

# CURTAILING MLB'S RECRUITING ABUSES OF LATIN AMERICAN TALENT

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*Baseball is an integral part of America's social fabric, and as such, it has always reflected the language of America. In this time of globalization, when corporations are criticized for exploiting cheap sources of labor in developing countries, the exploitative nature of Major League Baseball's ("MLB") recruiting practices in Latin America seem to be overlooked. While the wealth of talent coming from Latin America demonstrates its importance to MLB, MLB has failed to adequately address the issues facing Latin American recruits. Even though MLB is not responsible for the socioeconomic inequalities that place it in a better bargaining position, MLB should be held accountable for the exploitative nature of its practices.*

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## I. INTRODUCTION

Imagine risking everything you had to have your value appraised by a scout in a foreign country. After receiving the appraisal, you wait for someone to purchase your freedom at the expense of a percentage of your future earnings. This is the story of many Latin American players who travel to the United States in hopes of playing professional baseball. Depending on the player's country of origin, the risk is even greater. For example, given the tempestuous relationship between the United States

and Cuba,<sup>1</sup> players defecting from Cuba face an especially challenging odyssey fraught with peril for the possibility of playing professional baseball in the United States. Cuban baseball hopefuls had to defect from Cuba before they could enter the U.S.<sup>2</sup>

In 2014, the story of Yasiel Puig's journey from Cuba to the Los Angeles Dodgers captivated millions of baseball fans.<sup>3</sup> Despite past failed attempts to defect to the United States, clandestine plans were formed to extract Puig and three others from the island.<sup>4</sup> Established in 1960, the United States trade embargo against Cuba restricted almost all exportations, and later importations, of goods, excluding some foods and medicine.<sup>5</sup> This included prohibiting American entities, like Major League Baseball, from conducting business with Cuban nationals or hiring them unless they first defected, and essentially renounced their Cuban citizenship.<sup>6</sup> While this may seem like a small obstacle to some, for a chance to live their dreams, the political relationship between the

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1. See Danielle Renwick et al., *U.S.-Cuba Relations*, COUNCIL ON FOREIGN REL., <http://www.cfr.org/cuba/us-cuba-relations/p11113>; see also Maria Cardona, *Celebrate New Day for U.S-Cuba Relations*, CNN, <http://www.cnn.com/2015/08/14/opinions/cardona-cuba-relations/> (stating that in December 2014, President Obama announced a plan to reestablish relations with Cuba after five decades since the Cuban trade embargo. Although the U.S. reopened its embassy in Cuba in 2015, only Congress can end the embargo, which is uncertain considering Congress has heavily opposed the Obama administration).

2. Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, 22 U.S.C. §§ 6021–91 (1996).

3. See Scott Eden, *No One Walks Off the Island*, ESPN (Apr. 17, 2014), [http://espn.go.com/espn/feature/story/\\_id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba](http://espn.go.com/espn/feature/story/_id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba).

4. *Id.*

5. In 1960, Cuba signed an agreement to buy oil from the Soviet Union. However, when U.S.- owned oil refineries would not process the oil, Castro seized them. The U.S. responded by limiting Cuba's import on sugar, and eventually implementing an embargo against Cuba and cutting all diplomatic ties. *Cuban Foreign Relations*, WILSON CTR., <http://digitalarchive.wilsoncenter.org/document/115140> (last visited Apr. 2, 2016); *Timeline: Post-Revolution Cuba*, PBS, <http://www.pbs.org/wgbh/amex/castro/timeline/> (last visited Mar. 26, 2017).

6. Eden, *supra* note 3.

United States and Cuba made it nearly impossible for players defecting to the United States to return home.<sup>7</sup>

Many foreign athletes are lured to North America with hopes of playing the game they love and receiving large sums of money for it.<sup>8</sup> However, many players are brought to the United States and find themselves entirely dependent on their scouts.<sup>9</sup> These players find themselves in a foreign country illegally with no support system.<sup>10</sup> While MLB has acknowledged the challenges endured by Latin American athletes, it has done little to adequately address the problems.<sup>11</sup>

This note is an analysis of MLB's policies and practices regarding recruitment in Latin America. It will analyze the challenges that Latin American prospects encounter, such as labor and contract issues, and examine how MLB has attempted to level the playing field between the players, clubs, and scouts. Despite MLB forming committees and implementing rules governing recruitment in Latin American countries, the integrity of the game is still compromised, as is evident by multiple investigations in 2014 involving Cuban smuggling rings. The issue surrounding the recruitment of Latin American players is whether MLB's interests can be promoted while protecting players' interests, without sacrificing freedom of contract. The purpose of this note is to suggest ways in which the federal government can collaborate with MLB to develop better recruiting practices in Latin American countries.

As an integral part of America's social fabric, baseball has been linked to the cultural ideal of Americanism.<sup>12</sup> However, the 2015

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7. *Id.*

8. Samuel O. Regalado, "Latin Players on the Cheap:" *Professional Baseball Recruitment in Latin America and the Neocolonialist Tradition*, 8 *IND. J. GLOBAL LEGAL STUD.* 9, 13 (2000) (discussing how baseball is rooted in America's historical exploitation of Latin America).

9. Kavitha A. Davidson, *African Victims of Basketball's Global Push*, *BLOOMBERG VIEW* (Mar. 19, 2015, 3:20 PM), <http://www.bloombergvew.com/articles/2015-03-19/african-victims-of-basketball-s-global-push>.

10. *See id.*

11. Arturo J. Marcano & David P. Fidler, *Baseball's Exploitation of Latin Talent*, *NACLA*, <https://nacla.org/article/baseballs-exploitation-latin-talent> (last visited Mar. 5, 2016).

12. *See* Ira Berkow, *What is Baseball's Meaning and Its Effect on America*, *N.Y. TIMES* (May 31, 1981), <http://www.nytimes.com/1981/05/31/sports/what-is-baseball-s-meaning-and-its-effect-on-america.html?pagewanted=all>.

Opening Day roster showed that 26.5% of players were born outside of the United States and its territories.<sup>13</sup> Of that percentage, the majority of players are from Latin American countries.<sup>14</sup> As the number of Latin American baseball players increases, the less MLB can ignore the exploitation employed by its clubs to recruit these players.<sup>15</sup> The globalization of baseball evidences just how critical Latin American talent is to MLB's economic system.<sup>16</sup>

## II. GLOBALIZATION OF BASEBALL

Prior to the integration with the Negro Baseball League, Caucasian athletes were the sole participants in MLB.<sup>17</sup> However, as baseball globalized, it became more culturally diverse and Latin America developed into a goldmine for major league recruiting.<sup>18</sup> Today, some of the most prominent up and coming players are from Latin America.<sup>19</sup>

### A. History of American Baseball

Baseball is America's beloved pastime.<sup>20</sup> Abner Doubleday, a New Yorker, was mistakenly credited with inventing the game in 1839.<sup>21</sup> However, the origins of baseball date back to the 18th century with English games like rounders and cricket.<sup>22</sup> Baseball became more popular in industrialized cities during the American Revolution.<sup>23</sup> The

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13. Press Release, Major League Baseball, Opening Day Rosters Feature 230 Players Born Outside the U.S. (Apr. 6, 2015).

14. *See id.*

15. *See generally* Marcano & Fidler, *supra* note 11.

16. *Id.*

17. *See* Steven Goldman, *Segregated Baseball: A Kaleidoscopic Review*, MLB, [http://mlb.mlb.com/mlb/history/mlb\\_negro\\_leagues\\_story.jsp?story=kaleidoscopic](http://mlb.mlb.com/mlb/history/mlb_negro_leagues_story.jsp?story=kaleidoscopic) (last visited Mar. 1, 2016).

18. *See* Regalado, *supra* note 8, at 9.

19. *See* Eden, *supra* note 3.

20. *See* Berkow, *supra* note 12.

21. *Who Invented Baseball?*, HIST. (Mar. 27, 2013), <http://www.history.com/news/ask-history/who-invented-baseball>.

22. *Id.*

23. *Id.*

game was introduced in Cuba in the late 1800s, where it gained instant popularity and spread throughout Central America and the Caribbean.<sup>24</sup>

The first players union in baseball was formed in 1885 in response to baseball's reserve clause<sup>25</sup> and the growing movement to cap players' salaries.<sup>26</sup> Proving unsuccessful, later attempts to organize players were made in 1900 with the Players' Protective Association, in 1912 with the Fraternity of Professional Baseball Players of America, and in 1946 with the American Baseball Guild.<sup>27</sup> However, none of the efforts were sufficient to end the reserve clause.<sup>28</sup> In 1968, the players regrouped and organized the Major League Baseball Players Association (the "MLBPA").<sup>29</sup> That same year, the MLBPA negotiated its first Collective Bargaining Agreement ("CBA").<sup>30</sup> This milestone was critical to the advent of free agency rights.<sup>31</sup>

In an effort to combat free agency and restrict salary growth, baseball clubs sought to limit players' rights to sign with another club at the expiration of their individual contracts.<sup>32</sup> From 1985 to 1987, baseball club owners collectively decided not to pursue free agents.<sup>33</sup> In 1988,

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24. See Roberto González Echevarría, *Latin Americans in Major League Baseball Through the First Years of the 21st Century*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/Latin-Americans-in-Major-League-Baseball-910675> (last updated Nov. 4, 2009).

25. The reserve clause was a clause in baseball players' contract that stated at the contract's expiration, the rights to the player remained with the team, meaning that the player was not free to contract with another team. *Reserve Clause*, BASEBALL REFERENCE, [http://www.baseball-reference.com/bullpen/Reserve\\_clause](http://www.baseball-reference.com/bullpen/Reserve_clause) (last updated Nov. 30, 2012).

26. *Our History*, MLBPLAYERS, [http://www.mlplayers.com/ViewArticle.dbml?ATCLID=211042995&DB\\_OEM\\_ID=34000](http://www.mlplayers.com/ViewArticle.dbml?ATCLID=211042995&DB_OEM_ID=34000) (last visited Feb. 11, 2016) [hereinafter MLBPA History].

