



2004

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Recommended Citation

Korczak '04, Jason, "Baseball and Its Anti-Trust Exemption" (2004). *Honors Projects*. Paper 2.
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Baseball and Its Anti-Trust Exemption

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Honors Research Project
April 14, 2004

Introduction

Somewhere in small town America there is a group of young boys with an old tattered ball and a game tested Louisville Slugger playing a pick up game of baseball. It doesn't matter that there is no crowd cheering them on, or that none of the players have a uniform, or even that not one of them is being paid. All of these youngsters are playing simply for the love of the game. And this is how the majority of people in America view baseball, as a game that people play for fun and enjoyment. This is not the case however, with the select few that are talented enough to play baseball professionally. Their reasons for playing go further than their passion for the game; they also make a living by playing. So, to some, these rare athletic marvels could be said to view the game as a business. Just as in any other business, these workers are paid to perform a service and, since their craft is in high demand, some are paid well. These two contrasting situations, though, present a problem: should baseball be considered a game or a business? As a legal matter, that question was answered by the United States Supreme Court. And since the Court's 1922 decision, America's Pastime has never been the same. It is likely that Justice Oliver Wendell Holmes had no idea what sort of impact his ruling of baseball as an exhibition would have, but some eighty years later we are still feeling the ripples from this drop in the pond.

These ripples that the game of baseball experiences today are a result of an over five-year-long court battle that took place about eighty years ago. In *Federal Baseball Club of Baltimore v. the National League of Professional Baseball Clubs*, the Supreme Court ruled that baseball was an exhibition and not a sport (Federal Baseball). This means that baseball is considered a game, and not a business that is subject to interstate

commerce regulations. So, unlike most businesses in America, baseball need not worry about whether it is in violation of the Sherman Anti-Trust Act. Looking at the ruling, though, one has to wonder why the Supreme Court would ever make such a ruling? It makes no legal sense to absolve an entire industry of a federal law, so why was it done? There are reasons why this historic ruling was made, and the tale truly starts with the formation of the short-lived Federal Baseball League.

The Federal League

The Federal League was started by a group of wealthy businessmen who wanted to get themselves into the fast growing business of baseball. They felt that they could compete with the National and American Baseball Leagues and make a profit doing. So, in 1914, the Federal League was formed and owners in eight cities tried to lure players away from the other two leagues (James 105). The idea was initially successful. Many players from the competing leagues came over to the Federal League because they were promised two things that other leagues could not: higher salaries and free agency every year (Burns 121). These two concepts were unheard of in baseball. Salaries had always been just enough to live on and players were owned by the team they played for until their services were no longer needed. The league was a complete success with the players, but this did not translate into popularity with fans. Times were tough in the mid 1910's and with a world war going on fans were not interested in paying big money to see baseball. This caused the Federal League to fold after the 1915 season, only two years into its existence. Players from this now bankrupt league were either left without jobs or sold back to the American and National Leagues so that owners would not lose more money than they already had (James 105). The players that were lucky enough to

be sold back were completely devastated, being forced to go back to the leagues that treated them poorly. They were fortunate to be allowed to come back though, in that they had been blacklisted by the other two leagues. However, out of this mess arose a lawsuit that would challenge the way things were done in the all of baseball. Though the National and American Leagues were the only ones who would be brought to court on anti-trust violation charges by an angry owner from the Federal League, all of baseball would be mired in controversy.

The Anti-Trust Case

Before this Supreme Court decision is described in detail, mention must be made of a “case” that never really happened, but still set the stage for what was to come. The Federal League was experiencing financial trouble because of a fan base that was not looking to go to the ballpark. On top of this, the American and National Leagues were blacklisting the Federal Leagues players, in essence prohibiting them from playing in those leagues again. Fed up and frustrated with the two dominant leagues, the Federal League took the established leagues to federal court in Chicago. Arguing that the blacklisting of players was in restraint of trade, and an anti-trust violation, they were looking to earn some quick capital to keep their league afloat. This would not happen though, because of the intervention of a judge that all baseball fans should be familiar with: Kenesaw Mountain Landis. Landis heard both sides of the case and felt that, in the best interest of the game, it should be settled out of court. Seeing this as an opportunity to avoid a court battle, the two major leagues agreed to settle with the Federal League owners for \$600,000 and stock in several of their clubs. The Federal League owners saw this opportunity to get out without losing everything, and did so by folding in 1915

(Burns 123). Thinking that had they escaped without having to go to court, the National and American Leagues were shocked when the owner of the Baltimore Terrapins, a Federal League team, refused to settle and took them to court in 1917. Managing to avoid the first trial, the two major baseball leagues thought that they were in the clear. In reality, the National and American Baseball Leagues were in for a long battle.

For the next few years the two major baseball associations would find themselves in and out of court often. Filed first in 1917, this much-awaited trial did not begin in Federal District Court until 1919. Presenting clear-cut evidence of blacklists, a reserve clause, and buying competing teams to maintain a monopoly, the Major Leagues were set up to be found in violation of the Sherman Act. This evidence against the American and National Leagues was so overwhelming that Baltimore won this trial easily and was awarded \$254,000. The American and National Leagues, of course, filed an immediate appeal.

But the story takes an interesting twist in 1920, and changes the course of baseball history forever. Most people familiar with the legal history of baseball will say that the 1922 Supreme Court case is the biggest decision ever issued. Prior to this significant ruling though, the Washington D.C. Circuit Court of Appeals heard oral arguments on this matter and reversed the Federal District Court decision that baseball was subject to the Sherman Act. This seemingly mundane step in the process on the way to the Supreme Court seems almost trivial, but the events surrounding this decision are what make it noteworthy. Just three weeks before the federal appellate court heard arguments, an infamous scandal broke out that shamed the game of baseball for years. The event was the Black Sox scandal of 1919 and it could not have happened at a worse time for the

game. Besides having to deal with the issue of anti-trust, baseball was now facing crooked people playing more for the money than the love of the game (Thorn 602-03).

