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# AMERICAN CIVIL RIGHTS LAWS AND THE LEGACY OF JACKIE ROBINSON

J. GORDON HYLTON\*

The relationship of Jackie Robinson to American civil rights legislation has been rarely addressed. While his signing with the Brooklyn Dodgers in the fall of 1945 was a landmark event in the history of the civil rights movement, it was a development that appeared to come completely outside of the context of the NAACP-inspired movement to attack racial segregation in the courts and legislatures.<sup>1</sup> Organized baseball's ban on black players was an unwritten rule enforced by a private business, and according to the conventional account, it fell because of the heroic actions of Robinson and Brooklyn Dodgers President Branch Rickey who had the courage to sign a black player. It was not the legal mandate of integration that forced Rickey into action, the story has it, but his deeply held belief that African-American baseball players had been victims of injustice for too long.<sup>2</sup> Even Rickey's critics, who claim that his motivation was purely economic—to pull new fans into Ebbets Field and to destroy the competition in the Negro Leagues—agree that he was not responding to political pressure.<sup>3</sup>

Moreover, while the signing of Jackie Robinson and his appearance in a major league uniform in April 1947 may have contributed greatly to the cause of black civil rights—in much the same way that Joe Lewis and

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1. For a general account of the NAACP campaign, see RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF *Brown v. Board of Education* and Black America's Struggle for Equality* (1975).

2. For scholarly examples of the traditional account, see DAVID QUENTIN VOIGT, *AMERICAN BASEBALL: FROM POSTWAR EXPANSION TO THE ELECTRONIC AGE* 44-51 (Vol. III 1983); BENJAMIN G. RADER, *BASEBALL: A HISTORY OF AMERICA'S GAME* 150-53 (1992); CHARLES ALEXANDER, *OUR GAME: AN AMERICAN BASEBALL HISTORY* 198-203 (1991); MARK RIBOWSKY, *A COMPLETE HISTORY OF THE NEGRO LEAGUES: 1884 to 1955* 273-86 (1997); DAVID FAULKNER, *GREAT TIME COMING* 102-15 (1995); ARNOLD RAMPERSAD, *JACKIE ROBINSON: A BIOGRAPHY* 120-31 (1997).

3. For examples of this "revisionist" view, see JOEL ZOSS & JOHN BOWMAN, *DIAMONDS IN THE ROUGH: THE UNTOLD HISTORY OF BASEBALL* 162-64 (1989) and the summary of other works provided in JULES TYGIEL, *BASEBALL'S GREAT EXPERIMENT: JACKIE ROBINSON AND HIS LEGACY* 347-49 (Expanded ed. 1997).

Miriam Anderson had demonstrated that blacks could succeed in the white world—those events seemingly had little effect on the course of civil rights legislation. No new federal civil rights statutes were forthcoming from Congress until 1957, a full decade after his historic breaking of baseball's color barrier.<sup>4</sup> Significant civil rights legislation, prohibiting discrimination in employment of the sort confronted by Robinson himself, did not come until 1964, long after Robinson had retired from major league baseball.<sup>5</sup>

Historians have also been reluctant to credit the Robinson signing as playing a significant role in the civil rights advances in American law and government that occurred in 1947 and 1948. For example, two months after Robinson completed his successful 1946 season with the Montreal Royals of the International League, President Truman announced the appointment of a Committee on Civil Rights to investigate violations of the rights of black Americans and to recommend remedial legislation. Truman's decision occurred at a time when, at least according to Brooklyn sportswriter Harold Burr, Robinson's name appeared in the newspapers as much as the president's.<sup>6</sup> Similarly, the landmark Supreme Court case of *Shelley v. Kramer*<sup>7</sup> was argued during the winter following Robinson's "Rookie of the Year" winning performance during the 1947 season, and Truman's decision to end segregation in the United States military came in July 1948 when Robinson was well on his way to establishing that his rookie season had been no fluke.<sup>8</sup> There may well be a connection between the integration of baseball and these events, although even Robinson's biographers have claimed that such events could not have occurred without the integration of baseball.<sup>9</sup> Rather than be seen as a factor in the development of modern civil rights law, Jackie Robinson and the integration of baseball are viewed as something separate and apart. Robinson was, in the words of black sportswriter Sam Lacy, "a weapon far more potent than the combined forces of all our liberal legislation."<sup>10</sup> As the historian Jules Tygiel has noted "the integration of the

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4. 71 STAT. 637 (1957). The 1957 Act established a six-man bipartisan commission on Civil Rights and give federal courts greater authority in proceedings involving interference with voting rights.

