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GATEKEEPERS OF AMERICANA: OWNERSHIP'S NEVERENDING QUEST FOR CONTROL OF THE BASEBALL CREED

By

Mitchell Nathanson•

Introduction

John Gaherin, the chief negotiator for the owners' Player Relations Committee (PRC), addressed the congregation of owners at the December 1975 winter meetings with some sobering news: they were very likely going to lose the Messersmith arbitration.[1] He, along with Marvin Miller, the head of the Major League Baseball Players Association (MLBPA), had been invited to independent arbitrator Peter Seitz's apartment a few days earlier, following the conclusion of the hearing concerning the contested free agent status of pitchers Andy Messersmith and Dave McNally and the proper interpretation of baseball's infamous reserve clause and were told, in so many words, of this impending likelihood.[2] Technically, Seitz told both Gaherin and Miller that he would prefer not to rule at all in the case. "We're dealing with issues that are very important to both sides," he said. "This may be the most serious grievance I've ever been asked to deal with. If I decide this, somebody's going to get hurt."[3] Seitz then turned to Gaherin, reminded him of commissioner Bowie Kuhn's earlier statement that this issue was one that was more properly negotiated than arbitrated, and even volunteered to act as mediator if that would help.[4] Although Seitz addressed both Gaherin and Miller that day, the PRC chief understood what was really being said. The owners were going to lose and

Seitz was graciously offering the owners a way to minimize their losses.[5] Therefore, it was prudent to negotiate the best deal possible now rather than wait for Armageddon at Seitz's hands later.

The owners responded to Gaherin's advice by effectively hooting him out of the room.[6] No, they concluded, there would be no negotiations with the players.[7] Instead, they had more pressing business to undertake. Rather than attempt to minimize their losses by sitting down and hashing through the issues with the players, the owners decided to prepare Seitz's walking papers in advance so that they could at least enjoy the satisfaction of publicly firing him on the spot as soon as he read the decision they knew was coming.[8] They also mapped out their post-arbitration strategy which consisted of a seemingly endless succession of hopeless appeals designed to stave off the end of the world (as they had argued during the hearing was imminent should Seitz rule against them).[9] A few weeks later, Seitz proved Gaherin prescient and made official what he not so subtly hinted at earlier: the players had won the Messersmith arbitration, the reserve clause, if not dead, was on life support, and the era of free agency was about to begin.[10]

As he read his ruling, Seitz acknowledged the concerns of the owners and again proposed the solution he had suggested earlier. "It was represented to me," he began, "that any decision sustaining Messersmith and McNally would have dire results, wreak great harm to the reserve system and do serious damage to the sport of baseball…I am confident that the…damage to the reserve system can be avoided or minimized through good-faith collective bargaining between the parties."[11] Once again, his suggestion was ignored by the owners who chose instead to do nothing and wait for their previously filed appeal to be heard. When that ruling went against them as well (as they knew it

would),[12] they unsuccessfully requested a stay of the judge's order, appealed it to the 8th Circuit Court of Appeals and locked the players out of spring training.[13]

All of this despite the fact that the players were on record as saying that they were not opposed to the reserve system on principle.[14] Rather, they merely wanted to sit down and negotiate a modification of the system with the owners.[15] Negotiations with players, however, was completely out of the question as far as the owners were concerned. As New York Times columnist Red Smith so aptly put it when summarizing the owners' attitude towards the players both historically and to the present day: " 'These,' the owners…will say as they have time and time again, 'are matters best left to collective bargaining.' Then they refuse to bargain."[16]

This time, their refusal cost them dearly. After their appeals were exhausted they were left with no choice but to do what they were loath to do: negotiate with the players. Only now, they had no remaining leverage; every decision had gone against them and there was nowhere left for them to turn. They were at the mercy of the MLBPA and, as a result, eventually signed on to a system of free agency more radical than anything the players would have likely agreed to most certainly before and probably even shortly after Seitz's ruling.[17]

At first blush, things should not have gone as badly for the owners as they did in the Messersmith case. If only they had negotiated with the players when they knew they were beat, they could have agreed upon a free agency system that would have been more palatable to them and perhaps they might have even been able to preserve more of their cherished reserve clause then they were ultimately able to save. Upon closer analysis, however, the owners really had no choice. For negotiation would necessitate sitting

down with the players, acknowledging them as equals and embracing a partnership with them. And this was something so contrary to the principles underlying the foundation of the National League a century earlier and embedded thereafter that it could not even be considered by the owners during the winter of 1975-76.

This article examines owner-player relations from the founding of the National League in 1876 to the present and concludes that the owners' refusal to negotiate in the Messersmith case was merely another chapter in their quest to position themselves as the sole protectors of what has become known as the "baseball creed" and all that is symbolic of baseball as metaphor for traditional American values. In order to maintain their status as the lone gatekeepers of the American values supposedly embodied and taught by baseball, it has always been necessary for ownership to not merely distance itself from its players (who otherwise naturally would have been bestowed this title) but to belittle and disparage them in the eyes of the public. As a result, presenting an image of a partnership with them has always been an impossibility. For the National League was founded on the subservience of the players to the owners in a calculated effort to increase the social status of the owners by presenting an image to the public of a game whose purity and values were protected by the owners from ruin by the players. Creation and maintenance of this status was a primary reason many of the owners sought to associate themselves with the game and they have been at war with their players (who until the 1960's did not even realize there was even a war being waged against them) ever since.

