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The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent

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INTRODUCTION

The 1998 Major League Baseball (MLB) season was filled with many memorable moments and achievements. While not as obvious as the historic home run duel between Mark McGwire and Sammy Sosa, the 1998 MLB season reflected the growing prominence of foreign baseball players in the League. This prominence appears not only in the performances of foreign superstars such as Sammy Sosa¹ and Bernie Williams² but also in overall number of foreign players now on MLB rosters. MLB reports that thirty-two percent of MLB professional baseball players were born outside the United States and that 147 MLB players represent twenty-three countries.³ The international flavor to MLB is continuing in the 1999 season as the Baltimore Orioles have played two games against a Cuban all-star team, and the

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1. Sosa won the 1998 MVP Award for the National League. See Murray Chass, *Here's One for Sammy: The National League MVP*, INT'L HERALD TRIB., Nov. 20, 1998, at 23.

2. Williams won the American League batting title in 1998. See Buster Olney, *Batting Title for Williams, with Free Agency Ahead*, N.Y. TIMES, Sept. 28, 1998, at D7.

3. MLB Web Page (visited Oct. 2, 1998) <<http://www.majorleaguebaseball.com/mlbi/gd1.sm1>>.

Colorado Rockies and San Diego Padres opened their seasons with a game in Monterrey, Mexico.

The global growth of MLB is also reflected in the growing global community of MLB fans. As foreign players have successfully penetrated MLB, baseball fans in many other countries follow the successes of their “native sons” in the Big Show. Many of these countries sport a strong cultural attachment to baseball, whether in the form of MLB or local leagues and teams. MLB is, and has for several years, been moving to exploit the potential of this growing global community of baseball fans. As MLB notes, “America’s pastime is growing—and most of that growth is happening outside the United States.”⁴ Gene Budig, President of the American League, has asserted boldly that “[o]ur National Pastime is now the world’s.”⁵

The success of foreign players in MLB and MLB’s efforts to tap into a global community of baseball fans represent elements in the phenomenon of the globalization of baseball. On the surface, the globalization of baseball appears benign as it brings Americans and foreigners together in mutual enjoyment of sport. The globalization of baseball has, however, a dark side that has received surprisingly little attention from those who follow the game. MLB teams systematically treat potential baseball talent in Latin America⁶ less favorably than they do American baseball prospects. This Article focuses on this unpleasant reality of the globalization of baseball in order to raise awareness about an aspect of MLB that should concern fans of the sport.

In Part I, we demonstrate that baseball is much more than a pastime; it is big business, both domestically and now globally. The business of MLB now involves accessing global markets for: (1) baseball consumers in many countries besides the United States, and (2) baseball talent or labor. In going global to access these markets, MLB behaves like other big businesses facing globalization in their respective areas. Multinational companies (MNCs) have for many decades been building global markets for their products and utilizing a global labor pool to manufacture those products. MLB’s international activities follow the same path already blazed by MNCs.

In Part II, we define more precisely what the globalization of baseball means. This phenomenon contains two basic dynamics: the denationalization

4. *Id.*

5. Gene Budig, *Baseball Has a Worldly Look*, USA TODAY, June 26, 1998, at 6C.

6. For purposes of this Article, “Latin America” includes countries in the Caribbean, Central America, and South America.

of (1) the market for baseball consumers, and (2) the market for baseball labor. For most of its history, MLB tapped into an overwhelmingly national market—the United States—for fans and players. Today, the markets for fans and players span many countries. Again, the denationalization of markets for businesses is not new as MNCs have already been down this road. In the globalization of baseball, one can find strong echoes of the globalization of markets generally.

In Part III, we focus on how the globalization of baseball produces in MLB the less favorable treatment of baseball prospects in Latin American countries. The heart of this argument is that MLB and MLB teams treat Latino baseball talent in ways that would not be tolerated in the United States. We examine three specific areas where this less favorable treatment is manifest: in the process of scouting Latino baseball prospects; in the baseball academies in Latin American countries; and in how MLB actively discourages Latino baseball prospects from using agents. Again, the historical behavior of MNCs provides a good analogy as MNCs routinely treat foreign workers less favorably in terms of pay and working conditions than they do workers in the United States. Such MNC behavior has been subjected to harsh criticism by non-governmental organizations (NGOs) working to promote international human rights and labor standards. We believe MLB deserves the same type of scrutiny in connection with its activities with Latino baseball prospects.

In Part IV, we argue that the behavior of MLB teams with respect to Latino baseball prospects violates international human rights and labor standards. First, MLB teams behave in ways that jeopardize the human rights of children enshrined in the United Nations Convention on the Rights of the Child. Second, MLB teams behave in ways that violate international labor standards crafted by the International Labor Organization in connection with their treatment of Latino children. When MLB teams are engaged in violations of established international human rights and labor norms, we believe that critical attention should be brought to bear on MLB to correct the unseemly side of the globalization of baseball.

In Part V, we discuss possible ways to remedy the less favorable treatment received by Latino baseball prospects. The remedies include legal responses, institutional reform with MLB, and labor pressure on MLB from Latino baseball players. The most realistic short-term remedy, we believe, is for Latino and other foreign baseball players to form a labor association to put

pressure on MLB teams to end their less favorable treatment of foreign baseball prospects.

We conclude by arguing that the globalization of baseball has made baseball a global game and has given MLB not only global opportunities to make money but also global responsibilities that it must face if the future of baseball as a pastime and as a business is to be healthy and honorable.

I. THE GLOBAL BUSINESS OF BASEBALL

The moniker “America’s pastime” obscures the degree to which baseball has from its earliest days been a business designed to make money. The National League had its origins in the desire of influential baseball men to organize professional baseball around sound business principles. Influential figures, such as William Hulbert, Harry Wright, and Albert Spalding, succeeded in turning baseball from a pastime into big business, meaning that “[t]he managing end of the game was to be separate and distinct from the playing end, thus allowing the players to concentrate on performance and leave business affairs and promotion to the owners.”⁷ Spalding argued that taking ballplayers out of the management of the game merely reflected:

[T]he irrepressible conflict between Labor and Capital asserting itself under a new guise Like every other form of business enterprise, Base Ball [*sic*] depends for results on two interdependent divisions, the one to have absolute control and direction of the system, and the other to engage—always under the executive branch—the actual work of production.⁸

These men were clearly thinking about baseball as a business rather just a pastime.

The American League also came to life through savvy business strategies crafted by Byron Bancroft (Ban) Johnson. Johnson built a struggling minor league circuit called the Western League into the American League—a force that eventually challenged the professional baseball monopoly of the National

7. HAROLD SEYMOUR, *BASEBALL: THE EARLY YEARS* 80 (1960).

8. *Quoted in id.*

League.⁹ Johnson hired talent away from the National League by offering higher salaries and advertised the American League's family-friendly atmosphere in the ballpark.¹⁰ The American League brought competition to professional baseball for both baseball consumers—the fans—and baseball talent. The business success of Johnson's American League forced the once dominant National League to negotiate an agreement with the challenger in 1902 that would prove to be the foundation for MLB.¹¹

The growth of the business of baseball in the United States would probably have staggered even the business-savvy founders of MLB.¹² Baseball revenues and expenses have reached huge amounts. The MLB Commissioner's Office estimated that per team revenue in 1998 ranged from the highest figure of \$170 million (believed to be the New York Yankees) to the lowest amount of \$35 million (believed to be the Montreal Expos).¹³ MLB teams derive their revenue from three basic sources: gate and stadium receipts, sale of television and radio broadcasting rights, and sales of licensed products.¹⁴ While gate and stadium receipts used to account for the majority of a MLB team's revenue, today television broadcast revenues constitute the biggest revenue item.¹⁵ Licensing revenues have also grown enormously for MLB, with total sales of licensed products growing from \$200 million in 1987 to \$1.5 billion in 1990.¹⁶ Licensing revenues are distributed equally among MLB teams, meaning that in 1990 each team received an estimated \$2.7 million from sales of licensed products.¹⁷

Costs have also grown enormously, largely because of escalating players' salaries. Zimbalist estimated that the cost of players' salaries as a percentage

9. *Id.* at 307-08.

10. *See id.* at 309, 314 (noting how "the fans came out because they liked the American's absence of rowdyism" and the American League's success in "raiding National League stars.").

11. *See id.* at 322-24 (discussing details of the agreement that brought the National and American Leagues together).

12. For detailed overviews of the business of baseball, see ANDREW ZIMBALIST, *BASEBALL AND BILLIONS: A PROBING LOOK INSIDE THE BIG BUSINESS OF OUR NATIONAL PASTIME* (1992); David Pietrusza, *The Business of Baseball*, in *TOTAL BASEBALL: THE OFFICIAL ENCYCLOPEDIA OF MAJOR LEAGUE BASEBALL* 588 (J. Thorn and P. Palmer eds., 4th ed., 1995) [hereinafter *TOTAL BASEBALL*].

13. See CBS SportsLine Web Page (visited Jan. 11, 1999) <<http://cbs.sportsline.com/...overs/baseball/dec98/bigsalary121898.htm>>.

14. ZIMBALIST, *supra* note 12, at 48.

15. *Id.*

16. *Id.* at 57.

17. *Id.* at 58.

of total team revenue was 17.6% in 1974 but 42.9% in 1991.¹⁸ Tables 1 and 2 list the 1998 team payrolls for both the American and National Leagues. In aggregate, the payroll expenses of both Leagues in 1998 exceeded half a billion dollars.

Table 1: American League Payrolls, 1999¹⁹

Team	Salary
Anaheim Angels	\$ 51,830,166
Baltimore Orioles	78,902,282
Boston Red Sox	59,553,500
Chicago White Sox	24,560,000
Cleveland Indians	68,061,627
Detroit Tigers	34,104,666
Kansas City Royals	23,706,000
Minnesota Twins	19,242,500
New York Yankees	85,034,692
Oakland Athletics	23,234,333
Seattle Mariners	49,963,503
Tampa Bay Devil Rays	33,952,500
Texas Rangers	74,834,931
Toronto Blue Jays	44,509,333
Grand Total	671,490,033

18. *Id.* at 59.

19. Hal Bradley, *1999 Major League Baseball Salaries*, USA TODAY, Apr. 6, 1999, at 14c.

Table 2: National League Payrolls, 1999²⁰

Team	Salary
Arizona Diamondbacks	\$ 66,078,999
Atlanta Braves	73,585,000
Chicago Cubs	60,191,500
Cincinnati Reds	33,162,761
Colorado Rockies	55,864,837
Florida Marlins	18,876,000
Houston Astros	51,629,000
Los Angeles Dodgers	79,265,953
Milwaukee Brewers	41,395,762
Montreal Expos	16,175,500
New York Mets	62,450,427
Philadelphia Phillies	30,297,500
Pittsburgh Pirates	22,197,666
St. Louis Cardinals	45,698,333
San Diego Padres	47,828,346
San Francisco Giants	44,943,557
Grand Total	749,641,141

20. *Id.*

In addition, salaries for MLB stars continue to escalate. During the off-season after the 1998 season, a number of MLB free agents signed with new or current teams for astonishing sums of money.²¹ The ever-escalating salary costs of MLB players has stirred controversy and worry within MLB. In January 1999, the MLB Commissioner announced the formation of a Blue Ribbon Task Force on Baseball Economics to study the economic and financial condition of MLB.²² The biggest problem facing the Blue Ribbon Task Force, according to the MLB Commissioner, is payroll disparity between high-revenue teams and low-revenue teams.²³ As noted below, these ever-increasing financial pressures on MLB intensify MLB teams' search for high-quality talent on the cheap in Latin America.

Although these significant economic and financial statistics demonstrate that baseball in the United States is big business, they do not capture the global dimensions of MLB. As quoted earlier, MLB sees its "emerging markets" to be outside the United States. MLB is aggressively marketing its products overseas through various strategies and programs. The most lucrative for MLB are the sales of television broadcasting rights for foreign markets and sales of MLB-licensed products to overseas markets. Figures for total MLB revenues generated by overseas sales of licensed merchandise and television broadcasting rights are difficult to find. Zimbalist reported that total 1990 MLB licensing revenues were \$1.5 billion,²⁴ but how much of that \$1.5 billion was generated by sales outside the United States is not clear. MLB sales of television broadcasting rights generated \$1.7 billion for MLB

21. Some of the astounding salary deals included the following players and teams: the Los Angeles Dodgers signed pitcher Kevin Brown to a \$105 million, seven-year contract; the New York Mets signed catcher Mike Piazza to a \$91 million, seven-year contract; the New York Yankees signed right fielder Bernie Williams to a \$87.5 million, seven-year contract; the Anaheim Angels signed first baseman Mo Vaughn to a \$80 million, six-year contract; the Baltimore Orioles signed left fielder Albert Belle to a \$65 million, five-year contract; and the Arizona Diamondbacks signed pitcher Randy Johnson to a \$52.4 million, four-year contract. See CNN/SI Web Page (visited Jan. 10, 1999) <http://www.cnn.com/baseball/mlb/news/1998/12/24/free_agent_signings/>; Jason Dianos, *Brown Becomes the Richest in Baseball*, N.Y. TIMES, Dec. 13, 1998, § 8, at 1.

22. See Murray Chass, *Selig Names Panel to Study Payrolls*, N.Y. TIMES, Jan. 14, 1999, at D9. The Task Force members include thirteen officials from twelve MLB teams and George Mitchell, Paul Volker, Richard Levin, and George Will. *Id.*

23. *Id.* See also George Will, *Baseball in Trouble Over Economics*, BLOOMINGTON SUNDAY HERALD TIMES, Feb. 28, 1999, at A13 (arguing that "[r]evenue disparities now pose an unprecedented threat to baseball's competitive balance.").

24. ZIMBALIST, *supra* note 12, at 57.

in 1995.²⁵ The growing prominence of foreign players in MLB has produced more demand for MLB broadcasts in other countries, particularly in Asia.²⁶

In addition, MLB organizes programs involving U.S. amateur coaches teaching baseball fundamentals overseas;²⁷ Pitch, Hit, and Run competitions for young children in foreign countries;²⁸ and “baseball festivals” that introduce MLB to new foreign audiences.²⁹ All these programs strategically aim to build foreign markets for MLB’s products—baseball games and licensed merchandise.

The globalizing of the baseball business can also be found in MLB teams’ increasing efforts to find baseball players outside the United States. The extension of the talent hunt to foreign fields is not a recent development, but has gradually grown in scope and intensity as foreign baseball players have proved successful in MLB. In the 1960’s, MLB teams began to look more systematically for baseball talent in Latin America.³⁰ In the 1970’s, MLB teams began building training facilities in Latin American countries to develop further access to baseball talent.³¹ In addition, the participation of MLB players in the Latin American winter leagues helped develop the interest of MLB teams in Latino baseball talent.³² In 1986, DeVoss argued that “[t]o a large extent, a team’s ability to compete for a pennant today is determined by its scouting organization in Latin America.”³³ Today, many MLB teams engage in extensive efforts to find Latino baseball talent. Unfortunately, the nature of these extensive efforts creates problems that we analyze later in this Article.

25. CBS SportsLine Web Page (visited Feb. 17, 1999) <<http://cbs.sportsline.com/u/page/cyberspy/spy5.htm>>.

26. See Part II.A.1 for more on international broadcasts of MLB games.

27. MLB Web Page, *supra* note 3 (describing the Envoy Program).

28. *Id.* (describing Pitch, Hit, and Run competitions).

29. *Id.* (describing “baseball festivals”).

30. Steve Wulf, *El Futuro*, ESPN: THE MAGAZINE, Apr. 1998, at 82, 82 (noting that “[i]n the ‘60s, scouts were making forays” into Latin America). On Latin American baseball generally, see MICHAEL M. OLEKSAK & MARY ADAMS OLEKSAK, *BÉISBOL: LATIN AMERICANS AND THE GRAND OLD GAME* (1991); PETER C. BJARKMAN, *BASEBALL WITH A LATIN BEAT: A HISTORY OF THE LATIN AMERICAN GAME* (1994); Rob Ruck, *Baseball in the Caribbean*, in *TOTAL BASEBALL*, *supra* note 12, at 560; SAMUEL O. REGALADO, *VIVA BASEBALL! LATIN MAJOR LEAGUERS AND THEIR SPECIAL HUNGER* (1998).

31. Regalado notes that by 1960 “Latinos appeared on most big league rosters.” REGALADO, *supra* note 30, at 116.

32. See Ruck, *supra* note 30, at 563 (discussing participation by MLB players and minor leaguers in the Latin winter leagues).

