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## Shaking Up the Line-Up: Generating Principles for an Electrifying Economic Structure for Major League Baseball

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# SHAKING UP THE LINE-UP: GENERATING PRINCIPLES FOR AN ELECTRIFYING ECONOMIC STRUCTURE FOR MAJOR LEAGUE BASEBALL

JASON B. MYERS\*

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## I. LEADING OFF: THE GAME OF BASEBALL AND THE BUSINESS OF BASEBALL

A. *Welcome to Today's Game*

<i>Shoeless Joe Jackson:</i>	What's with the lights?
<i>Ray Kinsella:</i>	Oh, all the stadiums have them now. Even Wrigley Field.
<i>Shoeless Joe:</i>	Makes it harder to see the ball.
<i>Ray Kinsella:</i>	Yeah, well the owners found that more people could attend night games.
<i>Shoeless Joe (shaking his head):</i>	Sheesh, owners. <sup>1</sup>

For most of its history, the game of baseball has been able to coexist with the business of Major League Baseball (MLB). Over the years, club owners have, on occasion, made noteworthy business decisions at the expense of their team's competitiveness. For example, the Red Sox sold Babe Ruth to the Yankees,<sup>2</sup> and Connie Mack sold off his famed \$100,000.00 infield.<sup>3</sup> More recently in 1976, Charlie Finley attempted to sell three prominent players that had led his Oakland Athletics (A's) to consecutive World Championships from 1972 to 1974.<sup>4</sup> Consider also Bill Veeck's failed "Disco Demolition" promotion in 1979, which filled the ballpark with fans, but caused his Chicago

1. FIELD OF DREAMS (Universal Pictures 1989).

2. Frederick Ivor-Campbell, *Team Histories*, in TOTAL BASEBALL 15, 20 (John Thorn et al. eds., 4th ed. 1995). Red Sox owner Harry Frazee was a New York theatrical entrepreneur. To cover losses that he incurred in the theater, Frazee sold off key baseball players with Babe Ruth being the most significant one. Frazee sold the Bambino to the New York Yankees for \$100,000.00 and a \$300,000.00 mortgage on Fenway Park. *Id.*

3. Wilfred Sheed, *Manager: Mr. Mack and the Main Chance*, in THE ULTIMATE BASEBALL BOOK 105, 113 (Daniel Okrent & Harris Lewine eds., 1991). Despite winning the 1914 American League Pennant, Mack's Philadelphia Athletics reportedly lost \$65,000.00 and saw a significant reduction in attendance. Mack recouped his losses by selling off his star players, most notably future Hall-of-Fame second baseman Eddie Collins for \$50,000.00. "Mack groaned mightily over his payroll . . . [and] would have traded his mother to keep it down to size." *Id.*

4. Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 530-31 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978). Finley attempted to sell Joe Rudi and Rollie Fingers to the Boston Red Sox and Vida Blue to the New York Yankees. Commissioner Bowie Kuhn blocked the proposed sales on the grounds that they were not in the best interest of baseball. The Seventh Circuit upheld Kuhn's actions. *Id.* at 531.

White Sox to forfeit a game.<sup>5</sup> The context in which the business of baseball and the game of baseball most notably have conflicted, however, has centered on the relationship between club owners and players. The 1919 Black Sox scandal, in which eight players on the Chicago White Sox, including Shoeless Joe Jackson, were accused of throwing the World Series, stemmed in large part from the low salaries and frugal ownership practices of team owner Charles Comiskey.<sup>6</sup> Although labor disputes have caused work stoppages<sup>7</sup> and lawsuits that have reached the Supreme Court,<sup>8</sup> they never seemingly permanently interfered with the success of baseball, either as a competitive endeavor or as a business one.

The players' strike from 1994 to 1995, coupled with the owners' decision to cancel the 1994 World Series, changed the relationship between the game of baseball and its business aspects. Before 1994 the business generally seemed to operate in the background. Since then, however, the business has been at least as prominent as the game itself, and, in some aspects, has determined what has happened on the field. Three teams signify the extremes of MLB's world since the 1994 strike.

At one end, the New York Yankees exemplify success—both in the business and competitive aspects of baseball. During the period of 1995 to 1999, the Yankees were the most profitable team in the major leagues with an aggregate net profit of \$64.5 million. On the field, the Yankees have won four World Series in five years: 1996 and 1998 to 2000. At the other end of spectrum lie the Montreal Expos. Although one of the poorer teams in MLB, the Expos had been able to rely on a steady stream of talented, young players to achieve a modest degree of on-the-field success. They even had the best

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5. *Disco-Haters to the Barricades*, NEWSWEEK, July 23, 1979, at 90. The White Sox organized the Disco Demolition promotion with two Chicago disc jockeys whose on-air gimmick at the time centered on the phrase "Disco Sucks." As part of the promotion, fans brought disco records to the ballpark and the disc jockeys proceeded to blow up the records in between the games of a double-header. The field was in such poor condition after the explosion that the umpires called off the second game and forced the White Sox to forfeit it. *Id.*

6. For probably the most widely known account of the 1919 Black Sox scandal, see ELIOT ASINOF, *EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES* (Henry Holt & Co. 1988) (1963).

7. David Pietrusza, *The Business of Baseball*, in *TOTAL BASEBALL*, *supra* note 2, at 588, 589-99. Baseball's work stoppages include: 1972 players' strike (canceling a total of 86 games), 1976 owners' lockout (shutting down spring training for 24 days), 1981 players' strike (baseball's first midseason work stoppage), 1985 players' strike (two days), 1990 owners' lockout (occurring during spring training), and 1994 players' strike (canceling the 1994 World Series and lasting into 1995 spring training). *Id.*

8. *Flood v. Kuhn*, 407 U.S. 258 (1972); *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953); *Fed. Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). These cases are known as the "Baseball Trilogy."

record in baseball in 1994 when the players' strike ended the season. Since then, however, the Expos have been in financial turmoil and underwent a tumultuous change in ownership.<sup>9</sup> In addition, the Expos have let their young talent—such as Pedro Martinez, Larry Walker, and Moises Alou—leave via free agency or have traded them away because the club simply could not afford to keep the players. The third team—the Florida Marlins—has experienced both the on-the-field success of the Yankees and the off-the-field “fire sale” of players for business reasons similar to the Expos. The Marlins won the 1997 World Series, thus disrupting the Yankees' string of championships. But doing so caused the Marlins' owners to lose thirty-four million dollars that season, thereby leading them to the business decision to reduce their player payroll drastically.<sup>10</sup> By the time the 1998 season opened, the Marlins had traded away so many key players or let them leave via free agency that most commentators did not give the club any chance to defend its championship. By the time the season ended, the Marlins payroll was less than ten million dollars and the team had the worst record in baseball.<sup>11</sup>

These three teams, one-tenth of the current thirty major league teams, highlight many of the problems of modern professional baseball. On the field, a competitive gap has arisen such that at the start of any given season, only a minority of the teams are seen as having a legitimate chance of being one of the eight playoff teams, and an even smaller number have any real chance of winning the World Series. Off the field, owning a major league club generally has not been a profitable investment since the 1994 strike. During the five-year period of 1995 to 1999, only three clubs turned a net profit.<sup>12</sup> These troubles have led MLB and commentators to seek solutions to the structural issues underlying the problems in a hope to attempt to stem the financial and competitive collapse of baseball.

This article seeks to add to the debate over how MLB should address its financial and competitive problems. After examining baseball's antitrust exemption, the article considers two comprehensive proposals to restructure MLB's economics, including one prepared on behalf of MLB club owners, in

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9. Thom Loverro, *Expos Stay in Montreal After Sale*, WASH. TIMES, Dec. 1, 1999, at B1.

10. Larry Stone, *Going . . . Going . . . Gone—Under the Financial Gun, The Florida Marlins Continue to Dismantle a Championship Team*, SEATTLE TIMES, Feb. 26, 1998, at C1.

11. PAUL C. WEILER, LEVELING THE PLAYING FIELD: HOW THE LAW CAN MAKE SPORTS BETTER FOR FANS 188 (2000).

12. RICHARD C. LEVIN ET AL., MAJOR LEAGUE BASEBALL, THE REPORT OF THE INDEPENDENT MEMBERS OF THE COMMISSIONER'S BLUE RIBBON PANEL ON BASEBALL ECONOMICS (2000) [hereinafter PANEL REPORT] (noting that the New York Yankees, Cleveland Indians, and Colorado Rockies were the only teams to make a profit), available at [http://www.mlb.com/mlb/downloads/blue\\_ribbon.pdf](http://www.mlb.com/mlb/downloads/blue_ribbon.pdf).

section II. Although these proposals offer useful mechanisms, they fall short of addressing what needs to be the proper objective of any restructuring—enhancing the individual clubs' profitability. Section III compares the issues facing baseball with those that the electric utility industry has faced over the past decade. In doing so, the restructuring of the energy industry is examined to derive some general principles that could be used to shape a new economic structure for MLB. Section IV considers the impact of the proposed economic structure on the competitive balance of the game of baseball. Finally, section V offers a post-script assessing the off-the-field developments during the 2001-2002 off-season in light of the arguments made in this article.

### B. Baseball's Antitrust Exemption

Before delving into baseball's current financial situation, one aspect of the business of baseball merits special consideration—its exemption from federal and state antitrust laws.<sup>13</sup> As will be discussed below, baseball's current exemption reaches all aspects of the business of baseball except for matters directly related to or affecting the employment of major league players.<sup>14</sup> Regardless of the merit of such an exemption, which is beyond the scope of this article, this exemption shapes the business of baseball and may provide a valuable resource in addressing MLB's current problems.<sup>15</sup>

Baseball's antitrust exemption developed as a result of the combination of judicial decisions and congressional silence. The United States Supreme Court exempted MLB from federal antitrust laws in 1922 in *Federal Baseball Club of Baltimore v. National League of Prof'l Baseball Clubs*.<sup>16</sup> In the short opinion that Justice Holmes authored, the Court concluded "[t]he business is giving exhibitions of base ball, which are purely state affairs."<sup>17</sup> Regardless of other facets related to putting on exhibitions of baseball that reach across state

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13. To the extent that MLB is exempt from federal antitrust laws, it also is exempt from similar state statutes. *Minn. Twins P'ship v. Minnesota*, 592 N.W.2d 847, 856 (Minn. 1999), *cert. denied*, 528 U.S. 1013 (1999) (precluding antitrust investigation by state Attorney General); *State v. Milwaukee Braves, Inc.*, 144 N.W.2d 1, 18 (Wis. 1966), *cert. denied*, 385 U.S. 990 (1966) ("A majority of this court . . . conclude[s] that the Wisconsin antitrust statute cannot, because of requirements of the federal constitution, be applied . . .").

14. 15 U.S.C. § 27a (2001). This Act is commonly referred to throughout this article as the Flood Act.

15. For a more detailed examination of baseball's antitrust exemption, see sources cited at *Flood*, 407 U.S. at 281 n.16; Larry C. Smith, Comment, *Beyond Peanuts and Cracker Jack: The Implications of Lifting Baseball's Antitrust Exemption*, 67 U. COLO. L. REV. 113 (1996); and Hon. Connie Mack & Richard M. Blau, Esq., *The Need for Fair Play: Repealing the Federal Baseball Antitrust Exemption*, 45 FLA. L. REV. 201 (1993).

16. 259 U.S. 200.

17. *Id.* at 208.

lines—most notably the fact that MLB teams are based in different states—the nature of the game is determined by the personal efforts of the players on the field. Because “personal effort, not related to production, is not a subject of [interstate] commerce,” the Court concluded that the federal antitrust laws did not apply to professional baseball.<sup>18</sup>

The Court’s decision in *Federal Baseball* has been widely criticized over the years, particularly in subsequent Supreme Court decisions. Later courts, contrary to Holmes’ opinion, have expressly found that “[p]rofessional baseball is a business and it is engaged in interstate commerce.”<sup>19</sup> The Court has referred to baseball’s exemption as an “anomaly”<sup>20</sup> and refused to extend the exemption to other similarly situated sports like professional football.<sup>21</sup> Nevertheless, the Supreme Court has never eliminated baseball’s antitrust exemption.

In fact, the Supreme Court twice faced the question of whether to overturn its decision in *Federal Baseball*, and in both cases the Court expressly affirmed the decision. In *Toolson v. New York Yankees*, the Court in a per curiam opinion found that “[t]he business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation.”<sup>22</sup> The Court thus refused to apply the federal antitrust laws to

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18. *Id.* at 209. As Holmes noted, “[t]he decision of the Court of Appeals went to the root of the case and if correct makes it unnecessary to consider other” issues. *Id.* at 208. The Court of Appeals stated:

A game of baseball is not susceptible of being transferred. . . . Not until [the players] come into contact with their opponents on the baseball field and the contest opens does the game come into existence. It is local in its beginning and in its end. . . . [T]he game effects no exchange of things according to the meaning of “trade and commerce” . . .