5. Civil Rights Act of 1964, 78 STAT. 241 (1964).

6. SPORTING NEWS, Jan. 22, 1947, cited in TYGIEL, *supra* note 3, at 160.

7. 334 U.S. 1 (1948).

8. On Truman and civil rights, see BARTON BERNSTEIN, ED., POLITICS AND POLICIES OF THE TRUMAN ADMINISTRATION 269-76 (1970).

9. For example, neither RAMPERSAD nor FAULKNER, *supra* note 2, attempt to link Robinson's breaking of the baseball color barrier to these events.

10. AFRO-AMERICAN (BALTIMORE), May 11, 1946, quoted in TYGIEL, *supra* note 3, at 75.

Brooklyn Dodgers” has been viewed, not as a triumph of modern civil rights laws, but as the product of “several traditional conservative themes: individual achievement, meritocracy, and progress without government interference.”<sup>11</sup>

#### THE ORIGINS OF BASEBALL’S COLOR BAN

Any examination of the relationship between the integration of baseball and American civil rights laws must begin with at least a short history of organized baseball’s color ban. Formal efforts to bar African-Americans from participating in white baseball date from December 1867, when the nominating committee of the National Association of Base Ball Players, then the governing body of American baseball, voted unanimously to bar from membership clubs “composed of one or more colored players.”<sup>12</sup>

The rules of the National Association, the first professional baseball league organized in 1871, contained no prohibition against black players, but no African-American performed in that league which lasted until 1876. The same was true of the National League which was formed in 1876. Neither of these leagues needed such a written rule because blacks were excluded from the outset on the basis of an unwritten regulation that came to be known as the “Gentlemen’s Agreement.”<sup>13</sup>

There was, however, no absolute color ban in the final quarter of the nineteenth century, and blacks did play in other white professional leagues. In 1878, Bud Fowler pitched three games for Lynn of the International Association, a league equal in talent to the National League, and one game for Worcester of the New England Association.<sup>14</sup> No other blacks appeared until 1883, but between 1883 and 1899, more than 70 African-Americans played in white professional leagues and at different times three minor leagues featured all-black teams playing against all white opponents.<sup>15</sup>

In 1884, Moses Fleetwood Walker and his brother Weldy played for Toledo of the then major league American Association, earning the offi-

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11. TYGIEL, *supra* note 3, at 346-47.

12. BALL PLAYERS’ CHRONICLE, Dec. 19, 1867, *quoted in* DEAN SULLIVAN, ED., *EARLY INNINGS: A DOCUMENTARY HISTORY OF BASEBALL, 1825-1908* 68-69 (1995).

13. On the early discriminatory practices of the National Association and the National League, *see* ROBERT PETERSON, *ONLY THE BALL WAS WHITE* 17 (1970).

14. *See* Bob Davids, “Chronological Registry of 19th-Century Black Players in Organized Baseball,” *in* SOL WHITE’S *HISTORY OF COLORED BASEBALL WITH OTHER DOCUMENTS OF THE EARLY BLACK GAME, 1886-1936* 162 (Jerry Malloy, ed., 1995) (hereinafter “Malloy”).