I. Nineteenth Century: Non-Players Appropriate the Game of Professional Baseball

By the late 1850's, baseball's popularity was mushrooming both as an activity and a spectator sport.[18] Part of this was due to the joys presented by the game itself but part was likely due to the notion of the game as something uniquely American. As the country careened toward civil war, nationalism ran high and the idea of an American game, as opposed to cricket with its obvious English roots, held great appeal.[19] The emergence of baseball during this time along with the fact that there were few other native sports established enough to challenge its claim as the national game proved fortuitous.[20] As a result, Americans embraced baseball for both its aesthetic and civil appeal.

However, baseball was very much a players game. Initially, teams were "clubs" in the traditional sense of the word: fraternal social organizations comprised mainly of men from the merchant and white collar classes who used baseball as the centerpiece of grander affairs.[21] Games were played between clubs who thereafter sat down together for sumptuous feasts and polite discourse.[22] Thereafter, as the game's appeal broadened, these quaint clubs disappeared and were replaced with professional teams.[23]

Although professionalism crept into the game, it remained, at least for a time, one centered on the players themselves.[24] In 1870, the National Association of Professional Base Ball Players (the "National Association") was formed and although it was supported financially by "sports enthusiasts," it was run, in large part, by the league's players.[25] In fact, for two of the league's five-year tenure, a former player served as league president.[26] The loose organizational structure of the league quickly led to problems which destabilized it, however. Gambling, fixing of games and player "revolving" (jumping from one team to another) were rife and soon, attendance dwindled and calls for reform

could be heard from all corners.[27] With the "American game" under attack, a collection of entrepreneurs (many of them the same "sports enthusiasts" who previously were content to remain in the background) seized the opportunity to step in and use the game to advance their own standing in society.[28]

In effect, they staged, in baseball historian Harold Seymour's words, a "coup d'etat," appropriating the game from the players, forming the National League and claiming it for themselves.[29] Chief among the differences between the National League and the old National Association was the newly subordinate role of the players.[30] By 1879, the reserve rule was agreed upon by league owners which prevented revolving.[31] Of course, the clubs were free to trade, sell or release players at their whim.[32] Players were likewise granted no voice in league governance and had no right of appeal of any decision rendered against them,[33] a far cry from the old National Association days when one of their own served as president.[34] Soon, the players were removed from every aspect of the game save for the actual competition on the field. The owner decided everything else: who was to play on "his" team, what they were to be paid, who was to manage the team, and how "his" ballpark was to be run.[35] There were even instances where the owner would leave his box to argue with the umpire.[36] The "sports enthusiasts" were now front and center in America's game.

Team owners unabashedly brayed to the public, trumpeting their good deeds. They were not shy about advertising their role in creating the National League in an effort "to rescue the game from its slough of corruption and disgrace" – a condition created, under this theory, by the players themselves.[37] They took public stands whenever possible to protect the "respectable and honorable" American game by

outlawing Sunday baseball (seen as sacrilegious by the dominant WASP culture),[38] alcohol,[39] and by limiting access of the lower echelons of society to the game by increasing ticket prices, thereby making the game more appealing to the "respectable classes."[40] All of these acts were undertaken, in large measure, to place themselves in the forefront of the game; to demonstrate to the American public that it was they, rather than the players, who were the face of our national pastime. The players were merely necessary interlopers.

They were likewise not shy in disparaging the rival leagues that challenged them, of which there were numerous in the late nineteenth century, making sure to point out that these leagues were dishonoring a game that apparently only they held sacred. The upstart Union Association, formed in 1883, was disparaged as a league rife with crooked players and floated with "beer money,"[41] a sharp contrast to the teetoteling National League which banned the sale of liquor three years earlier.[42] Similarly, the American Association, formed in 1881, was discredited for its cheaper admission prices (25 cents versus 50 cents to National League games) which were alleged to attract something less than the "respectable classes" to its games.[43]

National League owners likewise sneered at the Association's allowance of Sunday games and alcohol in its grandstands – policies that ran counter to upper class WASP societal temperance and religious values – by mockingly referring to it as the "beer and whiskey circuit."[44] When the Association, much to the chagrin of the National League owners, took root and began to outdraw the Nationals by a large margin, the National League owners used the occasion to trumpet themselves once again by proclaiming in publications such as 1883's *Spalding's Guide* (run by White Stockings

owner Albert Spalding) that the American Association's success was merely due to "the revival of the public confidence induced by the gradual establishment of honest professional play under the auspices of the National League."[45]

This public presence was so vitally important to these owners because they themselves were very often shunned by the same "respectable classes" they were now courting. For the most part, team owners from the very beginning were not from old, established money.[46] Instead, they were the nouveau riche: men who worked their way up through the classes and who had attained wealth but not the status and respect that ordinarily came with it.[47] In an effort to achieve a level of social standing that was otherwise denied them, they attached themselves to "America's game" and sought to exploit it as a means towards validating their status in the eyes of the public.[48] Achieving this goal, however, required more than merely owning a professional baseball team. For these early owners (who, in many instances, were American upper class outsiders: Irish and German Jews),[49] it was necessary to promote the American and civic values of the game in an effort to acculturate themselves into upper-crust WASP society.

