

THE AMERICAN AVERSION TO TIES IN SPORT AND INTERCOLLEGIATE WRESTLING'S LABYRINTHINE TIEBREAKER RULES

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*Americans love a winner and will not tolerate a loser.*¹

*[A tie is] like kissing your [sibling].*²

On April 18, 1981, the Pawtucket Red Sox and the Rochester Red Wings were tied 2-2 after nine innings of a game in the AAA class International League, a U.S. professional league one level below Major League Baseball (“MLB”).³ The teams played on, until 4:09 a.m. on April 19, when the

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1. TERRY BRIGHTON, PATTON, MONTGOMERY, ROMMEL: MASTERS OF WAR 261 (2008) (quoting General George S. Patton: “When you were kids you all admired the champion marble shooter, the fastest runner, the big-league ball players and the toughest boxers. . . . Americans play to win all the time.”).

2. Martie Zad, *After Middies Battle Duke, 0-0: Navy Coach Eddie Erdelatz Defines a Football Tie*, WASH. POST, Nov. 9, 1953, at 12 (“Navy Coach Eddie Erdelatz came up with a classic definition for a tie football game, especially a scoreless tie between Navy and Duke – ‘It’s like kissing your sister.’ No one asked the mild spoken Navy coach to explain.”). The quotation is also attributed to Michigan State University coach Duffy Daugherty. See C. Paul Rogers III, *The Quest for Number One in College Football: The Revised Bowl Championship Series, Antitrust, and the Winner Take All Syndrome*, 18 MARQ. SPORTS L. REV. 285, 300 (2008).

3. *The Longest Game in Baseball History*, PAWTUCKET RED SOX, http://www.milb.com/content/page.jsp?ymd=20080903&content_id=41224646&sid=t533&vkey=team1 (last visited Sept. 11, 2017).

umpires suspended the game after thirty-two innings and seven hours and forty-two minutes of play, with the score still tied at 2.⁴ Two months later, on June 23, the teams returned to Pawtucket to resume play.⁵ The Red Sox scored a run in the bottom of the thirty-third inning to claim victory and bring an end to the longest professional baseball game in history.⁶ The game has achieved legend status.⁷

Why the marathon to determine a winner, for a non-elimination game, in the minor leagues? Why require continued play when the season could have forged on with little consequence had the Pawtucket-Rochester game (as well as other games in the league) ended in a tie, after ten or a dozen innings – or maybe eighteen, the equivalent of *two* regulation games? Why impose on players the added risk of injury when the time of play exceeds beyond a certain point? The simple answer: Because the rules say so, and “the rules are the rules.”⁸ In American professional baseball – minor league games too⁹ – when the score is tied at the end of nine innings, “play *shall* continue *until*” there is a winner.¹⁰ But stating the rule only invites more questioning – why the rule?

I subscribe to the view that rules of sport, like laws of society, reflect the desires, passions, and culture of the jurisdiction – here, the sport, the governing body, and the fan base. In short, the rules say something about those making them. Perhaps the rules that allowed the thirty-three inning game in Pawtucket reflect a deeply-rooted societal desire to have a winner in a contest of the national pastime, and perhaps too there is a certain American romance to the rare game on the diamond of such marathon length. The view

4. *Id.*

5. *Id.*

6. *Id.*

7. See DAN BARRY, *BOTTOM OF THE 33RD: HOPE, REDEMPTION, AND BASEBALL’S LONGEST GAME* (2011).

8. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 700 (2001) (Scalia, J., dissenting); see also *Mendez v. Banco Popular de Puerto Rico*, 900 F.2d 4, 7 (1st Cir. 1990) (“Rules are rules – and the parties must play by them.”).

9. By agreement between Major League Baseball and the National Association of Professional Baseball Leagues, of which affiliated minor leagues are members, all games are played under MLB rules. Professional Baseball Agreement, art. V(A) (on file with author).

10. MAJOR LEAGUE BASEBALL, *OFFICIAL BASEBALL RULES* R. 7.01(b) (2017), http://mlb.mlb.com/documents/0/4/0/224919040/2017_Official_Baseball_Rules_dbt69t59.pdf [hereinafter *MLB OFFICIAL BASEBALL RULES*] (emphasis added) (In full: “If the score is tied after nine completed innings play shall continue until (1) the visiting team has scored more total runs than the home team at the end of a completed inning, or (2) the home team scores the winning run in an uncompleted inning.”). Under certain circumstances, a game with a tied score in extra innings may be “called” and deemed a “suspended game.” *Id.* R. 7.01(d). But additional provisions govern the resumption of a suspended game, so that the tie may be broken and a winner determined. *Id.* R. 7.02.

that every sporting contest should end in a win and loss – and not a tie – is apparently deeply ingrained in the minds of some, and not just for baseball. Note the comments of Hines Ward, then a receiver for the Pittsburgh Steelers, who played in one of the rare games of the National Football League that ended in a tie: “It was an exciting ballgame, but it was like a wasted Sunday. *We didn’t get anything accomplished.* It was like a scrimmage. *No one won or lost.*”¹¹ There is, however, a competing view on the subject of ties (or draws), depending on the sport and on account of its nature. Take international football (soccer), where ties are often seen and are part of the game.¹² As one commentator writes, “[T]his is something that we soccer fans don’t just accept about the game: we love it.”¹³ Perhaps there is a romance here too, of the honor of a well-fought draw on the pitch, between two teams of equal ability and execution on that particular day.

Regarding games in sport, this Article introduces the notion of a cultural desire to award a victory to one side – and by necessity, assess a defeat to the other (and in all events, no ties) – and the rules that are necessary to effect that result. Part I sheds light on the seemingly American preference for a win-loss result in most if not all sporting contests, as best articulated by a legendary sportswriter. Part II emphasizes the role and impact of *laws* to break ties, by examining the tiebreaker rules of one sport, American intercollegiate wrestling. Every sport requires rules, and some rules can have a powerful impact – tiebreaker rules demand that a tie be broken, and set the procedures for determining who wins and who loses.¹⁴ Like laws of society, rules of sport must first be vetted by the rulemaking body and then drafted and presented in positive text. Rules may later require interpretation on application and are also subject to revision. The rules of wrestling provide a good example.

11. Ray Fittipaldo, *Memories of a ‘Wasted Sunday’*, PITTSBURGH POST-GAZETTE, Sept. 12, 2010, at C1, 2010 WLNR 18098754 (emphasis added).

12. Alan Jacobs, *Why Draws in Soccer Make Sense – Most of the Time*, WALL ST. J. (June 27, 2014, 3:42 AM), <https://blogs.wsj.com/dailyfix/2014/06/27/why-draws-in-soccer-make-sense-most-of-the-time/>. Jacobs explains that draws are common in soccer because it “is a game in which it is very, very difficult to score. Since scoring is so rare, many matches end 0-0 or 1-1.” *Id.*

13. *Id.*

14. An example is the mechanism to break the tie for third place in the women’s 100 meters event at the 2012 U.S. Olympic Trials in Track and Field. For details and a discussion of the controversy surrounding the event, see Ilhyung Lee, *Revisiting the Olympic Tie*, in SPORTS LAW: PRESENT AND FUTURE (forthcoming 2017).

