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Two Strikes: A History and Analysis of Major League Baseball, its Antitrust Exemption, and the Reserve Clause

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As the story has it, one summer afternoon in 1839, at Cooperstown, on the shore of Otsego Lake in upstate New York, the boys of Otsego Academy were playing a game of town ball against Green's Select School. That day, a resourceful young Otsego player named Abner Doubleday sat down and, on the spot, drew up the rules for a brand new game, and called it baseball. Doubleday's game would become the national pastime and its founder, who would become a hero at the Battle of Gettysburg, would forever receive the notoriety for his creation from millions of young boys and girls, fans and antitrust attorneys alike (Ward and Burns, 1994).

Doubleday most certainly could never have envisioned the development of his game, both on and off the field, over the years. What began as a leisurely "game" played on college campuses and village greens has transformed into a worldwide, multi- billion-dollar industry. Burdened by disputes between high priced and overexposed athletes and multi-millionaire and business-smart owners, the game of baseball has ridden the proverbial roller coaster of financial success, fan support, and legal disputes. Baseball has enjoyed a judicially created exemption from federal antitrust law since the *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* Supreme Court decision in 1922. However, this decision does not mark the beginning of baseball's legal and labor problems, for the reserve clause was challenged and upheld as an enforceable personal service contract and an illegal restraint of trade as early as 1879 (Stedman, 1984).

Major League Baseball is the only professional sport and the only INDUSTRY in the United States that has a blanket exemption from our national antitrust laws. Therefore, "Major League Baseball is the only legally-sanctioned, self-regulating monopoly in the country" (Selig, 1994, p. 289). This paper will trace the history of baseball's reserve clause and antitrust exemption and the potential modern-day problems and situations arising from this monopolistic existence.

History

By the winter of 1876, the National Association was in trouble. Seeing an opportunity, Chicago White Stockings owner William A. Hulbert established a new league, the National League, with himself at the helm. He tightened up the rules of the game and, most importantly, invested the real power in the owners, not the players. To solidify an owner's power, Hulbert and his allies soon added a reserve clause to the

contracts of the five best men on every team: this required that each play only for his current employer, and, in effect, "reserved" his services in perpetuity. Prior to the reserve agreement, players signed freely with the highest bidding club. With the establishment of the reserve clause, players who objected too strenuously were fired, then blacklisted. This arrangement allowed wealthy clubs to dominate the league, promoted uneven competition, and, consequently, reduced fan interest. The National League owners would dominate professional baseball for the next quarter of a century. From this point forward, players would simply be employees (Ward and Burns, 1994).

The first formulation of the modern reserve clause was in every player's contract by 1907 as part of the Standard Player's Contract. This provision assigned to a ball club the exclusive right to employ, sell, or trade a player without his prior consent. Club owners interpreted the reserve clause as a perpetual option to renew a player's contract, although they also maintained the right to amend the terms of the contract upon ten days written notice (Stedman, 1984). Players interpreted it from a differing perspective.

During the next 30 years, players rebelled against the clause. For example, John Montgomery Ward, a well-educated shortstop for the New York Giants, took on the owners on their own terms, and even went so far as to form one of the first baseball unions, the Brotherhood of Professional Base Ball Players, which proclaimed that, "Like a fugitive slave law, the reserve clause denies [the player] a harbor or a livelihood, and carries him back, bound and shackled, to the club from which he attempted to escape" (Ward and Burns, 1994 p. 39). Up against too powerful an opponent, the Brotherhood, and subsequently all competing baseball leagues, folded, thus solidifying the National League's stranglehold on the professional baseball industry.

The first hint of professional baseball's favored status from the antitrust laws came in 1914 in *American League Baseball Club v. Chase*, when the special term of the Supreme Court of New York denied equitable enforcement of a player contract against Hal Chase, "The best first baseman in professional baseball" (Markham and Teplitz, 1986, p. 7). The court held that the contract, which incorporated the reserve system, lacked mutuality, was unconscionable, and was monopolistic in violation of New York common law. Nevertheless, it held that the contract was not subject to the Sherman Act because:

> Baseball is an amusement, a sport, a game that comes clearly within the civil and criminal law of the state, and it is not a commodity or an article of merchandise, subject to the regulation of Congress on the theory that it is interstate commerce (Markahm and Teplitz, 1981, p. 7).