Nat’l League of Prof’l Baseball Clubs v. Federal Baseball Club of Baltimore, Inc., 269 F. 681, 684-85 (D.C. 1920), *vacated*, 269 F. 681 (1921), *aff’d*, 259 U.S. 200 (1922).

In very prophetic words, Judge Smyth also noted:

If the reserve clause did not exist, the highly skillful players would be absorbed by the more wealthy clubs, and thus some clubs in the league would so far outstrip others in playing ability that the contests between the superior and inferior clubs would be uninteresting, and the public would refuse to patronize them.

Nat’l League of Prof’l Baseball Clubs, 269 F. at 687.

19. *Flood*, 407 U.S. at 282; *see also Toolson*, 346 U.S. at 365 (Burton, J., dissenting) (“It is interstate trade or commerce and, as such, it is subject to the Sherman Act until” Congress expressly exempts it.).

20. *Flood*, 407 U.S. at 282.

21. *Radovich v. National Football League*, 352 U.S. 445, 451 (1957) (“[S]ince *Toolson* and *Federal Baseball* are still cited as controlling authority in antitrust actions involving other fields of business, we now specifically limit the rule there established to the facts there involved, *i.e.*, the business of organized professional baseball.”).

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

MLB retroactively, as requested by the plaintiff, and instead left to Congress the issue of whether MLB's exemption should be eliminated.<sup>23</sup> By the time that the Court decided *Flood v. Kuhn*<sup>24</sup> in 1972, Congress had let the *Federal Baseball* decision stand for fifty years and had not responded to the *Toolson* Court's statement that the legislature would be responsible for overturning baseball's exemption, if at all. The *Flood* Court concluded Congress' lack of activity was "something other than mere congressional silence and passivity."<sup>25</sup> Indeed, because baseball's antitrust exemption "is an established one, and one that has been recognized" through a series of five cases, the Court "continue[d] to be loath . . . to overturn those cases judicially when Congress, by its *positive inaction*, has allowed those decisions to stand for so long and, far beyond mere inference and implication, has clearly evinced a desire not to disapprove them legislatively."<sup>26</sup>

In the wake of the *Flood* decision and continued congressional silence, lower courts were faced with a stream of cases requiring them to assess the scope of baseball's antitrust exemption. Specifically, the Supreme Court's "Baseball Trilogy" involved MLB's reserve clause system, in which uniform contracts effectively bound each major league player to the "club that has him under contract" and that allowed each club "annually to renew [its players'] . . . contract[s] unilaterally, subject to a stated salary minimum."<sup>27</sup> Because *Flood* concluded that MLB constituted interstate commerce, an issue arose as to whether *Federal Baseball* and *Toolson* retained any precedential authority beyond their application to baseball's reserve system.<sup>28</sup> The question that lower courts faced was: Were the other aspects of the business of baseball exempt from federal antitrust laws?

The minority view that emerged was that *Flood* limited baseball's exemption to matters involving the reserve clause, and that the Supreme Court had not established any precedent regarding other matters.<sup>29</sup> A related line of

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23. *Id.* ("We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.").

24. *Flood*, 407 U.S. 258.

25. *Id.* at 283.

26. *Id.* at 282-84 (emphasis added). The five cases are: *Radovich*, 352 U.S. 445 (declining to exempt professional football); *United States v. International Boxing Club*, 348 U.S. 236 (1955) (companion case to *Shubert*, *infra*, related to boxing); *United States v. Shubert*, 348 U.S. 222 (1955) (declining to provide an antitrust exemption for theatrical productions); *Toolson*, 346 U.S. 356; *Fed. Baseball*, 259 U.S. 200.

27. *Flood*, 407 U.S. at 259 n.1.

28. *Piazza v. Major League Baseball*, 831 F. Supp. 420, 436 (E.D. Pa. 1993).

29. *Id.* at 438 (explaining that "no rule from those cases binds the lower courts as a matter of *stare decisis*"); *Butterworth v. National League of Prof'l Baseball Clubs*, 644 So. 2d 1021, 1025 (Fla. 1994).



reasoning concluded that "the exemption does not provide baseball with blanket immunity for anti-competitive behavior in every context in which it operates," and that courts must consider whether any given matter is "central enough to be encompassed in the baseball exemption."<sup>30</sup> Despite these cases, however, the majority position was the "the Supreme Court intended to exempt the business of baseball, not any particular facet of that business . . . ."<sup>31</sup>

These decisions, from the Baseball Trilogy on down, all took place in the absence of congressional action. But in 1998 Congress finally spoke on the issue of baseball's antitrust exemption by passing the Flood Act.<sup>32</sup> The Flood Act revoked baseball's antitrust exemption in regard to "the conduct, acts, practices, or agreements . . . *directly relating to or affecting employment of major league baseball players to play baseball at the major league level.*"<sup>33</sup> Congress, however, clearly limited the revoked exemption to labor issues in several ways. First and most importantly, Congress expressly stated that the Flood Act would not change baseball's exemption in regard to all other matters that did not directly relate to or affect major league players.<sup>34</sup>

[*Flood's*] rejection of the very reason that the Court recognized such an exemption in *Federal Baseball* seriously undercuts the precedential value of both *Federal Baseball* and *Toolson*. Based upon the language and the findings in *Flood*, we come to the same conclusion as the *Piazza* court: baseball's antitrust exemption extends only to the reserve system.

*Id.* at 1025.

30. *Postema v. National League of Prof'l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992) (quoting *Henderson Broad. Corp. v. Houston Sports Ass'n*, 541 F. Supp. 263, 265 (S.D. Tex. 1982)), *rev'd*, 998 F.2d 60 (2d Cir. 1993).

31. *Finley*, 569 F.2d at 541; *see also* *Prof'l Baseball Schools & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1086 (11th Cir. 1982) ("Each of the activities appellant alleged as violative of the antitrust laws plainly concerns matters that are an integral part of the business of baseball."); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974) ("The plaintiff's claim for relief under the antitrust laws was properly dismissed."); *Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1335 (M.D. Fla. 1999) ("This Court is bound to follow precedent favoring the broad exemption from antitrust liability afforded the business of professional baseball."); *cf. Butterworth*, 644 So. 2d at 1025 ("There is no question that *Piazza* is against the great weight of federal cases regarding the scope of the exemption.").

32. 15 U.S.C. § 27a. The Flood Act's sponsors named the legislation after Curt Flood, the St. Louis Cardinals outfielder who challenged MLB's reserve clause system in *Flood*.

33. § 27a(a) (emphasis added).

34. § 27a(b).

No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a). This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws . . . any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level . . . .

*Id.*

Congress provided a nonexclusive list of issues that do not “directly relate to or affect” major leaguers: acts related to minor league ballplayers, the relationship between major league and minor league baseball, business matters relating to franchise expansion, location or relocation, franchise ownership, marketing and licensing of intellectual property; conduct protected by the Sports Broadcasting Act of 1961, the relationship between professional baseball and umpires, and the relationship between professional baseball and those not in the business.<sup>35</sup> Second, the Flood Act provided that only “a major league player has standing to sue” under the statute.<sup>36</sup> Finally, it directed that the definition of conduct *not* directly relating to or affecting major leaguers “shall not be strictly or narrowly construed.”<sup>37</sup>

Congress designed the Flood Act to bring MLB’s relations with its players under the ambit of federal antitrust laws. The effect of doing so likely will have some bearing on future labor relations, but may or may not be of great significance.<sup>38</sup> The Flood Act’s real impact, however, may rest in Congress’ express statement regarding the scope of baseball’s remaining antitrust exemption. In expressly exempting the rest of the business of baseball from antitrust laws, Congress may have believed that it simply was codifying existing law. To a large extent it was, but the Flood Act did more. The exemption had been based on highly criticized judicial reasoning, and some courts in the absence of an express congressional statement on the matter sought to find ways to limit the exemption’s scope. With the Flood Act, Congress statutorily defined the exemption, effectively overturning cases that narrowly construed its scope, and foreclosed a host of potential lines of attack against MLB owners.<sup>39</sup> As a result, MLB club owners can proceed in virtually all non-labor related aspects of their business unimpeded by any antitrust concerns. As Representative Asa Hutchinson (R-AR) noted during

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35. § 27a(b)(1)-(6).

36. § 27a(c).

37. § 27a(d)(5).

38. Edmund P. Edmonds, *The Curt Flood Act of 1998: A Hollow Gesture After All These Years?*, 9 MARQ. SPORTS L.J. 315, 317 (1999) (asking whether the Flood Act is “anything more than a hollow gesture to the memory of Curt Flood”); Ted Curtis, *The Curt Flood Act: The Flood Act’s Place in Baseball Legal History*, 9 MARQ. SPORTS L.J. 403, 412 (1999) (“It appears that the Flood Act probably will be viewed as an RBI-producing single up the middle—a rather useful, if not wildly dramatic, contribution towards the continued legal evolution of Major League Baseball—rather than a heart-stopping bottom-of-the-ninth game-winning grand slam.”).

39. Senator Patrick Leahy, an original co-sponsor of the Flood Act, contended that because the Flood Act states that it does not change the current law other than in regard to major league ballplayers, decisions like *Piazza* and *Butterworth* would still be good law. 144 CONG. REC. S9621 (daily ed. July 31, 1998). But because these cases represent a minority position and their holdings would seem to conflict directly with the Flood Act’s statutory language, it is unlikely that a court could now reach the same conclusions under the Flood Act.

the House debate on the Act's final passage, "this bill also recognizes the importance of an antitrust exemption for certain aspects of the game so team owners may continue to cooperate on issues such as league expansion, franchise location and broadcast rights, without fear of lawsuit."<sup>40</sup>

This exemption, therefore, is a tool available to MLB club owners in any economic restructuring. They can pursue alternatives that generally may not be available to other businesses, even though such alternatives all might seem collusive, monopolistic, anti-competitive, and restrictive of the interests of parties other than major league ballplayers. But owners also need to remember that during much of the 1990s, many members of Congress and commentators alike suggested revoking baseball's antitrust exemption.<sup>41</sup> Congress likely will continue to monitor MLB's ability to address its economic and competitive problems.<sup>42</sup> If MLB does not effectively resolve these issues, some future Congress could decide to eliminate MLB's privileged position and revoke the exemption altogether.

## II. BATTING SECOND: THE PERCEIVED PROBLEM, THE PROFERRED SOLUTIONS, AND THEIR SHORTCOMINGS

### A. *The Perceived Problem: Economics Drives Competition*

Turning now to the matter of MLB's current financial and competitive problems, the first question to consider is: What is the specific problem that needs to be addressed? This leads to other questions: How should the issue be framed? What is the direction of the relationships between the variables? The framing of the issue is important because how these questions are posed will shape what factors are considered important, what goals should MLB try to obtain, and what alternatives could MLB club owners pursue to resolve the problems as framed.

This article focuses on two recent comprehensive efforts at identifying MLB's problems and proposing solutions to them.<sup>43</sup> In the first, MLB's Blue

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40. 144 CONG. REC. H9945 (daily ed. Oct. 7, 1998).

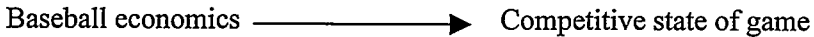
41. Mack & Blau, *supra* note 15, at 201. In fact, the Flood Act originally sought to revoke MLB's antitrust exemption subject to a few narrow exemptions.

42. Associated Press, *Dewine: Too Many Have-Nots in Baseball*, DAYTON DAILY NEWS, Nov. 21, 2000, at 4D (citing Senator Mike DeWine's concern that "baseball is not moving fast enough to deal with" the economic disparity between baseball's large-market and small-market teams).

43. The two proposals here are not the only ones offered to restructure baseball's economic situation, but they represent two of the most prominent and comprehensive examinations of baseball's situation specifically. Cf. WEILER, *supra* note 11. Weiler, a Harvard law professor, suggests that the key for baseball is to impose a meaningful graduated salary tax that all teams must pay. *Id.* at 189

Ribbon Panel on Baseball Economics (MLB Panel) undertook an extensive investigation of MLB's financial and competitive situation and released its report on the status of baseball's economic conditions in July 2000. The second is a book written by Emmy-winning sports broadcaster Bob Costas. *Fair Ball* presents what Costas claims is a "fan's case for baseball."<sup>44</sup> Costas' position as a sports journalist well-known for his deep love of baseball lends his insights a high degree of credibility.

Both efforts focus on the MLB's competitive state, with the standard of competitiveness being "a well-managed club that demonstrates baseball acumen should allow its fans a reasonable hope that their club will be able to play and win in the postseason."<sup>45</sup> They both also posit a negative relationship between baseball's current economics and the competitive state of the game as reflected in the simple diagram below:



The MLB Panel concluded "[l]arge and growing revenue disparities exist and are causing problems of chronic competitive imbalance."<sup>46</sup> Similarly, Costas states "I think it's safe to say that revenue . . . has become a problem when this factor— . . . more than any other single factor in the game— becomes the biggest single indicator of a team's chances for success."<sup>47</sup>

The relationship is one of cause and effect. The independent variable, so to speak, is revenue disparity, most often operationalized as player payroll disparity.<sup>48</sup> The dependent variable is the MLB competitive balance, meaning

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("The solution I favor, instead, is a set of league-wide payroll standards . . . that gives every club the incentive to invest to the level needed to build a competitive team, rather than spend too much on assembling a roster that is too strong or too little on a roster that is too weak.").