These two problems are not at all unrelated. The problem of players fixing games is the result of them thinking that baseball is a business, and that as a business they have to look after their own financial interests. The other problem of dealing with anti-trust issue looks at the question of whether or not baseball is game, without the need to be regulated in the way an ordinary business is. Faced with the proposition of making the criminals that rigged the World Series seem right about baseball being a business, the judges of the appellate court had a tough decision to make. The game of baseball had become a big business that involved interstate commerce and the need for regulations, but at what cost to the future of the game? If the ruling had been affirmed by the appellate court and baseball was ruled to be a business and not an exhibition, who knows how it would have affected the game. There could have been many more incidents of tampering with games and baseball would lose all its credibility, making it no better than professional wrestling. Thankfully, the judges thought about these scenarios and ruled that baseball was just a game. By showing that baseball was not a business where players should only be concerned with their financial well being, and by punishing those who broke the rules severely, baseball managed to save most of its integrity. Though the people involved were in a no-win situation, they made a decision that was best for baseball at the time. When this case finally reached the Supreme Court in 1922, the same issues were in play. If baseball were to be viewed as a business, its sanctity as America's one true pastime might be ruined. No one realized this more than two men who were vital parts of the United States Supreme Court, Justices Oliver Wendell Holmes and

William Howard Taft. Both men had a deep passion for the game. Holmes was once an amateur player and Taft a third baseman for Yale. They clearly did not want anything to destroy baseball (Zimbalist 16-17)(2).

With these thoughts in mind, the Supreme Court, with a majority opinion written by Holmes, ruled that baseball was an exhibition and not a business. The main reason given for this decision was that baseball was in the business of performing exhibitions, which are purely state affairs. The fact that travel had to occur between teams from different cities was a mere incident and not essential to the game. With this the Court said that anything which is an incident, the exhibition, even if its purpose was to make money, could not be called trade or commerce under the accepted use of the word. The illustrations that were used to show where the Court was coming from here included, “a firm of lawyers sending out a member to argue a case, or a lecture bureau sending out lecturers.” Both of which do not engage in such commerce because the lawyer or lecturer goes to another state (Federal Baseball). Though this opinion was now the new law, it came under a lot scrutiny because it contradicted the Sherman Act.

People could not understand how the Court could compare a law firm or a lecture bureau to the sport of Major League Baseball. To anyone with a legal background, this ruling likely seems absurd. How could a group of Justices with their legal knowledge possibly decide that baseball was not a business subject to anti-trust laws? According to the Sherman Act, which was the law in question here, there are two provisions that owners could be accused of. The first was using contracts, combinations, or conspiracies in the restraint of trade. The other stated that anyone who monopolizes or attempts to monopolize any action involved in trade or commerce was guilty of a felony

(Cleveland State 3). Looking at both of these provisions, it is easy to see where the Court could have ruled against the National and American Leagues. Choosing to rule the way it did though, put an abrupt end to scandals in baseball and since the 1919 Black Sox incident, baseball has not been marred by one. It may have given a little too much power to the owners, but the sanctity of the game would remain intact and that was an important issue at the time.

Since its inception about fifty years before this decision the landscape of American baseball changed significantly. From its origins as a game played for fun and entertainment to something that men did as a profession, the game was now far different. These changes helped the game spread and gain popularity, but at a cost. With more money surrounding the game than ever, scandals like the Black Sox were popping up more frequently. This trend did not go unnoticed either, as people all over the country, and even some of the player themselves, were starting to see greed take over. One of the greatest players of all time, Ty Cobb, said of the game at this time, “The great trouble with baseball today is that most of the players are in the game for the money that is in it, not for the love of it, the excitement and thrill of it (Stump 2).” With such comments by players, it is no wonder that the Supreme Court ruled as it did. The Court felt it had to do something about the direction the game was heading, or it would cease to exist. Besides, they thought, there is always the option of reversing their decision later, if needed.

Reviewing Baseball’s Exemption

It would be about twenty-five years before any challenges to the anti-trust exemption would appear in court. Once one emerged though, the floodgates opened and there were numerous lawsuits objecting to the original Supreme Court ruling. The first of

these legal battles was one that never made it to court, but had significant ramifications in future cases. In 1949, the Court in *Gardella v. Chandler* looked at Major League Baseball's ability to totally control where and for whom players played. In circumstances similar to the Federal League blacklisting ordeal, the post-World War II emergence of the Mexican League was beginning to hurt Major League Baseball. Players once again fled to another league that promised to pay them more and treat them better. Exerting his enormous power over the players, Major League Commissioner Albert Chandler mandated that all players who left their contracts and went to the Mexican League could not come back for five years. Just like other upstart leagues before them, the Mexican League could not compete and was soon bankrupted. Again, many players were left without jobs because no team would have them back. One player did not take this mandate sitting down though, and challenged its legality under the Sherman Act.

When Daniel Gardella filed his suit in 1948, it was immediately dismissed by the trial court on the basis of the anti-trust exemption established in *Federal Baseball*. On appeal in 1949, though, the Court reversed the decision by a 2-1 margin and granted Gardella the right to a trial (*Gardella*). Seeing that baseball's powerful exemption might be in jeopardy, the lawyers representing Major League Baseball, decided to settle out of court. Never having to put their exemption at risk, baseball was still under heavy scrutiny from the famous appeals court judge Learned Hand. In his majority decision, Hand pointed out that no matter what the economic climate of baseball was in the 1920s, now that radio and television had added tremendous revenues for teams, baseball should be subject to interstate commerce regulations. This did not mean that baseball was guilty of an anti-trust violation however, there was still the matter of trying to prove that they

“excluded Gardella from his calling.” If baseball was found guilty of this accusation, then an anti-trust suit would be in order because they would be considered a business now (Gardella).