I. THE AMERICAN BINARY: A DESIRE FOR A WINNER/LOSER – AND NO TIES

In the women's individual all-around gymnastics event at the 2012 London Summer Olympics, Aly Raisman (U.S.A.) and Aliya Mustafina (Russia) both received the identical score of 59.566, resulting in a tie for third place, the bronze medal.¹⁵ Tiebreaker rules of the sport's governing body, Fédération Internationale de Gymnastique, provided that the lowest score of the four apparatuses for each athlete be dropped, which broke the tie (45.933 to 45.366) and gave the final medal to Mustafina, relegating Raisman to fourth place.¹⁶ "But why?"¹⁷ Professor David Orentlicher asked. "When two superb athletes share the same score at the end of their competition, we should appreciate that they have performed equally well. A tiebreaker creates only an illusion that one of the two was the better contender that day. . . . If two players or two teams end up with the same score, they deserve to be treated as equals."¹⁸ Orentlicher acknowledged that ties are necessary in playoffs or elimination contests, "[b]ut in the absence of such a need, we should give every player and team their due and recognize the tie."¹⁹

Nevertheless, Professor Orentlicher also noted the "strong societal desire to identify number one even when there really is no significant difference between one and two."²⁰ There's the rub. Perhaps the rules of the international gymnastics federation, like those of other governing bodies, reflect this societal desire. The late sportswriter Frank Deford, in his inimitable style, offered an explanation of the American aversion to ties and desire for a victor, apparently employing a comparative politico-cultural analysis:

Politicians love to boast about American exceptionalism: how special we are from all the merely ordinary, everyday, run-of-the-mill countries around the globe. I would say that what sets us apart, more all the time, is that we Americans don't like ties [in games].

15. See *Douglas Completes Remarkable Rise to Top*, HOUS. CHRON., Aug. 3, 2012, at 8, 2012 WLNR 16358195; *Douglas Flies High To Land Gold for USA*, STATES NEWS SERV., Aug. 2, 2012 (available on WL).

16. See Justin Peters, *Aly Raisman Tied for Third in the Gymnastics All-Around Final. Why Didn't She Win a Bronze Medal?*, SLATE (Aug. 2, 2012, 4:48 PM), www.slate.com (search "Justin Peters" and "Aly Raisman"; then follow hyperlink); *Douglas Completes*, *supra* note 15, at 8; *Douglas Flies High*, *supra* note 15. Apparently, the tiebreaking rules were implemented just before the 2012 Summer Games. *Id.*

17. David Orentlicher, *Honoring the Tie*, FAC. LOUNGE (Aug. 5, 2012, 11:19 AM), <http://www.thefacultylounge.org/2012/08/honoring-the-tie.html>.

18. *Id.*

19. *Id.*

20. *Id.*

... Nothing about me is more American than that I don't like ties.

Lots of times, in other English-speaking countries, a tie is called a draw. Well, partner, in these United States, when we say "draw," we don't mean a namby-pamby even-Steven – we mean John Wayne a-reachin' for his six-shooter. Now that's the American way to draw, a-standin' our ground.

....

... You're either beat, or doing the beating – no Mr. In-Between. College football changed the rules in 1996, so two teams keep playing until somebody wins. The NFL is still a little wimpish. There have been two NFL ties in the 21st century^[21] – two too many, in the minds of good red-blooded Americans like me.

Ice hockey was tie city. I blame that on the Canadians, who are so nice. But now, in hockey, we got shootouts. That's the all-American way. There hasn't been a tie in the NHL since April 4, 2004. And there never will be another.

The worst thing that happened to baseball since steroids was when they ran out of pitchers at the 2002 All-Star Game, and it was called a draw. A date that will live in stupidity. Do you know they have ties in Japanese baseball? That just flat-out takes the "national" out of "pastime."

But of course, the rest of the world loves soccer. And it is reliably calculated that 30 percent of all soccer games end tied, drawn, deadlocked, nil-nil. How does the rest of the unexceptional world tolerate this? It's exactly this kind of thinking, I believe, which is why they can't fix the bloody euro. The dollar is a winner. The euro is a tie. Get off the dime, Europe, and play to win.

In this country, the teams in Major League Soccer play a 34-game schedule. They averaged 11 ties a team. Chicago had 16 ties out of 34! Couldn't they at least get rid of ties in American soccer?

A tie has no place in sports. It's like not finding out who is the "who" in whodunit.²²

Deford's comments provide a tongue-in-cheek (I presume) case against ties in sports, reflecting an American societal demand for a winner in each

21. Since Deford's broadcast, there have been five more, two in the 2016 season, one week apart. See Peter King, *Dramatic Incompetence and the True Story of an NFL Tie*, SPORTS ILLUSTRATED (Oct. 24, 2016), <http://mmqb.si.com/mmqb/2016/10/24/seattle-seahawks-arizona-cardinals-tie-nfl-week-7> (Arizona v. Seattle, 6-6); Conor Orr, *Redskins-Bengals London Duel Ends in 27-27 Tie*, NFL (Oct. 30, 2016, 3:47 PM), <http://www.nfl.com/news/story/0ap3000000730117/article/redskinsbengals-london-duel-ends-in-2727-tie> (Cincinnati v. Washington, 27-27, played in London, England).

22. Frank Deford, *The American Way: Winners And Losers, And No Ties*, NPR (May 6, 2012, 12:01 AM), <http://www.npr.org/2012/05/16/152737291/the-american-way-winners-and-losers-and-no-ties>. For a review of Deford's work, see Colin Dwyer, *Frank Deford, NPR's Longtime Philosopher of Sports, Dies at 78*, NPR: AMERICA (May 29, 2017, updated at 4:11 PM), <http://www.npr.org/sections/thetwo-way/2017/05/29/530600033/frank-deford-nprs-longtime-scholar-of-sports-dies-at-78>.

sporting contest. Deford's text also provides an encapsulated survey of the major U.S. professional sports leagues' rules regarding ties and the breaking of ties. Note that there was no need for the hall of fame sportswriter to even mention tiebreakers in basketball, for the notion of a tie in basketball may be, for many, beyond the pale.²³ Overtime play to determine a winner has long been part of the game and was even contemplated in Dr. James Naismith's original thirteen rules.²⁴ Deford derisively noted that there are ties in Japanese baseball (after twelve innings);²⁵ statistics from the past five seasons in the Nippon Professional Baseball Organization indicate that less than 5% of any team's games in a season ended in a tie.²⁶ It is the same for

23. But never say never, or at least for approximately forty hours, until the American sporting mind prevailed. There was the intercollegiate basketball game between Winston-Salem State University (WSSU) and host Johnson C. Smith University (JCSU), played in Charlotte, North Carolina, on February 19, 2014. *40 Hours Later, Tie Basketball Game Ends*, BISMARCK TRIB., Feb. 22, 2014, 2014 WLNR 38182365. With the score tied, 76-76, and in the final seconds of regulation play, a JCSU player attempted a full-court desperation shot. *Id.* The ball hit the lights above the court, "leaving one dangling perilously from a wire." *Id.* With 0.3 second left, the game was suspended due to safety concerns. *Id.* On the next day, "the conference [Central Intercollegiate Athletic Association] office got involved. *No one much wants a basketball game to end in a tie, including the two schools.*" Scott Fowler, *J.C. Smith Wins 'Strangest Game Ever'*, CHARLOTTE OBSERVER (Feb. 21, 2014, 8:27 PM), <http://www.charlotteobserver.com/sports/spt-columns-blogs/scott-fowler/article9098984.html> (emphasis added). WSSU was offered to break the tie by a coin flip. *Id.* Instead, the team agreed to return to play an overtime period, which JCSU won, 89-86, secured by a three-point shot with twenty-four seconds left. *See* Fowler, *supra*; *40 Hours Later, supra*.

24. *See* JAMES NAISMITH, BASKETBALL: ITS ORIGIN AND DEVELOPMENT 55 (1941) (Rule 13) ("In case of a draw, the game may, by agreement of the captains, be continued until another goal is made.").

25. *See Standings 2017 Regular Season*, NIPPON PROF'L BASEBALL ORG., <http://npb.jp/bis/eng/2017/standings/> (indicating a column for ties ("T")).

