The close of the 2001 Major League Baseball ("MLB") season marked the end of a dramatic era, both for the sport and the nation. Louis Gonzalez’s ninth inning single drove in the winning run, closing the 2001 World Series between the New York Yankees and the nascent Arizona Diamondbacks, who were an expansion team only four years earlier.¹ The 2001 World Series was notable for many reasons, including the fact that 2001 was the last time the American flag adorned the uniform of major league ballplayers.² The flag’s brief appearance only lasted for the balance of the baseball season marred by the tragic events of the terrorist attacks.³

Old Glory appeared as a patch on the back of every uniform and on the side of every cap following the tragic events of September 11, 2001.⁴ The patch honored the memory of the victims and heroes who died in the attacks.⁵ Moreover, the flag also represented the ideals and principles of a nation threatened by terrorist forces on that tragic day.⁶ “[The Flag is] a symbol of a living thing … [a] 225-year experiment in liberty and the people, the values and institutions that have made it work.”⁷ The disappearance of this important symbol of American ideology from the players’ uniforms eerily coincides with a rising threat to the economic ideals and principles that govern our national pastime—a threat greater than the designated hitter, Astroturf, or inter-league play.

“\[The smaller market teams claim that they cannot compete because they have less revenue than the bigger teams, and less revenue translates to an inability to pay for high priced players and state-of-the-art facilities.\]"
I. Introduction

In response to a growing disparity amongst the league’s best and worst teams, fans, reporters, and even some players have proposed various plans designed to share revenues amongst owners and level the economic playing field. The smaller market teams claim they cannot compete because they have less revenue than the bigger teams, which translates to an inability to pay for high priced players and state-of-the-art facilities. In response to this perceived problem, owners have proposed and implemented some limited forms of revenue sharing and a competitive balance tax. The competitive balance tax collects revenue from MLB’s wealthiest teams and redistributes it evenly to poorer teams in smaller markets for their expenses and development. Owners remain free to either reinvest the money received from the competitive balance tax in the team and stadium or to pocket the money as profit. As such, the redistribution may not have the desired effect on competition, if it has any effect at all. In addition, there are a number of antitrust issues to consider under any proposed expansion of the competitive balance tax or other form of revenue sharing plan agreed to by players and owners in a MLB Collective Bargaining Agreement (“CBA”).

II. Labor, Management, and the Collective Bargaining Agreement

A. Baseball’s Antitrust Exemption: A Fragile House of Cards

Beginning next season, the Montreal Expos will no longer play in Montreal. A team that was on the verge of extinction just a few years ago is hoping to start a new life in Washington. Team relocation and contraction are issues beyond the scope of this Note, but the Expos’ exodus from Montreal for greener pastures is illustrative of MLB’s control over the market for professional baseball. The federal courts and federal legislature created MLB’s market and the thriving cartel of MLB owners that oversees it. The twenty-nine major league owners’ ability to collectively purchase one of their existing competitors and relocate the team from its home stems from MLB’s operation outside traditional federal and state antitrust law. Essentially, MLB’s antitrust exemption allows cooperation and collusion amongst its owner members.

Traditionally, “[e]very contract combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce...is...declared to be illegal.” Congress passed the Antitrust Act of July 2, 1890 (“Sherman Antitrust Act”) to stem a tide of unfair cooperation amongst trusts formed in industries such as oil, steel, and the railroads, and to encourage fair trade through competition in the free market. Since the passage of the Sherman Antitrust Act, the predominant form of antitrust enforcement against businesses that harm others through price fixing, and other forms of anticompetitive cooperation, has been the private antitrust suit. The United States Supreme Court and Congress have taken steps to exempt professional baseball from the reach of private antitrust suits. This anomaly in antitrust regulation is the result of Congressional inaction, the effect of which is the preservation of three United States Supreme Court
decisions that considered antitrust challenges to professional baseball’s operations creating the exemption.

Professional baseball’s infamous antitrust trilogy begins with Federal Baseball Club v. National League, which considered a treble damages suit filed by the Federal Baseball Club alleging antitrust violations. In Federal Baseball Club, the plaintiff alleged unfair cooperation amongst the individual clubs in the National and American Leagues to share gate receipts and establish a monopoly through interstate commerce, which was an alleged violation of federal antitrust law. Justice Holmes, writing for the majority, opined that professional baseball is immune from federal antitrust regulations. He reasoned that the federal law did not apply to the baseball teams, and held that players playing games for their respective teams outside their home states is not unlike a firm of lawyers sending attorneys outside its home state’s boundaries to argue a case, or a lecturer traveling the lecture circuit, and thus not interstate commerce.

The Supreme Court confronted the question of professional baseball and antitrust again in 1953 in Toolson v. New York Yankees, Inc. when it considered allegations that professional baseball deprived the plaintiff of his livelihood through unfair cooperation. In Toolson, the plaintiff alleged that the league “blacklisted” him and essentially barred him from playing on other teams. The Toolson Court, based chiefly upon the precedent in Justice Holmes’ opinion in Federal Baseball Club, held that professional baseball was exempt from the ordinary reaches of federal or state antitrust law, and denied the plaintiff’s claim.

The final case in baseball’s infamous antitrust trilogy, Flood v. Kuhn, involved a challenge of professional baseball’s reserve system. The Supreme Court reaffirmed baseball’s exemption from federal and state antitrust law. The Supreme Court’s decision relied upon the opinions of Federal Baseball Club and Toolson, taking judicial notice of Congress’ acquiescence to the Court’s rulings by its silence on the subject, and an explicit Congressional refusal to extend baseball’s exemption to other organized professional sports. The Flood Court observed, “the orderly way to eliminate error or discrimination [from the existing exemption], if any there be, is by legislation and not by court decision.”

Congress finally took action to limit the scope of baseball’s antitrust exemption when it passed the 1998 Curt Flood Act. Although it was a dramatic step, the legislative effect of the Curt Flood Act was not a complete repeal of baseball’s exemption. Instead, the Curt Flood Act was a rather small strike against it, removing labor agreements between players and owners from coverage by baseball’s infamous antitrust exemption. Arguably, the Curt Flood Act may cause a long-standing exemption for MLB from federal and state antitrust challenges to come tumbling down. The exemption has been the subject of numerous legal challenges, all seeking a similar exemption. So far, the delicate house of cards that protects MLB’s operations from antitrust attacks in federal court remains intact and unique to baseball.

B. The Future of the Collective Bargaining Agreement in the Wake of the 1998 Curt Flood Act

To date, neither Congress nor the Su-
The Supreme Court is willing to change the status quo. In the future, however, it is possible that lawsuits challenging MLB labor agreements reached through collective bargaining will be vulnerable to antitrust litigation. This is true because of the Sherman Antitrust Act’s undesirable effect on organized labor. In Loewe v. Lawlor, the Supreme Court determined that cooperation amongst unionized laborers violated the Sherman Antitrust Act as an illegal restraint of trade; this is a decision in conflict with legislation aimed at reducing unfair competition that gave industry a stranglehold over its customers and laborers.