After this incident brought great attention to the anomaly that baseball enjoys, Albert Chandler resigned as baseball’s commissioner in 1951. Seeing that something was obviously wrong with the game and that the man in charge of keeping order could not do anything, Congress decided to step in and rectify the situation. In 1951, the House of Representatives formed a subcommittee within the Judiciary Committee to look at baseball’s monopolistic power. Interviewing witnesses from every aspect of the game, this House subcommittee came up with five viable options for a solution to the baseball anti-trust problem. Ranging from forcing baseball to operate in a free market for talent, to creating a federal agency specifically designed to regulate Major League Baseball, this subcommittee looked at many possible remedies. In the end, after days of interviews and hundreds of hours researching the game, the House subcommittee concluded that it should decline legislative action and let the judicial system take care of the matter (Duquette 48). This choice to remain inactive and let another branch of the government solve the problem seemed inconsequential at the time. Later, though, the decision to not legislate would cause considerable tension between Congress and the Court as to which governmental body was responsible for baseball’s anti-trust exemption.

Just two years later, in 1953, the Supreme Court was again faced with an anti-trust suit involving Major League Baseball. This time a minor leaguer for the New York Yankees named George Toolson commenced a lawsuit stating that the Yankees were in restraint of free trade by enacting the reserve clause (Toolson). The reserve clause, a

frequent topic of dispute, was a rule that had been in affect since organized baseball started. It essentially gave teams the right to do whatever they wanted with players, and the players were left with no course of action to stop them. Teams owned players for their whole career and could trade them at anytime without getting their permission. With this obvious injustice placed upon the players, the reserve clause was a heavily debated topic. This clause, which would have been ruled upon in *Gardella v. Chandler* had it not settled, was finally having its day in court though. With the Federal Baseball decision now thirty years in the past, going to court was not something that baseball wanted to do. Baseball executives figured the exemption would be viewed as bad law now and would be changed to fit the times.

This was not the case, however. The Federal District Court and the Court of Appeals both ruled that the Supreme Court had already decided on this issue, and that it was still good law. Figuring that it would have to be the Supreme Court that changed its own decision, the plaintiff's felt confident that a change would occur. However, the Supreme Court surprised everyone when it came back with a short decision saying that its previous ruling was upheld. The one paragraph decision offered two main reasons for leaving baseball exempt from anti-trust legislation. First, the Court cited *Federal Baseball*, which said, "the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of federal anti-trust laws." Second, it said that since Congress had not made any effort to remedy *Federal Baseball*, it did not need to be changed. Baseball had operated for the last thirty years with this understanding and there were no "evils" in the game which warranted a change in the law (Toolson). This came as a complete shock to all parties involved, especially those in

Congress who had recently reviewed the issue and left it to the courts for revision. Now that the ball was back in Congress's court, there was plenty of confusion as to which branch of government would or should take away baseball's unfair advantage.

Meanwhile, the owners were still operating with the reserve clause and had the ultimate power over their players. Acknowledging that this was a problem, neither Congress nor the Supreme Court was willing to step to the forefront and take charge. Both sides had examined this issue a few times and looked to the other as if they would do something about it. With nobody ready to take the lead, this issue would go unresolved for another twenty years.

By 1972, not much more headway had been made in working to eliminate baseball's unfair advantage. Both Congress and the Supreme Court had remained indifferent about the issue and it looked as if nothing was going to be done in the near future. In the meantime, both had taken steps to get rid of competitive advantages and stabilize the economy in other industries. The Supreme Court by now had ruled that all other major professional sports were subject to anti-trust laws, and Congress had just recently established agencies like the EPA and Highway Safety Administration to address the need for social and economic stability (Duquette 61). Yet, neither one of these branches of government was willing to erase the wrong that had been done fifty years ago. The Supreme Court would get another crack at this question though, in a case brought by Saint Louis Cardinals player Curt Flood. Flood had played for the Cardinals for eleven years before the team unexpectedly traded him to the Philadelphia Phillies after the 1969 season. Not wanting to accept the trade and insisting on becoming a free agent, Flood brought the game to court to earn his freedom. Quoted as saying, "I am a

man, I live in a democratic society, and I believe I am entitled to participate in our free enterprise system,” Flood was suggesting something that had never before been done, letting a player choose where they want to play (Korr 84).

As a result of baseball being exempt for anti-trust legislation, the reserve clause could never be found illegal. So, players were at the mercy of owners and had no choice as to where they would play. Though Flood’s thought was a good one, it could never be realized under the rules that were in place while he was playing. Looking to change this out-dated rule, Flood decided to take his case to court. Wasting the last few years of his career to pursue this groundbreaking case, Flood would be extremely disappointed when no court would reverse the anti-trust exemption and allow his dream to come true. Culminating in a 1972 Supreme Court case, Flood was denied his free agency and baseball’s reserve clause would remain intact. The opinion written by the Court said that, “If baseball is to be damaged by statutory regulation, let the congressman face his constituents the next November and also face the consequences of his baseball voting record.” This jab was basically telling Congress that it had to change the exemption because the Court would not do it. In addition to this the Court also commented on its inconsistencies in ruling on other sports like football and boxing by saying, “If there is any inconsistency or illogic in all this, it is an inconsistency and illogic long standing that is to be remedied by Congress and not by this Court.” In its conclusion, the Court quoted the Federal Court of Appeals judge that wrote the opinion for this case, using his comment on the chances of the Court overturning this decision, “there is no likelihood that such an event will occur” (Flood). Though Flood lost his case, this would mark the beginning of some progress towards limiting baseball’s advantage. In the up coming

years Flood's dream of free agency would be realized by players, too bad it was just a few seasons to late for him.

In the same year that the Supreme Court ruled against Flood's case, baseball's players decided to strike in order to get a new labor contract with the owners. They had just signed a contract two years prior in 1970, but due to fights over player's pensions there was a work stoppage for the first time in baseball history. Out of this thirteen day strike came a completely new agreement between owners and players, with changes that were long overdue. Now the players were entitled to go to salary arbitration and veto trades under the 10 and 5 rule. This rule allowed players who had ten years in the league and five with the same team to veto any trade they did not want to go through with. Unhappy with the new concessions given to the players, the owners decided to have a lockout in 1976 to try and regain some of their power. This attempt to try and lessen the perceived stranglehold that the players were getting was ineffective though, and the players gained even more. After the lockout of 1976, the players were granted free agency and allowed to change teams after six years of service (Zimbalist 20-21)(1). With the advantage clearly moving towards the player's side now, the owners were trying everything to keep the playing field even.

