

# The Washington Post

## Justice, Ferguson MO, and the NFL

By [David Post](#)

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I read Dickens' *Bleak House* for the first time this past year, with its brilliant and often terrifying descriptions of what was, at the time, a truly rotten and squalid legal system – and Dickens is good enough so you can almost smell it decaying on the page. [The first chapter alone is required reading if you're interested in law or lawyering or the legal system; if the actual system was anything like Dickens' depiction of it, it was monstrous]. It has made me wonder a bit about how one recognizes legal systems that are in some sort of terminal decline.

It does seem to me like there's a great deal of disgust out there about our law and our legal system and our lawyers – much of it well-earned, for which the legal profession itself ( yes, including law professors) bears some not-inconsiderable responsibility, though that's a separate issue – and I wonder if there isn't some tipping point which helps push the edifice crashing down. I wasn't even thinking about the events in Ferguson and now New York, though they've generated plenty of disgust. I was actually thinking about the NFL.

The public clamor for the NFL to “do more” when confronted by evidence of serious wrongdoing in the cases of Ray Rice, Adrian Peterson, Greg Hardy, and an unfortunately large number of other cases strikes me as very troubling, and reflective of this view, apparently pretty widespread, that we can't count on the legal system to mete out appropriate punishment in a reasonable way. We have a criminal law, one would think, to define behavior that we cannot accept as a society, and to identify and punish those who violate those norms. Many people, though, seem to want the NFL, and/or the individual NFL teams, to take over that function. It's a kind of privatization of a public function, and, extended more broadly, its costs might be much higher than we think. Do we really think it would be a such a good idea if Microsoft, say, or General Electric, or Wal-Mart, or Amazon, or other large private employers started instituting “codes of conduct” governing employee behavior outside of work time? And if they started firing people because they received a video showing them behaving unlawfully, even heinously? And let's see, whose interests do we think the NFL's process for determining punishment is going to serve – the public's? Or the NFL's?

I understand that perhaps the NFL is a special case, because it is in the entertainment business, and has to be particularly sensitive to public opinion and to be sure that its product meets with the public's approval, so it needs to take the law into its own hands for reasons not applicable to other private firms. Perhaps. But the underlying principle, and the move from public to private justice, still seems wrong to me.

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