

# SWINGING FOR THE FENCE: A CALL FOR INSTITUTIONAL REFORM AS DOMINICAN BOYS RISK THEIR FUTURES FOR A CHANCE IN MAJOR LEAGUE BASEBALL

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You drive around and look at local ballfields in this country and you'll find they are empty. . . . That's what I love about going to Latin American countries, places like the Dominican Republic. It's like going back in time, the way it was here in the 1940s, '50s, and '60s. You see kids playing everywhere, with taped-up balls, taped-up bats, whatever they've got to do to play. That's why the search for talent is expanding world-wide.<sup>1</sup>

## 1. INTRODUCTION

Baseball reflects the social, economic, and political developments of its own environment. Like many industries, the business of American baseball has been directly affected by the globalization of the world's economies.<sup>2</sup> In the early 1900s, sports entrepreneur A.G. Spaulding addressed baseball's involvement in interna-

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<sup>1</sup> Arturo Marciano & David P. Fidler, *The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent*, 6 IND. J. GLOBAL LEGAL STUD. 511, 530 (1999), in John Harper, *The International Pastime*, N.Y. DAILY NEWS, Mar. 27, 1997, at 16.

<sup>2</sup> More than twenty-five percent of major league players are from Latin America, and more than half of those are from the Dominican Republic ("D.R."). MARCOS BRETÓN & JOSÉ LUIS VILLEGAS, *AWAY GAMES* 36 (1999).

tional politics when he declared that the sport should “follow the flag” as the United States sought to flex its political and military muscle around the world.<sup>3</sup> In many ways, baseball did just that; as a result, the sport has become part of a wide range of diverse cultures.<sup>4</sup> In today’s global economy, the teams of Major League Baseball (“MLB”) benefit from recruiting efforts in countries around the world, including Korea, Japan, Spain, Belgium, the Philippines, Mexico, and Venezuela.<sup>5</sup> But nowhere has the farming of players been as intense as in the small Caribbean nation of the Dominican Republic (“D.R.”).<sup>6</sup>

In recent years, the presence of Latino, and especially Dominican, ballplayers in MLB has exploded. Players like Sammy Sosa and Vladamir Guerrero<sup>7</sup> broke away from childhood poverty to make millions through success in MLB. These players are heroes in their hometowns and entire Dominican communities continue to benefit from their altruism, made possible by large salaries from MLB teams.<sup>8</sup> But for every Sosa, there are thousands who never make it, thousands who sacrifice much and gain little. According to players’ advocates, those players become the unfortunate victims of a system that exploits Dominican boys to serve as a source of cheap labor for MLB.<sup>9</sup> This Comment explores both the benefits and the negative effects of MLB’s recruitment of Dominican players and suggests institutional changes to address these problems.

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<sup>3</sup> ALAN M. KLEIN, *SUGARBALL* 15 (1991); Donald Roden, *Baseball and the Quest for National Dignity in Meiji Japan*, 85 AM. HIST. REV. 511, 534 (1980).

<sup>4</sup> Peter Gammons, *International Pastime: Tapping Foreign Markets and Talent Does America’s Game a World of Good*, BOSTON GLOBE, Mar. 27, 1998, at F2.

<sup>5</sup> William B. Gould IV, *Baseball and Globalization: The Game Played and Heard and Watched ‘Round the World (With Apologies to Soccer and Bobby Thomson)*, 8 IND. J. GLOBAL LEGAL STUD. 85, 86-87 (2000).

<sup>6</sup> Many commentators attribute the dominant role of Dominican players over that of other Latin American countries to a variety of factors, including the inaccessibility of Cuban players due to Communism and the Embargo, as well as strict laws protecting against the exploitation of Mexican players. See, e.g., MICHAEL M. OLESAK & MARY ADAMS OLESAK, *BÉISBOL: LATIN AMERICANS AND THE GRAND OLD GAME* 169 (1991).

<sup>7</sup> Luciana Chavez, *A World Away: Baseball Player Vladamir Guerrero Travels Back to Dominican Republic*, SPORTING NEWS, Feb. 19, 2001, available at [http://www.findarticles.com/cf\\_0/m1208/8\\_225/70926949/print.jhtml](http://www.findarticles.com/cf_0/m1208/8_225/70926949/print.jhtml).

<sup>8</sup> SAMUEL O. REGALADO, *VIVA BASEBALL! LATIN MAJOR LEAGUERS AND THEIR SPECIAL HUNGER* 201 (1998).

<sup>9</sup> Telephone Interview with Tony Bernazard, Special Assistant to the Executive Director, Major League Baseball Players Association (Nov. 27, 2002) (transcript on file with Author).

In order to provide a better understanding of how the business of baseball developed as a focal point in Dominican culture, Section 2 of this Comment traces the history of the sport's development in the D.R. alongside the nation's political and economic development, vis-à-vis American influence and intervention. Section 3 examines the role of the baseball academy and presents arguments from the perspectives of both players' advocates and MLB. Section 4 analyzes the economic factors that make the current recruiting system possible. Section 5 explores the legal dilemma Dominican players find themselves in once they are released from their contracts. Section 6 suggests possible institutional reform in order to improve the current recruiting system. Section 7 concludes the Comment.

## 2. THE HISTORY OF BASEBALL IN THE DOMINICAN REPUBLIC

During the 1860s, American troops developed the game of baseball in Cuba. In 1891, the Alomar Brothers, two Cubans working in the D.R., began teaching Dominicans their country's new pastime.<sup>10</sup> Between its introduction to the Dominican people in 1891 and the mid-1920s, Dominican baseball developed within loosely formed leagues with occasional competition among Cuban and Puerto Rican teams.<sup>11</sup> One of the greatest moments of early Dominican baseball was the no-hit shutout against an American Navy team in 1914. This Dominican victory would later become a source of pride for Dominican nationalists when U.S. Marines invaded their homeland in 1916.<sup>12</sup>

While the Marine invasion of 1916 was detrimental to Dominican autonomy and independence, it did have some positive contributions. The occupation served to develop both Dominican patriotism and Dominican baseball, and since that day, the two have continued to develop hand-in-hand.<sup>13</sup> Fierce competitions began on the baseball diamond as Dominicans had the opportunity to redeem themselves and overcome the degrading presence of *Los*

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<sup>10</sup> KLEIN, *supra* note 3, at 16; JOHN KRICH, *EL BÉISBOL: TRAVELS THROUGH THE PAN-AMERICAN PASTIME* 119 (1989).

<sup>11</sup> KLEIN, *supra* note 3, at 17.

<sup>12</sup> *Id.*

<sup>13</sup> Samuel O. Regalado, *Viva Baseball! The Beginnings of Latin American Baseball*, reprinted in *BASEBALL HISTORY FROM OUTSIDE THE LINES* 332 (John E. Dreifort ed., 2001) [hereinafter Dreifort].