Having to limit the power of the reserve clause to keep the players from leaving, the owners now had to figure out a way to keep players from driving them out of business with skyrocketing salaries. The way to avoid this problem was by colluding with each other to keep players with their original teams at a lower salary. Seeing that this is what the owners were doing, the players brought a lawsuit against the owners for collusion in 1988. Not feeling confident in victory because of the presumed exemption, the players

were surprised when an arbitrator awarded them a \$280 million settlement. In addition to this, free agency was granted to twenty players who were deemed to be at a disadvantage by staying with their old teams (Powers 189). Though the monetary win was great for the players, it was not a complete victory because the exemption still stood. The owners never had to put their exemption on the line, because this case was not settled in court but by an independent arbitrator. By going to an arbitrator whose only responsibility was to decide if the owners were in collusion, not if baseball's anti-trust exemption needed to be changed, the owners really did not put much on the line beside money. This is mostly likely the reason why many people had never heard about this violation, and why no change to the law came of it.

Since this decision about fifteen years ago, there have not been any major anti-trust cases involving owners and players. With the anti-trust exemption still being considered good law though, I really do not think that the owners have much room to complain about players having too much control. The players have come a long way since the *Federal League* decision and may have tipped the scales in their advantage a bit, but as long as the owners have the power of not worrying about the Sherman Act, they have the upper hand. Having been a fan of baseball my entire life and seeing some of the things that are done by both owners and players that do not make sense, the thought of change is obvious. Having an opinion on just about every move made by both sides, there must be a solution to the problem of how to make baseball run more efficiently and effectively. So, in this paper the ideas conveyed will be that of what a baseball commissioner should do to make the game better for both sides. Starting with eliminating the anti-trust exemption, there are many ways in which the game could be

improved. Examining the effects of these decisions, the hope is to improve the game for everyone involved, including the fans.

Picking a Commissioner

Switching gears and looking at the management aspect of the game, the main purpose in this part of the paper is to look at how baseball would be improved by eliminating its implied anti-trust exemption. But is change necessary? In the first part of this paper the history and ramifications behind the current ruling were discussed. From the beginning of baseball it was apparent that the owners were taking advantage of the players by use of the reserve clause, which was legal under a 1922 Supreme Court ruling. Within the last thirty years though, the tables have turned and the players have made significant headway towards leveling the playing field. They have managed to abolish the reserve clause and gain benefits that had never been given to players before. With the advantages that players had clearly gained from the owners, the obvious question to ask would be: is change necessary? The owners and players are now operating on a fairly even field and nothing has been done about the anti-trust exemption, so would changing it accomplish much? The answer to this question is that it would absolutely change things, not only for the players and owners but also more importantly for the fans. By eliminating the anti-trust exemption that baseball currently enjoys, the two sides that stand to gain the most are players and fans. They will both be able to enjoy the changes that could not be made before because of the owners' stronghold on the game and its decisions. Consequently, the owners are the ones fighting to keep things the way they are now. The owners would not necessarily lose out on as much as they think they would,

though. If baseball were to change things and make the league more competitive, then everyone would win, even owners.

The first step in the process to becoming a better league is to eliminate the anti-trust exemption that has gone on for too long. Since it is plain to see that neither the Supreme Court nor Congress wants to take the necessary steps to do this, a decision must be made. One of these two governing bodies has to make this landmark decision in order for something to be done, and since they cannot decide by themselves a choice will be made for them. For the purposes of this paper, Congress will be the one that has to repeal this exemption. There are a couple of reasons for this decision, and the first is that it is unlikely that the Supreme Court will ever go back on the 1922 decision. As was evident in the ruling in the Flood case, the Supreme Court has no intention of changing the law that gives baseball its exemption. Though this decision could be viewed in the future as an egregious error, the Court has reviewed it a few times already and has yet to make a change, which leads one to believe it does not think a terrible ruling was made. The other reason for having Congress repeal this decision is because in the best interest of the game there should definitely be an independent commissioner in charge and it can make this happen. If the Supreme Court were to repeal its ruling, then Bud Selig would still be the commissioner and have the owners best interests in mind. The reason being is that he is still indirectly linked to the Milwaukee Brewers organization, which his daughter took control of after he accepted the commissioner's job (www.jsonline.com). By having Congress deal with this situation, it can not only change the law but also dictate who can and cannot be in charge of the league. Getting someone who will not side with either the players or the owners would certainly have a positive effect on the game. Ideally, one

would want it to be someone who had the fans best interests at heart, because that would most likely lead to a competitive league in which all parties could benefit from.

When examining the proposed change that Congress would be making here, one might ask themselves why the exemption needs to be repealed for an independent commissioner to come in? The answer to this is pretty simple, because if the exemption is not repealed the new commissioner will have no power. Owners will still be able to run their teams the way they want and be able to veto any decision that the new person in charge makes. As it stands now the owners have total control over where teams set up, how players are paid, and where they will play for their first six years in the league. These are just a few examples of how they control the league, and without the exemption in place all of these benefits will cease to exist. So, as one can see, it is absolutely necessary for the anti-trust exemption to be revoked for a plan like this to proceed. Otherwise, what motivation do the owners have to listen to this “outsider” who is coming in and telling them what to do for the first time ever. The only way to make them listen is by forcing them to and annulling the law that gives them all their power. This is also why the other suggestions in this paper rely on a change in the rules. Without it, the owners will be able to do whatever they want to do despite the requests of the new commissioner. So, in order to make these necessary changes that will improve the game it is imperative that the anti-trust exemption is rescinded.