26. *Id.* (indicating a high of five ties out of 143 games, for two teams); *Standings 2016 Regular Season*, NIPPON PROF'L BASEBALL ORG., <http://npb.jp/bis/eng/2016/standings/> (six out of 143 games, for one team); *Standings 2015 Regular Season*, NIPPON PROF'L BASEBALL ORG., <http://npb.jp/bis/eng/2015/standings/> (five out of 143, for one team); *Standings 2014 Regular Season*, NIPPON PROF'L BASEBALL ORG., <http://npb.jp/bis/eng/2014/standings/> (six out of 144 games, for one team); *Standings 2013 Regular Season*, NIPPON PROF'L BASEBALL ORG., <http://npb.jp/bis/eng/2013/standings/> (seven out of 144 games, for one team). There were significantly more ties in the 2012 and 2011 seasons – a high of sixteen ties in the 2012 season, *Standings 2012 Regular Season*, NIPPON PROF'L BASEBALL ORG., <http://npb.jp/bis/eng/2012/standings/>, and fifteen in 2011, *Standings 2011 Regular Season*, NIPPON PROF'L BASEBALL ORG., <http://npb.jp/bis/eng/2011/standings/>. After the Great East Japan Earthquake and the resulting tsunami in March 2011, there were nationwide efforts to reduce energy usage. The league called for a maximum of nine innings for a game, even if the score was tied, which resulted in an increase in tied games. The league returned to the twelve-inning limit for the 2013 season, and the number of ties returned to previous levels. Email from Wayne Graczyk to author (Aug. 13, 2016, 21:25 CST) (on file with author) (Graczyk is a Japanese baseball columnist and a resident of Japan for forty-seven years).

professional baseball in Korea.²⁷ For some, this is simply an unnecessary and unacceptable 5%. Deford implied that there are no ties in American baseball, but technically, the rules (rules are rules) provide for the possibility of a tie game in MLB games, under certain and rare circumstances.²⁸

As Deford indicated, the National Football League (“NFL”) is not quite on par with the other sports leagues when it comes to ridding its games of the specter of ties. Although NFL rules require overtime play in all of its games where the score is tied at the end of regulation, preseason and regular season games may end in a tie if the score is tied at the end of one ten-minute extra period.²⁹ If it is true that the NFL is a “little wimpish” about demanding a process that declares the *beater* and the *beaten*, the question is why it is so. There must be some explanation for the rule, some rationale behind the law, and some reason for the lack of reform to break all ties. Perhaps the NFL is cognizant of player safety and the increased risk of injury in this full-contact and often violent sport, especially in overtime. Or perhaps the rule allowing for ties in regular season games after an overtime period reflects the owners’ preference – at that stage in the game – to give both teams a tie, instead of

27. See *Team Standings* [2017], KOREA BASEBALL ORG., <http://eng.koreabaseball.com/Standings/TeamStandings.aspx?searchDate=2017-10-03> (indicating a column for draws (“D”), and a high of five draws out of 144 games, for one team); *Team Standings* [2016], KOREA BASEBALL ORG., <http://eng.koreabaseball.com/Standings/TeamStandings.aspx?searchDate=2016-10-09> (three out of 144 games, for two teams); *Team Standings* [2015], KOREA BASEBALL ORG., <http://eng.koreabaseball.com/Standings/TeamStandings.aspx?searchDate=2015-10-06> (three out of 144 games, for one team); *Team Standings* [2014], KOREA BASEBALL ORG., <http://eng.koreabaseball.com/Standings/TeamStandings.aspx?searchDate=2014-10-18> (three out of 128 games, for one team); *Team Standings* [2013], KOREA BASEBALL ORG., <http://eng.koreabaseball.com/Standings/TeamStandings.aspx?searchDate=2013-10-04> (four out of 128 games, for two teams).

28. MLB OFFICIAL BASEBALL RULES, *supra* note 10, at 150 (“Definition of Terms” “A TIE GAME is a regulation game which is called when each team has the same number of runs.”). A “tie game” under the rules occurs when the score is tied in “[a]ny suspended game that has progressed far enough to become a regulation game, but which has not been completed prior to the last scheduled game between the two teams during the championship season,” *id.* R. 7.02(b)(4), “unless the game is called while an inning is in progress and before the inning is completed, and the visiting team has scored one or more runs to tie the game, and the home team has not retied the game, in which case the score upon completion of the last full inning shall stand,” *id.* R. 7.02(b)(4)(B).

Of the 2,430 regular season games played in MLB in 2016 (which ended with the Chicago Cubs winning the World Series), there was one tie. *Standings*, MAJOR LEAGUE BASEBALL (Oct. 2, 2016), <http://mlb.mlb.com/mlb/standings/#20161002> (noting: “Tie Games[.] September 29, Cubs 1 at Pirates 1[.] Tie games do not count towards standings calculations.”).

29. See NAT’L FOOTBALL LEAGUE, 2017 OFFICIAL PLAYING RULES OF THE NATIONAL FOOTBALL LEAGUE R. 16, art. 4(a) (2017), <http://operations.nfl.com/media/2646/2017-playing-rules.pdf>. In the postseason, however, “[i]f the score is tied at the end of a 15-minute overtime period, . . . another overtime period will begin, and play will continue, regardless of how many 15-minute periods are necessary.” *Id.* art. 5(a).

imposing on one a risk of a loss. Some have observed that the league's competition committee, which must propose rules changes, is comprised of a conservative core that is resistant to changing the longstanding rule, first implemented in 1974.³⁰ In this regard, the governing body of a sport operates in much the same way as a jurisdiction's legislative body.

Rules are rules, as laws are laws, but there is occasional ignorance of them, sometimes even by those most significantly affected. After the Philadelphia-Cincinnati NFL game on November 16, 2008 that ended with the score 13-13, Eagles quarterback Donovan McNabb stated that he did not know that a game could end in a tie, for which he was widely derided.³¹ But McNabb was hardly alone among active players in the league who also did not know of the law.³² Likewise, after a closely contested intercollegiate wrestling meet between two teams in Iowa City, Iowa in 2012 that saw a tied team score after the final bout, there was some confusion and uncertainty.³³

II. INTERCOLLEGIATE WRESTLING'S LABYRINTH

Initially, for the less acquainted, a brief overview of the basics of intercollegiate wrestling competition is presented here. Under the rules of the National Collegiate Athletic Association ("NCAA"), a meet between two teams includes matches in ten weight classes.³⁴ For each match, points are

30. See *Tagliabue Expects OT Change To Give Both Teams the Ball*, TENNESSEAN, Jan. 25, 2003, at C7, 2003 WLNR 17872858.

31. See, e.g., Ed Hardin, *NFL Rules Made To Be Broken, Not Understood*, GREENSBORO NEWS & RECORD (NC), Nov. 20, 2008, at C1, 2008 WLNR 22177162; Mike Klis, *NFL Report*, DENV. POST, Nov. 23, 2008, at CC, 2008 WLNR 22451710.

32. See *McNabb Not Alone in His Ignorance*, VANCOUVER PROVINCE (CANADA), Nov. 21, 2008, at A52, 2008 WLNR 28459556. Six years before, after the 34-all tie between Pittsburgh and Atlanta in November 2002, Steelers wide receiver Hines Ward said, "I didn't even know you could tie like that. When we went into overtime and didn't score, I thought we were going into another overtime." Fittipaldo, *supra* note 11, at C1.

