

CAUGHT STEALING: THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

A Union for the Few at the Expense of the Many

By Alec Kassin

With over \$3.5 billion to divide between roughly 1,200 players each year, the Major League Baseball Players Association (MLBPA) is described by members and scholars as the most powerful union in the country. When the then-ineffective MLBPA was founded in 1953, private sector unionization was at its zenith. Today, the MLBPA is at the height of its power at a time when private sector unionization has hit a nadir. Considering this, it can be tempting to regard the MLBPA as a formidable outlier that has successfully bucked the trend of deunionization. However, the reality is far less uplifting. To achieve success, the MLBPA has actually repressed low-level workers within the same industry, thereby creating a microcosm of our current era — the New Gilded Age, defined by a growing divide between rich and poor — in professional baseball. This repression has come in the form of restricting minor league player rights and is exemplified by the union’s actions during the 1994-1995 player strike, the rollback of baseball’s antitrust exemption, and changes to the format of the amateur draft. This shift from policies that benefit the largest number of players to ones that favor superstars has resulted in rampant individualism within the baseball world and has perhaps been to the detriment of the union’s well-being. This work illustrates how a large concentration of labor power shared only by a few select workers within an industry can be just as problematic for lower level worker rights as a large concentration of corporate power.

I. CONTEXTUALIZING MLB, THE MLBPA & THE NEW GILDED AGE

Pregame Warmup: Introduction

“If you build it, he will come.” In the classic 1989 baseball movie *Field of Dreams*, an Iowa corn farmer by the name of Ray Kinsella, played by Kevin Costner, hears a voice from above instructing him to plow through his crops and build a baseball field.¹ Kinsella follows through, much to the bewilderment and scorn of his fellow farmers and brother-in-law, erecting a baseball field that imperils his family’s financial livelihood and sends him on a quixotic yet meaningful journey across the country in an attempt to return to a nostalgic past.²

1 “Synopsis for Field of Dreams,” IMDb, Accessed May 01, 2016, http://www.imdb.com/title/tt0097351/synopsis?ref_=ttpl_pl_syn.

2 “Synopsis for Field of Dreams.”

A 2016 MLB.com Movie Bracket crowned *Field of Dreams* the greatest baseball movie ever made, beating out classics like *Bull Durham* and *The Natural*.³ In a twenty-year retrospective, *Sports Illustrated* said in 2009 that, “*Field of Dreams* remains the quintessential moving-image expression of why we love baseball ... baseball as we discovered it and as we prefer to preserve it.”⁴ This sentiment is encapsulated by James Earl Jones’ character Terrance Mann, who says in a famous monologue, “This field, this game, is a part of our past, Ray. It reminds us of all that once was good, and that could be again.”⁵

But while celebrated, the wholesome and innocent depiction of baseball in *Field of Dreams* rings hollow when one sheds the nostalgic and superficial layer over the underlying business of the game, exposing a bedrock of strife analogous to that of other American industries. Career minor leaguer Dirk Hayhurst in his 2010 work *The Bullpen Gospels* said, “Don’t lecture me about the magic of the game; I’m all magicked out. I’ve heard every cliché, read very quote, watched every Disney movie about overcoming. I know what Hollywood fabricates the sports life to look like, and this ain’t it.”⁶

With \$3.5 billion to divide between roughly 1,200 individuals each year, the Major League Baseball Players Association (MLBPA) is described by members and scholars as the most powerful union in the country.⁷ From 1995-2014, MLB payrolls increased almost 400%, while Major League Baseball revenue jumped from \$1.4 to \$9 billion.⁸ This increase in revenue has been a boon to major leaguers, as the average player salary in 2015 reached \$3.3 million and the minimum salary eclipsed \$500,000.⁹ When the MLBPA was founded in 1953, it was largely irrelevant and ineffective, while private sector unionization as a whole was at its zenith. Today, the MLBPA is at the height of its power at a time when private sector unionization has hit a nadir, with a mere 6.6% of Americans unionized, down from a peak of 35% in the 1950s.¹⁰ In this context it can be tempting to regard the MLBPA as a formidable outlier that has successfully bucked the trend of deunionization, but the reality is far less uplifting.

