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THE RISE OF AMERICA'S TWO NATIONAL PASTIMES: BASEBALL AND THE LAW

*Cleta Deatherage Mitchell**

LEGAL BASES: BASEBALL AND THE LAW. By *Roger I. Abrams*. Philadelphia: Temple University Press. 1998. Pp. xi, 226. \$27.95.

Mark McGwire's seventieth home run ball sold at auction in January of this year for \$3,005,000.¹

In late 1998, Baltimore Orioles owner Peter Angelos sued a former Orioles manager and his daughter in the Circuit Court of Cook County, Illinois. Angelos alleged that the original lineup card from the 1995 game when Cal Ripken, Jr., broke Lou Gehrig's consecutive game record belongs to the Orioles, not to the former manager and certainly not to his daughter.²

There may be no crying in baseball,³ but there *is* money. And wherever earthly treasure gathers two or more, a legal system arises. From this confluence of forces is born *Legal Bases: Baseball and the Law*, a recent addition to that burgeoning genre of nonfiction works about the business and law of baseball.

Legal Bases intends to inform a lay audience about basic legal concepts that have shaped baseball as well as other aspects of American law and culture: antitrust law and monopolies, collective bargaining, labor arbitration, enforcement of private contractual rights, and an overview of the civil justice system. In the process, author Roger I. Abrams⁴ introduces *Legal Bases* as a teaching tool that uses baseball as the backdrop to discuss the role in American society of law, legal institutions, and private ordering in the development of a significant American business enterprise (p. 3).

In the preface, Abrams writes that he knew as a Little Leaguer "that baseball would be an important part of my life. . . . To combine baseball and law in one project fulfills this Little Leaguer's

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1. See WASH. TIMES, Jan. 13, 1999, at B1 ("\$3 million: McGwire's 70th HR ball is auctioned off").

2. See *Lineup Card Decision Delayed*, STREET & SMITH'S SPORTSBUSINESS J., Jan. 4-10, 1999, at 40.

3. See LOWELL GANZ & BABALOO MANDEL, *A LEAGUE OF THEIR OWN* (1992).

4. Dean of the Rutgers Law School, professor of sports law, and self-described ardent baseball fan. Abrams also serves as a major league baseball salary arbitrator, having decided such cases as those involving Ron Darling (pitcher) and Brett Butler (outfielder). P. ix.

dream" (p. ix). He goes on to advise that "[i]t is a lawyer's responsibility as a guardian of [the legal] system to teach the public about the legal process. . . . Baseball is tailor-made for this educational purpose, filled with colorful characters and perfect examples of the legal process in action" (p. x). Abrams's discussion "draws on both baseball and the legal process [to] show[] the law in operation, for better or for worse" (p. 3).

Baseball metaphors abound here as in most writing on the national pastime.⁵ Abrams organizes *Legal Bases* around nine "All-Stars" culled from baseball's 150 years. Each represents a different chapter in baseball's legal history and embodies a different legal concept important to the development of the law relative to baseball. As this book evidences, the term "baseball nonfiction" can be oxymoronic. Well-written, interesting, informative, and often entertaining, *Legal Bases* is nonetheless shaded by assorted baseball "fictions" and liberal political orthodoxy.

BASEBALL AND THE RISE OF AMERICAN LEGAL PROCESS

John Montgomery "Monte" Ward

The opening chapter traces the origins of baseball in the nineteenth century and the rise of the National League and organized baseball. Abrams relates those events to the beginnings of the labor union movement and issues related to business regulation through the legal process.

Connecting this era of baseball and the law is Monte Ward, a pitcher for the New York Giants in the mid-1880s who, according to Abrams, was "[t]he only player in major-league history to win 100 games as a pitcher and collect 2,000 hits as a batter" (p. 7). "Ward, a Columbia-trained lawyer, organized the first players' union and created the ill-fated Players League that challenged the National League in 1890" (p. 7).

Abrams, discussing the efforts led by Ward in the 1890s to organize professional baseball players for collective representation, describes how and why those efforts failed. Abrams states that "[a]n organization of players would not play an important role again until the 1960s."⁶

5. Some examples of titles for otherwise serious legal scholarship on the subject of law and baseball: Joseph A. Kohm, Jr., *Baseball's Antitrust Exemption: It's Going, Going . . . Gone!*, 20 NOVA L. REV. 1231 (1996); Eric D. Scheible, Note, *No Runs. No Hits. One Error: Eliminating Major League Baseball's Antitrust Exemption Will Not Save the Game*, 73 U. DET. MERCY L. REV. 73 (1995); Kathleen A. Turland, Note, *Major League Baseball and Antitrust: Bottom of the Ninth, Bases Loaded, Two Outs, Full Count and Congress Takes a Swing*, 45 SYRACUSE L. REV. 1329 (1995). You get the picture.

6. P. 25. For a more detailed and illuminating discussion of how the MLBPA ultimately came into existence and established itself on behalf of the players, see MARVIN MILLER, *A WHOLE DIFFERENT BALLGAME* (1991).

Initially, Abrams is sympathetic to the players' plight as underpaid underdogs for most of the game's history, a tenor that is much diminished by Chapter Nine and the accounts of modern baseball. This shift closely tracks the evolution of baseball fans' attitudes generally. It seems that most fans favored the players' getting their fair share of the baseball financial pie right up until the time when it actually started to happen.

BASEBALL AND THE LAW OF CONTRACTS

Napoleon "Nap" Lajoie

Nap Lajoie, who Abrams calls "[t]he greatest second baseman of all time,"⁷ is the second "batter" in Abrams's All-Star baseball legal history "lineup." In addition to his skills on the field, Lajoie is remembered for his role in one of the early legal proceedings involving baseball. Lajoie left the National League Phillies in 1901 to play for the Athletics in the newly formed American League, triggering a legal dispute over Lajoie's rights and obligations under his player contract (pp. 27, 31-36). This chapter, and this era in baseball, cover the full breadth of first-year law school curriculum: private contracts and their enforcement, with brief descriptions of the federal and state court systems, the notion of full faith and credit, negative injunctions, consent, mutuality, specific performance, and the general circumstances under which courts will enforce private agreements.

