

THE LAW OF SPORT

by BRUNO ZAULI

General Secretary of the Italian Olympic Committee

No inquiry into the *Law of Sport* is possible without first defining the term *sport* itself. But it is precisely with this definition that scholars grapple, definitions alternating between principles of causality and finality as a glance at any dictionary or encyclopedia will show. On the other hand philosophers for thousands of years have been seeking to arrive at a precise interpretation of the concept of 'law' and particularly after the bitter experiences of this century, it cannot be said that any convincing agreement has been reached. The social events that pervade

and weave together the operative cycle of human life are undeniable, but do not always meet with rational explanation.

Of ancients and moderns it is undoubtedly the Dutch philosopher HUITZINGA, who has delved most deeply into the subject of sport in his *Homo Ludens* which, together with *Homo Faber* constitutes an incontrovertible and universally accepted aspect of the Aristotelian *Homo Sapiens*. The third face of human nature — *Homo Cogitans* followed in the wake of these classifications, but it is not shared by all, especially those followers

of the doctrine of Giovanni Gentile who identify thought with action treating them as one whole.

Huitzinga conceives *ludus* (a latin word meaning 'play' or 'game') as an activity that has always been present in the life of man, from the origins of history until the present day, an activity whose very nature also permeates other manifestations of *Homo Faber*, which, in appearance, are far removed from play.

On a theoretical level the Dutch philosopher has fully and completely expressed the significance of play, listing all the phenomena observable in nature, from the play of animals and children to the more evolved and complicated figures which we look upon as sport. But, in his turn, when he came to the quintessence of this activity, all he could do was to quote the explanations catalogued by other investigators, under the rational pressure of scientific speculation, particularly psychology and physiology.

The biological function of sport perhaps finds its 'raison d'être' in the elimination of an excess of vital energy;

or in obedience to an innate impulse to imitate;

or in a need for psychic release;

or in a need to prepare for life's labours;

or as training in self-control;

or in a natural human need to cause or be capable of something;

or the yearning to dominate, or to compete or in the innocuous evacuation of harmful instincts;

or as the indispensable complement to an excessively monotonous activity;

or in the satisfaction, by means of a pretence, of insatiable desires which, as such, are capable of conserving the sense of personality.

I reproduce this list — which could be still further lengthened — to show that play in general and sport in particular cannot be explained by one or more of these motives. They may all be acknowledged as valid without solving the enigma as to *why* and for *what purpose we play*.

When I was looking for a definition of Physical Education for teaching purposes, I found I had to use formulas which appealed to a principle of finality freely chosen by man. Thus one of them, very simple and academic, runs: 'physical Education is the science of human motion applied to energy built-up in the organism'. This is true if we take the views of those who sponsor or promote physical training in order to attain objects of a *medical, military, or humanistic* character, but it is not so true if we take the standpoint of the young who undergo it or lend themselves to it quite apart from any generic of specific objective. This is particularly true as regards sport. Can one

really believe that a lad who spontaneously takes up basket-ball is induced to do so from concern about his future health, or from a wish to improve his physical efficiency for military purposes, or to increase, according to the teaching of Herbet SPENCER, his working capacity in industry, commerce, or other productive activity in his later life?

These things concern parents and the elders who rule the community. Although young people know about them they do not 'feel' them. Their minds are unencumbered by any practical or utilitarian aims and they only think of the game for its own sake, with the heat of contest and the swift and point less outcome.

Every analysis therefore brings us back to the unsolved question of why and for what purpose we play, to a sharp distinction between *Homo Ludens* and *Homo Faber*. But it is just this differential diagnosis, just the negative aspect of the question that can help us to define that objective phenomenon we call sport.

The motives for playing games may be more or less surmised and at least in part satisfactory, but the purpose, in its essence remains veiled.

Homo Faber acts and works under the pressure of his instincts or fundamental necessities for living: *nourishment, reproduction, defence* and hence all the practical consequences deriving therefrom. We know why a man a woman come together, love each other, unite and form a family. They do so to preserve the species.

