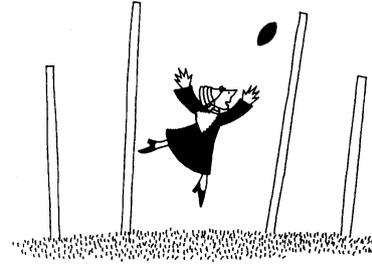


# SPORT AND THE LAW

## The authentic referee

JONATHAN CROWE



The recent FIFA World Cup in South Africa brought plenty of drama, but also the usual complaints about the standard of refereeing. Two incidents, in particular, attracted the ire of fans and players. The first came when a shot by Frank Lampard rebounded downwards off the crossbar during England's second round match against Germany. The referee failed to award England a goal, despite the ball appearing to land well inside the goal line.

The second incident occurred during the second round match between Argentina and Mexico, when a goal by Argentina's Carlos Tevez was allowed to stand, even though Tevez was clearly offside. Australian fans, meanwhile, continue to lament the questionable decisions that saw star players Tim Cahill and Harry Kewell shown red cards in successive fixtures, effectively ruining their team's chances of making the second round.

### The moment of decision

It's hard for fans not to feel outraged by these types of controversial decisions. They might spare a thought, however, for the person who bears responsibility for making them. It's lonely out there in the middle. No matter how much unsolicited advice the ref may get from the sidelines, in the moment of decision they are on their own.

The referee is constantly called on to make choices that can fundamentally alter the course of a match. The stakes are often high: teams may be crowned champions or eliminated from the tournament as a result of a single call. When the ball hits a player's arm in the penalty box (as happened to Kewell in the World Cup game against Ghana), the ref is the only one with the power to stop the game. The assistant referee may flag, the players may appeal and the crowd may roar, but ultimately everything depends on the referee. This is the moment of decision, when the fate of the game rests squarely on the ref's shoulders.

The challenging nature of the referee's role is aptly drawn out by the ideas of the existentialist philosopher Jean-Paul Sartre. The moment of decision plays a central role in Sartre's philosophy. Indeed, he presents it as the defining feature of human experience. Sartre draws a distinction between two basic modes of existence: being-in-itself [*l'être-en-soi*] and being-for-itself [*l'être-pour-soi*]. The being-in-itself is a non-conscious object, which can be encapsulated by reference to a pre-determined function. The being-for-

itself, by contrast, is a conscious agent able to perceive and reflect upon the world around themselves.

Sartre suggests that, far from possessing a pre-determined essence, the being-for-itself is permanently haunted by the possibility of 'nothingness' or negation. In other words, the being-for-itself is forced to continually confront the possibility that things might be otherwise than they are. In our everyday lives, Sartre contends, we are constantly engaged in enquiries about the world around us: questions ranging from whether there is a God to where we put the car keys all place certain aspects of our existence into question.

Since any question we might pose raises the possibility of a negative response, it seems to us that our place in the world is not necessary, but contingent. According to Sartre, this sense of contingency pervades the human experience of choice. However sure we may be that a particular decision was the right one, we are nonetheless aware that other choices were possible. Since every course we follow is pregnant with alternative paths we might have taken, it seems that we cannot avoid accepting ultimate responsibility for our decisions.

Sartre argues that this sense of inescapable responsibility tends to give rise to anguish. Imagine that you are walking along a narrow mountain trail. You are constantly aware of the importance of treading carefully, so as not to lose your footing. At the same time, however, you are also aware that, despite your present care and attention, you could just as easily throw yourself over the precipice.<sup>1</sup> Sartre points out that human existence is full of such potentially life-altering moments. The everyday actions of driving a car or having a conversation could be altered irrevocably by one decision: in the space of a moment, you could easily steer your car into incoming traffic or make a callous comment that would alienate a loved one forever.

For Sartre, then, human life involves an unavoidable double realisation. In the first place, the alternative possibilities present in my experience of choice reveal to me that I am free. At the same time, however, I am also aware that I am responsible, since I am confronted with the apparent absence of constraints on potential exercises of my freedom. Whether I walk calmly along the ledge or hurl myself into the abyss, the decision rests with me alone.

#### REFERENCES

1. Jean-Paul Sartre, *Being and Nothingness* (1958) 29–32.

## The anguish of the referee

What does all this have to do with the referee? Let us return to the moment of decision. The ball strikes a player's arm in the penalty area. The referee must decide whether or not to call the foul. In this moment, the referee is both free and responsible: nobody can tell them what decision to make and responsibility for the outcome rests with them alone. This position of power naturally gives rise to anguish, in precisely Sartre's sense of the term.