The Pennsylvania Supreme Court in 1902 found in favor of the Phillies in their suit to keep Lajoie from playing for the Athletics, determining that Lajoie was not "readily replaceable" by another player at his position (p. 34). On the issue of "mutuality," the court determined that, while the terms of the contract were not necessarily equal as between the parties, because Lajoie was paid a "large salary" by the Phillies,⁸ the contract was enforceable through the issuance of a negative injunction. Thus, while the court could not and did not order Lajoie to play for the Phillies, it enjoined him from playing for the Athletics, or any other team (pp. 34-36). What Abrams calls the "[c]urious [a]ftermath" of the Lajoie decision was that the Athletics then traded Lajoie to the Cleveland Blues (p. 40). The Ohio courts refused to apply the legal principle of "full faith and credit"; they declined to enforce the Pennsylvania court's deci-

7. P. 27. Lajoie was an original inductee into the Baseball Hall of Fame at Cooperstown as one of the Eleven Immortals. Pp. 29-30. Baseball enthusiasts might argue, however, about his being the greatest second baseman of all time, citing Rogers Hornsby as a possible competitor for that title. See BILL JAMES, *WHATEVER HAPPENED TO THE HALL OF FAME?* 174 (1995).

8. See p. 35 ("Although not paid as much as he wished, Lajoie's salary was, in fact, more than ten times the earnings of the average laborer of the time.").

sion. Lajoie consequently continued to play for Cleveland, except when the team traveled to Pennsylvania, where he was prohibited by that state's highest court from playing for any club but the Phillies. The signing in 1903 of the National Agreement between the National and American Leagues allowed Lajoie to play for his team even in Pennsylvania (pp. 40-41).

BASEBALL AND THE ANTITRUST LAWS

Curt Flood

At the heart of *Legal Bases* is one of the enduring myths of baseball, beginning with the discussion in Chapter Three. Much of the recent literature on baseball describes how the United States Supreme Court, in one of its worst decisions ever, ruled in 1922 that the Sherman Antitrust Act did not apply to baseball because baseball was not engaged in interstate commerce. Thus armed, the baseball owners were allowed to function as a cartel for the next fifty years, running roughshod over the baseball players and the sport itself. There happens to be enough truth in the story of the ruling's impact to foster general agreement of its validity.⁹

It is an unfortunate shortcoming of the book, however, that someone of Abrams's apparent legal scholarship does not examine this particular baseball legend in any depth. The absence of serious contemplative discussion of antitrust regulation of baseball is disappointing and renders the book less valuable than it otherwise might have been.

Chapter Three explains the economics of and justifications for the reserve system,¹⁰ the origins of antitrust law, and such legal concepts as restraint of trade and stare decisis. More importantly, the chapter focuses on the Supreme Court's decisions in three antitrust cases, now known as the "baseball trilogy": *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*,¹¹ *Toolson v. New York Yankees*,¹² and *Flood v. Kuhn*.¹³

Federal Base Ball arose in 1915 when the Federal Base Ball League organized to compete against the existing leagues: the National League, the oldest league in Organized Baseball, and its

9. For a thorough and wholly unsympathetic history of the baseball owners, see JOHN HELYAR, *LORDS OF THE REALM: THE REAL HISTORY OF BASEBALL* (1994).

10. The reserve system is based on a clause in the baseball player's contract that "reserves" his services to the contracting ball club for not only the original contract year, but also for each year thereafter that the contract is extended at the unilateral discretion of the club. See pp. 45-47; MILLER, *supra* note 6, at 238-39.

11. *Federal Base Ball Club of Baltimore, Inc. v. National League of Prof. Baseball Clubs*, 259 U.S. 200 (1922).

12. *Toolson v. New York Yankees*, 346 U.S. 356 (1953) (mem.; per curiam).

13. *Flood v. Kuhn*, 470 U.S. 258 (1972).

junior counterpart, the American League. The three leagues, after some years of competing, and, after federal antitrust litigation had been filed by the Federal League in Chicago in January 1915, settled their differences in December 1915 (p. 55). This was due in no small part to the death of one of the Federal League's key financial backers in October 1915.¹⁴ The club in Baltimore, however, refused to join the settlement and initiated its own lawsuit. The Baltimore club argued unsuccessfully that the National and American Leagues had engaged in illegal business practices against it in violation of the Sherman Act (pp. 56-58). The Supreme Court's test in *Federal Base Ball* was whether a baseball game was a "good" or "product" being imported from one state to another. Using that test, the High Court concluded that a game of baseball is primarily an exhibition, the transport of which across state lines is merely incidental to the enterprise.¹⁵ While commentators have long derided the Court's decision in *Federal Base Ball*,¹⁶ some analysts have observed that the holding in *Federal Base Ball* can only be read to extend to a "particular business at a particular time — the business of exhibition baseball as it existed in 1922 — and [that it] was not intended to extend further."¹⁷

Other lower court decisions after 1922 considered and applied *Federal Base Ball*,¹⁸ but the Supreme Court did not review the application of the federal antitrust laws to organized baseball again until *Toolson* in 1953.¹⁹ This time, the fact situation presented to the Court was not the organization of the leagues, but the reserve clause in player contracts (p. 60).

The *Toolson* Court determined that for more than thirty years organized baseball had relied on *Federal Base Ball* and the industry's "understanding that it was not subject to existing antitrust legislation." It concluded that "if there are evils in this field which now warrant application to [organized baseball] of the antitrust laws it should be by legislation."²⁰ Recognizing that "Congress . . . had the [*Federal Base Ball*] ruling under consideration but [had] not seen fit to bring such business under these laws by legislation hav-

14. See Joseph J. McMahon, Jr. & John P. Rossi, *A History and Analysis of Baseball's Three Antitrust Exemptions*, 2 VILL. SPORTS & ENT. L. F. 213, 234 (1995).

15. See *Federal Base Ball* 259 U.S. at 209.

16. P. 58; see also BASEBALL AND THE AMERICAN LEGAL MIND 78 (Spencer Weber Waller et al. eds., 1995).

17. See McMahon & Rossi, *supra* note 14, at 236.

18. See *Martin v. National League Baseball Club*, 174 F.2d 917 (2d Cir. 1949); *Gardella v. Chandler*, 172 F.2d 402 (2d Cir. 1949).