15. *Id.* at 162-68.

cial distinction of being the first African-Americans to play major league baseball.<sup>16</sup> (Jackie Robinson, contrary to popular belief, was actually the third.) The appearance of black players on the roster of a major league team was not universally applauded. In a well-publicized incident in 1883, the Chicago White Stockings (now the Cubs) initially refused to play an exhibition game against Toledo (then a member of the minor league Northwestern League) if Fleet Walker was allowed to participate.<sup>17</sup> Although Toledo was able to call Anson's bluff in 1883, its games against southern opponents Louisville and Richmond the following year brought out considerable racial antipathy on the part of white fans and may well have led to Toledo's decision to release both Walkers before the end of the 1884 season.<sup>18</sup>

Although the Walkers were the only African-Americans to play for a recognized "major" league in the nineteenth century, the high point of black involvement in white professional baseball in the nineteenth century came in 1887 when seven African-Americans (including Bud Fowler and Fleet Walker) played in the International League, the most prestigious minor league of the time. That same year other black players appeared in the Ohio State League, the Central Interstate League, the Vermont League, and the Northern Michigan League.<sup>19</sup> Three of the 10 teams in the International League had one black player while Binghamton and Newark had two prompting the *SPORTING LIFE*, one of the most important sports publications of the time, to wonder, "How far will this mania for engaging colored players go?"<sup>20</sup>

Nor was every team in the National League adamantly opposed to the use of black players. In 1886, the Philadelphia Athletics (now Phillies) and the New York Giants were reportedly interested in signing catcher Arthur Thomas of the independent Cuban Giants, an all-black team based in Trenton, New Jersey, and pitcher George Stovey of the Jersey City team in the Eastern League.<sup>21</sup> This plan was reportedly engineered by John Montgomery Ward, the captain of the Giants who was

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16. On Moses Fleetwood Walker generally, see DAVID W. ZANG, *FLEET WALKER'S DIVIDED HEART: THE LIFE OF BASEBALL'S FIRST BLACK MAJOR LEAGUER* (1995).

17. For accounts of this game, see PETERSON, *supra* note 13, at 29; ZANG, *supra* note 16, at 40-41.

18. ZANG, *supra* note 16, at 40-45. Walker's career actually continued in predominantly white minor leagues through the 1889 season.

19. Davids, *supra* note 14, at 163.

20. *SPORTING LIFE*, June 1, 1887, *quoted in* Malloy, *supra* note 14, at xx.

21. *DAILY TRUE AMERICAN* (TRENTON), June 29, 1886, *cited in* Malloy, *supra* note 14, at lvii; *CLEVELAND GAZETTE*, Feb. 13, 1892 (reporting events of 1886 season), *reprinted id.* at 141. In September 1886, the *SPORTING LIFE* had reported, "New York has been seriously

also a graduate of Columbia Law School, and the next year the organizer of the Players Brotherhood, the first union for professional athletes.<sup>22</sup> The following year, the Giants supposedly again expressed an interest in Stovey and in Fleet Walker, who were both now with Newark of the International League. According to pioneer negro baseball historian Sol White, a deal between New York and Newark was actually made before protests from other National League teams, particularly Anson's Chicago, forced New York to back out of the deal.<sup>23</sup> (New York, which finished third, 12.5 games out of first place, could have used Stovey who won 33 games that season, an International League record which still stands 111 years later.)<sup>24</sup>

Although blacks would continue to appear in white minor league games until 1900, the tide clearly turned against integrated baseball after 1887. On a day in 1887, when Newark withheld its two black stars from an exhibition at the insistence of their opponent, the Chicago White Stockings, the International League, by a 6-4 vote, barred its teams from signing any additional black players.<sup>25</sup> Later that year, the integrated Ohio State League adopted a similar rule.<sup>26</sup>

By the early 1890's, it was clear that a color ban was slowly being imposed on all of organized baseball. In April of 1891, the *SPORTING LIFE* noted that "[p]robably in no other business in America is the color line so finely drawn as in baseball. An African who attempts to put on a uniform and go in among a lot of white players is taking his life into his hands."<sup>27</sup> Although a few minor leagues continued to accept black players, the possibility of playing at the major league level had clearly been eliminated, although by informal agreement rather than written rule. In 1895, the *SPORTING LIFE* also noted that "nothing is ever said or written about drawing the color line in the [National] League. It appears to be generally understood that none but whites shall make up the League teams, and so it goes."<sup>28</sup> By the end of the decade the "gentlemen's agreement" had been extended to include the minor leagues as well. In 1899, there was only one African-American player in all of organized

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considering the engagement of Stovey, Jersey City's fine colored pitcher. The question is would the League permit his appearance in League championship games?" *Id.*

22. SOL WHITE, *HISTORY OF COLORED BASEBALL* (1907), in Malloy, *supra* note 14, at 87.

23. *DAILY JOURNAL* (NEWARK), Apr. 9, 1887, *cited in* Malloy, *supra* note 14, at lvii.