By having Congress repeal the anti-trust exemption and allowing a commissioner independent of both major factions in the game to take control; there could also be the strong possibility of dissent within baseball. Getting rid of a commissioner who was biased towards the owners is a great step forward in the process of improving the game,

but replacing him with an outsider is not something that either side will probably embrace. Though the players do not like having Bud Selig in charge, if asked how they would change things the answer would most likely be to put a player in charge of baseball. Having a former player as commissioner would not be a bad idea, except for the fact that it would completely defeat the purpose of trying to level the playing field of baseball. Doing away with this exemption should make the game even for both sides, and by putting a player in charge the power would immediately go to the players. Making a player the commissioner, no matter how qualified he is, would be just as much a conflict of interest as having an owner in charge. To improve the game this conflict of interest must be eliminated, and the only way to do this is by not allowing an owner or player to be commissioner.

If Congress were to go ahead and take the suggestion of putting baseball under the control of a third party, it would have to be someone who has some experience around the game but is not too involved in any one aspect. There are two candidates that would mostly likely do a great job in this position. One is Bob Costas, who has been an award-winning broadcaster and announcer of Major League games for years. He has authored a book with a theme similar to this paper's, in that it has solutions for baseball that would protect and promote the game's best interests. Already being familiar with some of the changes that are being proposed in this paper, he would be an ideal candidate to lead the game through drastic changes. The other candidate is Andrew Zimbalist, who is a renowned economist that has written several books and articles about the game. With his knowledge of the game and economic savvy, Zimbalist would definitely be an effective leader for the game. He may not be a name that everyone knows and may not have all

the credentials that a Costas has, but he would be able to lead baseball into future. Either one of these men would be a great choice for the next commissioner of baseball, but the job that would confront them is arduous. They would have to erase years of tradition and mistakes to bring the game to a state where it could once again be considered America's most popular sport. The one thing that the new commissioner will have going for them though, is that with the anti-trust exemption gone they will have true power over the game and not have to plead with owners to do what is right.

The very first step that a newly appointed commissioner would have to take is to establish their authority. Now, this may sound like a common thing to do, but with the history behind this position it is vital that the commissioner show who is in charge. Showing no favoritism and treating both sides equally is a must, or the owners and players will eat the new head of baseball alive. The fans, more importantly, will also lose faith in the integrity of the game if one side is treated better than the other. It will make it appear as if the changes that Congress made to improve the game were all for not. They were specifically put into place so that one group did not have a monopoly over the game and could not do what they will with the sport. By asserting that they will not take any undermining of their authority, the new commissioner will set an important precedent that the game is going to change for better no matter what. Even if the owners stage a lockout or the players strike in order to regain control and put things the way they previously were, the commissioner should stay strong. Neither one of these sides is going to stay out for a long period of time because of the damage done by the work stoppage in 1994. Some say that baseball is still trying to recover from the backlash people had to the strike that canceled the 1994 World Series, and nobody wants to see

anything like that happen again. Not only will this help if a work stoppage were to occur, but now that baseball has the government helping out, they could step in and put an end to any strike that may happen. Through federal intervention and the possible loss of a large fan base, the commissioner has a lot of leverage when it comes to implementing a new plan for the game.

To make sure that the independent commissioner stays honest, as well, Congress should place a set term on the position. This will prevent a fair and impartial person at first from turning and giving favor to one side over the other. A good limit on this term would probably be five years, with the opportunity to be granted additional terms if the person is doing a good job. This way, the commissioner is not locked into a lifetime appointment and can get out if they so choose. There is also the opportunity for Congress to find a new commissioner after the five years and not be stuck with an inadequate one. Now some may think that this is a complete waste of Congresses time, to take care of baseball when there are bigger concerns with the country like the budget deficit and terror. Well, considering that presently Congress is spending time with the steroid situation in baseball, how much more time and effort would it take to find a commissioner and ensure that he is doing a good job? Obviously, Congress has the time to address this issue and with it being an area of concern for so many Americans who love the game, they are spending their time wisely. As long as baseball does not become a burden and waste all of Congresses time, no one should see a problem with them helping to make America's game better for everyone.

Changing the Game: Salary Cap and Floor

After settling the debate about how to choose the right commissioner for the job of turning around baseball's troubles, now it is time to look at how to fix the game itself. There have been many suggestions thrown around by hundreds of people who call themselves experts on baseball and business about how to correct the serious financial and competitive problems with the game. To go over every one of these possible remedies would take a very long time and be quite useless, because not every opinion that people have can be employed by the game. Like with every other sport that is played in America, there are many imperfections and flaws in the way that baseball is operated and played. This is partly why people like sports, such as baseball, so much, because we can see that not even our favorite pastimes are without their share of problems. Seeing that baseball has many things that need to be changed, it is natural that a fan would want to suggest modifications to be made. In this paper, the proposed changes are only going to be ones that affect the game in profound ways. There are many ways in which the game could be different and when deciding which to focus on, the ones that will have the biggest economic and competitive upsides were examined. These are not the only ways in which the game could be made better, but they are ones that a good commissioner should make in order to bring baseball back to its position as America's favorite sport.

The first of these drastic changes that should be made by a new baseball commissioner is one that just about every other major American sport has in place already. It is the establishment of a salary cap and floor on total team payroll for all Major League teams. This is a very sensitive subject when discussing the business of baseball, because the player's union would never consider an idea like this and the

owners know it. The owners do not even bring up the topic due to the fact that they know it will only cause angst during bargaining table discussions. Being arguably one of the most powerful unions in sports and American business, the Major League Baseball Players Association would not allow any such restrictions to be put in place because it would dramatically affect the thing they care most about, money. So, in order to implement a needed change like this, the commissioner would have to sell the player's on the fact that a cap and floor would not hurt their salaries as much as they think. Obviously, there will be a decrease in player's salaries, but the amount of these decreases will not cause any player to go to the poor house. In fact, with the next suggestion that will be discussed, having lower salaries will allow more teams to exist and more players to have jobs. Though it may not appear as if this is always the Major League Baseball Players Association's first concern, it is still a union and more jobs for its employees should be the top priority. The MLBPA should look at enacting this plan as giving a little to get a little, because some players will lose a little money, but others will have the opportunity to make a living as a professional baseball player.