19. See *Toolson v. New York Yankees* 346 U.S. 356 (1953).

20. *Toolson*, 346 U.S. at 357.

ing prospective effect,” the Court in 1953 declined to reverse *Federal Base Ball*.²¹

Crucial to a complete understanding of the legal, political, and economic history of baseball is the context in which *Toolson* was considered by the High Court. Abrams barely addresses this aspect. Without a thorough account of the proceedings in Congress at the time of *Toolson*, it is difficult to understand the Court’s decision. But given the broader picture, it is evident that the Supreme Court was not acting in a vacuum. In 1951 Congress had begun hearings into various aspects of baseball and its antitrust exemptions. Hearings on the subject continued in 1952, 1953, 1954, 1957, 1958, 1959, 1960, 1961, 1964, and 1965, as Congress sought to “put pressure on baseball to do various things: to expand, to improve the situation of the minor leagues, or to bend to constituent desires for more television or radio coverage.”²² For the first time in the sport’s history Congress began to examine how baseball was organized and how baseball decisions were made.

It is against this screen that the Supreme Court in *Toolson* decided to let Congress, not the courts, decide the issue of the applicability of the antitrust laws to baseball. Abrams concludes that the Court’s decision in *Toolson* is “indefensible” (p. 62). Abrams argues that “Congress’s failure . . . to act is perfectly understandable” because, in Abrams’s view,

[b]aseball was too hot an issue to address, and members of Congress [feared] the owners’ . . . clout. Although Congress may be excused for reacting in a political manner — it is, after all, supposed to respond to political forces — nothing can excuse the Supreme Court’s timidity or the duplicity of baseball counsel in misleading Congress. [p. 62]

It is Abrams’s analysis that is indefensible. Regardless of the subject matter, such ill-conceived drivel is precisely the problem with American jurisprudence in the late twentieth century. There is no constitutional authority for the federal judiciary to supplant the legislative branch of government in order to protect Congress from political forces.²³

21. See *Toolson*, 346 U.S. at 357.

22. See JAMES EDWARD MILLER, *THE BASEBALL BUSINESS* 6 (1990).

23. See *Judicial Activism: Defining the Problem and Its Impact: Hearings on S.J. Res. 26 Before the Subcomm. on the Constitution, Federalism, and Property Rights of the Senate Comm. on the Judiciary*, 105th Cong. 21 (1997) (statement of former United States Attorney General Edwin Meese III) (“[T]o combine judicial power with executive and legislative authority was the ‘very definition of tyranny’ . . .” (quoting James Madison)); *id.* at 22 (“‘The Founding Fathers were clear on this issue. For them, the question involved in judicial restraint was not — as it is not — will we have liberal courts or conservative courts? . . . The question was and is, will we have government by the people?’” (quoting President Ronald Reagan)).

Yet that is precisely what Abrams advocates here. Whatever the issue, Congress is constitutionally charged to make legislative determinations,²⁴ even if such decisions are difficult and even if the decision is to maintain the status quo. For the federal judiciary to be cast in the role of substituting its judgment for that of Congress in order to spare the national legislature political repercussions is certainly not in keeping with any theory of thoughtful jurisprudence. It is cause for serious dismay that the dean of a respected law school envisions such a constitutional duty for the Supreme Court and advances that notion to the public as a self-described “guardian” of the legal system (p. x).

The third and final Supreme Court decision in the “baseball trilogy” came in 1972 in *Flood*,²⁵ when the Court essentially restated its decision in *Toolson* that any change in baseball’s legal status should come from Congress. The Court did, however, limit the application of *Flood* solely to professional baseball.²⁶

Curt Flood was an outfielder for the St. Louis Cardinals, traded to Philadelphia as part of a multiplayer swap on October 7, 1969. Flood refused to report to the Phillies for personal and philosophical reasons, including a concern about the hostility of Philadelphia fans to black players. He wrote to baseball Commissioner Bowie Kuhn: “‘After 12 years in the Major Leagues, I do not feel I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen’” (p. 65). Flood, with the help of a reorganized Major League Baseball Players Association (MLBPA), brought an action in federal court challenging baseball’s judicially created exemption from antitrust law. The litigation ultimately resulted in a decision against Flood by the Supreme Court, leading the players’ union to understand, according to Abrams, that “if [they] were going to improve their lot, it would have to be through collective action, economic strength, and private dispute resolution, not through traditional court litigation based on public laws” (p. 69).

It is unfortunately true that Americans subscribe to a notion that virtually every modern problem can be resolved via this “traditional” two-step process: passage of federal legislation followed by a sorting of the law’s meaning and application through the federal judicial system. Such a “tradition” is far from the federal judiciary’s role as described during the debates on the Constitution.²⁷

24. “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” U.S. CONST. art. I, § 1.

25. See *Flood v. Kuhn*, 470 U.S. 258 (1972).

26. See *Flood*, 470 U.S. at 283-84 (“[T]here is merit in consistency even though some might claim that beneath that consistency is a layer of inconsistency.”).

27. See THE FEDERALIST NO. 81, at 545-46 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) (“It may in the last place be observed that the supposed danger of judiciary encroach-

As an expert in the field Abrams should welcome the Supreme Court's decision in *Flood* as a grand opportunity for the application of labor, not antitrust, law. Those processes are far preferable to ongoing litigation, government micromanagement, or direct regulation (a frightening idea that has actually been proposed by some in Congress and elsewhere).²⁸ The Supreme Court in *Flood* performed a greater service for baseball generally, and for the players in particular, by refusing to enter the baseball arena at such a late date.

The history of baseball serves as testimony to the existence of avenues other than the federal courts to resolve issues, even the seemingly intractable. Although Abrams doesn't connect the issues of baseball's racial integration and its antitrust exemption, he does acknowledge that baseball became an integrated sport not as a directive from the Congress or the courts, but rather through mechanisms outside either the judicial or legislative systems.