24. *THE ENCYCLOPEDIA OF MINOR LEAGUE BASEBALL* 111, 640 (Lloyd Johnson & Miles Wolff, Ed., 2nd ed. 1997).

25. PETERSON, *supra* note 13, at 28-29.

26. *Id.* at 32-33.

27. *SPORTING LIFE*, April 11, 1891 *reprinted in* Malloy, *supra* note 14, at 139.

28. *SPORTING LIFE*, June 29, 1895, *quoted in* Malloy, *supra* note 14, at xv.

baseball, and when the Woodstock, Ontario team of the Canadian League released outfielder Bill Galloway (who had batted a meager .150 in 5 games), the number dropped to zero, where it would stay until Jackie Robinson took the field with the Montreal Royals of the International League in 1946.<sup>29</sup>

Once the last black player disappeared, there seemed no chance that the ban would be reversed. In 1907, black baseball historian Sol White, himself a veteran of the integrated minor leagues, sadly observed, “[i]n no other profession has the color line been drawn as rigidly as in baseball.”<sup>30</sup> While it is possible that some African-Americans played professional baseball between 1899 and 1946 under the guise of being caucasian or Native American—Indians were not subject to the color ban—no player is known to have done so.<sup>31</sup> Although baseball Commissioner Kennesaw Mountain Landis insisted as late as 1942 that “[t]here is no rule, formal or informal, or any understanding—unwritten, subterranean, or sub-anything—against the hiring of Negro players by teams of organized ball,” no one was fooled by this claim.<sup>32</sup>

Although the talents of outstanding Negro League players like Cool Papa Bell, Josh Gibson, and Satchel Paige were well known to organized baseball, there was virtually no discussion of signing black players until the 1940's. However, during the second World War, the issue at least received an airing. The combination of a shortage of quality players—the one armed Pete Gray of the St. Louis Browns symbolized the manpower shortage—and the fact that blacks who were denied equal opportunities at home were being sent overseas to fight the explicitly racist Germans and Japanese, led to a small but determined campaign to expose the hypocrisy of organized baseball.<sup>33</sup>

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29. Davids, *supra* note 14, at 168.

30. Malloy, *supra* note 14, at 74.

31. The best known attempt to conceal the race of an African-American player came in 1901 when John McGraw, the manager of the Baltimore Orioles of the new American League, signed Charles Grant, second baseman of the colored Columbia Giants of Chicago, with the intention of passing him off as an American Indian named Tokohoma. The plan was uncovered when Grant's black friends in Chicago honored him publicly for signing a major league contract. On this episode, *see* Malloy, *supra* note 14, at 78-79. Also, between 1911 and 1929, eleven Cubans, all ostensibly caucasians played at different times in the major leagues and on “black” teams. While the precise racial ancestry of these players is unknown, it seems highly likely that some would have met the conventional American definition of “black.” For a list of these players, *see* DICK CLARK & LARRY LESTER, *EDS.*, *THE NEGRO LEAGUES BOOK* 255 (1994).