Scholars commonly view unions as protectors of the proletariat, whose decline has gone hand in hand with a vast increase in inequality between the rich and poor in America. Some have even gone so far as to call unions the “core equalizing institution” of the “golden age” of welfare capitalism in the U.S.¹¹ Unions tend to provide advantages in the form of higher wages and increased compensation to all workers within an industry, even to those who do not belong to the organization.¹² As a union, one would expect the MLBPA to do the same. However, the MLBPA has actually done the opposite, repressing low-level workers within the same industry, thereby creating a microcosm of our current era — the New Gilded Age, defined by a growing divide between rich and poor — in professional baseball.

In fact, it is more accurate to label the MLBPA a union of the bourgeoisie than one of the proletariat; the journey to peel back the layers of the MLBPA in order to expose this is best illustrated by a nine-inning baseball game. The first two innings will discuss the contemporary structure of major and minor league baseball, laying the foundation for understanding the MLBPA’s place within the sport. The third inning will look back at the history of

3 “The MLB Movie Bracket Has Spoken, and ‘Field of Dreams’ Has Taken Home the Title,” Major League Baseball, Accessed May 01, 2016, <http://m.mlb.com/cutfour/2016/02/26/165500160>.

4 Tom Verducci, “FIELD OF DREAMS,” *Sports Illustrated*, July 13, 2009, 102-03.

5 “Synopsis for Field of Dreams.”

6 Dirk Hayhurst, *The Bullpen Gospels: Major League Dreams of a Minor League Veteran* (New York: Citadel Press, 2010), 25.

7 “History of the Major League Baseball Players Association,” Major League Baseball, Accessed April 22, 2016, <http://mlb.mlb.com/pa/info/history.jsp>.

8 David Cameron, “The Coming Fight: Why the Next CBA Won’t Be So Easy,” *The Hardball Times*, February 29, 2016, Accessed February 29, 2016, <http://www.hardballtimes.com/the-coming-fight-why-the-next-cba-wont-be-so-easy/>.

9 Dave Matter, “Minor Leaguer-turned-lawyer Targets MLB in Lawsuit,” *Stltoday.com*, June 25, 2014, Accessed March 01, 2016, http://www.stltoday.com/sports/baseball/minor-leaguer-turned-lawyer-targets-mlb-in-lawsuit/article_713f4d65-e981-5565-a4a2-2e36ed1e627c.html.

10 Mike Collins, “The Decline Of Unions Is A Middle Class Problem,” *Forbes*, March 19, 2015, Accessed March 01, 2016, <http://www.forbes.com/sites/mikecollins/2015/03/19/the-decline-of-unions-is-a-middle-class-problem/#2c378ce418be>.

11 Jake Rosenfeld, *What Unions No Longer Do*. (Cambridge: Harvard University Press, 2014), 2.

12 Matthew Walters, and Lawrence Mishel, “How Unions Help All Workers,” Economic Policy Institute, August 26, 2003, Accessed March 22, 2016, http://www.epi.org/publication/briefingpapers_bp143/.

unionization within Major League Baseball and how the MLBPA has gained power by learning from the mistakes of previous attempts to organize baseball players. Next, the fourth inning will contextualize the MLBPA within the present-day New Gilded Age, an era characterized by severe deunionization and a growing disparity between the wealthiest and poorest Americans. This will set the stage for innings five, six, and seven, which will illustrate the paradox of how and why the Players' Union suppresses minor league player rights, specifically by looking at: the 1994-1995 player strike, the partial repeal of baseball's antitrust exemption, and the format of the First-Year Player Draft. Finally, innings eight and nine will be spent discussing how the breakdown in player solidarity in the MLBPA has shifted the union's focus from policies that benefit the most players to ones that favor superstars. This has resulted in rampant individualism and staggering inequality within the baseball world and has perhaps been to the detriment of the well-being of the union.

By examining the quintessential American sport and its place in the overarching societal trends of the past forty years, the impact of the New Gilded Age can be seen in a different light, exposing the way in which a union has actually contributed to furthering the aims of an elite few at the expense of the many. While much scholarship has been devoted to the plight of minor league players, the power of the MLBPA, and changes in player revenues over the past half-century, little has been done to contextualize these developments through changes in unionization and the stratification of wealth in American society over the past forty years. Analyzing the actions of the MLBPA complicates the knowledge of the New Gilded Age by examining the paradox of a powerful union at the center of neoliberal policies in the baseball world. Doing so ventures past the rosy idealism of our national pastime in movies like *Field of Dreams* and exposes a seamy underbelly, rife with labor conflict, borderline illegal practices, and the use of government mechanisms to repress player rights.