Legal challenges all but ceased subsequent to 1915 due to successful monopolization of the industry by organized baseball.

The last independent baseball league of consequence in the United States was the Federal League, which incorporated in March 1913. Formed by a band of wealthy businessmen and supported by 81 former National League players, the Federal League promised big money and free agency. It even fostered a harmonious relationship with the Fraternity of Professional Base Ball Players, a quasi-union formed a year earlier. The league held its own for two seasons, but soon ran into financial strains when the National League owners, in response to a few Fraternity demands, offered a pay raise to the stars who remained loyal to them and pledged to do better even by average players in the future (Ward and Burns, 1994).

Federal League owners, now losing money fast, fought back, charging that the reserve clause and the policy of blacklisting rebellious players were in restraint of trade. A peace agreement was reached in December 1915 between the National League and the Federal League, the latter of which dissolved, along with the Fraternity of Professional Base Ball Players, except for the Baltimore club of that league (Ward and Burns, 1994).

The owners of the Baltimore Federal League club returned to federal court in 1916, charging the two major leagues and their former colleagues within the Federal League conspired to shut them out of baseball in clear violation of the antitrust laws (Ward and Burns, 1994).

The Sherman Act, signed into law in 1890, was an act to protect trade and commerce against anti-competitive business behavior. The Clayton Act of 1914 amended the Sherman Act to specify certain illegal practices in interstate commerce. These acts provided the basis for the plaintiff's case, which finally reached the U.S. Supreme Court in 1922. A lower court ruled that baseball was not interstate commerce and "(t)he business of baseball is not susceptible of being transferred." Furthermore, the travel of players among the several states, according to the court, did not substantially affect interstate commerce but was merely incidental to the operation of baseball (Stedman, 1984). Subsequently, *Federal Baseball Club v. National League* came before the U.S. Supreme Court.

Justice Oliver Wendell Holmes, Jr. delivered the opinion of the court, which supported the findings at the appellate level. Relying on the commerce-clause construction in *Hooper v. California*, the court, per Justice Holmes, held that the antitrust statutes were inapplicable because baseball, however popular among the masses was purely state affairs. Furthermore, he stated that, "Personal effort, not related to production, is not a subject of commerce" (*Federal Baseball Club v. National League*, 259 U.S. 200 (1922), 208-209). Thus, professional baseball was a state activity that neither engaged in nor interfered with interstate commerce, thereby exempting it from the Sherman and Clayton Acts. Baseball had a clear judicial ruling that exempted it from the federal antitrust laws that, coupled with baseball's complete monopoly over the industry, assured the sanctions imposed on the players by the reserve clause.

The reserve clause stood unchallenged for another quarter of a century. In *Gardella v. Chandler*, the Second Circuit majority held professional baseball to be engaged in interstate commerce. The court, however, did not pass specifically on the merits of the reserve clause and the case ultimately was settled. The U.S. Supreme Court first reconsidered Federal Baseball in *Toolson v. New York Yankees, Inc.*, a 1953 ruling that disposed of three challenges to the antitrust exemption. Toolson, who filed the suit under the provisions of the Sherman Act, argued the ruling in Federal Baseball was erroneously based on various precedents. Precedence established radio and television, essential parts of the business of baseball, as interstate commerce, thus bringing baseball itself under the antitrust laws in concurrence with the opinion in *Gardella v. Chandler* (Stedman, 1984).

The court appeared unimpressed with Toolson's arguments and ruled, per curiam, to affirm the lower court's dismissal based on authority of Federal Baseball without an examination of the underlying issues. The court majority upheld the antitrust exemption. The court reasoned that it was Congress' responsibility to lift the exemption. Thus, Toolson marked the first clear indication that the Supreme Court had determined that any change in the non-applicability of the antitrust laws to baseball would henceforth have to be made by Congress and not by the judiciary. (Berger, 1983). Because Congress had, and still has, no serious intention to include baseball under the Sherman Act, baseball remained free from antitrust coverage.