32. TYGIEL, *supra* note 3, at 30.

33. For a discussion of the efforts to challenge baseball's color ban, *see* TYGIEL, *supra* note 3, at 30-46.

In 1942 and 1943, a number of minor and major league clubs were rumored to be close to signing black players. The Los Angeles Angels and the Oakland Oaks of the Pacific Coast League scheduled tryouts for black players as did the major league Chicago White Sox, Washington Senators, and Pittsburgh Pirates.<sup>34</sup> Nothing, however, came of these initiatives. In 1942, Brooklyn Dodger manager Leo Durocher publicly stated his willingness to sign blacks if it would help his team, but all he received for his efforts was a rebuke from Commissioner Kennesaw Mountain Landis.<sup>35</sup>

Landis's rebuke of Durocher was evidence that organized baseball was committed to maintaining the color barrier in the 1940's in spite of the commissioner's insistence that there was no "rule, formal or informal, or any understanding—unwritten, subterranean, or sub-anything—against the signing of Negro players,"<sup>36</sup> In 1943, Pittsburgh owner William Benswanger, who had publicly called for the integration of baseball as early as 1940, canceled a scheduled tryout for Negro League stars Roy Campanella and Dave Barnhill, citing, somewhat obliquely, "unnamed pressures."<sup>37</sup> That same year, Bill Veeck, the 29-year old owner of the minor league Milwaukee Brewers, offered to purchase the financially struggling Philadelphia Phillies. Veeck, who would initiate the integration of the American League later in the decade, planned to release most of the Phillies current players (who had finished in last place the previous year) and replace them with a group of Negro League all-stars which he felt could easily win the championship of the talent-depleted National League. Prior to the completion of the sale, Veeck met with Landis to reveal his plan. Although Landis voiced no objection at the meeting, Veeck discovered the next day that the owners of the Phillies had turned the franchise over to the National League which shortly thereafter sold it to another buyer for a sum less than what Veeck had offered.<sup>38</sup>

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34. *Id.* at 39-41.

35. *Id.* at 32.

36. *Id.* at 30.

37. *Id.* at 39-40.

38. *Id.* at 40-41. [Author's Note: In an article published after this essay was completed, a group of baseball historians have raised serious questions about the accuracy of Bill Veeck's claim that he had made arrangements to purchase the Philadelphia Phillies and stock the club with African-American players. The authors note that the only authority for such a claim was Veeck himself. Moreover, not only is there no evidence of any such agreement between Veeck and Phillies owner Gerald Nugent or of any such meeting between Veeck and Commissioner Landis, the surviving records suggest that no such offer was ever made. It appears that Veeck's reputation as a maverick and his very real role in integrating the American League

## THE LEGALITY OF THE GENTLEMEN'S AGREEMENT

One might ask why there were no challenges to the legality of organized baseball's "gentlemen's agreement" to refrain from signing African-American players? The unfortunate answer is that given the understanding of civil rights that prevailed between the 1890's and the 1940's, it was probably not illegal. In an era in which "separate but equal" was the accepted constitutional standard, it is hardly surprising that there were no laws banning discrimination in employment. Many northern states had civil rights statutes, but they typically only applied to the right to equal accommodations on common carriers and in hotels, restaurants, and theaters.<sup>39</sup> (Even these statutes often went unenforced.) In 1888, black outfielder Weldy Walker argued that the recently-enacted rule of the Ohio-based Tri-State League barring the signing of black players was in violation of "the laws of Ohio. . .that say all men are equal."<sup>40</sup> However, neither Walker nor anyone else ever challenged baseball's discriminatory policies on these grounds, and it is doubtful that had such a challenge been mounted it would have received a sympathetic hearing.<sup>41</sup>

The federal Civil Rights Act of 1866 (the statute now known as 42 U.S.C. § 1981) on its face might have appeared applicable. The act provided that "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts."<sup>42</sup> Read literally, this provision seemed to apply to the baseball situation. By threatening to penalize those teams which sought to sign black players (if that was in fact what was happening), the baseball commissioner and his supporters among the ranks of major league owners were interfering with the ability of black players to sign contracts with major league teams, a right that was not denied to outstanding players who were white or Native American.

There was, unfortunately, a major problem with this argument after the mid-1880's, the very time that the color ban was first imposed. In the *Civil Rights Cases*<sup>43</sup> of 1883, the Supreme Court had held that the Four-

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later in the decade gave his claim a credibility that it did not deserve. See David M. Jordan, Larry R. Gerlach, and John P. Rossi, *A Baseball Myth Exploded*, 18 *THE NATIONAL PASTIME* 3 (1998)].