27. *Id.*

28. *Id.*

29. *Id.*; *MLBPA Info*, MLBPLAYERS, <http://mlb.mlb.com/pa/info/cba.jsp> (last visited Feb. 11, 2016) [hereinafter MLBPA Info].

30. MLBPA Info, *supra* note 29.

31. *See id.*

32. William B. Gould IV, *Bargaining, Race, and Globalization: How Baseball and Other Sports Mirror Collective Bargaining, Law, and Life*, 48 U.S.F. L. REV. 1, 14 (2013).

33. MLBPA History, *supra* note 26; Cliff Corcoran, *The Strike: Who Was Right, Who Was Wrong and How It Helped Baseball*, SPORTS ILLUSTRATED (Aug. 12, 2014), <http://www.si.com/mlb/2014/08/12/1994-strike-bud-selig-orel-hershiser>.

club owners began sharing player information to restrain salaries, which led to the MLBPA filing grievances against the owners alleging collusion between 1986 and 1988.<sup>34</sup> Prevailing on all three cases, the parties settled for \$280 million in 1990.<sup>35</sup> Four years later, owners again attempted to break the players' union and reduce pay and benefits, which resulted in a 232-day strike.<sup>36</sup> The strike forced owners to rescind the unilateral changes of free agency and salary arbitration.<sup>37</sup> Players used labor law as an effective means of increasing contractual freedoms.<sup>38</sup> The resulting 1996 CBA brought peace, sustained salary increase, and a search for new, cheap talent.<sup>39</sup>

#### B. Baseball in Latin America and Major League Baseball's Search for New Talent

Baseball was first introduced in Latin America in the nineteenth century.<sup>40</sup> Initially, baseball was seen as a potential way to strengthen North-South relations during the time of U.S. foreign military presence in Latin America.<sup>41</sup> U.S. military occupation and involvement in Latin American countries led to servicemen teaching the game to locals.<sup>42</sup> In the 1880s, Esteban Bellán, also known as Steve Bellán, and Vincent Nava, also known as Sandy Nava, became the first two Latin Americans to play baseball in the U.S.<sup>43</sup> Due to the segregation system, Bellán and Nava played under the auspice of Spanish, rather than Cuban and

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34. MLBPA History, *supra* note 26.

35. *Id.*

36. *Id.*

37. See Gould, *supra* note 32, at 14–15.

38. See Robert A. McCormick, *Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball*, 35 VAND. L. REV. 1131, 1164 (1982).

39. Gould, *supra* note 32, at 15.

40. Echevarría, *supra* note 24.

41. See generally JASON TURNER, *BASEBALL POLICY, BASEBALL DEPLOYMENT: THE NATIONAL PASTIME IN U.S.-CUBA RELATIONS* (2012), available at [http://acumen.lib.ua.edu/u0015/0000001/0001115/u0015\\_0000001\\_0001115.pdf](http://acumen.lib.ua.edu/u0015/0000001/0001115/u0015_0000001_0001115.pdf); see also ADRIAN BURGOS JR., *PLAYING AMERICA'S GAME: BASEBALL, LATINOS, AND THE COLOR LINE* 19 (2007).

42. BURGOS, *supra* note 41, at 19–20.

43. See *id.* at 13, 17–18.

Mexican.<sup>44</sup> Latino players' entry into the majors depended largely on the color of their skin due to racial segregation that baseball leagues implemented in the 1880s.<sup>45</sup> If the player's skin was light, he was welcomed.<sup>46</sup> This system left dark-skinned Latino players with two options: (1) play in the Negro Leagues or (2) play on teams in their native countries.<sup>47</sup>

In the late nineteenth century, a transnational baseball circuit developed that enabled the spread of the game and a network between the U.S. and Latin American baseball leagues and players.<sup>48</sup> In addition to the attraction of a warmer climate, African American ballplayers were also drawn by opportunities in Latin America that were not available in the U.S.<sup>49</sup> By the 1940s, approximately half of the top African American and darker-skinned Cuban ballplayers left the U.S. to play in Latin America.<sup>50</sup> Once the game became integrated in 1947, the attraction to American baseball resurfaced and increased.<sup>51</sup> By the time of the 1996 CBA, the use of litigation, free agency, and collective bargaining enabled ballplayers to level the playing field of contract negotiations.<sup>52</sup> Ultimately, the tactics employed by ballplayers in the U.S. led MLB to expand recruitment to Latin America.<sup>53</sup>

For scouts, Latin America was essentially an untapped source of inexpensive talent.<sup>54</sup> Furthermore, labor laws in these regions typically favored MLB club owners.<sup>55</sup> In the later part of the twentieth century, teams established baseball academies, which allowed them to access

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44. See Brian McKenna, *Steve Bellán*, SOC'Y FOR AMERICAN BASEBALL, <http://sabr.org/bioproj/person/78dbf37d> (last visited Mar. 27, 2017); see also Brian McKenna, *Sandy Nava*, SOC'Y FOR AMERICAN BASEBALL, <http://sabr.org/bioproj/person/1ac63c02> (last visited Mar. 27, 2017).

45. BURGOS, *supra* note 41, at 5.

46. See *id.* at 6.

47. *Id.* at 9–10.

48. *Id.* at 8.

49. *Id.*

50. *20th Century*, BASEBALL REFERENCE, [http://www.baseball-reference.com/bullpen/20th\\_Century](http://www.baseball-reference.com/bullpen/20th_Century) (last updated Dec. 2013).

51. See BURGOS, *supra* note 41, at 13–14.

52. See Gould, *supra* note 32, at 15.

53. *Id.* at 17.

54. Regalado, *supra* note 8, at 9.

55. *Id.*

Latin American players before they entered the draft.<sup>56</sup> Likewise, Latin American players were drawn to the U.S. and Canada with promises of tremendous economic opportunities that far surpassed those offered in their native lands, and a chance to play professional baseball.<sup>57</sup>

The treatment of Latin American players as commodities favors the neocolonialist tradition of U.S. business practices throughout the region.<sup>58</sup> For prospective players in Latin America, the recruiting system is unstructured and essentially unregulated, as compared to their North American and Asian counterparts.<sup>59</sup> Thus, the question is whether the imbalance of bargaining power between MLB scouts and owners relative to Latin American players can be corrected through the collaborative work of MLB and government that protects players' interests in the context of recruiting, without the affecting freedom of contract.

### III. REGULATIONS ON FOREIGN RECRUITING

Under the Major League Constitution, the Commissioner has the authority to investigate and sanction individual and club infractions.<sup>60</sup>

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56. See Vanessa Marie Zimmer, *Dragging Their Devotion: The Role of International Law in Major League Baseball's Dominican Affairs*, 4 NW. J. INT'L HUM. RTS. 418, 421 (2005); *Id.* at 419 (stating that players from Puerto Rico, Canada, and the United States are required to be eighteen years old to enter a draft, players from Latin American countries are not subject to the same age requirement because they do not enter Major League Baseball through the draft); *Id.* at 421 (stating that to avoid these regulations, some teams hide prospects at remote training facilities to prevent the players from signing with other teams or finding an agent who would demand an increase in payment. Alternatively, some Major League teams violate these regulations outright by signing players who are below the age requirement); see also OFFICE OF THE COMM'R OF BASEBALL, OFFICIAL PROFESSIONAL BASEBALL RULES BOOK, MLR 3(a)(1)(B). Major League Rule 3(a)(1)(B) provides that: "[a] player who has not previously contracted with a Major or Minor League Club, who is not a resident of the United States or Canada, and who is not subject to the High School, College or Junior College Rules, may be signed to a contract if the player: (i) is at least [seventeen] years old at the time of signing, or (ii) is [sixteen] at the time of signing, but will attain age [seventeen] prior to September 1 of the first season covered by the contract."

57. Regalado, *supra* note 8, at 9.

58. *Id.* at 11.

59. Marcano & Fidler, *supra* note 11.

60. Pursuant to Article II, section 2 of the Major League Constitution, the functions of the Commissioner include:



The Major League Agreement reinforced this authority, enabling the Commissioner to determine what is in the best interest of the game.<sup>61</sup> Given the commissioner's inability to impose legal sanctions, and the mild attempts to regulate recruitment in Latin American countries, government involvement could lead to heavier consequences for violating MLB's policies.

In 2011, MLB created the International Talent Committee as part of the new Basic Agreement.<sup>62</sup> The International Talent Committee is responsible for discussing the development and recruitment of international athletes.<sup>63</sup> In addition to general issues regarding international recruitment, the Committee is tasked with determining the appropriate age at which international amateur athletes are allowed to sign with professional teams.<sup>64</sup> Further, the Committee develops effective strategies to provide undrafted or unsigned Latin American players with an opportunity to continue their development.<sup>65</sup> Considering that MLB faces varying difficulties recruiting from certain countries, most of the

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“(b) To investigate, either upon complaint or upon the Commissioner's own initiative, any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball, with authority to summon persons and to order the production of documents, and, in case of refusal to appear or produce, to impose such penalties as are hereinafter provided[;]

(c) To determine, after investigation, what preventive, remedial or punitive action is appropriate in the premises, and to take such action either against Major League Clubs or individuals, as the case may be.”

*Major League Constitution*, IP Mall, [https://ipmall.law.unh.edu/sites/default/files/hosted\\_resources/SportsEntLaw\\_Institute/League%20Constitutions%20&%20Bylaws/MLConstitutionJune2005Update.pdf](https://ipmall.law.unh.edu/sites/default/files/hosted_resources/SportsEntLaw_Institute/League%20Constitutions%20&%20Bylaws/MLConstitutionJune2005Update.pdf).

61. *Id.*

62. Evan Drellich, *MLB, Union Form International Talent Committee*, MLB.COM (Dec. 15, 2011), <http://m.mlb.com/news/article/26173582/>.