*Yanquis*<sup>14</sup> on their homeland. The games were seen as symbolic battles against the Northerners; on the baseball field, Dominicans could beat the Americans at their own game.<sup>15</sup> The years of the occupation led to growth of the game and of a sense of national pride.

During the mid-1920s and 1930s, Dominicans saw tremendous development of the game as leagues became more formalized and business owners began to provide financial sponsorship to teams.<sup>16</sup> However, due to the Dominican economy's strong dependence on American investors that continues to this day, Dominican industries, including the business of baseball, reacted to the fluctuations of the American economy.<sup>17</sup> When the Great Depression hit the United States in 1929, Dominican baseball retracted.<sup>18</sup> While development did continue on the level of small-scale individual series, it was greatly reduced from 1929 to 1935 when the National Championship Series was halted because of economic difficulties.<sup>19</sup>

The relationship between Dominican players and MLB continued to grow through the 1960s and 1970s. By the mid-1970s, the Dominican leagues were recruiting and training players for MLB in the United States. One of the top scouts at the time, Rafael Avila, realized a more holistic approach was needed if players were going to be truly successful in the Major Leagues. Avila tried to convince

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<sup>14</sup> Long before the New York Yankees became heroes in Dominican culture, "Los Yanquis" were the unwanted foreigners whose very presence threatened the vision of nationalists for their country. KLEIN, *supra* note 3, at 13.

<sup>15</sup> ROB RUCK, *THE TROPIC OF BASEBALL: BASEBALL IN THE DOMINICAN REPUBLIC* 26-27 (First Bison Books 1999) (1991). See also Dreifort, *supra* note 13, at 332 (discussing how baseball became a symbol of resistance against the American occupation).

<sup>16</sup> KLEIN, *supra* note 3, at 18.

<sup>17</sup> See *infra* Section 4 (discussing how the Dominican economy's dependence on foreign investment has inhibited independent growth).

<sup>18</sup> KLEIN, *supra* note 3, at 21.

<sup>19</sup> *Id.* During this period, Dominican teams also began to include black players from the American Negro Leagues — players who were denied access to MLB. Unlike its American counterpart, Dominican baseball reflected the racial diversity of its society in general. Opening the Dominican leagues to Black Americans promoted the infiltration of the American pastime into Dominican culture and was an important step in continuing the relationship between U.S. and Dominican baseball. See KRICH, *supra* note 10, at 111 (detailing the relationship between Black Americans and Dominican baseball); MARK RIBOWSKY, *A COMPLETE HISTORY OF THE NEGRO LEAGUES 1884 TO 1955*, 218-19 (1995) (emphasizing the presence of Black Americans in MLB as a key factor in the development of this American sport in the Dominican Republic); RUCK, *supra* note 15, at 33 (comparing American and Dominican baseball's treatment of race during the 1920s and 1930s).

his employer, the Los Angeles Dodgers, that the team's recruiting efforts would benefit from a formalized system where players not only prepared for the physical aspects of the game, but also learned what it would take to succeed both emotionally and culturally in the United States.<sup>20</sup>

After the Dodgers denied Avila's request, Avila independently developed what is now considered to be the first baseball academy in the D.R. Avila and his assistant, Elvio Jiménez, built two dormitories in Jiménez's backyard and paid Jiménez's wife to prepare the players' meals.<sup>21</sup> Avila successfully removed young players from their communities and any other influence that might distract them from their goal of making it to the Major Leagues. By the mid-1980s the Dodgers took notice and decided to formally invest in a true baseball academy. After decades of informal farming of Dominican players for American MLB, the Dodgers created a formalized institution that would serve as a model for other American teams in their quest for young talent.<sup>22</sup>

### 3. THE BASEBALL ACADEMY

#### 3.1. *The Critics' Perspective*

The academy is the baseball counterpart of the colonial outpost, the physical embodiment overseas of the parent franchise. It operates more or less like the subsidiary of any foreign company: it finds raw materials (talented athletes), refines them (trains the athletes), and ships abroad finished products (baseball players).<sup>23</sup>

Similar to the Spaniards and then the Americans who used the D.R. for its sugarcane, and like the foreign investors who continue to use the country's cheap labor to staff textile factories,<sup>24</sup> MLB

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<sup>20</sup> KLEIN, *supra* note 3, at 63-64.

<sup>21</sup> *Id.* at 64-65.

<sup>22</sup> BRETÓN & VILLEGAS, *supra* note 2, at 42-44.

<sup>23</sup> KLEIN, *supra* note 3, at 42.

<sup>24</sup> By 1999, forty-three free trade zones housed 400 factories and employed more than 200,000 people. Similar to the baseball academies, these factories are foreign-owned, over half by U.S. companies. Critics argue that the factories exist to promote foreign interests at the expense of the Dominican population; employ-

found a tremendous opportunity in the talents of young Dominican athletes with dreams of breaking free from the cycle of poverty. In pursuing this resource, the teams of MLB built the physical infrastructures that would serve to process the raw talent before exporting it to the United States. Just as Spanish colonists carved into the Dominican countryside to plant sugarcane, and international textile companies constructed their factories on land that once supported local agriculture, the teams of MLB “plowed amid the island’s sugar-cane plantations, replacing its yield stock with baseball diamonds, batting cages, and pitching mounds—the new growth industry of Latin America.”<sup>25</sup>

Critics claim the academies actively perpetuate the cycle of poverty and poor education in the D.R., while exploiting the country’s difficult economic reality. The major allegations surrounding the academies include scouts’ attempts to hide talent from other teams<sup>26</sup> and abuses of the Seventeen-Year-Old Rule<sup>27</sup> that include lying and falsifying players’ documents.

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ees in the sweatshops work long hours and earn only U.S. \$80 to \$120 per month. Marie Michael, *The Dominican Republic: Latin America’s Latest Economic “Miracle”?*, DOLLARS & SENSE, Mar. 1, 2001, at 35. While the opportunity to bring in a salary, albeit minimal, is arguably a slight improvement to many families’ financial situations, the negative effects of the sweatshops outweigh their benefits. Players’ advocates claim the same is true with baseball. Like young baseball players, teenagers leave school to seek employment in the factories, thereby severely limiting any prospect of upward mobility in Dominican society. See Latin America Financial Publications, Inc., *The Dominican Republic: Outstanding Economic Results*, LATIN FIN., Nov. 1, 2001, at S18 [hereinafter Financial Publications] (proposing that Dominican educational standards are not high enough to attract better foreign investment).

<sup>25</sup> BRETÓN & VILLEGAS, *supra* note 2, at 42.

<sup>26</sup> Ross Newhan & Paul Gutierrez, *Island Fever; Dominican Republic: Beltré Case Wouldn’t Be First Violation of Rules in this Baseball-Mad and Talent-Rich Country*, L.A. TIMES, Dec. 5, 1999, at D1.

<sup>27</sup> The rule provides that a player who is not subject to the draft and who is not under contract with a Major League Baseball team can be signed by any team if ‘(1) he is seventeen years old at the time of signing, or (2) he is sixteen years old at the time of signing and he will turn seventeen prior to the later of (i) the conclusion of the baseball season in which he signed and (ii) September 1 of the year he signs.’