Congress responded to the Court’s interpretation of its oversight by passing legislation to specifically remove organized labor from coverage by the Sherman Antitrust Act and instituting a federal policy favoring organized labor. In addition, Congress passed the National Labor Relations Act (“NLRA”) in 1953, which established a federal policy that favored a collective bargaining process between labor and management. Shortly thereafter, the NLRA established the National Labor Relations Board (“NLRB”) to review questions on whether labor-management issues fell under the collective bargaining laws of the NLRA. Although MLB labor agreements were only recently formally exempted from antitrust challenges in state and federal courts, a ruling by the NLRB in 1969, holding that baseball is interstate commerce and subject to the provisions of the NLRA, paved the way for the modern collective bargaining process between players and MLB owners.

1. Baseball’s Labor Woes: A History of its CBAs and the MLBPA

The most recent labor agreement between players and MLB owners was the first CBA reached without a work stoppage. By avoiding another devastating players’ strike like the one in 1994, which caused the World Series to be cancelled for the first time in history, the most recent CBA came at a relatively low cost to all concerned. Arguably, a CBA reached without a strike or lockout has taken this long to come about because of professional baseball’s exemption from antitrust litigation. The 1969 NLRB ruling that baseball is interstate commerce and subject to the provisions of the NLRA allowed the players to organize and strike. Initially the players organized simply as a creature of convenience to communicate their grievances to owners. Eventually this fledgling organization of players became the MLB Players’ Association (“MLBPA”), an organization that has grown stronger over time.

The MLBPA’s transformation from a creature of convenience to a real players’ union began in 1966 with the hiring of a new executive director, Marvin Miller. Miller encouraged players to flex their combined muscle against owners who were unwilling to make concessions to their demands. Miller’s hiring, which coincided with the seminal 1969 NLRB ruling, allowed the MLBPA to take advantage of the players’ basic labor rights under the NLRA, which included a right to self-organization, a right to bargain collectively through chosen representatives, and a right to participate in concerted activities against MLB owners.

The 1973 CBA, which was reached shortly after Miller’s installment as executive director, was a major victory for the MLBPA over the MLB owners. The 1973 CBA limited the effects of the reserve system and allowed players to submit salary disputes to an independent arbitrator. Baseball’s reserve system did not disappear because of an antitrust suit, such as the one against MLB in 1972. In other industries, consumers harmed by price fixing may levy private antitrust suits against owners engaged in similar unfair cooperative practices. Baseball avoids such private suits because of its antitrust exemption. The reserve system allowed owners to unilaterally renegotiate an individual player’s contract at the player’s existing salary if there was not a new contract in place before the commencement of the following season. It prevented players from holding out for more money by becoming free agents, essentially foreclosing a player’s ability to profit from superior play on the field. Limiting MLB owners’ unilateral control over players’ salaries and movement was a major victory for Miller and the MLBPA in 1973.

The reserve clause disappeared in 1976, following another work stoppage and a hard-fought CBA. Building off the success of the 1973 agreement and the bargaining strength of Miller and the MLBPA, the players gained
the ability to become free agents following six years of play under their original contracts. The owners conceded to raise the minimum player salaries and increased pensions; however, the owners also used a seventeen day lockout during the talks to force the players’ hand. The necessity of a lockout in 1976 and the resulting CBA were both indicative of MLB owners losing ground to the MLBPA. 

The final blow to the reserve system came in 1976 in a court challenge by two players upset with their treatment from their former teams. In Kansas City Royals Baseball Corp. v. MLBPA, the Eighth Circuit considered grievances filed by the MLBPA on behalf of Andy Messersmith and Dave McNally (two MLB pitchers), alleging that MLB owners denied them their rights to deal with other teams for their services after their year on reserve. The MLBPA requested that the owners be ordered to treat these players as free agents and to compensate them for any financial detriment incurred due to their delay in doing so, as previously directed to under the 1973 CBA. The Kansas City court held that the players were free agents. Further, the Kansas City court held that, while players and owners agreed that there is a year reserved for an owners’ renewal, the agreement did not allow owners to force a player into a perpetual agreement to play for their respective clubs at the existing contract rate.

The 1981 strike was more severe than the 1976 lockout since it lasted fifty days and cost the league a considerable amount of revenue. While each side would argue that it gained from the resulting CBA, it seems clear to most commentators that the 1981 work stoppage sent unambiguous signals to the industry that the MLBPA had gained a significant foothold against the powerful cartel of MLB owners. The 1981 agreement included a new method for compensating major league clubs that lost players to free agency. In essence, players were divided into two pools, a pool of “A” players and a pool of “B” players, depending upon their performance during the previous two years. A team losing an “A” player received an extra player in the subsequent year’s amateur draft, as well as a player from the compensation pool of players. Teams losing a “B” player received two extra selections in the next year’s amateur draft. In 1981, MLB owners aimed the pooling plan for compensating teams at improving the level of competitiveness amongst the various MLB clubs. The goal of the 1981 strike was to improve the balance of bargaining strength between players and owners.

In 1985, players and owners were once again at odds, this time over a proposed salary cap and revenue sharing plan, both of which were attempted to limit salary growth. An MLBPA strike that lasted two days forced the salary cap off the table. In return for limiting a player’s opportunity to seek independent salary arbitration after three years of his existing contract, the owners conceded the salary cap, but agreed to an increase in the players’ minimum salary requirements and granted players a portion of revenue profits. Unfortunately,
The MLBPA took its grievances before an independent arbitrator, stating that the owners had conspired against the players and were implementing unfair labor practices in conflict with the provisions of the NLRA. The arbitrator sided with the players and awarded $280 million in damages.

In 1990 came another lockout, this time lasting thirty-two days. Owners proposed a massive restructuring of the expiring CBA, seeking revenue sharing amongst clubs and a salary cap. The players and owners successfully negotiated a new CBA, leaving revenue sharing and the imposition of a salary cap on the table, and pushing the start of the postseason back in order to appease television networks suffering from the rescheduling of the seventy-eight missed games. The players conceded, however, that after three years, talks would resume regarding free agency, arbitration, and minimum salaries. Arguably, by leaving the door open during these talks, the players set the stage for the devastating 1994 players’ strike.

In 1994, there was no World Series champion for the first time in the history of MLB. During the 1993 and 1994 MLB seasons, MLB owners took an opportunity to walk through the door left open by players in 1990, and reopened discussions with players concerning issues of free agency, salary arbitration, and minimum salary. Despite efforts by both sides to reach an agreement, the 1990 CBA expired on December 31, 1993, and a players’ strike began on August 12 of the following year that ended any hope of a World Series. Prior to the 1994 strike, the owners had proposed to share incoming revenues with players on an equal basis, a reduction from the players’ then existing share (closer to 56%), while phasing in a salary cap and eliminating salary arbitration.

Donald Fehr, the new MLBPA executive director, estimated the costs of the owners’ proposal to the players to be around $1.5 billion over the life of the proposed CBA. Accordingly, the MLBPA relied on its perceived bargaining position, rejected the owners’ proposal, and elected to strike. Some commentators observed that the 1994 strike was the result of the bargaining structure between players and owners, changing from one of paternalism to more of an adversarial system. The end result of the 1994 players’ strike was appalling to fans and disastrous to professional baseball, but the 1998 baseball season, which was filled with historic achievements and broken records, somewhat renewed fan interest in the game.

Although the 1998 season may have renewed interest in the game for some fans, the relationship between players and owners has been slower to recover.