Inning One: Major League Baseball Structure and History

In the aforementioned monologue from *Field of Dreams*, James Earl Jones' character Terrance Mann says, "the one constant through all the years, Ray, has been baseball."¹³ One could just as easily say that the one constant through all the years has been the commercialization of baseball. Sports economist Andrew Zimbalist states, "with few exceptions, franchise owners have always been out to maximize their profits, and they have changed baseball accordingly."¹⁴ The National League, founded in 1876 and originally boasting eight teams, joined with the rival American League in 1903 to form a World Series, in which the best team from each league would compete for the title of World Champion.¹⁵ That structure still exists today, with a total of thirty teams from New York to San Diego competing for the title every year. According to *Forbes*, growing revenues from ticket sales, local TV contracts, concessions, licensing agreements, and revenue sharing all combine to made baseball worth \$36 billion in 2015, a number that has only grown since.^{16,17}

Nevertheless, there seem to always be catastrophic predictions about the economic state of the sport. Zimbalist notes that, "dire economic predictions are as much a part of the baseball tradition as the seventh-inning stretch."¹⁸ Part of this has to do with the increase in expenses, which grew 9.5% per year between 1970 and 1989 and have continued to swell.¹⁹ Player salaries have been a large contributor, increasing from taking 17.6% of total

13 "Synopsis for *Field of Dreams*."

14 Andrew S. Zimbalist, *Baseball and Billions: A Probing Look inside the Big Business of Our National Pastime*, (New York: BasicBooks, 1992), 30.

15 History.com Staff, "1876: National League of Baseball Is Founded," History.com, Accessed April 4, 2016, <http://www.history.com/this-day-in-history/national-league-of-baseball-is-founded>.

16 Amy Fontinelle, "Major League Baseball's Business Model & Strategy," Investopedia, June 24, 2015, Accessed April 04, 2016, <http://www.investopedia.com/articles/personal-finance/062415/major-league-baseballs-business-model-strategy.asp>.

17 Mike Ozanian, "MLB Worth \$36 Billion As Team Values Hit Record \$1.2 Billion Average," *Forbes*, March 25, 2015, Accessed April 03, 2016. <http://www.forbes.com/sites/mikeozanian/2015/03/25/mlb-worth-36-billion-as-team-values-hit-record-1-2-billion-average/#6c7e1f14741e>.

18 Zimbalist, *Baseball and Billions*, 168.

19 Zimbalist, *Baseball and Billions*, 59.

team revenues in 1974 to peaking at 56% in 2002 before falling to 38% in 2014.^{20,21} Major league rosters consist of twenty-five players, each of whom are paid between the mandatory minimum of \$507,500 and top out at over \$35 million in the case of the Dodgers' Clayton Kershaw.²² In addition, MLB teams are responsible for the costs of minor league player development, stadium operations, a ticket department, and general administrative resources.²³

Due to an early twentieth century Supreme Court ruling, Major League Baseball operates as a cartel, excluding others from competition. In 1922, owners of the Baltimore Terrapins, part of the rival upstart Federal League, sued MLB for holding a monopoly on players. In a victory that would have monumental effects on labor relations, a unanimous Supreme Court, led by Justice Oliver Wendell Holmes, “created an exemption for organized baseball from the application of the federal antitrust laws.”²⁴ The decision in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Clubs* was due to a narrow — although relatively standard for the era — interpretation of interstate commerce, saying that baseball was exempt from provisions in the Sherman Antitrust Act.²⁵ According to baseball antitrust expert Nathaniel Grow, baseball was fortunate to face a lawsuit during the 1920s, when antitrust regulations were interpreted more loosely than in later decades. He states that, “Had MLB faced its first antitrust lawsuit in the 1940s rather than the 1920s, the Court would have almost certainly held that the sport was subject to the Sherman Act.”²⁶ Despite being incongruent with the contemporary interpretation of antitrust statutes, the Supreme Court has been unwilling to modify its 1922 decision, as it has upheld the exemption despite challenges by minor leaguers in 1953 in *Toolson v. New York Yankees* and major leaguers in 1972 with *Flood v. Kuhn*.²⁷ This seemingly trivial antitrust exemption has had monumental effects upon the business of the game.