33. David DeVoss, *Edwin Tapia Joins the Dodgers in the Dominican Republic*, L.A. TIMES, Feb. 23, 1986, at 10.

While Latin American countries have been the largest source of foreign baseball talent for MLB,³⁴ Asia is also a labor market for MLB teams. Baseball is big business in Japan too,³⁵ and recent MLB teams' acquisitions of Japanese baseball stars highlight the global growth of the MLB market for baseball talent.³⁶

MLB is also eyeing the synergies created by global growth of its business. More foreign baseball players in MLB makes it easier for MLB to sell television broadcasting rights and licensed merchandise in the native countries of the MLB players. In addition, MLB sees in Latino communities in the United States a growing market for its products. Paul Beeston, an executive with the Toronto Blue Jays, notes that "[w]e've done a great job at growing baseball outside the U.S. Now it's time to grow it within our borders. That means selling the game to the 30 million Latinos in this country."³⁷ By the 1994 season, fourteen MLB teams broadcast games in Spanish to reach growing Latino communities in the United States.³⁸

These brief descriptions of MLB's efforts to globalize the business of baseball suffice to show that, like other business enterprises facing the opportunities and challenges of globalization, MLB sees its future in global rather than national terms. Foreign baseball talent is transforming a once homogeneous American product into an internationally diverse one. The consumers of this globalized product are also increasingly diverse internationally, giving MLB a global, rather than merely a national, consumer base. MLB is clearly attempting to create the "global ballpark," an image that echoes the broader but related concept of the global village. The benign nature of the global ballpark image should not obscure, however, that the managers of the global ballpark are out to make money. Behind the foreign baseball players and consumers are globalized revenue streams for MLB

34. In the 1997 MLB season, 130 players came from Latin American countries, with fifty seven from the Dominican Republic, twenty eight from Puerto Rico, and twenty from Venezuela. See Joseph Torres, *Latinos expanden 'la línea de color' en el béisbol 50 años después de Jackie Robinson* (visited Feb. 23, 1999) <<http://www.latinolink.com/opinion/opinion97/0504hias.htm>>.

35. On Japanese baseball, see Yoichi Nagata and John B. Holway, *Japanese Baseball*, in TOTAL BASEBALL, *supra* note 12, at 547; ROBERT WHITING, YOU GOTTA HAVE WA (1989); Ron Fimrite, *Land of the Rising Fastball*, SPORTS ILLUSTRATED, Sept. 9, 1985, at 62.

36. Japanese baseball players in MLB include: Hideo Nomo (Chicago Cubs); Masato Yoshii (New York Mets); Hideki Irabu (New York Yankees); Shigetoshi Hasegawa (Anaheim Angels); and Mac Suzuki (Seattle Mariners). See MLB Web Page (visited Feb. 24, 1999) <<http://www.majorleaguebaseball.com>>.

37. Quoted in Wulf, *supra* note 30, at 82.

38. REGALADO, *supra* note 30, at 204. See also Wulf, *supra* note 30, at 82 (noting that during the 1998 season eleven MLB teams will provide Spanish-language broadcasts).

teams and MLB itself. The global ballpark is being built to house and advance the global business of baseball.

II. BUILDING THE GLOBAL BALLPARK: THE GLOBALIZATION OF BASEBALL

A. The Concept of Globalization and Baseball

Our argument that MLB is undergoing globalization requires that some attention be focused on the concept of globalization. This concept has been the subject of much scholarly and political debate and analysis, but globalization is not always defined in identical ways by participants in the discourse.³⁹ Nor is there agreement about the impact of globalization on politics, economics, law, and culture. These controversies make it necessary to define as precisely as possible what we mean by the “globalization of baseball.”

Using the concept of globalization in the context of MLB might strike some readers as odd because much of the globalization literature focuses on how the processes of globalization—information technologies, trade, travel, international capital movements, etc.—affect the State. A consistent theme centers on how globalization is rendering traditional State borders permeable and increasingly irrelevant to the organization and dynamics of human activity. Much of the globalization literature focuses on the growth of global markets to describe how States are losing control over what happens economically within their territories. As Walker and Fox argued, “[t]he key feature which underlies the concept of globalization . . . is the erosion and irrelevance of national boundaries in markets which can truly be described as global.”⁴⁰ While MLB is not a State, MLB is in the process of building global markets for its products and accessing global sources of labor.

Delbrück defines globalization as the “process of denationalization of markets, laws, and politics in the sense of interlacing peoples and individuals

39. See Gordon R. Walker & Mark A. Fox, *Globalization: An Analytical Framework*, 3 *IND. J. GLOBAL LEGAL STUD.* 375, 377 (1996) (noting that “[t]he concept of globalization has gained considerable strength in recent years; its meaning, however, is often obscured in its application. Likewise, the policy implications of globalization are not always clearly enunciated or understood.”).

40. *Id.* at 380.

for the sake of the *common good*.⁴¹ This definition helps with understanding what we mean by the globalization of baseball. First, the denationalization of markets is exactly what is happening with MLB: the markets for baseball consumers and baseball talent are denationalized now, in the sense that these markets are no longer strictly national (or American) in scope. Second, the denationalization of baseball markets brings together people of different countries and cultures together in common enjoyment of the sport of baseball. Kanter observed that, in the era of globalization, “[t]he world is becoming a global shopping mall in which ideas and products are available everywhere at the same time.”⁴² The global ballpark image similarly captures the interlacing of baseball fans for the common good of the sport.

No single factor accounts for the general phenomenon of globalization in international relations. As defined by Scholte, “globalization refers to processes whereby social relations acquire relatively distanceless and borderless qualities, so that human lives are increasingly played out in the world as a single place.”⁴³ As Fidler has argued, “[g]lobalization arises from the confluence of something old and something new in international relations. It involves the very old process of political and economic intercourse among sovereign States. The new element is the intensification and expansion of such intercourse made possible by technological advances in travel, communications, and computers.”⁴⁴ In the latter half of the twentieth century, political, economic, technological, and cultural changes have eroded traditional barriers, such as borders and concepts of State sovereignty. Globalization in international relations is, thus, a very complicated phenomenon that requires analysis of technological, organizational, ecological, economic, political, and cultural transformations in human life.

The globalization of baseball can be seen as a subset of globalization generally because professional baseball is also affected by globalization processes, such as the increasing importance of non-State actors and technological changes. A thriving baseball cyberspace exists, for example, on

41. Jost Delbrück, *Globalization of Law, Politics, and Markets—Implications for Domestic Law—A European Perspective*, 1 *IND. J. GLOBAL LEGAL STUD.* 9, 11 (1993).

42. Quoted in Jan Aart Scholte, *The Globalization of World Politics*, in *THE GLOBALIZATION OF WORLD POLITICS: AN INTRODUCTION TO INTERNATIONAL RELATIONS* 13, 15 (John Baylis & Steve Smith eds., 1997).

43. *Id.* at 14.

44. David P. Fidler, *Globalization, International Law, and Emerging Infectious Diseases*, 2 *EMERGING INFECTIOUS DISEASES* 77, 77 (1996).

the World Wide Web.⁴⁵ The various processes of globalization affect all kinds of business enterprises, so it is not surprising that globalization in international relations also implicates MLB. But, business enterprises are also one of the catalysts of globalization. Scholte writes that “globalization has been transpiring through the proliferation and growth of companies, associations, and regulatory agencies that operate as transborder networks. . . . [That] treat the whole planet as their field of activity and regard humanity at large as their actual or potential clients.”⁴⁶ MLB’s global pursuit of foreign baseball consumers and talent constitutes itself a process of globalization, just as Nike’s or IBM’s pursuit of global markets for consumers and labor contributes to globalization.⁴⁷

B. The Processes of the Globalization of Baseball

More specifically, we can identify the processes of the globalization of baseball—those activities that have denationalized the markets for baseball consumers and talent in MLB. The processes of the globalization of baseball include: global broadcasting of MLB games, global sales of MLB licensed merchandise, MLB programs designed to increase the popularity of baseball globally (e.g., Pitch, Hit, and Run competitions and Baseball Festivals), the relationship between the Latin winter leagues and MLB, and the development of the serious baseball labor market in Latin American. The next sections of this Article look briefly at each of these processes of the globalization of baseball.

1. International Broadcasting of MLB Games

MLB International lists 215 countries and territories in which MLB games are now broadcast, by either American-based media companies, such as

45. See, e.g., Society for American Baseball Research (SABR) Home Page (visited Oct. 6, 1998) <<http://www.sabr.org>>; John Skilton’s Baseball Links Web Page (visited Feb. 23, 1999) <<http://www.baseball-links.com>>; Nathan’s Baseball Page (visited Feb. 17, 1999) <<http://www.nmia.com/~browns/framebbb.htm>>.

46. Scholte, *supra* note 42, at 15-16.

47. MLB is not alone among American-based professional sports in its attempts to go global. The National Football League (NFL), National Basketball Association (NBA), and National Hockey League (NHL) are all involved in reaching out to foreign markets for both consumers and athletic talent. In addition, it should be remembered that soccer is already a globalized sport.

ESPN, or foreign media enterprises.⁴⁸ MLB International does over-hype its world broadcasting because many of the countries listed, including such baseball havens as Bangladesh and Congo, are simply served by ESPN, most likely only at four- and five-star international hotels catering to Western business executives. Even discounting for this puffing by MLB International, the importance and growth of world broadcasting to MLB is clear.

As noted earlier, MLB is harnessing in its global strategies the synergy developing between foreign baseball players in MLB and foreign baseball consumers. It is easier to sell MLB broadcasting rights in Japan when Hideki Irabu and other Japanese players provide a powerful connection between Japanese baseball fans and MLB. Tim Brosnan of MLB International stated that MLB “now wants to exploit the game’s popularity in Asia and Latin America by showcasing foreign-born players like Dodger pitchers Hideo Nomo of Japan and Chan Ho Park of Korea.”⁴⁹ During the 1997 season, for example, each game pitched by South Korean Chan Ho Park for the Los Angeles Dodgers was broadcast live in South Korea.⁵⁰ In 1998, Korean baseball fans could tune into more than 100 games, including live telecasts of Park’s games, the All-Star Game, and the World Series.⁵¹ The same holds true for MLB broadcasts in Latin America. Some of the push for world broadcasting of MLB arises from perceptions that the U.S. domestic market for baseball broadcasts has matured, and that broadcasting revenue growth has to be sought overseas.⁵² MLB, as well as the NBA and NFL, are following in the footsteps of manufacturing and service industries in developing export strategies as revenues from domestic markets flatten out because the market has matured. Some of the stagnation in the U.S. domestic baseball market has been caused by MLB’s self-inflicted wounds, as the repeated labor controversies, such as the disastrous labor strike of 1994, have soured fans on the nation’s pastime. Baseball consumers in other countries, particularly in Asia and Latin America, are easier targets than jaded Americans.

48. MLB Web Page (visited Feb. 16, 1999) <<http://www.majorleaguebaseball.com/mlbi/tvlist.sm1>>.

49. Marc Gunther, *They All Want to Be Like Mike: Led by the NBA and Global Superstar Michael Jordan, U.S. Pro Sports Leagues Are Extending Their Worldwide TV Presence All the Way from Chile to China*, FORTUNE, July 21, 1997, at 51, 52.

50. Budig, *supra* note 5, at 6C.

51. *Id.*

52. The same perception exists with the NBA. NBA Commissioner Stern said that: “There are just so many seats in an arena and so many hours of television programming, period. The domestic business is becoming mature. That’s why we’re moving internationally.” *Quoted in* Gunther, *supra* note 49, at 52.

2. *Global Sales of Licensed MLB Merchandise*

Following in the footsteps of the NBA, MLB is pursuing a global strategy of selling licensed MLB merchandise overseas. MLB licenses to domestic and foreign enterprises the right to use insignias of MLB and MLB teams to baseball card companies, clothing manufacturers, electronic game makers, and others; and MLB earns big money from such licensing agreements.⁵³ Major League Baseball Properties (MLBP) was established in 1987 to handle the growing licensing business. In 1998, MLBP signed agreements with federations, teams, clubs, scouts, companies, and stores in 109 different countries for the sale of licensed MLB merchandise.⁵⁴ Retail sales of licensed MLB products are projected to grow 200% in the next five years under this new global marketing strategy.⁵⁵

The global broadcasting and global licensing strategies are, of course, intertwined. Broadcasting of MLB games in foreign countries will increase the likelihood that fans in those countries will purchase MLB merchandise. Through broadcasting and merchandise sales, MLB deepens its penetration of the sports culture of the foreign countries. In countries such as Japan or Venezuela, where baseball is already part of the respective national cultures, MLB is exploiting emerging markets for baseball consumers. Of course, some of these emerging markets are more lucrative than others. Despite the fact that the Dominican Republic has sent more players to MLB than Japan, Japan is more appealing than the Dominican Republic as a market for MLB products because it has a developed, modern economy.

3. *Global Game Development*

MLB International sponsors a variety of programs designed to develop baseball in other countries. These programs are strategically aimed primarily at children in order to increase the likelihood that they will become consumers of MLB products, or perhaps develop into the next Sammy Sosa. MLB International's Envoy Program sends amateur baseball coaches overseas to

53. ZIMBALIST, *supra* note 12, at 57-58, 79-80.

54. MLB Web Page (visited July 20, 1998) <<http://www.majorleaguebaseball.com>>.

55. *Id.*

teach baseball fundamentals to foreign players.⁵⁶ In 1997, “43 Envoy Coaches taught in 30 countries around the world.”⁵⁷

MLB International’s Pitch, Hit, and Run competitions overseas seeks “to teach boys and girls of ages 9 to 12 the fundamentals of baseball. The program is designed to put balls and bats into the hands of thousands of school kids who have never experienced the thrill of playing baseball or teeball.”⁵⁸ In 1997, MLB International conducted Pitch, Hit, and Run competitions in Australia, Japan, Taiwan, Germany, Puerto Rico, Korea, and the United Kingdom.⁵⁹ In 1998, MLB International hoped to add South Africa to the list and reach about 70,000 children internationally.⁶⁰

One curious feature of the international Pitch, Hit, and Run competitions is that they all have taken place in developed, or relatively developed, countries. Why not have Pitch, Hit, and Run competitions in the Dominican Republic or Venezuela? If the objective is to put a baseball into the hands of a child who has never held one, then targeting Germany is better than Venezuela. But, perhaps the real objective here is not to develop the German version of Roberto Alomar but to create a market for MLB products amongst children in more affluent countries.

MLB International also sponsors Baseball Festivals in various countries. According to MLB International: “Baseball festivals are interactive fan events designed by MLBI to introduce baseball to new audiences. The festivals recreate the sights, sounds and smells of the game—visitors are able to take their turn at bat, clock their pitching speed, run the bases, or have their own baseball cards made.”⁶¹ In 1997, MLB International held Baseball Festivals in England, Germany, Taiwan, Australia, and Japan, with attendance over 500,000.⁶² In 1998, Baseball Festivals were scheduled for Venezuela, England, Germany, and Taiwan.⁶³

Again, apart from the Baseball Festival that took place in Venezuela, MLB International held these events in developed countries. While this may be motivated by the desire to spark the development of shortstops from

56. MLB Web Page (visited Oct. 2, 1998) <<http://www.majorleaguebaseball.com/mlbi/gd1.sm1>>.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

London, it also tracks traditional marketing strategies of targeting consumers with disposable income.

4. *MLB's Relationship with the Latin Winter Leagues*

Venezuela, Mexico, Puerto Rico, and the Dominican Republic have their own professional leagues during the North American winter.⁶⁴ MLB's relationship with these Latin winter leagues is old. Before Jackie Robinson broke the color bar in MLB, the Latin winter leagues provided African American athletes with opportunities to play professional baseball.⁶⁵ Later, MLB players and coaches in need of practice and experience would play and coach in the Latin winter leagues regularly.⁶⁶ Eventually the Latin winter leagues started to become important to MLB as a source of Latino baseball players. Today, the winter leagues form part of the systematic search by MLB teams for Latino baseball talent. The relationship between MLB and the Latin winter leagues clearly related more to the denationalization of the market for baseball talent than it does to the effort to build global markets of baseball consumers.

Despite the close historical relationship between MLB and the Latin winter leagues, tensions between the two leagues are increasing. First, MLB has created a competing off-season league, the Arizona Fall League (AFL).⁶⁷ In 1998, the AFL completed its seventh season and sported six teams that played a schedule from the end of September to the end of November.⁶⁸ Part of MLB's motivation for starting the AFL was its unhappiness with American major and minor leaguers heading south during the off-season to play in the

64. Ruck, *supra* note 30, at 563. Less well known is the use by a number of MLB teams of the fledgling Australian Baseball League to provide off-season training for American minor leaguers. See Larry Whiteside, *Making Inroads Near the Outback: Sox Among Teams Exploring Australia, Where Game Faces Major Challenges*, BOSTON GLOBE, Mar. 27, 1998, at F8.