The last major Supreme Court challenge to the reserve clause occurred in 1972 with the *Flood v. Kuhn* decision. A key element of the St. Louis Cardinals' World Series- winning team in 1967, outfielder Curt Flood asked for a $30,000 raise for the upcoming season. 70-year-old Cardinals owner August Busch, an imperious brewer who despised unions, was incensed by Flood's request and denied the raise. Busch never forgot Flood's audacity, for two seasons later, in October 1969, Flood received a brusque telephone call from a junior official in the Cardinal front office. After twelve years in St. Louis and without any warning, Flood was being traded to the Philadelphia Phillies as part of a seven-player deal (Ward and Burns, 1994).

Flood resolved that he would not report to the Phillies training camp in the spring 1970. In a letter that he wrote to then Commissioner Bowie Kuhn, Flood stated, in part, of that:

> After twelve years in the Major Leagues, I do not feel that I am a piece of property to be bought and sold irrespective of my wishes... .1 believe that I have the right to consider offers from other clubs before making any decisions (Ward and Burns,

1994, p. 411).

Flood's petition to Commissioner Kuhn was denied. After passing through district and appeals courts in New York, a writ of certiorari was issued and the case was heard by the U.S. Supreme Court in 1972.

Justice Harry A. Blackmun, a baseball fan himself, directly assailed the antitrust exemption, writing in *Flood v. Kuhn* that, "Federal Baseball and Toolson have become an aberration." Nevertheless, Blackmun cited congressional inaction as a reason for the court to uphold the 1922 decision. According to Blackmun's research, in the 20 years before the 1972 case, not a single bill to lift the antitrust exemption made it through a congressional committee. In a concurring opinion, Chief Justice Warren Burger wrote that the time had come for "Congress.. .to solve this problem" (*Flood v. Kuhn* p. 286). The reserve clause and the antitrust exemption withstood yet another test.

The demise of the reserve clause finally came about in December 1975. In an arbitration hearing to decide the free agency claims of pitchers Andy Messersmith and Dave McNally, 70-year-old arbitrator Peter Seitz surprisingly cast the deciding vote in favor of the players. His ruling agreed with the Major League Baseball Players Association's request that an owner could only control a player for one year (Ward and Burns, 1994). Seitz was fired within five minutes of the decision reaching the owners, who then took their case to the Court of Appeals, which rejected it. Thus, the arbitration decision was binding and the old reserve clause, which had been disputed for nearly a century, was finally dead.

Potential Problems and Situations

With the Seitz ruling in 1975 and Congress' failure to repeal baseball's antitrust exemption, the shape of the baseball legal landscape has only slightly changed. The reserve agreement among teams initiated in 1879 is still in effect. The reserve clause in the Standard Players Contract also continues (Stedman, 1984). As a result, there exists several issues that are problematic to the game of baseball.

Probably the most problematic issue concerns the relationship between the owners and the player's union, the Major League Baseball Players Association. Formed in 1952 but not a force until Marvin Miller's hiring in 1966, the Players Association became a significant force as the collective bargaining agent for major league baseball players. All previous union-like attempts had summarily failed. Therefore, this fact, coupled with the existing environment of labor strife and escalating salaries, made the Players Association's impact even more immediate and lasting.

In 1968, the Players Association saw its first major accomplishment with a negotiated grievance settlement as part of the Basic Agreement of 1968. In 1969, the court ruled that the National Labor Relations Board could not decline jurisdiction over the Players Association through advisory decisions, thereby contributing substantial leverage to the Players Association's future collective bargaining efforts. Impartial arbitration to resolve disputes was adopted in a 1970 Basic Agreement, and amended three years later to extend arbitration to resolve salary disputes and to provide trade veto status to a "5 and 10" player (a player with 10 years of service in the major leagues, five of those years with one team) (Stedman, 1984). The McNally and Messersmith decisions opened up free agency for players. The reserve clause as a perpetual option to renew a player's contract was reduced to one year. And the assignment clause in the 1976 Basic Agreement stated that a 5 and 10 player could not be assigned to another club without the player's written consent, thereby strengthening the Players Association's position (Stedman, 1984). To summarize, the MLBPA's three major accomplishments which established the modern era in labor relations, and has affected all professional team sports, are the use of grievance arbitration for contract interpretation disputes, salary arbitration, and rules governing free agency (Staudohar, 1996).