39. On state civil rights statutes, see MILTON R. KONVITZ, *THE CONSTITUTION AND CIVIL RIGHTS* 109-23 (1946).

40. *SPORTING LIFE*, Mar. 14, 1888, reprinted in SULLIVAN, *supra* note 12, at 152.

41. For a discussion of state court responses to racial discrimination in the late nineteenth century, see CHARLES LOFGREN, *THE PLESSY CASE: A LEGAL-HISTORICAL INTERPRETATION* 28-44 (1987).

42. In the 1940's, this statute was codified as 8 U.S.C. § 41.

43. 109 U.S. 3 (1883).

teenth Amendment gave Congress no authority to legislate against private segregation. Although the 1866 Act had originally been enacted under the authority of the Thirteenth Amendment, it was widely assumed that this statute applied only to state action, and not to private acts of discrimination.<sup>44</sup> As recently as 1942, the Eighth Circuit Court of Appeals had confirmed that the statute did not apply to private action.<sup>45</sup> Although there were some individuals in the mid-1940's who advocated a broader interpretation of the 1866 Act, even they admitted that precedent was on the side of a narrow reading of the statute.<sup>46</sup> (The Supreme Court decisions that would repudiate this interpretation of the statute—*Jones v. Alfred Mayer*<sup>47</sup> and *Runyon v. McCreary*<sup>48</sup>—were still in the distant future.)

In fact, from the perspective of fifty years hence, America of the 1940's was an extraordinarily segregated society and the legitimacy of that segregation was widely accepted. Until Harry Truman's 1948 executive order, the American armed forces were still segregated into all-white and all-black units, and the 1948 order took more than two years to fully implement.<sup>49</sup> Even the American Bar Association was essentially a "whites-only" organization before 1943, a fact which forced black lawyers to form their own group, the National Bar Association.<sup>50</sup> If these forms of segregation were viewed as legitimate, it seems unlikely that anyone would have seriously questioned the legality of baseball's lily white personnel policies.

Moreover, as late as 1945, the United States Supreme Court was seriously entertaining the possibility that the Fourteenth Amendment gave white Americans the right to discriminate on the basis of race. In *Railway Mail Assn. v. Corsi*,<sup>51</sup> a labor union argued before the Court that a recently enacted New York statute, which barred labor organizations

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44. The 1866 Act had been reenacted in 1870 as part of the CIVIL RIGHTS ACT, 18 STAT. 140 (1870), which was linked to the recently enacted Fourteenth Amendment rather than the Thirteenth. The Fourteenth Amendment had been enacted in part as a result of concern over the constitutionality of the 1866 CIVIL RIGHTS ACT. See generally, WILLIAM E. NELSON, THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE (1988).

45. *Love v. Chandler*, 124 F.2d 785 (8th Cir. 1942).

46. For the views of one such individual, Professor Morton Konvitz of Cornell University, see KONVITZ, *supra* note 39, at 97-106.

47. 392 U.S. 409 (1968).

48. 427 U.S. 160 (1976).

49. *Supra* note 8.

50. For the racially exclusive policies of the American Bar Association and the response of African-American lawyers, see J. CLAY SMITH, EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944 541-85 (1993).

51. 326 U.S. 88 (1945).

from discriminating on the basis of race, offended the due process clause of the Fourteenth Amendment. According to the appellants, the statute was an unconstitutional interference with the property and liberty of contract rights of its white members. To its credit, the Supreme Court unanimously rejected this argument. Nevertheless, it is telling that the union felt confident enough in its chances of winning that it undertook the time and expense of taking the case all the way to the United States Supreme Court.

