom that can be embedded in the law or, for our purposes here, in any game’s constitutive rules. But he gives an even stronger endorsement of formalism when he argues that the best defense for the legitimacy of rules rests “not in the hard terrain of contracts or duties of justice or obligations of fair play that might hold among strangers ... but in the more fertile ground of fraternity, community, and their attendant obligations” (1986: 206). The warrant for honoring game rules, according to Dworkin, would stem from “obligations in virtue of collective community decisions” (p. 206) as represented in a game’s constitutive rules. The doorway for change and flexibility is kept open by Dworkin with his reliance on “the principles these decisions assume,” but the crack is not very wide. So, while neither legal precedent nor constituted game traditions deserve anything like blind allegiance, they arguably deserve a healthy degree of respect.<sup>9</sup>

A final argument in support of formalism is an important one. It speaks to claims that formalism is counter-intuitive, that it presents logical conundrums. Many of these criticisms are related to the logical incompatibility thesis and its consequences. Ironically, these criticisms carry force only if one ignores the full analysis provided by the often-cited progenitor of formalism – John Searle.

My claim here is that formalism becomes illogical when interpreted in a wooden, analytic way. D'Agostino (2005), for instance, stipulated that playing a game required adherence to *all* its constitutive rules, and that game playing or defection was an *all or nothing phenomenon*. That is, one is either playing in accordance with all game rules (or not) and, consequently, one is either in the game (or not). Neither one of these stipulations is required by formalism, neither one is supported by Searle, and neither one makes much sense.

Searle (1969) argued that not all constitutive rules of language are created equal. Some are more important than others. Consequently, the violation of some rules does more damage to communication acts and purposes than does the violation of others. In speaking of chess and American football Searle wrote, "There will always be degrees of centrality in any system of constitutive rules." It would not be true, therefore, that "a slight change in a fringe rule makes it a different game" (p. 34). Similarly, the violation of a fringe rule of, say, football would not mean that one was no longer playing football.

It makes much more sense to portray formalism in terms of constitutive rules that perform greater and lesser roles in making any game what it is. Earlier, I detailed the many functions of constitutive rules. Those regulations related to creating a game problem that is neither too difficult nor too easy, that specify the use of certain physical skills, certain strategic decisions, and certain interactions among teammates would typically lie closer to the heart of the game. A violation of those rules might well damage the game beyond repair, make a mockery of it, or otherwise ruin the contest. On the other hand, wearing a jersey with an illegally small number on it, standing an inch outside the batter's box in baseball, or creating incidental contact that confers no significant advantage in basketball, are relatively trivial violations of constitutive rules. A failure to heed their requirements does little or no damage to the game itself.

Searle argued that language institutions are built to perform a function. So, too, it is with games. When language conventions fail because someone fails to follow the rules of vocabulary, syntax, grammar, and semantics we suffer the results – probably some form of non- or miscommunication. In language, there are no formal penalties for rule violations. We simply do not get the message, or have to put up with unnecessary ambiguities when we need clarity.

In sport, the failure to follow rules has analogous effects. The game might be ruined or damaged. However, gamewrights invoke penalties that would restore games to something of their pre-violation status. But again, not all violations threaten games to the same degree.

In light of these reflections, we might picture four levels of violations of constitutive rules and the typical responses for each one. Level I involves a violation of a central rule or attitude required for game play.<sup>10</sup> It is met with disqualification or other brands of strong punishment such as a red card in soccer or some other form of warning. Such violations are, in effect, failures to play the game or play it in accord with common tenets of fair play or moral decency.

A level-II violation does not merit disqualification. Nevertheless, it is serious because it immediately confers significant unearned advantage. It is met with compensations designed to erase the advantage and also with threats of eventual disqualification for continued or excessive violations – as is the case in basketball, where a person can foul out of the game.

Level-III violations confer insignificant advantages. Thus, compensatory penalties are typically not needed or, when used, their effect is minimal. Many such violations at this level are unintended, as when a pass in soccer misses a teammate and the ball goes out of bounds. Possession, in such cases, is simply awarded to the other team. Such minimal indiscretions blend at some point into what I am calling level-IV violations of constitutive rules. These are of such little consequence that they normally invoke no penalties whatsoever. Even where penalties could be levied, officials often "overlook" such violations for purposes of preserving the flow of the game.

This stratified, functional approach to formalism allows us to avoid some of the odd conclusions required by an analytic, dichotomous account. People who violate rules are still in those games and can still win them. The violation of a single, trivial constitutive rule does not effectively change the game. Penalties make sense because violations (at least at levels II, III, and IV) do not nullify games or necessarily render game outcomes invalid. They merely harm them, make them less likely to function well and may render game outcomes less reliable. Thus, the distinction between playing unfairly and fairly is preserved.