i. Curt Flood & Major League Baseball's Antitrust Exemption

On December 24, 1969, fourteen-year MLB veteran and three-time All-Star Curt Flood sat down and wrote a letter to the Commissioner of Baseball Bowie Kuhn:

“After twelve years in the Major Leagues, I do not feel I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the sovereign States.”²⁸

At age thirty-one, Flood was irate about being traded from the St. Louis Cardinals — the team that had been his home since he was twenty — to the Philadelphia Phillies without any input on the decision.²⁹ At the time, this practice was legal under what was known as baseball's Reserve Clause. This kept players like Flood under the control of the same team for the entirety of their careers — even though their contracts covered only a single season.³⁰ The practice had been in place unofficially since 1880, when teams would circulate a list of five of their

20 Zimbalist, *Baseball and Billions*, 59.

21 Nathaniel Grow, “The MLBPA Has a Problem,” Fangraphs, March 30, 2015, Accessed February 02, 2016, <http://www.fangraphs.com/blogs/the-mlbpa-has-a-problem/>.

22 Zimbalist, *Baseball and Billions*, 61.

23 Zimbalist, *Baseball and Billions*, 61.

24 Zimbalist, *Baseball and Billions*, 121.

25 Nathaniel Grow, “Baseball's Antitrust Exemption: A Primer,” Fangraphs, June 4, 2015, Accessed February 25, 2016, <http://www.fangraphs.com/blogs/baseballs-antitrust-exemption-a-primer/>.

26 “Baseball's Antitrust Exemption: A Primer.”

27 Not all Supreme Court justices agreed. In a 1972 ruling on *Flood v. Kuhn*, Justice William Brennan in his dissent said, “The unbroken silence of Congress should not prevent us from correcting our own mistakes.” (Burk, *Much More Than a Game*, 181.)

28 MLB.com, “Curt Flood's Letter to Bowie Kuhn,” Major League Baseball, March 15, 2007, Accessed April 25, 2016, <http://m.mlb.com/news/article/1844945/>.

29 Robert Fredrick Burk, *Much More than a Game: Players, Owners, & American Baseball since 1921*, (Chapel Hill: University of North Carolina Press, 2001), 162.

30 “History of the Major League Baseball Players Association.”

players that rival teams were forbidden to sign when their contracts expired.³¹ Not only did this serve to keep the best players under the control of their teams, but it also reduced any negotiating leverage that players could gain by eliminating the possibility of receiving multiple offers. Over time, the reserve clause would expand to cover teams' entire rosters, and the practice would transform from being conducted in secret to be written into league rules for all to see. This policy of barring players from signing with other teams was the defining issue that led to previous attempts to organize, going back to the nineteenth century.³²

The Reserve Clause remained relatively unchallenged until Flood sued MLB in 1969 for illegal labor practices. Flood's case would go all the way to the Supreme Court, and despite a 5-3 split decision upholding the Reserve Clause, Flood's defiant actions "sent shock waves not only through baseball but ultimately through all professional sports."³³ It would pave the way for a monumental Supreme Court ruling in 1975 that granted free agency to two pitchers, Andy Messersmith and Dave McNally. This ruling freed veteran players with six or more years of MLB service — disregarding time spent in the minors — to sign with a team of their choosing. Historian Garrett Broshuis states that this decision "resulted in perhaps the greatest shift in relative bargaining power in the history of baseball," paving the way for competition for player services and more lucrative contracts.³⁴ Thanks to the work of Flood, Messersmith, McNally, and the MLBPA, the advent of free agency has led to an enormous increase in player salaries and the mega-contracts that we associate with the sport today — like the thirteen-year \$325 million contract given to Giancarlo Stanton by the Miami Marlins.³⁵

In 1998, twenty-nine years after Flood's challenge, Congress passed the Curt Flood Act, which altered the antitrust exemption for major league players. The law "allows professional Major League Baseball players to file lawsuits under antitrust regulations" which grants them rights shared by professional athletes in other leagues.³⁶ Yet the bill "does not change the application of the antitrust laws in any other context," meaning that "minor league baseball, the amateur draft, the relationship between the major leagues and the minors, franchise relocation, intellectual property, the Sports Broadcasting Act, and umpires" are all off-limits to antitrust lawsuits.^{37,38} The exclusion of minor league players from these labor rights is emblematic of a broader effort to suppress minor leaguers from any benefits flowing to their major league brethren.