33. See *infra* text accompanying notes 50-52.

34. NAT'L COLLEGIATE ATHLETIC ASS'N, WRESTLING 2017-18 AND 2018-19 RULES AND INTERPRETATIONS R. 3, § 4 art. 1 (2017), <http://www.ncaapublications.com/productdownloads/WR19.pdf> [hereinafter NCAA WRESTLING RULES 2017-2019] (providing weight classes in (in pounds) 125, 133, 141, 149, 157, 165, 174, 184, 197, and Heavyweight (183-285)). In addition to dual meets involving two teams, there are also "multiple duals" (duals between multiple teams on the same date of competition), and dual "team-advance" tournaments (in which teams compete against other teams in single elimination format to determine a championship team). NAT'L COLLEGIATE ATHLETIC ASS'N, WRESTLING 2015-16 AND 2106-17 RULES AND INTERPRETATIONS R. 1.2 (2015), <http://www.ncaapublications.com/productdownloads/WR17.pdf> [hereinafter NCAA WRESTLING RULES 2015-2017]. There are also tournaments in which wrestlers from multiple teams compete in a bracket competition format, resulting in individual champions in the ten weight classes, and a team champion, determined by points awarded to teams whose wrestlers advance. See NCAA WRESTLING RULES 2017-2019, *supra*, R. 3, § 23. The NCAA annual national championship tournament held at the end of the season in March operates in this format. See generally Roger

awarded to an individual wrestler for various offensive and defensive maneuvers,³⁵ as well as for penalties, technical violations, and warnings against the opponent.³⁶ Each regulation bout lasts three periods – the first period of three minutes, and the second and third of two minutes each.³⁷ A match may end before the end of the third period, as a result of a “fall,”³⁸ “technical fall,”³⁹ forfeit,⁴⁰ default,⁴¹ or disqualification.⁴² Where the score is tied at the end of the three regulation periods, the rules provide for overtime to break the tie, a one-minute “sudden victory” period, at the end of which, if still tied, two thirty-second “tiebreaker” periods follow.⁴³ (This was not always so. In previous years, individual bouts could end in a tie; the rules were amended to break ties.⁴⁴) After the match in each weight class is concluded, team points are awarded to the team of the winning individual wrestler, with the number of points depending on the result of the match.⁴⁵ After the tenth and final match, each team’s total points are added to determine the winner of the dual meet. Though not common, there are sometimes ties in the team points at the end of the dual.⁴⁶

Moore, *Division I Wrestling: Penn State, Dieringer Highlight Final Day of NCAAs at MSG*, NCAA (Mar. 20, 2016, 11:44 EDT), <http://www.ncaa.com/news/wrestling/article/2016-03-20/division-i-wrestling-penn-state-dieringer-highlight-final-day> (and links therein, for brackets and team scores).

35. NCAA WRESTLING RULES 2017-2019, *supra* note 34, R. 4, §§ 2-6.

36. *Id.* R. 5.

37. *Id.* R. 3, § 3.

38. “A fall occurs when any part of both shoulders or part of both scapulae of either wrestler is held in contact with the mat for one second.” *Id.* R. 2, § 3, art. 1.

39. “A technical fall . . . occurs when a wrestler has earned a 15-point advantage over the opponent.” *Id.* R. 2, § 3, art. 6.

40. “A forfeit is received by a wrestler when the opponent, for any reason, fails to appear for the match.” *Id.* R. 2, § 3, art. 11.

41. “A default is awarded in a match when one of the wrestlers is unable to continue due to an injury or by choice of their coach.” *Id.* R. 2, § 3, art. 9.

42. “A disqualification is a situation in which a competitor is banned from participation from further competition.” *Id.* R. 2, § 3, art. 10.

43. *Id.* R. 3, § 16. If there is still a tie at the end of the second tiebreaker, the wrestlers continue. *Id.* R. 3, § 17.

44. Email from Timothy Shiels, NCAA Coordinator of Wrestling Officials, to author (Aug. 9, 2017, 11:18 CST) (on file with author).

45. Six team points are awarded for a fall, default, forfeit or disqualification; five points for a “technical fall” (when a wrestler earns a fifteen-point advantage); four team points for a “major decision” (when the margin of victory is eight through fourteen points); and three team points for a “decision” (when the margin of victory is fewer than eight points). NCAA WRESTLING RULES 2017-2019, *supra* note 34, R. 4, § 7, arts. 1-4.

46. See Interview with Brian Q. Smith, Wrestling Head Coach, University of Missouri, in Columbia, Mo. (Aug. 15, 2016). Smith was president of the National Wrestling Coaches Association from 2010 to 2012. In his coaching career of more than twenty-five years, Smith recalls only a handful of ties in dual meets.

Due to a rule change in July 2011, ten months before Deford's pronouncement, intercollegiate wrestling joined the list of sports stateside where a contest, specifically, a dual meet, must declare a winner.⁴⁷ Previously, the rules provided that "[i]n regular-season dual meet competition, team ties shall not be broken."⁴⁸ As one coach explained simply, after a dual meet in which his team was declared the winner by way of the new tiebreaker rules, "[T]here should be a winner[.] There shouldn't be ties."⁴⁹ The tiebreaker rules of wrestling are selected for discussion here, because they provide in one setting rules that have a decisive impact, are sometimes obscure and confusing, require interpretation, and are amended after an incident when the rules were applied in a situation that seemed unlikely to occur.

The dual between the University of Iowa Hawkeyes and the Oklahoma State University Cowboys on January 7, 2012, provides a backdrop for an application of the tiebreaker rules. The dual featured the two most storied programs in intercollegiate wrestling, and the top two ranked teams in the country at the time.⁵⁰ There was additional significance to the meet. If Iowa could win this dual, it would set a new national record for the longest streak of consecutive unbeaten dual meets.⁵¹ After the tenth and final individual bout, the team score was a *tie* – 16-16.⁵² It was, by all indications, an evenly contested match, perhaps worthy of a draw in the noblest sense. But

47. See NAT'L COLLEGE ATHLETIC ASS'N, WRESTLING 2011-12 AND 2012-13 RULES AND INTERPRETATIONS R. 3.15 (2011), <http://www.ncaapublications.com/productdownloads/WR13.pdf> [hereinafter NCAA WRESTLING RULES 2011-2013]; Seth Roberts, *New Tiebreaker Rules Hand Iowa Wrestling Its First Loss Since 2008*, DAILY IOWAN (Jan. 7, 2012) (on file with author).

48. NAT'L COLLEGIATE ATHLETIC ASS'N, WRESTLING 2010 AND 2011 RULES AND INTERPRETATIONS R. 3.12 (2009), <http://www.ncaapublications.com/productdownloads/WR11.pdf> [hereinafter NCAA WRESTLING RULES 2009-2011].

49. Hawkeye Insider, *Post Iowa/Okie State: John Smith*, YOUTUBE, (Jan. 7, 2012), <https://www.youtube.com/watch?v=MYOfWdu7SNo>; Roberts, *supra* note 47.

50. Up to that season, the two teams had claimed between them fifty-seven (out of eighty-six) national team championships. *Wrestling Championship History*, NCAA, <http://www.ncaa.com/history/wrestling/d1> (last visited Sept. 8, 2017). The Hawkeyes were national champions in twenty-three seasons; the Cowboys were the top team in thirty-four. One of Oklahoma State's championships was a tie with Iowa State University, in 1934. *Id.*

51. Iowa began its eighty-four dual unbeaten streak on January 12, 2008, with a victory over Cornell University, after losing its previous dual one week before against – Oklahoma State. See 2007-08 *Wrestling Schedule*, IOWA HAWKEYES, <http://www.hawkeyesports.com/schedule.aspx?sched=239> (last visited Sept. 8, 2017); see also *Cowboys Edge No. 1 Iowa, End Hawkeyes' Unbeaten Streak at 84*, OKLA. STATE UNIV. (Jan. 7, 2012), http://okstate.com/news/2012/1/7/Cowboys_Edge_No_1_Iowa_End_Hawkeyes_Unbeaten_Streak_at_84.aspx?path=wrestling; *Tie Goes to the Cowboys*, IOWA HAWKEYES (Jan. 7, 2012), http://www.hawkeyesports.com/news/2012/1/7/Tie_Goes_to_the_Cowboys.aspx?path=wrestling.

52. See *Cowboys Edge No. 1 Iowa*, *supra* note 51; *Tie Goes to the Cowboys*, *supra* note 51.

tiebreaker rules were in place to determine a winner. The rules then in effect provided:

When two teams finish in a tie in a dual meet or a team-advancement tournament, the following criteria shall be applied to determine a winner:

3.15.1 Greater number of victories [of the ten bouts].

....

3.15.2 Combined total of falls and technical falls.

3.15.3 Total match points.

....