II. The Development of the Baseball Creed

Having wrested control of the game from their players, the owners then went about building upon the foundation that had already been laid regarding "America's game." Over the course of the next several decades, they took this concept one step further and promoted the game as not merely American in origin but one that actually is the embodiment of the values that make America great. This came to be known as the "baseball creed."[50] Essentially, the creed held that baseball contributed to individual and public welfare by "building manliness, character and an ethic of success."[51] The crowds

at games were touted (largely disingenuously given the rationale behind the increased ticket prices) as exemplifying American equality in that they intermingled people from all walks of life, from each and every class;[52] the owners were "benevolent citizens who operated their franchises out of concern for the public interest;"[53] and the American dream was alive and well in that anyone at all could become a professional baseball player provided they had the "talent and perseverance."[54] Pursuant to the creed, the virtues of the game were not limited to the ballpark. More broadly, the virtues embodied by baseball could be used to instill the proper values in America's children as well as educate immigrants as to the American way of life.[55] By owning a professional baseball team, the owners – who otherwise were largely a collection of societal outsiders -- therefore positioned themselves as the gatekeepers of the American way of life. Through this avenue, they would attempt to achieve the social standing through the back door that they had been denied at the front.

The promotion of the baseball creed led to an obvious problem, however. For if the game of baseball instills the civic virtues embodied by the very best Americans, then naturally the professional players – the most accomplished students of the sport – would be the *most* virtuous and should serve as role models for all Americans. This, however, would shine the spotlight on the players rather than the owners and provide the players with the social standing long desired by the owners. As such, this was unacceptable. In order to counter this urge, the owners set upon a conflicting course of promotion: one of trumpeting the abstract civic virtues of the game through the baseball creed on one hand, and of the incivility of the professional players on the other. They would pursue this dichotomy, unchallenged and unquestioned, through the next several decades through the

1970's when Marvin Miller finally awoke the players to the war being waged against them without their even knowing it.

Of course, the owners were not able to spread these conflicting messages on their own. They would need a mouthpiece and found a ready and willing one in the journalists that covered the games. Beginning in the late 19th century, owners and journalists banded together to simultaneously spread the baseball creed and denigrate the professional players.[56] There were two primary reasons why so many journalists were such willing accomplices. First, many writers depended on the owners for their livelihoods. Owners oftentimes paid their expenses and hired them for additional promotional work.[57] As such, they were not about to bite the hand that fed them. Second, the relationship between the media and baseball ownership was occasionally incestuous with many team executives former journalists, not the least of whom was Ban Johnson, the founder of the American League.[58] Johnson's connections with his media friends helped him establish some of his fledgling franchises. In Philadelphia, for example, two sportswriters partnered with Connie Mack and put up a substantial percentage of the money necessary to get the Athletics off the ground.[59] They continued to hold a 25% stake in the A's through the 1912 season.[60] In St. Louis, the Spink family not only ran *The Sporting News*, which regularly served as the mouthpiece of the owners, but were intermittently involved in ownership of local teams throughout the late 19th century.[61] Al Spink was later influential in the placement of the American League's Browns in St. Louis in 1902.[62]

Through the media, the owners' message of the virtues of the baseball creed was spread quickly and thickly. According to an article written in 1907: "A tonic, an

exercise, a safety valve, baseball is second only to death as a leveler. So long as it remains our national game, America will abide no monarchy, and anarchy will be slow."[63] Twelve years later, another journalist wrote: "Baseball, to my way of thinking, is the greatest single force working for Americanization. No other game appeals so much to the foreign-born youngsters and nothing, not even the schools, teaches the American spirit so quickly, or inculcates the idea of sportsmanship or fair play as thoroughly."[64] Hundreds, if not thousands, of articles in newspapers and magazines across the country would repeat these themes for decades to come.

Along these lines, journalists made very clear who was responsible for baseball's virtues. Team owners were repeatedly portrayed as smart, civic-minded people – "selfless philanthropists" -- who operated their clubs in the public interest.[65] Although the founders of the National League triumphantly claimed to have saved the game from the evils of gambling and corruption, the media throughout the years conveniently ignored the strong ties between several team owners and organized crime or other gambling interests.[66] Instead, for decades the public was fed a daily dose of virtuous team owners presiding over a virtuous game.[67]

The players did not get off so easily. The 1885 edition of *Spalding's Guide* ran an article entitled "Drunkenness in the Ranks" which bemoaned the rowdiness of the day's players.[68] Later, in 1889, it asserted that prostitutes and alcohol were the prime evils confronting the game.[69] Thus, while the misdeeds of the owners were repeatedly ignored, those of the players often made headlines. Stories of brawls, assaults on women and criminal activity were regular features in the sports pages as far back as the late 1800's.[70] In addition, owners famously set forth strict rules for their players, ordering them to

disassociate themselves from prostitutes or from "mashing" women while in uniform.[71] As a result of this type of publicity, the public formed an impression of players as, in the words of one minister, "men without character."[72] Accordingly, many of the same middle-class parents who apparently bought into the virtues of the baseball creed actively discouraged their sons from considering professional baseball as a career and their daughters from associating with professional ball players.[73] The conflicting messages sent by the owners and their journalist accomplices explains in large part why, by the early 1900's, the status of the professional game was never higher while the status of the professional player was very low.[74]

In short, the owners and the media were surprisingly effective in convincing the public to accept and reconcile this conflicting portrait of America's game: one in which the game itself promoted civic mindedness and virtue while its players somehow did not. By successfully placing this message in the minds of the public, the owners were able to use the baseball creed to promote themselves at the expense of their players. As such, they succeeded in acculturating themselves into the upper echelons of American society by achieving, through their association with baseball, a level of status that they could not otherwise achieve merely through the accumulation of wealth. Successive generations of owners throughout the 20th century would continue spreading this dichotomy until eventually, it became second nature. As a result, the very idea of even considering their players as equals was innately repugnant to them.