63. *Id.*

64. *See id.*

65. Press Release, Major League Baseball Player Association, MLBPA, MLB Appoint Members to a Committee to Discuss International Player Acquisition (Dec. 15, 2011), <http://mlb.mlb.com/pa/releases/releases.jsp?content=121511>.

Committee's discussions are conducted on a country-by-country basis.<sup>66</sup> Despite the Committee's ambitious agenda, lack of information regarding the Committee's plans and implementations suggests that little has been done to combat the long-standing issues surrounding Major League Baseball's recruiting practices in Latin America.<sup>67</sup>

#### IV. MAJOR LEAGUE BASEBALL'S RECRUITMENT ABUSES: CHILD LABOR AND CONTRACT ISSUES

The socioeconomic inequalities that exist in Latin America constitute an important element in analyzing labor exploitations by MLB.<sup>68</sup> Recruiting practices in Latin America have created a profitable market in young talented players who come from impoverished areas and lack good counsel.<sup>69</sup> This system risks the opportunity for players to be legitimately developed and scouted.<sup>70</sup>

##### A. Child Labor Law and Baseball's Market for Younger Talent

Recruits are often under the age of eighteen, so child labor laws are particularly relevant to MLB's recruitment of Latin American players.<sup>71</sup> In 1999, the Inter-American Commission on Human Rights reported that the most serious issue the Dominican Republic faced was children dropping out of school to join the workforce.<sup>72</sup> Title II of the Labor Code of the Dominican Republic prohibits children under the age of fourteen from working.<sup>73</sup> Despite that provision, the World Bank reported that approximately 13% of children ages seven to fourteen have abandoned their education to work or do house chores.<sup>74</sup> This issue, coupled with the poverty level faced by many Latin American families, results in recruits

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66. Drellich, *supra* note 62.

67. *See id.*

68. *See* Rob Ruck, *Baseball's Recruitment Abuses*, AMERICAS Q. (summer 2011), <http://americasquarterly.org/node/2745>.

69. *Id.*

70. *See id.*

71. *See id.*

72. Zimmer, *supra* note 56, at 432.

73. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, SITUATION OF MINORS IN THE DOMINICAN REPUBLIC, ch. XI, sec. D.

74. *Id.* at sec. C.

being taken of advantage of by shady scouts, which ultimately threatens the integrity of baseball.<sup>75</sup>

MLB has operated baseball academies throughout Latin America for years.<sup>76</sup> The purpose of these academies is to hone recruits' skills and prepare them for MLB.<sup>77</sup> Buscónes, or street agents, operate facilities that mimic those operated by MLB clubs.<sup>78</sup> Although MLB has yet to recognize an official relationship with buscónes, players are often unofficially recruited by buscónes and train at their facilities before entering MLB baseball academies.<sup>79</sup> On the surface, baseball academies benefit both MLB and the country in which the academy is located.<sup>80</sup> For recruits, they are provided with basic necessities and an education that is specifically tailored to assist them in adapting to life in America.<sup>81</sup> For recruits lucky enough to go the major leagues, the system enables them to effectively escape poverty.<sup>82</sup> However, those not as lucky return home without a practical education.<sup>83</sup>

The wealth of talent coming from Latin America cannot be ignored, but neither can the lack of regulation that effectively protects Latin American recruits.<sup>84</sup> Despite child labor's integral role in economies worldwide, Congress sought to limit it in the U.S. by passing the Fair Labor Standards Act in 1938.<sup>85</sup> However, like MLB's aggressive plans, federal restrictions on child labor appear "more symbolic than real."<sup>86</sup>

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75. See Zimmer, *supra* note 56, at 419.

76. *Rookie Academy*, BASEBALL REFERENCE, [http://www.baseball-reference.com/bullpen/Rookie\\_Academy](http://www.baseball-reference.com/bullpen/Rookie_Academy) (last updated July 4, 2006).

77. See *id.*

78. Some buscónes-run facilities are better than others, but the primary purpose is to hone players' skills. Little is done to educate players beyond baseball. See Ruck, *supra* note 68; see also Adam Wasch, *Children Left Behind: The Effect of Major League Baseball on Education in the Dominican Republic*, 11 TEX. REV. ENT. & SPORTS L. 99, 100 (2009) (stating that MLB has invested an estimated seventy-six millions dollars in the Dominican Republic and created approximately 2,000 jobs).

79. See Zimmer, *supra* note 56, at 423.

80. See Wasch, *supra* note 78, at 101.

81. See Zimmer, *supra* note 56, at 423–24.

82. See *id.* at 418.

83. See *id.* at 423–24 .

84. See Marcano & Fidler, *supra* note 11.

85. Seymour Moskowitz, *Dickens Redux: How American Child Labor Law Became a Con Game*, 10 WHITTIER J. CHILD & FAM. ADVOC. 89, 91 (2010).

86. *Id.* at 92.

Further, MLB is accustomed to preferential treatment.<sup>87</sup> While baseball offers great financial reward potential, it poses immediate and long-term threats to players' education<sup>88</sup> and development into a self-sufficient adult.<sup>89</sup>

*i. Major League Baseball's Age Limit Restriction*

In the 1980s, MLB implemented a rule in the Dominican Republic that limited baseball organizations' time with prospective players.<sup>90</sup> Baseball organizations were granted an exclusive period of thirty days to determine whether they wanted to sign the player.<sup>91</sup> At the conclusion of the period, if the team decided against signing the player, he would have to leave the baseball academy.<sup>92</sup> Consequently, baseball academies would no longer be able to develop players who were fourteen and fifteen-years-old.<sup>93</sup> Venezuela adopted this rule some two decades later.<sup>94</sup> Previously, a team would train children that young at the team's facility, sometimes for as long as two years, which allowed teams to circumvent any rule or regulation that prohibited teams from signing players younger than sixteen-years-old.<sup>95</sup> MLB did not prohibit organizations from training players younger than sixteen at the baseball academies or keeping them for an extended period.<sup>96</sup>

Prior to MLB's age limit restrictions, baseball organizations seemingly had no boundaries in regard to age limit.<sup>97</sup> Jim Kelly, who

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87. See Zimmer, *supra* note 56 at 425; see also Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 (1922)(the Supreme Court held that "[a]lthough [baseball] competitions between various clubs required extensive and frequent travel across state lines of players and officials, such travel was merely incidental to the baseball competitions. . . baseball [is] purely a state affair, [and as such], the professional baseball business [is] not subject to federal antitrust law.")

88. See MILTON H. JAMAIL, VENEZUELAN BUST BASEBALL BALL BOOM: ANDRES REINER AND SCOUTING ON THE NEW FRONTIER 100–01 (2008).

89. See *id.* at 104.

90. See *id.* at 101.

91. *Id.*

92. *Id.*

93. *Id.* at 101–02.

94. *Id.* at 101.

95. *Id.* at 102.

96. *Id.* at 101.

97. See *id.* at 102.

played shortstop for the Toronto Blue Jays, was only thirteen when he was signed in February 1984.<sup>98</sup> While the Blue Jays were not particularly eager to sign Kelly, the team felt compelled to do so because there were multiple other clubs showing interest.<sup>99</sup> Although he never made it to the major leagues, he was the youngest player to ever sign with a major league organization.<sup>100</sup> MLB's rule that prohibited teams from signing players under the age of sixteen was known in the industry as the "Jimmy Kelly Rule."<sup>101</sup> Kelly's contract with the Toronto Blue Jays effectively served as the event that terminated child labor in Latin American baseball, and effectively in MLB.<sup>102</sup>

While players from Puerto Rico, Canada, and the United States are required to be eighteen years old to enter a draft, players from Latin American countries are not subject to the same age requirement because they do not enter Major League Baseball through the draft.<sup>103</sup> With respect to baseball academies, children in the Dominican Republic can enter as young as twelve.<sup>104</sup> To avoid MLB's regulations, some teams hide prospects at remote training facilities to prevent the players from signing with other teams or finding an agent who would demand an increase in payment.<sup>105</sup> Alternatively, some Major League teams violate

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98. *Id.*

99. *Id.*

100. *Id.* at 102–03.

101. *Id.* at 103.

102. *Id.*; *First-Year Player Draft: Official Rules*, MLB, <http://mlb.mlb.com/mlb/draftday/rules.jsp> (stating that today, players who are eligible to enter the draft are separated into three basic categories: (1) High school players who have graduated from high school, but have not attended college or junior (or community) college; (2) College players who attend four-year colleges and have either completed their junior or senior years or are at least 21-years-old; and (3) Students who attend junior (or community) college, regardless of how many years of school they have completed).

103. Zimmer, *supra* note 56, at 419, 420; OFFICE OF THE COMMISSIONER OF BASEBALL, *supra* note 56, at MLR 3(a)(1)(B) (providing that a player who is not under contract with a Major League Baseball team and not subject to the draft can be signed to any team if (1) he is seventeen years old at the time of signing, or (2) he is at least sixteen years old at the time of signing and will be seventeen either by (i) the end of the baseball season in which he signed or (ii) September 1 of the year he signs).

104. Zimmer, *supra* note 56, at 421.

105. *Id.* at 420–21.

these regulations outright by signing players who are below the age requirement.<sup>106</sup>

*ii. Age and Identity Fraud*

To understand the dynamics between MLB and Latin American players, there must be an understanding of the recruiting process of Latin American players and the profit motive for these players.<sup>107</sup> MLB's rule that excludes Latin American players from the draft allows Latin American players to start their baseball careers as free agents and creates loopholes for their recruitment.<sup>108</sup> Age and identity fraud is a common practice among Latin American baseball hopefuls because players desire to be more marketable.<sup>109</sup> As a survival tactic, players change their names and age without a thought because *buscónes* tell players that major league teams will pay more for younger players.<sup>110</sup> Athletes are encouraged to assume fake identities because clubs may pay a player who is sixteen years old \$100,000 or more than it would pay a player who is just a year older.<sup>111</sup> The older the prospect, the more he is devalued.<sup>112</sup> While the common practice of falsifying documents may give the illusion that it is easy to assume a fake identity, or perhaps it is a

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106. *Id.* at 420.