Major League Baseball Rule 3(a)(1)(B) [hereinafter Major League Rule], *quoted in* Angel Vargas, *The Globalization of Baseball: A Latin American Perspective*, 8 IND. J. GLOBAL LEGAL STUD. 21, 26 (2000). See also OLEKSAK & OLEKSAK, *supra* note 6, at 184 (describing a type of recruiting involving an anti-abuse rule that is more nurturing for the boys).

### 3.1.1. *Hidden Talent*

Angel Vargas, General Secretary of the Caribbean Baseball Players Confederation, claims the academies provide MLB with the opportunity to hoard players and hide them from other scouts.<sup>28</sup> Because teams are limited in the number of U.S. visas granted annually, the teams gather the players in the academies,<sup>29</sup> keeping them from other teams that might have available visas and might provide the players an opportunity to advance within the system.<sup>30</sup> The academies thus remove the players from the market, potentially creating situations where the players never sign a contract to play baseball in the United States. Vargas claims it is better for the teams to have players remain in their own academies than on the roster of a potential opponent. But according to players' advocates, this attitude hurts the young players whose talent becomes trapped inside the walls of the academy.

Critics claim that scouts in the D.R. often attempt to penetrate the walls of the academies and steal players from other teams because, until the players actually sign a contract, they are technically still available.<sup>31</sup> Former Dominican Commissioner of Baseball Papi Bisono recounts stories of worried parents reporting the disappearance of their sons. "She'd heard that her son had been taken away by a baseball scout . . . . The scouts who ran them kept the kids hidden: That is the real truth. These camps were hideouts because the scouts didn't want their kids seen by other scouts."<sup>32</sup>

### 3.1.2. *Underage Players*

Players' advocates argue that teams also use the academies to circumvent the Seventeen-Year-Old Rule that places a minimum

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<sup>28</sup> See Newhan & Gutierrez, *supra* note 26, at D1 (explaining that academies can keep players under contract in an academy for up to three years).

<sup>29</sup> See Telephone Interview with Lou Meléndez, Vice-President of Latin American Operations, Major League Baseball (Nov. 2, 2002) (explaining how visas limit the number of Dominican players that MLB can send to the United States) (transcript on file with Author).

<sup>30</sup> Vargas, *supra* note 27, at 28-29.

<sup>31</sup> In the United States, scouts may only pursue players until they have been drafted. In contrast, Dominican players can be recruited up until the moment they sign a contract. BRETÓN & VILLEGAS, *supra* note 2, at 46. *But see infra* Section 3.2.2. (discussing the *buscones* and the academy's one-month limitation on keeping unsigned players).

<sup>32</sup> BRETÓN & VILLEGAS, *supra* note 2, at 47.

age limit on exactly whom may be signed.<sup>33</sup> Many allege that not all players at the academies are actually signed,<sup>34</sup> and that boys between the ages of twelve and sixteen often attend the camps.<sup>35</sup> As Vargas contends, young boys are thrown into the mix and are expected to participate in the curriculum designed for young men who are at least seventeen years of age—a practice that can be physically and emotionally damaging to these children.<sup>36</sup>

Much controversy surrounds the ages of Dominican players. In 1999, MLB fined the Los Angeles Dodgers when MLB discovered that the team had signed Adrian Beltré when he was only fifteen years old. In 1994, Dodger employees at the Las Palmas Academy in the D.R. falsified Beltré's documents in order to obtain certification that the player was within the parameters of the Seventeen-Year-Old Rule.<sup>37</sup> According to MLB Commissioner Bud Selig, Beltré participated in the scheme in order to land a contract and to avoid having to wait another year. While Selig fined the Dodgers \$50,000 and closed the team's Dominican training camp for one year,<sup>38</sup> it seems that many other such violations go unpunished in what critics and defenders alike consider "routine practice" for MLB scouts in the D.R.<sup>39</sup> Dodgers senior vice-president and former manager Tommy Lasorda defended the Dodgers' actions by claiming that they did nothing out of the ordinary. As Lasorda stated, "I'll bet you there's [sic] fifty ballplayers in the major leagues that have signed illegally."<sup>40</sup>

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<sup>33</sup> Vargas, *supra* note 27, at 26; see also OLEKSAK & OLEKSAK, *supra* note 6, at 184 ("In 1984, the major leagues . . . created a 17 year-old age limit on the signing of young [players].").

<sup>34</sup> See Newhan & Gutierrez, *supra* note 26, at D12 (discussing the abuses of the competitive system of signing and drafting young Dominicans and the fact that there are no guarantees of success in MLB).

<sup>35</sup> Vargas, *supra* note 27, at 29.

<sup>36</sup> *Id.*

<sup>37</sup> Associated Press, *Dodgers Fined for Signing Young Beltré* (Dec. 21, 1999) [hereinafter *Young Beltré*], available at <http://espn.go.com/mlb/news/1999/1221/246027.html>; Vargas, *supra* note 27, at 26.

<sup>38</sup> In addition to the fines and closing of the Dodgers' academy, Commissioner Selig imposed sanctions against retired scout Rafael Avila, the same man credited with opening the first-ever baseball academy in the D.R. See *Young Beltré*, *supra* note 37 (stating that Avila, the semi-retired vice president of Campo Las Palmas, was ordered to serve a one-year suspension from baseball).

<sup>39</sup> RIBOWSKY, *supra* note 19, at 208.

<sup>40</sup> Associated Press, *Lasorda Defends Dodgers' Actions* (Dec. 16, 1999) [hereinafter *Lasorda Defends*], available at <http://espn.go.com/mlb/news/1999/1116/174860.html>.



For critics, Lasorda's admission that the Dodgers' signing of Beltré was nothing out of the ordinary simply reinforces the belief that MLB scouts disregard regulations intended to protect minors.<sup>41</sup> The Beltré scenario also indicates MLB's failure to successfully regulate its overseas recruiting<sup>42</sup> and emphasizes a need for further cooperation between MLB and the Dominican Commissioner of Amateur Baseball, as discussed in Section 6 of this Comment.

### 3.1.3. *The "Boatload Mentality"*<sup>43</sup>

MLB's approach to recruiting players in the D.R. is to cast a wide net by signing as many players as possible and holding as many others inside the academies. In the United States, the market itself would regulate such behavior because signing more players than could ever be employed, even in the minor leagues, would be prohibitively expensive.<sup>44</sup> In contrast, teams can sign Dominican players for a fraction of the cost.<sup>45</sup> As some scouts readily admit, the teams prefer to sign twenty Dominicans at \$5,000 apiece, rather than only two Americans at \$50,000 each.<sup>46</sup>

Critics argue that this unabashed behavior by scouts only proves their point: MLB sees these players as commodities and fails to recognize the long-term negative implications that some of their actions might have on the players' lives. Players' advocate Tony Bernazard identifies this mentality as the source of the inequities facing Dominican recruits.<sup>47</sup> According to Bernazard, "Base-

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<sup>41</sup> Telephone Interview with Tony Bernazard, *supra* note 9.