III. Ownership's Ongoing Subordination and Denigration of its Players

In furtherance of this conflicting portrait, team owners made certain to distance themselves from their players at every opportunity in order to convey the impression that

the players were unquestionably beneath their station. This was in evidence as far back as 1890 when negotiations between the National League, American Association and the Players League commenced. Formed as a cooperative venture between players and the "capitalists" who backed the teams (and, in some respects, harkening back to the days of the player-centered National Association), the Players League challenged the autocratic rule of the owners in the National League and American Association.[75] After a tumultuous 1890 season in which the three competing leagues endlessly fought amongst themselves to the dismay and eventual disinterest of many in their fan base, they decided to sit down and negotiate a peace.[76]

At first, each league sent a three owner delegation to the meeting, with the Players League sending three of their non-playing "capitalists" to negotiate on the league's behalf.[77] However, after the Players League insisted on sending a second delegation, this one consisting of three players, the delegations from both the National League and American Association refused to sit down with them.[78] John Montgomery Ward, one of the three Players League player negotiators, astutely dismissed the owners' official objections to their presence (i.e., that the additional negotiators would cause an imbalance in representation – six on behalf of the Players League as opposed to three each for the other leagues) as a smokescreen to the real reason for their refusal to negotiate: they simply did not wish to sit down at arms length and negotiate with players.[79] Incredulous, Ward remarked that the owners' committees for the National League and American Association included men such as Al Spalding, a former player, and questioned whether the owners "wish(ed) to go on record as saying that the occupation of ball player bars him from respectable business association with respectable men".[80] He then addressed

Spalding directly: "Mr. Spalding, are you willing to place such a stamp of infamy upon the profession of which you were for years a member and to which you owe your start in life?"[81] Although Spalding's actual response is unknown, given the reasons many of the owners sought association with professional baseball in the first place, an honest response to this question could be nothing other than an emphatic "yes!"

Team owners continued their practice of keeping the players subordinate to them (and making the public aware of this) throughout the 20th century. Nowhere was this more evident than in contract negotiations where the owners would wield the reserve clause like a saber to maintain the subservience of their players.[82] In an effort to demonstrate their control, owners routinely slashed the salaries of even their star players – many times merely because they could – and were not shy about publicly confronting and displaying their dominance over even the most popular ones. Continuing the relationship formed in the 19th century, owners frequently used their influence in the media to paint a picture of even such players as Joe DiMaggio as spoiled, pampered athletes who were not appropriately appreciative of the privilege they had been given (presumably by the owners) to participate in our national pastime.[83] *The Sporting News*, which for a time was partially subsidized by the commissioner's office, ran numerous stories to this effect.[84] This public relations campaign proved to be overwhelmingly successful as fans typically sided with ownership whenever a player had the temerity to hold out for more money.[85] From the popular perspective, it was only the players who were privileged to be associated with professional baseball.[86] There was little consideration of the possibility that the privilege might run another way as well – towards

the owners. Rather, having successfully positioned themselves as the gatekeepers of the American way of life, they were seen as having a right to be there.

Owners also asserted their superiority in other, more benign, ways. Several owners delighted in demonstrating their benevolence by doling out rewards to "deserving" players. Cardinals owner Gussie Busch, the grandson of German immigrants, provided for the post-baseball lives of Stan Musial and Roger Maris by transitioning them into the restaurant and brewery businesses respectively;[87] Dodger management would occasionally shell out money to players so that they could enjoy a night on the town.[88] Despite the fact that these were acts of kindness, they served the same purpose as the punitive contract cuts. For they demonstrated, both to the players as well as the public, who was at the helm of America's game.[89] In effect, the owners were royalty, and as royalty, were permitted to dole out patronage and punishment however they saw fit.[90] Just as it would be an unacceptable abuse of station for feudal serfs to sit down at the same table with their lords, it was unthinkable that a player would ever approach an owner as anything even remotely resembling an equal.

IV. Ownership's Manipulation of the Baseball Creed in its Continued Elevation of Itself and Subrogation of its Players

For almost a century after the National League was born, the players were largely unaware of the war being waged against them. They believed that the game being played on the field was the only game being played and that their opponents consisted solely of the players on the opposing teams. Their ignorance of the battle being waged over control of the game itself allowed the owners free reign to enlist the aid of the baseball creed to their legal advantage and to use the players as pawns to perpetuate their own

subrogation for decades. Nowhere was this more visible than in the treatment of Major League Baseball by the courts and Congress during the 20th century.

Three times during the century, the Supreme Court had the opportunity to examine baseball as it was: an industry divided into ownership and labor, complete with the issues and problems attendant to any other industry, and three times it declined to do so. Instead it chose, in opinions that ranged from the merely ridiculous to the patently illogical, to treat it as something else, in large part because of the Court's acceptance of the sanctity of the baseball creed.