Still, it may be a mistake to downplay the relationship of the integration of baseball and American civil rights laws. In January of 1945, New York state adopted the nation's first fair employment practices statute, the so-called Ives-Quinn Act.<sup>52</sup> The New York act created a State Commission Against Discrimination with the power to eliminate discrimination in employment on the basis of race, creed, color, or national origin. It applied to all for-profit private businesses with six or more employees. Although the statutes only applied to New York employers, the Empire State was, of course, home to three of baseball's most successful major league franchises, the New York Yankees of the American League, the Giants and the Brooklyn Dodgers of the National League, as well as 13 minor league teams, the largest number in any state.<sup>53</sup>

While there is no evidence that the Ives-Quinn Act was motivated by a special concern about the labor situation in baseball, from the time of its passage, some New Yorkers began to lobby to have the three major league teams prosecuted under the act if they failed to hire black players.<sup>54</sup> During the summer and fall of 1945, several candidates for public office in New York campaigned on the promise to secure enforcement of the Ives-Quinn Act against baseball owners. Although the most vociferous critics of baseball were members of the New York Communist Party, including city councilman and former college football star Ben Davis, more mainstream politicians also joined the crusade.<sup>55</sup> Mayor Fiorella LaGuardia appointed a Committee on Baseball (which included Rickey and Larry MacPhail, president of the Yankees) and while the committee actually did very little, LaGuardia publicly claimed that it was working to resolve the problem of discrimination. He also promised that the

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52. 1945 N.Y. LAWS 457. For an early article discussing the impact of this act, see Morroe Berger, "The New York State Law Against Discrimination: Operation and Administration," 35 CORNELL L. Q. 747 (1950).

53. For a list of professional teams in 1945 arranged by league, see JOHNSON & WOLFF, *supra* note 24, at 343-44.

54. TYGIEL, *supra* note 3, at 38.

55. *Id.* at 69.

New York teams would soon be signing black players.<sup>56</sup> A state panel, charged with investigating violations of the Ives-Quinn Act, demanded in October that the three major league owners sign a pledge not to discriminate in hiring. When all three owners refused to do so, calls for legal action against the three teams intensified.<sup>57</sup>

When the Dodgers announced the signing of Jackie Robinson on October 23, a number of contemporary commentators saw Branch Rickey's actions as a clear reaction to the Ives-Quinn Act. The St. Louis-based *SPORTING NEWS*, which opposed the integration of baseball, described Rickey's decision to sign Robinson as a "legalistic move" to evade the Ives-Quinn bill.<sup>58</sup> Black sportswriter Joe Bostic of the *PEOPLE'S VOICE* thought the whole scheme was a "trick" to avoid prosecution.<sup>59</sup> New York sociologist Dan Dodson, who worked with Rickey on LaGuardia's baseball commission, believed that the new anti-discrimination law and the campaign to enforce it against baseball "both contributed to the initiation of the venture [the signing of Robinson] and the venture was far less difficult, no doubt, because both were realities."<sup>60</sup>

Although the motives for Rickey's decision in 1945 may never be completely understood, there is a great deal of evidence that he had made his decision to sign one or more black players before the campaign to prosecute baseball under the Ives-Quinn Act reached its peak in September and October.<sup>61</sup> (Rickey reportedly told Dodger broadcaster Red Barber in early 1945 that he planned to sign a black player for the Dodgers.<sup>62</sup>) It is even possible that the campaign to enforce the Ives-Quinn Act forced Rickey to announce the Robinson signing earlier than he had intended, lest a later signing appear to be a response to political pressure. Although Rickey had secretly signed Robinson to an agreement on August 28, he may have preferred to have waited until after the first of January 1946 to make the public announcement.<sup>63</sup>

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56. *Id.* A fuller account of the events of the summer and fall of 1945 by the same author is found in John Thorn & Jules Tygiel, "Jackie Robinson's Signing: The Untold Story," in *THE JACKIE ROBINSON READER: PERSPECTIVES ON AN AMERICAN HERO* 81-93 (Jules Tygiel, ed., 1997).

57. TYGIEL, *supra* note 3, at 69.

58. *SPORTING NEWS*, Nov. 1, 1945, *quoted id.* at 74.

59. *Id.*

60. Dan Dodson, *The Integration of Negroes in Baseball*, *J. EDUC. SOC.* 78 (1954), *quoted in* TYGIEL, *supra* note 3, at 54.