44. BOB COSTAS, *FAIR BALL: A FAN'S CASE FOR BASEBALL* 13 (2000) ("This isn't a commentator's diatribe against the sport, but rather a fan's case *for* baseball. What do I want? I think the same thing most baseball fans want: To see the game prove worthy of our devotion.").

45. PANEL REPORT, *supra* note 12, at 13. Costas expressed a similar notion more colorfully: If, through a run of outrageous fortune, adversities, blunders, front-office insanity, and other circumstances that make up their star-crossed condition, the Red Sox go 80-plus years without a world title or the Cubs go 50-plus years without a pennant, that's part of baseball's lore. But if fans of the Kansas City Royals or Minnesota Twins feel they're doomed to spend decades out of contention simply because the deck is stacked against them (rather than the stars aligned against them), that's part of baseball's problem. And that's what's happened in the economic environment of the late '90s.

COSTAS, *supra* note 44, at 59-60.

46. PANEL REPORT, *supra* note 12, at 1.

47. COSTAS, *supra* note 44, at 56.

48. PANEL REPORT, *supra* note 12, at 4 ("A high payroll has become an increasingly necessary ingredient of on-field success.").

a "reasonable *opportunity* for all clubs" to achieve success in MLB's post-season playoff, but "not equal outcome."<sup>49</sup> With the issue framed in this way, the rest of the analysis starts to fall into place. The goal of any restructuring would be to improve MLB's competitive balance; to do so requires examining alternatives that would change the nature of revenue and payroll disparities among clubs.

In the MLB Panel's study of the first five post-strike years, MLB's industry-wide revenues more than doubled from \$1.384 billion in 1995 to \$2.786 billion in 1999.<sup>50</sup> In terms of the effect on club revenues, the growth in revenue had a mixed result. On one hand, this growth slightly narrowed the gap between the richer and poorer clubs in their average club revenue as measured by the percentage of total club revenue. On the other hand, the disparity in actual dollars and, thus, financial resources available to club owners between the richer and poorer clubs became wider. (See Table 1)

**Table 1: Average Club Total Revenue by Revenue Quartile<sup>51</sup>**

	<u>1995</u>		<u>1999</u>	
	Percentage*	Dollars (\$000,000)	Percentage*	Dollars (\$000,000)
Quartile 1	38.7%	76.55	35.8%	131.82
Quartile 2	27.1%	53.55	27.1%	99.97
Quartile 3	19.7%	38.89	20.7%	76.23
Quartile 4	14.6%	28.86	16.4%	60.69

\* "Percentage" means average club total revenue as a percentage of total revenue of all clubs

The proportionate increases in average club revenue were not replicated in the average payroll. (See Table 2) The average payroll for Payroll Quartile 1 teams jumped from 35.0% to 40.3% of the total payroll of all clubs, while the average payroll for Quartile 3 dropped 2.7% and Quartile 4 dropped 3.1%. The actual dollar gap in average payroll between Quartile 1 and Quartile 4 teams increased from \$28.60 million to \$58.62 million.

49. *Id.* at 37; COSTAS, *supra* note 44, at 16 ("Money is not just running the game, but whipping it. . . . With every season, there seem to be more teams greeting Opening Day with little or no chance to compete for a pennant.").

50. PANEL REPORT, *supra* note 12, at 15 (Table 2: Industry Revenues).

51. *Id.* at 23 (Chart 6).

**Table 2: Average Payroll by Payroll Quartile<sup>52</sup>**

	<u>1995</u>		<u>1999</u>	
	Percentage*	Dollars (\$000,000)	Percentage*	Dollars (\$000,000)
Quartile 1	35.0%	46.40	40.3%	78.83
Quartile 2	27.9%	36.90	28.5%	55.67
Quartile 3	23.7%	31.37	21.0%	41.03
Quartile 4	13.4%	17.80	10.3%	20.21

\* "Percentage" means average club player payroll as a percentage of the total payroll of all clubs

As these tables show, a gap between the richer and poorer clubs, already existing in 1995, has continued to grow at least in terms of hard dollars and particularly in relation to player payrolls. The richer clubs are paying higher salaries for their players and, therefore presumably are able to attract and retain the better players in the league. Based on the causal model set out by the MLB Panel and Costas, the richer teams with the better players would be better able to build a competitive team, and thus be more likely to achieve on-the-field success.<sup>53</sup> Although both the MLB Panel and Costas are quick to point out that a high team salary does not necessarily result in a winning record,<sup>54</sup> they contend that the richer teams are more likely to have winning seasons, participate in the playoffs, and win championships.

The empirical data since 1995 supports the correlation between the salaries a club pays to its players and that club's on-the-field success:

- Between 1995 and 1999, teams in Payroll Quartile 1 won 58.0% of their games; Quartile 2—53.3%, Quartile 3—46.7%, and Quartile 4—44.4%.<sup>55</sup>
- During the same period, Payroll Quartile 1 teams won 134 of the 158 postseason playoff games and Quartile 2 won the remaining 24;

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52. *Id.* at 27 (Chart 9).

53. *But cf.* GEORGE F. WILL, BUNTS: CURT FLOOD, CAMDEN YARDS, PETE ROSE AND OTHER REFLECTIONS ON BASEBALL 328 (1998) ("So far, free agency . . . has not had the consequence predicted: It has not resulted in diminished competitive balance."); PANEL REPORT, *supra* note 12, at 53 (noting that prior to the mid-1990s, free agency had not disrupted baseball's competitive balance).

54. COSTAS, *supra* note 44, at 57.

Now let's kill some empty rhetoric right here: Every time a big-money ballclub like the Orioles or the Dodgers stinks up the joint, someone says that it 'proves' that money isn't that important. But the question isn't whether big-money teams can fail. . . . [Some] mismanaged high-payroll teams will fail spectacularly.

*Id.*

55. PANEL REPORT, *supra* note 12, at 30 (Chart 11).

only one Quartile 3 team made the playoffs during this time, losing its only three games; and no Quartile 4 team made the playoffs between 1995 and 1999.<sup>56</sup>

- In 2000, although three teams from Payroll Quartiles 3 and 4 qualified for the playoffs and won the first three games by teams in the bottom half of the payroll rankings since the 1994 strike, none advanced beyond the first round; by the end of the 2000 World Series, teams in Payroll Quartiles 1 and 2 had won 186 of the 189 postseason games between 1995 and 2000.<sup>57</sup>

- Between 1995 and 2000, eleven of the twelve teams in the World Series were Payroll Quartile 1 teams, including each World Champion.<sup>58</sup> The 2000 World Series, for example, pitted the teams with the highest and third highest payrolls against each other.<sup>59</sup>

Perhaps the most telling data regarding the correlation between payroll and on-the-field success relates to the effect on head-to-head competition among teams of disparate payrolls. As Table 3 shows, the greater the disparity between two teams, the more likely that the team with the payroll advantage would win. This trend holds up for both home and away games.

**Table 3: Percentage of Games Won by Payroll Advantage, 1999<sup>60</sup>**

Payroll Advantage	All Games	0- 25%	26- 50%	51- 75%	76- 100%	101- 125%	126- 150%	151- 175%	176- 200%	201- 225%	226- 250%	251- 275%	276- 300%
<b>1999 Home Games Won</b>													
% Won	52	60	60	61	62	61	64	65	64	68	67	68	70
<b>1999 Visitor Games Won</b>													
% Won	48	55	55	57	55	56	57	59	59	62	65	63	63

Calling the club's payroll "the most important factor in determining" a club's competitiveness, the MLB Panel reached the following conclusion regarding MLB's competitive balance:

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56. *Id.* at 32-34.

57. George F. Will, *Oh, Swell: New York Wins Again*, NEWSWEEK, Oct. 30, 2000, at 104. The San Francisco Giants (the 18th largest payroll) won one game and the Oakland A's (23rd) won two. The Chicago White Sox (24th and the first Payroll Quartile 4 team to make the playoffs following the strike) had the best record in the American League in 2000, but lost all three games it played in the playoffs.

58. PANEL REPORT, *supra* note 12, at 35 (Table 14).

59. Will, *supra* note 57, at 104.

60. PANEL REPORT, *supra* note 12, at 31 (Table 10).

While most fans do not demand or expect that their team will reach postseason play each year, some have ample reason to believe that the club they root for will remain chronically uncompetitive . . . . The presence in the game of clubs, perhaps a majority, that are chronically uncompetitive, alongside clubs that routinely dominate the postseason, undermines the public's interest and confidence in the sport.<sup>61</sup>

### *B. Proffered Solutions*

With both the MLB Panel and Costas framing baseball's problem as being about a structural lack of competitive balance, one next needs to consider their proposals as to how MLB should restructure its economics. At the heart of both proposals lies some form of revenue sharing among the clubs and an effort to rein in player salaries. The MLB Panel and Costas, however, take some different approaches in achieving these goals and also offer distinct ideas. With this in mind, let us examine their proposals for restructuring.

#### 1. Baseball's Blue Ribbon Panel

MLB Commissioner Bud Selig appointed the MLB Panel, comprised of Richard C. Levin, George J. Mitchell, Paul A. Volcker, and George F. Will,<sup>62</sup> "to examine the question of whether Baseball's current economic system has created a problem of competitive imbalance in the game."<sup>63</sup> The MLB Panel offered its report as recommendations to club owners and sought to have input from interested groups, most notably the Major League Baseball Players Association (MLBPA).<sup>64</sup> Although essentially working on behalf of MLB club owners, the MLB Panel brought with it a distinct set of values separate from those of the owners. Specifically, the MLB Panel expressly considered itself as "representing the interests of baseball fans."<sup>65</sup> For example, it noted its concern that the increasing costs associated with teams trying to remain competitive would "jeopardiz[e] MLB's traditional position as the affordable

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61. PANEL REPORT, *supra* note 12, at 36.

62. Levin is a Professor of Economics and President of Yale University. Mitchell is the former Majority Leader in the United States Senate. Volcker served as Chairman of the Board of Governors of the Federal Reserve System from 1979 to 1987. Will is a political commentator and author of two well-respected books on baseball (*Bunts: Curt Flood, Camden Yards, Pete Rose and Other Reflections on Baseball* (1998) and *Men at Work: The Craft of Baseball* (1990)). PANEL REPORT, *supra* note 12, at 55-57.

63. PANEL REPORT, *supra* note 12, at 53.

64. *Id.* at 54.

65. *Id.* at 1. The first sentence of the Report starts: "The Commissioner's Blue Ribbon Panel on Baseball Economics, representing the *interests of baseball fans* . . ." (emphasis added). *Id.*



family spectator sport.”<sup>66</sup>

As noted above, the MLB Panel’s focus centered on the “competitive state of the game,” and its purpose was “to recommend solutions designated to address any identifiable problem.”<sup>67</sup> The MLB Panel sought to offer reforms that the club owners could implement unilaterally—that is, reforms not subject to collective bargaining with the MLBPA, leaving such issues to be developed in cooperation and collaboration with the players’ union.<sup>68</sup> In doing so, the MLB Panel came up with six specific recommendations: revenue sharing, a competitive balance tax, unequal distribution of MLB’s Central Fund, a competitive balance draft, reforms to its Rule 4 draft, and strategic franchise relocations.

*a. Revenue sharing*

*“MLB should share at least 40 percent, and perhaps as much as 50 percent, of all member clubs’ local revenue, less local ballpark expenses as uniformly defined.”*<sup>69</sup>

Currently, MLB clubs receive revenue from three primary sources:

- “local” revenues, which include ticket sales, local broadcasting rights, ballpark concessions, parking, and team sponsorships;
- “Central Fund” revenues, which are industry-wide revenues, such as from national television contracts and licensing agreements, and which historically have been split evenly among clubs; and
- Limited revenue sharing implemented in 1996.

Of these, “local” revenues tend to provide the bulk of each club’s revenue. Between 1995 and 1999, local revenue provided on average seventy-five percent of a club’s revenue, ranging from forty-six percent of Montreal’s revenue coming from local revenue to the New York Yankees’ ninety-five percent.<sup>70</sup> In dollar terms, the Yankees received more than ten times the local revenue than the Expos.<sup>71</sup> The variance among local revenues is in large part attributable to the media market of the MLB clubs—the larger the market a club is in, the more it can charge for its television and radio rights. Market

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66. *Id.*

67. *Id.* at 53.

68. PANEL REPORT, *supra* note 12, at 12.

69. *Id.* at 8.

70. *Id.* at 81-82 (Tables 27 and 28).