When looking at how a salary structure could be instituted in baseball, the most frequently suggested plan comes from Bob Costas. In his book *Fair Ball*, Costas puts forth the idea of a salary cap and floor in baseball that revolves around the amount of money that each team receives from local and national television revenues. The very simple plan says that a floor should be put in place that takes the average amount of total television revenues from every team and uses that number as the lower limit for what a Major League team can spend on salary. Conversely, taking this number and doubling it would set the cap (Costas 92-93). This plan seems simple enough, and might work if

enacted by Major League Baseball. But there are flaws with it. First, the fact that television revenues are used to determine these numbers is questionable. This means that the people in charge of the media are responsible for determining the salary structure for the league, and not those who are supposed to be in charge of running baseball. This is an extremely problematic, because both the owners and players could exude influence on television company owners to do what they want. By doing this the commissioner loses a lot of power in keeping control of the game and creating a more competitive league. Baseball cannot let an outside source determine how it will allow owners to spend money; it just does not make sense. Another predicament that this situation presents is the fact that it will cost players more money than they need to give up. In Costas' example, the floor and cap for 1999 would have been \$40 and \$80 million respectively. This would require teams who do not spend much increase salary, but the cap takes away more salary than a floor puts back in. A cap like this is going to cost players a substantial amount of money, not to mention that it is flawed in other ways. These are two great points as to why a different plan for baseball must be made, one that has never been suggested before but has worked well for another major sport.

The National Basketball Association a few years ago had a situation similar to the one baseball had in 1994, a work stoppage was jeopardizing the future of the game. However the parties involved in the NBA labor stoppage did not let it get in the way of the playoffs, and came up with an agreement both sides could live with. Out of this agreement came a proposal for a salary cap and a floor that would definitely work for baseball. Involving more than just the amount of money teams receive from television revenues, this plan considers a few sources of revenue that can be used when trying to

establish a cap and floor. Some of these revenue sources include gate receipts for all games played, proceeds from novelties and concessions in the stadium and stores within a 75-mile radius, and the money obtained from renting out the luxury suites in the arena. In addition to these major revenue makers for sports franchises, television revenues are still counted in the basketball related income to produce a total that really reflects how much a team can spend on players. Once these numbers are figured out they are all added together and divided by the number of teams in the league to come up with a basketball related income number or BRI. The BRI number is very important, because this is the figure used to determine how much teams can spend on players. In the NBA, the rule is that 48.04% of the BRI is the maximum amount that a team can use to pay its players. So, for all intents and purposes this means that owners only have to spend half of what they make on players and can use the remainder however they please. The players also benefited from the fact that a floor at 75% of the cap was established. This meant that owners could not just have a team that perennially spent no money and never competed for a title (www.nbpa.com). Now, this number seems a little high and should probably be lowered for baseball, but the point is that there is a lower limit on salary. Using this as a template for establishing a salary structure, it is time to look at how a plan like this could be implemented in Major League Baseball.

The advantage of using a plan like this is that running a sports franchise is similar no matter what the sport may be. Both basketball and baseball involve selling tickets, concessions, and television rights, so there is no need to worry about changing the calculation aspects of the plan. Though the NBA's agreement is numerous pages long and full of legal loopholes and jargon, there is really only one part that should be changed

for baseball. This part that stipulates that NBA teams need to spend at least 75% of the cap on salaries. With a floor that is three quarters of the cap, this will lead to many players being overpaid just so that the team can reach its required level. This may work for basketball, which has fewer players, but in baseball an appropriate level for a floor would have to be 50%. This way players are not overpaid and the floor is still at a reasonable mark to keep all teams competitive. If it were any higher a severe overpayment problem for talent would arise, and if it were lower teams would try and maximize profits by spending the minimum and neglecting to compete for a title.

Having a cap and floor on team salaries, the next logical step is to do the same for individual salaries. The NBA implemented individual caps and floors and started a pay scale that depends on years of services for their team and in the league. This is not really necessary though, because by having a cap and floor on team salaries, it will naturally level out individual salaries. Owners can pay the players whatever they want, but if they cannot exceed the cap it takes away the possibility of contracts similar to the one Alex Rodriguez got. Though this may make many superstars extremely mad, because they will not make absorbent amounts of money any more, it will allow a lot of the lower tier players to have a job. When increasing the competitive nature of the game there are some things that have to be sacrificed, and most would agree that the athlete making a couple million less when he is already making tens of millions is less of a sacrifice than the person who would not have a pro career at all if it were not for this new scenario. Not to mention that it would make the game better for the fans whose sub par team will now compete for a World Series, because it has to have a payroll within the league boundaries. Without the glaring difference in team salaries anymore, we will see the

Yankees and Expos in a situation where both can compete, even though one is a small market and the other is a large one.

Looking at this plan, which for simplicity's sake will be referred to as the Baseball Related Income (BRI) plan, there is only one problem with applying it to baseball right away, even with the 50% floor change. As it stands right now, team payrolls for the next season have been said to approach the \$200 million dollar mark. With figures like that, how would it be possible to institute a cap that will definitely be less than half of that? Conversely, how would teams whose payroll is far less than the floor achieve the minimum status without having to grossly over pay their mediocre talent? Though this may sound like a problem that is extremely difficult to solve, it really is not something that will jeopardize the idea of changing the game for the better. To combat against this predicament the best solution is to wait and implement the solution over the course of a couple of years. By making the cap and floor slowly work their ways to the ideal position, this not only gives owners time to align themselves with the best players for the amount they are willing to spend, but also gives players time to restructure their contracts in order to fit within the team limits. Of the two sides involved in this situation, the players are the ones that are mostly likely to oppose these changes, because plenty of them are going to have to restructure contracts and take less money. This will cause many of the players with Alex Rodriguez-like contracts to complain that they are being cheated. The problem with them complaining is that they are pretty much the only people in this situation that are losing anything, and when we are talking about a few million dollars to multi millionaires not many people feel pity for them. They will be

forced to conform or told to leave, and they are not going to give up their career for a cause like this, especially when they can make up the lost income in endorsements.