Its first opportunity came about due to the emergence of yet another challenger to the throne occupied by Major League Baseball: the Federal League. Formed in 1913 outside of Organized Baseball, the Federal League initially existed as a quasi- minor league.[91] In 1914, however, it received an influx of capital, expanded and announced that while it would honor the contracts of players under contract to clubs within Organized Baseball, it would not honor the reserve clause.[92] Owing to the Federal League's relatively liberal standard player contract which offered, among other things, the carrot of free agency after ten years of Federal League service, as well as the simple presence of a rival league vying for the services of professional baseball players, war erupted between the Federals and Major League Baseball.[93] Eventually, a peace was restored that left the Baltimore Federal League club, which refused to sign the peace agreement and disband like the rest of the Federal League, with no one left to play against.[94] With no other option, it filed suit, alleging that Organized Baseball's reserve clause violated the Sherman Antitrust Act. After winning at the District Court level,[95] the D.C. Court of Appeals reversed, holding that the Sherman Act could not be violated since professional

baseball was not engaged in interstate commerce.[96] The U.S. Supreme Court, in a brief decision authored by Justice Holmes, affirmed the Appellate Court's opinion.[97]

Although acknowledging that games between professional clubs within Major League Baseball necessarily involve travel between the states and that money is involved in the transport of players and equipment, Holmes nevertheless concluded that baseball was somehow different from the myriad of industries that fell under the umbrella of the Sherman Act even though they displayed no more of a connection to interstate commerce. By straining logic and credibility, Holmes concluded (in an opinion that would later be criticized as "not one of (his) happiest days"[98]) that despite the obvious, Major League baseball games were "purely state affairs."[99] What was left unsaid was clear: that despite its obvious workings as a business like any other, there was something greater, transcendent, about baseball that made its adherence to stifling and mundane acts of legislation such as the Sherman Act unseemly. Justice Holmes, as well as his brethren on the Supreme Court, had bought into the baseball creed.

31 years later, in *Toolson v. New York Yankees,*[100] the Supreme Court would again refuse to drag Major League Baseball down to the level of a mere business. In a one paragraph decision, the Court essentially washed its hands of the matter and left the unenviable task of acknowledging that Major League Baseball was what it was: a business just like any other, to Congress.[101] Clearly, the United States Supreme Court was not about to challenge the baseball creed by holding that Major League Baseball was essentially no different than a shirt factory or an automobile manufacturer.

Finally, in 1972, the Supreme Court made explicit what it had implied earlier in *Federal Base Ball* and *Toolson.* In declining for the third time to bring Major League

Baseball under the scope of the Sherman Act, the Court in *Flood v. Kuhn*[102] finally acknowledged the absurdity of Holmes' contention that baseball was not engaged in interstate commerce but then inserted its own when it concluded that the fact that baseball is engaged in interstate commerce was nevertheless irrelevant.

Instead, it held that Major League Baseball, and the *Federal Base Ball* and *Toolson* decisions, were judicially acceptable "aberration[s]."[103] As for why this was the case, the Court, in an opinion authored by Justice Blackmun, engaged in a lengthy, rambling and syrupy retelling of the history of the game as well as providing a seemingly endless list of the game's great players "celebrated for one reason or another, that have sparked the diamond and its environs and that have provided tinder for recaptured thrills, for reminiscence and comparisons, and for conversation and anticipation in-season and off-season."[104] In addition, Ernest Thayer's "Casey at the Bat" was recalled as was the familiar refrain of "Tinkers to Evers to Chance."[105] Finally, Blackmun quoted the lower court, which, in Blackmun's opinion, put the case in the proper perspective when it wrote:

> Baseball has been the national pastime for over one hundred years and enjoys a unique place in our American heritage. Major league professional baseball is avidly followed by millions of fans, looked upon with fervor and pride and provides a special source of inspiration and competitive team spirit especially for the young.
>
> 'Baseball's status in the life of the nation is so pervasive that it would not strain credulity to say the Court can take judicial notice that baseball is everybody's business. To put it mildly and with restraint, it would be unfortunate indeed if a fine sport and profession, which brings surcease from daily travail and an escape from the ordinary to most inhabitants of this land, were to suffer in the least because of undue concentration by any one or any group on commercial and profit considerations. The game is on higher ground; it behooves every one to keep it there.[106]

The Court's opinion in *Flood* indicated the depths of which 100 years of unceasing promotion of the baseball creed had become ingrained. Because owners and journalists had proclaimed baseball to be different and pure, it ultimately became different and its allegedly fragile purity justified suspension of the ordinary rules governing the rest of American society. The players – the victims of the suspension of rules enacted to protect workers just like them – were, for the most part, none the wiser.[107] Notwithstanding their occasional bursts of independence and labor rebellion through the years,[108] the players in large part accepted their subordinate role and became convinced that they, unlike the owners, were privileged just to be a part of the game. As such they were willing accomplices in ownership's continuing effort to keep them subservient.

The owners played on this ignorance when it was Congress's turn to examine the workings of Major League baseball and actually enlisted them to justify the "bands of steel"[109] that was the reserve clause. Despite the Supreme Court's ruling in *Federal Base Ball,* the owners were aware as early as on August 27, 1946 that their reserve clause could not withstand legal scrutiny as a matter of contract law. On that date, the secretly-created Major League Baseball Steering Committee issued its report on, among other things, the validity of the reserve clause.[110] In the committee's opinion, the reserve clause was not legally enforceable for several reasons: its terms of renewal were indefinite, it lacked consideration, it was not freely bargained for, and its' insertion into player contracts was the result of an inequality of bargaining power.[111]

In order to remedy these ills, a revised reserve clause was proposed and eventually adopted that attempted to resolve the problem of indefiniteness.[112] The

problems of inequality of bargaining power and lack of consideration remained, however. It was here that the owners required the cooperation of their players to ensure their continued subordination through the reserve clause. As noted in the Committee's report:

> …(i)t is extremely desirable that the players' representatives recognize that the reserve rules are for the benefit of players, as well as Club owners. Consequently the Committee, in its meeting with the representatives of the players, took the initiative to secure such a statement.
>
> If a uniform contract can be adopted which is in general satisfactory to both parties to the contract, and if the players' representatives agree that the reserve clause is necessary for the protection of the industry and benefits the player – your counsel and your Committee believe that the Courts will be inclined to recognize this fact and uphold the validity of the option clause.[113]

As noted in the above excerpt, the Committee approached the players' representatives even before the report was issued and cajoled them into cooperating with them in extolling the reserve clause's benefits. Later, in 1951, when Congress came calling in the form of New York Representative Emanuel Celler's Subcommittee on Monopoly Power, many of the greatest names of the game's past and present willingly testified as to the benefits of the clause.[114] Ty Cobb, Pee Wee Reese, Lou Boudreau, Fred Hutchinson and others all testified that they did not believe that the game could survive without it.[115] In 1957, more players were called to testify in hearings before the Antitrust Subcommittee.[116] Once again, player after player testified that a system that artificially suppressed their salaries and restricted their professional movement actually worked to their benefit.[117] Only Jackie Robinson, whose status as a baseball and American pioneer perhaps enabled him to see things other players could not, spoke out against it.[118] For the rest, however, they were blissfully content to accommodate the owners in their battle to uphold the reserve clause; to be used as pawns to ensure their continued subservience to the owners. Without being aware of it, they were willing

accomplices in the battle against them. It would not be until the late 1960's that Marvin Miller would change all of this.

V. The Education and Rebellion of the Players in the 1960's and '70's

It took Marvin Miller to educate the players as to the battle over control of the game itself that they had ignored, and were being clobbered in, up to that point. He showed them how management acted in concert to hold their salaries down and to bend the rules whenever convenient.[119] If there was a "tight fraternity" in baseball, Miller succeeded in showing his troops that it existed among the owners themselves rather than within the hierarchy of any one particular team.[120] At the same time, he pounded his message into the players that *they* "were the game,"[121] rather than the owners and that, if anything, it was the owners who should feel privileged just to be a part of it. The players, due to their unique skills, were entitled to their association with the game and a generous cut of the profits that went with it. He allowed them to see how much they had been brainwashed by the owners' rhetoric, to the point where some players, such as Al Kaline who reportedly refused a salary of $100,000 in 1947, actually would refuse pay increases on the grounds that they were undeserving.[122] In short, he made visible what had previously been transparent.

Curt Flood's suit against Major League Baseball was emblematic of their recognition of this battleground away from the playing field. In his December, 1969 letter to commissioner Bowie Kuhn outlining the rationale behind his refusal to abide by his trade to Philadelphia for the 1970 season, Flood spoke not of privilege but of rights:

> After 12 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. I believe that any system that produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and the several states.[123]

Because he had a right to play major league baseball, Flood contended that he was entitled to have a say as to where he would ply his trade. If there was any privilege involved, it would come to the owner fortunate enough to own the team Flood chose to play for. Although he would ultimately lose in the Supreme Court, Flood's suit was successful in demonstrating to the owners that the battle lines were finally being drawn.

Therefore, it should have come as no surprise that this salvo would be seen as an affront to the owners, for it challenged the very framework which built the National League and supported Major League Baseball for nearly a century. The owners' social standing was being contested and the battle for control of America's game -- and everything that symbolically went along with that -- was on. Ceding even an inch of ground to the players on any issue, even if it otherwise made sound business or practical sense, was absolutely out of the question because to do so would be contrary to the principles that underlay the foundation of the game, at least from the owners' perspective.[124] By the time the Messersmith arbitration rolled around in 1975 the owners could see no option other than the maintenance of a hopeless hard line. Anything more conciliatory would be seen as nothing less than complete capitulation.

After their loss in the Messersmith arbitration, the owners no doubt feared that they would soon find themselves in a position similar to the one occupied by the "sports enthusiasts" in the old National Association back in the 1870's -- one in which they merely supplied the capital for a game run by their players, without the concomitant glory and adulation they had grown accustomed to. Therefore, it was not surprising that they reacted to the dawn of the free agency era in much the same way their predecessors did a century earlier when faced with a different sort of tumult: by asserting once again that the

sanctity of America's game was being threatened by the ruinous players and that it was up to them to step up and save it. Their comments on the evils of free agency focused heavily on the eventual damage that would be done not to them but to the game itself: how the sacred ties between a community and its players would be severed forever, how competitive balance would be a thing of the past[125] (conveniently ignoring the 29 pennants and 20 world championships won by the Yankees in the 43 year period between 1921-1964),[126] and how, if left to their own devices, the players would soil that which was otherwise pure. In the words of Red Smith, "(t)hey suggest(ed) that ballplayers are not decent human beings but creeps with no allegiance to anyone, and also gypsies who enjoy dragging their families from town to town".[127] By contrast, it was the benevolent owners – the gatekeepers of American values – who had the public interest at heart.

In baseball, as in life, everything old is inevitably new again.