71. In 1999, the Yankees had local revenue of \$176 million compared to the Expos’ \$12 million. *Id.* at 17.

size also affects other sources of local revenues, such as ballpark naming rights, sponsorships, etc.<sup>72</sup> Thus, the disparity of local revenues among clubs is a structural problem associated in part to where a team is located; a club cannot change its position without moving the franchise.<sup>73</sup>

The relative effect that the other sources of revenue has on any given club depends, of course, on how much that club receives in local revenue. Thus, consider the three highest and the three lowest local revenue teams in 1999:

**Table 4: Comparative Impact of Revenue Sources, 1999<sup>74</sup>**

Club	Local Revenues	Central Funds	Rev. Share	Total
<b>Highest Local Revenue Clubs</b>				
New York Yankees	175.94	13.32	(11.32)	177.94
New York Mets	132.32	13.32	(5.05)	140.59
Cleveland Indians	128.82	13.32	(5.36)	136.78
<b>Lowest Local Revenue Clubs</b>				
Pittsburgh Pirates	32.67	13.32	17.20	63.19
Minnesota Twins	17.87	13.32	21.45	52.64
Montreal Expos	11.97	13.32	23.51	48.80

For the highest clubs, the Central Funds received represent less than ten percent of their total revenues, but they do more than offset the funds that these clubs give up under the current revenue sharing plan. On the other side of the spectrum, however, the monies received through Central Funds and revenue sharing are necessary components to sustain the economic viability of the lowest local revenue clubs.

Given this, the MLB Panel proposed an enhanced revenue sharing scheme that would shift a greater percentage of local revenues from the wealthier to poorer teams. The Panel did not consider this proposal to be a form of corporate welfare. Instead, the revenue sharing proposal would compensate "visiting teams for their indispensable role in producing a marketable event."<sup>75</sup> The MLB Panel considered the term "local revenue" somewhat of a misnomer because the product that each team sells locally actually is a competition between the home team and the visiting team. Without all the other teams in the National and American Leagues, including poorer teams like the Expos

72. *Id.* at 19.

73. PANEL REPORT, *supra* note 12, at 19 ("No matter how well-managed a club might be, it cannot change its media market rank . . .").

74. *Id.* (Appendices).

75. *Id.* at 38.

and Twins, teams like the Mets and Yankees would not have a valuable product. Therefore, the visiting teams should be entitled to share in the local revenue riches that large market teams are able to generate.

Under the current revenue sharing scheme, each club contributes twenty percent of its net local revenues to a shared pool, which is distributed in two ways: (1) seventy-five percent is dispersed equally among all clubs, and (2) the remaining twenty-five percent is distributed only to clubs who fall below the local revenue average.<sup>76</sup> The MLB Panel would enhance the revenue sharing scheme in two ways. First, it would increase the percentage of net local revenues that each club would contribute to at least forty percent and possibly as high as fifty percent. Second, the Panel would redistribute the pooled funds equally among all the clubs.<sup>77</sup> Finally, the MLB Panel noted that for its revenue sharing scheme to be effective, it must be coupled with a minimum club payroll (discussed next) to “discourage clubs from using revenue sharing to become profitable without making a proper effort to become competitive on the field . . . .”<sup>78</sup>

*b. Competitive balance tax*

*“MLB should levy a 50 percent competitive balance tax on clubs that are above a fixed threshold of \$84 million and all clubs should be encouraged to have a minimum payroll of \$40 million.”*<sup>79</sup>

As discussed above, the MLB Panel contended that the growing disparity in teams’ payrolls has disrupted MLB’s competitive balance. Therefore, the Panel sought to introduce a mechanism that would narrow the gap in the aggregate salaries paid by Payroll Quartile 1 and Quartile 4 teams. The proposed solution: taxing clubs that spend in excess of a fixed amount of eighty-four million dollars<sup>80</sup> and providing incentives for clubs to spend at least forty million dollars<sup>81</sup> on their payroll. The MLB Panel noted that this

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76. *Id.*

77. *Id.* The MLB Panel contends that this “straight pool” plan is better than the current “split pool” plan, which “creates anomalous results in the sense that some middle market clubs face a higher marginal tax rate than the highest revenue clubs.” *Id.*

78. PANEL REPORT, *supra* note 12, at 38 (emphasis in original).

79. *Id.* at 8.

80. *Id.* at 39. The MLB Panel chose the \$84 million value based on a previous luxury tax implemented in 1997 and designed to stem escalating salaries. Because the luxury tax was calculated on a floating average salary based on the clubs with the fifth and sixth highest payrolls each year, the threshold at which the tax would kick in continued to increase, and as a result, the penalty of being above the threshold effectively decreased.

81. *Id.* The MLB Panel chose this amount to approach a “reasonable ratio” between Quartile 1 and Quartile 4 teams’ payroll.

proposal would set into motion three dynamics. First, higher payroll teams would face a tax disincentive and, as a result, limit their payroll. Second, poorer teams would pursue the incentives (discussed below) to reach the forty million dollar minimum threshold. Finally, middle level clubs could decide to absorb higher salaries to become more competitive with richer clubs without the fear of the wealthier clubs responding by outspending them.<sup>82</sup>

*c. Central fund distributions*

*"MLB should use unequal distribution of new Central Fund revenues to improve competitive balance, creating a 'Commissioner's Pool' that is allocated to assist low-revenue clubs in improving their competitiveness and in meeting the minimum payroll obligation of \$40 million."*<sup>83</sup>

Although Central Funds traditionally have been distributed equally among all clubs, in January 2000 MLB owners granted MLB's Commissioner the power to distribute these funds unequally. Given this, the MLB Panel suggested that the Commissioner have the discretion to distribute Central Funds, including any new Central Funds,<sup>84</sup> disproportionately to poorer teams to offset partially their disadvantage in local revenue.<sup>85</sup> The Commissioner would be able to use his discretion in distributing these funds; for example, to assist clubs in revenue-enhancing endeavors like building a new ball park or developing young players. More importantly, the use of discretionary funds would be the carrot to get poorer clubs to meet the proposed minimum forty million dollar payroll. The MLB Panel proposed that any clubs below that threshold would be barred from receiving any discretionary Central Funds.<sup>86</sup>

*d. Competitive balance draft*

*"Major League Baseball should conduct an annual 'Competitive Balance Draft' of players in which the weakest eight clubs would have a unique opportunity to select non-40-man roster players from the organizations of the eight clubs that qualified for the playoffs."*<sup>87</sup>

The MLB Panel developed this proposal to keep the wealthier clubs from stockpiling young talent in their minor league farm systems. An important

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82. *Id.*

83. PANEL REPORT, *supra* note 12, at 9.

84. Although not discussed by the MLB Panel, one potential source of new Central Funds may be revenues from the Internet. Schwarz, *infra* notes 164 and 165 and accompanying text.

85. PANEL REPORT, *supra* note 12, at 40.

86. *Id.*

87. *Id.* at 9.

part of this proposal is that the drafting club would not have to keep the drafted player on its major league roster.<sup>88</sup> Thus, a team could draft the best prospect available with an eye toward him making the major leagues at some point in the future.<sup>89</sup>

*e. Rule 4 draft*

*"Major League Baseball should implement reforms in the Rule 4 draft."*<sup>90</sup>

The current Rule 4 draft is MLB's amateur draft, in which clubs select American high school and college players and obtain exclusive rights for that player's services.<sup>91</sup> The MLB Panel's proposed reforms entailed: including international players in the draft,<sup>92</sup> eliminating compensation picks for the loss of a free agent,<sup>93</sup> narrowing the number of times that a player may submit himself for draft consideration, eliminating first round picks for clubs that reach the playoffs, and allowing the trading of draft picks.<sup>94</sup> These reforms would tend to promote a more equal distribution of talented minor league players among MLB clubs.

*f. Franchise relocations*

*"Major League Baseball should utilize strategic franchise relocations to address the competitive issues facing the game."*<sup>95</sup>

As noted above, one of the structural causes of revenue disparity among clubs is the different size of their markets. The MLB Panel contended that

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88. *Id.* at 40.

89. Under the current Rule 5 draft system, which the MLB Panel would keep in place as well, a team may draft a minor league player not on another team's 40-man major league roster and must either keep the drafted player on its major league roster or return the player to his original team.

90. PANEL REPORT, *supra* note 12, at 9.

91. *Id.* at 41-42. The amateur players are not required to sign with the club that drafts them, but they cannot play for any minor league team affiliated with a MLB team. For example, after J.D. Drew chose not to accept the contract and signing bonus offered by the Philadelphia Phillies after the club drafted him, he played the next season in an independent minor league. The next year, the St. Louis Cardinals drafted him and were able to sign him. WEILER, *supra* note 11, at 200-05.

92. PANEL REPORT, *supra* note 12, at 41. Currently, foreign-born players are excluded from the draft, but can be signed as free agents by clubs.

93. *Id.* at 41. Teams get a compensation draft pick when they lose a highly ranked free agent. The MLB Panel contended that this system favors teams that "rent" potential free agents—that is, acquire them in the last year of their contract from a poorer team that knows that it cannot afford to re-sign the player when he becomes a free agent. Because teams contending for playoff positions are those more likely to "rent" players and those teams tend to be the wealthier clubs, the compensation system has systematically benefited the wealthier clubs at the expense of poorer clubs. *Id.*

94. *Id.* at 41-42.

95. *Id.* at 10.

"[c]lubs that have little likelihood of securing a new ballpark or undertaking other revenue enhancing activities should have the option to relocate if better markets can be identified."<sup>96</sup> The benefits that would stem from strategic franchise relocation would include allowing the relocated club to compete with richer clubs, giving MLB a stronger portfolio of markets, and enabling the industry to generate more funds that would be distributed pursuant to the proposed enhanced revenue sharing system.<sup>97</sup>

## 2. A fan's case for baseball

Bob Costas sought to offer a comprehensive approach to baseball's problems because pursuing another piecemeal attempt, as baseball has done in the past, would prove to be "disastrous."<sup>98</sup> Although he discussed a wide range of issues ranging from baseball's economics to its wild card system, his approach is that of the baseball *fan*. He wants to see "baseball become fun again."<sup>99</sup> For Costas, the special moments of the current game—such as the 1998 home run race between Mark McGwire and Sammy Sosa—provide for many fans the only enjoyment they may find in the game, because they know "that [their] team had no living chance to contend for a pennant."<sup>100</sup> He wants the game to reward baseball fans that continue to return to and show their support for the game.<sup>101</sup>

Many of Costas' restructuring principles are similar to the MLB Panel's, such as closing the salary gap between Payroll Quartile 1 and Quartile 4 teams. Costas, however, offers some different viewpoints on the best way to accomplish these reforms as well as other ways to enhance baseball's appeal to its fans. The crux of Costas' proposal boils down to revenue sharing: "And to achieve competitive balance, especially in this era, you have to have comprehensive revenue sharing . . . [because] the substantial existing revenue isn't distributed equitably."<sup>102</sup>

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96. *Id.* at 43.

97. PANEL REPORT, *supra* note 12, at 43.

98. COSTAS, *supra* note 44, at 173.

99. *Id.* at 13.

100. *Id.* at 5.

101. *Id.* at 11.

And it is for moments like [the home run race] that we keep returning to the game, why we still—despite all the evidence—hold out hope for it. Because we know that, at its core, the game itself can still reward us. That's why it's worth caring about. That's why it's worth arguing about. And that's why I'm writing this book.

*Id.*

102. *Id.* at 54.

Like the MLB Panel, Costas notes the interdependence of MLB franchises.<sup>103</sup> As a joint effort among all the clubs in a league, MLB teams need “to cooperate in some measure to generate revenues.”<sup>104</sup> Moreover, a sports league can bring together the common interests of owners, players, and fans alike: “A sports league is a business whose success and appeal to the public depend on both the quality of play and the perceived fairness of competition.”<sup>105</sup> Viewing MLB in this manner, “franchises still have an incentive both to make profits and to win championships, as well as an obligation to the welfare of the league as a whole”—an obligation that also extends to players who reap the financial benefits of playing in the league.<sup>106</sup> In the end, “the ideal is at once practical and profitable. Teams make money. Players get rich. And fans get something that, in a real sense, money can’t buy.”<sup>107</sup>

Turning to Costas’ specific proposals, he suggests a revenue sharing scheme in which each club would contribute one-half of its local broadcasting revenue to a national pool to divide equally among each club. In addition, clubs would contribute a portion of their ticket revenue to the national pool—instead of a fifty-fifty split like that proposed by the MLB Panel, teams would keep seventy percent of their ticket revenue with the remaining thirty percent contributed to the pool. Costas contends that such a revenue sharing plan would not only narrow the structural differences between richer and poorer clubs, but also establish a sound economic model that would enable club owners to negotiate with the MLBPA.

Like the MLB Panel, Costas offers a plan that would narrow the gap in club salaries to a 2:1 ratio between the richest and poorest clubs, and he offers a range of forty million dollars to eighty million dollars as a starting point. But his proposal differs in several key ways:

- Whereas under the MLB Panel teams were provided with incentives to encourage them to fall within the proposed salary range, Costas would impose a mandatory salary floor-and-cap system;<sup>108</sup>
- Unlike the MLB Panel’s proposal of establishing amounts for the

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103. *Id.* at 42-43 (“But properly understood, Major League Baseball is less like 30 different restaurants and much more like 30 franchises within a single restaurant chain.”).