65. REGALADO, *supra* note 30, at 11 (noting that "American black professionals eventually competed in Cuba to enhance their finances and gain a needed reprieve from the torrent of racial abuse in the United States.").

66. Ruck, *supra* note 30, at 563.

67. See MLB Web Page (visited Feb. 18, 1999) <<http://www.majorleaguebaseball.com/arizona/98/overview.sml>>.

68. *Id.* The six teams are the Grand Canyon Rafters, Maryvale Saguaros, Peoria Javelinas, Phoenix Desert Dogs, Scottsdale Scorpions, and Sun Cities Solar Sox. *Id.*

Latin winter leagues, over which MLB had no control.⁶⁹ More specifically, MLB was concerned about top American baseball players getting injured during Latin winter league play but not having access to proper medical care and treatment.⁷⁰ It is clear that the AFL is designed to serve Americans as opposed to Latino baseball talent because its eligibility rules allow only one foreign player on a roster who does not live in a country that participates in the Latin winter leagues.⁷¹ The AFL represents a direct challenge to the traditional relationship between MLB and the Latin winter leagues and to the role the winter leagues play in the economics and societies of Latin American countries.

Second, MLB teams have also grown more reluctant to allow many of their important Latino players to play in the Latin winter leagues. This desire by MLB teams to protect their investments in their Latino players was not received well in Latin America because the winter leagues' success has been sustained by the regular return of Latino MLB players. In 1998, MLB and the winter leagues signed an agreement to place their relations on a firmer foundation.⁷² An important part of this agreement is a provision that bars Latino major and minor league players from participating in the winter leagues if they have pitched a certain number of innings or had a certain number of at bats during the major and minor league seasons.⁷³ What the rest of the agreement provides, however, remains shrouded in mystery as other terms of the agreement have not been made public.⁷⁴ Officials and persons involved in the winter leagues in Venezuela accused MLB in early 1999 of repeated violations of the agreement.⁷⁵ One such alleged violation occurred when the Arizona Diamondbacks instructed one of their pitchers, Omar Daal, not to continue pitching in the winter league playoffs for the *Leones del Caracas*

69. *Id.* ("A concern was that with some of the very best ball players going to play Winter Ball out of the country, such as in the Caribbean, there was no way to monitor it. If Major League Baseball created a league that it could govern and monitor, it would be better organized.")

70. *Id.* ("Another factor was sending the best prospects to a regulation system, so that if a player was injured or hurt, proper care and treatment would be on hand.")

71. *Id.*

72. Ignacio Serrano, *Béisbol de grandes ligas evade enfrentar el "caso Daal"*, EL NACIONAL (Jan. 17, 1999) <<http://www.el-nacional.com/archive>>.

73. Arturo J. Marcano, *Fatiga extrema II*, MERIDIANO, Oct. 27, 1998, at 29.

74. Serrano, *supra* note 72.

75. *Id.*

(Caracas Lions).⁷⁶ Other Venezuelan players were also subjected to similar orders from MLB teams.⁷⁷ A representative of the *Leones del Caracas* claimed that this action violated the MLB winter leagues pact, and he threatened to propose that the agreement be terminated.⁷⁸ In addition, the *Leones* representative warned that MLB's behavior could lead to governmental regulation against MLB scouts and academies.⁷⁹ Based on what follows in this Article, this warning represents a serious shot across the bow of MLB's activities in Latin America.

5. *Development of Global Markets for Baseball Talent*

The globalization of baseball also features an increasingly global hunt for baseball talent. The already significant presence of foreign players in MLB indicates how serious the global talent hunt has become. The most serious international market for baseball players is in Latin America, but MLB teams are also scouting and trying to recruit talent in Asia. Most MLB teams now seriously hunt talent in Latin American countries, through scouting and baseball academies where MLB teams systematically evaluate baseball prospects.

The denationalization of the market for baseball talent is a complex, and in many ways, disturbing phenomenon. Baseball experts perceive that MLB teams hunt so competitively in Latin America not only because Latino players are good, but also because the quality of American baseball talent is declining. Dick Williams, special assignment scout for the New York Yankees, believes that "[t]he American talent has diminished."⁸⁰ While American Little League continues to introduce large numbers of American children to baseball, some experts feel that some of the passion for the game has been lost in the United States. Joe McIlvaine, General Manager of the New York Mets, observed:

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. Quoted in John Harper, *The International Pastime*, N.Y. DAILY NEWS, Mar. 27, 1997, at 16. See also G. EDWARD WHITE, CREATING THE NATIONAL PASTIME: BASEBALL TRANSFORMS ITSELF 330 (1996):

As fewer young Americans play baseball because of competition from other sports, and fewer American families are financially able to attend games regularly, the time-honored customs of parents playing catch with their children or taking them to the park to watch their heroes may give way to other rituals, such as fathers or mothers coaching youth soccer for their sons and daughters.

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 '60's. 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 worldwide.⁸¹

Behind these nostalgic images lies a more brutal socioeconomic reality. Children in affluent America often face many kinds of opportunities and choices. As John Harper put it, "American kids may spend more time surfing the net these days than choosing up sides in the sandlot."⁸² But many children in the developing countries of Latin America face a different present and future. A reporter assigned to do a story on Sammy Sosa's background captured the uglier side of children playing baseball in the Dominican Republic: "Neighborhoods where giant hills of garbage and puddles of animal excrement were the landscape on which children played 'baseball' with a tree branch and a bottlecap as a ball. Man, could they hit that bottlecap."⁸³ Lurking behind the impressive growth in the numbers of Latino ballplayers in MLB and the increasingly competitive hunt for Latino baseball players by MLB teams are disturbing questions about MLB profiting from the baseball talent refined in the squalor and poverty of developing countries in Latin America. As Roberto González-Echevarría has argued, a serious problem with the growing prominence of the Latin baseball market is "the widespread use of Latino youngsters as cheap and, ultimately, disposable talent."⁸⁴ Examining these questions reveals the dark side of the globalization of baseball, which Parts III and IV of this Article explore in detail.

81. *Quoted in Harper, supra* note 80, at 16.

82. *Id.*

83. Jimmy Roberts, *What Must They Be Thinking?* (visited Feb. 18, 1999) <<http://204.202.129.20/mlb/columns/jroberts/>>.

84. *Quoted in Harvey Araton, Clemente to Sosa, and Beyond*, N. Y. TIMES, Nov. 13, 1998, at D1 (Roberto González-Echevarría is professor of Hispanic and comparative literature at Yale University and author of the forthcoming book CUBAN BASEBALL: A CULTURAL HISTORY).

6. *Profiting from the Globalization of Baseball*

The globalization of baseball is not only good for MLB but it also creates opportunities for other business enterprises that feed off consumers of baseball. The same synergies appear in the export strategy of the NBA. Nike has, for example, profited from and significantly contributed to the global fame of Michael Jordan and the growing international popularity of the NBA. In the same manner, Coca-Cola “targets basketball-crazed teenagers by putting NBA and team logos on Sprite soft drink cans sold in 30 countries.”⁸⁵ Scott McCume, Coca-Cola’s director of worldwide sports, says: “We’re using the NBA and their players to help sell Sprite, but at the same time it does a lot of good for the NBA.”⁸⁶ McDonald’s and the NBA co-sponsor “a program called 2Ball that teaches basic basketball skills to thousands of kids outside the U.S.”⁸⁷ The same sport-corporate synergies are at work in MLB’s export strategies as well. Nike, for example, sponsors Pitch, Hit, and Run competitions “in Asia and is the title sponsor in Japan, Korea, Taiwan and Australia.”⁸⁸

The combination of American sports and consumerism has some people worried because “the world’s kids don’t need more fast food, sugared drinks, and sports from America.”⁸⁹ These concerns echo criticisms that globalization as a general matter fosters the Americanization of national cultures, or more harshly that globalization is American cultural imperialism. As John Galvin noted, “American pop-culture exports often generate cries of imperialism.”⁹⁰ The globalization of baseball contributes to the creation of, in Barber’s term, McWorld.⁹¹

III. MLB’S LESS FAVORABLE TREATMENT OF LATINO BASEBALL TALENT

Our basic argument against the way MLB teams locate Latino baseball talent is that they employ methods and behavior that would not be acceptable today in the United States. Latino baseball prospects are treated less favorably

85. Gunther, *supra* note 49, at 53.

86. *Quoted in id.*

87. *Id.*

88. MLB Web Page (visited Oct. 10, 1998) <<http://www.majorleaguebaseball.com/mlbi/info.sm1>>.

89. Gunther, *supra* note 49, at 53.

90. John Galvin, *Making the World Safe for Miller Lite*, N.Y. TIMES MAGAZINE, Oct. 18, 1998, at 90.

91. See BENJAMIN R. BARBER, *JIHAD VS. MCWORLD: HOW THE PLANET IS BOTH FALLING APART AND COMING TOGETHER AND WHAT THIS MEANS FOR DEMOCRACY* (1995).

by MLB teams than American baseball prospects. This less favorable treatment is not an isolated occurrence but is a systematic problem with how MLB teams operate in Latin America. Important to our argument is understanding that for every Sammy Sosa, Bernie Williams, Roberto Alomar, or Andres Galarraga, hundreds of Latino children and young men who come into contact with MLB teams never make the big leagues. MLB teams exploit poverty and ignorance in their efforts to bring Latino baseball players into MLB. When baseball fans see the success of many Latino ballplayers in MLB, “exploitation” is not what they see. They see multimillionaire superstars. What baseball fans do not see is the treatment of the hundreds of Latino children in so-called “baseball academies;” MLB scouts getting Latino children to sign blank pieces of paper as “contracts” to play professional baseball; MLB teams paying no or only paltry signing bonuses for Latino baseball prospects; and MLB teams systematically discouraging Latino baseball prospects from retaining agents. None of these routine MLB practices in Latin America are tolerated today in the United States in connection with American baseball prospects.

MLB is not responsible for the poor socioeconomic conditions in which many Latino children live and which feed their desire to escape poverty through professional baseball. Jimmy Roberts captured what might be going through a Latino boy’s mind when he arrives at a baseball academy:

I looked around at the training complex and its two or three flawless practice fields, where it seemed not a blade of unruly grass existed. It was then I really understood. What must a child, raised in squalor and deprivation—who loves baseball with every ounce of his fiber—feel or think when he sees this for the first time? . . . Maybe he loves this game because it represents a joyous escape from the indigent reality of his daily life or maybe because it was a way out.⁹²

What MLB and its teams must be held accountable for is taking advantage of these socioeconomic circumstances in how they systematically mistreat Latino children hungry for a life away from poverty in the American big leagues.

92. Roberts, *supra* note 83.

A. The Process of Signing Baseball Talent in the United States

To understand how Latino baseball prospects are systematically treated less favorably than their American counterparts, it is necessary to know how American baseball prospects find their way into the big leagues. Today, the annual amateur baseball draft controls how baseball players from the amateur ranks in the United States, Canada, and Puerto Rico are brought into the professional game.⁹³ When a prospect is drafted, the MLB team that drafted him has exclusive negotiating rights with him;⁹⁴ this prevents MLB teams from engaging in a bidding war for North American and Puerto Rican talent. Not only does the draft provide a transparent and open process for North American and Puerto Rican baseball prospects, but it also helped “to stop the upward spiral of [signing] bonuses and to distribute talent more evenly.”⁹⁵

Prior to the 1965 institution of the draft, American baseball amateur players were free agents and could sign with whatever team made the most attractive offer. This system placed a premium on a MLB team’s scouting system because the better the scouting the better the prospects of landing the best amateur players. Because extensive scouting systems cost money, the free agency framework favored richer teams, such as the New York Yankees, which could afford not only the scouts but also the signing bonuses demanded by highly recruited ballplayers. As a general matter, teams with more money had more scouts; and the teams with more scouts tended to attract more good ballplayers. Good ballplayers meant winning teams, and winning teams attracted younger players and meant more profits for the owners.⁹⁶ Before the draft, scouting was at the very heart of the American business of baseball.

This scouting system ultimately proved, however, bad for the baseball business. First, competition for baseball talent caused expenses to rise as more scouts were needed and higher signing bonuses and salaries were paid to hotly recruited players. Simpson records that upward pressure on signing bonuses began during World War II, prompting MLB team owners in 1946 to make the first attempt to slow down the escalation in signing bonuses by

93. On the amateur draft generally, see Allan Simpson, *The Amateur Draft*, in TOTAL BASEBALL, *supra* note 12, at 608.

94. *Id.* at 609.

95. *Id.* at 608.

96. *See id.* at 609. Lee MacPhail, who was instrumental in the dominance of the New York Yankees in the 1950’s and 1960’s observed: “We won the World Series five years in a row. Kids wanted to sign with the Yankees, the most glamorous team in baseball at the time.” *Quoted in id.*

fining teams for exceeding fixed bonus limits.⁹⁷ Teams quickly discovered, however, ways to get around the fixed bonus rule.⁹⁸ In 1958, MLB adopted a new rule requiring players paid bonuses over certain fixed amounts to be placed directly on the big league roster.⁹⁹ This rule proved ineffective in preventing signing bonuses from escalating further.¹⁰⁰ Between 1958 and 1963, MLB teams spent an estimated \$45 million in signing bonuses and first-year salaries,¹⁰¹ and, in 1964, MLB teams paid \$7 million to amateur players, which was “more than was spent on major league salaries.”¹⁰²

Second, because the system favored rich teams over less affluent ones, it threatened to produce competitive disequilibrium in the sport with rich teams winning consistently and poor teams losing regularly. Such disequilibrium would be bad for the overall business of baseball as fans would get bored with the same teams always winning pennants and World Series.¹⁰³ Bored fans would mean less ticket and other revenues for team owners.

The draft terminated the economics of the scouting system in professional baseball. It was primarily a business strategy to improve the overall MLB product and to lower the cost of producing the product. The draft was, thus, an efficiency strategy: produce a better product at lower cost.¹⁰⁴ The draft had three general impacts on the way American ballplayers came into the major leagues. First, the draft accorded more protection to baseball players because the process was formal and transparent, so vulnerable teenagers did not have to deal with smooth-talking MLB scouts. Second, scouts were largely removed from the process of signing a player, as the draft determined where a player would play. Third, scouts essentially became talent filters for the decisionmaking process imposed by the draft. While scouting remains important, scouts in the United States, Canada, and Puerto Rico have less power today than they did during the years of amateur free agency.

97. *Id.* at 608.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. See John Thorn, *Our Game*, in TOTAL BASEBALL, *supra* note 12, at 5, 10. Thorn notes that “the pennant domination by the three New York teams—principally the Yankees, of course—made the national pastime a rather parochial pleasure; it was hard for fans in Pittsburgh or Detroit to wax rhapsodic over a Subway Series.” *Id.*

104. Simpson argues that the draft largely achieved this objective: “Payments to untried amateur players were kept in line until the late 1980s, while new meaning has been given to competitive balance.” Simpson, *supra* note 93, at 609.

The draft also empowers amateur ballplayers in their dealings with MLB teams because it provides opportunities for many ballplayers to retain agents to help them in negotiations with teams that draft them. Agents can help level the economic playing field in contract negotiations between teenagers and savvy business executives. In addition, as most American baseball prospects and their parents have received formal education, MLB teams cannot systematically dupe American players and their parents in contract negotiations.

Other protections exist for American baseball prospects as they prepare for the world of MLB. First, baseball prospects typically arrive in MLB through very formal and organized systems, from Little League through high school into university. Once upon a time scouts used to find the farm boy with no formal baseball training who was a "natural;" but, today, most American MLB players come up through the formal system in place throughout the United States. Importantly, much of this system is linked to educational institutions so that baseball prospects also receive formal education. While high schoolers used to make up the majority of MLB draftees, today university ballplayers constitute the dominant source of talent in the draft.¹⁰⁵ Thus, current American draftees are older, more mature, and better educated than draftees in the early years of the draft.

Second, private and public regulatory regimes protect baseball prospects from unscrupulous agents. The National Collegiate Athletic Association (NCAA) imposes rules on its member universities that regulate student-athlete contact with agents and with professional teams.¹⁰⁶ Many state legislatures have also enacted laws that regulate how agents may deal with athletes in their jurisdictions.¹⁰⁷ While these private and public regulatory regimes are not perfect as abuses and problems continue to occur, they offer American

105. *Id.*

106. See Lionel S. Sobel, *The Regulation of Sports Agents: An Analytical Primer*, 39 BAYLOR L. REV. 701, 768-69 (1987) ("The NCAA has long had many rules that make student-athletes ineligible for NCAA competition if they engage in certain conduct. Ineligibility may result . . . from an agreement by the athlete . . . to be represented by an agent."). See also GLENN M. WONG, *ESSENTIALS OF AMATEUR SPORTS LAW* 303-04 (2d ed. 1994) (discussing NCAA eligibility rules in connection with professional contracts).