One team point shall be awarded to the team winning by criteria. The method of recording the score in breaking team ties shall be the score followed by the criterion number that broke the tie (for example, Team A 17, Team B 16, criterion 3.15.1[.]).⁵³

Note that the wrestling rules did not (and still do not) provide for a breaking of the tie by continued play, that is, *further* wrestling; instead, the tiebreaker is on specified “criteria” – determinants or indicators of already performed activity on the field of play, the mat.⁵⁴

For the Iowa-Oklahoma State dual, the first criterion did not break the tie, as each side recorded five victories – the Cowboys at 149, 157, 174, 197, and Heavyweight, and the Hawkeyes at 125, 133, 141, 165, and 184.⁵⁵ (For the record, the matches at 133 and 174 were decided in overtime.⁵⁶) Nor did the second criterion, since each team had an equal number of falls and technical falls – zero.⁵⁷ The match was ultimately decided on the third criterion, “[t]otal match points,” which refers to the total number of points scored by all of the individual wrestlers per each team.⁵⁸ Oklahoma State’s ten wrestlers recorded fifty-four points, to Iowa’s fifty-one.⁵⁹ Thus, the

53. NCAA WRESTLING RULES 2011-2013, *supra* note 47, R. 3.15. The tiebreaker rules have since been revised, with more criteria added. See *infra* text accompanying notes 73-77.

54. One coach prefers the continued action to break the tie, over criteria: “I’d rather wrestle for it. . . . Line ten guys up, one minute each guy, and takedowns. Something. . . . I tried to actually push that last year [2011]” *Post Iowa/Okie State: John Smith*, *supra* note 49. See Roberts, *supra* note 47. The rules committee did discuss the possibility of continued wrestling, but ultimately rejected it. Telephone Interview with Ron Beaschler, Secretary-Rules Editor, NCAA Wrestling Rules Committee, 2011 to 2015, and Head Wrestling Coach, Ohio N. Univ. (Aug. 15, 2016). Additional wrestling after the tenth match to break the tie in team points would sometimes entail requiring wrestlers to return to the mat, in some cases, an hour or more after their individual bouts have concluded.

55. See *Cowboys Edge No. 1 Iowa*, *supra* note 51; *Tie Goes to the Cowboys*, *supra* note 51.

56. See *Cowboys Edge No. 1 Iowa*, *supra* note 51; *Tie Goes to the Cowboys*, *supra* note 51.

57. See *Cowboys Edge No. 1 Iowa*, *supra* note 51; *Tie Goes to the Cowboys*, *supra* note 51.

58. See *Cowboys Edge No. 1 Iowa*, *supra* note 51; *Tie Goes to the Cowboys*, *supra* note 51.

59. See *Cowboys Edge No. 1 Iowa*, *supra* note 51; *Tie Goes to the Cowboys*, *supra* note 51.

Cowboys were awarded an extra point on the third criterion, and the final team score was Oklahoma State 17, Iowa 16.⁶⁰

As to the longest consecutive unbeaten streak in intercollegiate wrestling, the record books would indicate, poetically enough, a tie – between Iowa, whose streak ended on that date, and Oklahoma State, which not only ended Iowa’s streak but also had previously set its own eighty-four dual meet unbeaten streak, from 1959 to 1966.⁶¹ There was an artificial quality to the distinction of the record. The official result of the dual, and the end to Iowa’s unbeaten streak, was ultimately shaped by the rules. Per the title of the *Daily Iowan* article reporting the event, it was the “[n]ew tiebreaker rules” that “hand[ed] Iowa . . . its first loss since 2008.”⁶² Had the previous rule been in effect for the Iowa-Oklahoma State dual in 2012, the dual would have ended in a tie, and the Hawkeyes’ streak would have continued. Note that in the season before, on January 16, 2011, in the middle of Iowa’s streak, ties were allowed under the rules, when Iowa also faced Oklahoma State after having won sixty-nine consecutive dual meets.⁶³ That meet also ended in a tie (15-15), but with no tiebreaker rules, the official result was a tie, and Iowa’s unbeaten streak was intact.⁶⁴ The Hawkeyes’ string continued as an *unbeaten* streak, in contrast to an undefeated and untied streak. The rules had much to say about the record for the streak and the specific nature of the streak.

When a wrestling dual ends in a tie and the tiebreaker rules must be applied to determine the victor decided by criteria, there is often confusion among fans, the media, and even coaches and officials.⁶⁵ The uncertainty

60. See *Cowboys Edge No. 1 Iowa*, *supra* note 51; *Tie Goes to the Cowboys*, *supra* note 51.

61. See *Cowboys Edge No. 1 Iowa*, *supra* note 51.

62. Roberts, *supra* note 47. The report added: “Iowa will remain *tied* with Oklahoma State for the longest undefeated streak in NCAA wrestling history – which is funny, because new rules implemented this year meant the Hawkeyes *couldn’t* remain tied with the Cowboys at the end of 10 individual matches.” *Id.* (emphasis added).

63. See *Cowboys, Hawkeyes Tie, 15-15*, OKSTATE (Jan. 16, 2011), http://www.okstate.com/news/2011/1/16/Cowboys_Hawkeyes_Tie_15_15.aspx?path=wrestling; *Hawkeyes Tie Oklahoma State, 15-15*, IOWA HAWKEYES (Jan. 16, 2011), http://www.hawkeyesports.com/news/2011/1/16/Hawkeyes_Tie_Oklahoma_State_15_15.aspx.

64. See *Cowboys, Hawkeyes Tie, 15-15*, *supra* note 63; *Hawkeyes Tie Oklahoma State, 15-15*, *supra* note 63.

65. One wrestling commentator observed, “[T]he Jan. 7 Oklahoma State and Iowa slugfest in Iowa City sent many scrambling for the new NCAA guidelines. . . . What was the next tiebreaker? Some fans thought near fall points; others takedowns.” Roger Moore, *Getting out the Rulebook: Rules Changes Have Fans and Some Officials Scratching Heads*, NCAA (Jan. 26, 2012), <http://www.ncaa.com/news/wrestling/article/2012-01-26/getting-out-rulebook>.

One week after the Iowa-Oklahoma State contest, the dual between Cornell University and Binghamton University also ended in a tie, 21-21, and was also decided on the third criterion, with Cornell prevailing. See *No. 5 Wrestling Wins 22-21 Nail Biter Over No. 24 Binghamton*, CORNELLBIGRED.COM (Jan. 15, 2012),

over the applicable criteria was on full display in the press conference after the Iowa-Oklahoma State dual where Iowa's coach Tom Brands met with the media:

- Brands: The criteria – I had actually thought it was a different criteria. I thought they would win on three-point near fall.⁶⁶ . . . I'm a little bit off on the criteria.
-
- I didn't even realize that it would come down to the third criteria. I thought – I thought the early criteria was three-point near fall. If somebody could check your stats quick and you know, the rulebook. Anybody got a rulebook?
- Reporter: What we were looking up was that the match points came before near fall We were scrambling⁶⁷

The reporter's statement was inaccurate, as later corrected (by the same or another reporter) during the press conference.⁶⁸ The criterion of near fall points (either two or three points) was not included in the tiebreaker rules at

http://cornellbigred.com/news/2012/1/15/WREST_0115121447.aspx?path=wrest. Binghamton coach Pat Popolizio said:

There was a lot of confusion. I got a couple of calls from some people later that night telling me they thought we won the dual; that I should go back and look at some things. The rules don't make it so easy and the officials didn't seem too sure of things.

They are going to have some stuff to talk about when the season is over.

Moore, *Getting out the Rulebook*, *supra*.

There was also confusion after a televised dual meet between Missouri and Ohio State on December 14, 2014, when there was a public announcement that the Buckeyes had won the meet, only to be corrected after a calculation of the applicable criterion. See *infra* note 98.

66. "Near fall" points were described as follows in the rules then in effect:

Two-point Near Fall. A near fall is a position in which the offensive wrestler has the opponent in a controlled pinning situation in which (1) the defensive wrestler is held in a high bridge or on both elbows, or (2) any part of one shoulder or scapula, or the head is touching the mat and the other shoulder or scapula is held at an angle of 45 degrees or less to the mat, or (3) any part of both shoulders or both scapulae are held within four inches of the mat. Two points shall be awarded for such near-fall situations when one of these three criteria has been met for two seconds. . . . In any pinning situation, a near fall may occur if any part of the defensive wrestler's pinning area remains in bounds. . . . A continuous roll-through is not to be considered a near fall.