104. *Id.* at 43 (citing Notre Dame Economist Richard Sheehan).

105. *Id.* at 49.

106. *Id.*

107. *Id.*

108. *Id.* at 91-104; *see also supra* notes 79-82 and accompanying text (noting that the MLB Panel would tax teams with salaries above \$84 million and provide incentives for teams below \$40 million).

high and low ends of the salary range that would not change, Costas would calculate the salary floor based on the per-team average of local and national media revenues and set the high value at two times that amount; thus, as media revenues increased, the salary range would increase;<sup>109</sup> and

- Although the MLB Panel suggested that the salary ranges could be implemented without affecting the MLBPA's collective bargaining rights, Costas would implement this salary range by negotiating with the players and providing them consideration to do so.<sup>110</sup>

For Costas, these two reforms—revenue sharing and salary adjustments—would take MLB a long way to restoring the primacy of the game itself and allowing the business of baseball to recede to the background and become a more stable, lucrative endeavor.<sup>111</sup>

### *C. The Shortcomings: Confusing the Means and the Ends*

Approaches like the MLB Panel's or Costas' are useful tools in beginning to address baseball's problems.<sup>112</sup> In addition, the reforms they suggest—revenue sharing and narrowing the payroll gap in particular—will likely be the cornerstone of any restructuring that MLB undertakes in the near future. But their recommendations, as structured, do not offer sufficient incentives for clubs—rich or poor—to pursue them simply in the name of achieving the desired end of enhancing baseball's competitive balance.

As discussed above, both the MLB Panel and Costas frame MLB's problems in terms of competitiveness, which is the dependent variable in their equation. An enhanced competitive balance, however, is an inappropriate end

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109. *Id.* at 92-93.

110. *Id.* at 95-102. Specifically, Costas would require a "superstar salary cap" equal to one-fourth the minimum team salary and a fixed range of graduated salaries for players in their first four years of service, but increase the minimum salary from \$200,000.00 to \$300,000.00 and allow players to pursue free agency two years earlier. *Id.* Costas also notes that under his plan, the aggregate amount paid to all players would increase by approximately \$150 million per season. *Id.* at 99.

111. *Id.* at 103-04. Costas' suggestions to enhance MLB's fan appeal extend beyond these economic matters. He also offers many other suggestions that may or may not have an effect on economic matters: undertaking a "radically simple realignment," eliminating the wild card playoff team, eliminating the designated hitter, adjusting the rules regarding the roster for All-Star games, opening the amateur draft to foreign players, holding umpires more accountable for proper officiating, permitting a limited use of instant replay, continuing efforts to promote minorities in baseball, limiting the use of commercial advertising in the ballpark, and bringing back daytime World Series games. *Id.* at 115-72.

112. As Costas notes, "I don't presume to have all the right answers. But I hope in many cases I'm on the right track. And at the very least, these things are worth discussing." *Id.* at 14.



for a MLB club to pursue. Despite the interdependent nature of MLB as a sports league, each club is a distinct business entity. The form of each club's ownership structure may differ, ranging from being wholly owned subsidiaries of large corporate conglomerates<sup>113</sup> to corporations with a dominant recognizable majority owner<sup>114</sup> to partnerships.<sup>115</sup> Regardless of the ownership structure, each club as a business entity must have as its primary end the objective of making profits for its shareholders or partners. As stated in the seminal case of *Dodge v. Ford Motor Co.*:<sup>116</sup>

A business corporation organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors . . . does not extend to a change in the end itself, to the reduction of profits or to the nondistribution of profits among shareholders in order to devote them to other purposes.<sup>117</sup>

Given this, establishing MLB's competitive balance as an end of any economic restructuring would be inconsistent with this fundamental premise of business law. In this sense, each team must take an individualistic, narrow view of its own self-interest; it cannot set another team's competitiveness ahead of its own duty to make a profit for its investors. Furthermore, a club may even have difficulty justifying putting its own competitiveness ahead of its profitability.

Certainly real-world examples of this abound, such as the case of the Florida Marlins following the 1997 World Series. Consider also the San Diego Padres, who made the World Series in 1998, but allowed several key players to leave via free agency in a cost-cutting move before the 1999 season. In 2000, the Padres were required to make a twenty million dollar cash call on owners to cover what were deemed "intolerable losses" and planned to reduce spending on salaries further before the 2001 season to prevent any future cash calls.<sup>118</sup> For these clubs, on-the-field success meant financial losses. Consequently, the only way to keep from losing money was to be willing to lose games.

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113. For example, the Tribune Company owns the Chicago Cubs and Walt Disney owns the Anaheim Angels.

114. For example, George Steinbrenner of the New York Yankees and Tom Hicks of the Texas Rangers.

115. The Minnesota Twins, for example, are owned in partnership form.

116. 170 N.W. 668 (Mich. 1919).

117. *Id.* at 684.

118. *Cash Flow Problems*, ARLINGTON STAR-TELEGRAM, Sept. 17, 2000, at 7C (quoting club President Larry Lucchino).

In addition to competitiveness, the MLB Panel and Costas sought to promote another value, another set of interests—those of the fans. But like competitiveness, restructuring baseball's economics to promote the fans' interests is an inappropriate end for the clubs as business entities to pursue. Moreover, MLB's antitrust exemption effectively allows clubs to ignore *as a matter of law* the fans' or general public's interests when it comes to conducting their business affairs. Under the Flood Act and case law, fans, even as consumers of baseball, do not have standing to sue MLB clubs for any alleged antitrust violations.<sup>119</sup> When the business of baseball is at issue, as it will be in any proposed economic restructuring, the baseball fans' legal interests are, at best, of indirect concern.<sup>120</sup>

Given all this, as a matter of business law, the end objective of any economic restructuring in MLB must be profit. Each club individually must approve of any proposed restructuring on the basis of the reforms' likely effects on that club's profitability. Admittedly, a state's constituency statute<sup>121</sup> may afford a club some flexibility in determining its best interests, such that the clubs could take into account such factors as the league's competitive balance, the fan's interests, or some conception of the "best interests of the game." However, the bottom line is clear—each club must make a business judgment as to how best improve its own profitability.<sup>122</sup>

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119. 15 U.S.C. § 27a (granting standing to sue only to major league players); *McCoy v. Major League Baseball*, 911 F. Supp. 454 (W.D. Wash. 1995) (suit arising following the 1994 players' strike).

120. *McCoy*, 911 F. Supp. at 458 (stating that the "injury suffered by the fans is not direct, that is, the injury can be fairly characterized as an indirect 'ripple effect'").

121. See, e.g., OHIO REV. CODE ANN. § 1701.59(E) (Anderson 2001).

[A] director, in determining what he reasonably believes to be in the best interest of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

- (1) The interests of the corporation's employees, suppliers, creditors, and consumers;
- (2) The economy of the state and nation;
- (3) Community and societal considerations;
- (4) The long-term as well as short-term interests of the corporation and its shareholders . . . .

*Id.*

See also LEWIS D. SOLOMON ET AL., CORPORATIONS LAW AND POLICY 122 (4th ed. 1998) (characterizing these provisions as "typical" in a constituency statute).

122. Consider, for example, the ten-year, \$252 million contract that the Texas Rangers gave Alex Rodriguez in December 2000—the richest in sports history. Rodriguez will earn \$21 million per season for the first seven seasons, and provided he does not exercise an option to terminate that contract after year seven, his salary escalates thereafter. Despite the enormity of the contract, the Rangers expected to make a profit in 2001. T.R. Sullivan, *A-Rod 'Fell in Love' With Team, Owner*, ARLINGTON STAR-TELEGRAM, Dec. 13, 2000, at 1D.

Both the MLB Panel and Costas treat a club's profitability as a secondary concern.<sup>123</sup> Costas acknowledges that a number of teams would sacrifice in the short term so that baseball as a whole might be better off.<sup>124</sup> He specifically points out that under his plan the "Yankees profits would be sliced . . . [but] the Yankees and teams like them will still be profitable."<sup>125</sup> Given this, these proposals do not necessarily give richer teams an incentive to agree to an enhanced revenue sharing. They would be required to give up substantial gross revenue without regard to their net profitability.

Even poorer clubs may find that these revenue sharing proposals do not serve their business needs. Although they would receive more revenue, a number of MLB clubs would likely need to increase their expenditures just to meet the minimum payroll. For example, using 1999 data, the eleven clubs that fell below a forty million dollar payroll would receive an average net gain of about three million dollars from a fifty percent local revenue sharing scheme after incurring additional payroll expenses—they range from a net loss of nearly nine million dollars (Florida) to a gain of over fifteen million dollars (Cincinnati).<sup>126</sup> But these clubs tend to operate already with a net operating loss. Thus, for the clubs that would suffer an additional net loss, the revenue sharing/minimum payroll scheme is far from being in their financial interests. The scheme would impose yet another structural barrier affecting their profitability and, indirectly, their competitiveness. As for the other clubs, the enhanced revenue sharing has little or no effect on their profitability. As with the rich clubs, the proposed reforms provide little economic incentive to pursue them.

Costas notes: "Forced to choose between winning a championship and breaking even, or not winning a title but turning a profit, almost any owner—

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Asked whether it's now hypocritical to sign a player to a \$252 million contract, [Rangers owner Tom] Hicks said: "What I have difficulty with is a team taking their payroll up to 85 percent of their total revenues and end up losing a lot of money. That's stupid. . . . *We're running this like a business. We're going to make a profit next year.*" Hicks projects the Rangers will have \$160 million in revenue next year and a payroll around \$80 million.

*Id.* (emphasis added).

123. The MLB Panel, for example, quantifies some problems associated with club profitability, club debt, and franchise values in an appendix, but expressly notes that its "recommendations are not based on [its] analysis of these topics." PANEL REPORT, *supra* note 12, at 36.

124. COSTAS, *supra* note 44, at 69.

125. *Id.*

126. PANEL REPORT, *supra* note 12, at 81-83. The net gain/(loss) for these eleven clubs would be: Minnesota: \$3.48 million; Florida: (\$9.00 million); Kansas City: (\$3.03 million); Montreal: \$8.78 million; Pittsburgh: \$4.82 million; Chicago White Sox: (\$7.16 million); Oakland: \$4.33 million; Philadelphia: \$2.96 million; Detroit: \$7.81 million; Tampa Bay: \$2.81 million; Cincinnati: \$15.54 million. *Id.*

save for the most craven and soulless—would choose the former over the latter. In a heartbeat.”<sup>127</sup> But this scenario omits an important economic issue: MLB clubs tend to lose money. Between 1995 and 1999, the average annual loss across all MLB teams was nearly seven million dollars.<sup>128</sup> Although the New York Yankees (\$64.50 million total profit between 1995 and 1999), Cleveland Indians (\$45.92 million), and Colorado Rockies (\$12.44 million) made money, each of the other clubs were in the red over the same period, with the San Francisco Giants (\$97.02 million in total loss), Toronto Blue Jays (\$87.63 million), and Anaheim Angels (\$83.32 million) suffering the largest losses. The teams that tend to incur the largest losses are those in the middle of the pack in terms of total revenue.<sup>129</sup>

Before a club can even make the decision that Costas sets out, it first needs to be in a position to break even. The proposed reforms do little to get teams there, in part, because of their misplaced emphasis on competitive balance as the goal of restructuring. Unless a reform proposal improves a club’s ability to earn a profit, then it stands little chance of being accepted by the owners. Admittedly, this is a very difficult task given the wide vast array of ownership and economic structures currently in place. But this must be a fundamental proposition of any restructuring proposal.

To summarize the above discussion, such matters as MLB’s competitive balance and the interest of the fans are improper ends for any proposed restructuring, because the clubs’ profitability is the only legitimate end. This does not mean, however, that competition and the fans should be forsaken or ignored. On the contrary, both ends should be pursued, but only in a proper way. They represent important values that can serve as the *means* to a successful restructuring, just not the *ends* themselves.

One should view appealing to the fans and enhancing a team’s competitiveness as ways to improve profitability, which thus effectively reverses the direction of the relationship that underlies the MLB Panel’s and Costas’ proposals: baseball’s economics is now the dependent variable of the equation.<sup>130</sup>

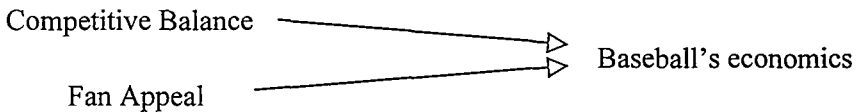
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127. COSTAS, *supra* note 44, at 47. Costas continues, “[b]aseball fans know the Detroit Tigers won the World Series in 1984. But which was the most profitable team in baseball that year? No fan knows, and even better, no fan cares.” *Id.*

128. PANEL REPORT, *supra* note 12, at 84 (Table 30).

129. *Id.* at 80-86. Between 1995 and 1999, the average annual gain/(loss) for a club in each revenue quartile was: Revenue Quartile 1 = \$1.8 million; Revenue Quartile 2 = (\$11.0 million); Revenue Quartile 3 = (\$13.2 million); and Revenue Quartile 4 = (\$7.8 million). *Id.*

130. This relationship should also depict the indirect effect that competitiveness has on profitability by enhancing fan appeal. *See infra* note 132. For now, this relationship has been omitted from the graphic.