When all is said and done, and if my arguments carry any weight, the common ethical recommendation to “follow game rules” is not bad advice. While I have not argued that a formalist account of games is sufficient, it is nonetheless powerful. I say it is powerful because many games and their variations have been with humankind for centuries. Their enduring popularity speaks to the fact that their constitutive rules are doing their jobs well.

It is also powerful because many current game rules, I think, combine elements of the two other adjudicatory options. Many of our popular games do, in fact, reveal principles related to good physical tests, good ways of measuring success or progress, good ways to share tests and compete, and so on. This would suggest that broad internalism can be useful.

But the variety of games available and the variable ethos that surrounds them also speaks to the importance of pluralism and thus, too, conventionalist interpretations of sport. Such values as excellence, drama, knowledge, excitement, improvement, opportunity or having a chance, among other goods that arguably have intrinsic connections to gratuitous physical testing and contesting are alternately featured, or given lesser roles, from one time or one culture to another (Kretchmar 2014).

I would add a third adjudicatory factor and one that is often overlooked – namely biology and our evolutionary history. Games are made by us and for us. They have to fit our nature – our capacities, our tendencies, our genetic leanings. This is obviously true at the physical level, but it is less obviously the case at the human level. Yet we hominins have been built to play, seek meaning, solve problems and so much more. Gamewrighting, whether explicitly or tacitly, must take these givens of human nature into account if it is to be successful.

Thus, effective constitutive rules and the strength of formalism may rest on the deft deployment of principled thinking, an appreciation for cultural pluralism, and a sensitivity to what we humans are. But these speculations reach far beyond the central purposes of this chapter. As this debate over interpretive foundations continues, we might be well advised to take game rules seriously and treat them with a degree of respect. As Dworkin argued, precedent provides the necessary cultural stability and predictability that would counterbalance any drive for excessive change and the uncertainty that comes with it.

## Notes

- 1 Criticism of formalism has been around for years. D’Agostino (1988/1995) was one of the first to attack formalist interpretations of sport, but many others followed. Among the most notable are Dworkin (1986), Morgan (1987, 2004, 2012), Russell (1999, 2004, 2007, 2011), Simon (2007) and Edgar (2013).
- 2 A recent example is found in Morgan (2012), he identified formalism as the least useful of the three major options for interpreting sport, the other two being broad internalism and his preferred interpretative framework, deep conventionalism.
- 3 My understanding of the work accomplished by constitutive rules is taken from Searle. That is, the constitutive rules of language (or games) are all stipulations that, in any way, contribute to the creation of the entire language (or game) institution and its ability to perform its functions. Clearly, some constitutive rules meet this requirement more fully than others. In this sense, as argued later in the chapter, not all constitutive rules are created equal. For a more complete discussion of this, see Kretchmar (2001).

- 4 The work of Bernard Suits (1978/2005) is often regarded to be a prime example of formalist thinking. Interestingly, he never (to this author's knowledge) mentioned regulative rules. This may be due to the fact that he was interested in defining a convention, not its preconditions. Nevertheless, he at least tacitly acknowledged this distinction by noting that there are two ways by which hurdles make tasks more difficult. Game hurdles are placed in one's way solely for the sake of the challenges they make possible. This, as noted, is a consequence of what Suits called the lusory attitude. But natural hurdles (he used an example from ethics) are accepted for non-lusory reasons. In Searle's conceptual scheme, such natural hurdles are comprehended vis à vis regulative rules. Thus, Suits made use of the distinction even if he did not formally acknowledge or emphasize it.
- 5 Some would argue that I am begging a question here by identifying sport as a pastime. To an extent, this is true. But my argument here is that this is arguably no more indefensible than identifying the foundational function of language as one of communication or the function of money as facilitating trade or the exchange of goods and services. Also, the identification of games as pastimes does not preclude their use for other purposes such as the pursuit of excellence or making a living. Similarly, language can be used for a variety of purposes—for instance, to intimidate, intentionally deceive, solidify one's power, and so on.
- 6 See Kretchmar (2005a, 2005b) and Torres (2000) for further analyses of game rules and their functions.
- 7 According to most analyses, games are tests. Thus, contesting and competition are not assumed when one speaks of game tests. Many of our sporting games (e.g., bowling, golf, running and swimming for time) can be done alone and non-competitively, in non-competitive groups, or alternately in competitive settings where two or more opponents (or teams of opponents) are present.
- 8 I am not claiming that games are all invented by individuals. The process of gamewrighting is undoubtedly messy, one that often involves antecedent activities of uncertain origin that are then modified and re-modified by individuals or groups.
- 9 The qualifier here is important. Some brutal or wicked games, for instance, deserve little or no respect. Dworkin was sensitive to criticisms related to corrupt legal precedent, like those established during the Nazi regime. Likewise, the argument for respect here speaks to a critical and qualified respect.
- 10 Interestingly, it is not just a violation of constitutive rules that generate disqualification. We saw that in the recent summer games when Korea was disqualified for a failure to try to win – something, as Reddiford (1985) argued, that cannot be helpfully stipulated in the rules. Suits' categories of "triflers" and "spoilsports" also identify game playing failures for which there may be no constitutive rules. Of course, egregious cheats who do, in fact, violate constitutive rules, count among the others who may be thrown out of games.