. . . *Three-point Near Fall.* If a criterion for a near fall is met and held uninterrupted for five seconds, three points shall be awarded.

NCAA WRESTLING RULES 2011-2013, *supra* note 47, R. 2.9.1, 2.9.2. Oklahoma State's Heavyweight wrestler scored three near fall points in his match; Iowa's 141-pound wrestler scored two near fall points. See *Cowboys Edge No. 1 Iowa*, *supra* note 51.

67. HawkeyeInsider, *Post Iowa/Okie State: Tom Brands*, YOUTUBE (Jan. 7, 2012), <http://www.youtube.com/watch?v=W2HytOVypvc>.

68. Later in the press conference, a voice from the audience is heard saying, "Just to clarify for everybody. The first criteria was the number of matches won by each team. The second criteria was the number of either falls or tech fall. Third criteria is match points." *Id.*

the time.⁶⁹ It was part of the tiebreaking criteria for the previous year's rules⁷⁰ – which applied to dual advance tournaments only – and was not returned to the list of criteria until 2015.⁷¹ In tabular form, below are the criteria for breaking ties for dual meets in the current and previous four rulebooks, with the near fall points and match points criteria **highlighted**, and the revisions of the previous versions also indicated:⁷²

69. See NCAA WRESTLING RULES 2011-2013, *supra* note 47, R. 3.15.

70. NCAA WRESTLING RULES 2009-2011, *supra* note 48, R. 3.12.7.

71. NCAA WRESTLING RULES 2015-2017, *supra* note 34, R. 3.15.4.

72. Revisions from the 2011-2013 to 2013-2015 rulebooks and from the 2013-2015 to 2015-2017 rulebooks are indicated, with subtractions (as seen in the next version) and additions (to the previous) as indicated. The tiebreaker criteria in the 2017-2019 rulebook are identical to those in the 2015-2017 version, except for the numbering of the individual criteria and a preposition in 3.15.7 (“of”) and g. (“in”).

2009-2011 ⁷³ [for dual advance tournaments only]	2011-2013 ⁷⁴	2013-2015 ⁷⁵	2015-2017 ⁷⁶ /2017-2019 ⁷⁷
3.12.1 Greater number of victories. 3.12.2 Greater number of six-point victories (including falls, forfeits, defaults and disqualifications). 3.12.3 Greater number of five-point technical falls. 3.12.4 Greater number of four-point technical falls. 3.12.5 Greater number of major decisions. 3.12.6 Fewest number of matches forfeited. 3.12.7 Greater number of total near-fall points earned. . . . 3.12.8 Greater number of takedowns. 3.12.9 Greater number of reversals. 3.12.10 Greater number of escapes. 3.12.11 Greater number of riding-time points. 3.12.12 Greater number of stalling points. 3.12.13 Colored disc toss.	3.15.1 Greater number of victories. <i>Note: Forfeits, defaults and disqualifications count only toward total number of victories.</i> 3.15.2 Combined total of falls and technical falls . 3.15.3 Total match points . 3.15.4 First takedown.	3.15.1 Greater number of victories. <i>Note: Forfeits, defaults and disqualifications count toward total number of victories.</i> 3.15.2 Combined total number of falls, <u>forfeits, defaults and disqualifications</u> . 3.15.3 Total match points scored only from decisions, major decisions and technical falls. 3.15.4 First takedown. 	3.15.1/a. Greater number of victories. <i>Note: Forfeits, defaults and disqualifications count toward total number of victories.</i> 3.15.2/b. Combined total number of falls, forfeits, defaults and disqualifications. 3.15.3/c. Total match points scored only from decisions, major decisions and technical falls. 3.15.4/d. <u>Total near fall points scored only from decisions, major decisions and technical falls</u> 3.15.5/e. <u>Total number of takedowns scored only from decisions, major decisions and technical falls</u> 3.15.6/f. <u>Least number of unsportsmanlike conduct calls</u> . 3.15.7/g. First takedown <u>scored of/in the dual meet</u> .

73. NCAA WRESTLING RULES 2009-2011, *supra* note 48, R. 3.12. For the 2009-2010 and 2010-2011 seasons, the criteria applied only to “dual-meet advance tournament[s].” *Id.* “In regular-season dual-meet competition, team ties shall not be broken.” *Id.*

74. NCAA WRESTLING RULES 2011-2013, *supra* note 47, R. 3.15.

75. NAT’L COLLEGIATE ATHLETIC ASS’N, WRESTLING 2013-14 AND 2014-15 RULES AND INTERPRETATIONS R. 3.15 (2013), <http://www.ncaapublications.com/productdownloads/WR15.pdf> [hereinafter NCAA WRESTLING RULES 2013-2015].

76. NCAA WRESTLING RULES 2015-2017, *supra* note 34, R. 3.15.

77. NCAA WRESTLING RULES 2017-2019, *supra* note 34, R. 3, § 21.

With each revision of the rules, the NCAA Wrestling Rules Committee provides some guidance, noting the fact of the revision and occasionally the reasons (often terse) for some of the revisions. With respect to the rule doing away with ties for non-tournament dual meets effective the 2011-2012 season, the committee stated only that “[t]ies in dual meets have been eliminated”⁷⁸ and that the revision “establishes [the criteria] for dual meets.”⁷⁹ With respect to the revisions of the rules from the 2009-2011 to the 2011-2013 rulebook, the rules committee explained that “the tie-breaking criteria have been simplified.”⁸⁰ Indeed, the revised tiebreaker rules for 2011-2013: reduced the number of criteria from thirteen to four (eliminating the criteria of number of major decisions, matches forfeited, near-fall points, takedowns, reversals, escapes, riding time points, stalling points, and colored disc toss); elevated the technical falls (whether a four- or five-point variety) criterion to the same status as falls; added match points as the new third criterion; and added the first takedown as the fourth and final criterion.⁸¹ The first three criteria in the 2011-2013 rulebook have stayed largely intact in subsequent versions, with minor revisions and clarifications.⁸²

A review of the tiebreaker rules and criteria in intercollegiate wrestling invites questions of why the various criteria, why in the prescribed order, and

78. NCAA WRESTLING RULES 2011-2013, *supra* note 47, at WR-6 (“Major Changes for 2012 and 2013”).

79. *2012 and 2013 Wrestling Major Rules Changes*, at 1, NCAA, http://fs.ncaa.org/Docs/rules/wrestling/2011/Rules_changes_for_2012_%202013.pdf [hereinafter NCAA, *Wrestling Major Rules Changes 2012-2013*].

80. NCAA WRESTLING RULES 2011-2013, *supra* note 47, at WR-6 (“Major Changes for 2012 and 2013”); *see* NCAA, *Wrestling Major Rules Changes 2012-2013*, *supra* note 79, at 1.

81. *Compare* NCAA WRESTLING RULES 2011-2013, *supra* note 47, R. 3.15, *with* NCAA WRESTLING RULES 2009-2011, *supra* note 48, R. 3.12.

82. *See* table *supra* accompanying notes 73-77. The second criterion was revised to include falls, forfeits, defaults, and disqualifications, and eliminated technical falls. The third criterion clarified that match points scored only in decisions, major decisions, and technical falls (and not those ending in falls, defaults, or disqualifications) are considered. NAT’L COLLEGIATE ATHLETIC ASS’N, REPORT OF THE NCAA WRESTLING RULES COMMITTEE APRIL 10-12, 2013 MEETING 4, [https://web.archive.org/web/20151228192947/http://www.ncaa.org/sites/default/files/2013%20Wr%20estling%20Rules%20Committee%20Meeting%20Report%20\(Posted%209%3A12%3A13\).pdf](https://web.archive.org/web/20151228192947/http://www.ncaa.org/sites/default/files/2013%20Wr%20estling%20Rules%20Committee%20Meeting%20Report%20(Posted%209%3A12%3A13).pdf).