The relationship between appealing to fans and profitability is direct. The more fans that come to a team's games, the more money that team makes.<sup>131</sup> Similarly, a team's on-the-field successes often lead to enhanced profitability.<sup>132</sup> These are simple, but important, propositions to keep in mind.

A MLB team can seek to make a profit in any number of ways. It could choose to emphasize its entertainment value—perhaps comparable to going to a movie or a concert—even if the team is not competitive.<sup>133</sup> It could choose to play most of its games during the day even though the norm is to play at night.<sup>134</sup> Or it could choose to invest in high quality players to create a competitive team. These are matters of business judgment and are well within the ambit of the authority of a team's business decision-makers.

The distinction between competitiveness as a *means* and as an *end* is a fine one; the relationship between competitive balance and economics is blurry indeed. In fact, viewing the two concepts in simple terms like “independent value” and “dependent value” is incorrect. Rather than a one-directional relationship, however defined, the two are interrelated in a dynamic

131. Cleveland Indians Baseball Co., SEC Form S-1, at \*6 (Apr. 3, 1998), SEC EDGAR, Archives.

These strong attendance figures provide the Club with a predictable ticket sale and premium seating revenue base . . . [that] has allowed [the Club] to create a competitive, profitable team within the framework of a [MLB] system that is confronted with escalating player salaries and limited means for clubs to increase revenue.

*Id.* at \*7.

132. *Id.* at \*11.

The team's recent successes have generated fan enthusiasm, resulting in [greater local revenues]. Furthermore, success in the regular season has permitted participation in post-season playoffs, which has provided the Company with additional revenue and income. Poor on-field performance by the Indians is likely to adversely affect revenue and income.

*Id.*

133. COSTAS, *supra* note 44, at 57-58.

As Sandy Alderson said before he left the A's to join Major League Baseball's central office, small-market teams are no longer in the business of competitive baseball, they're in the business of entertainment . . . . [T]hey have to get fans to the ballpark by some means other than the pursuit of a championship.

*Id.*

134. *Shlensky v. Wrigley*, 237 N.E.2d 776, 780-781 (Ill. App. Ct. 1968) (upholding the decision of Philip Wrigley, the majority stockholder and controlling director of the Chicago Cubs, not to install lights at Wrigley Field in a shareholder derivative action).

relationship. The cause of one creates an effect in the other and vice versa. To improve MLB's overall economic situation, it can seek to enhance the competitive balance, but to do so requires a restructuring of baseball's economics. The key thing to keep in mind, though, is that the final analysis has to be economic, because the last calculation has to be profitability. The MLB Panel and Costas overlooked this crucial step, but that does not mean that their proposals would fail automatically. Instead, they can be the springboard toward a proper solution.

### III. HITTING THIRD: WORKING TOWARD A NEW SOLUTION

#### *A. Reassessing the Problem and Redefining the Solution*

On November 21, 2000, MLB Commissioner Bud Selig testified before the United States Senate Judiciary Committee's Subcommittee on Antitrust, Business Rights, and Competition. In his testimony, Selig stated: "The economic landscape of the game must be changed, and the way we do business must be changed."<sup>135</sup> But as discussed in the previous section, current restructuring proposals do not offer a significant enough change to MLB's economic system—in the words of Senator Mike DeWine (R-OH), "the problem seems to be racing far ahead of the solution thus far."<sup>136</sup> Thus, the question becomes how can the business of baseball be changed to achieve the many disparate goals at stake—increasing the profitability of all clubs, improving the game's competitive balance, managing player compensation, and strengthening the sport's fan base.

At this point, let us take a step back and assess where baseball currently stands:

- MLB is (for the most part) a government-sanctioned monopoly;
- MLB clubs are saddled with long-term contracts that force them to pay escalating rates for more than they really can afford;
- Teams are burdened by debt and other fixed costs;
- The quality of MLB's product is deteriorating;
- Customers are asked to bear the increasing costs of MLB's product and, as a result, are exploring other alternatives; and
- MLB needs a fundamental restructuring of its business model to

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135. Ronald Blum, *Selig: "Time For Sweeping Changes" in Major League Baseball*, CHATTANOOGA TIMES, Nov. 22, 2000, at D2.

136. *Id.*

address all of these problems comprehensively.

In broad terms, these problems characterize the state of the MLB today. They also characterize the state of the electric utility industry for approximately the past ten years. To address these problems, much of the energy industry has started to deregulate, and in doing so, has undergone a fundamental restructuring designed to lower customer prices and increase company profitability, all while maintaining the quality of its product (*i.e.*, reliability of service).<sup>137</sup> MLB shares similar goals and, as a result, may be able to take some lessons from the restructuring of the energy industry to develop a framework for undertaking the "sweeping changes" that Commissioner Selig said are needed.<sup>138</sup>

Admittedly, the energy industry restructuring does not provide a direct comparison for MLB—they are two distinct industries. But some of the economic theories underlying electrical deregulation—particularly, the blending of competitive forces and a regulated natural monopoly to achieve the goals stated above<sup>139</sup>—and financial mechanisms used to facilitate change can be applied to MLB to develop a plan that not only benefits club owners, players, and fans alike, but also has the potential to be approved by each of the constituent interests.

### *B. Lessons From the Restructuring of the Energy Industry*

Approximately one-half of the states across the U.S. have either deregulated or taken steps toward deregulating their energy industry. To simplify the analysis here, however, we shall focus on one utility in particular—Niagara Mohawk Power Corporation. Niagara provides a useful model for MLB for two reasons. First, it had to deal with many of the generic issues related to the fundamental economic restructuring associated with deregulating the industry. Second, Niagara was burdened by contracts with independent power producers (IPPs), which required Niagara to pay above-market rates. How Niagara dealt with these contracts offers an approach of how MLB can address the issue of players' salaries.

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137. The transition to a deregulated energy industry has not gone as smoothly as proponents had originally hoped. For example, energy customers in California have been subject to price spikes and blackouts. These problems, however, are more attributable to the specifics associated with energy—such as the inability to store electricity and the lack of sufficient generating capacity—than to the economic theory underlying deregulation, which is the focus of discussion in this article.

138. Blum, *supra* note 135.

139. W. KIP VISCUSI ET AL., *ECONOMICS OF REGULATION AND ANTITRUST* 387 (3d ed. 2000) ("If changing technologies can make it possible for competition to work at least in certain sectors of the industry, that approach is likely to be preferred to regulation.").

Before we begin to apply the lessons that Niagara's restructuring offers MLB, some background information is useful. Niagara was a traditional, vertically integrated utility<sup>140</sup> that provided electricity to a good portion of upstate New York from Albany to Buffalo. By 1991, "the Company's competitive position and financial performance [had] deteriorated and the price of electricity paid per [kilowatt-hour] by its customers [had] risen significantly above the national average."<sup>141</sup> Although Niagara's internal expenses were somewhat excessive, the primary cause of its economic problems stemmed from over 150 power purchase agreements (PPAs) with IPPs.

Federal law, in particular the Public Utilities Regulatory Policy Act (PURPA),<sup>142</sup> requires utilities to enter into PPAs with certain IPPs<sup>143</sup> at the utility's avoided cost—that is, a utility's "cost of either generating the electricity itself or purchasing it from another source."<sup>144</sup> New York enacted a statute that further required utilities to pay IPPs a minimum of six-cents-per-kilowatt-hour (\$0.06/kWh).<sup>145</sup> As a result of the statute, upstate New York's then-existing infrastructure, and the potential for developing new energy projects, a large number of IPPs built qualifying facilities in Niagara's service territory.<sup>146</sup> As time moved on, wholesale energy prices never reached the 6 ¢/kWh that Niagara paid at a minimum to the IPPs, and Niagara's supply of electricity exceeded consumers demand, which led to Niagara's financial plight. Moreover, the amount Niagara spent on IPP power increased more than five-fold, from \$200 million in 1990 to approximately \$1.1 billion in

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140. Niagara Mohawk was a vertically integrated utility in the sense that it performed all aspects of delivering electricity to end users. It owned facilities that generated electricity, transmitted and distributed that electricity over its own power lines, and provided customer service to the rate payers. "Traditionally, most of the large privately owned electric utilities in the United States have been vertically integrated—owning power plants, substations, transmission lines, and distribution systems." VISCUSI, *supra* note 139, at 388-89.

141. Niagara Mohawk Power Corp., SEC Form S-3, at \*8 (Apr. 7, 1998), SEC EDGAR, Archives.

142. The Public Utility Regulatory Policy Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (1978) (codified as amended at 16 U.S.C. §§ 2601-2645 (2000)).

143. For IPPs to take advantage of this requirement, they must be "Qualifying Facilities" under PURPA. 16 U.S.C. § 824a-3 (Supp. III 1997).

144. *Ecogen Four Partners, L.P. v. Niagara Mohawk Power Corp.*, 914 F. Supp. 57, 59 (S.D.N.Y. 1996), *vacated sub nom. Norcon Power Partners, L.P. v. Niagara Mohawk Power Corp.*, 163 F.3d 153 (2d Cir. 1998).

145. N.Y. PUB SERV. § 66-c(2) (Consol. Supp. 2001). The state legislature revoked the six-cent law, as it was known, in 1992, but grandfathered all existing contracts that had been entered into based on the law.

146. Niagara Mohawk Power Corp., *supra* note 141, at \*8.



1997.<sup>147</sup> In 1995, Niagara announced that if it were not able to reduce these costs, it faced the prospect of bankruptcy.<sup>148</sup>

At the same time that Niagara was trying to address its growing financial problem, other New York utilities were facing similar problems although not quite to Niagara's extent. As a result, the New York State Public Service Commission (PSC)—the government agency that oversees and regulates New York utilities—started to explore energy deregulation as a means to reduce electric rates, which were well above the national average. The PSC's proceeding, called Competitive Opportunities, culminated in a 1996 order that established the "framework of goals and strategies for restructuring the electric industry in the state."<sup>149</sup> In promulgating this Order, the PSC established a new economic framework for the energy industry in New York.

The primary emphasis of the PSC's Competitive Opportunities Order was to establish a competitive retail market and to allow consumers to choose which company would sell them their electricity. The theory behind this was that by opening up the generation component of the industry to competition, power producers would produce electricity more efficiently, and thus sell at a cheaper rate. Competitive forces, therefore, would require individual producers to manage their variable costs to maximize their profit.

On the other hand, certain functions of the industry, namely the transmission and distribution (T&D) of electricity, are natural monopolies.<sup>150</sup> These functions provide a common benefit to all users, but only one company in any given service area realistically can perform them. Thus, the PSC recognized that energy "deregulation" would require the continued regulation of a singular central entity—the T&D utility. The PSC also recognized that certain costs associated with providing a safe, reliable, and environmentally

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147. *Id.*

148. Agis Salpukas, *New York State Utility Seeks Sweeping Changes*, N.Y. TIMES, Oct. 7, 1995, at A35 ("Threatening to throw itself into bankruptcy unless it wins relief, the power utility that serves much of upstate New York . . . proposed yesterday to form a separate company to free itself from state regulation over the generation of power.").

149. Phillip S. Cross, *N.Y. Issues Electric Restructuring Plan*, 134 PUB. UTIL. FORT. 45 (1996). These goals included: establishing a competitive retail energy market, utilities divesting their generation assets, establishing a "systems benefit charge" to pay for public policy programs, and providing the utilities the reasonable opportunity to recover stranded costs, which are above-market costs incurred in the regulated environment and which cannot be supported in a competitive one. *Id.*

150. VISCUSI, *supra* note 139, at 390 ("The transmission function (high voltages) and the distribution function (low voltages) remain natural monopolies and will continue to require regulation."). "An industry is a natural monopoly if the production of particular good or service by a single firm minimizes cost." *Id.* at 337. The T&D functions present high costs and great barriers to entry, including the expense of constructing a wide-ranging transmission system, the limited land available for such a system, and the inability for consumers to change companies who distribute energy into their homes or businesses.

sound energy system entailed a large number of fixed costs that, like T&D services, provided a common benefit. In addition, to achieve a competitive energy industry, certain stranded costs associated with the transition would need to be absorbed and paid for.<sup>151</sup> Because the costs associated with public policy concerns and the transition to a competitive market ultimately provided a common benefit, the PSC generally shifted responsibility for these costs to the central T&D monopoly and allowed it to recover such costs through wire charges on T&D services.<sup>152</sup>

The PSC allowed each of the state's utilities to develop individual-based restructurings that adhered to the principles it set forth in the Competitive Opportunities proceeding. Before Niagara Mohawk could proceed with implementing the Order, it needed to address its problem with the IPP contracts. To that end, Niagara negotiated a Master Restructuring Agreement (MRA) with fourteen IPPs with twenty-seven PPAs, which represented approximately seventy-five percent of Niagara's above-market IPP and PPA obligations.<sup>153</sup> Under the MRA, Niagara bought out the above-market portion of those existing PPAs for a total of \$3.6 billion. Some IPPs had their contracts terminated solely in exchange for cash, while others received shorter, more market-based fixed price contracts in addition to cash.<sup>154</sup> Furthermore, in an effort to provide more value to the IPPs, and to tie Niagara's and the IPPs' interests together, Niagara granted the IPPs approximately twenty-three percent of the outstanding shares of the company's common stock.<sup>155</sup> Niagara

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151. *Id.* at 390.