107. See Sobel, *supra* note 106, at 724-25 (describing agent regulation plans adopted by state legislatures in the United States); and WONG, *supra* note 106, at 671 (providing an overview of state legislation regulating sports agents). See also Linda S. Calvert Hanson, *The Florida Legislature Revisits the Regulation and Liability of Sports Agents and Student Athletes*, 25 STETSON L. REV. 1067, 1068 n.7 (1996) (listing the legislation of twenty-four states that regulate agents).

baseball amateurs some protection against the economic forces at work in professional baseball.

This brief overview of the process by which an American baseball prospect becomes part of MLB demonstrates that the process accords many types of protections for American amateurs. The protections come in a variety of forms: the draft; the availability of agents and the economic incentives fueling agency relationships; organized, formal training systems linked to secondary and higher education; general socioeconomic advantages available in the United States; private regulatory rules; and public laws. While not perfect, the overall situation gives American baseball prospects advantages, benefits, and protections in their dealings with MLB teams.

B. The Process of Signing Baseball Talent in Latin America

None of the protections available to American baseball prospects are generally available to Latino children and teenagers recruited by MLB teams.¹⁰⁸ This less advantageous situation partially arises from the less affluent socioeconomic conditions generally present in Latin American countries. But MLB teams generally make little effort to afford Latino baseball prospects with some minimum standards of treatment and take advantage of poverty and ignorance in signing Latino baseball prospects. The intentional exploitation of youngsters in poor countries has long been a factor in MLB teams' interest in Latino talent.¹⁰⁹ This reality is widely known, often admitted,¹¹⁰ and has been brought to the attention of the MLB Commissioner

108. See Ross Newhan, *The Great Escape: America's Pastime is Also Pedro Guerrero's Passport*, L.A. TIMES, Jan. 7, 1985, available in WESTLAW, ALLNEWS PLUS (noting that the Dominican Republic "is an open market ungoverned by baseball's amateur draft, a last great hunting ground for eager scouts who are able to sign equally eager prospects for bonuses far below those demanded by already jaded U.S. players. There are no college-scholarship opportunities here to increase a player's value."). Similar ungoverned markets exist in other Latin American countries.

109. See Steve Aschburner, *Twins Get Back in Step with the Latin Beat*, MINNEAPOLIS-ST. PAUL STAR-TRIB., May 21, 1989, at 1C (explaining that the reason MLB teams got interested in Latino talent in the 1950's was because "teams could exploit underdeveloped countries, signing players from impoverished backgrounds to paltry contracts.").

110. See *id.* at 1C (noting that MLB "teams still will plead guilty to taking advantage of them as a cheap source of talent.").

in the past.¹¹¹ Thus, MLB teams and MLB treat Latino baseball talent less favorably than American prospects in a systematic and intentional way. Such systematic less favorable treatment arises in three general areas: (1) the scouting process in Latin America; (2) the baseball academies; and (3) the role of agents in the signing of Latino baseball players.

1. The Scouting Process in Latin America

As indicated earlier, the institution of the draft in 1965 dramatically altered the role of scouting in MLB in the United States. Scouting plays a major role in MLB teams' hunt for baseball talent in Latin America because Latino players (excluding those in Puerto Rico) are not included in the draft. In fact, scouting has developed an importance for MLB in Latin America that echoes the old role of scouting in the United States, but so far without the negative consequences for MLB teams. In addition, the pre-draft economics of signing American ballplayers encouraged MLB teams to look south for cheaper talent.¹¹²

Scouting has gone global as the game has globalized. Again, this was a gradual rather than an overnight process. MLB teams began to scout in Latin American countries in the 1950s,¹¹³ but today the scale of the scouting has reached impressive proportions. The competition for Latino baseball talent, the decline in the North American talent pool, and the presence of the baseball academies have combined to increase the number of scouts and the intensity of their activities in Latin American countries.¹¹⁴

Such scouting intensity in Latin America might suggest that scouting for Latino talent might be following the pattern seen in the pre-draft days in the United States: higher and higher costs favoring rich teams, with the process accompanied by rule-breaking. Just as in the pre-draft days in the United

111. See Newhan, *supra* note 108. Newhan reported that in 1985 that the MLB Commissioner's office has been looking into the possibility that some U.S. teams have been exploiting the situation, attempting to corner the market by signing very young Dominicans for very little money, or by teams staging tryout camps and baseball academies, requiring players to sign an attendance agreement, which they later claim is a binding contract.

Id.

112. REGALADO, *supra* note 30, at 59.

113. *Id.* at 57 ("Throughout the 1950s, expanded scouting efforts brought players from the Dominican Republic, Puerto Rico, and Central America.")

114. See *id.* at 58 (mentioning the "great influx of scouts" into Latin American countries).

States, rich teams have an advantage in the hunt for Latino talent. As John Harper observed, “[b]ecause players outside the U.S. aren’t subject to the amateur draft, clubs willing to scout and spend have an advantage.”¹¹⁵ To date, however, the scouting process in Latin American countries has not produced the kinds of expensive bidding wars witnessed in the pre-draft days of MLB.¹¹⁶ The power of the MLB scouts *vis-à-vis* a baseball prospect in Latin America is greater than it was in the United States (generally speaking) because of the poverty and relative lack of education suffered by the prospect and his family. As a representative of a MLB team, a scout with the power to sign prospects has tremendous leverage over a vulnerable young player from a poverty-stricken country.¹¹⁷ In addition, although many MLB teams scout in Latin America, potential prospects may not see scouting frenzies over their talent because the scouting system is not as well structured as the pre-draft American system was. These factors lead to Latino prospects who are generally willing to sign anything a MLB scout puts in front of them without receiving anything close to the kind of signing bonuses received by American baseball draftees.

While the scouting for Latino talent has not yet produced expensive bidding wars between MLB teams, the fierce competition is producing questionable practices and behavior that breaks or bends MLB rules on signing baseball prospects—just as witnessed in the pre-draft days in the United States. First, scouts for MLB teams now try to sign as many players as possible to prevent other teams from contracting with them.¹¹⁸ MLB teams and their scouts feel pressure to produce a larger flow of prospects into their baseball academies in order to find the gems that will go on to professional

115. Harper, *supra* note 80, at 16.

116. Some upward pressure on signing bonuses for Latino prospects has, however, been noted in a few cases. See Jack Wilkinson, *Baseball Dreamers: The Road to Turner Field*, ATLANTA JOURNAL-CONSTITUTION, Aug. 16, 1998, at E1. These cases remain the exception and not the rule for Latino baseball prospects. In 1986, the average signing bonus for an American first-round draft pick was between \$80,000 and \$100,000. Signing bonuses for Dominican players ran from \$3,000 to \$5,000. DeVoss, *supra* note 33, at 10. In 1993, the average signing bonus for a first-round draft pick was \$611,000. Simpson, *supra* note 93, at 610. In 1991, Klein reported that Puerto Rican draft picks commonly get signing bonuses of \$100,000. ALAN M. KLEIN, SUGARBALL: THE AMERICAN GAME, THE DOMINICAN DREAM 61 (1991).

117. See REGALADO, *supra* note 30, at 60-61 (noting that poor Latin American ballplayers were “vulnerable to exploitation” through meager salaries and lack of bonuses). See also Newhan, *supra* note 108 (quoting Los Angeles Dodger star Pedro Guerrero, a native of the Dominican Republic, stating that “[t]he scouts look at the way guys live here and figure they can offer anything, and it’s the truth. . . . The kids are just looking to sign and get out of here.”).

118. The early days of scouting were less pressure-filled as scouts could be selective and save some prospects for closer scrutiny during the next season. See REGALADO, *supra* note 30, at 58.

ball in the United States. Thus, more Latino children are being brought into MLB's system without any improvement in their chances to play baseball professionally in the United States. The number of children brought into the academies and then released back into poverty after one or two years is increasing.¹¹⁹ The social penetration of the MLB system has become deeper and more malignant. Some respected Latino baseball figures, such as Felipe Alou, have criticized MLB teams for over-signing Latino children.¹²⁰

Second, the fierce competition for Latino baseball talent is forcing the scouting process to affect children at younger and younger ages. It is generally known that scouts in Latin America routinely begin calling on players and their families when the children are only twelve or thirteen years old.¹²¹ Scouts often use gifts to gain the confidence of families and to build a relationship that the scout hopes will build loyalty to the MLB team he represents.¹²² As the relationship is established, the scout begins to exercise more control, instructing the children and families not to deal with other teams, scouts, or agents.¹²³ Eventually, the child and parents sign a "contract," are promised a signing bonus, and the child is sent to a baseball academy.¹²⁴ In Venezuela, it is also widely known that some MLB teams are even "buying" little league teams to get a head start on the competition.¹²⁵ The scheme works like this: for around \$200 a month, the manager of the little league team sends a monthly report to the scout to let him know if a good prospect is blooming.¹²⁶ Then the scout can act on this exclusive information and sign the child before the competition.¹²⁷ Incredible as it may seem, MLB teams' farm systems now extend all the way down to Latino little league teams, meaning that MLB's human commodities are getting younger in Latin America to satisfy the need for profits in the United States.

119. Regalado notes that in 1990, "49 Dominicans were on big league rosters while 325 toiled in the minor league, [and] 400 were in various academies." *Id.* at 202. By these numbers, for every one Dominican big league player there are approximately fifteen Dominican minor leaguers and academy attendees whose chances of making the big leagues are slim.

120. OLEKSAK AND OLEKSAK, *supra* note 30, at 184 (quoting Alou as arguing that "[t]hey sign 25 guys and maybe only one is a good player. It's like they throw a net in the ocean, hoping that maybe they'll get a big fish. The problem is, if they don't get a big fish, they'll throw all the smaller ones back.>").

121. These observations derive from the knowledge and experience gained by Arturo Marciano in his years of involvement with professional and amateur baseball in Latin America.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

In his study of baseball in the Dominican Republic, Alan Klein asserted that the coming of the baseball academies and the passage of legislation regulating scouting put an end to the rapacious behavior of scouts, who would lie to and cheat baseball prospects and their parents and in some cases isolate prospects from other teams and scouts.¹²⁸ Klein argued that the techniques of MLB scouts in the Dominican Republic “were reminiscent of those of the West African slave traders of three centuries earlier.”¹²⁹ But Klein’s belief, stated in the early 1990s in connection with the Dominican Republic, that “[t]he free-roving scouts of the 1970s gave way to baseball academies . . . [which] made the process of securing talent grow less brigandish, more routinized, and more civilized”¹³⁰ does not accurately describe what happens today all over Latin America. Scouts remain essential for feeding Latino children into the baseball academies, as evidenced by the numbers of scouts combing the ball fields around Latin America. And their techniques, refined under the fierce competition for baseball prospects, seem increasingly reminiscent of the rapacity of the earlier age of scouting.

Klein also asserted that a law passed by the Dominican Republic in 1984 “did much to protect young Dominican athletes from the more rapacious scouts and organizations.”¹³¹ While Klein may have been right about the initial impact of the law, all we could elicit from people familiar with scouting practices in the Dominican Republic was laughter when the matter of this law was raised. This reaction suggested to us that the law regulating scouts in the Dominican Republic was not having much of an impact on scouting practices. In addition, other countries crawling with MLB scouts, such as Venezuela, have no such regulations at all. Even Klein’s own analysis undermines his assertions about improvements in scouting in the Dominican Republic. He noted that not all abuses had been corrected and that “[c]heating young hopefuls out of their due continues despite decrees against it.”¹³²

In connection with Latino talent, the MLB rules being routinely violated by MLB scouts and teams are: (1) the rule prohibiting the signing of

128. KLEIN, *supra* note 116, at 42.

129. *Id.*

130. *Id.*

131. *Id.* at 43. For an English translation of this law, see AARON N. WISE AND BRUCE S. MEYER, 2 INTERNATIONAL SPORTS LAW AND BUSINESS 889 (1997).

132. KLEIN, *supra* note 116, at 54.

prospects under the age of seventeen (17-year old rule),¹³³ and (2) the rule that all players signed must sign a standard player's contract (SPK) agreed between MLB and the Major League Baseball Players Association (MLBPA).¹³⁴ MLB teams will often sign Latino prospects at ages younger than permitted by the 17-year old rule. A frequent practice is the signing of sixteen-year old prospects regardless of the provisions of the 17-year old rule. Then MLB teams have such prospects sign "contracts" (sometimes just blank pieces of paper) that do not conform to the SPK. Once the prospect is signed, the MLB team tries to hide him from the eyes of other scouts and MLB teams, usually in a baseball academy. When the player reaches the age when he can be legitimately signed, the MLB team will sign him to a SPK, thus making everything look legitimate.¹³⁵

A famous situation involves Bernie Williams, now a superstar for the New York Yankees. The Yankees discovered Williams in Puerto Rico in the 1980s when scout Fred Ferreiro saw him play.¹³⁶ Fearing that other teams would also see Williams's talent, the Yankees wanted to get Williams under contract; but he was not old enough to sign the SPK under the 17-year old rule.¹³⁷ So, the Yankees simply brought Williams to the United States to keep him away from other teams.¹³⁸ When Williams was old enough to be signed, the Yankees signed him with a \$16,000 signing bonus.¹³⁹ Even though the Yankees did not break any rules or laws in what they did with Williams, it is a depressing sign of the fiercely competitive world of Latino scouting in the era of the globalization of baseball.

While it might be hard to feel sorry for Bernie Williams because he is now a baseball superstar with a new \$87 million contract, what happened to him and what routinely happens to Latino children at the hands of MLB scouts and

133. The rule provides that a player who is not already under contract with a MLB or minor league team, who is not a U.S. resident, and who is not subject to draft eligibility rules, may be signed by any club if (1) he is seventeen years old at the time of signing, or (2) he is sixteen years old upon signing and will reach seventeen prior to the later of (a) the conclusion of the baseball season in which he was signed, and (b) September 1. See WONG, *supra* note 106, at 635.

134. MLB Standard Player's Contract (on file with authors).

135. These observations derive from the knowledge and experience gained by Arturo Marcano in his years of involvement with professional and amateur baseball in Latin America.

136. Thomas R. Dominczyk, Comment, *The New Melting Pot: As American Attitudes Toward Foreigners Continue to Decline, Athletes Are Welcomed with Open Arms*, 8 SETON HALL J. SPORTS L. 165, 188 (1998).

137. *Id.*

138. *Id.*

139. *Id.*

teams would not happen to an American prospect because legal, MLB, and cultural barriers exist to such treatment of American children. In addition, Williams's success is the exception not the rule in terms of MLB treatment of Latino children. Of the hundreds of Latino children signed by scouts and shipped off to baseball academies, only a handful ever make it to the United States to play minor league ball; and even fewer make it to the Big Show.¹⁴⁰ Everyone marvels at the baseball skills of Bernie Williams but never sees or cares what happens to the hundreds of other prospects who did not make the cut. After years of struggling in baseball academies and/or the minors, they generally return home without fame, fortune, or formal education. The prospects for these former players are in most cases dim.¹⁴¹ While a Latino teenager may still make the big leagues, he probably will not based on statistical averages. In many cases, the MLB team's violation of the 17-year old rule and the SPK rule and shielding prospects from contact with knowledgeable people who could rectify their treatment would not happen today to an American. Given that such treatment of Latino children is not uncommon, a dark cloud hangs over this part of MLB activities in Latin America.

2. *The "Baseball Academies"*

A number of MLB teams operate "baseball academies" in Latin American countries through which they evaluate prospective Latino baseball players. Baseball academies "started in the late seventies and flourished by the mideighties."¹⁴² The Toronto Blue Jays built the first baseball academy in 1975, and today many MLB teams operate baseball academies in countries

140. Wilkinson reported, for example, that "[n]o player has ever started with the Dominican Braves and worked his way through the farm system to reach Atlanta." Wilkinson, *supra* note 116, at E1. DeVoss reported that "only 3% of the players signed ever reach the big leagues." DeVoss, *supra* note 33, at 10. See also Aschburner, *supra* note 109, at 1C ("For every Hispanic player who finds success in America, hundreds more fall short of the dream and return home, scraping out their existence.")

141. Dario Paulino, a coach for the Atlanta Braves in the Dominican Republic, noted that it is "very, very hard" when Latino players fail to make it to the American big leagues. *Quoted in* Wilkinson, *supra* note 116, at E1. Luis Silverio, a scout for the Kansas City Royals, admitted that "[t]he worst thing about my job is when you have to release them from [the academy] You gotta see their face. After the disappointment sets in they ask, 'What am I going to do now?'" *Quoted in* Dave Hoekstra, *A Land of Hope, Dreams: Cubs Seek Untapped Talent in the Dominican Republic*, CHI. SUN-TIMES, Feb. 29, 1988, at 12.