61. See Thorn & Tygiel, *supra* note 56.

62. RED BARBER (WITH ROBERT CRAMER), *RHUBARB IN THE CATBIRD SEAT* 265-73 (1968).

63. Thorn & Tygiel, *supra* note 56, take this position. See also Ribowsky, *supra* note 2, at 276-79.

Even if one accepts the traditional account of the Robinson signing and its view that Rickey was not motivated by fear of prosecution under the Ives-Quinn Act, it is still possible to acknowledge that the act would have eventually led to the integration of organized baseball, even if Rickey had failed to act when he did. Although New York prosecutors seemed to be in no hurry to initiate such a legal proceeding in the fall of 1945, the growing public clamor and the support of mainstream political figures like LaGuardia probably would have forced the three New York City teams to offer contracts to black players.

Ironically, the decision of the Dodgers to sign Robinson in 1945 and four other black players in 1946 (Roy Campanella, Don Newcombe, John Wright, and Roy Partlow) may have retarded rather than advanced the integration of baseball. The clamor for prosecution of the New York teams immediately subsided after the Robinson signing, allowing the Giants and the Yankees to continue their segregationist policies for several more years. The Giants and Yankees did not sign their first black players until January and February of 1949, respectively, more than four years after the announcement of the Robinson agreement.<sup>64</sup> (While the first black player to actually play for the Giants, Monte Irwin, was called up from the minors during the 1949 season, no African-American appeared in a Yankees uniform in a major league game until the arrival of Elston Howard in 1955.) The signing of Robinson by their cross-borough rival saved both teams the embarrassment of having to appear in court where they no doubt would have insisted that they had signed no black players because they had been unable to find any qualified to play in the major leagues. Had all three teams been prosecuted under the Ives-Quinn Act, it seems likely that every New York team would have had black players by 1947, at the latest. Moreover, successful prosecutions in New York would probably have led to similar actions against the two Boston teams (the Red Sox and the Braves) after the adoption of a similar statute in Massachusetts in 1946.<sup>65</sup> With five of sixteen teams integrated by force of law, it is hard to believe that most of the remaining teams would not have followed suit. Instead, once Jackie Robinson was signed, both the baseball world and its critics sat back and watched.

Finally, it may also be that Jackie Robinson's success, a success that in the public mind was achieved without the benefit of formal legislation, itself retarded the development of employment discrimination laws. By

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64. TYGIEL, *supra* note 3, at 250.

65. See the Massachusetts Law against Discrimination in Employment, *reprinted in* KONVITZ, *supra* note 39, at 184-92.

apparently demonstrating that an institution with as long a history of segregation as organized baseball could be integrated without governmental involvement, many Americans may have optimistically interpreted the Robinson example as evidence that with the right people segregation could be ended without the necessity of legislation. Branch Rickey himself appears to have believed this, at least initially. In 1950, he warned that in the campaign to solve the nation's racial problems, "legislative force" was likely "to delay rather than accelerate the solution."<sup>66</sup> Even today, Robinson remains a hero for some anti-government activists.<sup>67</sup>

Finally, the most important connection between Robinson and American civil rights laws lies in his support for federal civil rights legislation in the very public life that he led away from the baseball field. Jackie Robinson was never just a baseball player, and both during his playing days and after he lent his considerable influence to a variety of civil rights causes, including the acts that would be known as the Civil Rights Acts of 1957 and 1964 and the Voting Rights Act of 1965.<sup>68</sup> While his benefactor and friend Branch Rickey may have believed that such laws were not necessary, Jackie Robinson always knew better.

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66. For Rickey's views on civil rights legislation in 1950 see Stephen Fox, *The Education of Branch Rickey*, CIVILIZATION 55 (Sept./Oct. 1995), cited in TYGIEL, *supra* note 3, at 389, n. 5.

67. See for example, Steve Sailer, *How Jackie Robinson Desegregated America*, NATIONAL REVIEW 38-41 (April 8, 1996).

68. On Robinson's efforts on behalf of federal civil rights legislation, see RAMPERSAD, *supra* note 2, at 325-27 & 349-82.