<sup>42</sup> Gammons, *supra* note 4, at F2.

<sup>43</sup> See BRETÓN & VILLEGAS, *supra* note 2, at 38 (citing Colorado Rockies Vice President Dick Balderson's admission that MLB benefits from the "boatload mentality").

<sup>44</sup> Without the Dominican academies, this "boatload mentality" would also be confined by U.S. State Department regulations that limit new visas for minor league players to approximately twenty per team. Telephone Interview with Lou Meléndez, *supra* note 29 (discussing governmental allocations of H2B Visas for minor league players).

<sup>45</sup> Telephone Interview with Tony Bernazard, *supra* note 9 ("They don't have to bring all of those guys over here. They don't have to use all this space for training. Let's filter these guys out and we don't have to use all these visas. Major League Baseball saves money with these academies.").

<sup>46</sup> See BRETÓN & VILLEGAS, *supra* note 2, at 38 (theorizing that big league teams gain more by signing large numbers of players for very little money, so that if some players make it to MLB, teams still make a profit).

<sup>47</sup> Telephone Interview with Tony Bernazard, *supra* note 9.

ball is a business. Baseball cares about, like any other industry, getting the products for less money and developing the products in the cheapest way possible. That is how this Dominican situation has evolved."<sup>48</sup>

### 3.2. *Defending the Academies*

The Author found that no one in MLB denies that the aforementioned violations exist,<sup>49</sup> but while it is easy to blame MLB for the problems, the situation is far more complicated than it initially appears. The business of baseball does not operate in a vacuum. Like all industries, baseball must contend with the social, political, and economic factors within its environment.

#### 3.2.1. *The Benefits*

##### 3.2.1.1. *Player Benefits*

Most of these guys have never had three meals [a day] in their lives and every organization is giving them a chance and an opportunity to be somebody in life.<sup>50</sup>

According to MLB and the teams that run the baseball academies, these training centers offer Dominican boys an opportunity to fully develop their talents and reach their athletic potential. The academies take a holistic approach to a player's physical and emotional development. The academies teach more than baseball: They prepare the boys for a new culture and language, so they can compete with their American counterparts.<sup>51</sup>

In addition to housing the boys and training them in the fundamentals of baseball, the academies provide medical and dental care, laundry services,<sup>52</sup> and a regimented diet, as directed by a nu-

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<sup>48</sup> *Id.*

<sup>49</sup> Telephone Interview with Lou Meléndez, *supra* note 29 (recognizing the violations and explaining MLB's plans to address them).

<sup>50</sup> Interview with Wil Tejada, Head Scout, Philadelphia Phillies Baseball Academy, in Santo Domingo, Dom. Rep. (Aug. 13, 2002) (transcript on file with Author).

<sup>51</sup> *Id.*

<sup>52</sup> REGALADO, *supra* note 8, at 201-02 (citing Dave Nightingale, *Baseball's Secret Treasure*, SPORTING NEWS, Aug. 19, 1985). The newer facilities also have small

tritionist from the Dominican Commissioner's Office in Santo Domingo.<sup>53</sup> On a typical day, players rise at 7:30 a.m., eat breakfast prepared by hired cooks, and spend their mornings competing or practicing. The morning session is followed by lunch and English lessons. Most academies hire a private English instructor to work with the players and prepare them for not only communicating with their future (mostly English-speaking) teammates, but for everyday life in the United States.<sup>54</sup> In the late afternoon, players return to the field for more individualized instruction, followed by dinner and free time in the evenings.<sup>55</sup>

### 3.2.1.2. *Benefits for the Families*

Aside from the services and support the academies provide, academy advocates stress the economic benefits that come from the players' relationships with the academies. The founder of the academies, Rafael Avila, stresses that for many families, the academies represent an opportunity to reduce the number of mouths that need to be fed at home.<sup>56</sup> In addition, players almost always use their earnings to support family members. Players in their first year at an academy earn \$600 U.S. per month. Second-year players earn \$700 and those in their third year earn \$750 per month.<sup>57</sup> The most common alternative form of employment available to non-high school graduates would be a position in one of the country's many garment factories, typically earning a mere \$100 per month.<sup>58</sup> The academies give the MLB teams an opportunity to provide employment (albeit, often temporary) for these young players with incomes that far exceed most employment alternatives. As a result, these boys are better able to help support their own families.<sup>59</sup>

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gyms, a training room to treat injuries, and a recreation area for the players' free time. Interview with Wil Tejada, *supra* note 50.

<sup>53</sup> Interview with Wil Tejada, *supra* note 50.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> REGALADO, *supra* note 8, at 201-02.

<sup>57</sup> Interview with Wil Tejada, *supra* note 50.

<sup>58</sup> See Telephone Interview with "Yenny," former employee in a Dominican garment factory (Dec. 18, 2002) (discussing her compensation as a worker in the *Zona Franca* (Free Trade Zone)) (interview notes on file with Author).

<sup>59</sup> Rick Morrissey, *Doctoring Age Good Medicine in the Dominican*, CHI. TRIB., Sept. 2, 2001, at 1C.

### 3.2.1.3. Benefits for the Communities

Communities that host the academies also benefit from MLB's presence. In addition to the actual players, academies employ cooks, housekeepers, medical trainers, English teachers, security guards, groundskeepers, scouts, and a team of coaches.<sup>60</sup> Beyond providing direct employment, academies create indirect job opportunities for other members of their host communities.<sup>61</sup> Local entrepreneurs sell homemade goods as refreshments at the games that are usually well attended by locals. Additionally, motor-taxis, a common sight on street corners in the D.R., benefit from transporting fans to and from the games, and players between the academies and nearby towns. Overall, an academy's presence helps to create jobs and stimulate economic activity in its host community.<sup>62</sup>

### 3.2.2. Hidden Talent: Buscones and MLB's Legal Black Hole

Due to current regulations on the length of time a team may retain an unsigned player, it seems unlikely that the formal academies serve to hide talented players who have not signed formal contracts. However, the problem does exist and unregulated<sup>63</sup> scouts, or *buscones*, are at least partially to blame.<sup>64</sup> *Buscones* are scouts who canvas the Dominican countryside in search of young talent and notify MLB scouts when they believe they have discovered noteworthy players.<sup>65</sup> If the MLB scout signs the player, the *buscón* almost always receives a portion of the player's signing bonus for his role in initiating the relationship between the two par-

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<sup>60</sup> Interview with Wil Tejada, *supra* note 50.

<sup>61</sup> *Id.*

<sup>62</sup> See Interview with Wilson Peña, Executive Officer SOELLA, in El Llano, Barí, Dom. Rep. (Aug. 1999) (describing the benefits the village of El Llano received from the presence of the San Diego Padres) (interview notes on file with Author).