But we are unable to give a biological explanation to the purposes of *Homo Ludens* in the performance of his activity.

I must make it clear that, when I speak of sport, I refer to the *essential nature of sport*, excluding all the superficialities, deviations, deformations, and aberrations that it has been subjected to in both, ancient and modern times through spectacle and professionalism. But this does not count, for the professional is not a *Homo Ludens*, but a *Homo Faber* who comes within the sphere of ordinary Law, whether it be civil, administrative, commercial or of some other branch.

What counts is the very act of sport itself, in its absolute purity, with no practical and immediately useful end. A youth for example, as a result of constant and determined efforts, succeeds in jumping 1 meter 90 cm. What has he achieved? What material advantage has he gained from this jump which has cost him great sacrifices and expenditure of energy? And the swimmer who does 50 meters in 30 seconds? Or the footballer who scores a goal? Or the wrestler who throws his opponent?

At the end of these competitions, winner and loser shake hands in compliance with the rules of sport which is innocuous. Moral satisfaction and other abstract things are

spoken of, but, in actual fact, the athletic act has produced nothing directly. It has all been done 'in play'. Had it not been accomplished men would have gone on living just the same. And yet men are not able to live without playing! Even though play is irrational it takes up a great part of their lives; as youths they take an active part in sport, as grown-ups they become spectators, thus associating themselves with the young sportsmen, or transfer their own games, their own competitions, to other sectors of social life.

At this point, then, we may draw our first conclusions:

Given that:

a) Sport cannot exist unless there is competition. Where the agonistic factor is lacking (agonistic derives from the Greek word *agon*, having the same root as *agorà*, meeting) there may be physical culture or education, or medical gymnastics, but not for sport, which can never be engaged in alone. The contest, the challenge between two or more opponents before an arbiter who declares the result is essential.

b) Sport is a pure act without practical, immediate and useful ends for the competitors.

We may deduce the following definition:

'Sport is a physical agonistic activity, incontrovertibly and irrepressibly part of human life, from which the latter derives nothing useful for its fundamental requirements.'

This is a negative definition which may be accepted, and enables us to distinguish two completely different spheres of action: ordinary Law (*Homo Faber*) from the Law of Sport (*Homo Ludens*).

* * *

Here it is opportune to insert parenthesis, for, especially in those countries which are morally poisoned by a professionalism in sport, the concept that sport does not 'yield profit' is not easily assimilated, at least by the ordinary rank and file.

We have already mentioned that in an inquiry into the sources of Law we are obliged to analyze the phenomena in their essential nature, leaving aside the deformations or deviations that only apparently maintain contact with the origins, whilst they are actually severed from them.

Apart from the fact that professionalism can cease to exist as is historically demonstrable (whereas sport as simple play or amateur activity is irrepressible) it is worth while reflecting on the limited extent of the phenomenon, which is certainly not on a level with the advertising excesses promoted for purposes of speculation.

Quite rightly *Avery Brundage*, President of the International Olympic Committee, has pointed out that the Olympic Games

depend upon a world movement of hundreds of millions of amateurs compared with whom the professionals are numerically negligible.

I would like to quote my favourite slogan: 'One is born an amateur, one becomes a professional.' All professionals before becoming such, took part in sport as amateur. So that amateurism, which contains the pure and concrete expression of sport, is irrepressible, as we demonstrated earlier.

Whereas the ostensible end of sport is palpably evident in the contest and the result, we do not know how to explain the supreme and intimate purpose of this form of human activity. There must be one, though at present, we do not know what it is. We can only go as far as to accept reality and to represent life as a medal with the grave visage of *Homo Faber* on one side and the smiling one of *Homo Ludens* on the other.

* * *

One final observation. As sport has no immediate utilitarian end, is an expenditure of energy without a practical return and a giving without any concrete receiving it is an act of *generosity*.

Hence we see men continually striving to establish moral or material prizes which sport itself does not offer.