[Joskow] also noted that there is a "price gap" of perhaps 3-4 cents in California and the Northeast between the price of generation service included in regulated retail rates and the lower current and projected wholesale market prices. If generation services were suddenly to be priced at market prices in those areas, the present value of losses to utilities would be on the order of \$100 billion. This is the "stranded cost" problem.

*Id.* (citing Paul Joskow of MIT).

152. Cross, *supra* note 149, at 48.

153. Niagara Mohawk Holdings, Inc., Amend. No. 1 to SEC Form S-4, at \*9 (May 19, 1998), SEC EDGAR, Archives. The MRA negotiations started with 19 IPPs representing 44 PPAs. A total of 16 IPPs with 29 PPAs eventually signed the MRA, but two IPPs withdrew from the transaction before it was consummated. *Id.* The three IPPs that did not sign the MRA owned hydroelectric power plants; these projects had different economic structures than the other IPP participants in the MRA. The hydro IPPs were removed from the negotiations approximately one month before the remaining parties signed the MRA. This article's author served as Vice President of Asset Management for one of the hydro IPPs during this process and participated in the negotiations culminating in the MRA.

154. *Id.* at \*42 ("Under the MRA, 18 PPAs . . . will be terminated completely and 8 PPAs . . . will be restated on economic terms and conditions that the Company believes are more favorable to it than the existing PPAs.").

155. *Id.*

characterized the economic benefit that the MRA provided as:

The primary objective of the MRA is to convert a large and growing off-balance sheet payment obligation that threatens the financial viability of the Company into a fixed and manageable capital obligation. Accordingly, the Company believes that the lower contractual obligations resulting from the MRA will significantly improve cash flow . . . .<sup>156</sup>

The MRA facilitated Niagara's movement to a deregulated environment. In one fell swoop, it terminated escalating above-market contracts that had already been signed; converted those obligations into more defined and manageable costs; and, perhaps most importantly, established a framework that resulted in lower costs going forward.

### *C. Applying These Lessons to MLB*

From this review of Niagara's restructuring, one can begin to develop a model that MLB can use to restructure its own financial system. The core principle of this model is that MLB should blend aspects of a regulated monopoly with competition. MLB has a great asset at its disposal, namely its government-sanctioned protection from federal antitrust laws. It needs to use this asset more effectively. For years, MLB has used its antitrust exemption primarily to perpetuate the reserve clause system. With the advent of free agency and the demise of the reserve clause system, MLB has not used its exemption proactively—it primarily has been invoked to escape civil liability arising from lawsuits.<sup>157</sup>

Restructuring baseball's economics provides MLB the opportunity to use its exemption to its benefit. Recall that the Flood Act expressly exempts many aspects of the business of baseball from federal antitrust laws.<sup>158</sup> MLB should centralize many of the expenditures related to these categories into a central entity akin to the T&D company in the energy context. To some extent, MLB has already started to do this. For example, MLB consolidated the separate league offices for the American and National Leagues into the Commissioner's office, and also consolidated MLB's oversight of umpires into one office. MLB now needs to go further and consolidate expenses in other areas as well, such as player development, travel between games, renting spring training facilities, stadium management, advertising and promotion,

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156. Niagara Mohawk Power Corp., *supra* note 141, at \*9-10.

157. See, e.g., *McCoy*, 911 F. Supp. 454.

158. 15 U.S.C. § 27a(b).

debt repayment, and the purchasing of merchandise inventory.<sup>159</sup> These are expenses that each of the thirty MLB clubs currently undertake individually. By consolidating these expenses and negotiating new contracts aggressively, MLB would likely achieve some economies of scale and reduce the aggregate outlay for these expenses.<sup>160</sup>

To give an idea of the extent of possible savings, consider this: in 1999, the difference between the aggregate total revenue for all clubs and aggregate payroll expenses was approximately \$1.3 billion.<sup>161</sup> For discussion purposes, let us assume that this represents the approximate total expenses that could be centralized. If, by consolidating these expenses, MLB could reduce the aggregate expenditures, for example, by 10% to 20%, that would result in a total savings of \$130 to \$260 million savings per season, or \$4.3 to \$8.6 million per club. Admittedly, this is not an extraordinary amount given MLB's current situation, but it is a sufficient level of savings to contribute to an overall solution to enhance each club's profitability.

Two aspects of the consolidation of expenses require further discussion. The first relates to player development costs. Player development provides both individualized benefits for each club as well as a common benefit. Historically, the focus has been on the former with clubs relying on their own scouts to find players to draft, and relying on minor league coaches to hone the players' skills. Given this, clubs may be reluctant to cede control over this aspect of their business to a centralized entity.

But in the modern game and business, the common benefit provided by player development has become more prevalent. Players are more mobile via free agency, younger players are often coveted in trades, and expansion has resulted in players being rushed to the major leagues much faster. Because of this fluidity of player movement, all clubs benefit when other teams have quality scouting and player development resources. The players developed by a club are more than likely to move to another club at some point in their career. As with other aspects of the business of baseball, however, financially troubled teams often will make cuts in scouting and player development

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159. These expense categories were taken from line items of the Cleveland Indians financial statement for the nine months ending September 30, 1999. Cleveland Indians Baseball Co., SEC Form 10-Q, at \*5-\*7 (Nov. 15, 1999), SEC EDGAR, Archives. These line items are offered as being representative of expenses that MLB teams currently undertake.

160. For example, if MLB were to put out to bid a contract to handle the food and beverage concessions for all thirty MLB clubs (or some sizeable subset), it likely could extract very favorable terms from the bidders. Although in most other contexts such behavior might be deemed as anti-competitive, MLB's antitrust exemption seemingly would enable MLB to pursue such a course.

161. PANEL REPORT, *supra* note 12, at 77 (Table 25).

resources when profits are lacking.<sup>162</sup> Therefore, to enhance player development resources league-wide, this aspect of the business should be consolidated.

The second aspect of consolidation that requires special attention concerns the debt that each club carries on its balance sheet. The level of a team's debt does not directly show up on its income statement calculating profit and loss, but it eventually places a great drain on the club's financial position. Between 1993 and 1999, total industry debt increased 243% from \$604 million to \$2.075 billion.<sup>163</sup> As the MLB Panel noted "[t]he average club debt in 1999 was approximately \$69 million, and undoubtedly will continue to rise."<sup>164</sup> Consolidating some or most of this debt within a central entity will allow MLB to repay this debt in a more cost-effective manner. First, by consolidating the debt of thirty different teams into one debt, MLB will be able to manage the cash flow necessary to amortize the principle. Second, if the debt were cross-collateralized among all of MLB's assets, including those of individual teams, MLB should be able to obtain a lower cost of indebtedness than the current average, thereby generating additional savings over the current economic system.

One should note that MLB has provided a centralized credit facility through which clubs can obtain access to revolving credits. But each club remained individually responsible for repaying any advances it took under the credit facility, because the obligation was secured by each club's rights to receive Central Funds.<sup>165</sup> Consolidating the repayment of existing debt as discussed here is an extension of this credit facility framework. Moreover, doing so would relieve a significant burden that weighs clubs down, and its effect has not fully been realized yet. Addressing MLB's increasing debt level as part of a comprehensive economic restructuring is a way to preempt a significant problem waiting to erupt down the road.

The obvious correlation to loading a significant level of expenses on a centralized entity is that the entity must have some form of revenue. It is in

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162. For example, in November 2000, the Arizona Diamondbacks announced they were seeking to cut operation costs by \$10 million through an across-the-board reduction in administrative expenses. In regard to Arizona's cuts in scouting and player development expenses, team president Rich Dozer said, "It's a little bit of everything. It's not just a baseball operation thing or just a baseball marketing thing. Every department has cut its operating budget, some of them by two percent and some by 10 or 15 percent." *Financial Losses Spur Cutbacks by D-Backs*, HOUS. CHRON., Nov. 15, 2000, at 5.

163. PANEL REPORT, *supra* note 12, at 50.

164. *Id.*

165. The credit facility expired as of December 31, 2000. Cleveland Indians Baseball Co., *supra* note 131, at \*35.

this context that the sharing of local revenue comes into play as clubs will be required to contribute to the central entity. In this regard, the formulaic approaches proffered by the MLB Panel and Bob Costas provide a useful framework, although the percentages may need to be greater than originally proposed in order for the central entity to meet its expenses. Keep in mind, however, that the proposed system provides a benefit to all clubs by not only shifting revenue from these clubs, but also by shifting expenses and leveraging the revenue more efficiently. Thus, when revenue sharing is used in this manner, it is consistent with the fundamental tenets of business law that require increasing profits.

In addition to the revenue-sharing scheme, MLB should continue to pursue additional forms of revenue to cover the expenses incurred by the central entity. MLB club owners already have done this to a degree by agreeing to consolidate all revenue derived from Internet ventures and then distributing the money among all clubs.<sup>166</sup> MLB estimated that it would receive approximately fifty million dollars in Internet revenue in 2000 and believes that the revenue will increase to over one billion dollars by 2005.<sup>167</sup> To the extent that the central entity realizes a profit each year, under the plan proposed here, those funds would be available for distribution.

With MLB's newly formed central entity responsible for many of the expenses that provide a common benefit to all clubs, that leaves open the question of which expenses the club is responsible for. Once again, the deregulation of the energy industry provides guidance for MLB. Much like individual power producers have become responsible for managing their variable costs to maximize a profit in a competitive marketplace, each MLB club will be required to do the same. Because of the differences in local revenue, each team will have a different level of funds available for player salaries. Therefore, each club will need to put together the best team possible within its salary constraints. As will be discussed in the next section, the proposed restructuring reduces players' base salaries, thus enabling clubs to put together a more competitive team at lower fixed prices.

#### *D. Restructuring Player Compensation*

Although the focus of this article thus far has been on club profitability, MLB clubs cannot become more profitable without addressing players' salaries. In this regard, player contracts are similar to the IPPs and PPAs that led Niagara Mohawk to pursue the MRA. Similarly, the economic concepts

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166. Alan Schwarz, *Big Leagues' Net Bet*, NEWSWEEK, Oct. 2, 2000, at 74C.

167. *Id.* at 74D.

employed in the MRA can be applied to the context of restructuring player compensation.

Before doing so, let us consider once again the proposals offered by the MLB Panel and Bob Costas to reduce player salaries. Generally speaking, both, in effect, envision a salary structure where clubs will pay between forty to eighty million dollars in player salaries. Although these proposed structures themselves are useful to consider, players would likely reject the specifics of these proposals on both legal and practical grounds. For example, the MLB Panel believed that club owners could achieve closing the salary scale between rich and poor clubs unilaterally and without player approval. However, the Flood Act specifically prohibits MLB from employing anti-competitive practices that are "directly relating to or affecting" MLB player employment.<sup>168</sup> This statutory language would appear to cover the level of player salaries. Therefore, the MLB Panel proposal may violate the terms of the Flood Act.

On a more practical matter, "it will be difficult for the players to accept changes in an economic system that [as of the 2000 season] has resulted in an average salary of \$1.8 million."<sup>169</sup> Most commentators have noted that a change in baseball's economic system likely will depress player salaries.<sup>170</sup> Costas contends that only top-level stars would be affected because they would not be able to earn annual salaries in excess of approximately ten million dollars under his system.<sup>171</sup> The salaries paid to top players, however, are like rising tides that lift other players' salaries as well.<sup>172</sup> Conversely, when the tide drops (i.e., when top-level salaries are reduced), other players' salaries will drop as well. Thus, because the players must approve of any

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168. 15 U.S.C. § 27a(a).

169. T.R. Sullivan, *Commissioner Short on Details of Possible Economic Overhaul*, ARLINGTON STAR-TELEGRAM, Nov. 26, 2000, at 13C. Sullivan continues, "[w]ho cares if the New York Yankees are buying the World Series every year if the Philadelphia Phillies are willing to pay Jose Mesa \$6.8 million over two years?" *Id.*

170. Sen. Mike DeWine specifically asked Commissioner Selig during his testimony before Congress: "Isn't it going to depress wages?" Blum, *supra* note 135.

171. COSTAS, *supra* note 44, at 95 (describing his "superstar" salary cap formula, which is equal to one-fourth the minimum team salary); The "superstar salary cap" proposed by Costas is discussed *supra* note 110.