<sup>63</sup> *Buscones* are not regulated by either MLB or the Dominican Commissioner of Baseball. In addition, MLB and players' advocates describe *buscones* as a well-organized and powerful group that successfully lobbies for its own interests with the Dominican Commissioner. Telephone Interview with Tony Bernazard, *supra* note 9 (claiming that the Dominican Commissioner is "on the take" from the *buscones*); Telephone Interview with Lou Meléndez, *supra* note 29 (describing the *buscones* as well-organized).

<sup>64</sup> Telephone Interview with Tony Bernazard, *supra* note 9 (criticizing the role of the *buscones*).

<sup>65</sup> Interview with Wil Tejada, *supra* note 50.

ties. That amount is negotiated between the player and the *buscón*, and MLB denies being involved in that process.<sup>66</sup>

Part of the dilemma is that families may not be able to distinguish scouts employed by MLB from unregulated *buscones*. As a result, complaints directed at MLB might actually be the result of *buscones'* actions. For example, critics argue that young talent is hidden within the walls of the academies as MLB teams try to circumvent the Seventeen-Year-Old Rule.<sup>67</sup> This rule states that MLB may not sign players until they are within six months of their seventeenth birthday;<sup>68</sup> academies are accused of housing these unsigned players for years, until they may sign an MLB contract. However, MLB's Commissioner's Office limits an unsigned player's academy stay to one month.<sup>69</sup> After that month, the player must be signed or leave the academy.<sup>70</sup> In contrast, *buscones* are free to follow their own rules, untouched by both MLB and the Dominican Commissioner of Baseball.<sup>71</sup> MLB acknowledges the existence of the unregulated academies, but clearly distinguishes MLB's academies from those of the *buscones*.

The *buscones* have them in their camp as early as twelve or thirteen from what I hear, not that I have ever seen it, but those are the things you hear . . . . We have nothing to do with those camps. We have our academies and we have regulations that apply to our academies.<sup>72</sup>

Addressing the *buscones* problem is one of the challenges currently facing MLB, and is discussed in Section 6 of this Comment.

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<sup>66</sup> *Id.* He describes the MLB's position on negotiations with *buscones* and players, explaining:

That is between the *buscones* and the players. We comply with the money we think the players are worth at a particular time. We don't get involved with what the *buscones* are going to get or what the family is going to get. We just tell the family, "Okay, your son is worth this much and it is your problem to make a deal with the *buscones*."

<sup>67</sup> Vargas, *supra* note 27, at 29.

<sup>68</sup> Interview with Wil Tejada, *supra* note 50.

<sup>69</sup> Telephone Interview with Lou Meléndez, *supra* note 29.

<sup>70</sup> Interview with Wil Tejada, *supra* note 50.

<sup>71</sup> Telephone Interview with Lou Meléndez, *supra* note 29.

<sup>72</sup> *Id.*

### 3.2.3. *Underage Players: Formal Requirements in an Informal Society*

While it is true that MLB scouts aim to recruit young players in order to take advantage of boys' talents as soon as they are old enough to sign, it should also be noted that many players also work the age variable to their own advantage. For example, Oakland Athletics shortstop Miguel Tejada claims to have been born in 1976.<sup>73</sup> However, in a 1999 interview with men from Tejada's community, many of whom had grown up playing baseball with Tejada, the young men insisted that Tejada must have been born in 1974, or even earlier.<sup>74</sup> As many Dominicans explain, scouts lose interest in players as they age into their twenties. Players commonly lie about their dates of birth, appearing younger in order to land a contract. According to the residents of Tejada's community, most Dominican players in MLB are at least a few years older than what they publicly admit.<sup>75</sup>

This phenomenon is not new to the world of baseball,<sup>76</sup> but it gained mainstream international attention in 2001, when Dominican-born Little Leaguer Danny Almonte was criticized for allegedly being older than the thirteen-year old age limit for participation in the Little League World Series.<sup>77</sup> The event promoted public discourse about problems that many scouts have faced for decades—the impossibility of verifying birth dates in a country where record keeping is often informal. This Comment does not suggest that players born without proper documentation should be prohibited from signing a professional contract, as that would severely disadvantage much of the Dominican population. Rather,

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<sup>73</sup> BRETÓN & VILLEGAS, *supra* note 2, at 21.

<sup>74</sup> Interview with Florencio Lebrón, Former teammate of Miguel Tejada, in El Llano, Baní, Dom. Rep. (Aug. 1999) (transcript on file with Author).

<sup>75</sup> *Id.*

<sup>76</sup> New York Yankees pitcher Orlando Hernández of Cuba claimed he was four years younger than what his legal documentation eventually revealed. See *Lasorda Defends*, *supra* note 40 (reporting Dodgers Senior Vice President Lasorda's angry reaction to the possibility of losing his third baseman as a result of violations of age restrictions).

<sup>77</sup> Paulino Pérez, *Madre de Danny defiende edad de su hijo*, LISTIN DIARIO, Aug. 26, 2001 (on file with the U. PA. J. INT'L ECON. L.).

as discussed in Section 6, educational reform might help to address this dilemma.

#### 4. THE ECONOMICS OF A DEVELOPING COUNTRY

The Dominican Republic has often been described as a country that is not completely in control of its destiny. Outside agents and outside forces, particularly from the United States, are viewed as having an inordinately large influence on the political, economic, and cultural life of the country.<sup>78</sup>

Economic developments in American baseball and the D.R.'s long tradition of dependency on foreign economic influences have created the current system of recruitment in the D.R. Although American baseball has had its eye on the country since the start of the twentieth century, the proliferation of academies, scouts, and an increase in the general awareness of the benefits the country had to offer the business of baseball occurred, in part, because of the implementation of free agency in American baseball. The decision in the Messersmith and McNally Grievances<sup>79</sup> paved the way for free agency in baseball,<sup>80</sup> and as a result,<sup>81</sup> the median player's salary increased from \$40,000 in 1976 to \$400,000 in 1997.<sup>82</sup> Since it became less financially desirable to recruit American players, a heightened awareness of the opportunities in a cheap labor market like the D.R. developed.

On the Dominican front, a long history of foreign economic influences<sup>83</sup> created an underlying acceptance of the presence of yet

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<sup>78</sup> MICHAEL J. KRZYANEK & HOWARD J. WIARDA, *THE POLITICS OF EXTERNAL INFLUENCE IN THE DOMINICAN REPUBLIC* 117 (1988).

<sup>79</sup> Messersmith, 66 Lab. Arb. Rep. (BNA) 101 (1975) (Seitz, Arb.); David A. McNally, 66 Lab. Arb. Rep. (BNA) 101 (1975) (Seitz, Arb.).

<sup>80</sup> ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* 128 (1998).

<sup>81</sup> Free agency was not the only factor that increased players' salaries. Television contracts, fan attendance, merchandising, and league expansion have all contributed to the financial boom in baseball. PAUL C. WEILER & GARY R. ROBERTS, *SPORTS AND THE LAW* 239 (2nd ed. 1998).