Branch Rickey and Charles O. Finley

Branch Rickey²⁹ has been properly idealized for his courageous decision to bring Jackie Robinson into the Major Leagues in 1948. The "private legal processes" that "control business relationships within organized baseball" are the strength of the industry (p. 93). In Chapter Five, Abrams describes the functioning of that private system (pp. 93-97) and the process by which the game became racially integrated (although not quite as easily as one might be led to believe by Abrams's innocent account).³⁰ But with regard to the antitrust issue, Abrams takes a dim view of what he calls a "conservative" judiciary with too unyielding a respect for the principle of stare decisis.³¹

From a jurisprudential perspective, the Supreme Court exercised in the baseball trilogy a restraint long since, and regrettably so, abandoned by the federal bench. In 1922 the High Court narrowly construed a broadly framed act of Congress in *Federal Base*

ments on the legislative authority, which has been upon many occasions reiterated, is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive as to amount to an inconvenience, or in any sensible degree to affect the order of the political system. This may be inferred with certainty from the general nature of the judicial power There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the [legislative] body").

28. See National Commission on Major League Baseball Act of 1994, S. 2401, 103d Cong. (introduced by Sen. Dennis DeConcini (D-AZ)); see also Turland, *supra* note 5, at 1365 n.224, 1387 n.332.

29. A revered University of Michigan Law School alumnus, Class of 1911.

30. See pp. 106-07; MILLER, *supra* note 22, at 39-40.

31. Pp. 63-64, 68-69. "[D]oes this mean courts should always refrain from overruling their own misguided or outmoded precedent?" P. 68.

Ball. That decision was followed by the Court's considered refusal to reverse itself over ensuing decades. Such judicial restraint is considered exemplary by those who yearn for adherence to original constitutional principles. The idea advanced in *Federal Base Ball* is this: not EVERYTHING the American citizenry can think of to do is interstate commerce, thus conferring blanket authority on the federal government to do whatever it can think of to do. Such a notion seemed valid to the Founding Fathers in 1789, but had apparently become anachronistic to Abrams and others by 1998.³² The thinking evidenced by the Supreme Court in the baseball trilogy may not represent such dark hours in the Court's history as Abrams and others lead us to believe.

Not only is Abrams's discussion of the baseball antitrust decisions inadequate from a philosophical perspective, but he also neglects several major points about antitrust law's evolution as related to baseball. For instance, Abrams doesn't address the development of, and relationship between, the areas of labor and antitrust law on issues related to employment, other than a very brief reference in the book's conclusion. Even that mention appears to be an afterthought (pp. 202-03). In cases having nothing to do with baseball, certain exemptions (both statutory and nonstatutory) from antitrust law have been created with respect to labor issues and collective bargaining.³³ As one analysis concludes: "Since these labor exemptions would supersede antitrust law, the exemptions would provide a safe harbor for owners from most activities that would normally be subject to antitrust charges."³⁴

In 1996, the Supreme Court, in *Brown v. Pro Football, Inc.*³⁵ stated that "one of [the] objectives [of labor laws] was to take from antitrust courts the authority to determine, through application of the antitrust laws, what is socially or economically desirable collective-bargaining policy."³⁶ The interrelation between labor and antitrust law seems worthy of more than passing mention in a book largely devoted to these two subjects.³⁷

32. For a thorough discussion of the historical evolution of the expansion of the Commerce Clause by Congress and the Supreme Court and the tension among the differing schools of thought on the subject, see *United States v. Lopez*, 514 U.S. 549 (1995).

33. See *NBA v. Williams*, 45 F.3d 684 (2d Cir. 1995); *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1976); see also 29 U.S.C. §§ 52, 104-105, 113 (1994) (listing statutory exemptions from antitrust laws for collective bargaining by labor unions).

34. Kohm, *supra* note 5, at 1249.

35. 518 U.S. 231 (1996).

36. *Brown*, 518 U.S. at 242.

37. See Robert A. McCormick, *Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball*, 35 VAND. L. REV. 1131, 1138 (1982) ("[T]he Article concludes that collective bargaining and not antitrust law must shape the contours of baseball's reserve system in the future.").

The more recent case law and statutes fly in the face of baseball lore concerning the unique nature of baseball's legal status. The reality renders traditional arguments about the shame of baseball's antitrust exemption somewhat exaggerated. A discussion of whether baseball is the legal anomaly most have believed it to be for decades³⁸ seems essential in a primer on the subject.

More surprising is Abrams's failure to include reference to Congress's enactment of the Sports Broadcasting Act in 1961,³⁹ which specifically exempts all professional sports leagues from antitrust laws for purposes of broadcasting games. Because of the enormous industry impact of television and radio contracts and revenues, any discussion of antitrust law as applied to baseball should contain a meaningful consideration of the relationship between antitrust laws and broadcasting.⁴⁰

Sixteen years after *Flood v. Kuhn*, the 105th Congress enacted the sentimentally named Curt Flood Act of 1998.⁴¹ The legislation provides that labor relations in major league baseball are specifically *not* excluded from coverage of the Sherman Act. Abrams notes in his Conclusion that the agreement between the owners and players following the 1994-95 strike called for a joint effort to enact legislation clarifying the status of baseball under antitrust law (p. 201). Passage of the bill, however, is rendered virtually meaningless by the passage of time.⁴² The legislation specifically states that the statute disturbs neither existing statutory and case authority nor judicially created exemptions under antitrust law. It also provides that franchise relocation, broadcast rights, the amateur draft, and the status of the relationship between the major and minor leagues are exempt from antitrust laws.⁴³ It is therefore unclear exactly what the legislation accomplished, other than bragging rights that Congress has specifically acknowledged, for the first time in history, that baseball should be treated the same as other professional sports for antitrust purposes. This in the same year when the National Basketball Association owners' lockout of the NBA players threatened to produce the first-ever cancellation of an entire season in any professional sport.⁴⁴ Something for baseball to aspire

38. See Kohm, *supra* note 5, at 1247.

39. 15 U.S.C. §§ 1291-1295 (1994).