But above all we note that generosity is an essential element in sports activities and an indispensable psychological component in the figure of the athlete.

* * *

Turning our attention now to the Law of sport we must closely observe the elementary phenomena, the essential and indispensable minimums for sport to take place.

For sport to occur two or more persons must freely and voluntarily meet and agree to abide the rules of the game, delegating to a referee or umpire (the word judge according to modern usage is incorrect) all decisions in respect to the rules.

Another point needs to be mentioned: in order for sport to take place it must be a shut off from the everyday world, from the life going on around it, in special places or grounds (sports installations in the modern idiom) where sport *ca*, be carried on in the fullest liberty without extraneous interference of any kind. Should there be interference then sport ceases. The sports grounds are a *magic enclosure* in which the rules that the competitors have themselves imposed, have freely consented to, rules inspired by the concept of loyalty are sovereign. Even today the words 'bona fide' are to be read in national and international regulations. In any event, if play is unfair then sport ceases. The referees' task is to protect it by punishing or expelling those who fail to observe the Law of sport.

There now emerge a number of fundamental elements intrinsically connected with the essence of sport.

In the first place the *principle of freedom*. Sport is based on the free choice of the contracting parties. Unless two athletes or two teams meet in a selected sport at a given hour prepared to accept voluntarily the rules of the game (that they themselves may make, as comes in the case of simple races or contests between children) the games cannot be played.

But this is not all: inside the enclosure — isolated from the outside world and so outside the scope of ordinary Law — and within the limits of the rules of the games the athlete enjoys supreme freedom of action. He may run his fastest or slow down as he pleases, he may attack, or defend, he may pursue or elude, throw, jump or swim, will all his strength, freely giving vent to muscular and psychic energies.

This cannot physically harm his opponent because the rules of sport are so devised as to *exclude the possibility* to a very appreciable extent. If more or less serious accidents happen, even fatal ones, they are to be looked upon as incidental events, outside the norms of sport which in itself is innocuous. It is precisely for this reason that there has been and is discussion about boxing for which, despite the precautions of doctors, referees, and gloves, the concept stated above can be accepted only to a very relative degree.

What needs to be stressed is the fundamental principle of freedom. No provision of enacted law can constrain anyone to take part in sports; this comes within the realm of individual choice.

This principle of freedom *has been and is the determining factor in the development of modern sports*, in any climate, under any regime, in any country where the present machine age has made itself felt.

This machine age clamps down on individual freedom for more than any arbitrary tyrannical law. An extensive literature already exists depicting the figure of modern man, a being fattened to the production line of a vast workshop where each action is constricted between the link that precedes and the one which follows. *Homo Faber prisoner of the mounting social structures that constrict him in his working life, desperately seeks freedom in Homo Ludens, in sport*, which more than any other recreational activity allows him, with the full liberty of movement, to be himself — at least for a few hours — in Henry Ibsen's poetic formula.

Not only the young co-oped up in schools, *but adults too*, feel this great yearning for freedom. They enter the magic enclosure of the stadium and by pretence or psychic transference they transform themselves —

as they sit there — into athletes and participate with exuberant energy (cheering and so forth) in the games.

Inside the magic enclosure ordinary Law cannot, does not wish to, and must not enter. It stays outside the gates so long as the sport is performed strictly in accordance with its own laws (law of sport). If it enters, it means that the spell is broken, that sport has ceased that accidents or incidents have taken place.

That this atmosphere of freedom truly exists is daily proved by episodes that are familiar to everybody.

I recall a distinguished magistrate who was once sitting next to me in the old national Stadium cheering for the ROMA team. At one point of the games, he yelled the usual insults at the referee. I reflected how different the same man was in his robes in the austere court-rooms of the Palace of Justice where it would be inconceivable that he should gratuitously insult anyone.

But in the stadium insults do not count: *it is all part of the game and done with the greatest seriousness*. The referee knows that though the fans give full rein to their feelings it does not affect his family, that the insults are not meant seriously, even though the games is in deadly earnest, even though he knows quite well who shouted the insults.