The 1996 CBA included concessions from both sides and a peaceful settlement after a disruptive break in the baseball action in 1994. The players received an increase in their minimum salaries, as well as a time-in-service credit for the seventy-five playing days they missed during the strike in 1994. The 1996 CBA also saw the birth of the competitive balance tax, which is the present version of revenue sharing in MLB. Under the current structure, the five teams with the biggest aggregate payrolls pay the competitive balance tax. MLB pools the revenues from these sources and divides them among smaller revenue and payroll teams. Presumably, the tax
helps smaller revenue clubs compete and corrects an environment currently favoring player mobility amongst the leagues varied clubs.96 On September 9, 2002, MLB reached its most recent CBA between players and owners, with the owners voting 29-1 in favor of the CBA’s final provisions.97 Not surprisingly, the Yankees were the lone holdout.98 The parties reached an agreement for the first time in history, without resulting in either a strike or lockout.99 Avoiding a work stoppage is indicative of improving relations between the two factions; however, the agreement currently in place may have left some owners feeling unsatisfied.100

The 2002 CBA, other than a few minor modifications, generally leaves the 1996 agreement intact. The league’s newest agreement did not change the language governing salary arbitration.101 MLB owners increased players’ minimum salaries, tabled contraction until the end of the present four-year agreement, and included provisions to discuss a worldwide draft and drug testing for “Schedule III” anabolic androgenic steroids through the agreement.102

The most dramatic changes to the 1996 CBA agreement were those made in the areas of revenue sharing and the competitive balance tax. There is a growing trend in MLB to share revenues and penalize wealthy teams, which introduces a strong form of socialism into MLB. Specifically, the 2002 CBA calls for the disbursement of $175 billion to the teams, or $258 million per team, phased in over four years on a straight pooling basis.103 Over the same four-year period, the competitive balance tax will increase in thresholds, above which a team will pay a penalty to the league, from $117 million to $136.5 million in 2006.104

The changes made in these areas coincide with the recommendations made in The Report of the Independent Members of the Commissioner’s Blue Ribbon Panel on Baseball Economics (“Blue Ribbon Report”), authored by Richard C. Levin, et al., and completed in July 2000.105 MLB commissioned the Blue Ribbon Report to study whether revenue disparities among clubs are seriously damaging to the competitive balance of MLB, and to recommend structural reforms to ameliorate the problem.106 The Blue Ribbon Report offered several suggestions to level the economic playing field. Specifically, the Blue Ribbon Report recommended that MLB should develop new ways to increase revenues, and treat more revenue as industry revenues, which would force competition that focused on the skill of the players and the baseball acumen of the team’s management.107

2. Despite the 1998 Curt Flood Act, a Private Antitrust Suit Challenging a MLB Labor Agreement Remains Unlikely

The 2002 CBA, which sought greater competitive balance in MLB, is a threat to the position of the Yankees and other wealthy teams. The Yankees, owned by George Steinbrenner, were the only MLB club to vote against the 2002 CBA.108 This position was likely due to the increases in revenue sharing and the imposition of a substantial competitive balance tax. In light of the 1998 Curt Flood Act, an individual owner, like Steinbrenner, may respond to the unfavorable effects of the 2002 CBA by filing an antitrust suit alleging anticompetitive cooperation in federal court. The legislative effect of the 1998 Curt Flood Act was not a repeal of MLB’s antitrust exemption.109 Instead, it removed labor agreements (such as the 2002 CBA) from coverage by baseball’s infamous antitrust exemption, potentially bringing players and owners into federal court.110

Generally, cooperation and collusion by labor unions is exempt from the provisions of antitrust law, such as the Sherman Antitrust Act. Congress views collective boycotts and strikes, although they amount to restraints of trade, as a necessary allowance to limit the stranglehold management might otherwise have on its laborers.111 Congress made this clear by passing the NLRA in 1953, which established a federal policy that favored a collective bargaining process between labor and management.112 If an individual owner or player elects to file an antitrust suit, however, allegations of alleged misconduct must not apply to issues covered by the current MLB CBA.113 The Eighth Circuit first considered the implications of such a challenge from professional football players in the National Football League (“NFL”) in Mackey v. National Football League.114 The players alleged that the so-called “Rozelle Rule” was “an illegal combination and conspiracy in
restraint of trade.”115

In Mackey, the Eighth Circuit held that before a court will consider a suit challenging a league’s action with respect to labor, the plaintiff must first demonstrate that the labor policy in question is outside the scope of the current CBA.116 Second, the plaintiff must allege that the labor agreement concerns a mandatory subject of collective bargaining, and lastly that the labor agreement was not the result of arm’s length bargaining.117

An antitrust challenge in federal court to a MLB labor agreement must conform to the foregoing requirements. As such, the 2002 CBA forecloses some of the most controversial issues from the fight until the CBA’s expiration in 2006. The threat of an antitrust suit may force MLB owners to reconsider their position on competitive balance in the league and the appropriate remedy; however, any immediate attack by MLB players or owners must conform to the requirements of the federal courts for antitrust suits affecting labor agreements.

For example, in National Basketball Association v. Williams,118 and Brown v. Pro Football, Inc.,119 the federal courts required that individuals levying antitrust challenges do so only at the appropriate time.120 The Williams and Brown courts held that they would not hear an antitrust suit that challenged the provisions of an expired CBA, even if owners and players reached an impasse during the ensuing negotiations.121 A further limitation on the players’ ability to file suit is the Eighth Circuit’s requirement that players and owners not be currently engaged in the collective bargaining process, thus requiring the MLBPA to be de-certified before a suit may be filed.122

Mounting a legal attack against owners in MLP and the MLBPA is ill advised in light of the owners and players who are opposed to any expansion of MLB revenue sharing and the imposition of a salary cap. As an alternative to this difficult road, the remainder of this Note endeavors to propose a cooperative solution for fixing baseball’s competitive imbalance. The solution it proposes makes use of the cartel, which MLB, the federal courts, and Congress have all created over time. It takes advantage of MLB’s immunity from traditional antitrust suits and operation immune to most outside market forces, by creating internal incentives to foster competition and parity.

III. Analysis: The Delicate Balancing Act between Players and Owners Trying to Improve the Level of Competition in MLB

In 1999, Rick Reilly’s weekly Sports Illustrated column suggested in jest that MLB create a MLB “Junior Varsity League” to properly account for the fact that “[o]nly four or five teams have a shot at the World Series … (and that,) [b]aseball has become as predictable as a Havana City Council election.”123 Reilly’s tongue-in-cheek suggestion may not be out of left field considering the current state of the game.