142. REGALADO, *supra* note 30, at 201.

such as the Dominican Republic and Venezuela.¹⁴³ Regalado observes that the baseball academies “contributed much to the Latin increase in the big leagues.”¹⁴⁴ Thus, these baseball academies play an important role in MLB teams’ hunt for Latino baseball talent.

Klein described baseball academies in terms familiar from discourse about neocolonialism: “it finds raw materials (talented athletes), refines them (trains the athletes), and ships abroad finished products (baseball players).”¹⁴⁵ This description also resonates with our earlier arguments about baseball being a global business. The neocolonial image can be further enhanced by observing that MLB teams have built baseball academies where the raw materials are plentiful, pliant, and cheap to harvest compared to indigenous sources of baseball talent.¹⁴⁶ Baseball academies can also be seen as strategies to achieve economies of scale in the production of baseball players. Interestingly, one Japanese corporation not affiliated with professional baseball proposed to transform neocolonialism into full-blown capitalism by setting up a baseball academy “to produce players for sale on the world market.”¹⁴⁷ Even Fidel Castro has expressed a desire to “export” Cuban baseball players to MLB for a profit rather than having them defect to the United States.¹⁴⁸

In addition, neocolonialism as a description also fits with the involvement of local elites in the business at hand. The lack of implementation and enforcement of Dominican Republic regulations on the operation of scouts and baseball academies suggests that collusion neocolonial-style occurs.¹⁴⁹ Collusion of the periphery with the core also probably exists because of the

143. OLEKSAK & OLEKSAK, *supra* note 30, at 186.

144. REGALADO, *supra* note 30, at 201.

145. KLEIN, *supra* note 116, at 42.

146. *Id.* at 55 (“Lured by a cheap and docile labor force, corporations in industrial countries move their manufacturing plants off-shore.”).

147. *Id.* at 52.

148. See Rich Opiel, *Castro Asks for Cut of Baseball Profit* (visited Feb. 23, 1999) <<http://www.latinolink.com/sports/sports98/1026scas.htm>>. See also Tom Farrey, *Traitor to the Heart* (visited Feb. 26, 1999) <<http://espn.go.com/gen/columns/farrey/01121832.html>> (reporting on Castro’s efforts to make it more difficult for Cuban baseball players to defect to the United States).

149. Klein noted that the Dominican government intervened in 1984 to regulate the appalling behavior of not only scouts but also baseball academies, which “signed as many players as possible (some as young as thirteen) and separated them from their families without any consideration of the consequences, hid the boys so that other scouts would not get hold of them, and failed to pay bonuses that were promised.” KLEIN, *supra* note 116, at 43. While Klein stated that this regulatory intervention had salutary effects, he observed in a footnote that the 1985 appointment of the Dominican baseball commissioner to oversee relations between MLB teams and Dominican players lapsed two years later and had not been renewed as of 1990. *Id.* at 164 n.25.

economic importance of the baseball academies to these impoverished communities. Threats of divestment help reinforce the cooperation of the locals. As Klein noted in connection with the Dominican Republic, “[s]ome teams even get their way by threatening to leave the country if they are interfered with by the government.”¹⁵⁰

For MLB teams, baseball academies serve several important functions. First, the scouts can sign promising young children (often violating MLB rules in the process) and send them to the academies for intensive training until they turn seventeen. Second, the baseball academies attract young players who have not yet been signed, allowing MLB teams to test these prospects out under rigorous training conditions. Third, the baseball academies are great places to isolate young talent from the eyes of other teams and the hands of agents. Fourth, prospects that survive the baseball academies and show great promise usually are easy and cheap to sign because they have invested so much of themselves in the particular team that they are very unlikely to look at other teams for employment. Finally, the baseball academies serve as convenient holding pens for talented players as MLB teams get only a limited number of immigration visas each year for foreign players.¹⁵¹

The baseball academies are basically baseball boot camps for Latino children. The average age of children attending the academies is between twelve and sixteen years.¹⁵² Although MLB rules prohibit a team from signing any player to a contract before he is seventeen, the rule does not prevent MLB teams from systematically evaluating children younger than seventeen in the baseball academies.¹⁵³ Latino children sometimes spend up to three years in baseball academies.¹⁵⁴ While MLB claims to monitor the treatment of children attending baseball academies,¹⁵⁵ these operations submit Latino children to questionable treatment and interfere with their education.

The daily regimen at baseball academies is generally quite rigorous.¹⁵⁶ While such regimens have benefits in connection with instilling discipline,

150. *Id.* at 54.

151. For discussion of the limitations imposed by U.S. visa restrictions, see *id.* at 56-57.

152. These observations derive from the knowledge and experience gained by Arturo Marciano in his years of involvement with professional and amateur baseball in Latin America.

153. *Id.*

154. *Id.*

155. See OLEKSAK & OLEKSAK, *supra* note 30, at 187.

156. See KLEIN, *supra* note 116, at 73-74 (describing the “rigidly structured daily regimen” at the Los Angeles Dodgers’ baseball academy in the Dominican Republic); Wilkinson, *supra* note 116, at E1 (describing daily routine at Atlanta Braves’ baseball academy in the Dominican Republic).

they have potential problems as well. First, whether such physically and mentally demanding regimens are appropriate for children to endure for years is open to question. Second, it is not clear that the rigor of life in the academies is always geared toward nurturing baseball talent. Many Latino players who have experienced life in the baseball academies report being subject to very hard physical and emotional conditions, including oral and physical abuse and lack of proper medical treatment for injuries.¹⁵⁷ Injuries to players sometimes result not in medical attention but in release from the academy.¹⁵⁸ If they have come to the academy after signing a contract, getting injured often results in the signing bonus never being paid.¹⁵⁹ Money to help the child and his family take care of the injury sustained in the academy is often not offered by the MLB team.¹⁶⁰

Scouts and baseball academies are often less than family oriented in the attempt to protect prospects from being pilfered by other MLB scouts and teams. Klein related how “many academies often hide their prospects, bringing forth charges of kidnaping.”¹⁶¹ A former Dominican baseball commissioner once stated: “These camps were hideouts because the scouts didn’t want their kids seen by other scouts. It almost seemed like they were concentration camps.”¹⁶²

While not as bad as the sweatshop environments suffered by child laborers in many developing countries, these observations point toward questionable treatment of *children* by MLB teams. It is inconceivable that American children could be exposed to such treatment in the United States by MLB teams. More generally, it is worrying to learn that MLB teams systematically treat Latino children in this way.

One defense of this sort of treatment is that it is perhaps better than the daily existence of most of the children in attendance. More flattering descriptions of life in baseball academies can be found. Although he retains a critical eye, Klein’s description of the Los Angeles Dodgers’ baseball academy at *Campus Las Palmas* in the Dominican Republic is, on the whole,

157. These observations derive from the knowledge and experience gained by Arturo Marcano in his years of involvement with professional and amateur baseball in Latin America.

158. *Id.*

159. *Id.*

160. *Id.*

161. KLEIN, *supra* note 116, at 53.

162. *Quoted in id.* at 54.

fairly positive.¹⁶³ Former major leaguers who now work in the baseball academies stress the physical benefits of life in the academies, as the boys are treated for intestinal parasites, fed nutritious food, and generally grow healthier than they would in their squalor-ridden neighborhoods.¹⁶⁴ The boys get plenty of physical exercise, learn discipline and teamwork, and become motivated to achieve goals large and small. When contrasted to the grinding poverty beyond the academy's walls,¹⁶⁵ the atmosphere within the walls can seem positively humanitarian. The image given by these descriptions is one of opportunity not exploitation, and it connects powerfully with the "rags-to-riches" mythology of American baseball:

A kid with nothing to his name except talent and desire works hard, harder even than the other kids working hard toward the same goal. In time, he goes from playing baseball with a cardboard glove and a ball of taped socks on a corner sandlot, through tough times on the road in semi-pro leagues and on to pro ball. One day, and for years after that, he plays in Dodger Stadium. The story is as old as Abner Doubleday and as American as the game itself. . . . This is about Latin baseball players, who they are, how they got to The Show and what it took to get there.¹⁶⁶

This Horatio Alger mythology also appears in the attitudes of American MLB scouts traveling the poverty-drenched areas of Latin America. Deric Ladnier, director of the Atlanta Braves' minor league operations, complained that economic affluence has diluted the passion for baseball in American boys; but, referring to the Dominican Republic, Ladnier gushed: "When you come down here and you're looking for baseball players and you see people playing on street corners and in fields, you think, 'What a great place to come. They

163. *Id.* at 62-103.

164. *See* Hoekstra, *supra* note 141, at 12 (noting efforts by the Chicago Cubs to rid prospects of parasites and to provide them with good nutrition); and REGALADO, *supra* note 30, at 201-02 (quoting Ralph Avila of the Los Angeles Dodgers who stated that "the Dodgers promise three meals a day, a bed, a physical examination, any necessary dental work, prescription drugs and vitamins, classes in Spanish, an English teacher, transportation to and from the ball park and free laundry.").

165. Regalado notes that the baseball academies "became temporary sanctuaries from poverty" for young persons in the Dominican Republic. REGALADO, *supra* note 30, at 201.

166. T.R. Reinman, *Getting to First Base: Latins Have Earned Their Place in Major Leagues*, SAN DIEGO UNION-TRIB., July 9, 1991, at D1.

play.”¹⁶⁷ Latin American countries are attractive to MLB *because* the field of dreams is built upon poverty and near hopelessness. What a great place to come. That’s what I love about going to Latin American countries. Man, could they hit that bottlecap.

The projection of the “rags-to-riches” mythology onto the exploitation of Latino children by MLB represents profound ethical myopia by the American baseball world. First, the mythology neglects to take into account the negligible economic benefits of baseball to the general populations of Latin American countries. Klein contrasted the economic success of a handful of Dominican baseball players with the continuing and distressing socioeconomic conditions in the Dominican Republic.¹⁶⁸ In connection with baseball, Klein argues that “the Dominicans’ economic and political dependence on industrialized nations is both their best hope for the future and a leading cause of their underdevelopment.”¹⁶⁹ Second, this projection of American baseball mythology essentially holds that it is acceptable to treat poor children worse than affluent children because they are poor. Systematic and intentional discrimination based on economic status is not a shining beacon in favor of MLB’s practices in Latin American countries.

3. *The Role of Agents in Signing Latino Baseball Players*

Sport agents, or athlete agents, have become a bigger part of professional sports in the United States in the last thirty years. In earlier decades, professional athletes negotiated their own contracts because they had few alternatives to what their teams offered. In MLB, players were for decades bound to a team through the reserve clause, which drastically limited a player’s negotiating freedom. The reserve clause in a player’s contract essentially bound “a player in perpetuity to a single club.”¹⁷⁰ Despite its unfairness, the reserve clause survived from the late nineteenth century until the mid-1970s.¹⁷¹ After the demise of the reserve clause, the bargaining leverage of players began to increase through the advent of free agency, litigation, and collective bargaining. In addition, as professional sports grew into multi-billion dollar industries, players needed more and more professional

167. *Quoted in Wilkinson, supra note 116, at E1.*

168. *See KLEIN, supra note 116, at 60.*

169. *Id.*

170. *Pietrusza, supra note 12, at 590.*

171. *Id.* at 588-90.

representation to level the playing field of contract and product endorsement negotiations. All these factors have led to sports agency being something of a boom industry in the United States over the past three decades.

Sports agents are generally thought of as the individuals who negotiate contracts for athletes. However, the agent performs a variety of functions in representing the professional athlete. For example, in addition to negotiating the player's contract, the agent might furnish the player with the following services: legal counseling; obtaining and negotiating endorsement and publishing contracts; financial management and accounting; insurance, investment, tax and estate planning; present and post-athletic career counseling; public relations; coordinating travel arrangements; resolving disputes that arise under the athlete's employment contract and collective bargaining agreement; soliciting, negotiating and securing additional income opportunities; and providing financial advice and income management services and furnishing general guidance on legal tax issues.¹⁷²

While few will argue that the services of a competent agent can be very valuable for a professional athlete, the emergence of the sports agent in professional sports has not been without problems. First, the fierce competition for a limited supply of quality athletes has encouraged corruption.¹⁷³ Until recently, unscrupulous or corrupt agents had everything to gain and nothing to lose by breaking the rules in the aggressive hunt for talented clients. Many agents offered money or gifts to talented college players to sign with them representation agreements before the expiration of their collegiate eligibility.¹⁷⁴ Stricter laws have been passed to correct this situation, as noted above.

Second, there are not professional requirements or standards to which agents must comply, even though they perform professional services for their athlete clients. The agency industry has evolved beyond just contract negotiation. In fact, many agents now provide many additional professional

172. See Sobel, *supra* note 106, at 705-09 (discussing different functions of sports agents); WONG, *supra* note 106, at 666-71 (discussing the same).

173. Leigh Steinberg, *How the Agent-Athlete Relationship Begins* (visited Feb. 25, 1999) <<http://espn.go.com/gen/columns/leighsteinberg/00731332.html>> (noting that 20,000 sports agents in the United States are competing to represent 200 NFL draft picks, 58 NBA draft picks, and several hundred MLB draft picks).

174. See WONG, *supra* note 106, at 664-65 (quoting Leigh Steinberg, a leading sports agent, who alleged that "at least one third of the top athletes in college football and basketball are signing early every year. It is usually done in return for money payments. It is an open secret no one wants to talk about. It is unconscionable.").

services as noted above. Few agents have expertise in all areas, yet many of them attempt to compete with those who have such professional knowledge. Because of the abuses in the agent-player relationship, measures have been taken to regulate sports agents in the United States by the MLBPA,¹⁷⁵ the NCAA,¹⁷⁶ and state legislatures.¹⁷⁷

As baseball has gone global in the search for talent, agents are also trying to go global. Sports agents are not, as a general matter, regulated in Latin American countries. Agent abuses similar to those that occur in the United States are also happening with Latino baseball players. The larger problem with Latino baseball prospects is not, however, agent abuses; but, rather, the lack of agent involvement in the signing of Latino ball players by MLB teams.

Agents are necessary in the various worlds of professional sports; but, in the case of foreign players, the role of agents is even more important than for American players because of economic, educational, language, and cultural barriers that foreign players face. Many Latino players lack the education or language skills to discuss or even ask for benefits normally given to American players. Such educational and language obstacles put them at a disadvantage when dealing with MLB teams. In addition, given that many Latino baseball prospects see MLB as their escape from poverty, they are less likely to challenge their treatment than American prospects are.

MLB teams know that the absence of agents for Latino baseball talent is good for them because these players often accept everything offered to them with no bargaining. The absence of agents allows MLB teams to keep the costs of finding Latino baseball talent down and to create the freedom to bend or break MLB rules on signing baseball players. MLB teams generally pay low signing bonuses to Latino signees, and they often violate MLB rules in order to get talented players in their systems. This MLB formula is a paradigm of business efficiency: the production of profit-generating talent at low cost. Agent involvement would probably raise the level of signing bonuses and work as a compliance mechanism for MLB rules—each of which would raise the overall cost of finding Latino baseball talent.

Thus, it is not surprising that MLB teams systematically discourage young Latino ballplayers from retaining agents. Scouts routinely tell prospects that

175. See Sobel, *supra* note 106, at 725 (noting agent regulation plan adopted by the MLBPA in 1986).

176. See *id.* at 724.

177. See *id.* at 724-25.

they do not need agents, who are only out for money and not the welfare of the player.¹⁷⁸ Once the prospect is signed, MLB teams continue to discourage the Latino players from working with agents by preventing the players from receiving communications from agents and continuing to persuade them that they do not need agent representation. A frequent persuasive tactic is telling young Latino players that MLB teams might treat them less favorably if they sign with an agent because such signing suggests the players are rebels or problematic people.¹⁷⁹ When such “persuasion” happens to a child from a developing country who speaks no English and desperately wants to escape poverty through baseball, the result is predictable: the player does not sign with an agent.

With this background, it is easy to see why agents are even more necessary for foreign players than for Americans. To date, the globalization of the market for baseball talent has not produced the globalization of the market for baseball agents. Much of this situation is created by active MLB deterrence of young Latino athletes from enjoying the benefits that agency representation brings American draftees. While agents do cause problems, as evidenced by the public, intercollegiate, and MLBPA regulations on agency representation in the United States, agents remain necessary to level the playing field with MLB management. MLB teams’ efforts to prevent young Latino baseball prospects from having agency representation is yet another manifestation of MLB teams treating Latino players less favorably than American players.

The intensification of competition for Latino baseball talent, combined with the attempts by MLB teams, scouts, and baseball academies to keep agents away from Latino prospects, has led agents to attempt new strategies. In Latin America, agents are now hiring scouts of their own to find players before MLB teams do and to bring them under control in connection with dealing with MLB scouts and teams.¹⁸⁰ Latino children with any baseball talent now confront potential exploitation by the agent-scout dynamic in addition to the pressures from the MLB team-scout juggernaut.