This labor situation created, and continues to foster, an environment that is rife with unrest. The issues of past decades are still troublesome today. Salaries for most players continue to escalate. Alarmed owners protest that they can not afford the players' salaries. Smaller-mar-

ket teams openly worry about losing their best players in bidding wars. The early success of the Players Association and the impact that it had on the owners and the industry as a whole led to a first in the history of any American sport: the players on every team went on strike on April 1, 1972, described as "the darkest day in sports history" by The Sporting News (Ward and Burns, 1994). The strike ended 13 days and 86 canceled games later. It was not just another clear-cut victory for the players and their savvy negotiator, Marvin Miller, it was, more importantly, a black mark of the game of baseball and the professional sports industry; an off-the-field "stare decisis" that laid the foundation for walkouts and lockouts for the indefinite future.

Beginning in 1972 and reoccurring in 1981 and 1987, a parade of strikes and lockouts interrupted games, reaching a crescendo in 1994 with the deadlock over salary caps that proved so irreconcilable that owners canceled the World Series (Hosansky, Sept. 24, 1994). In 1972, the players went on strike over a pension dispute, resulting in the cancellation of only 86 games. In 1976 the owners shut down training camps for 17 days as a result of an impasse in bargaining over free agency (Staudohar, 1996). The 1981 strike was especially damaging to the game. Lasting many weeks and resulting in the cancellation of over 700 games, the strike heightened collective bargaining differences over free agency. In effect, the players won the strike, because their free agency rights were loosened and their salaries rose.

This rapid increase in salaries led baseball owner's to collude in the restriction of free agent signings. Owners hoped that no open bidding for free agents would force the players to re-sign with their present teams at reduced salaries. Owners were eventually caught and they paid almost $300 million in collusion violations (Staudohar, 1996). There was a brief strike in 1985 and another brief lockout in 1990, but the "mother of all sports strikes" occurred in 1994-95. Spurred by differences over revenue sharing, the strike lasted 232 days, ruined one season and cut into another, canceled a World Series, and alienated an entire generation of fans (Staudohar, 1996). It is painfully apparent that the long-standing feud between owners and players will continue to have a negative impact on the business and the game of baseball.

There is more to this issue than collective bargaining. There are explicit extensions of the antitrust exemption concerning the relocation of baseball franchises. In *State of Wisconsin v. Milwaukee Braves, Inc.*; the Wisconsin Supreme Court addressed the relocation of the Braves franchise from Milwaukee to Atlanta and the propriety of state efforts to force baseball to give Milwaukee a new team. The court held state laws could not reach baseball. A holding contrary to Chase.

The Seventh Circuit also took an expansive view of the exemption in *Finley and Co. v. Kuhn. Oakland Athletics* owner Charlie 0. Finley sued Commissioner Bowie Kuhn after Kuhn using his "best interests of baseball" powers, voided several of Finley's player assignments *(Finley and Co. v. Kuhn)*. Finley brought an antitrust suit claim and argued that baseball's exemption was limited to the reserve system. The appellate court affirmed the district court's granting of summary judgment for the commissioner on this claim, stating that, "The Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws" *(Finley and Co. v. Kuhn)*.

A repudiation of extensions of the exemption arose out of the attempted 1992 sale and relocation of the San Francisco Giants to Tampa, Florida. In *Piazza v. Major League Baseball*, two Tampa investors alleged that Major League Baseball had established illegal monopoly control of the market for Major League Baseball teams and unreasonably restrained trade when it denied the sale, transfer, and relocation of the Giants to Tampa Bay. In response to baseball's invocation of the antitrust exemption and its subsequent motion to dismiss, the district court held that baseball's antitrust exemption was limited to the reserve clause. The court reasoned that before Flood the exemption may well have extended beyond the reserve clause, but Flood stripped Federal Baseball and Toolson of precedential value *(Piazza v. Major League Baseball)*.