107. Nicholas Pompeo, *DNA To Play: Major League Baseball's Use of DNA Testing on Central and South American Prospects in the Age of the Genetic Information Nondiscrimination Act of 2008*, 21 HEALTH MATRIX 627, 629–30 (2011).

108. Ruck, *supra* note 68; *Free Agency*, THE FREE DICTIONARY, [http://legal-dictionary.thefreedictionary.com/Free +Agency](http://legal-dictionary.thefreedictionary.com/Free+Agency) (last visited Dec. 11, 2015) (defining free agency as a "legal status that allows a professional athlete to negotiate an employment contract with the team of his or her choosing instead of being confined to one team").

109. *See* Zimmer, *supra* note 56, at 422.

110. Paul Hoynes, *The Mystery of Indians Pitcher Roberto Hernandez is a Way of Life in Baseball-Mad Dominican Republic*, CLEVELAND.COM (Feb. 25, 2012, 10:35 PM), [http://www.cleveland.com/tribe/index.ssf/2012/02/the\\_mystery\\_of\\_indians\\_pitcher.html](http://www.cleveland.com/tribe/index.ssf/2012/02/the_mystery_of_indians_pitcher.html).

111. Michael O'Keeffe, *Miami Marlins Reliever Juan Carlos Oviedo, Formerly Known as Leo Nunez, Arrested in Dominican Republic*, N.Y. DAILY NEWS (Dec. 9, 2011, 12:15 PM), <http://www.nydailynews.com/sports/baseball/miami-marlins-reliever-juan-carlos-oviedo-leo-nunez-arrested-dominican-republic-article-1.989179>.

112. Michael O'Keeffe, *Marlins Closer Leo Nuñez, aka Juan Carlos Oviedo, One of Many MLB Players With Fake Name: Expert*, N.Y. DAILY NEWS, (Oct. 6, 2011, 4:00 AM), <http://www.nydailynews.com/sports/i-team/marlins-closer-leo-nu-ez-aka-juan-carlos-oviedo-mlb-players-fake-expert-article-1.960202>.

deal only between the buscón and the prospect, sometimes, school and hospital personnel are also involved.<sup>113</sup>

In an effort to counter the issues of age and identity fraud, MLB started using genetic testing on Latin American players.<sup>114</sup> MLB would require a player to pay for the testing and would reimburse him only if the results matched the information on his documentation.<sup>115</sup> However, the passing of the Genetic Information Nondiscrimination Act of 2008 (GINA) called into question the legality of MLB's use of genetic testing in its investigations.<sup>116</sup> In addition to making it illegal for employers to use genetic information to make decisions about employment, GINA also prohibited employers from requesting, requiring, or purchasing a potential or current employee's genetic information, or that of his or her family members.<sup>117</sup> Despite the mixed views on MLB's use of genetic testing, it did enable MLB to identify multiple players who falsified their documents, which ultimately saved baseball clubs millions.<sup>118</sup>

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113. Hoynes, *supra* note 110; OFFICE OF THE COMMISSIONER OF BASEBALL, *supra* note 56, at MLR(3)(a)(1)(F) (stating that “[a]ny player found to have violated this [r]ule . . . shall be declared ineligible to sign with any Major or Minor League Club for a period of one year, if the player does not have an approved contract with a Major or Minor League Club, or shall be placed on the Disqualified List for a period of one year, if the player does have an approved Minor League Uniform Player Contract with a Major or Minor League Club. The Commissioner or the Commissioner’s designee shall have the discretion to reduce the mandatory sanctions described in this [r]ule . . . only if the Commissioner or the Commissioner’s designee concludes that extraordinary circumstances exist that call for the exercise of such discretion. . . . Any person employed by or affiliated with any Major or Minor League Club who participates in, aids or abets any violation of this Rule 3(a)(1)(F) shall be subject to such sanctions as may be deemed appropriate, in the discretion of the Commissioner or the Commissioner’s designee”).

114. Pompeo, *supra* note 107, at 628.

115. Michael S. Schmidt & Alan Schwarz, *Baseball's Use of DNA Raises Questions*, N.Y. TIMES (July 21, 2009), [http://www.nytimes.com/2009/07/22/sports/baseball/22dna.html?\\_r=0](http://www.nytimes.com/2009/07/22/sports/baseball/22dna.html?_r=0).

116. Pompeo, *supra* note 107, at 629–30.

117. *Genetic Information Nondiscrimination Act: Gina and Your Job*, <http://ginahelp.org> (last visited April 25, 2017)(employees and their families are protected under this Act regardless of their citizenship).

118. See Schmidt & Schwarz, *supra* note 115.

### 1. *Fausto Carmona of the Cleveland Indians*

On January 19, 2012, Roberto Heredia Hernández, better known as Fausto Carmona, was arrested in Santo Domingo for using a false name and birth date when he tried to apply for a visa using the false identity.<sup>119</sup> Hernández, a pitcher for the Cleveland Indians, reportedly changed his name in 2003, and listed his birthdate to appear three years younger.<sup>120</sup> According to a representative for the Indians, the team was unaware of Hernández's true identity and age when it first signed him in 2000.<sup>121</sup> The then general manager for the team admitted that thorough background investigations were not conducted during that time.<sup>122</sup> Consequently, the Indians placed Hernández on a restricted list,<sup>123</sup> which meant that the team conveniently did not have to pay his multi-million-dollar salary until he was allowed to join the team in the United States.<sup>124</sup>

### 2. *Miami Marlins Reliever Formerly Known as Leo Nunez*

Juan Carlos Oviedo, commonly known as Leo Nunez, was arrested and charged with using a false identity on official documents in December 2011.<sup>125</sup> Oviedo was arrested in the Dominican Republic when he was attempting to apply for a visa under his real name.<sup>126</sup> In an effort to receive more money, and at the insistence of a coach, Oviedo assumed the identity of a friend who is a year younger.<sup>127</sup> Apparently, Oviedo was

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119. Tyler Kepner, *Baseball's Identity Fraud Problem May Be More Prevalent*, N.Y. TIMES (Jan. 28, 2012), <http://www.nytimes.com/2012/01/29/sports/baseball/identity-fraud-among-dominican-players-worries-baseball-officials.html>.

120. *Id.*

121. Hoynes, *supra* note 110.

122. *Id.*

123. *Restricted List*, BASEBALL REFERENCE, [http://www.baseball-reference.com/bullpen/Restricted\\_list](http://www.baseball-reference.com/bullpen/Restricted_list) (defining restricted list as a category of players who have been suspended from organized baseball, but are not free agents. By placing a player on a restricted list, the team retains its rights to the player if and when he or she becomes active again).

124. Kepner, *supra* note 119.

125. *See* O'Keeffe, *supra* note 111.

126. *Id.*

127. *Id.*



able to convince MLB of this identity from 2008 to 2011.<sup>128</sup> Despite this and Oviedo's refusal to come forward in 2008 when MLB offered amnesty to foreign-born players, the Miami Marlins were still assisting Oviedo in obtaining proper U.S. documentation.<sup>129</sup> Oviedo was later released and not charged because of his cooperation in a larger investigation, which led to the arrest and prosecution of the man who helped Nunez falsify his documents.<sup>130</sup>

### iii. 2014 Age and Identity Investigations

During the summer of 2014, the Department of Homeland Security and the Federal Bureau of Investigation (FBI) investigated the smuggling of Cuban baseball players into the U.S.<sup>131</sup> The investigations, also known as Operation Safety Squeeze and Operation Boys of Summer, initially targeted smugglers, financiers, and the handlers that assisted in the smuggling rings in its initial stages.<sup>132</sup> The investigations centered on whether MLB teams and office officials had willfully ignored the criminal activity that enabled teams to sign Cuban players.<sup>133</sup> Agents also investigated whether club officials and employees played a more direct part in the smuggling of Cuban players, such as by funding the smuggling operations or paying smugglers for the opportunity to connect with players.<sup>134</sup> Over the course of these investigations and since, MLB and its franchises have maintained that they are simply innocent bystanders who have no involvement with the smuggling operations that deliver the players to their field.<sup>135</sup>

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128. Associated Press, *Miami Marlins' Leo Nunez Apologizes*, ESPN (Dec. 9, 2011), [http://espn.go.com/mlb/story/\\_/id/7336000/miami-marlins-leo-nunez-apologizes-using-fake-name-age](http://espn.go.com/mlb/story/_/id/7336000/miami-marlins-leo-nunez-apologizes-using-fake-name-age).

129. O'Keeffe, *supra* note 111.

130. Associated Press, *supra* note 128.

131. Scott Eden, *Federal Investigations into Cuban Smuggling, Major League Baseball Slow*, ESPN (Aug. 7, 2015), [http://espn.go.com/espn/otl/story/\\_/id/13383092/homeland-security-fbi-agents-look-major-league-baseball-cuban-player-smuggling-slowed](http://espn.go.com/espn/otl/story/_/id/13383092/homeland-security-fbi-agents-look-major-league-baseball-cuban-player-smuggling-slowed).

132. *Id.*

133. *Id.*

134. *Id.*

135. *See id.*

## B. Inequality of Bargaining Power

The U.S. has deep ties with Latin America, both culturally<sup>136</sup> and economically.<sup>137</sup> As a whole, Latin American countries have made substantial progress by expanding relations with other countries, spreading democracy, and mobilizing more of the population.<sup>138</sup> However, individual countries have failed to significantly reduce poverty and inequality.<sup>139</sup> Consequently, these are areas of major concern to Latin American governments and citizens.<sup>140</sup> Baseball recruitment is a reflection of the economic and inequality status of some Latin American countries.<sup>141</sup>

While high school athletes in the U.S. occasionally relocate for more exposure,<sup>142</sup> Latin American athletes are happy to relocate to be taken care of and get an education while learning a skill with great earning potential.<sup>143</sup> Despite the increase in the annual per capita income over the last decade, the projected increase in the unemployment rate in Latin America<sup>144</sup> places young players and their families in idle bargaining

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136. See generally Yesenia D. Acosta & G. Patricia de la Cruz, *The Foreign Born from Latin America and the Caribbean: 2010*, AMERICAN CMTY. SURVEY BRIEFS (Sep. 2011), <http://www.census.gov/prod/2011pubs/acsbr10-15.pdf> (stating that as of 2010, those who were born in Latin America account for more than half of the total foreign-born population).