40. See MILLER, *supra* note 22, at 6-9 (labeling television "The One-Eyed Monster"); JAMES QUIRK & RODNEY FORT, *HARDBALL: THE ABUSE OF POWER IN PRO TEAM SPORTS* 27-47 (1999); Robert Alan Garrett & Philip R. Hochberg, *Sports Broadcasting and the Law*, 59 IND. L.J. 155 (1983-1984); Turland, *supra* note 5, at 1350-52 (discussing the Sports Broadcasting Act).

41. Pub. L. No. 105-297, 112 Stat. 2824 (codified at 15 U.S.C.A. § 27a (West Supp. 1999)).

42. See pp. 201-03; Kohm, *supra* note 5, at 1241 ("The Irrelevancy of *Flood v. Kuhn*").

43. 15 U.S.C.A. § 27a(b), (d)(4).

44. See Richard Justice & Mark Asher, *NBA Labor Dispute Ends After Six Months: Short Season to Start in February*, WASH. POST, Jan. 7, 1999, at A1.

to! Some might argue that the bill actually reinforces baseball's exemption from most applications of antitrust law.⁴⁵

Despite its undesirable effects on player careers and compensation for more than a century,⁴⁶ there is evidence that baseball's peculiar legal status actually enabled it to survive two world wars and a depression.⁴⁷ Abrams grudgingly acknowledges some upside, but assigns such benefit only to the owners: "Without question, a secure and stable reserve system made good economic sense for the owners" (p. 46), and "[i]t is possible that the strict reserve system did increase the total revenue of the baseball industry, and the owner (and not the players) captured the profit increment. It also brought order to the business" (p. 52). Undeniably, the advantage was a period of incubation for baseball's growth and development, which protected and stabilized the industry. Prosperity was created not only for owners, but also, ultimately, for major league players and, in turn, baseball fans and supporters.⁴⁸

Finally, what Abrams, and others, have always overlooked in disparaging the outcome in *Flood* is what may well have happened legislatively had *Flood* been decided in the players' favor. There is no evidence to suggest that the players in 1972 were politically strong enough to induce Congress to act in their favor.⁴⁹ As surely as the owners had lost *Flood*, they would have turned to Congress seeking a *statutory* exemption from the antitrust laws. It is difficult to imagine that the owners would not have prevailed in such a quest. A *legislated* exemption from the antitrust laws (similar to the statutory exemption for broadcasting purposes discussed above) would have superseded the National Labor Relations Board's (NLRB) determination three years before *Flood* that the NLRB has jurisdiction over the baseball industry.⁵⁰ That being true, the

45. Paul Beeson, President and CEO of Major League Baseball, stated concerning the bill: "This [legislation] shouldn't be read as us [sic] losing our antitrust exemption. We still have the bulk of our antitrust exemption intact." See Bill King, *An Antitrust Bill in Name Only*, SMITH & STREET'S SPORTSBUSINESS J., Aug. 3-9, 1998, at 3.

46. See MILLER, *supra* note 6, at 5-6 (Between 1945 and 1965, in "a period of rampant inflation, the major league minimum [salary] had gone from \$5,000 to \$6,000 a year. The average salary was a paltry \$19,000, and since World War II, only superstars like Ted Williams, Stan Musial, Joe DiMaggio, Willie Mays, and Mickey Mantle had reached the unofficial maximum of \$100,000.").

47. See MILLER, *supra* note 22, at 5.

48. See QUIRK & FORT, *supra* note 40. Ultimately, the game itself may even be getting better, even as observers complain about the money in baseball. See George F. Will, *We Don't Care If We Never Get Back*, NEWSWEEK, Sept. 14, 1998, at 61 ("This is the greatest baseball season since . . . Abner Doubleday . . . invented baseball . . .").

49. Congress waited 16 years to pass the "Curt Flood Act of 1998." It acted only after the bill specifically excluded most areas of the baseball industry, various court decisions had severely limited the impact of the law, AND the owners agreed not to oppose it. What makes anyone think the owners wouldn't have succeeded in persuading Congress to codify their exempt status in the early 1970s?

50. See *infra* text accompanying notes 46-49.

rest of baseball's story would have turned out quite differently for the players.

One must be ever mindful that the "baseball gods" (not the owners, but the cosmic forces of good who hover eternally over baseball) always know what they're doing — even when mere mortals in Congress, the Supreme Court, and those running the baseball enterprise on earth seem not to. A baseball fan of Abrams's stature should know that.

BASEBALL AND THE LABOR LAWS

Marvin Miller, Andy Messersmith, and Carlton Fisk

Marvin Miller, the dapper economist from Brooklyn, converted a social fraternity of baseball players into the strongest trade union in America. Under his leadership, for the first time in a century of organized baseball, the players received a significant share of the profits of the baseball enterprise. In the process, however, the game would be interrupted by periodic work stoppages and employer lockouts. [p. 71]

So begins the chapter on collective bargaining and the most illuminating discussion in the book. Abrams is clearly at home in the world of national labor policy, the Norris-LaGuardia Act of 1930, the Wagner Act of 1935, the Taft-Hartley and Landrum-Griffin Acts, the NLRB, collective bargaining, and salary arbitration. Chapters Six, Seven, and Nine are all devoted to the development of the baseball players' union and the evolution of the players' stature through the use of the federal labor laws. Through baseball's rocky labor history, Abrams brings to life various arcane legal concepts such as good faith bargaining, arbitration, collusion, and the roles of management, labor unions, arbitrators, the NLRB, mediators, and judges.

For example, one of the most compelling points of the entire book is Abrams's comment in Chapter Four that "[t]he first collective bargaining agreement is always the most difficult to achieve, and a signed contract is itself a major victory" (p. 83). Abrams explains that most union-organizing efforts fail, and only half of those that succeed ever yield a written contract.⁵¹ According to Abrams, "the creation of the Basic Agreement [in 1968] fundamentally altered the structure of the baseball business."⁵²

More than half of *Legal Bases* is devoted to a discussion of the various labor law principles that have freed professional major

51. Abrams cites to no authority for this interesting and rather startling statement.

52. P. 83. The Basic Agreement is the contract for all major league baseball players negotiated by the MLBPA and the owners as a group. Individual player contracts establish additional terms and conditions for compensation beyond the Basic Agreement. P. 83.

league baseball players from servitude and made them wealthy.⁵³ Curt Flood may have lost his antitrust case at the U.S. Supreme Court in 1972, but three years earlier the NLRB, deciding it had jurisdiction over the baseball industry, had set in motion the events that would ultimately accomplish Flood's goal: elimination of the reserve clause. That case was brought to the NLRB by, of all people, a group of American League umpires, seeking certification to form a labor union under federal labor laws (pp. 77-79). The umpires' successful petition paved the way for the rise of the MLBPA as a powerful union. Now, "[f]or the first time in the history of the baseball enterprise, there was a power in the world above the owners and the commissioner; there was the law of the land, not just the internal law of baseball" (p. 82).