To many people, the National League's decision to keep the Giants in San Francisco was

simply a reaffirmation of the league's long established policy against the relocation of franchises that have not been abandoned by their local communities. However, many others who remember the devastation caused in Milwaukee when the Braves moved to Atlanta claim that the league's preference for franchise stability is not only an appropriate policy, but the only policy that is in the public interest (Powers, 1994). If Major League Baseball were not exempt from the Sherman Antitrust Act, a decision protecting franchise stability such as the one made in San Francisco would have certainly subjected the league to a costly and unpredictable lawsuit.

Owners have put forth many reasons justifying their antitrust exemption. Players challenging the reserve clause was the owner's biggest fear in using the antitrust exemption to protect its interests, but developments over the past twenty years has made this a non-issue. Traditional claims that free agency disrupted competitive balance has proven to be untrue. Owners still claim that ownership of a major league baseball franchise is unprofitable and that the antitrust exemption is necessary to protect what little revenue they earn. The exemption is also necessary for the commissioner, when there is one, to operate effectively, to prevent franchise relocation and frivolous litigation, and to protect minor league baseball from destruction (Zimbalist, 1994). No matter what the arguments and counter-arguments are, Major League Baseball enjoys a status that allows them to operate differently than every other business in the country.

Summary and Conclusion

Professional baseball enjoys a status in the United States shared by no other major sport. Sanctioned by the "stare decisis" effect of Federal Baseball and the indifference of congressional leaders, baseball has developed for over a century an internal set of regulations that stand apart from predominant case law and legislative rulings. The only successful challenges to baseball's monopolistic power have occurred since the foundation of the Players Association in 1966 (Stedman, 1984).

Baseball owners operate under different rules than every other business in the United States. There is little doubt that baseball is a business broad enough to be considered engaged in interstate commerce. It also seems unlikely that baseball will appear before the Supreme Court soon in an antitrust case. No bill to lift baseball's antitrust exemption has ever made it out of committee in either the House of Representatives or the Senate. Therefore, it appears that it is Congress' responsibility to step to the plate and take a few swings at this issue (Zimbalist, 1994).

With the increased public pressures created by the cancellation of the 1994 World Series, congressional leaders have taken steps to repeal the exemption. Politicians criticized the exemption as anti-competitive and a barrier to settling labor disputes. Baseball officials claimed that lifting the exemption would interfere with the collective bargaining process and endanger the minor leagues, which would face lawsuits from players wanting to switch teams (Hosansky, Sept. 24, 1996). However, the language of the few sponsored bills aimed at repealing the exemption is inconsistent. For example, some politicians want to repeal the exemption in full, others in part. One politician is concerned about giving the Players Association more legal clout than other unions have (Hosansky, Feb. 18, 1996). Even President Clinton has intervened, unsuccessfully, to resolve this issue (Hosansky, Feb. 11, 1995).

Despite all the problems of and the efforts to repeal the exemption, it appears that baseball owners can rest easy for the time being. Prior to the forced resignation of Commissioner Fay Vincent in 1992, the owners were subject to at least one constraint, however minimal. Currently, their decisions about the fate of baseball go completely unchecked (Zimbalist, 1994). Congressional efforts to eliminate the exemption have been only marginally successful. High court litigation appears unlikely. Club profitability will determine owners' willingness to negotiate issues. As long as club profits decline and labor tensions rise, owners will take a hard line and strikes will forever be on the horizon. The antitrust exemption is firmly entrenched and will

most likely remain so for a long time.

(Note: June 18, 1997 *The Atlanta Journal/Constitution*, p. C-4).

Senate eyeing antitrust bill

"The Senate Judiciary Committee held yet another hearing Tuesday on Baseball's antitrust exemption."

The difference was that this time owners and players have agreed on language that would partially eliminate the exemption, but only as it effects major league players.

Utah Republican Orrin Hatch, chairman of the committee, noted the efforts by players and baseball executives to negotiate terms of a bill and said lawmakers were interested in working with the two sides. Once he receives the proposal agreed to by the players and the owners, he would consider passing that bill rather than the one he has introduced.

"The most important impediment to passage of baseball antitrust reform has been eliminated," Hatch said. He called it "a truly momentous occasion when major league baseball owners have aligned in support of such reform."

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