137. See Charles E. Noyes, *United States Trade with Latin America*, in EDITORIAL RESEARCH REPORTS 1939, at 257–74 (1939), available at <http://library.cqpress.com/cqresearcher/cqresrre1939101000>.

138. COUNCIL ON FOREIGN RELATIONS, U.S.-LATIN AMERICA RELATIONS: A NEW DIRECTION FOR A NEW REALITY xi (2008) (assessing the changes of U.S. policy toward Latin America).

139. *Id.*

140. *Id.* at xii.

141. See Ruck, *supra* note 68.

142. See generally Greg Howard, *So Who's This Andrew Wiggins Kid? An Explainer*, DEADSPIN (Nov. 8, 2013) <http://deadspin.com/so-whos-this-andrew-wiggins-kid-an-explainer-1456392439> (noting that Canadian basketball player Andrew Wiggins transferred to a high school in the United States for more competition).

143. See JAMAIL, *supra* note 88, at 102.

144. *Unemployment in Latin America and the Caribbean Could Rise 0.2 Percentage Point*, INT'L. LABOUR ORG. (May 13, 2015), [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_368315/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_368315/lang--en/index.htm) (stating that “[t]he stagnation of Gross Domestic Product (GDP) per capita should weaken labour demand and, therefore, the creation of salaried employment. For that reason, a decline in the

positions.<sup>145</sup> Supporters of MLB's recruiting practices in Latin American countries like the Dominican Republic contend that American baseball affords the players an opportunity to provide significant financial assistance to their families.<sup>146</sup> While baseball can make a positive impact from a financial perspective, the players, many of whom are children when they become first involved with baseball scouts and clubs, are not afforded the same protection as their American counterparts.<sup>147</sup>

Exploitation is rooted in an inequality of bargaining power.<sup>148</sup> The basis for determining each party's power in a negotiation relies more on the dependence of each party on the other, rather than how powerful each party purports to be.<sup>149</sup> This power typically involves a relationship where it flows from the more dependent party to the less dependent party.<sup>150</sup> In addition to assessing alternatives, which afford the parties leverage, a more accurate power calculus also considers what each party can offer and do to the other.<sup>151</sup> Professor Richard Shell called these powers "positive leverage" and "negative leverage."<sup>152</sup> For the purposes of this article, "negative leverage" will not be discussed. Positive leverage, which is needs-based, arises when one party has the ability to satisfy the other's needs.<sup>153</sup> Given the economic position of most Latin American prospects, baseball scouts and teams have an obvious leverage

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region's urban employment rate—which refers to the relationship between the employed population and the total number of people who are of working age—is forecast for a third consecutive year”).

145. See Regalado, *supra* note 8.

146. Diana L. Spagnuolo, *Swinging for the Fence: A Call for Institutional Reform as Dominican Boys Risk Their Futures for a Chance in Major League Baseball*, 24 U. PA. J. INT'L ECON. L. 263, 280 (2003).

147. See Zimmer, *supra* note 56, at 420.

148. ALAN WERTHEIMER, EXPLOITATION 264 (1996).

149. Robert S. Adler & Elliot M. Silverstein, *When David Meets Goliath: Dealing with Power Differentials in Negotiations*, 5 HARV. NEGOT. L. REV. 4, 20 (2000).

150. *Id.* at 19.

151. *Id.* at 20.

152. *Id.*; see also G. RICHARD SHELL, BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE 6 (1999) (defining a negotiation as “an interactive communication process that may take place whenever we want something from someone else or another person wants something from us.”).

153. Adler & Silverstein, *supra* note 149, at 20.

when negotiating contracts.<sup>154</sup> The rules and regulations governing the recruitment of Latin American players have created an opportunity for these players to be exploited.<sup>155</sup>

### C. Exploitation

For Latin American recruits, American baseball provides shelter, and a salary potential that would be unattainable otherwise.<sup>156</sup> However, this is overshadowed by the treatment many receive prior to their enrollment in MLB academies.<sup>157</sup> As early as their preteen years, baseball prospects are trained by *buscónes*, who may encourage these children to forgo a formal education to focus on baseball full-time.<sup>158</sup> Unlike players in the U.S., Latin American players are not encouraged to have a backup plan in case a professional team does not recruit them.<sup>159</sup> Because MLB does not contract with *buscónes* and it purportedly has no official relationship with them, MLB and its affiliates do not regulate *buscónes*' dealings with the players.<sup>160</sup> The *buscón* system, which is essentially unstructured and unregulated, exposes recruits to shady, opportunistic scouts.<sup>161</sup>

Historically, a *buscón* would work with one major league team to hunt, train, and develop promising athletes, and direct them to that team.<sup>162</sup> Despite the absence of an official relationship, major league teams often paid *buscónes* a finder's fee or commission if they signed the player.<sup>163</sup> From an economic perspective, the *buscón* system is efficient in that it allows major league teams to thoroughly scout Latin American

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154. See Regalado, *supra* note 8 (discussing the neocolonialism tradition of recruiting Latin American talent).

155. See *id.*

156. Spagnuolo, *supra* note 146.

157. Dustin Williamson, *Part of the Team: Building Closer Relationships Between MLB Teams and Independent Agents in the Dominican Republic Through an MLB Code of Conduct*, 2 N.Y.U. J. OF INTELL. PROP. & ENT. L. 369, 371 (2013).

158. *Id.*

159. See Zimmer, *supra* note 56, at 423–26.

160. See Williamson, *supra* note 157, at 371.

161. See Zimmer, *supra* note 56, at 422–23.

162. See ARTURO J. MARCANO GUEVARA & DAVID P. FIDLER, *STEALING LIVES: THE GLOBALIZATION OF BASEBALL AND THE TRAGIC STORY OF ALEXIS QUIROZ* 37 (2002).

163. *Id.* at 38.

countries for promising talent, at minimal costs.<sup>164</sup> Further, unlike sports agents, a *buscón's* representation of a player ends at signing.<sup>165</sup> Once negotiations have commenced, the *buscón* is focused on the signing bonus.<sup>166</sup> If negotiations are successful, the player typically pays the *buscón* a percentage of the bonus, which sometimes totals as much as 50 percent.<sup>167</sup>

The exploitative system surrounding the recruitment of Latin American players is rooted in the inequality of bargaining power between the players and major league teams, and fostered by MLB's ineffective regulations and investigations of the paths that lead the players to its doorstep.<sup>168</sup> The 2012–2016 Basic Agreement represented a major shift in attitude regarding MLB's recruiting practices in Latin America.<sup>169</sup> However, how the system continues to function suggests that MLB is not equipped to effectively regulate this area.<sup>170</sup> When Bay Area Laboratory Co-operative (BALCO) was initially investigated, threats of legislation spurred MLB to seriously consider its issue of players using steroids, and implement an effective drug testing policy.<sup>171</sup> Regulation developed by the joint efforts of MLB and government that governs MLB's recruiting practices in Latin America may have the same positive effect.

## V. REGULATION FOR THE *BUSCÓN* SYSTEM IN LATIN AMERICA

As a matter of interdependence between Latin America and American baseball, MLB is in the unique position to counteract corruption, and curtail conduct that is detrimental to the general welfare of the game.<sup>172</sup>

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164. *Id.* at 39.

165. *Id.*

166. *Id.*

167. *Id.* at 38.

168. *See id.*

169. SAMUEL O. REGALADO & SARAH K. FIELDS, *SPORT AND THE LAW: HISTORICAL AND CULTURAL INTERSECTIONS* 127 (2014).

170. *See generally* Eden, *supra* note 131.

171. *See* Michiko Kakutani, *Barry Bonds and Baseball's Steroids Scandal*, N.Y. TIMES (Mar. 23, 2006), <http://www.nytimes.com/2006/03/23/books/23kaku.html?n=Top%2FFeatures%2FBooks%2FBook%20Reviews>.

172. *See* PAUL C. WEILER, GARY R. ROBERTS, ROGER I. ABRAMS & STEPHEN F. ROSS, *SPORTS AND THE LAW: TEXT, CASES AND PROBLEMS* 9 (5th ed. 2015).

However, MLB's casual attitude toward policing itself suggests that it has no real interest in improving its practices,<sup>173</sup> and thus, government involvement is warranted. While this attitude may be the result of years of preferential treatment from U.S. courts and Congress,<sup>174</sup> past investigations imply that MLB is not totally out of the federal government's reach.<sup>175</sup>

For the most part, the connection between Latin American recruits and professional baseball is initially developed through *buscónes* because they are able to access players earlier than allowed under MLB's rules.<sup>176</sup> Despite the controversial nature of the *buscón* system and MLB's denial of an official relationship, *buscónes* save MLB time and money by supplying it with players who have been training in academies since they were twelve years old.<sup>177</sup> While MLB may not have direct involvement in the controversy, it has been an enabler by having knowledge of *buscónes*' wrongdoings and doing nothing to discourage it.<sup>178</sup>

#### A. Building on Past Attempts at Regulating the *Buscón* System

In 2004, the Dominican Republic government sought to regulate *buscónes* in an effort to combat recurring issues of exploitation and fraud.<sup>179</sup> In addition to limiting *buscónes*' fees, the law would also require them to register with the government with the potential to lose their license for illegal behavior.<sup>180</sup> Further, the law would limit the duration of the contracts that players could sign so to limit the amount players would have to pay *buscónes*.<sup>181</sup> Although the legislation did not specifically mention an age requirement, it is likely that it would discourage training children under a certain age because *buscónes* would

173. See Marcano & Fidler, *supra* note 11.

174. See generally *Fed. Baseball Club of Baltimore, Inc. v. Nat'l League of Prof. Baseball Clubs*, 259 U.S. 200, 207, 209 (1922).