Beginning in 1970, the collective bargaining agreement between the owners and players provided for the arbitration of unresolved differences between owners and players. In the winter of 1974, James "Catfish" Hunter became the first "free agent" in baseball history. Labor arbitrator Peter Seitz ruled that Oakland Athletics' owner Charlie Finley had negated Hunter's contract by failing to make the contractually required deferred salary payments (pp. 108-09). Accordingly, on December 31, 1974, Hunter, no longer bound by contract to the Athletics, signed a \$3.25 million contract with the New York Yankees. The baseball business had changed forever.⁵⁴

One year later, Andy Messersmith, a right-handed pitcher for the Los Angeles Dodgers, and Dave McNally, from the Montreal Expos, filed a grievance contesting the reserve clauses in their contracts. The players argued that the reserve clause could bind them for only one year beyond the original contract date, absent their consent, which they refused to give. Pete Seitz, the same arbitrator who had declared Catfish Hunter a free agent, agreed with the players that the option was for one additional year beyond the original contract date, not an automatic, perpetual, self-executing renewal (p. 125). Seitz specifically rejected any analogy to the notion of "'emancipating players from claimed serfdom or involuntary servitude as was alleged in the *Flood* case'" (p. 126). Nonetheless, he was fired by the owners as the independent arbitrator within five minutes of handing down his decision (p. 127). The Seitz decisions established the legal process that yokes baseball owners and players together as partners in a great American enterprise, whether they like it or not.

53. The average major league baseball player salary on the Opening Day rosters in 1998 was \$1,444,763. See QUIRK & FORT, *supra* note 40, at 197 tbl.4-2 ("Payrolls & Average Salaries, Opening Day Rosters, Major League Baseball, 1998").

54. See p. 109; HELYAR, *supra* note 9, at 133-50; MILLER, *supra* note 6, at 236.

Legal Bases takes the reader through the labor minefields of the baseball players and owners over the ensuing two decades: the wars of words, lockouts, work stoppages, collusion cases, and ongoing disputes through the baseball strike of 1994-1995, which resulted in the cancellation of the 1994 World Series. The parade of commissioners, the changing of the guard of the players' union from Marvin Miller to Donald Fehr, and the unsuccessful attempts by the President of the United States to resolve baseball's bitter labor strife are chronicled by Abrams in fine fashion with easily understandable explanations of the labor law principles and procedures at play (p. 126, chs. 6-9).

Judge Sonia Sotomayor

Abrams's last All-Star is the federal judge in New York's Southern District, Sonia Sotomayor,⁵⁵ who resolved the 1994-1995 strike by ruling against the owners. Curiously, the litigation that led to resolution of the strike was several issues removed from the salary cap, the issue that had triggered the strike in the first place.

The seeds of the strike were planted even before baseball's contract expired in 1993. The owners had determined to resolve two concerns in the next player contract. The first was the redistribution of revenues among the teams, some of which have large incomes from broadcasting rights and some of which do not, sometimes referred to in baseball as "large market" and "small market" teams.⁵⁶ The second was the wealthy owners' desire to shift the costs of any such revenue sharing to the players in the form of a cap on player salaries. The owners dedicated themselves to "holding the line" on player salaries through a salary cap, absent which there would be no new contract. The players started the 1994 season and played through the All-Star break without any contract. But in August 1994, the players went on strike, hoping to force the owners to the bargaining table in order to obtain a prompt resolution of the issues. The players had been willing to continue with a Basic Agreement fairly similar to the one that expired in 1993. The players underestimated the owners' "resolve" (p. 185) to secure some type of salary cap. It was hard to imagine that the owners would, in fact, cancel the World Series — but they did.

In December 1994, the owners declared an impasse in negotiations and unilaterally imposed their salary cap. In response, the

55. Judge Sotomayor was elevated to the Court of Appeals for the Second Circuit in 1998.

56. Only in baseball would Houston or Miami, the 10th and 12th largest cities in the country, respectively, be referred to as "small markets." See BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 1998, at 41-43 tbl.43 ("Large Metropolitan Areas — Population: 1980 to 1996").

MLBPA filed with the NLRB one of several unfair labor practice charges against the owners before and during the strike (p. 188). A few weeks later, in early 1995, the owners, in a series of bizarre moves, first withdrew the salary cap in favor of a 'luxury tax' on team payrolls. Then, a few days later, they abandoned that scheme and unilaterally imposed a wholly new set of rules: individual clubs were suddenly forbidden to sign contracts with individual players, and portions of the Basic Agreement that provided for salary arbitration and prohibited collusion among the owners were rescinded.