Outside the stadium, outside the magic circle, serious alternation and litigation would ensue, for from this standpoint too the freedom peculiar to players and fans ceases. And indeed thousands of different instances could be quoted, if further demonstration for this generally-recognized truth were required.

Another detail distinguishes ordinary Law from the Law of sport. It is the way in which the Law is administered. Under ordinary Law, decisions are normally reached through the workings of the machinery of justice set up to settle controversies between the parties, with judges, lawyers, witnesses, prosecution, defence, and verdict. In sport the *normal praxis* is arbitrament, accepted in principle by the opponents, in good faith, *without even knowing, at times, what the future question at issue will be*. The decision of the referee is final. There is no appeal against it.

This is not merely in views of the importance of immediacy in order to safeguard the continuity and rapidity of the game, as many believe, but also concerns the principle of loyalty, already mentioned in accordance with which it is inconceivable that justice should be knowingly betrayed. If it should be, sport would cease.

And at times, it is also due to the need for a decision whatever it be, for the game to be played, perhaps imposing a will extraneous to that of the players.

When ration discrimination between contenders is not possible, recourse is even made to the 'Judgement of God', that is, decision by lots. These are methods unknown to contemporary civil Law, which has relegated them to mediaeval history.

But chance is made arbiter not only in cases of parity, but often also so as to ensure the 'greatest fairness' or 'equality of rights' in fixing matches and heats, in allotting tracks or turns. When earthly justice is deemed unable to provide adequate guarantees, the issue is left to the super-rational will transcending human power.

The Law of sport is exercised on the playing field and bears great resemblance to the justice that Salomon administered under the oak. The adjudication panels that many federations have set up — the so-called round table justice — are superstructures promoted mainly by those who have thought to introduce ordinary Law into the sphere of sport, thus deforming it and depriving it of its true nature.

From the standpoint of its essential feature it is extremely difficult to fit the law of sport into the categories that the philosophy of Law has evolved through the centuries. It is a *Jus quia Jussum* or a *Jus quia Justum* according to the celebrated formulas of schoolmen? Does it come under natural law or positive law.

The answer is difficult. As the phenomenon of sport is founded on a principle of freedom, of free choice, and it is impossible to play without prior individual acceptance of the rules of the games, it seems to come under natural law.

The eminent jurist GROTIUS gave the following definition: '*Law is that which shows itself to be reasonably suited to making social consort possible.*' To accept it we must overcome the rational-irrational antinomy, for, in its essence, sport is irrational.

But this is not all. If the Law of sport is to be respected, individuals must yield their rights to a higher authority, to a body that can make them respected, by force if need be. At the origins, we are very close to the idealism of Jean-Jacques Rousseau's *Social Contract*. But then in the end an arbiter is appointed who is perfect embodiment of positive law, guided only by sense of fairness, by good faith, which is a typically sporting act of trust and does not fit into any form of law.

Of course if sport is analyzed in its practical manifestations many points of contact both with natural and positive Law are to be observed.

National and international sports organizations originate from athletes themselves who join together and through the delegation of powers gradually build a pyramid; then, at the top, the instruments of the Law of Sport become more and more remote from the cells at the base. *Authoritarianism arises,*

tempered only by those fundamental constitutional ideas that the great English philosopher *John Locke* with his practical turn of mind, chose to base on the majority principle, foregoing humanity.

The fundamentals of sport are invariably the principles of free choice already mentioned. Those who accept them come within the rules of the game, those who do not are left out or go out. We should speak of a *Jus quia acceptum*, with all the advantages and disadvantages of acceptance, something half way between individual contract and the social contract, defined only by the word sport in its truest and fullest meaning.

*

The Law of Sport is the aggregation of rules regulating and governing sport.

They are rules that belong to the world of sport and have nothing whatsoever to do with ordinary Law. They are rules that generally go under the term 'technical regulations'. Statutes and other federation regulations are organizational superstructures brought into being by the need to provide for the increasingly large numbers of players. But these addenda also belong to the world of sport.