A. A Tale of Two Cities: New York City, Montreal, and the Failure of Revenue Sharing in MLB

In light of its colored past and ineffectiveness, the league should avoid expanding revenue sharing in MLB. There is a sizable gap in the size of MLB teams’ incoming revenues that exists in large part because of the amount of revenue an individual team earns selling the rights to broadcast baseball games on television and radio stations locally.124 MLB implemented revenue sharing to redistribute a small percentage of these local revenues more evenly to level the economic playing field.125 Some felt that if revenues were redistributed, poor teams would have more money to spend and could become more competitive.126

The Yankees, for example, owe a large part of its incoming revenue stream to the sale of the rights to broadcast games locally in New York City, the nation’s largest television and radio market.127 At the other end of the spectrum, the Expos bring in a very small amount of revenue from selling rights to broadcast games in its much smaller local market of Montreal.128 The principle differences between cities such as Montreal and New York are geographic, demographic, and economic, all of which guarantee that teams such as the Yankees take in enormous amounts of local revenues from cities such as New York City, while teams playing in San Francisco, Kansas City, Minneapolis and Montreal get whatever they can from considerably smaller populations of
people and baseball fans. Some commentators believe that teams in small markets are less competitive on the field because there is a smaller pool of potential fans from which to draw revenue. When one examines the effect that the sale of local broadcast rights has on the gap in revenues, the available data is difficult to refute. The Commission responsible for MLB’s Blue Ribbon Report concluded that a team’s local television revenue was a good predictor of a team’s appearances and success in the MLB postseason. The sale of local broadcast rights for regular season baseball games is almost exclusively a function of the local population that advertisers can expect to reach; however, MLB is most definitely not a locally produced product. To remedy the inherent differences, MLB redistributes funds from teams earning local revenues to poorer teams. Thus, a poor team, such as the Expos, receives funds through revenue sharing. Teams like the Expos remain free to spend their profits on players, parks, and/or improving the Expos owners’ rate of return. A refusal to reinvest funds in players and facilities leaves wealthy teams and their fans wondering why they share revenue if the result remains the same year to year. The shared revenue allows owners to pay down outstanding debts and increase individual owners’ rates of return.

Sharing local revenues has failed because the money has not improved teams’ competitiveness or increased attendance. At best, the plan only marginally increased parity, and then only did so at the top of the heap. Arguably, because of more revenue sharing (e.g., cropping available revenues of teams such as the Yankees or Boston Red Sox), more of the first quartile teams from MLB’s Blue Ribbon Report earned a place in the World Series. At the bottom, however, teams remained uncompetitive and out of the postseason and out of the World Series. In Montreal, owners improved their own position by paying down debt with the revenues pouring in from around the league, and not spending money on new players or facilities.

The Florida Marlins are the obvious exception to the rule and best counterargument to the position that MLB should not expand its current revenue sharing programs. Much like their World Series appearance in 2001, the Yankees’ most recent turn in the fall classic ended with the Bronx Bombers on the losing end. The Marlins’ World Series victory in 2003 is significant because the team’s payroll ranked 25th amongst MLB teams, unlike their first championship in 1997, when the team’s payroll ranked fifth amongst MLB teams.

“There is a growing trend in MLB to share revenues and penalize wealthy teams, which introduces a strong form of socialism into MLB, an economic system that calls into sharp relief whether Cuba’s political managers are coming over with foreign players too.”

The Marlins are the first World Series Champions from the fourth quartile of MLB. Bud Selig, current MLB Commissioner believes that revenue sharing is having the intended effect of increasing parity in MLB, despite owners’ tendencies to pay down debt and increase their return on investment, recently stating that, “[t]here’s no question that the new economic system … is producing parity.” Others feel, however, that the recent success of small market teams like the Marlins, Minnesota Twins and Oakland Athletics, all of whom receive revenue under the revenue sharing plan, has more to do with a new management style used by MLB owners and managers. The Marlins, Twins, and Athletics are small market
teams with small payrolls, but they are successful because of a renewed interest in baseball statistics.\(^{149}\)

Athletics’ General Manager Billy Beane spends the majority of his available revenue on players who get on base frequently, pouring over statistics to find such players in other clubs’ fire sales and in amateur drafts.\(^{150}\) By acquiring undervalued young players and underrated veteran players, both looking to make fresh starts and play under lucrative one-year contracts, small market teams such as the Athletics are successful despite their very small payrolls.\(^{151}\)

Beane and other General Managers that have adopted Beane’s system are beginning to achieve the standard of competitiveness expected by most baseball fans.\(^{152}\) Teams should therefore seek efficient solutions to their competitive deficiencies, rather than larger amounts of revenue from those teams already producing winners.\(^{153}\) The Marlins’ success is due to efficient management (wise spending of the revenue received as a reinvestment in undervalued players), not baseball’s attempt to fix the inequalities that exist by resorting to socialism.\(^{154}\) Thus, the success of teams like the Marlins and Athletics demonstrates that fans should be waiting for efficient management in the future rather than handouts from Commissioner Selig.

**B. The Improbable Salary Cap Solution and the Strength of the MLBPA**

Unlike revenue sharing, the owners’ proposed salary cap remains on the negotiating table and has yet to be implemented, chiefly because of Marvin Miller’s legacy of leadership and negotiating prowess.\(^{155}\) Miller revolutionized the economic structure of MLB by seriously upsetting the balance of power between players and owners.\(^{156}\)

The notion of placing a cap on players’ salaries did not originate in MLB.\(^{157}\) The National Basketball Association (“NBA”) placed caps on the percentage of revenues that an individual team could spend on players’ salaries in 1983.\(^{158}\) The league instituted a range of percentages for the individual teams to keep their salary spending within it.\(^{159}\) “The years under the cap have been the most successful in NBA history with league revenues, profits and player salaries skyrocketing.”\(^{160}\) The NFL experienced similar prosperity under its own salary cap; however, players in MLB and the National Hockey League (“NHL”) remain resistant to the institution of a salary cap.\(^{161}\) The resistance by MLB players led to a devastating players’ strike in 1994,\(^{162}\) and has left the NHL embroiled in an owners’ lockout in 2004 that threatens the end of professional hockey in the U.S.

The NBA salary cap, however, remains imperfect. Much like the revenue sharing plan implemented by MLB, there are problems. According to James Quirk and Rodney Fort, the NBA currently faces difficulties stemming from innocuous language in the original salary cap agreement.\(^{163}\) The original NBA agreement allowed a NBA team to match another team’s offer to one of its departing free agents, regardless of salary cap restrictions.\(^{164}\) Allowing NBA teams a last shot at keeping their free agents may keep teams together; however, this largely emaciates the salary cap to the point that it is non-existent.\(^{165}\) Thus, the salary cap acts as
nothing more than an artificial barrier if a team may exceed its limitations to prevent a star player from departing their ranks.\textsuperscript{166} The MLBPA effectively keeps the salary cap out of baseball by making concessions to owners in other areas. For example, the MLBPA agreed to eliminate the player compensation picks that first appeared in 1981.\textsuperscript{167} Although this was effective in preventing owners from imposing a salary cap on players, compensation picks remain a better method for maintaining and improving competitive balance in MLB.\textsuperscript{168} The 1981 CBA agreement included a method for compensating major league clubs that lost players to free agency.\textsuperscript{169} In 1981, MLB owners implemented the pooling plan for compensating teams in the hopes of improving parity.\textsuperscript{170} MLB no longer uses this method of compensation.\textsuperscript{171} 

The MLBPA conceded to the demands of owners in 2002 when it signed the most recent CBA.\textsuperscript{172} Portions of that agreement found their basis in recommendations of the MLB Blue Ribbon Report.\textsuperscript{173} In addition to the request that the league drop the 1981 compensation picks, the report requested that baseball alter eligibility standards for incoming draft picks.\textsuperscript{174} The practice of enticing incoming draft picks to hold out and wait to sign with a high revenue club making its selections in later rounds or a year or two after the players’ original selections and offering a large signing bonus upset the competitive balance.\textsuperscript{175} As such, the rookie drafts of collegiate players yielded very few good players to lower revenue clubs; the resulting draft order of the selections was based upon available revenue, rather than performance.\textsuperscript{176} This is in direct contradiction to the reasons for having an available talent draft in MLB.\textsuperscript{177} 

To avoid the salary cap, the MLBPA makes concessions in areas that do not directly affect the current crop of players or the MLB players’ pension plan.\textsuperscript{178} In its infancy, the MLBPA’s main concern was the protection of the players’ pension plan.\textsuperscript{179} As in any other industry, the MLB players’ union seeks to protect the interests of its current members by erecting barriers to entry, serving the interests of the whole over those of its individual members, and effectively using whatever advantage available to the union as a whole, even to the detriment of future members like those entering in an amateur draft. 