The MLBPA immediately filed yet another unfair labor practice charge against the owners, and, after investigating the complaint, the NLRB found in favor of the union. The agency filed an enforcement action against the owners seeking an injunction to keep them from imposing their new plan (p. 190). It was this case, assigned to Judge Sotomayor, that ultimately ended the strike. In Abrams's account,

Judge Sotomayor issued the injunction that the Labor Board requested and ordered the owners and the players back to the bargaining table. . . . They were ordered to negotiate, in good faith, until one of three things occurred: (1) they reached an agreement; (2) the Labor Board issued a final order on the union's underlying unfair labor practice allegations; or (3) the parties reached a true impasse after good faith bargaining. Although the court did not order the players to "play ball," the union offered to do so, and management accepted. Against all odds, the 1995 season began on April 26, only a few days late. [pp. 194-95]

For more than twenty-five years, the rules of baseball have been supplemented (some would say supplanted) by federal labor law. One reason is that the leaders of the MLBPA are not baseball players, or even particularly dedicated students of baseball as a sport. Rather, they are accomplished labor lawyers who don't allow romantic or sentimental notions about the game to interfere with their duties as labor lawyers on behalf of their clients, the players.⁵⁷ On the other hand, the owners are a varied assortment of wealthy individuals and corporate entities who may not necessarily have become involved in the industry due to a particular passion for baseball.⁵⁸

Such is the result of the decisions by the legal system, the Congress, and the courts over more than a century during which federal labor law has come to play such a prominent role in all professional sports, especially baseball.⁵⁹ The presence of a final arbiter (the NLRB) who is NOT an owner and NOT the Commissioner

57. See p. 178; HELYAR, *supra* note 9, at 323-24; MILLER, *supra* note 6, at 11.

58. See Joanna Cagan & Neil deMause, *Bizbrawl: How the Heavy Hitters Are Fighting to Control the Planet*, N.Y. TIMES, Oct. 18, 1998, § 6 (Magazine), at 66.

59. See QUIRK & FORT, *supra* note 40, at 49-73.

of Baseball has proven a necessity for the sport to survive its own peccadilloes during the last two decades, the best example being the strike of 1994-1995 (p. 200).

A pressing question for baseball at this juncture is whether the federal labor laws, apparatus, and procedures offer the most appropriate forum to best serve baseball's interests in the twenty-first century. And, if not, what alternative exists or could be created?⁶⁰ The labor and economic issues between major league players and owners will not disappear. Certainly, the perennial arguments about the profitability of the teams, the disparity of broadcasting revenues, and skyrocketing payrolls are not likely to dissipate in the near term.⁶¹ One wonders if baseball's labor woes will present themselves as uglier than ever when the current contract expires in October 2000.

Other challenges loom for baseball. One is the question of providing fairer compensation for minor league players, who constitute the majority of professional baseball players in America.⁶² Another is the quality of training, stature, and representation of the major league managers and coaches, who normally rise from the ranks of the players, but are, more often than not, ill-equipped to successfully manage highly paid workers who earn more than their bosses. Coaches and managers are not necessarily well represented by their own agents, nor are they represented by the players' union. Indeed, once they become part of management, coaches and managers are not even allowed by the union to be represented by the same agents who represent active players. Yet managers are still tied to the players' pension fund and other union-managed revenues from their prior playing careers. The system is odd and has received little attention, but as team payrolls escalate, the caliber of those who manage and coach the millionaire players becomes ever more crucial and problematic.⁶³

No serious baseball fan should neglect to learn at least the basics of federal labor law because it now dictates much about the game.⁶⁴ Hence, the reason for writing — and reading — *Legal Bases*.

60. See Len Elmore, *Reserve Players a Few Seats at the Table of Power*, STREET & SMITH'S SPORTSBUSINESS J., Aug. 3-9, 1998, at 35.

61. See Jay Weiner, *Baseball's Glory Days Didn't Solve a Thing*, BUS. WK., Nov. 9, 1998, at 166.

62. See David M. Szuchman, Note, *Step Up to the Bargaining Table: A Call for the Unionization of Minor League Baseball*, 14 HOFSTRA LAB. L.J. 265 (1996).

63. For a byzantine view of some econometric models "quantifying" the impact of major league managers on the success of their teams, see GERALD W. SCULLY, *THE MARKET STRUCTURE OF SPORTS* 143-69 & app. (1995).

64. For example, the designated hitter rule is a bargaining issue between labor and management. Pp. 192-93.

BASEBALL AND CRIMINAL LAW

Pete Rose

Chapter Eight is in this book only because Abrams's baseball metaphor made it necessary for Abrams to have nine All-Stars. By adding this "inning," we have a discussion of Pete Rose, baseball and gambling, baseball and illegal drug use, and the application of internal baseball procedures to address these societal problems when they appear within the industry.

The chapter details the events involving Baseball Commissioner Bart Giamatti's 1989 investigation and banishment of Pete Rose from baseball for gambling. The findings included the fact that, while Rose may have bet on his own team, the Cincinnati Reds, he ALWAYS bet on the Reds to win (p. 158). There is a brief discussion of the Hall of Fame and the events that have since conspired to keep Pete Rose from being voted as a member at Cooperstown.⁶⁵

The Pete Rose case is not as clear-cut as Abrams makes it out to be.⁶⁶ While essentially concurring in the banning of Rose from the Hall of Fame, other observers have differing views of the Commissioner's office, the investigation, and what some perceive as inappropriate procedural actions in the Pete Rose case.⁶⁷ Abrams would have better served his readers by providing a more objective description of the procedures in the Rose matter and incorporating some of the competing views on the controversial manner in which this entire subject was investigated, prosecuted, and concluded.

For my part, Cooperstown is not heaven, and the members of the BBWAA⁶⁸ are not a grand jury. The Lord will deal with Pete Rose's sins to the extent that the IRS hasn't already. Cooperstown is for ballplayers, not saints, and those terms are normally not sy-

65. Pp. 169-71. There is no mention of Cooperstown's own unique story: that of a private institution with its strange history and origins. According to baseball historian and statistician *par excellence* Bill James, the idea for a baseball museum in Cooperstown originated in 1934 when Alexander Cleland, an employee of one of the town's wealthy patrons, proposed it to encourage tourists to visit the town each year. See JAMES, *supra* note 7, at 4. "The Hall of Fame selection process was an afterthought to an accident. Alexander Cleland had not set out to create a Hall of Fame; he had set out to create a museum, and this turned into a Hall of Fame." *Id.* at 30.

66. Bill James's book, *Whatever Happened to the Hall of Fame?*, discusses Pete Rose and captures the complexities of the matter more fully than Abrams does. See JAMES, *supra* note 7.

67. See *id.* at 353-58; see also JAMES RESTON, JR., *COLLISION AT HOME PLATE: THE LIVES OF PETE ROSE AND BART GIAMATTI* (1991).