<sup>82</sup> *Id.* at 271.

<sup>83</sup> See *supra* Section 2 (describing the history of foreign influence and baseball in the D.R.).

another foreign corporation.<sup>84</sup> According to Tony Bernazard, Special Assistant to the Executive Director of the MLB Players Association, foreigners who do business in the D.R. feel that the poverty they encounter allows them to make decisions on behalf of the Dominican people. As Bernazard says, "[a] bunch of gringos go to the Dominican. The conditions are atrocious, and [Dominican] people [are] begging and asking for things in little barrios with nothing in them. They [the gringos] think they can do whatever they want in those places."<sup>85</sup>

#### 4.1. A Lack of Bargaining Power

The Dominican economy has created a cycle of interdependency with foreign influences. On a national scale, the country has not fully succeeded in generating its own economic activity and has become increasingly dependent on outside investments. Outside investments perpetuate this dependency by preventing the Dominican economy from developing its own activity. A prime example of this dependency is the fact that remittances from family members in the United States are one of the largest contributors to the Dominican economy.<sup>86</sup>

At the individual level, the cycle of dependency creates an almost desperate willingness to accept what one can get. Few will dispute the great discrepancy between Dominican and American signing bonuses.<sup>87</sup> Minimal bonuses perpetuate the "boatload mentality." American-born Alex Rodríguez, now the highest-paid

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<sup>84</sup> By the late 1980s, there were over 160 American-owned companies and over eighty private international organizations in the D.R. KRYZANEK & WIARDA, *supra* note 78, at 118. Foreign economic presence in a country is certainly not *per se* detrimental to a national economy, but there is a limit. Just as foreign-owned textile industries prevent Dominicans from developing and benefiting from this business themselves, foreign recruiting efforts serve to undermine the development of Dominican baseball leagues. As long as American baseball is every Dominican boy's dream, his own country's teams can only be considered second-best. See Bill Brubaker, *Hey, Kid, Wanna Be a Star?*, SPORTS ILLUSTRATED, July 13, 1981, at 64 (explaining how the presence of U.S. baseball has harmed the development of Dominican baseball).

<sup>85</sup> Telephone Interview with Tony Bernazard, *supra* note 9.

<sup>86</sup> Financial Publications, *supra* note 24, at S18.

<sup>87</sup> The average signing bonus for American players is \$50,000. See Nicholas Dawidoff, *The Dominican National Pastime*, N.Y. TIMES BOOK REV., May 30, 1999, at 7. In contrast, Dominican players most commonly sign for less than \$5,000. RUCK, *supra* note 15, at 201.



player in MLB,<sup>88</sup> recognizes that if his Dominican parents had not immigrated to the United States before his birth, he would not have had the bargaining leverage to demand \$1.3 million for his first major league contract.<sup>89</sup>

I'm really grateful I was born and raised in the U.S. . . . I'm sure I would have been a top prospect, [if he had been born in the D.R.], but maybe I would have gotten \$5,000 or \$10,000. Or maybe \$4,000. . . . The point is, it would have been a much tougher road . . . . You have to pay for talent . . . . You should not treat someone unfairly because they don't have the leverage some of these high-school kids have here. Just because they don't have the opportunity to go to Stanford or the University of Miami.<sup>90</sup>

When a scout offers a Dominican player a \$3,000 signing bonus, the player is generally happy to accept it, despite the fact that his counterpart in the United States might easily demand twenty times that amount. In a country where, over the past decade, the annual per capita income has been lower than \$1,000<sup>91</sup> and the unemployment rate has ranged from fifteen<sup>92</sup> to thirty percent,<sup>93</sup> young players are hardly in a powerful position to negotiate employment contracts.<sup>94</sup> Whether the player is signed with an academy and earning \$800 per month,<sup>95</sup> or the player is unsigned and

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<sup>88</sup> The Texas Rangers paid Rodríguez \$21 million for the 2002 season alone. ESPN, Scouting Report—Alex Rodríguez [hereinafter ESPN], at <http://sports.espn.go.com/mlb/players/profile?statsId=5275>.

<sup>89</sup> BRETÓN & VILLEGAS, *supra* note 2, at 39.

<sup>90</sup> *Id.*

<sup>91</sup> Newhan & Gutierrez, *supra* note 26, at D1.

<sup>92</sup> CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2002—DOMINICAN REPUBLIC 7 [hereinafter WORLD FACTBOOK], at <http://www.odci.gov/cia/publications/factbook/geos/dr.html>.

<sup>93</sup> TIME, ALMANAC 2000 207 (Borgna Brunner ed., 1999).

<sup>94</sup> The Dominican Economy is known for its tremendous income inequality. As a result, relevant per capita income and unemployment figures affecting typical baseball recruits and their families would demonstrate lower incomes and higher unemployment, because these families are among the poorest Dominicans. WORLD FACTBOOK, *supra* note 92, at 6. See also Interview with Wil Tejada, *supra* note 50 (explaining that most recruits come from poor families and have very little formal education).

<sup>95</sup> Newhan & Gutierrez, *supra* note 26, at D1.

receiving food and housing from a *buscón*, one can make the argument that, statistically speaking, he is financially better off than he would have been without the influence of American baseball.

Proponents of MLB's recruiting efforts in the D.R. defend the system by insisting that American baseball is giving the boys a chance to earn money—an opportunity otherwise scarce in the country.<sup>96</sup> Boys who sign with the academies often provide their entire families with much-needed financial assistance. While these players admittedly earn less than their American counterparts, they are still better off financially than they would be without the recruiting efforts of MLB.<sup>97</sup> According to scout Wil Tejada, Dominican parents “do not have the money or the luxury to send their kids to school. So if [the players] have an opportunity to bring their families food and be successful in life, and besides that give the family the opportunity to have a lot of money, they will play baseball.”<sup>98</sup>

#### 4.2. Foregoing Education

Regarding accusations that scouts entice young boys to leave school and join the academies, some proponents of MLB argue that statistics show that most of the boys would not have graduated from high school anyway. “Baseball doesn't induce anyone to leave school. These guys aren't going to finish school anyway. . . . The idea that they finish school is a lot of bull.”<sup>99</sup> However, the high school attendance rate among Dominican boys<sup>100</sup> is not a realistic indicator that boys would drop out of school, even without the influence of Major League recruiting. Baseball's influence is everywhere, underlying nearly every decision that young boys make, because these boys believe they have a chance of making it big. Regardless of whether the boy is ever contacted by a scout, the fact remains that he has an opportunity to at least be recruited into an academy at a young age. As long as that option exists, MLB will continue to be a significant influence that deters Dominican boys from graduating from high school.

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<sup>96</sup> See TIME, *supra* note 93, at 207 (stating the Dominican unemployment rate as thirty percent).

<sup>97</sup> Brubaker, *supra* note 84, at 73.

<sup>98</sup> Interview with Wil Tejada, *supra* note 50.