175. See Eden, *supra* note 131.

176. See Zimmer, *supra* note 56, at 420, 422.

177. *Id.* at 421.

178. See Marcano & Fidler, *supra* note 11.

179. '*Buscones*' que se las *Buscan*, ESPN DEPORTES, <http://espndeportes.espn.go.com/nota?id=228769> (last updated Apr. 30, 2004) [hereinafter 2004 MLB Problems & Solutions].

180. *Id.*

181. *Id.*

be unable to receive payment for any time outside of the contract.<sup>182</sup> While the bill was passed, the regulation was not enforced.<sup>183</sup>

The 2009 Alderson Report (“the Alderson Report”) suggested that MLB develop a plan to urge the Dominican Republic government to enact and implement legislation that regulates buscónes’ conduct and imposed heavy fines on violators.<sup>184</sup> The Alderson Report also proposed a collaborative effort between the Office of the Commissioner and lobbyists in the Dominican Republic in preparation of the legislation and discussions about it.<sup>185</sup> Third, the Alderson Report suggested that the Office of the Commissioner requests the assistance of the U.S. Embassy in the Dominican Republic for any assistance the U.S. government could provide.<sup>186</sup> Finally, the Alderson Report recommended that MLB’s Department of Investigations (“DOI”) create an electronic database that contained biographical and business information on each buscón that registered.<sup>187</sup>

Possibly one of the main reasons why the 2004 law was not effective is due to lack of incentive for MLB and buscónes and that it disfavored MLB club owners.<sup>188</sup> The market for Latin American talent is primarily created through buscónes and supported by MLB.<sup>189</sup> If MLB refused recruits from buscónes, buscónes would have no real financial incentive.<sup>190</sup> Thus, while the main focus should be on protecting Latin American players, legislation should also be drafted in favor of maintaining the financial incentives of MLB and buscónes.<sup>191</sup> Given that MLB is a large part of the Dominican Republic’s economic revenue, it is

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182. *See id.*

183. Memorandum from Sandy Alderson to Comm’r Selig Bob DuPuy, at 8 (Sep. 23, 2009) [hereinafter 2009 Alderson Report].

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* (stating that some of the legislations provisions regulated other aspects of MLB conduct, which was not in MLB’s best interest); Zimmer, *supra* note 56, at 425 (stating that “the establishment of Major League Baseball as a largely autonomous enterprise with an internal legal system has given it the ability to act solely with its own interests in mind; what is most profitable for the League has become the status quo”).

188. 2009 Alderson Report, *supra* note 183, at 8.

189. *See Ruck, supra* note 68.

190. *See id.*

191. *See* 2009 Alderson Report, *supra* note 183, at 8.

in a favorable position to influence government decisions.<sup>192</sup> To ensure both interests are acknowledged, the Dominican Republic government should form a committee consisting of mostly government officials and personnel from the Office of the Commissioner.<sup>193</sup> This would reduce the chances of unfavorable legislation for MLB and ultimately, *buscónes*.<sup>194</sup>

Registration under the current law should require the same information suggested for the proposed database in the Alderson Report.<sup>195</sup> Specifically, the database should include information on which players and teams are working with which *buscónes*.<sup>196</sup> The database could also be used to track any complaints made about a *buscón*'s conduct, which will assist the government in conducting investigations.<sup>197</sup> For *buscónes*, mandatory registration would level the playing field amongst them for access to player and team information.<sup>198</sup> For MLB, a database would assist teams in determining which *buscónes* to work with when recruiting.<sup>199</sup> Alternatively, registration could be voluntary, as suggested in the Alderson Report.<sup>200</sup> Voluntary registration should require adherence to strict standards, and violators would be removed in order to protect the integrity of the database.<sup>201</sup> To encourage registration, the Dominican Republic government could implement a tax break for *buscónes* and MLB club owners or provide funding for player development.<sup>202</sup>

An expected criticism is that a new Dominican Republic government regulation would intrude on another facet of private business practices.<sup>203</sup> However, a collaborative effort on the part of the Dominican Republican

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192. Zimmer, *supra* note 56, at 425.

193. See 2009 Alderson Report, *supra* note 183, at 10.

194. See *id.*

195. Compare 2004 MLB Problems & Solutions, *supra* note 179, with 2009 Alderson Report, *supra* note 183, at 10.

196. See 2009 Alderson Report, *supra* note 183, at 5.

197. *Id.* at 8.

198. See *id.* at 5.

199. *Id.* at 9.

200. *Id.* at 8.

201. See *id.*

202. See 2004 MLB Problems & Solutions, *supra* note 179; see also 2009 Alderson Report, *supra* note 183, at 8.

203. See Tibor Machan, *Government Regulation of Business: The Moral Arguments*, FOUND. FOR ECON. EDUC. (1988).



government and the Office of the Commissioner will lessen the likelihood of resistance.<sup>204</sup> The government's role will be neither novel nor overpowering.<sup>205</sup> Legislation regulating the *buscón* system was passed in 2004.<sup>206</sup> Furthermore, the proposed legislation is more statutory oversight than a complete federal takeover.<sup>207</sup>

### B. Regulating Baseball Academies and Emphasizing the Importance of Education

The government is the primary institution responsible for remedying the education system in Latin American countries.<sup>208</sup> In addition to funding, it is responsible for the quality of education received by students.<sup>209</sup> For example, in the Dominican Republic primary education is free and compulsory; however, it is basic by western standards and students are not prepared to continue to the next level of education.<sup>210</sup> Even though students can attend college for free, few students from poorer areas manage to complete the prerequisite education levels.<sup>211</sup> Although an increase in government spending on education suggests the prioritization of education,<sup>212</sup> when compared to baseball, it is not a main priority for Latin American youth.<sup>213</sup>

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204. *See About Us: Mission Statement*, EMBASSY OF THE UNITED STATES: DOMINICAN REPUBLIC, <http://santodomingo.usembassy.gov/about-us.html> (last visited Mar. 2, 2016) [hereinafter U.S. Embassy].

205. *See* Machan, *supra* note 203.

206. *See* 2004 MLB Problems & Solutions, *supra* note 179.

207. *See* Machan, *supra* note 203.

208. *See* Alejandro Chafuen, *Educational Quality and Inequality in Latin America*, FORBES (Nov. 11, 2014, 11:11 AM), <http://www.forbes.com/sites/alejandrochafuen/2014/11/20/educational-quality-and-inequality-in-latin-america/#279dl846224>.

209. Jaclyn Ambrecht, *Education in the Dominican Republic*, BORGEN MAG. (Jul. 2, 2014), <http://www.borgenmagazine.com/education-dominican-republic/>.

210. *Education System in the Dominican Republic*, FOREIGN CREDITS, <http://www.classbase.com/countries/Dominican-Republic/Education-System> (last visited Feb. 16, 2016).

211. *Id.*

212. LATIN AMERICAN ECONOMIC OUTLOOK 2010, DEVELOPMENT CENTRE OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dev/americas/latinamericaneconomicoutlook2010.htm>.

213. *See* Zimmer, *supra* note 56, at 431.

In Latin America, baseball academies are either owned by MLB teams or operated independently by *buscónes*.<sup>214</sup> The primary purpose of the academies is to hone players' skills and prepare them to acclimate to life in the U.S.<sup>215</sup> Additionally, academies run by MLB teams provide education-based programs that help prepare players for life after their baseball careers.<sup>216</sup> Academies operated by *buscónes* do not have the same resources, and thus, cannot provide players with the same quality of education.<sup>217</sup> Although academies owned by MLB teams answer to the Office of the Commissioner, there is currently no regulation in place that governs baseball academies ran by *buscónes*.<sup>218</sup>

In regard to baseball academies, the Alderson Report primarily focused on the issues of age and identity fraud.<sup>219</sup> However, it was Alderson who introduced the idea of an education initiative, which MLB implemented in 2010.<sup>220</sup> In addition to hiring a full-time educational coordinator, MLB commissioned a study to analyze the educational programs and challenges of the different MLB team academies.<sup>221</sup> Recently, MLB had a workshop at which representatives from MLB team academies met with MLB employees in the Dominican Republic to discuss possible educational programs.<sup>222</sup> The workshop successfully enabled MLB to identify several goals aimed at improving the academies' educational standards and ways to implement the changes.<sup>223</sup> Academies run by *buscónes* should be encouraged to implement a similar education initiative.<sup>224</sup>

The education initiative for academies ran by *buscónes* should begin with a required curriculum.<sup>225</sup> Given the poor quality of education

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214. *Id.* at 423.

215. *See id.*

216. *Academies*, MLB, <http://mlb.mlb.com/dr/academies.jsp> (last visited Feb. 7, 2016).

217. *See* Ruck, *supra* note 68.

218. *See* Zimmer, *supra* note 56, at 422, 427.

219. *See* 2009 Alderson Report, *supra* note 183, at 2.

220. *Education Initiative*, MLB, [http://mlb.mlb.com/dr/education\\_initiative.jsp](http://mlb.mlb.com/dr/education_initiative.jsp) (last visited Feb. 7, 2016).