178. These observations derive from the knowledge and experience gained by Arturo Marcano in his years of involvement with professional and amateur baseball in Latin America.

179. *Id.*

180. *Id.*

IV. VIOLATION OF INTERNATIONAL HUMAN RIGHTS AND LABOR STANDARDS BY MLB TEAMS

The process of scouting Latin American talent, baseball academies, and the active discouragement of agency representation of Latino baseball prospects not only constitute three strikes against MLB in its globalized form but also represent violations by MLB teams of human rights and labor standards enshrined in international law.¹⁸¹ Reviewing the behavior of MLB teams against the human rights and labor standards in international law demonstrates that the less favorable treatment received by Latino baseball prospects is a serious matter not to be lightly dismissed. When MLB practices in Latin American countries are variously described as neocolonial exploitation, reminiscent of West African slave trading techniques, and almost like concentration camps, then it is time to hold MLB accountable for its behavior. The human rights and labor standards violations occur in the area of the rights of the child because much of the less favorable treatment discussed earlier in this Article happens to individuals under the age of eighteen. When MLB teams systematically engage in violations of the human rights of children and of international labor standards designed to protect children, something is very wrong in and around the global ballpark.

A. The Relevance of International Human Rights and Labor Standards to the Globalization of Baseball

Standard legal analyses of baseball do not contain analysis of the international legal aspects of the global business of baseball as they stick to strictly national legal issues.¹⁸² To some, analyzing the globalization of baseball in terms of international human rights and labor standards might seem wrong because, technically, international law applies to States. While international organizations are also subjects of international law, such organizations are merely composed of States. Individuals are also subjects of international law through human rights concepts, but they generally have international legal rights in connection with State action. International law

181. Our analysis does not deal with the historic racism, discrimination, and mistreatment experienced by Latino players in MLB that has been discussed at length elsewhere. See, e.g., REGALADO, *supra* note 30. Our analysis focuses on the problems generated by MLB teams hunting for Latino talent.

182. See, e.g., Gary D. Hailey & Douglas R. Pappas, *Baseball and the Law*, in TOTAL BASEBALL, *supra* note 12, at 600; ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* (1998).

does not traditionally apply to non-State actors, such as MNCs. As a technical matter, MLB—as a non-State actor—does not have duties towards individuals under international law. MLB and MLB teams are subject to the national laws of the jurisdictions in which they operate. What, then, is the relevance of arguing that MLB teams violate international legal standards on the human rights of, and labor protections for, children?

The relevance comes in two forms. First, while many international human rights and labor standards on children, such as the abolition of child labor, technically apply only to governments as a matter of international law, these standards also target non-State actors, such as MNCs. A country that prohibits child labor to conform to the Minimum Age Convention (MAC) of the International Labor Organization (ILO)¹⁸³ is adopting an international legal standard into national law. The law that is then applied to companies is technically national law, but often the well-spring for the national law is international law. Thus, measuring the performance of MNCs against human rights and labor standards cannot be rejected on a legal technicality as the purpose of the international legal standard is to affect not only State behavior but also the activities of non-State actors.

Second, as the globalization of markets weakens the formal State, non-State actors grow in power and influence. Increasingly, human rights advocates are challenging the behavior of global companies under human rights standards.¹⁸⁴ Human Rights Watch noted that “the debate on the relationship between corporate conduct and human rights evolved from questioning whether corporations should respect human rights to a recognition that corporations must implement credible human rights policies and practices and ensure compliance to these standards.”¹⁸⁵ Perhaps the most famous examples of this involve challenges to American MNCs, such as the Gap and Nike, using cheap labor in foreign countries that toils under less favorable

183. Convention No. 138 Concerning Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297 [hereinafter MAC], reprinted in *THE RIGHTS OF THE CHILD: INTERNATIONAL INSTRUMENTS* 519-27 (Maria Rita Saulle ed., 1995) [hereinafter *THE RIGHTS OF THE CHILD*].

184. See, e.g., Human Rights Watch, *Corporations and Human Rights* (visited Feb. 22, 1999) <<http://www.hrw.org/hrw/worldreport99/special/corporations.html>>.

185. *Id.*

working conditions than American workers.¹⁸⁶ Another example can be found in the litigation commenced in the United States against global oil companies for aiding and abetting human rights violations in Burma.¹⁸⁷ Globalization generally is creating the need to bring non-State actors more directly into international discourse about human rights and labor standards.¹⁸⁸

The globalization of baseball creates similar opportunities to examine the behavior of MLB and MLB teams in connection with human rights and labor standards. Baseball is a global business, and MLB seeks to build a growing global consumer base for its products. Just as Nike and other companies have been hauled before the court of public opinion for their treatment of foreign workers, MLB must answer difficult questions that international human rights and labor standards pose for its less favorable treatment of Latino baseball talent.

B. Human Rights Analysis of the Globalization of Baseball

1. Definition of the Child

Under the almost universally adopted United Nations Convention on the Rights of the Child (UNCRC), "a child means every human being below the age of eighteen years."¹⁸⁹ The MAC supports this definition of the child by stating that "[t]he minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be

186. *Id.* (noting criticisms of Gap Incorporated and Nike for labor rights violations in overseas plants).

187. *See, e.g., Nat'l Coalition Gov't of the Union of Burma v. UNOCAL, Inc.*, 176 F.R.D. 329 (C.D. Cal. 1997) (plaintiffs alleging that UNOCAL, as a joint venturer with the Burmese government on a natural gas project, is liable for the Burmese government's violations of international law committed in furtherance of such project); *Doe v. UNOCAL Corp.*, 963 F. Supp. 880 (C.D. Cal. 1997) (class action against UNOCAL for its complicity with Burmese government's violations of international law).

188. *See generally* Ariadne K. Sacharoff, Note, *Multinationals in Host Countries: Can They Be Held Liable Under the Alien Tort Claims Act for Human Rights Violations?*, 23 BROOK. J. INT'L L. 927 (1998).

189. United Nations Convention on the Rights of the Child, Nov. 20, 1989, U.N. Doc. A/44/49 (1989) [hereinafter UNCRC], art. 1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 9, 10. Article 1 also provides that the jurisdiction in which the child lives may set a lower age at which majority is attained. *Id.*

less than 18 years.”¹⁹⁰ Thus, under international law, MLB teams are significantly engaged with children in their hunt for Latino baseball talent. In fact, the entire MLB enterprise in Latin American countries is designed to bring children into MLB and develop them into professional baseball players. Demarcating at what age a person is a child or an adult is critical to international human rights standards because the United Nations declared in 1989 that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”¹⁹¹ This position has been pronounced repeatedly by international instruments throughout this century.¹⁹² Under the age of eighteen, individuals need *more* not *less* care and protection. In addition, the UNCRC proclaims that “children living in exceptionally difficult conditions . . . need special consideration.”¹⁹³ Children in developing countries who live in conditions of poverty deserve special protection under international human rights law.

International labor standards allow the employment of children sixteen years old “on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.”¹⁹⁴ Governments may also permit the employment of thirteen- to fifteen-year olds in “light work which is—(a) not likely to be harmful to their health and

190. MAC, art. 3.1, *reprinted in* THE RIGHTS OF THE CHILD, *supra* note 183, at 520.

191. United Nations General Assembly Declaration on the Rights of the Child, Nov. 20, 1989, pmbl., *reprinted in* THE RIGHTS OF THE CHILD, *supra* note 183, at 5, 5.

192. The UNCRC states:

The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959, and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children . . .

UNCRC, pmbl., *reprinted in* THE RIGHTS OF THE CHILD, *supra* note 183, at 9-10.

193. *Id.* at 10.

194. MAC, art. 3.3, *reprinted in* THE RIGHTS OF THE CHILD, *supra* note 183, at 520-21.

development; and (b) not such as to prejudice their attendance at school.”¹⁹⁵ In all cases of employment of children under eighteen, international labor law imposes duties of special care and protection in keeping with the tenor of international human rights law on children.

It should immediately be apparent from the three strikes against the globalization of baseball examined earlier that the behavior of MLB and MLB teams does not conform to the international human rights and labor standard that children need special safeguards and care. MLB teams go out of their way to ensure that Latino children do not get special safeguards and care in the hunt for profit-producing baseball players. MLB teams intentionally use the economic deprivation that surrounds these children as a weapon in signing baseball prospects. MLB teams behave as if Latino children are commodities rather than children in need of special safeguards and care as required by international law.

2. *The Role of Parents*

The UNCRC provides that States Parties shall “respect the responsibilities, rights and duties of parents”¹⁹⁶ and “use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.”¹⁹⁷ In addition, “States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.”¹⁹⁸ Thus, international human rights law places the parents at the center of the child’s development and future.

Based on the analysis in Part III, it is not at all clear that MLB teams acknowledge the special role of parents in the development of Latino children.

195. *Id.* art. 7.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 522.

196. UNCRC, art. 5, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 11.

197. *Id.* art. 18.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 15. See also *id.* art. 3.2, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 11 (“State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents . . .”).

198. *Id.* art. 18.2, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 15. See also, *International Federation of Sports Medicine/World Health Organization Ad Hoc Committee on Sports and Children, Sports and Children: Consensus Statement on Organized Sports for Children* (visited Mar. 25, 1999) <<http://www.who.int/nca/cvd/childsports.html>> (stressing the importance of parental involvement in sports training for children).

Violations of the 17-year old rule and the SPK rule not only do injustice to the child but also to the parents and the role they play, and are supposed to play, in the child's upbringing. In addition, MLB teams appear to display little sensitivity to the strain poverty and lack of education place on Latino parents that make them vulnerable to the practices of MLB scouts and baseball academies.

3. *The Principle of Non-Discrimination*

A central standard in the international law on the rights of children is the principle of non-discrimination. Under the UNCRC, States Parties are to respect and ensure the rights enshrined in the Convention "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."¹⁹⁹ The principle of non-discrimination is critical to every area of international human rights law, which indicates the reverence with which this principle should be approached.²⁰⁰

A key theme of the arguments in Part III of this Article is that MLB teams treat Latino children less favorably than American children in bringing baseball prospects into professional baseball. Such less favorable treatment is a form of discrimination against Latino children. This discrimination is systematic because it involves: (1) the structural differences between how American and Latino children are brought into MLB (i.e., draft vs. free agency), and (2) intentional practices that prevent Latino children from having access to agents and benefits routinely accorded to American draftees (e.g., decent signing bonuses). And, as indicated below, the discrimination also affects specific children's rights enshrined in international law.

199. UNCRC, art. 2.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 10.

200. See Steven D. Jamar, *The International Human Right to Health*, 22 S.U. L. REV. 1, 25 (1994) (commenting that the principle of non-discrimination is "so well enshrined in all human rights conventions as to be an indisputable part of customary international human rights law.").

4. *The Principle of the Best Interests of the Child*

Under the UNCRC, a guiding principle is that all actions, whether taken by the government or private entities, shall be driven by what is in the best interests of the child.²⁰¹ To achieve what is in the best interests of the child, the UNCRC generally requires States Parties to ensure: (1) necessary child protection and care, including taking all appropriate measures to achieve such protection and care,²⁰² and (2) that institutions, services, and facilities responsible for the protection and care of children conform with standards set by competent government authorities.²⁰³ Many of the other provisions and rights in the UNCRC also support the principle of the best interests of the child. The objective of the MAC also relates to the promotion of the best interests of the child as it seeks to abolish child labor and to raise progressively the minimum employment age “to a level consistent with the fullest physical and mental development of young persons.”²⁰⁴

The behavior of MLB teams in connection with Latino children raises the issue whether they act with the best interests of the children in mind. While MLB offers Latino children career possibilities otherwise unthinkable in their native countries, the dynamics of the system that MLB teams have created raise questions whether it operates in the best interests of not only those Latino children that make it to the major leagues in the United States but also the vast majority that do not. For example, is it really in the best interests of a Latino child not to have agency representation in his and his family’s dealings with a MLB team, especially given the language barriers and the climate created by poverty in Latin American countries? In actively working against agency representation for Latino baseball prospects, MLB teams are not, in the words of the UNCRC, undertaking to ensure the child such protection and care as is necessary for his well-being.

201. See UNCRC, art. 3.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 11.

202. *Id.*, art. 3.2, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 11.

203. *Id.*, art. 3.3, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 11.

204. MAC, art. 1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 519.

5. Protection Against Economic Exploitation and Physical or Mental Abuse

The UNCRC provides that children have the right “to be protected from economic exploitation and from performing any work that is likely to be . . . harmful to the child’s health or physical, mental, spiritual, moral or social development.”²⁰⁵ In addition, “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”²⁰⁶ States Parties are required to take all measures necessary to protect children from exploitation and abuse.²⁰⁷ The MAC aims for the same protections by seeking to totally abolish child labor, to secure a minimum employment age consistent with full physical and mental development, and to protect the health, safety, and morals of children who are employed.²⁰⁸ The International Covenant of Economic, Social, and Cultural Rights (CESCR) also declares that “[c]hildren and young persons should be protected from economic and social exploitation.”²⁰⁹

The fact that MLB teams treat Latino children like commodities raises the question whether they are engaged in the exploitation of such children for profit. The discriminatory treatment of Latino children relative to American prospects in the hunt for baseball talent also suggests that Latino children are being exploited because they are poor and vulnerable. The violations of the 17-year old and SPK rules further indicate that MLB teams exploit Latino children. The conditions of the baseball academies point to possible systematic physical and mental abuse of Latino children.

A technical argument could be raised against these accusations because the prohibitions against economic exploitation and physical and mental abuse arise in the context of child labor. It might be argued that children attending baseball academies are not employed as workers, and thus fall outside the scope of such protections in international law. The UNCRC provisions on economic exploitation include requirements to set appropriate hours and conditions of employment and a minimum age for admission to

205. UNCRC, art. 32.1, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 21.*

206. *Id.* art. 36, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 22.*

207. *Id.* art. 32.2, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 21.*

208. *See* MAC, arts. 1, 3.1, 3.3, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 519-20.*

209. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter CESCR], art. 10.3, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 655, 655.*

employment.²¹⁰ The MAC does not apply “to work done by children and young persons in schools for general, vocational or technical education or in other training institutions.”²¹¹ This line of reasoning would argue that the baseball academies are training institutions and not places of employment for children. Thus, the international legal prohibitions on economic exploitation of children do not apply to the activities of baseball academies under international law.

Such a position would be correct for those Latino children who are not at the baseball academies under contract. Those children who have signed with a MLB team are employees who should benefit from the prohibitions against economic exploitation of children in international law. In connection with children at the baseball academies who do not have a contract, a technical defense of economic exploitation is not very impressive and does not address how MLB teams exploit Latino children in the hunt for profit-producing players. Subjecting children to physical and mental abuse in baseball academies cannot be defended under international human rights standards on technical legal arguments. Systematically treating Latino children less favorably than American prospects in the search for baseball talent cannot be defended by MLB seeking legal loopholes.

6. *The Right to Education*

The UNCRC recognizes that every child has “the right to . . . education”²¹² and that States Parties are to protect children from economic exploitation that might “interfere with the child’s education.”²¹³ Similarly, MAC requires that light work for thirteen- to fifteen-year olds not prejudice their attendance at school.²¹⁴ In addition, the MAC requires employment to respect the objective of the fullest mental development of young persons.²¹⁵ More generally, the

210. UNCRC, art. 32.2, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 21.*

211. MAC, art. 6, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 522.*

212. UNCRC, art. 28.1, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 19.*

213. *Id.* art. 32.1, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 21.*

214. MAC, art. 7.1(b), *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 522.*

215. *Id.* art. 1, *reprinted in THE RIGHTS OF THE CHILD, supra note 183, at 519.*

right to education is enshrined in many other international legal documents.²¹⁶ This emphasis on a child's education in international human rights and labor law is a critical component of requiring governments and private actors to act in the best interests of the child.

Baseball academies interfere with the education of the Latino children who attend them. The schedule and demands of the academies do not allow children to attend school properly. Children can stay up to three years in the academies, losing a great deal educationally whether or not they are signed by a MLB team. MLB teams apparently do little in the academies to foster the education of the children attending.

One defense to this situation in the Dominican Republic offered by a MLB scout was that a low percentage of children attend school generally, so the baseball academy did not interfere with the schooling of the children attending.²¹⁷ In addition, one could observe that the preservation of the right to education is the duty of the parents and the national government, not a MLB team. If the parents send the child to the baseball academy, then why should the MLB team worry about the right to education? If the national government fails to provide adequate educational resources for children, how can MLB teams be held responsible for violating the right to education? Jose Martinez, a scout in Latin America for the Atlanta Braves, captured this sentiment when he said, "I don't know if it's the right thing to say, but I don't think they're interested in going to school."²¹⁸

These arguments sound plausible because parents and national governments in Latin American countries do have responsibilities in connection with the right to education. Baseball academies operate in Latin American countries, such as Venezuela, that have enshrined the right to education in constitutional texts.²¹⁹ MLB cannot be blamed for the poor quality of primary and secondary education in Latin American countries that

216. See, e.g. Universal Declaration of Human Rights, Dec. 10, 1948, UN Doc. A/811, art. 26.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 649, 652; CESCR, art. 13.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 656.