<sup>99</sup> Brubaker, *supra* note 84, at 73.

<sup>100</sup> School attendance among Dominican boys ages twelve to seventeen is only fifty-six percent. *Id.* at 68.

Not everyone in MLB denies the fact that baseball competes with a Dominican boy's educational opportunities.<sup>101</sup> As discussed in Section 6, MLB has identified the problem and is currently exploring options for implementing an educational component to their recruiting systems in the D.R. and Venezuela.<sup>102</sup>

#### 5. POST-RELEASE LEGAL DILEMMAS: THE UNDOCUMENTED UNDERGROUND OF MLB

And no one knows for certain how many 'illegals' major league baseball is generating every year. But they are out there and baseball knows it.<sup>103</sup>

The story of José Brea<sup>104</sup> illustrates one of the negative, long-term effects of MLB's recruiting efforts. By age seventeen, José had signed with one of the academies in the D.R. and at the time of his first interview with the Author, José had just completed his first season in the U.S minor leagues.<sup>105</sup> Halfway through his second season, José was released from his contract and put on a plane back to the D.R. But José's visa was valid for another two months, so after a brief visit with his family, José boarded a plane back to the United States to begin his new life as an undocumented immigrant. In his most recent interview with the Author, José explained that he was now earning a living as a dishwasher at a Boston-area restaurant.<sup>106</sup>

José's story is not at all uncommon, but no one knows for sure how many undocumented immigrants have entered the United States as a result of MLB's recruiting efforts in the D.R. (and around the world). The number of such people remains a mystery;

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<sup>101</sup> Telephone Interview with Lou Meléndez, *supra* note 29 (stating that "We [MLB] are aware of the problem with kids leaving school in the Dominican Republic to go learn and hopefully become baseball players. We are also aware of the fact that once they get released from the academy that they don't go back to school.").

<sup>102</sup> *Id.*

<sup>103</sup> BRETÓN & VILLEGAS, *supra* note 2, at 192.

<sup>104</sup> The Author changed the player's name in order to protect his identity. Interview with José Brea, Former Minor League player, in El Llano, Baní, Dom. Rep. (1998) (interview notes on file with Author).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

like most undocumented aliens, they are unlikely to complete a census form, and thus remain unaccounted for.<sup>107</sup>

Only three percent of Dominican players who sign professional contracts will actually make it to the Major Leagues.<sup>108</sup> For the Dominicans who are sent home, the problem is compounded by the fact that they have no education to direct them into a new career, because they sacrificed that education for the chance of a life in baseball.<sup>109</sup> Many players are illiterate in their own language<sup>110</sup> and the best employment they can hope for in the D.R. is a position in one of the foreign-owned garment factories.<sup>111</sup> With the prospect of Third World poverty in their futures, players choose the lesser of two evils and opt for lives as undocumented members of American society.<sup>112</sup>

## 6. POSSIBLE INSTITUTIONAL REFORM

MLB partially acknowledges the truth behind critics' views on the current recruiting system in the D.R. and the League expresses an interest in taking steps to remedy some of those negative effects. This Section of the Comment examines a number of MLB's most viable options for improving the influence of its recruiting system.

### 6.1. A World-wide Draft

MLB has discussed the option of an international draft for years.<sup>113</sup> In the most recent collective bargaining agreement be-

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<sup>107</sup> BRETÓN & VILLEGAS, *supra* note 2, at 192.

<sup>108</sup> KLEIN, *supra* note 3, at 72. See also Brubaker, *supra* note 84, at 190 (noting that the odds are overwhelming that none of these players will make it to the majors, especially when considering that ninety percent of all minor-league players are released before reaching the majors).

<sup>109</sup> See Brubaker, *supra* note 84, at 73 (explaining that these players are sent home to an overburdened job market without diplomas or career training).

<sup>110</sup> Interview with Elvis Fernández, English Instructor, Philadelphia Phillies Baseball Academy, in Santo Domingo, Dom. Rep. (Aug. 13, 2002) (describing illiteracy in Spanish as one of the biggest challenges in teaching players the fundamentals of English) (interview notes on file with Author).

<sup>111</sup> See Larry Rohter, *Dominican Sex Scandal Mars Big League Dreams*, N.Y. TIMES, Dec. 11, 1997, at A1 (noting that a failure to make it in the big leagues will most likely result in a lifetime of menial labor).

<sup>112</sup> See Telephone Interview with Lou Meléndez, *supra* note 29 (admitting that players commonly remain in the United States upon their release).

<sup>113</sup> See Newhan & Gutierrez, *supra* note 26, at D1 (discussing the benefits of an international draft in an article from 1999). See also Steve Henson, *Labor Daze: Talk is of Contraction, Revenue-Sharing and Luxury Tax*, L.A. TIMES, July 12, 2001, at

tween MLB and the Players Association, both parties agreed to form a study committee with the goal of moving forward with an international draft.<sup>114</sup> Initially, the committee was to be formed by October 15, 2002, but both parties are now hoping to finalize the committee's membership by Opening Day 2003. Among the issues the committees will face are whether to incorporate extra-national players into the current draft for domestic players, or to create a separate draft for international players; the number of rounds in the draft; how players will register to participate in the draft; and how to compensate a club that does not sign a player they select in the first round. In addressing the draft-related issues that both sides identified in recent negotiations, MLB has a great opportunity to remedy the negative effects of their current recruiting system by instituting formal procedures and guidelines as prerequisites for teams to participate in the draft.<sup>115</sup> In theory, organizing the recruiting efforts of all of the teams into one system would help enforce minimum standards that would apply to every recruiting relationship. Representatives of MLB also see the international draft as an opportunity to equalize recruiting opportunities between large- and small- revenue-generating teams. Closing the financial disparity among teams would also serve to promote uniformity in the system. Overall, one system could help resolve any inconsistencies that result from each team having its own process.<sup>116</sup>

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D5 (discussing the idea of implementing an international draft to reduce player salaries); Bart Hubbuch, *Hidden Talents: It's Still Tough for Latin Players to Stand Out*, WASH. TIMES, Aug. 22, 1993, at C1 (quoting Luis Mayoral, a broadcaster and scout in Latin America, as saying that "[b]aseball is going to have an international draft before too long").

<sup>114</sup> See Telephone Interview with Lou Meléndez, *supra* note 29 (discussing the current status of negotiations on an international draft).

<sup>115</sup> Players' advocates are also quick to emphasize the disadvantages of a draft system. One such complaint is that drafts are inherently anticompetitive because they prevent competition among teams for an individual player. Criticism directed at having a draft in the D.R. includes a fear that a general lack of organization would cause players to fall through the cracks of the system, because they would fail to understand how to register for the draft. Others compare the Dominican situation to the Puerto Rican situation, where, ever since Puerto Rican players entered into MLB's draft, fewer Puerto Rican players have obtained professional contracts. MLB only appears to want Puerto Rican players if they can be signed at bargain prices. See Telephone Interview with Tony Bernazard, *supra* note 9 (discussing his personal complaints about drafts and specifying that Puerto Ricans have suffered since they began participating in MLB's draft).