After the revision of the tiebreaker rules for the 2011-2013 rulebook, the NCAA reported a survey, at the request of the Wrestling Rules Committee, to obtain feedback from coaches and referees regarding the rule changes. “Approximately 57 percent of all respondents indicated that they were satisfied with Rule 3.15 concerning criteria to break ties when two teams finish in a tie in a dual meet or a team-advancement tournament.” NAT’L COLLEGIATE ATHLETIC ASS’N, 2012-2013 NCAA WRESTLING RULES SURVEY: EXECUTIVE SUMMARY 2, https://web.archive.org/web/20151228192905/https://www.ncaa.org/sites/default/files/RESULTS_Executive%20Summary.pdf. The survey indicated that 18.6% were “Highly Satisfied,” 38.4% “Satisfied,” 33.0% expressed a “Neutral Opinion,” 4.3% “Dissatisfied,” and 1.5% “Highly Dissatisfied.” *Id.* at 6.

why the revisions? Rules should not be arbitrary;⁸³ there should be some reason or rationale consistent with the advancement of the sport. The rulebooks and supporting documents referenced herein do not offer a rationale for the specified criteria, nor their respective placement in the hierarchy. The reasons set forth herein are based on the author's observations of the sport. Working from the current 2017-2019 rules, where the team score is tied, in determining which side is more deserving of victory, the first criterion asks which team recorded more victories of the ten matches.⁸⁴ The basic goal for every wrestler in every match is to win, and this criterion awards the team that has the advantage in the number of victories. The second criterion records the number of falls, defaults, forfeits, and disqualifications – all of which lead to the optimum number of points added to the team score (six). This criterion: awards the team that has the higher number of wrestlers who are able to (a) achieve the ultimate in any wrestling match (the fall),⁸⁵ and (b) wrestle their matches in full (instead of defaulting),⁸⁶ and discourages (x) the team from not sending a wrestler on to the mat for a match (forfeit),⁸⁷ and (y) every wrestler from engaging in any activity that leads to a ban from competition (disqualification).⁸⁸ The third criterion refers to match points, the total number of points scored by all wrestlers of each team in matches that ended in decisions, major decisions, and technical falls (not falls, defaults, or disqualifications⁸⁹). The ultimate achievement in wrestling is to pin the opponent (a fall), but short of that, the goal is to obtain more points than the opponent. The third criterion measures each team's collective ability to score points. As Oklahoma State coach Smith offered, and rationalized his team's tiebreaker victory over Iowa,

83. In this regard, I disagree with Justice Antonin M. Scalia who wrote that all rules in sports are “entirely arbitrary” and “[t]he only support for any of them is tradition and (in more modern times) insistence by what has come to be regarded as the ruling body of the sport.” *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 700, 701 (2001) (Scalia, J., dissenting). For context and further discussion, see Ilhyung Lee, *The Danish Question, the Mailman, and Justice Scalia: Examining the Group Play Tiebreaker Rules*, 27 S. CALIFORNIA INTERDISC. L.J. (forthcoming 2017).

84. This criterion specifies that forfeits, defaults, and disqualifications count in the calculation of the total number of victories. NCAA WRESTLING RULES 2017-2019, *supra* note 34, R. 3, § 21.a (“Note”).

85. See *supra* note 38.

86. See *supra* note 41.

87. See *supra* note 40.

88. See *supra* note 42.

89. This reflects a decision by the governing body that where a bout ends in a fall, default, or disqualification, the manner in which the match ended is definitive and what occurred before (more specifically, the points scored by either wrestler) is irrelevant. Moreover, there may be situations in which the wrestler who defaulted, or was pinned or disqualified might have been leading in points when the bout ended. To include his points would serve no purpose.

“[W]e take pride in scoring points. So, if it comes down to breaking some sort of tie, then the team that scores more points should be the winner.”⁹⁰

The criterion of the first takedown of the match, which appears as the fourth criterion in the 2011-2013 and 2013-2015 rules and the seventh in the 2015-2017 and 2017-2019 versions (and as the final in all of them), deserves separate elaboration. Presumably, this criterion, like the coin toss, is seen as a mechanism that will definitively break the tie, determine a winner, and bring closure, which is the point of tiebreaker rules.⁹¹ Moreover, the first takedown criterion might be favored over the “[c]olored disc toss”⁹² as the final determinant, because the takedown is an actual wrestling activity, in contrast to the game of chance inherent in a coin flip or drawing of lots. Indeed, wrestlers are often coached to get the first takedown in every match,⁹³ and incorporating this maneuver into the tiebreaking rules attaches extra significance to it. The rule encourages aggressive, offensive efforts at the beginning of the dual, which generates fan appeal; that first takedown may also be determinative some two hours later, in the event of a tie.

But note that with the inclusion of the first takedown criterion in 2011, the rules committee chose to place the first takedown – which can happen only once in a dual meet and be achieved by only one wrestler – over a team’s collective number of major decisions, near fall points, takedowns, reversals, escapes, riding time points, and stalling points, all of which are seen in the immediately previous version of the rulebook.⁹⁴ The first takedown criterion as the final criterion also may seem somewhat arbitrary.⁹⁵ Instead of the first takedown of the dual, why not the first takedown of the *last match* (just before which fans and the two teams might more likely contemplate the possibility of a tie in team scores), or the *last* takedown of the dual meet (adding more intrigue and encouraging a flurry of action in the closing seconds)? Moreover, as the rules are currently written, there is the possibility that the

90. Moore, *Getting out the Rulebook*, *supra* note 65.

91. But see the scenario set forth *infra* text accompanying notes 103-07.

92. NCAA WRESTLING RULES 2009-2011, *supra* note 48, R. 3.12.13.

93. See Scott Robertson, *Scoring the First Takedown in Any Wrestling Match a Huge Advantage*, PITT. POST-GAZETTE (Jan. 3, 2008), <http://www.post-gazette.com/sports/hsother/2008/01/03/Scoring-the-first-takedown-in-any-wrestling-match-a-huge-advantage/stories/200801030292>.

94. NCAA WRESTLING RULES 2009-2011, *supra* note 48, R. 3.12.5, 3.12.7, 3.12.8, 3.12.9, 3.12.10, 3.12.11, 3.12.12. These criteria were eliminated for the 2011-2013 rules. NCAA WRESTLING RULES 2011-2013, *supra* note 47, R. 3.15.

95. As one Internet user posted, to an article reporting a dual meet decided by this criterion, see *infra* note 98: “[H]ow does the first takedown of the meet break a tie? They may as well make it the *sixth* takedown of the meet. It signifies no upper hand in any way.” sjv, Comment to *Missouri Wins Wild One over Ohio State*, INTERMATWRESTLE.COM, Dec. 14, 2014, <http://intermatwrestle.com/articles/13743> (emphasis added).

tiebreaking first takedown is recorded by a wrestler who later loses his match by fall or is disqualified.⁹⁶ In my opinion, this is not a result consistent with the spirit of the wrestling tiebreaker rules. To explain, in the calculation of total match points (the third criterion in the current and two previous rulebooks), any points that a wrestler scored in a match in which he loses by fall or disqualification are not included.⁹⁷ Query as to why a takedown in such a match would not be similarly precluded from consideration.

Perhaps the governing body previously determined that although the first takedown criterion is grounded in wrestling, and therefore, defensible, it was unlikely that a dual meet would ever be decided by this criterion. But after it actually happened, at a dual meet during the 2014-2015 season (and confusion reigned),⁹⁸ the rules committee met to discuss and revise the tiebreaker law.⁹⁹ In the next (2015-2017) version of the rulebook, the first takedown is still the final criterion, but appears seventh, with three new

96. The 2011-2013 and 2013-2015 rules refer only to “First takedown.” NCAA WRESTLING RULES 2013-2015, *supra* note 75, R. 3.15.4; NCAA WRESTLING RULES 2011-2013, *supra* note 47, R. 3.15.4. The 2015-2017 version was clarified to read, “First takedown scored of the dual meet.” NCAA WRESTLING RULES 2015-2017, *supra* note 34, R. 3.15.7. It adds no other qualifications. The 2017-2019 version reads, “First takedown scored in the dual meet,” NCAA WRESTLING RULES 2017-2019, *supra* note 34, R. 3, § 21 (emphasis added), and also includes no further conditions.