NOTES

• Associate Professor of Legal Writing, Villanova University School of Law.
[1] John Helyar, *Lords of the Realm* (New York: Villard Books, 1994), 166-69.
[2] Ibid.
[3] Ibid., 167.
[4] Ibid.
[5] Ibid., 166-169.
[6] Ibid.
[7] Ibid.
[8] See Joseph Durso, *Arbitrator Frees 2 Baseball Stars*, New York Times, December 24, 1975.
[9] Helyar, *Lords of the Realm*, 161.
[10] Durso, *Arbitrator Frees 2,* New York Times, December 24, 1975.
[11] Ibid.
[12] *Arbitrator Upheld in Baseball Ruling,* New York Times, February 5, 1976. "Baseball administrators had expected to lose the case. 'If you had sat in the courtroom and listened to the proceedings, you would have expected it,' said Joe Burke, general manager of the Kansas City Royals, who filed the owners' suit."
[13] See Murray Chass, *Threat Now Looming For Spring Training*, New York Times, December 25, 1975; *Arbitrator Upheld In Baseball Ruling,* New York Times, February 5, 1976; *Owners File Appeal in Reserve Ruling,* The Washington Post, February 13, 1976; *Spring Training Start Postponed by Owners,* The Washington Post, February 24, 1976.

[14] See Chass, *Threat Now Looming,* New York Times, December 25, 1975.
[15] Ibid.
[16] Red Smith, *Christmas Spirit,* New York Times, December 24, 1975.
[17] For the terms of the settlement, see Allen Lewis, *Ball Players, Owners, Reach Labor Accord,* Philadelphia Inquirer, July 13, 1976.
[18] Harold Seymour, *Baseball: The Early Years,* (New York, Oxford University Press, 1989), 24-25.
[19] Ibid., 31.
[20] Ibid.
[21] Ibid., 15.
[22] Ibid.
[23] Ibid., 59-61.
[24] Steven A. Riess, *Touching Base: Professional Baseball and American Culture in the Progressive Era,* (Illinios: University of Illinois Press, 1999), 158; Seymour, *Baseball: The Early Years,* 60.
[25] Riess, *Touching Base,* 158.
[26] Seymour, *Baseball: The Early Years,* 60.
[27] Ibid. 75.
[28] Bruce Kuklick, *To Every Thing A Season: Shibe Park and Urban Philadelphia 1909-1970,* (New Jersey: Princeton University Press, 1993) 13.
[29] Seymour, *Baseball: The Early Years,* 80.
[30] Ibid.
[31] Reiss, *Touching Base,* 159-60.
[32] Ibid.
[33] Seymour, *Baseball: The Early Years,* 83.
[34] Ibid., 60.
[35] Ibid., 190.
[36] Ibid.
[37] Ibid., 81.
[38] Reiss, *Touching Base,* 135.
[39] Seymour, *Baseball: The Early Years,* 91.
[40] See Reiss, *Touching Base,* 33.
[41] Seymour, *Baseball: The Early Years,* 150.
[42] Ibid., 92.
[43] Ibid., 143
[44] Ibid., 144.
[45] Ibid.
[46] Ibid., 98.
[47] Ibid.
[48] Ibid. See also Kuklick, *To Every Thing a Season,* 13.
[49] Reiss, *Touching Base,* 98.
[50] Ibid., 7-8, 17.
[51] Ibid., 17.
[52] Ibid., 7.
[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] See Reiss, *Touching Base,* 12.
[57] Ibid., 54.
[58] Ibid., 54-55.
[59] David Jordan, *The Athletics of Philadelphia: Connie Mack's White Elephants, 1901-1954,* (North Carolina: McFarland & Co., Inc., 1999), 15.
[60] Ibid., 58-59.
[61] Peter Golenbock, *The Spirit of St. Louis: A History of The St. Louis Cardinals and Browns,* New York: HarperEntertainment, 2001), 9, 56.
[62] Ibid., 56.
[63] Reiss, *Touching Base,* 22, quoting Atlanta Constitution, April 14, 1913.

[64] Ibid., 29, quoting Atlanta Constitution, July 18, 1919.
[65] Ibid., 54-55.
[66] Ibid., 76, 87-88. See also Seymour, *Baseball: The Early Years,* 80-81.
[67] Reiss, *Touching Base,* 54-55, Seymour, *Baseball: The Early Years,* 80-81.
[68] Reiss, *Touching Base,* 163.
[69] Seymour, *Baseball: The Early Years,* 331.
[70] Ibid., 331-32.
[71] Ibid.
[72] Ibid. The minister's 1889 speech went on to assert that such men "would engage in no legitimate occupation."
[73] Reiss, *Touching Base,* 163-64.
[74] Ibid., 167-68.
[75] See Seymour, *Baseball: The Early Years,* 221-239.
[76] Ibid., 240.
[77] Ibid., 242-44.
[78] Ibid.
[79] Ibid.
[80] Ibid., 243.
[81] Ibid.
[82] See generally, Helyar, *Lords of the Realm.*
[83] Ibid., 10, 91-92.
[84] Ibid., 91-92.
[85] Ibid., 10.
[86] See Helyar, *Lords of the Realm,* 91.
[87] Ibid., 99.
[88] Ibid., 88.
[89] See Helyar, *Lords of the Realm, 157.* Helyar noted how the owners enjoyed their paternalistic relationship with the players and did not want to see an end to that relationship.
[90] Ibid., 97. Helyar noted that, for example, Cardinals owner Gussie Busch "wasn't a Lord of baseball only, he was corporate royalty." As such, he enjoyed the idea that all of the perks doled out on his behalf were from his "beneficent hand".
[91] Harold Seymour, *Baseball: The Golden Age* (New York: Oxford University Press, 1989) 199-200.
[92] Ibid., 201.
[93] Ibid., 201-213.
[94] Jeffrey Gordon, *Baseball's Antitrust Exemption and Franchise Relocation: Can a Team Move?* 26 Fordham Urb. L.J. 1201, 1207 (note 46) (1999).
[95] *See National League of Prof'l Baseball Clubs v. Federal Baseball Club of Baltimore, Inc.,* 269 F. 681, 684 ((D.C. Cir. 1920).
[96] Ibid.
[97] *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs,* 259 U.S. 200 (1922).
[98] *See Salerno v. Am. League of Professional Baseball Clubs,* 429 F.2d 1003, 1005 (2d Cir. 1970).
[99] Ibid., 208.
[100] 346 U.S. 356 (1953) (per curiam).
[101] Ibid. The Court held that Congressional inaction in the ensuing 31 years since *Federal Base Ball* had served to cement Major League Baseball's antitrust exemption and that it was up to Congress, not the court, to destroy it.
[102] 407 U.S. 258 (1972)
[103] Ibid., 282. "Federal Baseball and Toolson have become an aberration confined to baseball.
Even though others might regard this as 'unrealistic, inconsistent, or illogical, *see* Radovich v. National Football League, 352 U.S. 445 (1957), the aberration is an established one, and one that has been recognized not only in Federal Baseball and *Toolson*, … and Radovich, as well, a total of five consecutive cases in this Court. It is an aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of stare decisis, and one that has survived the Court's expanding concept of