After the players agree to this new idea then it should be able to pass with the owners too, because they will now all feel as if they have a chance to win with the competition being fairly equal. It will also allow owners to make a profit due to the fact that only half of the average team's revenue will be spent on players. This way Bud Selig cannot testify to Congress that the anti-trust exemption should be continued, because owners are losing money and therefore not abusing its power (Zimbalist 1-2)(2). The way it should play out with the owners is that big spenders like the Yankees will still be able to have somewhat of an edge by spending the cap maximum. They will not be able to break the cap and pay a luxury tax either, the cap and floor will be hard and will not be able to be broken under any circumstance. The Yankees and teams like that will also have their name which sells and provides a profit for the team no matter how much they win or lose. Teams like this may put up a fight when discussing the terms of this deal, but in the end will comply because they will still have some of the best talent and make a profit. The small market teams as well should agree with this new plan, because it will now allow them to not only to compete with teams like the Yankees but also make a profit while doing it. Before they were reluctant to spend money due to large market teams out spending them no matter what they did. Now that they know these "rich" teams just cannot out spend them and in essence make them insignificant parts of the league, small market organizations will gladly put forth some money to try and win. This will also be beneficial to the fans of baseball that will now be able to watch their teams compete, no matter whether they are in a small or large market. Though it is impossible

for a team spending the league minimum to always stay in the middle of a pennant race, there is a better chance when top teams are spending only twice as much compared with about ten times as much now.

The main purpose of changing the game and making teams adhere to a cap and floor is to make baseball better for the three main groups involved in the game: the owners, players, and the fans. All three of these groups will benefit in some way from the new way that things should be done by an effective commissioner, and that is the most important criteria to consider when suggesting changes to baseball. Making only this change is probably not enough though to make a true effect on the competitive nature of the game, something else must be done. One thing that is possible in this situation is to reorganize the teams so that not only more fans can be involved in Major League baseball, but also more excitement about America's pastime will be generated. By adding more teams to the league and changing the way that the regular season and the playoffs are conducted, baseball will get more teams involved and satisfy all three main groups. Having more teams with the opportunity to compete for a title and giving teams to areas that currently do not have anyone to cheer for is good for all parties. Just like the previous suggestion though, this one may take some time and cooperation to set up but once it is in place the benefits for everyone will be great. It would also change some of the traditions that baseball has built over the years, but this is not necessarily a bad thing. Change could bring in a new audience and excitement for a game that has lost its position as America's favorite sport to football.

Changing the Game: Playing Structure

Those who feel baseball's rich tradition should not be tampered with have always opposed change with considerable fervor. Looking at all of the major sports in America since their inceptions, baseball is by far the one whose reception to change has been less than enthusiastic. This is evident in the fact that in 1994 when baseball changed its whole structure to the current format, it was thought by those who closely follow the game that it would hurt baseball to get away from what everyone was accustomed to. Before the strike and subsequent change, attendance was at an all time high and people were happy without the wild card and extra division in each league. Traditionalists said that everything seemed to be going great and the only thing that was going to derail the game was a work stoppage. This was not necessarily the case though, the issues of skyrocketing salaries and economic disparity between small and large market teams was more of a pressing issue for the game than a stoppage. In the end, the stoppage was directly a result of these two problems, but they are never mentioned when the cause of baseball changing its ways comes up. The strike is always said to be the cause for baseball adding a wild card and reorganizing the leagues into three divisions (Costas 19).

Nothing in the end, though, was ever really done to solve the problem of escalating salaries and the discrepancies between large and small market teams. People in charge of the game made cosmetic changes to it and neglected the important issues that troubled baseball. If they had addressed the problems with salaries and disparity in 1994, then there would not be as many teams and fans complaining that the game is unfair. It would not have been too difficult a task to accomplish either, with a possible remedy discussed in the last section of this essay. Now that this problem has been looked at

though, it is time to examine how to change the playing structure. It should not be done just to make it appear as if the game is changing for the better when it is really not. In essence, this modification should not be made under the pretext that the 1994 changes were made. They should have a true impact on the game well into the future, and not be just a quick fix to solve the problems of today. Doing this will involve some alterations to the game, but the new structure will work off of the salary cap and floor that was newly enacted and allow more teams to compete and succeed.

When looking at how to change to the playing structure of the game, there are two main ways in which it should be done. The first is to add more teams to the game, so that all three of the major groups can benefit. The fans will be happy, because more of them will have the opportunity to cheer for a Major League team in their own backyard. The players will obviously be pleased due to the fact that there will be more chances for them to make a big league roster. As for ownership, there will now be more people with the ability to have a team that could not own before because of the limited number of them. The other change would have to be in the format of the playoff system that is currently in place. With the recent addition of the wild card playoff system, the excitement level in baseball at the end of the season has by grown leaps and bounds. With the new format that should be put in place, this anticipation at the end of the year will grow even more. By doubling the number of teams that make the post season from eight to sixteen this will now give more people hope that their team can win the World Series. It also gives the players and owners something to strive for deeper into the season, when normally they would have been completely out of the playoff race. Bringing these new ideas to the

game will definitely spark more interest and create a larger fan base, which baseball needs right now.

The first such change that should be made is to add six teams to the Major Leagues, bringing the new total to thirty-six. This idea is not a new one in baseball, because since 1961 the number of teams in the Majors has increased from sixteen to thirty (Scully 15). By making this change and adding more teams in areas where the market can support a team, it will definitely help the game prosper. The most important point though, is that these new franchises are placed in cities where they will have a chance to survive. Now, there may not seem like there is six markets in the United States left that could take in a baseball team, but that is incorrect. For example, look at the New York area, there are already two teams there, but a third one could very well be successful. For years there were three teams in New York, and with the westward movement of the Giants and Dodgers, they were left with one. Eventually, expansion gave them a second team in the Mets, but if New York could have supported three teams back then, what is stopping them now. Looking at New York, Chicago, and Los Angeles, all three already have two teams and have fans that enjoy watching their teams play. Noticing this point, there is no reason why any of these cities could not support another franchise. In fact, the populations for the three cities are large enough that if compared to a city like Milwaukee, they will have a larger number of people per team with three than Milwaukee with one. This does not necessarily guarantee that the new teams will be successful, but with a fan base that large there is very little risk of flopping (Marburger 139-140). As for the question of whether there are enough players in the talent pool to make thirty-six competitive teams, that should not be a big issue. With the

growing international presence in baseball now, the talent pool is worldwide and not confined to just America. With players from all over the world, there is more than enough talent to field thirty-six competitive teams.