221. *Id.*

222. *Id.*

223. *See id.*

224. *See generally id.*

225. *See id.*

received by prospects in buscón-operated academies, the curriculum should be developed by the government.<sup>226</sup> Despite baseball academies' status as private institutions, meaning the government does not fund them, there should be strict education standards to which all academies must adhere.<sup>227</sup> While primarily the government should determine the required subjects, MLB personnel and representatives from MLB team academies could provide a different perspective on educating ballplayers.<sup>228</sup> In addition to courses on English, reading, writing, general life skills, computer skills, and adapting to life in the U.S., the curriculum should include courses on mathematics, history and science.<sup>229</sup> The purpose of these courses is to produce well-rounded athletes, which will ultimately lead to better prospects and players for MLB.<sup>230</sup> The government and MLB can partially fund these programs.<sup>231</sup> Buscónes will be incentivized by the increased likelihood of their players' success.<sup>232</sup> For its academies, MLB should prohibit teams from recruiting players who have not finished high school, as is the rule for players in the U.S.<sup>233</sup>

Considering MLB's ability to provide recruits with an education and the age of recruits when they come to the academies, education should take priority.<sup>234</sup> Recruits should spend the majority of the day in classes and a few hours a day practicing or doing team workouts.<sup>235</sup> Alternatively, courses could be held on certain days, while practices could be held on others with a break during the week or weekend.<sup>236</sup>

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226. *See id.*

227. *See id.*

228. *See id.*

229. *See id.* The curriculum should be similar to that in an American school. MLB team academies could also add these courses to their curriculum.

230. *See generally* Isiah Thomas, *Education of Athletes Is Crucial and Goes Far Beyond What the NCAA/APR Tell Us*, HUFFPOST SPORTS (June 13, 2013, 3:49 PM), [http://www.huffingtonpost.com/isiah-thomas/education-of-athletes-is-\\_b\\_3437013.html](http://www.huffingtonpost.com/isiah-thomas/education-of-athletes-is-_b_3437013.html); *see also* Kareem Abdul-Jabbar, *Young Athletes, a Degree Matters*, ESPN (Sept. 6, 2012), [http://espn.go.com/college-sports/story/\\_/id/8344785/young-athletes-degree-matters](http://espn.go.com/college-sports/story/_/id/8344785/young-athletes-degree-matters) (discussing how education prepares athletes for life outside of sports).

231. *See* Ambrecht, *supra* note 209.

232. *See* GUEVARA & FIDLER, *supra* note 162, at 37.

233. *See First-Year Player Draft: Official Rules*, *supra* note 102.

234. *See, e.g., Education Initiative*, *supra* note 220.

235. *See generally* Zimmer, *supra* note 56.

236. *See generally id.*

Additionally, the contracts players sign when they enter the academies should include a provision regarding school performance.<sup>237</sup> Fortunately, MLB and the government have the resources to provide players with the tools to succeed both physically and academically.<sup>238</sup> Thus, poor performance in school should result in less time in practice.<sup>239</sup> If the poor performance continued, the player should face suspension, or possibly expulsion.<sup>240</sup>

### C. Curtailing the Problems of Age and Identity Fraud

After the terrorist attacks of September 11, 2001, the U.S. increased border security, which led to discoveries that several players from Latin America had falsified their documents.<sup>241</sup> However, despite this, MLB's identity fraud problem is unabated.<sup>242</sup> Although the background investigations conducted have been more thorough in recent years, which have led to clubs saving money, there are still many players who receive millions in a signing bonus, and are later determined to have falsified their documents.<sup>243</sup> Consequently, the players are unable to obtain a visa to enter into the U.S., and the clubs are unable to get any return on their investment in the players.<sup>244</sup>

## VI. THE EARLIER, THE BETTER: AGE AND IDENTITY FRAUD IN BASEBALL ACADEMIES

In an attempt to get more organized, MLB began registering prospects a few years ago at its showcases.<sup>245</sup> Typically, initial registration

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237. See *Education Initiative*, *supra* note 220.

238. See generally Ambrecht, *supra* note 209.

239. See Chafuen, *supra* note 208.

240. See *id.*

241. Hoynes, *supra* note 110.

242. See 2009 Alderson Report, *supra* note 183, at 2.

243. *Id.*

244. *Id.*

245. Jared S. Hopkins, *Welcome to the Dominican Republic: Baseball Mecca*, CHICAGO TRIBUNE (Mar. 3, 2015, 6:50 PM), <http://www.chicagotribune.com/sports/baseball/ct-dominican-baseball-spt-0304-20150303-story.html>.

generally includes name, age, and basic contact information.<sup>246</sup> This information, which is probably not verified by MLB, is usually used to send prospects and their families general information and news about MLB.<sup>247</sup> Although it helps MLB to track prospect registration, because players' initial exposure to professional baseball begins with training at academies, MLB should verify age and identity starting then, when the information is probably more concrete.<sup>248</sup>

The Alderson Report recommended that recruits be required to register with MLB's Dominican Republic Office ("DRO") upon their first point of contact with an MLB team, which is typically an invitation to tryout at an academy, but could also be the negotiation between a player's *buscón* and a team.<sup>249</sup> This policy would prohibit MLB teams from inviting a recruit to an overnight stay or multiple-day tryout, or engaging in contract negotiations, until the recruit registered with the DRO. The Alderson Report also suggested disallowing players who were suspended for falsifying their age and identity from participating in tryouts held during their suspension.<sup>250</sup> Additionally, the Alderson Report recommended that players and *buscónes* sign a declaration attesting to the player's age and identity and that no individual or organization was paid anything of value in connection with the registration or signing.<sup>251</sup>

Players' biological information should be collected and stored in a central database and they should be required to bring proper proof of age and identity when they first register with an MLB team.<sup>252</sup> As there have been instances when a hospital or school has been involved in age and identity fraud, the required documentation should come directly from either a hospital or school with proof of the documents' authenticity.<sup>253</sup> Schools and hospitals should be subject to penalties for any participation in age and identity fraud.<sup>254</sup> All of this information, including players'

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246. See *Camp Registration*, IMG ACADEMY, <https://register.imgacademy.com/> (last visited Mar. 1, 2016) (follow registration instructions).

247. See *id.*

248. See Zimmer, *supra* note 56, at 421, 423.

249. 2009 Alderson Report, *supra* note 183, at 5.

250. *Id.* at 6.

251. *Id.*

252. *Id.* at 5.

253. Hoynes, *supra* note 110.

254. See Hoynes, *supra* note 110.

photographs and fingerprints, should be stored in a database, accessible by the Dominican Republic government, the DRO, and MLB teams.<sup>255</sup>

Players suspended for falsifying their age and identity should be subject to suspension for a minimum of a year.<sup>256</sup> In addition to disallowing them from participating in tryouts, players should also be subject to a reinstatement fee.<sup>257</sup> The reinstatement fee would be paid to the DRO and split between it and the government.<sup>258</sup> Players who are repeat offenders should be ultimately placed on a banned players list.<sup>259</sup> Prior to being placed on this list, players must appear in a hearing before the DRO, which they would have agreed to do in an arbitration agreement signed when they registered.<sup>260</sup> From there, players would be able to challenge an unfavorable decision to the Office of the Commissioner.<sup>261</sup> Should it be determined that the player was rightfully suspended or banned, MLB teams should be prohibited from recruiting or negotiating with these players, and subject to fines for any violation.<sup>262</sup>

Realizing that registering all players and maintaining a database presents possible budgetary issues, MLB should consider sharing the cost.<sup>263</sup> In addition to fees recovered from violators, funding could also come from MLB teams and the U.S. Embassy.<sup>264</sup> The purpose of these procedures is to decrease of the instances of age and identity fraud.<sup>265</sup> Implementation of these procedures benefits MLB teams by saving them millions by not signing players who have falsified their documents.<sup>266</sup> Conducting these investigations early on and maintaining the database enables the U.S. Embassy to build on prior investigations and focus more attention on the higher ups involved in the fraud.<sup>267</sup>

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255. See 2009 Alderson Report, *supra* note 183, at 5.

256. See *id.* at 5.

257. See *id.* at 7.

258. See *id.*

259. See *id.*

260. See *id.*

261. See *id.*

262. See *id.* at 6.

263. See *id.* at 5.

264. See *id.* at 4; see U.S. Embassy, *supra* note 204.

265. See 2009 Alderson Report, *supra* note 183, at 4–6.

266. See Schmidt & Schwarz, *supra* note 115.

267. See Eden, *supra* note 131.

VII. AGE AND IDENTITY SHOULD BE VERIFIED PRIOR TO SIGNING A  
PLAYER: AN ALTERNATIVE TO VERIFYING AT FIRST CONTACT

While the U.S. Embassy acknowledged the improvement of MLB's age and identity fraud investigations, it still expressed concern in regard to the quality of MLB's investigations.<sup>268</sup> The Alderson Report suggested that investigations into players' age and identity be conducted prior to them signing their contract.<sup>269</sup> It further suggested that the DOI head age and identity fraud investigations in the Dominican Republic, and that the Office of the Commissioner assign an in-country lead investigator.<sup>270</sup>

A. The Department of Investigations

The DOI is primarily responsible for investigating MLB policy and rule violations.<sup>271</sup> Within the DOI, there is a unit specifically assigned to investigate age and identity fraud, drug use, and kidnappings of major league players and their families in Latin America.<sup>272</sup> In 2014, Assistant U.S. Attorney Bryan Seeley, took charge of the DOI and focused its attention on accusations of illegal drug use.<sup>273</sup> While the restructuring of the DOI led to the development of close working relationships between DOI personnel and prosecutors, there was no indication of age and identity fraud investigations.<sup>274</sup> Since MLB desires to discipline and sanction those who violate its policies, but has no legal authority to charge violators or make prosecutors bring charges, a relationship that fosters collaborative investigations between the DOI and local law enforcement should be developed.<sup>275</sup> In an effort to effectively tackle the

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268. See 2009 Alderson Report, *supra* note 183 at 4.

269. *Id.* at 5.

270. *Id.* at 4.

271. Jim Molony, *MLB Launches Dept. of Investigations*, MLB (Jan. 11, 2008), <http://m.mlb.com/news/article/2343864/>.

272. Teri Thompson & Christian Red, *MLB Hires New Top Cop With Ties to Washington D.C.*, N.Y. DAILY NEWS (Sept. 4, 2014, 12:01 AM), <http://www.nydailynews.com/sports/i-team/mlb-hires-new-top-ties-washington-article-1.1927209>.