217. See OLEKSAK & OLEKSAK, *supra* note 30, at 186 (quoting Ramón Naranjo, a scout for the Boston Red Sox and New York Yankees in the Dominican Republic, arguing that "I hear people in the United States say these kids ought to be in school, but that's ridiculous. Fewer than 20 percent of the kids in this country go to school.").

218. Quoted in Wilkinson, *supra* note 116, at E1.

219. See CONSTITUTION OF THE REPUBLIC OF VENEZUELA, art. 78 (on the right to education), reprinted in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* 13 (A. P. Blaustein and G. H. Flanz eds., Supp. 1983).

fuels the interest of Latino children and their families in the baseball academies.

But these arguments also neglect the effects of globalization on the power and duties of non-State actors such as MNCs like MLB. Just as MLB cannot be held responsible for the failure of the Dominican Republic to provide adequate primary and secondary education for its children, MLB cannot escape accountability for operating enterprises in Latin American countries that do not respect the child's right to education embedded in international law. The globalization of baseball makes MLB accountable to relevant international human rights and labor standards in its operations, just as the activities of MNCs are increasingly scrutinized by human rights advocates.

7. *Freedom of Association*

The UNCRC recognizes the right of the child to freedom of association.²²⁰ The only conditions under which a State Party may restrict the exercise of this right involve restrictions "necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."²²¹ The International Covenant on Civil and Political Rights (CCPR) also provides for freedom of association, and it emphasizes that such freedom shall include the right to join trade unions to protect the person's economic interests.²²²

MLB teams restrict a Latino child's freedom of association by actively deterring him from entering into contact with agents. As argued earlier, agents are perhaps more necessary for Latino prospects than American ones because of the socioeconomic circumstances often surrounding Latino children. Latino children are much more vulnerable to pressure from MLB teams to avoid retaining or even speaking with agents, and MLB teams exploit this vulnerability in order to get away with breaking MLB rules or to keep costs of signing Latino talent low. Thus, MLB teams intentionally interfere with Latino children's freedom to associate with agents to protect their economic interests. Denying Latino prospects access to agents is equivalent to a

220. UNCRC, art. 15.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 14.

221. *Id.* art. 15.2, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 14.

222. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter CCPR], art. 22.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 659, 665.

government prohibiting workers from forming and joining trade unions. Because MLB teams do not engage in such practices with American prospects, their behavior toward Latino children is discriminatory in connection with the right to freedom of association.

C. Summary of Human Rights and Labor Standards Analysis of the Globalization of Baseball

The specific analyses of international human rights of, and labor protections for, children negatively affected by MLB's hunt for Latino baseball talent demonstrate that MLB does not operate in conformity with international human rights and labor standards on the treatment of children. The globalization of baseball makes MLB a target for critical human rights and labor standards analysis just as MNCs face criticism for their human rights and labor attitudes in their pursuit of global profit. MLB ought to be held accountable for the behavior of its teams in connection with respect for the international legal rights of children.

We do not contend that the abuses of MLB constitute the worse abuses of human rights of, and violations of labor standards for, children in the era of globalization. Far more sinister abuses and violations occur in the atrocious working conditions experienced by child labor in many countries and the sexual exploitation of children around the world.²²³ What happens to Latino children in baseball academies or when signing with a scout pale in comparison to what daily happens all over the world to children in many other contexts. While perspective is important in connection to MLB's treatment of Latino children, we cannot turn a blind eye on what is happening to Latino children at the hands of MLB teams because international human rights and labor standards on the treatment of children exist and should be respected. Human rights are universal. The Latino child deserves no less respect from a MLB team than an American child. Taking advantage of the less fortunate situation of a Latino child for economic reasons is not acceptable morally or under international human rights and labor standards for children.

223. For examples of such abuses against children, see Amnesty International, *Children in South Asia: Securing Their Rights* (visited Feb. 26, 1999) <<http://www.amnesty.org/ailib/intcam/childasia/report.htm>> (cataloguing human rights abuses against children in South Asia).

V. REMEDIES FOR THE PROBLEMS CREATED BY
THE GLOBALIZATION OF BASEBALL

The problems identified with the globalization of baseball in this Article need to be addressed, and many possible remedial strategies can be discussed. In Part V, we analyze possible remedies in national law, international law, and within MLB itself. The biggest obstacle to these remedies is their feasibility, as we believe most are unlikely to be tried or adopted. We think that pressure will have to be brought to bear on MLB to change its practices towards Latino children, and we examine two possible strategies for bringing such pressure to bear: (1) national and transnational litigation against MLB and MLB teams, and (2) labor pressure from Latino baseball players already in MLB. Of these two strategies, we advocate for Latino and Asian ballplayers to form a foreign players' association to bring pressure to bear on MLB teams to improve their treatment of Latino children and of foreign baseball prospects in general.

A. Responses to Globalization Generally

States have adopted two different legal or regulatory strategies to deal with the pressures and opportunities created by globalization in international relations. The first strategy involves national legal reform; and, in many situations, a process of decentralized harmonization unfolds as different countries make similar regulatory adjustments to globalization phenomena.²²⁴ Decentralized harmonization is most apparent in the economic and financial realms.²²⁵ The second strategy is internationalization, under which States work together on international solutions to global problems.²²⁶ As Fidler observed, “[g]lobalization often begets internationalization because states face

224. See David P. Fidler, *The Globalization of Public Health: Infectious Diseases and International Relations*, 5 *IND. J. GLOBAL LEGAL STUD.* 11, 16 (1997).

225. *Id.* (“Primarily through domestic policies, liberal free-market states of Western Europe, North America, and East Asia have encouraged market and financial interdependence and integration.”)

226. Delbrück, *supra* note 41, at 11 (“*Internationalization* . . . may be defined as a means to enable nation-states to satisfy the *national interest* in areas where they are incapable of doing so on their own.”)

problems beyond their sovereign control that require international cooperation to address.²²⁷

The decentralized harmonization and internationalization responses to globalization in international relations do not fit the globalization of baseball well because these strategies focus on State responses. These two strategies call for State action, either domestically or internationally. We explore possible applications of these State-centered strategies to the globalization of baseball below in Parts V.B and V.C.

MLB is not, however, a State; so we have to move away from strictly State-centered remedial strategies. Applied to MLB and its global scope, decentralized harmonization seems an ill-fit because no other professional league has the presence, power, and talent of MLB. MLB is the “superpower” of professional baseball in the world, so the globalization of baseball affects it differently than, for example, winter leagues in Venezuela. Further, MLB is the engine of the globalization of baseball, making MLB’s drive toward such globalization unlikely to accommodate detours out of sensitivity to the concerns of other professional leagues.

Internationalization is more relevant because, as evidenced by the agreements between MLB and the Japanese professional baseball league, internationalization plays a role in the globalization of baseball as between professional leagues.²²⁸ Internationalization also appears in the various arrangements made between MLB and the Latin winter leagues.²²⁹ The relevance of internationalization to the globalization of baseball is explored below in Part V.D.

227. Fidler, *The Globalization of Public Health*, *supra* note 224, at 17.

228. In January 1999, the commissioners for MLB and the Japanese professional league signed an agreement under which MLB teams can bid on a Japanese player, if that player’s team is willing to make him available. See Associated Press, *Reds Hope to Sign Quezada* (last modified Feb. 8, 1999) <<http://espn.go.com/mlb/news/1999/990208/01093.html>>. The Japanese team has the option to accept or reject the offer of the MLB team that wins the auction, and that MLB team gets thirty days to sign the player. *Id.* Prior to this agreement, “players under contract with Japanese teams who wanted to move to the majors had to be released by their club, had their rights sold to a major league team or become eligible for free agency.” *Id.* For a discussion of an earlier agreement reportedly signed by MLB and the Japanese professional leagues, see WISE AND MEYER, *supra* note 131, 659-60.

229. For discussion about MLB-Latin winter leagues agreement and problems with it, see *supra* notes 64-79 and accompanying text.

B. State-Centered Decentralized Legal Harmonization

One possible remedy for MLB's mistreatment of Latino children is for the United States, as the home of MLB, and the Latin American countries affected by MLB practices to adopt national legislation regulating the behavior of MLB teams. From the perspective of the United States, MLB and MLB teams are subject to state and federal legislation, and such legislation on MLB teams' treatment of Latino baseball prospects might be a possible remedy.

Such a strategy has, however, political and legal problems. Politically, it is very unlikely that the federal legislature or any state legislature will legislate on this issue. Legally, international legal rules on the application of domestic law extraterritorially complicate using American statutory responses to remedy behavior primarily taking place in other countries. Under customary international law, a State can only apply its domestic law extraterritorially if it has a recognized basis and if the exercise of such jurisdiction is reasonable.²³⁰ American statutory regulation of the behavior of MLB teams in foreign countries would have to use either: (1) the nationality principle,²³¹ or (2) the "effects doctrine" as the basis for the exercise of jurisdiction.²³² Under the nationality principle, the United States can legislate in connection with the overseas behavior of its citizens and companies. While MLB teams are clearly subject to U.S. prescriptive jurisdiction under the nationality principle, many foreign scouts would not fall under the national principle as they are not American citizens. Nor is it clear that baseball academies can be regulated by the United States under the nationality principle;²³³ the United States has previously run into controversies trying to regulate foreign subsidiaries of American companies.²³⁴

The "effects doctrine" holds that a State may apply its law extraterritorially if the action sought to be regulated "has or is intended to

230. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 403(1) (1987) [hereinafter RESTATEMENT].

231. *Id.* § 402(2).

232. *Id.* § 402(1)(c).

233. *See id.* § 414(2) ("A state may not ordinarily regulate activities of corporations organized under the laws of a foreign state on the basis that they are owned or controlled by nationals of the regulating state.").

234. *See id.* § 414 reporters' note 3 ("Efforts by the United States to control certain activities of foreign branches and subsidiaries of United States corporations . . . have engendered much controversy.").

have substantial effects within its territory.²³⁵ It is not clear that baseball academies and the actions of scouts in Latin American countries would qualify under the effects doctrine as having serious impact on the United States and its citizens because the adverse effects are experienced outside the United States by foreign nationals. Even if the effects doctrine could be used as the basis for the exercise of jurisdiction, whether such extraterritorial regulation would be reasonable would remain unclear given how ambiguous international customary law is on this concept.²³⁶ In addition, the extraterritorial application of American law in various contexts (e.g., antitrust, securities, environment, and the Helms-Burton Act) has proved very controversial in international relations,²³⁷ which makes this strategy subject to diplomatic as well as legal problems.

Clearly, the most reasonable statutory route to pursue exists in those jurisdictions where MLB teams operate baseball academies and retain scouts. International legal principles support the exercise of such jurisdiction because the activities are taking place in the territories of these Latin American States.²³⁸ Territoriality is the strongest basis on which to exercise prescriptive jurisdiction under customary international law.²³⁹ We noted earlier the legislation enacted (but not implemented or enforced) in the Dominican Republic to regulate MLB scouts and baseball academies.²⁴⁰ In addition, many Latin American countries have existing international legal, constitutional, and statutory duties to protect the welfare of their children.

The problem with looking to Latin American countries for regulatory action against MLB teams is not legal but is political, economic, and cultural. Politically and economically, Latin American countries have more pressing matters to confront than the globalization of baseball, such as poverty, foreign debt, disease, corruption, environmental degradation, and in some cases civil unrest. It is also important to understand how important baseball is to Latin

235. *Id.* § 402(1)(c).

236. *See id.* § 403(2) (listing factors to consider in determining whether exercise of jurisdiction is unreasonable).

237. *See id.* § 402 cmt. d (“Controversy has arisen as a result of economic regulation by the United States and others, . . . on the basis of economic effect in their territory, when the conduct was lawful where carried out.”).

238. *Id.* § 402(1)(a).

239. *Id.* § 402 cmt. c (“The territorial principle is by far the most common basis for the exercise of jurisdiction to prescribe, and it has generally been free from controversy.”).

240. *See supra* notes 128-32 and accompanying text.

American cultures.²⁴¹ Government plans to tamper with the existing system might provoke political backlash by those fearful of the government wrecking the dreams of Latino children to play in the American big leagues by regulating MLB teams. We believe that people involved with the Latin winter leagues feel that rules need to be adopted to regulate the behavior of MLB teams, but that they hold out no great hope that such rules will come from their governments.

While these arguments have force, what must be remembered is that MLB teams are hunting for talent in Latin America for a reason: they need fresh baseball talent to deliver their product and to make a profit. Latin American countries have bargaining power in this relationship. Given the proven track record of Venezuelan players in MLB, a few laws and regulations that simply level the playing field for Venezuelan players is not in the long run going to scare off MLB teams. Latin American countries could coordinate their national legal approaches to MLB behavior. Such legislation might increase the cost of employing labor in Latin America, but this is not a legal or moral argument against establishing more equitable treatment of Latino players in MLB through Latin American legislative and regulatory action.

In the event that Latin American countries decided to pass some laws to regulate MLB teams, it would be necessary to cover baseball academies, scouts, and agents. In connection with baseball academies, laws could: (1) clarify at what age MLB teams can invite children to the academies, and (2) regulate the schedule of the academies so that they do not interfere with the educational requirements. At the same time, MLB teams should have to follow certain minimum requirements related to the attendees' diet, the condition of the accommodations, the number of hours that the attendees train, the need for proper medical attention, and the number of prospects they are allowed to invite each year.

241. See Ruck, *supra* note 30, at 564. Ruck observed in connection with baseball in the Caribbean that:

Knitting a common cultural fabric, serving as a vent to social and political tensions, and offering a vehicle not only for individual mobility but collective social affirmation, baseball indeed has been more than a game. . . . [Baseball] has become a catalyst to national cohesion and consciousness for the region in its troubled evolution this century.

Id. See also KLEIN, *supra* note 116, at 1 ("In the Dominican Republic baseball has a place all out of proportion to the normal one of sport in society. There is nothing comparable to it in the United States, nothing as central, as dearly held as baseball is for Dominicans.").

As for regulating scouts, there is the need for a registration process and a special license for scouts who want to work in the country. Part of the registration process must include: an orientation course that explains how scouts have to behave in order to sign a ballplayer; respect for the 17-year old rule; the need to sign a SPK; the need to get the parents' signature when the player is under eighteen; the need to pay the signing bonus; and the requirement that scouts may not discourage prospects from talking to or retaining agents.

Concerning agents, Latin legislation could draw on American statutory regulations on sports agents. American statutes on sports agents include many types of provisions, including registration requirements, fee disclosure and bonding requirements, accounting requirements for handling a player's money, and criminal and civil penalties for violations.²⁴²

Despite the appeal of legislation from Latin American countries in connection with the globalization of baseball, we remain skeptical whether such legislation is ever likely to appear.²⁴³ The globalization of baseball, and the problems it creates, simply do not register high on the list of priorities facing developing countries in Latin America already pressed by a myriad of more serious political and economic problems.

C. State-Centered Internationalization

The use of international human rights and labor law in this Article might suggest that States could pursue remedies to the problems caused by the globalization of baseball through internationalization. The practices of MLB teams in connection with Latino children could, for example, be taken up in the intergovernmental process established by the UNCRC and the ILO. The UNCRC created a Committee on the Rights of the Child to oversee the implementation of the UNCRC that could serve as a forum for discussing the

242. See generally Sobel, *supra* note 106, at 731-80 (analyzing substantive nature of different agent regulation statutes and plans in the United States).