Sartre argues that, in order to lead an authentic existence, humans must embrace the simultaneous sense of freedom and responsibility that lies at the heart of their lives. They must acknowledge that the type of person they become, rather than simply being dictated by external forces, is a function of the life they decide to lead. For the being-for-itself, as Sartre famously puts it, 'existence precedes essence'.<sup>2</sup> We are not born honest, cowardly, loyal, or untrustworthy. These types of traits are, and can only be, a function of the way we choose to live.

The task of living an authentic life is a challenging one. It is tempting to shirk personal responsibility for our choices, attributing them instead to hardwired aspects of our character or overwhelming external forces. However, Sartre depicts such attitudes as forms of bad faith [*mauvaise foi*]. Our existential freedom confronts us in literally every aspect of our existence. Any attempt to deny our capacity to shape certain aspects of our lives through our choices is therefore a form of self-deception, 'a lie to oneself'.<sup>3</sup>

Many referees have lain awake at night picturing what unfolded on the field, wondering if they made the right decision. Sometimes, the answer will be clear enough. Often, however, no amount of effort in trying to recall the events of the game will show definitively what the outcome should have been. This type of situation underlines the contingency of the referee's role: often, there is no reference point that can reveal a decision as definitively right or wrong.

Different referees deal with the contingency of their decisions in different ways. Some are sticklers: they hide behind the rules of the game, sticking strictly to the letter of the law, regardless of the context. This approach to refereeing brings to mind Sartre's criticisms of conceptions of morality that equate virtuous action with sticking to a rigid code. The problem with this type of outlook is that it encourages people to avoid taking responsibility for their actions. People rely on the code

to tell them what to do, instead of confronting each situation on its merits.

Sartre illustrates this problem through the story of a student who approached him for advice.<sup>4</sup> The student was trying to choose between joining the Free French Forces in England and staying in France to care for his ageing mother. He found each option morally attractive, but for different reasons. Leaving for England would enable him to defend his country and his ideals, but looking after his mother was important to him on a more personal level.

After considering the student's situation, Sartre responded with what must have seemed a very unhelpful suggestion: 'You are free, so choose.' His point was not that there can never be a correct answer to this type of existential question, but rather that in this case the student could not resolve his dilemma by reference to some abstract formula. Rather, he faced a competition between two dearly held ideals: the only way to confront the situation was to make a choice and accept responsibility for the outcome.

## Calling balls and strikes

Sartre observes that when people ask for advice on a difficult moral decision, they have often already made up their minds on what to do. He suspects the student described above had already made his choice, but wanted to lessen his personal guilt by getting his professor's endorsement. If the student had wanted to stay with his mother, Sartre remarks, he would have sought advice from someone like a conservative priest.

A similar point applies to the stickler. The fact that the stickler applies the rules of the game does not excuse them from making a decision. The laws of football are vague: they need someone to interpret and apply them. According to Law 12, for instance, acts such as pushing are to be penalised if the referee considers them 'careless, reckless or using excessive force'. This sort of standard is inherently open to interpretation. The stickler exercises as much discretion as any other referee, but tries to disguise it by citing the rules.

There are clear parallels in this regard between the role of the referee and the task of the judge. Chief Justice John Roberts of the United States Supreme Court famously claimed at his confirmation hearings in 2005 that the role of the judge is to 'call balls and strikes' like a baseball umpire, applying the legal rules rather than actively shaping them. This view brought a sharp response from the most recent prospective Supreme

2. Jean-Paul Sartre, *Existentialism and Humanism* (1948) 26.

3. Sartre, above n 1, 48.

4. Sartre, above n 2, 35–38.



Court justice, Solicitor General Elena Kagan, at her own confirmation hearings in June. The problem with the metaphor, according to Kagan, is that it makes law seem like a 'robotic enterprise', where no judgment or discretion is required.

As Kagan recognises, Roberts' statement is a mere caricature of the judicial role. However, it fares little better as an account of refereeing. Both judges and referees bear personal responsibility for how they discharge their tasks; no matter how clear or ambiguous the rules might be, in the end it is they who must decide. What, then, is the ideal style of refereeing, which avoids the sorts of existential traps that Sartre warns us to avoid?

It is often said that the best referees are the ones who do their job without interrupting the natural flow of the game. This suggests an ideal of the authentic referee, who accepts responsibility for their decisions, without denying the contingency of their position. The authentic referee is confident enough to admit that there is often more than one possible view of an incident and others may have made a different call. In the end, though, it is their responsibility to control the match; they confront this squarely when a decision is required.

The authentic referee is decisive, but does not pretend their decision is set in stone and no other perspectives are possible. They call it as they see it, doing their best to make the correct decision and taking the time, if necessary, to explain their reasons. They know they will not always get it right. Nonetheless, they take responsibility for their call, saying: this is what I have chosen. Judges, as well as referees, could do worse than bear this ideal in mind.

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