interstate commerce. It rests on a recognition and an acceptance of baseball's unique characteristics and needs."

[104] Ibid., 262.

[105] Ibid., 263-64.

[106] Ibid., 266-67 (quoting *Flood v. Kuhn,* 309 F. Supp 793, 797 (S.D.N.Y. 1970)).

[107] This is not to suggest that players never rebelled against the inequities in the system that they were forced to endure. For example, there were numerous failed attempts to unionize. In 1922, the National Baseball Players Association of the United States was created and although union membership purportedly ran as high as 225 members at one point, it eventually disbanded very quickly due to a lack of solidarity. *See* Seymour, *Baseball: The Golden Age,* 355-56. Later, in 1946, lawyer Robert Murphy formed "The American Baseball Guild" which attempted to unionize the players, team by team. His attempt began and ended with the Pittsburgh Pirates who showed considerable support for the union but ultimately fell 4 votes shy of the necessary two-third majority needed for it to be certified as the Pirates players' bargaining agent. *See* Helyar, *Lords of the Realm*, 10-11. Ultimately, Marvin Miller would succeed where Murphy failed by first obtaining a ruling by the National Labor Relations Board that Major League Baseball was subject to the National Labor Relations Act in 1969 and then having the Major League Baseball Players Association recognized as the players' certified bargaining agent under the NLRA. *See* Ibid., 455-56.

[108] Ibid.

[109] *See League Contract Unfair,* The Washington Post (May 7, 1902) (discussing the trial court's ruling in favor of former Cardinal players Jack Harper, Bobby Wallace and J.E. Hedrick and against the St. Louis Cardinals, who sought to enforce the two-year contract of Harper that he sought to breach, as well as the reserve clause against Wallace and Hedrick whose contracts expired at the conclusion of the 1901 season but who were nevertheless, at least according to the Cardinals, reserved to them for all eternity. The article quotes the oral opinion issued by Judge Talty of the trial court.)

[110] Ford Frick, Sam Breadon, Philip Wrigley, William Harridge, L.S. MacPhail, Thomas Yawkey, *Report of Major League Steering Committee For Submission To the National and American Leagues at Their Meetings in Chicago,* (August 21, 1946). This report may be accessed via http://www.businessofbaseball.com

[111] Ibid., 10-11.

[112] Ibid., 11.

[113] Ibid., 11-12.

[114] H.R. Subcomm. on Monopoly Power, Committee on the Judiciary, 82nd Cong. (July, August, October, 1951). A transcript of these hearings can be accessed via http:// www.businessofbaseball.com/cellerhearings1.htm

[115] Ibid.

[116] H.R. Antitrust Subcommittee Hearings, Committee on the Judiciary, 85th Cong. (August 1, 7, 8, 1957). A transcript of these hearings can be accessed via http:// www.businessofbaseball.com/cellerhearings2.htm

[117] Ibid.

[118] Ibid. Robinson stated that although stars such as Ted Williams, Mickey Mantle and Stan Musial had testified that the reserve clause had been beneficial to them, it must be remembered that they received large salaries as superstars on their clubs. Robinson questioned whether players of lesser stature would feel the same way about the reserve clause due to their smaller salaries

[119] Seymour, *Baseball: The Early Years*, 89-90.

[120] See Ibid. In discussing the prevailing attitude of the general managers ("GM's") up through the 1960's, the immediate superiors of the players and oftentimes the conduit from the owners, Helyar remarked: "The GM's were united in their commitment to the existing order, and their own tight fraternity."

[121] Ibid., 81.

[122] Ibid., 12.

[123] Ibid., 103-04.

[124] Ibid., 221-22. Helyar noted that, when it came to the issue of free agency, money wasn't the issue. "No, the real issue was control."

[125] Red Smith, *In the Spring an Owner's Fancy,* New York Times, March 19, 1976.

[126] Henry D. Fetter, *Taking on the Yankees,* (New York: W.W. Norton & Co., 2003), 8.

[127] Smith, *An Owner's Fancy,* New York Times, March 19, 1976.