The fundamental laws do not have a rational explanation and change, in the course of time, with the consent of the players.

It is perhaps on account of this continuous change that we lack precise details about ancient games, some of which were very extensively played, 'trigon', a ball game popular in the baths of Ancient Rome, is an example. But then we do not know the exact rules of even the classical individual exercises such as the long jump or throwing the javelin.

However the Law of sport does not only positively lay down everything that must be done, but also places a rigorous interdiction on everything that is not to be done, so that sport may exist and be safeguarded in the spirit of its action.

Hence there are sanctions. The severest is expulsion from the games; if it is permanent, for life, it is equivalent to excommunication under Canon Law.

We should seek in vain for such punishment in ordinary codes of law, for they concern *Homo Ludens* and not *Homo Faber*. We draw attention to them because they constitute another factor that differentiates between the two spheres of action.

*

As we approach the conclusion we trust we have demonstrated that sport is a unique social phenomenon, existing by itself, incontrovertible, and standing apart from the external world to live by its own laws which make up the Law of sport.

Therefore every attempt by ordinary Law to insert itself in, or encroach upon, the Law of sport is to be judged detrimental to sport.

But then, it will be asked, why is the history of society in ancient and modern times abounding in episodes that seem to prove the contrary.

A distinction must be made. The heartfelt appeal that sportsmen make to the authorities to those who wield power exercised under ordinary Law, is an appeal to safeguard sport with financial aid and moral protection. In this case, intervention, far from being harmful, helps to improve sport without interfering with the practice of it.

Since sport is an incontrovertible and unrestrainable component of human nature, constituted authority has the duty to protect and encourage it to the benefit of society.

In exercising its moral authority the Church has also declared sport to be good and necessary. Not only did Pope Pius II Piccolomini state this in his teaching, but mention has been made in pronouncements on life and doctrine by Popes Pius X, Pius XII and John XXIII. Theology itself, through the voice of its most illustrious exponent, St. Thomas Aquinas, in the *Secunda Secundae* of the *Summa Theologiae* speaks of the obligation to take recreations even in monastic communities. Of course the modern sense of the word sport does not apply to that era, but the phrase has the full meaning of the activity *ludus*, which is indispensable even for the members of religious orders.

Such general recognition and *consensus* is encouragement for governments to take measures on behalf of sport, but not to interfere with its free exercise.

The people were undoubtedly mortified when, in the 14th Century, *Edward III of England* promulgated a decree restricting aristocracy's right to practise sport, whereas they must have joyfully acclaimed James I's declaration of sport in 1617 which removed the proscription.

Another gross interference was that by Emperor Theodosius who, in the year 393 A.D., suppressed the Olympic Games at the instance, it would appear, of St. Ambrose. This did not however have any appreciable repercussions. The Emperor's gesture amounted to little more than making out the death certificate of an event that, through the degenerations of professionalism, had been spiritually dead for centuries.

Against a handful of negative instances, there is an endless list of measures taken through the ages in favour of sport, and today we must look forward to further aid and encouragement to meet even more fully and essentially human social need.

In all times, Heads of States and Government, and Leaders of Armies have crossed the threshold of stadiums not as the representatives of executive power, but as spectators who intended to honour sport and its laws by watching with approbation and enthusiasm.

The essential condition is that ordinary Law must not penetrate the confines of the magic enclosure, where none other than the Law of sport may exist.

It is the duty of ordinary Law to intrude only *if sport degenerates* into episodes harmful to the material and moral well-being of citizens, that is to say if sport ceases to be such and lacks in itself, in its members, its institutions, its means, the capacity or will to recover. In this case the action of the States is not interference, but the defence and protection of the free exercises of sport.

But when sport, at the same time earnest and playful, real and fanciful, spontaneous and harmonious proceeds along the narrow path of its true laws, in a supreme attempt to give expression to human freedom, but then it belongs uniquely and entirely to that Law of Sport that regulates governs and upholds it.

BRUNO ZAULI.