Inning Two: Minor League Baseball Structure & History

While MLB owners enjoy an annual revenue of \$9 billion, professional baseball also operates under substantial minor league player expenses that most professional sports do not.³⁹ MLB teams spend roughly \$20 million each year on player development, the bulk of which goes directly to minor league player salaries.⁴⁰ In the National Football League, by contrast, there is no minor league system — only college football where players are unpaid

31 "History of the Major League Baseball Players Association."

32 Zimbalist, *Baseball and Billions*, 4.

33 Allen Barra, "How Curt Flood Changed Baseball and Killed His Career in the Process," *The Atlantic*, July 12, 2011, Accessed April 22, 2016. <http://www.theatlantic.com/entertainment/archive/2011/07/how-curt-flood-changed-baseball-and-killed-his-career-in-the-process/241783/>.

34 Garrett R. Broshuis, "Touching Baseball's Untouchables: The Effects of Collective Bargaining on Minor League Baseball Players," *Harvard Journal of Sports & Entertainment Law* 4.1 (May 16, 2012): 72.

35 Jayson Stark, "Stanton Wanted Flexibility for Marlins," *ESPN*, November 18, 2014, Accessed May 01, 2016, http://espn.go.com/mlb/story/_/id/11897600/giancarlo-stanton-325m-miami-marlins-heavily-backloaded.

36 Gina Scalzo, "Major League Baseball's Antitrust Exemption and the Impact of the Curt Flood Act," Liberty University, Spring 2014, Accessed February 25, 2016. <http://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1473&context=honors>.

37 John T Wolohan, "The Curt Flood Act of 1998 and Major League Baseball's Federal Antitrust Exemption," *Marquette Sports Law Review*, Spring, 9, no. 2 (1999): 368.

38 "Baseball's Antitrust Exemption: A Primer."

39 Maury Brown, "Major League Baseball Sees Record \$9 Billion In Revenues For 2014," *Forbes*, December 10, 2014, Accessed February 05, 2016. <http://www.forbes.com/sites/maurybrown/2014/12/10/major-league-baseball-sees-record-9-billion-in-revenues-for-2014/#75c8a6b66cb2>.

40 Andrew S. Zimbalist, *Circling the Bases: Essays on the Challenges and Prospects of the Sports Industry*, (Philadelphia: Temple University Press, 2011), 88.

and colleges front the costs — and the National Basketball Association’s Development League — the equivalent of the minors — has only twenty two teams, not even enough for every NBA team to have their own affiliate.⁴¹ The National Hockey League, which made close to \$4 billion in revenue in 2015, spends roughly \$1-\$2 million annually on minor league player salaries, a much smaller percentage compared to the amount that MLB teams pay their minor leaguers.^{42,43} Most NHL teams also own their minor league affiliates and therefore enjoy the revenue that these teams generate.⁴⁴ This is not the case in MLB, as Major League Baseball franchises do not own their minor league affiliates, but instead sign a Player Development Contract with the ownership of a minor league franchise to use the team and the stadium for a predetermined number of seasons in a minor league baseball league.⁴⁵

Each franchise has seven to ten minor league affiliates in official Minor League Baseball (MiLB) leagues, 244 teams in all.⁴⁶ Most of these affiliates are at different levels of play. From the lowest to highest levels, teams will typically have two to four Rookie League teams, then one each of Class-A Short Season, Class-A, Class-A Advanced, Double-A, and Triple-A — the latter of which is commonly filled with a mixture of top prospects, former major leaguers, and career minor leaguers.^{47,48} These teams are spread throughout North America, from the Idaho Falls Chukars to the Dominican Summer League Cubs.⁴⁹ As prospects move up a level, the quality of play increases, and it becomes increasingly common for players to halt their careers because of inadequate skills and the demands placed upon minor leaguers.