68. The members of the Baseball Writers of America Association vote on admissions to Cooperstown. See JAMES, *supra* note 7, at 34-37. For James's thoughts on an alternative (and better) method of selecting the members of Baseball's Hall of Fame, see *id.* at 366-80. Essentially, James proposes expanding the selection process to include five voting panels from all segments of the baseball community: the media, fans, players, baseball executives and other professionals, and baseball scholars. See *id.*

nonymous. On the field, Pete Rose has earned his admission to the Hall of Fame.

CONCLUSIONS

For purposes of a general audience, *Legal Bases* is a good primer on basic legal principles. The concepts are easily understood, the applications informative, and the baseball stories entertaining, as baseball stories are. The problem is that *Legal Bases* does not provide a serious baseball student with sufficient in-depth discussion of the issues presented. Perhaps the author's goal is to whet an appetite among baseball fans for pursuit of more detailed history and analysis in the multitude of other publications on the subject.⁶⁹ For the baseball fan who happens to be a lawyer, baseball provides a wealth of legal treatises, scholarly articles, academic analyses, and symposia proceedings, and a multitude of legal opinions and court decisions from litigation spanning more than a century.⁷⁰

Abrams further tarnishes the seriousness of *Legal Bases* by his gratuitous inclusion of politically correct references, such as his comment on the change of the Cleveland team's name from the Blues to the Indians: "[t]he origin of 'Chief Wahoo,' the present-day Indians' racially offensive logo is unknown" (p. 208); Abrams's random discussion of "gender equity" in the future of baseball: "[t]he next barrier to be broken in professional sports is the inclusion of female athletes on previously all-male teams" (p. 204); and a discussion of the "[g]lobalization" of baseball (p. 205).

But perhaps the biggest shortcoming of the book is Abrams's philosophical bent which causes him, like most university professors who write about baseball, to approach the subject as do those dewy-eyed fans who believe that money is ruining the game⁷¹:

But after the appointment of Marvin Miller as executive director [of the Players Association], as we have seen, everything changed, including the players' self-image. The union turned baseball into a money machine for the players, and in the process, the baseball enterprise evolved into a modern entertainment business, no longer simply a summertime diversion. Baseball lost its innocence, which always had been part of its charm. [p. 178]

69. Amazon.com lists 6201 titles on the subject of "baseball." See Amazon.com (visited July 12, 1999) <<http://www.amazon.com/exec/obidos/subst/home/home.html/002-2279586-0482010>>.

70. Westlaw searches of databases for law review articles, treatises, texts, and American Jurisprudence each produce the maximum number of 100 listings for searches of "baseball and law." Search of WESTLAW, Texts & Periodicals combined Library (Dec. 31, 1998) (search for documents containing the terms "baseball" and "law"); see also *BASEBALL AND THE AMERICAN LEGAL MIND*, *supra* note 14.

71. See *QUIRK & FORT*, *supra* note 40, *passim*.

The ultimate impact of collective bargaining by major league baseball players is described here (and elsewhere) as having been good for the players but bad for baseball, as if those two conclusions can possibly be compatible. Abrams says negative repercussions from labor-management conflicts have "devastated the mythology, predictability, and sense of tradition that made baseball America's premier professional sport" (p. 89). This stems from the so-called fan impatience with both players and owners fighting about money.⁷² Many notable baseball writers and observers lean to that notion, particularly following a serious labor eruption like the strike of 1981. As Roger Angell wrote in 1981 in *Late Innings: A Baseball Companion*, "Most of all, I guess, it's the money that's got me down."⁷³ Marvin Miller doesn't understand such thoughts: "I love baseball as it is, and I don't harbor sentimental illusions about it. I'm constantly amazed at the softheadedness of even the best baseball writers, who yearn for some remote past where 'money wasn't so much a part of the game.' When, I wonder, was that time?"⁷⁴ Consider as well what George F. Will wrote in his 1990 bestseller, *Men At Work: The Craft of Baseball*:

Baseball's general health is served by making baseball a more lucrative life. It is a matter of supply and demand. The more dollar demand there is for talent, the more talent is apt to be supplied. The pool of money is growing

. . . .

Today there are choruses of people lamenting the large salaries earned by players. This moralizing makes no economic sense. The salaries are earned: The players make more for the owners than the owners pay in salaries. But the belief that large amounts of money must be bad for players is nothing new. A 1914 editorial in a baseball magazine advised players to ponder the terrible swiftness with which players become men in the crowd: ". . . A very glaring instance of [the unwise manner in which baseball players spend their money] is the recent evil tendency [of baseball players] to purchase and maintain automobiles."⁷⁵

Baseball has always engendered mythical thinking and misty-headed analysis from many quarters. Perhaps the quantity of baseball lore stems from imaginations inspired by the pastoral setting in which the game is played, à la Bart Giamatti's *The Green Fields of*

72. See pp. 86, 89. According to President Bill Clinton, the 1995 baseball strike was "just a few hundred folks trying to figure out how to divide nearly \$2 billion. They ought to be able to figure that out." *Quotables*, CHI. TRIB., Feb. 10, 1995, at 25.

73. ROGER ANGELL, *One Hard Way to Make a Living*, in *LATE INNINGS: A BASEBALL COMPANION* 325, 326 (1982).

74. MILLER, *supra* note 6, at 412-13.

75. GEORGE F. WILL, *MEN AT WORK: THE CRAFT OF BASEBALL* 308-10 (1990).

the Mind.⁷⁶ Or perhaps the sheer longevity of the sport, growing up alongside the nation itself, has created vast opportunities for legend, storytelling, and general misinformation.

Learning the story of baseball is akin to studying the Bible: one can spend years, indeed a lifetime, and make barely a dent in the seemingly boundless array of literature on the subject. Nevertheless, there is ample opportunity annually to dedicate oneself to the task. After all, what other meaningful activity is there to occupy one's wandering mind between the last out of the World Series in October and mid-February when pitchers and catchers report? In any case, *Legal Bases: Baseball and the Law* is a good starting point for one's quest to know more about how baseball came to its current condition, whatever one perceives that condition to be.

76. A. BARTLETT GIAMATTI, *The Green Fields of the Mind*, in *A GREAT AND GLORIOUS GAME 7* (Kenneth S. Robson ed., 1998).