In addition to drastic changes to the draft approved by the MLBPA, the union took a number of steps to ensure that player mobility and the competitive balance tax, rather than the salary cap, induce competition amongst MLB clubs.\textsuperscript{180} Although limited today, in \textit{Kansas City Royals Baseball Corp. v. MLBPA}, the Eighth Circuit held that the players in question were free agents and entitled to formal salary arbitration, which formally enabled greater player mobility through free agency.\textsuperscript{181} The arbitration decision ensured the more direct passage of incoming revenues to players, rather than owners’ pockets.\textsuperscript{182} Owners argued that enabling players to become free agents and increasing player mobility would hurt competitive balance in the league.\textsuperscript{183} The owners were wrong.\textsuperscript{184} Lifting the restrictions on player movement and upsetting the reserve clause slightly improved the level of competitive balance.\textsuperscript{185} The owners are probably also wrong about the salary cap. There will be no increased parity if MLB introduces a cap on the amount of revenues available for players’ salaries. Teams with higher revenue will still have more revenue, which they can offer to incoming players, offer to players in arbitration, and pay penalties imposed by MLB for violating the salary cap. 

C. The Failure of the Competitive Balance Tax

Cooperation and collusion in professional sports is unavoidable and is the nature of the beast.\textsuperscript{186} In a memorable episode of the National Broadcasting Corporation’s popular television show, “The West Wing,” Richard Schiff’s character, Toby Ziegler, jokes that people bother him and, as such, everyone should be killed,\textsuperscript{187} everyone that is, except for his beloved New York Knicks and Yankees.\textsuperscript{188} Of course, keeping the teams around requires keeping the sporting arenas to play in, people to operate them, and someone for the teams to play against, and as such, the Los Angeles Lakers and Boston Red Sox stay too.\textsuperscript{189} Ziegler’s rant illustrates the need for competitors and cooperation in professional sports. The reality is that sports teams do not function in a truly free market.\textsuperscript{190} Nor are sports teams successful through the physical elimina-
tion of their competitors. Unlike other industries, where firms strive for dominance in the industry by strategically positioning themselves as monopolies, sports leagues require mutual competition and cooperation and the preservation of healthy competitors to play against. Smaller markets, such as Kansas City, San Francisco, Oakland, and Anaheim would not survive the profitability of markets like Los Angeles, New York or Chicago, leaving the Dodgers, Yankees, Mets, Cubs, and White Sox to play against one another.

The competitive balance tax first appeared during the 1997 MLB season. Its purpose was to increase parity in baseball by holding down salaries. If teams elect to exceed a set spending limit on salaries, so the theory goes, they must pay a tax to the league on the funds spent in excess of that limit. It is thought that the tax will discourage such spending and teams will voluntarily concede to a self-enforcing salary cap. Secondly, if the league redistributes funds earned through this tax to poorer, less competitive teams, the incoming revenue will likely enable small market teams to spend more on salaries and increase competitiveness.

The competitive balance tax failed the league in both respects. “Free agent salaries rise for one reason: an owner believes that he/she will be more profitable by upping the bid to sign a player than by allowing the individual to sign for another team … owners have a powerful incentive to circumvent the rules that constrain their profits.” Innocuous language was the cause of the NBA salary cap agreement’s failure to prevent teams from exceeding its strict limits. Likewise, the incentive to capture and retain the most qualified talent in baseball keeps pushing teams above the competitive balance tax. Like the NBA’s regime, the tax amounts to an artificial barrier when it exists without proper incentives to deter exceeding the limit.

The competitive balance tax failed to induce more parity in baseball for the same reasons that revenue sharing failed, and there is still resistance to the imposition of a salary cap. Owners receiving funds from revenue sharing and from the competitive balance tax paid by wealthy clubs spent the money they received on items other than increasing player salaries. MLB operates as an independent cartel, free from outside interference from antitrust suits or competition from rival baseball leagues. The MLB Blue Ribbon Report recognized this fact and advised the league to use its operation as a cartel to induce more parity amongst its various members by increasing revenue sharing and taxing spending above the current competitive balance levels at even higher rates.

MLB’s Blue Ribbon Report recognized the need for a MLB minimum payroll level. To increase parity in MLB, small market teams receiving funds from revenue sharing and the competitive balance tax, must spend a minimum amount of their total revenue on players’ salaries in order to be successful against teams spending much more. Enforcement of the current revenue sharing and competitive balance tax plans without the imposition of a minimum payroll on all MLB teams makes it unlikely the league will ever see more parity.

To date, there is no minimum payroll in MLB and teams are free to allocate any percentage of their available funds to players’ salaries. Owners have incentives to continue cir-
cumventing the spending limits at the high end, exceeding the luxury tax and simply paying more in penalties to increase profitability. An individual owner valuing a players’ worth includes the amount he will have to pay by exceeding the competitive balance tax.

Small market clubs that feel they are receiving too small an amount from revenue sharing and the competitive balance tax to be competitive will continue to expend funds on anything other than player salaries; therefore, competition in MLB will remain stagnant. It is unlikely that a wealthy MLB club disappointed with the failure of revenue sharing and the competitive balance tax to increase parity in baseball will bring an antitrust suit challenging the provisions of the 2002 MLB CBA. This is an odd result, despite the fact that teams such as the Pittsburgh Pirates and Montreal Expos arguably squander their windfalls, “replacing quality players with cheaper, inexperienced players once quality players begin to earn market-level salaries.” According to Marburger, the Pirates and Expos act in their own best interests by carrying out just such a failing business model on the field, in favor of the positive effect it has on the books. Increasing profitability is the bottom line for any firm, including every one of the MLB clubs, and as such, “[t]he result (is) an increase in the number of mid-season cost-cutting trades as teams with losing records jockey to position themselves for more postseason subsidies.”

Baseball needs a new solution for increasing parity. Smarter management, not revenue sharing, increased parity in MLB. Likewise, a salary cap in MLB is unlikely because it will not have the owners’ anticipated effects of diminished player salaries or increased parity in postseason play. The competitive balance tax failed because baseball fails to improve low revenue teams’ chances of reaching the postseason. The competitive balance tax does not include safeguards (i.e., in the form of the minimum payroll) to ensure that the money reaches its intended destination, increasing the payrolls of the teams receiving the funds.