97. NCAA WRESTLING RULES 2017-2019, *supra* note 34, R. 3, § 21.c; NCAA WRESTLING RULES 2015-2017, *supra* note 34, R. 3.15.3; NCAA WRESTLING RULES 2013-2015, *supra* note 75, R. 3.15.3.

98. At the Missouri v. Ohio State dual on December 14, 2014, televised on BTN, in the tenth and final match, J’Den Cox, the defending national champion at 197 pounds, moved up to the Heavyweight class, and secured a 4-2 decision. With three team points added to Missouri’s score, the team score was a tie, 19-19. The first three criteria were even and not determinative. The meet was decided on the then fourth (and final) criterion, the first takedown, which was recorded at the 125-pound class when Missouri’s Alan Waters recorded the first takedown of his match and the dual. *No. 5 Missouri Edges No. 7 Ohio State, 20-19: Tigers Win Match Based on Tiebreaker Criteria*, OHIOSTATEBUCKEYES.COM (Dec. 14, 2014), <http://www.ohiostatebuckeyes.com/sports/m-wrestl/recaps/121414aaa.html>; *Wrestling Wins a Wild One Over No. 7 Ohio State, 20-19*, MUTIGERS.COM (Dec. 14, 2014), http://www.mutigers.com/news/2014/12/14/Wrestling_Wins_A_Wild_One_Over_No_7_Ohio_State_20_19.aspx?path=wrestling.

There was, however, some confusion before the final official result was recorded. Initially, the officials determined that Ohio State was the winner, based on the third criterion, and there was a public announcement that the Buckeyes won the dual. Missouri’s coaches quickly approached the officials, who re-calculated the total team points, which were determined to be even. Correcting the earlier announcement, Missouri was declared the winner, on the fourth criterion. Interview with Smith, *supra* note 46. It was Ohio State’s second loss of the season by criteria. Three weeks before, the Buckeyes lost to Virginia Tech on the third criterion, total match points. *WR: No. 4 Ohio State Edged by No. 10 Virginia Tech, 19-18*, OHIOSTATEBUCKEYES.COM (Nov. 23, 2014), <http://www.ohiostatebuckeyes.com/sports/m-wrestl/spec-rel/112314aaa.html>.

99. Telephone Interview with Beaschler, *supra* note 54. Beaschler noted that one incident can prompt discussion and sometimes change. *Id.* Regarding the Missouri-Ohio State dual, commentary on social media also brought attention to the tiebreaker rules. *Id.*

criteria, all relating to the collective team's statistics – near fall points, takedowns, unsportsmanlike conduct calls – added above it.¹⁰⁰

The rules committee's description of the revision reads simply: "Adds new criteria and moves first takedown down the list to break a tie."¹⁰¹ Whereas the governing body sought to "simplif[y]"¹⁰² the tiebreaker rules in the 2009-2011 version, the result appears to have been an oversimplification and removal of meaningful criteria from the list. After implementation and application of the rules (albeit in a scenario that is rare), the rules were amended again and some of the old law restored.

As noted above, the final criterion of the first takedown in the dual meet is designed to provide a definitive means to break the tie when the previous criteria do not achieve the result. But query: Is it possible that a dual meet could conclude with no takedowns in any of the ten weight classes? An individual match may end without a takedown, if, for example (i) there are no points scored in the first period, (ii) there is an escape at the beginning of the second period by the wrestler who chooses the defensive starting position, (iii) the same wrestler assumes an offensive starting position at the beginning of the third period and maintains control of his opponent in an advantage position (or captures enough "riding time" before his opponent escapes), resulting in a 2-0 (or 2-1) final score.¹⁰³ Or, after no points in the first period, a wrestler in the defensive starting position at the beginning of the second period scores a reversal and then a fall.¹⁰⁴ Nevertheless, the probability of all ten matches ending without a single takedown is "slim to none,"¹⁰⁵ perhaps the "same odds as winning the lottery."¹⁰⁶ (The probability would increase if there are fewer than ten matches, due to forfeits.) But as one coach

100. See NCAA WRESTLING RULES 2015-2017, *supra* note 34, R. 3.15.4-3.15.7.

101. See NAT'L COLLEGIATE ATHLETIC ASS'N, REPORT OF THE NCAA WRESTLING RULES COMMITTEE APRIL 13-15, 2015 MEETING 2, https://web.archive.org/web/20160409194036/http://www.ncaa.org/sites/default/files/MWR_Rule_s_Committee_Annual_Meeting_Report_041315_041515.pdf; 2015-16 and 2016-17 Wrestling Rules Changes, at 1, NCAA, http://www.ncaa.org/sites/default/files/2015-16_2016-17_Wrestling_Rules_Changes_FINAL.pdf (last visited Nov. 3, 2017).

102. NCAA WRESTLING RULES 2011-2013, *supra* note 47, at WR-6 ("Major Changes for 2012 and 2013"); NCAA, *Wrestling Major Rules Changes 2012-2013*, *supra* note 79, at 1.

103. See NCAA WRESTLING RULES 2017-2019, *supra* note 34, R. 2, § 1, art. 3 (defensive starting position), art. 4 (offensive starting position), R. 4, § 3 (escape), R. 4, § 5, art. 11 (riding time).

104. Missouri wrestler Alan Waters secured a victory in this manner in a dual against Ohio State, on February 22, 2013. *No. 6 Missouri (14-2) vs. No. 5 Ohio State (11-3)*, MUTIGERS.COM, (Feb. 22, 2013), <http://sidearm.sites.s3.amazonaws.com/mutigers.com/documents/2013/2/22/MizzouOSUResults.pdf>.

105. Interview with Beaschler, *supra* note 54.

106. Interview with Smith, *supra* note 46.

acknowledged, “It could happen,”¹⁰⁷ and the current tiebreaker rules would fail in their purpose.

I must leave to others what is more likely to occur: an intercollegiate wrestling dual meet ending in a tie score with none of the criteria breaking the tie (and no takedowns in any of the matches); or two sprinters finishing a 100-meter race in a photo finish tie, to the one-thousandth of a second, confirmed by state of the art technology that captures 3,000 frames per second. The latter did occur, in the 2012 U.S. Olympic Trials.¹⁰⁸ The situation raises challenging questions for the governing body in sport, as well as the legislature of a jurisdiction. In drafting rules and laws, the rulemaking body must consider their application to situations that may arise. But to what extent must the body also address situations that are not likely to occur? And how much of its limited resources should it devote to the question? Such is the arena of rulemaking.

CONCLUSION

This Article introduces interested readers of sport and law to the notion of a cultural aversion to ties in sporting contests and elaborates on one sport’s rules to break ties, seemingly, at all costs. If indeed there is an American desire for a victory and loss after every contest – in contrast to a tie and co-winners – it may “suggest[] something overly binary in our cultural mindset.”¹⁰⁹ The laws of intercollegiate wrestling appear to reflect this mindset, and deserve examination. Wrestling’s tiebreaker rules, their vetting, application, interpretation, and sometimes revision shed light on the legislative process of rulemaking and the culture of the jurisdictional mat.

107. Interview with Beaschler, *supra* note 54.

108. See Sam Borden, *A Photo Finish Too Close To Call, Even by Camera*, N.Y. TIMES (June 24, 2012), <http://www.nytimes.com/2012/06/25/sports/olympics/2012-olympics-allyson-felix-and-jeneba-tarmoh-100-meter.html>; Sam Borden, *When a Dead Heat Is More Than a Photo Finish*, N.Y. TIMES (June 24, 2012), http://london2012.blogs.nytimes.com/2012/06/24/when-a-dead-heat-is-more-than-a-photo-finish/?_r=0.

109. Jacobs, *supra* note 12.