172. As sportswriter Simon Gonzalez noted,

[Texas Rangers General Manager Doug] Melvin is concerned that teams that miss out on [signing top-tier free agents] will drive up the price on the so-called second tier free agents. . . . "That could be a danger, that the salary for the second-tier type player goes up a little more than you're willing to pay," Melvin said.

Simon Gonzalez, *Free Agents Are Big Topic at GM Meeting*, ARLINGTON STAR-TELEGRAM, Nov. 5, 2000, at 12C.

substantial change to the salary system, MLB must find a way, to paraphrase Commissioner Selig, to ensure that the industry restructures in the right way so that doing so does not have the effect of depressing salaries.<sup>173</sup>

Niagara Mohawk took a two-step approach with the IPPs involved in the MRA. First, it bought down or bought out existing above-market contracts so that the rates it paid were more in line with market rates. MLB should take a similar approach to existing player contracts. For example, suppose the Los Angeles Dodgers want to buy down the above-market portion of its contract with Kevin Brown. Brown's current contract runs through 2005 and pays him fifteen million dollars a season. If the Dodgers want to restructure the contract to pay Brown eight million dollars a season, it could pay Brown an amount equal to the net present value of the seven million dollars a year difference through the term of the contract. Using a discount rate of ten percent, for example, this lump-sum payment would equal \$24.41 million.<sup>174</sup> Brown benefits from this structure because he receives a substantial percentage of his contract value up-front and limits his exposure to the risk that an injury might prematurely end his career.

Once the MLB clubs negotiate the respective buy-outs, the liabilities should be shifted to the central entity, much like Niagara's T&D utility carried the debt burden associated with the MRA. MLB further could follow Niagara Mohawk's lead and seek to raise funds to pay for the buy-outs through a public bond offering. Thus, with this structure, MLB would be able to convert escalating off-balance sheet obligations into a fixed and manageable capital obligation. Furthermore, MLB's clubs would be better positioned to put together a competitive team within the forty-to-eighty million dollar annual salary range.

The second step that Niagara took was to give the IPPs an equity interest in the company. Such an approach is not feasible in the context of MLB, but the concept of tying the players' and owners' interests together can be achieved through profit sharing.<sup>175</sup> Under the current salary system, player wages constitute fixed obligations for MLB clubs. But under a profit-sharing

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173. In response to Senator DeWine's question regarding the possibility of depressing wages, Selig said, "I think if we as an industry do this right, I don't think it has that effect at all." Blum, *supra* note 135.

174. This would cover the period 2002 to 2005 and assumes a payout in 2002. The discount rate used here is for illustrative purposes. The actual rate likely would need to be negotiated between the owners and players union and would need to take into account such factors as MLB's cost of capital, the possibility of injury, and other relevant risk factors.

175. Randy Galloway, *Exit Polls Show Baseball Needs Our Help*, ARLINGTON STAR-TELEGRAM, Nov. 10, 2000, at 1D ("Salaries won't be curbed until the players' union is made a full partner on the business side of baseball, with owners and players sharing equal in a combined pot of profits.").



plan, player compensation would become more variable and more market-driven. This would be consistent with the emphasis of moving away from the current system in which teams pay more for players' services than they can afford.

Under this plan, all players would share any profits generated from the central entity, while players on specific teams would also share in that team's individual profits as well.<sup>176</sup> Thus, player compensation would be based on a combination of fixed priced contracts that fall within forty-to-eighty million dollar range per team,<sup>177</sup> and a variable bonus based on the profit-sharing plan. As Costas notes, the forty-to-eighty million dollar salary range increases the total amount paid to all players over current salaries,<sup>178</sup> while adding profit-sharing on top of that would provide the players with the economic incentive to agree to the new system.

### *E. Reviewing the Proposal*

In summary, the proposal offered in this article is: for MLB to take advantage of its monopoly status by consolidating certain expenses and team debt, implementing a revenue sharing system, reducing the team payroll differential to a range of forty-to-eighty million dollars, buying down current above-market player contracts, and implementing a profit-sharing plan with the players. These are the principles that MLB should follow in restructuring its economic system. They offer a system that, if properly designed, will enhance profitability and get the support of club owners and players. Many of the specifics still need to be resolved; to do so requires access to an extensive amount of financial data that is not publicly available. In developing the specifics, new methods may be found to improve upon the principles set forth here. The bottom line, however, is that the business of baseball will be improved.

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176. The MLB owners and MLBPA would need to negotiate the percentage of profits that would go from the owners (both collectively through the central entity and individually) to the players on an aggregate basis. The specific allocation of profits among the players is something that the MLBPA would need to negotiate with its members.

177. Recall that the MLB Panel focused on this range specifically while Costas suggested a formula that would increase over time based on broadcast revenue. Under the proposal offered here, either approach could be used. If the MLB Panel approach is followed, the increased broadcasting revenue would flow through to the players through the profit sharing plan. If MLB employed Costas' formula, the increased revenue would be available to the players under their contracts.

178. COSTAS, *supra* note 44, at 93. The salary structure proposed by Costas is discussed *supra* note 110.

#### IV. IN THE CLEAN-UP SPOT: DOES THE PROPOSED SYSTEM IMPROVE MLB'S COMPETITIVE BALANCE?

The proposed system offers incentives to club owners and players to agree to the change. But the question remains regarding MLB's third constituency, its fans—will baseball become more competitive as a result of this change? Although competitive balance may be an inappropriate end of restructuring, it is the component that MLB's customers care most about. It is also the issue that Congress would likely pay closest attention to as it continues to monitor the industry. Much like Niagara Mohawk faced the issue of how to provide quality services to its customers at cheaper prices, MLB faces the problem of how to deliver a quality product to its consumers at prices they are willing to pay.

The system proposed here improves the quality of on-the-field competition in a number of ways, including but not limited to:

- The payroll differential between rich and poor clubs will be reduced such that the highest base payroll will be only two times that of the lowest payroll;
- Overall player development will be improved by consolidating MLB's development resources and using them more efficiently;
- Clubs and players alike have incentives to field competitive teams, because doing so would increase attendance, thereby increasing profits to share between clubs and players; and
- The economic restructuring here can be implemented with other proposals to improve competitiveness, such as the MLB Panel's suggestions regarding the Rule 4 draft.

In addition, because teams will not be burdened with as many escalating costs, clubs would feel less financial pressure to raise ticket prices, thereby allowing MLB to continue its "traditional position as the affordable family spectator sport."<sup>179</sup>

The result of this restructuring would be that the off-the-field business of baseball would be on solid ground as would MLB's labor relations with its players. Thus, the business of baseball could once again recede to the background, and the on-the-field game of baseball could be the primary focus of clubs, players, and fans alike. As Hall of Fame baseball announcer Mel Allen used to say, "How about that!"

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179. PANEL REPORT, *supra* note 12, at 1.

## V. THE POST-GAME SHOW: A POSTSCRIPT IN THE WAKE OF THE 2001-2002 OFF-SEASON

The previous sections of this article were written before the start of the 2001 MLB season. During 2001, the Minnesota Twins, who maintained the lowest payroll in MLB, surprised many by holding first place in the American League Central Division throughout a good portion of the season.<sup>180</sup> The Oakland A's, another team in the lowest payroll quartile, mounted an impressive surge in the second half of the season ending the year with more than one-hundred victories and nabbing the American League Wild Card.<sup>181</sup> Despite these "success" stories, the overall relationship that has persisted since 1995 between payroll and on-the-field success, particularly in the post-season, continued. Seven of the eight playoff teams in 2001 were in either the first or second quartile of payroll.<sup>182</sup> These clubs won 33 of the 35 post-season games, bringing the total number of post-season wins since 1995 by clubs in the top two quartiles to 219 victories in 224 games.<sup>183</sup>

Perhaps the most significant news regarding baseball's economics is not what happened on the field during the 2001 season, but what happened off of it following the World Series: MLB owners approved the contraction of two clubs,<sup>184</sup> but that effort ultimately failed;<sup>185</sup> Congress considered legislation revoking portions of MLB's antitrust exemption, and both the Senate and the House of Representatives held hearings on the issue;<sup>186</sup> MLB detailed significant losses among its clubs, a total of \$232 million in operating losses for 2001;<sup>187</sup> the owner of the Florida Marlins bought part of the Boston Red

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180. Mel Antonen & Chuck Johnson, *Being Competitive at Half the Cost*, USA TODAY, Mar. 5, 2002, at 8C.

181. *Id.*

182. Hal Bodley, *Six Playoff Teams Make Top 10 in Payroll; Yankees Tops at \$143M*, USA TODAY, Oct. 9, 2001, at 4C.

183. *Selig's Testimony, Submitted in Advance*, MLB.COM (Dec. 6, 2001), available at [http://www.mlb.com/NASApp/mob/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011206\\_seligtestimony\\_news&team\\_id=mlb](http://www.mlb.com/NASApp/mob/mlb/news/mlb_news_story.jsp?article_id=mlb_20011206_seligtestimony_news&team_id=mlb). See also *Post Season Games Won by Payroll Quartile 1995-2001*, MLB.COM, available at [http://www.mlb.com/mlb/hearings/downloads/postseason\\_games\\_by\\_payroll.pdf](http://www.mlb.com/mlb/hearings/downloads/postseason_games_by_payroll.pdf) (last visited Apr. 17, 2002).

184. Hal Bodley, *Talking Contraction*, USA TODAY, Feb. 6, 2002, at 6C.

185. *Id.*

186. *Id.*

187. *Id.*

Sox,<sup>188</sup> the owner of the Montreal Expos bought the Marlins,<sup>189</sup> and *Major League Baseball itself* bought the Expos.<sup>190</sup> Despite the flurry of activity, however, not much has changed at least as of the time this article went to press; MLB looked at the start of the 2002 season much as it did at the end of the 2001 season, with thirty teams, labor troubles looming, and an uncertain economic future.

As noted above, the principles of the economic structure set forth in this article would work in conjunction with other efforts to improve MLB's competitiveness and economic strength. This also would be true with the steps that MLB took or attempted during the 2001-2002 off-season. In fact, MLB's attempt at contraction and its taking ownership of the Expos put into effect some of the principles promoted herein. The logic underlying contraction, specifically eliminating the Expos and the Minnesota Twins (and, as some owners reportedly wanted, an additional two teams), is to remove teams that have been continuous drains on the revenue-sharing system—that is, teams that year in and year out receive more money under the current revenue-sharing system than they put in.<sup>191</sup> For example, in 2001, Montreal received a net payment from revenue sharing of \$28.517 million and Minnesota received a net payment of \$19.069 million.<sup>192</sup> These amounts represent the largest two net payments to any club during 2001.<sup>193</sup> If these teams were contracted, the \$47.586 million paid to these clubs could be distributed among the remaining twenty-eight clubs, thereby increasing their net cash position on average by \$1.7 million. Like most other economic reform proposals, taken by itself, this amount is not that significant. But as one part of a comprehensive plan for improving MLB's overall economic strength, contraction would aid in enhancing the profitability of the remaining clubs.

Another key principle to reforming MLB's economic structure suggested in this article is for MLB to centralize many of its functions. MLB took important steps during the 2001-2002 off-season that demonstrate the viability of such coordinated action. Under the contraction proposal, MLB would have

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188. Hal Bodley, *MLB Expected to Approve Expos Bosses Today*, USA TODAY, Feb. 12, 2002, at 6C.

189. *Id.*

190. *Id.*

191. Peter Schmuck, *Baseball Expands on Idea of Reduction*, BALTIMORE SUN, Nov. 6, 2001, at 1D.

192. Michael Urban, *Revenue Sharing: How it Works, Is It Working?*, MLB.com (Dec. 6, 2001), available at [http://www.mlb.com/NASApp/mlb/mlb/news/mlb\\_news\\_story.jsp?article\\_id=mlb\\_20011206\\_urban2\\_news&team\\_id=mlb](http://www.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_20011206_urban2_news&team_id=mlb).

193. *Id.*

bought out the owners of the eliminated teams.<sup>194</sup> In reality, MLB did just this in regard to the Expos (even though the team was not contracted for the 2002 season). MLB, through a set of executives that it appointed, will run the Expos for at least the 2002 season. MLB has shown that it can affirmatively use its central organization to try to enhance the overall profitability of the industry; it should be willing to take additional steps along these lines. Moreover, these actions reflect that MLB should be given the opportunity to coordinate its response to its economic problems, now that it is doing so, and that Congress should not repeal MLB's antitrust exemption in any fashion. Such a repeal would merely impede MLB's ability to mold an economic solution that ultimately may provide benefits to all interested constituencies.

The issue of the antitrust exemption, however, along with contraction, team finances, operating losses, etc., will continue to be a part of baseball's lexicon. So long as they remain unresolved, they will continue to be central to any discussion of MLB's future. The main part of this article ended with a quotation from a Hall-of-Famer closely associated with the Yankees. Likewise, I will end this postscript with the words of wisdom of another Yankee Hall-of-Famer, that great baseball philosopher Yogi Berra: "It ain't over till its over."

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194. Schmuck, *supra* note 191.