273. *Id.*

274. See *id.*

275. See *id.*

issues of age and identity fraud, the DOI should consider dividing the interest and creating a separate unit to focus on age and identity fraud.<sup>276</sup>

### B. U.S. Embassy in the Department of Investigations

The clear question is whether MLB teams and officials willfully ignore the criminal activity players and prospects participate in to get a chance to play in the majors.<sup>277</sup> The next question is who is financially backing this activity.<sup>278</sup> Considering that government officials expressed support of MLB improving its operations in the Dominican Republic, which is echoed in other Latin American countries,<sup>279</sup> government officials would likely support the DOI following guidelines set by the U.S. Embassy for investigating age and identity fraud.<sup>280</sup> Alternatively, U.S. Embassy personnel could take an active role in investigating age and identity fraud alongside the DOI or have the DOI's investigators report directly to the U.S. Embassy.<sup>281</sup> The Alderson Report suggests that investigators should be subjected to extensive background and integrity checks.<sup>282</sup> The U.S. Embassy should do these checks, and the U.S. Embassy personnel conducting the checks should be anonymous.<sup>283</sup> As a final check, investigators in the U.S. Embassy and the DOI should be subject to federal prosecution for any participation in the age and identity fraud of those they investigated.<sup>284</sup>

### C. Joint Committee

As of yet, MLB has not matched its ambitious plans with committed actions. While MLB has implemented rules and formed committees, the rules have proven to be futile and the committees appear inept in developing a new culture of habits that discourage the exploitation and

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276. *See id.*

277. Eden, *supra* note 131.

278. *See id.*

279. *See* 2009 Alderson Report, *supra* note 183, at 3.

280. *See id.* at 2; *see also* U.S. Embassy, *supra* note 204.

281. *See* 2009 Alderson Report, *supra* note 183, at 4.

282. *Id.* at 4.

283. *See id.*

284. *See id.* at 3.



manipulation of Latin American athletes.<sup>285</sup> Baseball committees typically consist of members who represent the interests of the Association and the Clubs.<sup>286</sup> Since these parties are not necessarily concerned with the best interest of international athletes and corruption in regard to policy compliance appears to be a constant impediment, a joint committee should be formed.

A joint committee consisting of representatives from the Players' Association, the Clubs, and the U.S. Embassy in the Dominican Republic would allow Major League Baseball to focus its attention on the major issues surrounding the recruitment process in Latin America. The purpose of the U.S. Embassy in the Dominican Republic is to align the continued development of the Dominican Republic with the interests of the United States.<sup>287</sup> In regard to MLB's international recruitment process, the U.S. Embassy is in the unique position to conduct in-depth investigations, while maintaining a diplomatic front.<sup>288</sup> Additionally, because the U.S. Embassy has regular contact with local government, businesses and nongovernment organizations,<sup>289</sup> it can ensure representation of local interests in the development of new MLB policies. This approach would promote a sense of trust between the parties and facilitate positive responses to the changes.

#### D. Expanding the Draft to Include International Players

For Latin American countries, an international draft would mean that Latin American players would be eligible for selection alongside their American counterparts, or that MLB would hold a separate draft altogether.<sup>290</sup> In either system, Latin American players would no longer

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285. See REGALADO & FIELDS, *supra* note 169, at 132.

286. 2012-2016 *Basic Agreement*, MLB 51 (Dec. 12, 2011), [http://mlb.mlb.com/pa/pdf/cba\\_english.pdf](http://mlb.mlb.com/pa/pdf/cba_english.pdf).

287. U.S. Embassy, *supra* note 204.

288. See *What Is a U.S. Embassy?*, DISCOVER DIPLOMACY, <http://diplomacy.state.gov/discoverdiplomacy/diplomacy101/places/170537.htm> (last visited Mar. 2, 2016); see also 2009 Alderson Report, *supra* note 183, at 2.

289. *What Is a U.S. Embassy?*, *supra* note 288.

290. Associated Press, *Panel to Study International Draft*, ESPN (Dec. 15, 2011), [http://www.espn.com/mlb/story/\\_/id/7356002/panel-study-major-league-baseball-needs-international-player-draft](http://www.espn.com/mlb/story/_/id/7356002/panel-study-major-league-baseball-needs-international-player-draft).

be free agents.<sup>291</sup> In recent years, there has been growing anticipation regarding whether MLB will have an international draft.<sup>292</sup> In 2013, MLB decided against holding an international draft because it and the MLBPA could not reach an agreement about the logistics and procedures related to an international draft.<sup>293</sup> MLB is to revisit discussions of an international draft at the expiration of the 2016 CBA.<sup>294</sup>

Proponents of an international draft argue that an international draft will support a competitive balance because it would put all players in the same pool regardless of their country of origin.<sup>295</sup> Prior to the current CBA, MLB and MLBPA agreed to an international bonus system that restricted the amount of money teams could spend on international recruits.<sup>296</sup> Although violators of this restriction were subject to fines, the continued spending by teams suggests that money is not a deterrent.<sup>297</sup> Critics of having an international draft state that it would only be applicable in the Dominican Republic and Venezuela because those are the primary interests MLB focuses on in considering whether to have an international draft.<sup>298</sup> Further, critics believe that the two countries would want to protect a system that has resulted in consistent economic revenue.<sup>299</sup>

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291. See Ruck, *supra* note 69.

292. See generally Steve Adams, *2016 Draft & International Pool Changes by Team*, MLB TRADE RUMORS (Feb. 16, 2016, 11:38 PM), <http://www.mlbtraderumors.com/2016/02/2016-mlb-draft-international-pool-changes.html>.

293. Jesse Sanchez, *Baseball Decides Against Holding International Draft*, MLB (May 31, 2013), <http://m.mlb.com/news/article/49189442/major-league-baseball-decides-against-holding-international-draft>.

294. Ben Badler, *New MLB International Signing Rules*, BASEBALL AMERICA (Dec. 2, 2016), <http://www.baseballamerica.com/international/new-mlb-international-signing-rules/#RjKJdHiejfIhZbFj.97>.

295. Steve Adams, *Manfred on International Draft, Expansion, DH, CBA*, MLB TRADE RUMORS (Jan. 25, 2016, 5:46 PM), <http://www.mlbtraderumors.com/2016/01/manfred-on-international-draft-expansion-dh-cba.html>.

296. *Id.*

297. Jayson Stark, *International MLB Draft: Inevitable or Impossible?*, ESPN (Jun. 11, 2015), [http://espn.go.com/mlb/story/\\_id/13054711/biggest-obstacles-international-major-league-baseball-draft](http://espn.go.com/mlb/story/_id/13054711/biggest-obstacles-international-major-league-baseball-draft).

298. *Id.*

299. *Id.*

MLB should implement an international draft when the current MLB expires at the end of this year and include only players born outside of the U.S. and Canada.<sup>300</sup> Although this would result in the loss of Latin American players' free agency status, they would be aligned with talent from the U.S. and Canada.<sup>301</sup> In addition to providing a necessary structure around the recruitment of Latin American talent, implementing an international draft would also force much needed transparency.<sup>302</sup>

The financial impact an international draft may have is uncertain.<sup>303</sup> From a Latin American player's perspective, an international draft may offer advantages in negotiating his signing bonus.<sup>304</sup> Given the negotiations' visibility, as compared to the semi-closed negotiations with free agents, fans will likely apply pressure on MLB teams because they are invested in contract negotiations with their player.<sup>305</sup> When negotiating the logistics of an international draft, parties must be sure that international players' bargaining positions are not frustrated by impositions placed on MLB teams.<sup>306</sup>

#### VIII. CONCLUSION

Baseball is a game of tradition. As so, MLB has been reluctant to make changes, even in the face of a known exploitative system.<sup>307</sup> However, as baseball continues to expand globally, MLB will face new challenges that cannot be met with the same lackadaisical attitude as with past issues.<sup>308</sup> MLB's recruiting practices in Latin America include the complexities of international and sports law, as well as a contested

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300. See generally Adams, *supra* note 292.

301. See generally Stark, *supra* note 297.

302. See generally Marcano & Fidler, *supra* note 11 (discussing MLB's exploitation of Latin American talent).

303. See Stark, *supra* note 297; see also David Lengel, *MLB Wants International Players Included in the Draft, but is it Even Possible?*, THE GUARDIAN (Jun. 11, 2015, 6:00 AM), <https://www.theguardian.com/sport/2015/jun/11/mlb-draft-international-players-possible>.

304. See *id.*

305. See Adams, *supra* note 292.

306. See Stark, *supra* note 297.

307. See Drellich, *supra* note 62.

308. See generally Zimmer, *supra* note 56.

relationship between a multi-national corporation and impoverished people.<sup>309</sup>

The exploitative nature of MLB's recruiting practices in Latin America is not vindicated by MLB's aggressive plans to change.<sup>310</sup> MLB is more than equipped and has had ample opportunities to counter its unfair treatment of Latin American players. These issues require action, and MLB's reluctance to change suggests either it is more committed to tradition than righting its wrongs, or that it is inept to face these challenges alone.

Despite the criticisms of government involvement in private business practices, government involvement of MLB recruiting practices in Latin American countries will not only hold MLB accountable to certain standards, but also provide structure to a system that is effectively unregulated.<sup>311</sup> With speculation of an international draft, the soon expiration of the current of CBA, and relations between the U.S. and Cuba reopening, MLB has a lot to consider when negotiating the next CBA.<sup>312</sup> It is important that MLB prioritize revamping its recruiting practices in Latin America.

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309. See Marcano & Fidler, *supra* note 11.

310. See Drellich, *supra* note 62.

311. See Machan, *supra* note 203.

312. See Stark, *supra* note 297; see also Cardona, *supra* note 1.