243. Klein's observations about the failure of the Dominican Republic to implement and enforce its laws on MLB scouts and baseball academies also indicate that the mere existence of laws is not sufficient. See KLEIN, *supra* note 116, at 54 (noting continued abuses despite laws against such behavior).

treatment of Latino children by MLB.²⁴⁴ Similarly, the ILO has procedures for monitoring compliance with international labor law.²⁴⁵ But such internationalization is unlikely for legal and political reasons. Legally, only States Parties are subject to the UNCRC and its Committee on the Rights of the Child and the ILO procedures. This reality means that the failure of a State Party to protect the rights of children in connection with MLB activities is the only relevant type of case. In addition, the implementation process does not include the ability of State or non-State actors to report violations to the Committee on the Rights of the Child.²⁴⁶ The only information that officially reaches the Committee on the Rights of the Child comes from the States Parties in the form of periodic reports.²⁴⁷ Only if Venezuela, for example, declared that it had failed to protect the right of Venezuelan children in connection with MLB activities in Venezuela would the issue formally be before the Committee on the Rights of the Child. The ILO procedures have more flexibility in allowing non-State actors to participate in the monitoring and implementation of international labor law because they involve representatives from labor unions.²⁴⁸ But whether non-State actors active on ILO matters would engage the ILO with the issue of MLB treatment of Latino children is unlikely given the more serious violations of labor standards that occur worldwide today. Politically, the mistreatment of Latino children by MLB would not rank high on the list of priorities of States or non-State actors working to improve the human rights of, and labor standards for, children. Far more serious violations of children's rights occur that deserve intergovernmental attention and cooperation. Thus, for these legal and political reasons, State-centered internationalization would not be a fruitful way to deal with the problems created by the globalization of baseball.

244. UNCRC, art. 43, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 25.

245. See Virginia A. Leary, *Labor*, in 1 *UNITED NATIONS LEGAL ORDER* 473, 488-92 (Oscar Schachter & Christopher C. Joyner eds., 1995) (describing ILO methods for inducing compliance with ILO standards).

246. See UNCRC, art. 44, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 26-27.

247. *Id.* art. 44.1, reprinted in *THE RIGHTS OF THE CHILD*, *supra* note 183, at 26.

248. See Leary, *supra* note 245, at 489 (noting involvement of workers in the ILO supervisory institutions).

D. Remedies from Within MLB

An obvious strategy would be to convince MLB that it has to change the way its teams hunt for Latino baseball talent. An ambitious approach would be to turn MLB into a proper global NGO. This strategy would be more ambitious than the internationalization between professional leagues currently witnessed in the agreements between MLB and the Japanese league and the Latin winter leagues. Other international sports, such as soccer, have truly global organizations. The *Fédération Internationale de Football Associations* (FIFA) controls and regulates many soccer leagues around the world.²⁴⁹ FIFA acts as an umbrella organization and coordinates different national soccer associations.²⁵⁰ As such it is an example of internationalization among non-State actors to direct the future of a globalized sport. The International Olympic Committee (IOC) is similarly an international NGO that oversees the global Olympic movement.²⁵¹ This path would require turning MLB into a truly global NGO with representatives, officials, and staff from many different countries. Such a broadening of the scope of MLB would bring the less favorable treatment of Latino children to the surface as Latin Americans would have to play an active role in MLB as a global NGO.

Despite superficial appeal to create such a new world order for baseball, the FIFA and IOC models do not work well applied to MLB. Baseball differs fundamentally from soccer and the Olympic movement because it is deeply American-centric. While in soccer many national leagues of high quality exist, MLB is really the only "big league" in professional baseball. Other leagues around the world are not only inferior in quality but are also increasingly becoming talent feeders to MLB.

249. See generally FIFA Web Page (visited Feb. 22, 1999) <<http://www.fifa.com>>. There is an International Baseball Association (IBA) located in Lausanne, Switzerland that deals with amateur baseball. See International Baseball Association Web Page (visited Apr. 8, 1999) <<http://www.baseball.ch>>. The IBA claims to have "107 National Federation members [and] it organizes the Senior World Cup, World Championships in their different categories, the Intercontinental Cup and the Baseball Olympic Tournament, securing the development and expansion of this sport all over the world." *Id.* For discussion of IBA's relationship with MLB, see WISE AND MEYER, *supra* note 131, at 645-46.

250. See Inside FIFA: For the Good of the Game (visited Feb. 22, 1999) <<http://www.fifa.com/fifa/handbook/fgg/fgg3.html>> (noting FIFA "is the international federation for the world's most popular sport . . . [and] it now has 203 member associations.").

251. See generally IOC Web Page (visited Feb. 22, 1999) <<http://www.olympic.org>>. The IOC model has, however, been badly tainted by corruption scandals involving IOC members and cities bidding to host the Olympics. See Nicolaas van Rijn, *IOC Moves from Crisis to Crisis*, TORONTO STAR, Jan. 31, 1999, available in LEXIS, News Library, Curnws File (reporting on IOC corruption scandal).

Rather than try to make MLB more like FIFA or the IOC, a more realistic approach is to change the way MLB operates internally in connection with the globalization of baseball. MLB has proved adept at accessing foreign markets for baseball consumers and baseball talent. But what it needs is an international department or office to deal not only with the global consumer market (as MLB International does) but also with the human rights and labor concerns created by the globalization of baseball. MLB could claim that it has attempted to improve the behavior of MLB teams through the 17-year old rule and by making sure MLB teams have guidelines to protect teenagers attending academies. But MLB has not been very vigorous in making sure its rules are implemented by MLB teams. Nor has MLB been sensitive to the more general problems Latino players have faced. In response to Felipe Alou's campaign in the early 1960s to improve the treatment of Latino players in MLB, the MLB Commissioner appointed a representative in 1965 "to handle Latin players' affairs and represent them to the commissioner."²⁵² But "[b]y the 1970s, the office no longer existed."²⁵³

The international department should have the mandate of rectifying the problems MLB teams produce in accessing foreign baseball talent. Specifically, the international department should draft a set of rules that apply to the activities of MLB teams overseas, such as rules for baseball academies, scouts, agents, and the signing of contracts. In addition, the international department should enforce these rules by allowing foreign players, agents, coaches, parents, and non-governmental organizations (e.g., foreign baseball leagues, human rights NGOs) direct access to complain about violations of MLB's international rules. Such a complaint procedure would necessitate some type of arbitration or dispute settlement mechanism to arbitrate or adjudicate alleged violations of the rules. The international department could also perhaps start formulating the framework for a worldwide draft, which would bring Latino talent into the same protective system as North American and Puerto Rican amateurs.²⁵⁴

252. REGALADO, *supra* note 30, at 145.

253. *Id.*

254. Klein noted in 1991 that a "rumor is circulating that the North American baseball draft will soon include the Dominican Republic and Venezuela." KLEIN, *supra* note 116, at 61. He argues that the effects of instituting the draft in the Dominican Republic would "be to drive up the cost of signing all players" and "to diminish the power of the academies". *Id.* It would also change the dynamics of scouting in Latin America as the draft changed the dynamics of scouting in the United States. See *supra* notes 92-107 and accompanying text. Widening the draft to include the rest of Latin America would likely be opposed for other reasons, including a perceived detriment to the development of baseball talent. Omar Minaya, who

The biggest problem with this reform idea is its feasibility. Is MLB really likely to adopt such proposal? At the moment, the idea is hopelessly naïve. MLB teams are all part of a “silent conspiracy” in connection with the treatment of Latino baseball prospects because they are all involved in these questionable practices. But MLB is courting trouble if it allows MLB teams to treat Latino children as they historically have. The reform proposal is actually in the long-term self-interest of MLB and its teams because the status quo is a black mark on the product people buy. Other global corporations have found it in their economic self-interest to make reforms voluntarily in their foreign labor practices through codes of conduct rather than to continue to suffer the wounds of bad public relations and consumer anger.²⁵⁵ Many of the corporate codes of conduct incorporate the human rights and labor standards found in the UNCRC and the MAC.²⁵⁶ MLB has an opportunity to put its global house in order before its unsavory international practices become more widely known. It will also strengthen the prestige of MLB in Latin American countries because the reform would demonstrate not only that MLB likes Latino talent but also that it treats that talent on a par with American baseball players.

E. Pressure on MLB from the Outside

The internal reforms in MLB discussed above would have a greater chance of success if outside pressure were placed on MLB. This section discusses two possible avenues of pressure: (1) national and transnational litigation against MLB and MLB teams, and (2) collective labor pressure from foreign players on MLB to improve MLB team practices in foreign markets.

works on developing Latino talent for the New York Mets, has argued that Puerto Rico has been hurt by being included in the draft: “You used to be able to sign players when they were 16. . . . Now you have to wait two years before you can draft them, and they lose two years of important development time with the team.” *Quoted in* T. R. Sullivan, *Rangers Find Talent Shows on Latin Beat*, FORT-WORTH STAR TELEGRAM, Mar. 8, 1998, at 1.

255. See Janelle M. Diller and David A. Levy, *Child Labor, Trade and Investment: Toward the Harmonization of International Law*, 91 AM. J. INT’L L. 663, 694 n.265 (1997) (noting that a “U.S. government survey reported that more than 30 of 42 major U.S. retail and manufacturing companies specifically prohibit child labor, through a corporate code of conduct or other company policy, in the manufacture of corporate goods by contractors and subcontractors abroad.”).

256. *Id.* at 694.

1. *National and Transnational Litigation*

Latino children and their parents could attempt to file claims in the courts of their own countries or in American state courts to seek redress for the actions or omissions of MLB teams in Latin American countries that caused the children and families harm. A hypothetical case could involve a child physically injured in a baseball academy claiming tort damages against the relevant MLB team in a national court. The courts of the Latin American country in question would clearly have subject matter and personal jurisdiction to hear the claim against the MLB team. The impediments to such claims are not legal but economic and cultural. It is not realistic to expect poor families to pursue litigation against well-financed MLB teams. In addition, litigation as a means of redress is not common in many Latin American societies as it is commonplace in the United States.

A second litigation strategy would involve claims against MLB teams in state courts in the United States. Attempts by foreign nationals to seek tort compensation in American courts have been made in many other contexts, and these types of claims involve jurisdictional and conflict of laws questions. While a Texas state court has personal and subject matter jurisdiction over the Texas Rangers in a tort suit, whether the court would exercise jurisdiction in a tort claim by a Venezuelan national for a tort allegedly committed in Venezuela is not necessarily obvious. The Texas court might not be the most convenient forum to adjudicate the dispute. Even if the Texas court exercised jurisdiction, choice of law principles might point to the application of Venezuelan law as the *lex loci delicti*. While the American practice of contingency fees might make such suits more economically attractive to poor Latino families, it is unlikely that American plaintiffs' lawyers are going to be scouring Latin American for possible tort suits against MLB teams in the United States.

The analysis of international human rights and labor standards earlier in this Article raises the question whether transnational human rights litigation against MLB teams in U.S. federal courts is feasible. American courts are increasingly used in human rights litigation primarily under the federal Alien Tort Claims Act, which grants federal district courts original jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law

of nations or a treaty of the United States.”²⁵⁷ Federal courts have exercised jurisdiction in cases involving alleged violations of fundamental rules of customary international law protecting human rights (e.g., in connection with the prohibition against torture).²⁵⁸ A similar strategy pursued against MLB teams is not likely to be effective for a number of reasons. First, the legitimacy of using customary international law as the foundation for the exercise of federal jurisdiction is controversial because differences of opinion exist as to the status of customary international law in United States federal law.²⁵⁹ Relying on customary international law on the human rights of children in litigation before U.S. federal courts would run into the question whether such courts can legitimately apply customary international law as federal law absent a treaty or statute. Second, the human rights litigation in U.S. federal courts has mostly involved allegations against individuals who acted as agents of a government or under color of government authority.²⁶⁰ MLB teams do not act in Latin American countries under the color of any governmental authority, so the technical application of customary international law to MLB can be questioned.²⁶¹ Third, much of the human rights litigation of human rights claims in American courts has not involved allegations of violations of the human rights of children. Numerous cases dealt with torture

257. 28 U.S.C.A. § 1350 (West 1993).

258. See *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980). *Filartiga* spawned a number of cases using the Alien Tort Claims Act as the basis for federal jurisdiction over individuals alleged to have committed violations of international human rights norms. See, e.g., *Paul v. Avril*, 812 F. Supp. 207 (S.D. Fla. 1993); *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987); *In re Estate of Ferdinand Marcos*, 25 F.3d 1467 (9th Cir. 1994); *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995); *Hilao v. Marcos*, 103 F.3d 767 (9th Cir. 1996); *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996); *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189 (S.D.N.Y. 1996).

259. See, e.g., Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815 (1997) (arguing that customary international law is not federal law); Harold Hongju Koh, *Is International Law Really State Law?*, 111 HARV. L. REV. 1824 (1998) (challenging Bradley's and Goldsmith's arguments); Curtis A. Bradley & Jack L. Goldsmith, *Federal Courts and the Incorporation of International Law*, 111 HARV. L. REV. 2260 (1998) (responding to Koh's criticisms).

260. See *Kadic v. Karadzic*, 70 F.3d 232, 245 (2d Cir. 1995) (stating that “[a] private individual acts under color of law . . . when he acts together with state officials or with significant state aid.”).

261. In *Doe v. UNOCAL Corp.*, the federal district court held that “private actors may be liable for violations of international law even absent state action.” 963 F. Supp. 880, 891 (C.D. Cal. 1997). However, individual liability under international law absent state action is restricted to a few international crimes, such as piracy, slave trading, genocide, and war crimes. *Id.* at 891-92. In *Kadic v. Karadzic*, the federal appeals court held that “torture and summary execution . . . are proscribed by international law only when committed by state officials or under color of law.” 70 F.3d at 243.

and inhuman or other degrading treatment.²⁶² Expanding this line of transnational human rights litigation into the area of the human rights for children would be a departure from much of what has already transpired.

While private litigation has proved a powerful motivating factor in the United States in many contexts (e.g., product liability, environmental protection, and tobacco control), a litigation strategy against MLB in connection with the problems created by the globalization of baseball seems, at the moment, to offer little promise.

2. *Labor Pressure on MLB*

The history of labor-management relations in MLB suggests that management does not act on labor-related problems unless actively pressured by collective labor action to change the status quo.²⁶³ Just as the MLBPA has gained much for players during the last thirty years,²⁶⁴ a labor association consisting of Latino and other foreign players could have impact on MLB's international activities and the dynamics of the globalization of baseball. In the past, the MLBPA has expressed concern about the treatment of Latino players,²⁶⁵ but whether the union has made any progress on the treatment of Latino children is doubtful given what happens routinely in Latin American today. The presence of so many Latino ballplayers in MLB means that the foundation for a powerful foreign players' association exists. Such an association could play a significant role in leveling the playing field for Latino children, even in the absence of the legal and other protections American baseball prospects get. This type of labor association could be the catalyst for not only changes in the international behavior of MLB teams but also legal reform in Latin American countries because the Latino superstars carry great prestige and authority in their home countries.

A foreign players' association could undertake a number of functions to help remedy the problems created by the globalization of baseball. Such an association could provide information to baseball prospects in Latin America; create checklists and guidelines to assist prospects and their parents and coaches on how MLB teams should behave; develop procedures whereby the

262. See *supra* note 258 for a list of such cases.

263. On labor-management tensions in MLB, see generally Pietrusza, *supra* note 12, at 588-99.

264. *Id.* at 589-99.

265. See *Many Latins Discover Baseball is Not a Universal Language*, L.A. DAILY NEWS, Apr. 26, 1992, at SB5.

association could intervene on a prospect's behalf if a MLB team or an agent acts in violation of the rules; and make the names and addresses of reputable agents available to Latino prospects. The association could also put pressure on the MLBPA to assist it in creating non-discriminatory practices among MLB teams in the search for baseball talent. Such an association should aim to set in motion reform within MLB and MLB teams to ensure that Latino children are treated with respect and are accorded protections and benefits routinely made available to American baseball prospects.

We believe that pressure from the existing body of foreign players in MLB is the most effective strategy available to remedy the less favorable and often exploitative treatment suffered by Latino children that now features in the globalization of baseball.

CONCLUSION

This Article analyzed the globalization of baseball in order to examine the problems this phenomenon creates for Latino children. MLB's less favorable and exploitative treatment of Latino children does not constitute the most pressing labor problem in the era of the globalization of markets and business. But people should not ignore such treatment because baseball is just a game. Professional baseball has always been more than a game; it has always been a business with a keen eye on efficiency and profit. The myths of America's pastime should not obscure our ability to see clearly the problems generated by the globalization of the business of baseball.

The globalization of baseball means that baseball is now a global game. MLB is trying to build the global ballpark to accommodate the globalizing of the game. The globalization of baseball is not, however, just about emerging markets for baseball profits. The globalization of baseball means that MLB and its teams now have global responsibilities. These global responsibilities include behaving with respect towards Latino children as required by international human rights and labor standards. According Latino children such respect does not mean that socioeconomic differences between Latin American countries and the United States will disappear, or that Latino teenagers will get bonuses and salaries identical to American university graduates. Market forces, influenced by globalization and the economic gap between the United States and Latin America, will continue to affect the business of baseball. But MLB's global responsibilities include ensuring that Latino children are accorded basic protections from economic and social

exploitation. Unfortunately, we believe that MLB will have to be forced to live up to these global responsibilities through action by foreign players already in MLB. Whether such action develops remains uncertain. But only when MLB has fulfilled these responsibilities will the umpire's call of "Play Ball!" resonate with global equity and fairness.