## References

- D'Agostino, F. (1995). "The ethos of games," in *Philosophic Inquiry in Sport*, 2nd ed., edited by W. Morgan. Champaign, IL: Human Kinetics, pp. 42–49.
- Damasio, A. (1999). *The Feeling of What Happens: Body and Emotion in the Making of Consciousness*. New York: Harcourt.
- Damasio, A. (2003). *Looking for Spinoza: Joy, Sorrow, and the Feeling Brain*. New York: Harcourt.
- Dworkin, R. (1986). *Law's Empire*. Cambridge, MA: Harvard University Press.
- Edgar, A. (2013). "A hermeneutics of sport," *Sport, Ethics and Philosophy* 7: 140–67.
- Fraleigh, W. (2003). "Intentional rule violations – one more time," *Journal of the Philosophy of Sport* 30, 166–76.
- Gleaves, J. (2011). *From Science to Sport: A cross-disciplinary examination of the justification for doping bans*. Unpublished doctoral dissertation, Pennsylvania State University.
- Habermas, J. (1994). *Justification and Application: Remarks on discourse ethics*. Cambridge, MA: MIT Press.
- Kretchmar, S. (2001). "A functionalist analysis of game acts: Revisiting Searle," *Journal of the Philosophy of Sport* XXVIII: 160–72.
- Kretchmar, S. (2005a). *Practical Philosophy of Sport and Physical Activity*, 2nd ed. Champaign, IL: Human Kinetics.
- Kretchmar, S. (2005b). "Game flaws," *Journal of the Philosophy of Sport* XXXII: 36–48.
- Kretchmar, S. (2014). "Pluralistic internalism," *Journal of the Philosophy of Sport* published online April 16, 2014. DOI:10.1080/00948705.2014.911101.
- Loland, S. (1998). "Fair play: Historical anachronism or topical ideal?" in *Ethics and Sport*, edited by M. McNamee and S. J. Parry. London: E & FM Spon, 79–103.

- Morgan, W. (1987). "The logical incompatibility thesis and rules: A reconsideration of formalism as an account of games," *Journal of the Philosophy of Sport XIV*, 1–20.
- Morgan, W. (1988). "The logical incompatibility thesis and rules: A reconsideration of formalism as an account of games," in *Philosophic Inquiry in Sport*, (2nd ed.), edited by W. Morgan. Champaign, IL: Human Kinetics, 50–63.
- Morgan, W. (2004). "Moral antirealism, internalism, and sport," *Journal of the Philosophy of Sport 31*, 161–83.
- Morgan, W. (2012). "Broad internalism, deep conventions, moral entrepreneurs, and sport," *Journal of the Philosophy of Sport 39*: 65–100.
- Reddiford, G. (1985). "Constitutions, institutions, and games," *Journal of the Philosophy of Sport XII*, 41–51.
- Russell, J. S. (1999). "Are rules all an umpire has to work with," *Journal of the Philosophy of Sport, XXVI*: 27–49.
- Russell, J. S. (2004). "Moral realism in sport," *Journal of the Philosophy of Sport 31*: 142–60.
- Russell, J. S. (2007). "Internalism and internal values in sport," in *Ethics in Sport*, (2nd ed.), edited by W. Morgan. Champaign, IL: Human Kinetics, 35–50.
- Russell, J. S. (2011). "Limitations of the sport-law comparison," *Journal of the Philosophy of Sport 38*: 254–72.
- Searle, J. (1969). *Speech Acts: An essay in the philosophy of language*. Cambridge: Cambridge University.
- Simon, R. (2000). "Internalism and internal values in sport," *Journal of the Philosophy of Sport XXVII*, 1–16.
- Suits, B. (2005). *The Grasshopper: Games, life and utopia*. Introduction by T. Hurka. Plymouth: Broadview.
- Tomasello, M. (2008). *Origins of Human Communication*. Cambridge, MA: MIT Press.
- Torres, C. (2000). "What counts as part of a game: A look at skills," *Journal of the Philosophy of Sport 27*, 81–92.