IV. Solution: Creating New Economic Incentives and Expanding the Postseason Will Increase Parity among MLB Clubs

MLB should encourage parity via the traditional way: the free market. It should create incentives to return ownership of every team’s minor league teams to the owners of the big club. Generally, minor league franchises serve as training grounds for major-league players. As such, clubs either contract with or own four to six minor league teams, and each minor league team plays at a separate level of talent and experience. Major league clubs have separate contracts with each of their affiliates, which essentially create a market for minor league teams’ allegiances to the various big clubs. Each minor league team signs and develops its minor league players at standard contract rates for its respective affiliated major league club. Baseball operates on thin ice, basing much of its business model on an antiquated exemption from antitrust litigation.

The 1998 Curt Flood Act removes labor agreements from the exemption’s coverage. It threatens the relationship between MLB and the minor leagues. The belief is that the exemption remains intact for the minor leagues. MLB teams could better develop talent in their own ranks in a vertically integrated enterprise. Developing new talent is integral to parity in the league. If MLB is thirty vertically integrated clubs from Rookie ball through to the major league teams, it can argue labor agreements with minor league players should remain exempt from antitrust litigation. Baseball colludes in any number of areas, because every successful baseball team needs at least one other healthy competitor, and greater parity in the league.

Under another revenue sharing plan, shared funds should match the investment an owner makes in the team. Teams receiving revenue remain resistant to investing more funds in the size of their payrolls. The failures of teams like the Expos and the Pirates leave many baseball fans and owners wondering whether there is any value in a revenue sharing plan implemented without a league minimum for payrolls and incentives to put revenue received back on the field and in the stands. Presently, the league’s incentive structure is completely backwards.

Any plan to cooperate and share local revenues or to tax teams that spend more than
a threshold amount must include the imposition of a league minimum payroll and economic incentives for teams that exceed the minimum payroll. Bringing team payrolls closer together requires temperance at both ends of the spending spectrum. High revenue clubs will inevitably exceed any artificial limit created by a competitive balance tax, including the payment of any penalties imposed by such a tax in a player’s valuation. If a low revenue club feels that it cannot be competitive with the funds they receive, absent a minimum payroll they must meet, owners will direct the funds elsewhere.

Teams that meet and exceed the league minimum payroll ought to receive larger shares of available league revenues. In addition, teams that reach the postseason in years after increasing their payrolls should receive a bonus. The bonus should be unavailable to those teams that already exceed the competitive balance tax. By realigning the current incentives with the makeup and allowed each of the four division winners to take a place in the postseason and an opportunity to vie for the ultimate prize.

The more dramatic change for baseball was the introduction of a wild card team from each league. In the past, baseball expanded its postseason to give more teams a realistic chance to reach the World Series and increase interest in pennant races at the end of the regular season. MLB succeeded. Baseball’s popularity increases over the progression of the baseball season, and during the evolution of the postseason, because teams stay in the hunt longer as there are four spots currently available in both leagues.

It is time for baseball to expand again, this time allowing twelve teams to reach the postseason and rewarding the regular season champions and second place teams in each league a bye during the first round of the playoffs. Such a plan would be essentially the same as the playoff system as that used by the NFL.

leagues desired results, MLB will observe a fairer distribution of wealth in the league and increased parity. If improving a firm’s bottom line requires improving its competitiveness on the field, it will take the necessary steps to do both.

Finally, MLB should expand the postseason, allowing six teams from each league to reach the playoffs and adding a first round bye for the top two teams in each league. “Eight teams, one champion” is the current tagline for MLB’s postseason. Before the imposition of the league championship in 1969, and division series in 1995, there were no playoffs to speak of, only the World Series. As the leagues expanded, they introduced divisions into MLB’s

“Baseball operates on thin ice, basing much of its business model on an antiquated exemption from antitrust litigation.”
plans to share local revenues, to institute a salary cap, and imposed a competitive balance tax on wealthy clubs all in hopes of leveling the economic playing field. As such, the redistribution does not have the desired effect on improving parity. MLB attempted to improve the level of competition through collective bargaining. The suggested solutions failed because MLB failed to enforce spending limits on low revenue clubs and correctly incentivize teams to perform on the field.

MLB should encourage increased parity in the traditional way: the free market. The league should create incentives to return ownership of every team’s minor league teams to the owners of the big club.

In the alternative, if MLB implements another revenue sharing plan, then the shared funds should match the degree of investment an owner is willing to make into a team. Finally, MLB should expand the postseason. Baseball’s failures to improve parity are a real threat to the popularity and thereby financial viability of MLB. The failures threaten the introduction of more socialism into the game’s management. MLB needs new incentives. Who knows? If MLB can improve parity while preserving a more traditional market approach, one day MLB may bring the American flag back too.

**ENDNOTES**

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3 *Id.*

4 *Id.*


7 *Id.*


10 Traub, *supra* note 8 (discussing the history of the luxury tax, but noting the league’s failed attempts at implementing a salary cap in 1994, arguably the cause of the players’ strike that year); see also Stephen Baker, *Baseball’s Losers Still Lose*, BUS. WK., Dec. 16, 1996, at 42 (describing the revenue sharing plan implemented on December 3, 1996 in the form of a luxury tax paid by wealthier clubs to the league’s poorest clubs).


13 *Id.*


19 Id.


21 VISCUSI ET AL., supra note 20, at 67.


25 Id.

26 Id. at 207–08.

27 Id. at 208.

28 Toolson, 346 U.S. 356.

29 Id.

30 Id. at 94–95.

31 Flood, 407 U.S. at 259.

32 Id. Professional baseball’s reserve system allowed owners to unilaterally renegotiate a player’s contract at the player’s existing salary upon his current contract’s expiration, if the player and his owners did not reach an agreement before the commencement of the next season. Id.

33 Id. at 284–85.

34 Id. at 285.

35 Id. at 279 (quoting Radovich v. Nat’l Football League, 352 U.S. 445, 452 (1957)).


37 15 U.S.C. § 26b(b) (“No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a)”).

38 15 U.S.C. § 26b(a) [A]greements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent [as] agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce. Id.

39 See generally, Radovich, 352 U.S. 445; United States v. Int’l Boxing Club, 348 U.S. 236 (1955); United States v. Shubert, 348 U.S. 222 (1955) (involving theatre groups seeking an exemption to traditional antitrust law under a theory that the operation of a theatre production is similar to those of organized professional baseball’s counterparts in football and boxing).


41 Id. at 309.

42 15 U.S.C. § 26b; Norris LaGuardia Act, 29


49 McCormick, supra note 46, at 1153 (citing J. WEISTART & C. LOWELL, THE LAW OF SPORTS 523 (1979)).

50 McCormick, supra note 46, at 1152.

51 Id.

52 Wright & Cochrane, supra note 48, at 65. Miller was a former chief economic advisor to the President of the United Steelworkers of America and a formidable negotiator for the MLBPA. Id.


55 Staudohar, supra note 47, at 50.


57 VISCUSI ET AL., supra note 20, at 67.

58 Uniform Player’s Contract, clause 10(a) reprinted in Flood, 407 U.S. at 260.

59 McCormick, supra note 46, at 1158 (citing 1976 Baseball Basic Agreement, Art. XVII, B(2), reprinted in Comment, Nearly a Century in Reserve: Organized Baseball, Collective Bargaining and the Antitrust Exemption Enter the ’80’s, 8 PEPP. L. REV. 313, 338 (1981)).