Obviously the fans and players will benefit from the addition of teams to the league, but what about the owners? They are the ones that stand to lose from the fact that there are now more teams to compete with them. Though the owners do have a point in making this argument, it is not one that will hold much validity now that the anti-trust exemption is gone. The threat of competition is not a reason for the owners to strike down adding teams when everyone else in the game stands to gain from it. It is also not a completely horrible plan for owners, because with more teams available now there are more opportunities to purchase a team if someone chooses to. There are probably many wealthy people out there that have always wanted to own a team and try to win the World Series, but just could not because there were no teams for sale. Having new owners that are happy to be involved with the game and willing to spend money to win are just what baseball needs. Especially in the three major markets where a third team will be added, because they need to get off to good starts to compete with the established teams already there. If baseball can get owners like this to join the league, then it will definitely make the transition of having more teams a great deal easier.

Placing the first three teams in New York, Chicago, and Los Angeles, where teams already exist, there are still three left that need to find cities to play in. Unlike the first three teams that were mentioned, these next three are true expansion teams because they are going into an area that has no team and may not do as well as anticipated. The three franchises that are going to be set up in cities where teams already exist are not

taking too big a risk, due to the fact that it is already known how people will react to having baseball there. The other three teams, however, will have to choose their markets carefully as to not pick one that will be unreceptive to a new franchise. This should not be a problem though, because there are at least three cities in the United States that can handle the ability to sustain a baseball team. The best of these candidates would have to be Portland, Washington D.C., and Charlotte. All three have other sports franchises that currently exist there and Washington had a baseball team there until they moved to Minnesota and became the Twins. With a history of being able to support sports franchises, these cities are a better gamble for a possible new team compared with any other area in America. All three also have the populations to ensure a good fan base, which is a necessary element for a new team starting out. Taking this into consideration, these three cities would be the best choices for being home to three of the six new Major League Baseball franchises. Now that the cities where these new teams are going to play have been determined, it is time to look at the second step in how to change the playing structure of the game.

The second change that should be made, in addition to having more teams, is more complex than the previous one. This step involves reorganizing the divisions and changing the way that the playoffs are conducted. Now that there are thirty-six teams in the league, the divisions must be redone so that everything is fairly even. The ideal way to do this would be to have three divisions of six teams in each league. Doing this would entail making four of the new teams go to the American League and two of them to the National League, so that each league has eighteen teams. The way that the divisions are divided up after this should not change much either, adding one team to each of the

divisions in place is probably the easiest way to do it. This may cause some problems with the fact that a team may end up in a division in which all the other teams are far away from them, but this may only happen to one or two teams at the most. Considering that this is the biggest obstacle standing in the way of aligning the division in this manner, this plan seems very plausible. Before the last realignment of the leagues there were only two divisions, the Eastern and Western. With this set up there were many teams that had to travel long distances to play division games, so doing this is nothing new to baseball. Besides that, there will only be one or two teams doing this and there would have to be a way to set the schedule up so that it was not a huge inconvenience to them. Now that the new division alignments are all set up, it is time to look at the way the playoffs would be conducted under this revamped league.

In all of the major sports, the most exciting part of the season has to be the playoffs. They are the culmination of a long a grueling season and produce the one team that everyone for years will remember as the champion. Nobody remembers who wins the most regular season games each year, all they remember is who wins the World Series. Seeing as though this time of the year is the most important, why not make it the focal point of the baseball year. As it is now, only four teams from each league make the postseason. This does not create enough excitement for everyone who is fan, because a large percentage of them do not have a team to cheer for in the postseason. To solve this dilemma the people in charge of baseball should just take a page from the basketball and hockey playoff structure and add more teams to the postseason. By having eight teams from each league in the playoffs, this will give a lot more fans the opportunity to watch their team in October. It will also be better for the players too, because a team that use to

be far out of the playoff picture could now be right in the middle of it playing for a spot. This will make more end of the year games competitive due to the fact that more teams will be fighting for a playoff spot or seed. Besides making the players try harder all year, it will also give teams a chance to win the World Series that might not have even made the playoffs under the previous system. The owners would not have a problem with this change either; because it will mean more games that they could charge higher prices for due to the importance of them. To fit in all of these extra playoff games though, the regular season is going to need to be shortened to one hundred and fifty games. That way the one extra round of playoffs that will be added and making all round best of seven will not lengthen the season to the point where baseball will go into the winter. With all three of the major groups benefiting from this change, there really is no reason for baseball not to go ahead and make it.

Conclusion

Reviewing all of the changes that have been suggested for baseball, the most important one has to be getting rid of the anti-trust exemption. Without this important step none of the other ideas that have be put forth can be done. The only way to make the owners comply with the new regulations that have been proposed is to force them by getting rid of their anti-trust power. Once baseball loses its monopolistic power over the game, then this is when changes like the ones being suggested here will be able to make the game better. If baseball does manage to fix its ant-trust problem, though, it is still not completely out of the woods. It must also find an efficient leader to take charge and make the proper decisions for baseball. It does not necessarily have to be someone who has experience being the head of a sports association or team; it should be a person with

good ideas and the ability to be perceived as fair to all parties. If baseball could find someone like this then all of the great possibilities offered here and others that have not even been thought of yet are all within reach. The biggest hurdle, though, that has to be encountered in doing this is getting the owners and player aboard without showing favoritism to one side. This is once again where an efficient leader would come in and have the leadership qualities to make sure the transition is smooth. If a leader like this can be found and make the anti-trust exemption null and void without ruining the game, then baseball will be a lot better off. The most important thing, though, is that baseball's anti-trust exemption is eliminated and until it is the game will continue to lose its status as America's sport.

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