<sup>116</sup> Telephone Interview with Lou Meléndez, *supra* note 29. *But see* Interview with Wil Tejada, *supra* note 50 (discussing the fact that the Expos, one of MLB's

## 6.2. Age Requirements and Educational Components

During recent negotiations between MLB and the Players Association, both sides established a list of ancillary issues for the draft committee to address. Among those issues is the age at which a player can be drafted.<sup>117</sup> This is an opportunity for MLB to address allegations that their recruiting system exploits minors and entices young players to leave school.<sup>118</sup>

In the United States, players cannot leave high school to sign a baseball contract.<sup>119</sup> In instituting a draft in the D.R., MLB could require that students be high school graduates or nineteen years of age. These requirements would create an incentive for boys to stay in school. They would also promote the development of high school baseball teams. Currently, high school aged boys are either in school or playing baseball at one of the academies.<sup>120</sup> It is an either-or situation; however, MLB could shift that competition to collaboration by working *with* high schools, not *against* them.

Another pressing issue before the committee is what to do with the academies if a draft were implemented.<sup>121</sup> Again, MLB is presented with an opportunity to address one of the most criticized aspects of their current recruiting program. These academies could work with the Dominican Secretary of Education to incorporate an educational component, whereby players could complete their high school education *while* competing for a chance to play baseball in the United States. Such a system could be modeled after the Puerto Rico Baseball Academy and High School, currently in operation in conjunction with the University of Coamo, where students play baseball in the morning and attend classes in the afternoon.<sup>122</sup>

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smallest revenue-generating teams, is regarded as one of the most successful recruiters in the D.R.).

<sup>117</sup> See Telephone Interview with Lou Meléndez, *supra* note 29 (reading from the memorandum detailing the committee's agenda).

<sup>118</sup> Instituting an educational requirement for signing Dominican players is not dependent on a formal draft, but the current negotiations and the creation of the study committee present an ideal opportunity to address criticism in this area.

<sup>119</sup> Telephone Interview with Tony Bernazard, *supra* note 9.

<sup>120</sup> See Telephone Interview with Lou Meléndez, *supra* note 29 (discussing the development of players who reside in countries that do not play organized high school baseball).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

Educating Dominican players would serve to address the majority of concerns surrounding the current recruiting system. In addition to ending MLB's role in influencing boys to leave school, educating players would reduce the number of undocumented ex-recruits that remain in the United States. With a high school education, players would have greater employment opportunities in their own country and would be less likely to remain in the United States illegally. MLB cannot continue to ignore the population of undocumented ex-players it is creating.<sup>123</sup> The league should recognize its role in creating these underground communities and sponsor efforts to provide these players with the skills they need in order to openly participate in society. Just as the baseball academies train players for their transition to the United States, MLB could provide ongoing education for players that would not only ease their transition back into Dominican culture, but prepare them for vocational prospects once they return.<sup>124</sup> This type of education would be invaluable for both the players and their country; "[i]f this group of players had education, the problem would not be as severe . . . . With education, you can change a country."<sup>125</sup>

### 6.3. Cutting Off the Buscones

While MLB teams do not pay *buscones* a percentage of the player's signing bonus, the League often pays finders fees to the *buscones*. According to MLB, this is one of the practices that the League is currently in the process of ending, so as to further distance themselves from the *buscones'* misconduct.<sup>126</sup> According to MLB, it is José Daniel Calzada, Commissioner of Amateur Baseball in the D.R., who must address the *buscones'* violations, because the League has no legal authority to regulate non-American organizations within the D.R.<sup>127</sup>

MLB also recognizes that the *buscones'* strength as a lobbying group complicates the issue of restricting their role in the recruit-

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<sup>123</sup> See BRETÓN & VILLEGAS, *supra* note 2, at 192 (arguing that MLB's recruitment methods are a source of illegal immigrants).

<sup>124</sup> See Telephone Interview with Lou Meléndez, *supra* note 29 (stating that MLB is considering programs that would provide ongoing educational opportunities for its Dominican recruits).

<sup>125</sup> Telephone Interview with Tony Bernazard, *supra* note 9.

<sup>126</sup> Telephone Interview with Lou Meléndez, *supra* note 29.

<sup>127</sup> *Id.* ("The thing is under the law we [MLB] cannot come into the D.R. and try to regulate *buscones*. We just don't have the jurisdiction. That has to be done by someone in the country.").

ing process.<sup>128</sup> While MLB officially states that they have a positive working relationship with the Dominican Commissioner, not all accounts have been so flattering. Tony Bernazard points to Commissioner Calzada as the root of many of the problems facing Dominican players.<sup>129</sup> Bernazard claims that Calzada's unwillingness to regulate the *buscones* simply perpetuates the exploitation of Dominican players.<sup>130</sup> He explains that "[a]ll of these different schemes they have in the Dominican Republic, they have access because of the way the country is set up, you know these *buscones*, that so-called Commissioner. He's a crook. He's on the take from the *buscones*."<sup>131</sup>

## 7. CONCLUSION

True to its century-old mandate, baseball has "followed the flag" in its globalization over the past twenty-five years.<sup>132</sup> More recently, the game's expansion has developed into a system that calls for self-regulation and institutional reform on the part of MLB.<sup>133</sup> Additionally, MLB must pressure the Dominican Commissioner of Amateur Baseball to strictly enforce regulations against the *buscones*. The combination of the ancillary effects of MLB's current training program and the *buscones*' disingenuous recruiting methods<sup>134</sup> currently results in a system with potential long-term negative effects on Dominican boys.

However, baseball's role in Dominican society does not have to be a "necessary evil" for the Dominican people. The sport can continue to seek talented players among the population without harmful effects. MLB must act in conjunction with the Dominican government and follow through with recent discussions about how to address harms that stem from the current recruiting system.<sup>135</sup>

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<sup>128</sup> See *id.* (discussing the strength of the *buscones* as an organization).

<sup>129</sup> Telephone Interview with Tony Bernazard, *supra* note 9.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> KLEIN, *supra* note 3, at 15; Roden, *supra* note 3, at 534.

<sup>133</sup> See Telephone Interview with Lou Meléndez, *supra* note 29 (acknowledging MLB's influence on players' educational decisions and expressing his hopes that a draft will help to implement change).

<sup>134</sup> See Telephone Interview with Tony Bernazard, *supra* note 9 (accusing the *buscones* of cheating players out of large percentages of their signing bonuses).

<sup>135</sup> See Telephone Interview with Lou Meléndez, *supra* note 29 (stating that MLB is currently working with development specialists in the D.R. to help promote better education for its recruits).



While no one claims the business of baseball is the sole cause of the social ills affecting the Dominican economy, the League is in a position to give back to the society that has produced some of the greatest names in the game. Such steps will help to better compensate players for the risks they take with MLB and will ensure a positive working relationship between MLB and the people who love the game.