60 Id.

61 Staudohar, supra, note 47, at 50–51.

62 Staudohar, supra note 47, at 51; Bautista, supra note 54, at 458.

63 Kan. City Royals Baseball Corp. v. Major League Baseball Players Ass’n, 532 F.2d 615, 618 (8th Cir. 1976).

64 Id.

65 Id. at 632.

66 Id.

67 Staudohar, supra note 47, at 51.

68 Id. at 50; Bautista, supra note 54, at 460 (citing Jane Leavy, Strike is Off, Study Set on Compensation, WASH. POST, May 24, 1980, at C1); McCormick, supra note 46, at 1135–36.

69 Bautista, supra note 54, at 460 (citing Leavy, supra note 68).

70 Id. at 464.

Bautista, supra note 54, at 461–62.

Id. (citing JERRY GORMAN & KIRK CALHOUN, THE NAME OF THE GAME 153 (1994)).

Id. at 462.

Staudohar, supra note 47, at 51.

Bautista, supra note 54, at 51-52.

Id. at 51-52.

Bautista, supra note 54, at 463 (citing Sica, supra note 73, at 343 (citing Murray Chass, Baseball Negotiations Cleaning up Loose Ends, N.Y. TIMES, Mar. 20, 1990, at B11)).

Wright & Cochrane, supra note 48, at 71 (citing Smith, supra note 48 (“Labor discord managed to do what the Kaiser, Hitler and the Great Depression could not: bring the national pastime to the ground in ignominious defeat and disgrace.”)).

Staudohar, supra note 47, at 52.

Id. at 55–56.

Id. at 53–54.

Id. at 54.

Id. at 54–55.

Id. at 55 (“‘The two chief negotiators became known as ‘Fehr and Loathing,’ and their hostile relationship was a key factor in causing and prolonging the strike.’”).

Bautista, supra note 54, at 445.

Id. at 465.

Id. (citing Stephan Fatsis, Baseball Pact is Ratified by Owners, WALL. ST. J., Nov. 27, 1996, at A3).

Id. In reality, the luxury tax is not revenue sharing in the traditional sense. Strict revenue sharing would require owners with more incoming revenue to write checks to those clubs earning less. Under the luxury tax, it is technically up to each individual owner whether his club will spend over the luxury tax’s limit and incur the penalty. As such, if no team spends above the limit then revenue will not move from team to team. Economically, a team should not spend differently under either plan; however, the subtle difference should be accounted for. Id.

Id.

Id. at 465.

Id.

Bloom, supra note 47.

See id. (“The New York Yankees, the team that will pay the most into the system under the agreement because it has the highest player payroll and greatest local revenue, cast the only negative vote.”).

Staudohar, supra note 47, at 50; Bloom, supra note 47; see supra text accompanying notes 49–51.

Scott McCartney, Leveling the Field: Money Still Counts in Baseball, but with Revenue Sharing, Small-Budget Teams Are in the Game, WALL ST. J., Oct. 18, 2004, at R1 (“In a . . . TV commercial . . . Steinbrenner is hampered by a bandaged arm, apparently from signing so many large checks to his players. . . . What has really hurt . . . Steinbrenner isn’t the checks he has written for his players. Rather, it is the checks
he has written to other [MLB] teams.”).


102 See id.

103 See id.

104 See id.


106 See id. at 1.

107 See id. at 6, 8. The Blue Ribbon Report recommended that MLB share at least 40% of all member clubs’ local revenue, levy a 50% competitive balance tax on club payrolls above a fixed threshold, institute a competitive balance draft, and implement reforms to its Rule 4 draft, the existing source of new talent, and allow franchise relocation. Id. at 14–15.

108 Bloom, supra note 47.


112 Id.

113 Bautista, supra note 54, at 478 (citing Thomas C. Picher, Baseball’s Antitrust Exemption Repealed: An Analysis of the Effect on Salary Cap and Salary Taxation Provisions, 7 SETON HALL J. SPORT L. 5, 37 (1997)).

114 543 F.2d 606 (8th Cir. 1976).

115 Id. at 609. The rule was named for Pete Rozelle, Commissioner of the NFL, and granted the Commissioner’s office the final decision over how teams that lost players to free agency were to be compensated. Id.

116 Id. at 614.

117 Id.

118 45 F.3d 684 (2d Cir. 1995).


120 See generally, Brown, 518 U.S. 231; Williams, 45 F.3d 684.

121 Bautista, supra note 54, at 477 (citing Brown, 518 U.S. at 230–31; Williams, 45 F.3d at 693).

122 Id. at 477 (citing Picher, supra note 116, at 34).

123 Rick Reilly, A Low-Rent League of Their Own, SPORTS ILLUSTRATED, Mar. 15, 1999, at 138.

124 McCartney, supra note 100.

125 Id. MLB teams currently receive an equal share of 34% of local revenues, taken from every MLB team, rich and poor. Id.

126 Id. at R1, R3.

127 Levin et. al, supra note 105, at 17 (“In 1999, the range of local revenues was enormous from $12 million for Montreal to $176 for the New York Yankees.”).

128 Id.

129 Id.

130 Id. at 5 (“[T]oo many clubs know in spring training that they have no realistic prospect of reaching postseason play.”); Fatsis, supra note 9.

131 Levin et al., supra note 105, at 4.

132 Id. at 6.

133 Id. (“It takes two clubs to have a game and 30 to have today’s divisional races.”).

134 McCartney, supra note 100.

136 *See generally id.*

137 Bloom, *supra* note 47.


139 *Id.*

140 Levin et al., *supra* note 105, at 4 (the teams in the first quartile represent the top 25% of MLB teams in terms of both revenue and payroll).

141 In the American League, however, the Yankees have been quite dominant—almost exclusively representing the first quartile in the AL (the Yankees played in the ’98, ’99, ’00, ’01, and ’03 World Series, winning in ’98, ’99, and ’00).

142 Rovell, *supra* note 135; Levin et al., *supra* note 105, at 4 (“With the exception of 1998, even the World Series loser has been from payroll quartile I. (The 1998 loser, San Diego, was from Quartile II and lost in four games.)”).

143 Rovell, *supra* note 135.

144 McCartney, *supra* note 100.

145 Levin et al., *supra* note 105, at 70.

146 McCartney, *supra* note 100.

147 *Id.* (quoting MLB Commissioner Bud Selig).


149 McCartney, *supra* note 100; St John, *supra* note 148.

150 *See McCartney, supra* note 100 (referring to Billy Beane’s system, immortalized in Lewis’ book, *MONEYBALL, supra* note 148).


152 Levin et al., *supra* note 105, at 13, 19 ( “A well-managed club that demonstrates baseball acumen should allow its fans a reasonable hope that their club will be able to play and win in the postseason.”).

153 LEWIS, *supra* note 148, at 123.


155 LEWIS, *supra* note 148, at 64 (“Owners still talk about the need for a salary cap to ‘preserve’ competitive balance, but the experience of baseball under free agency makes it hard to keep arguing this with a straight face. Instead, there is more talk about the need for a cap on payrolls to keep teams profitable, especially small market ones.”).

156 Wright & Cochrane, *supra* note 48, at 65; *see supra* text accompanying notes 54–57. When Miller took over as executive director of the MLBPA in the early 1970’s, the players’ union was little more than a company union taking direction from MLB owners. JAMES QUIRK & RODNEY FORT, HARD BALL 51 (1999).

157 QUIRK & FORT, *supra* note 156, at 64.

158 *Id.* at 65.

159 *Id.* The original cap prevented teams from spending less than 47% of total league revenues divided by the number of teams in the NBA and more than 53% of total league revenues divided by the same number. *Id.*

160 *Id.*

161 *Id.*

162 *Id.* at 65–66.

163 *Id.* at 67–68.

164 *Id.*

165 *See id.*

166 *See id.*

167 *See generally* Bloom, *supra* note 47.
Bautista, supra note 54, at 464. In essence, players were separated into two pools, a pool of “A” players and a pool of “B” players depending upon their performance during the previous two years. A team losing an “A” player received an extra player in the subsequent year’s amateur draft, as well as a player from the compensation pool of players. Teams losing a “B” player received two extra selections in the next year’s amateur draft. Id.

The Blue Ribbon Report recommended that the rule should change to a scenario where, amateur players forfeit all future collegiate eligibility by declaring themselves eligible for the draft. The adoption of this rule, which is additionally justified as an incentive to education by the NCAA, would alter the leverage of amateur players and allow lower revenue clubs to draft and sign the best available players. Id.

Under normal circumstances, draft order is determined by the previous year’s finishing order in hopes that less successful teams may acquire the best available talent and be more successful in the coming year. Teams with larger amounts of revenue encourage hold outs by young players and upset the order, finishing high and still acquiring the best available talent further entrenching themselves as perennial leaders. Id.

Quirk & Fort, supra note 156, at 62–63.

Id. at 62.

Id. at 63.

Id.


The West Wing: Isaac and Ishmael (NBC television broadcast, Oct. 3, 2001) Isaac and Ishmael aired shortly after the terrorist attacks on New York City and Washington D.C. on September 11, 2001. The episode was aired in response to the tragedy, offering a somber commentary on the state of the world and remembering the lives lost in the attacks. Id.

Zeigler threw in the Lakers girls too, eventually allowing everyone to live. Id.

Quirk & Fort, supra note 156, at 182–83.

Id. at 183 (discounting the argument that MLB and sports leagues like it are ‘natural monopolies’).
on the time and place, and distribution of revenues.

193 This would hardly be an attractive sporting season for any fan to follow, especially to fans outside these large television and radio markets.

194 Marburger, supra note 186, at 193

195 Id.

196 See id.

197 See id. at 196–97.

198 Levin et al., supra note 105, at 1. A summary of the Blue Ribbon Report’s findings and conclusions included the following finding: [t]he limited revenue sharing and payroll tax that were approved as part of MLB’s 1996 (CBA) with the (MLBPA) have produced neither the intended moderating of payroll disparities nor improved competitive balance. Some low-revenue clubs, believing the amount of their proceeds from revenue sharing insufficient to enable them to become competitive, used these proceeds to become modestly profitable.

Id.

199 Marburger, supra note 186, at 193.

200 QUIRK & FORT, supra note 156, at 67–68.

201 Marburger, supra note 186, at 193.

202 Levin et al., supra note 105, at 1.

203 Id.

204 Id. at 5.

205 Id. at 6–8; see supra text accompanying notes 105–07.

206 Levin et al., supra note 105, at 8.

207 See id.

208 Id. As of 2003, the gap between the team spending the most on players’ salaries (the Yankees) and the team spending the least (the Expos) had grown to $157 million. McCartney, supra note 100.

209 See generally Bloom, supra note 47 (revealing no provisions for a league minimum salary in the most recent MLB CBA, an agreement reached after the Blue Ribbon Reports and published findings in 2000).

210 Marburger, supra note 186, at 193.

211 Id. at 194.

212 McCartney, supra note 100; Levin et al., supra note 105, at 1.

213 See Bautista, supra note 54, at 478; see also supra Part II.B.2.

214 Marburger, supra note 186, at 196.

215 Id. at 196–97.

216 Id. at 197.

217 LEWIS, supra note 148, at 123; St. John, supra note 148; see supra text accompanying notes 152–54.

218 QUIRK & FORT, supra note 156, at 62–63. Further, “player salaries instead simply reflect the value of players to teams. The value of players is high today because pro team sports is so popular with the public and because the monopoly power of leagues and teams allows them to maximize their share of the high levels of revenue from ticket sales, TV contracts, stadium deals and the like.” Id. at 92.

219 Levin et al., supra note 105, at 5.

220 See id. at 8.

221 MARKHAM & TELPLITZ, supra note 192, at 40.

222 See id. This “farm system ordinarily includes a team in each level: Rookie, class A, class AA, and class AAA.” Id.

223 See id. The current system allows a franchise to affiliate with another parent major league club and switch rosters without upsetting the development of individual players. Id.

224 Stanley M. Brand & Andrew J. Giorgione, Symposium 6-4-3 (Double Play)! Two Teams Out:

225 Id. at 58.


227 See generally Levin et al., supra note 105, at 13, 41–42. It is more difficult to achieve a fair distribution of new talent without standard contracts of service available across the board. Id.

228 QUIRK & FORT, supra note 156, at 125–26; MARKHAM & TEPPLITZ, supra note 192, at 19.

229 McCartney, supra note 100; Levin et al., supra note 105, at 1, 38–39.


231 Id. at 197; see supra text accompanying notes 209–16.

232 Marburger, supra note 186, at 194.

233 McCartney, supra note 100; Levin et al., supra note 105, at 1, 38–39.


235 See LCS OVERVIEW, available at http://www.mlb.com/NASApp/mlb/mlb/history/postseason/mlb_lcs.jsp (last visited Apr. 3, 2005); see also MARKHAM & TEPPLITZ, supra note 192, at 37 (explaining that in 1978 each league maintained two divisions, each of which produced a division champion to contend in the league’s respective league championship series and that the winners of these series then contended in the World Series to determine the World Champion); DIVISION SERIES OVERVIEW, available at mlb.mlb.com/NASApp/mlb/mlb/history/postseason/mlb_ds.jsp (last visited Apr. 3, 2005).

236 St. John, supra note 148.

237 See id.

238 See id.

239 See id.

240 See id.

241 See id. (generally discussing the downsides of being a wildcard team in the NFL).

242 The NBA and NHL each allow eight teams from their eastern and western conferences to reach the postseason; 16 teams to pare down to one champion.

243 St. John, supra note 148.

244 Traub, supra note 8.

245 Id.

246 Id.

247 See generally supra Part II.B.

248 McCartney, supra note 100; Levin et al., supra note 105, at 1, 38–39.

249 If MLB is thirty vertically integrated clubs from Rookie ball all the way through to the major league teams, it has a better argument that labor agreements with minor league players should remain exempt from antitrust litigation.

250 Baseball should expand the postseason by allowing six teams from each league to reach the playoffs and adding a first round bye for the top two teams from each league.

251 Baseball needs to return ownership of minor league teams to the big clubs, reward teams committed to making an investment in competitiveness, and expand the postseason.