Major league teams are responsible for supplying the players, coaches, and player personnel to their minor league affiliates, and pay the bulk of the cost of the bats, helmets, and balls.⁵⁰ The major league teams are also responsible for all player movement — promoting a player to the next level, sending him down a level, or releasing him. Minor league teams only pay a “very small portion” of ticketed revenue to their major league affiliate and do not share any of the non-ticketed revenue from advertising, concessions, and merchandise.⁵¹ In sum, the minors constitute a major expense for franchises, with the only real revenue coming from the hope that players toiling in the minor leagues will one day reach the majors and play well, engaging fans and increasing revenues.

Unlike other major sports, newly-drafted baseball players — even star prospects — do not go directly to major league teams. Take Bryce Harper, who graced the cover of *Sports Illustrated* at the tender age of sixteen as a high school sophomore.⁵² Billed as “Baseball’s Chosen One,” even he spent four seasons in the minor leagues after he was drafted first overall by the Washington Nationals in 2010.⁵³ Like Harper, draftees out of high school and college in the First-Year Player Draft every June will typically play in a Fall League, a Rookie League,

41 “NBA D-League Franchise Map,” NBA DLeague, Accessed March 26, 2017. <http://dleague.nba.com/franchise-map/>.

42 Forbes, “National Hockey League - Total League Revenue from 2005/06 to 2014/15,” Accessed April 3, 2016, <http://www.statista.com/statistics/193468/total-league-revenue-of-the-nhl-since-2006/>.

43 Zimbalist, *Circling the Bases*, 88.

44 Zimbalist, *Circling the Bases*, 88.

45 “MiLB.com Frequently Asked Questions The Business of MiLB.” Minor League Baseball, Accessed April 13, 2016, <http://www.milb.com/milb/info/faq.jsp?mc=business#7>.

46 “Teams by Affiliation,” Minor League Baseball, Accessed March 26, 2017, <http://www.milb.com/milb/info/affiliations.jsp>.

47 Jeff Moore, “Understanding Minor League Levels,” *The Hardball Times*, July 2, 2013, Accessed May 03, 2016, <http://www.hardballtimes.com/understanding-minor-league-levels/>.

48 Though they usually have only one of each, teams are granted leeway to choose different numbers of Rookie League teams, as well as their Single-A team classifications. The only commonality amongst franchises is the control of one Double-A team and one Triple-A team. (“Teams by Affiliation,” MiLB.com.)

49 “Teams by Affiliation.”

50 Robert J. Chalfin, “The Economics of Minor League Baseball,” *The Wharton School, The University of Pennsylvania*, August 19, 2013, Accessed February 16, 2016. <http://beacon.wharton.upenn.edu/entrepreneurship/2013/08/the-economics-of-minor-league-baseball/>.

51 “The Economics of Minor League Baseball.”

52 Jesse Sanchez, “Just 16, Prep Phenom Lands SI Cover,” *Major League Baseball*, June 04, 2009, Accessed May 03, 2016, <http://m.mlb.com/news/article/5139338/>.

53 “Bryce Harper Register Player Page,” *Baseball-Reference.com*, Accessed May 01, 2016, <http://www.baseball-reference.com/register/player.cgi?id=harper002bry>.

or Class-A Short Season to begin their careers.⁵⁴ While some players can make the adjustment to professional baseball relatively quickly and progress to the next level within weeks or months, others can spend a year or two in these Rookie Leagues before moving up to the next level. In fact, most major leaguers will spend a substantial amount of time in the minor leagues. According to the journal *Baseball Prospectus*, the average age of a player making his major league debut is 24.4 years, with the average batter accumulating over 2,000 at-bats in the minor leagues, and the average pitcher having thrown almost 400 innings before reaching The Bigs.⁵⁵ Harper, who had an astronomical rise through the minors, still accumulated over 500 at-bats in his minor league career.⁵⁶

Like their major league counterparts prior to the rise of the MLBPA, minor leaguers have had the short end of the stick since the first minor league was established in 1877.⁵⁷ Since then, minor league players been exploited through a draft, a fixed pay rate, and a reserve clause.⁵⁸ For instance, in the 1920s, General Manager of the St. Louis Cardinals Branch Rickey developed baseball's first farm *system* by buying teams at multiple levels.^{59,60} According to Broshuis, "This enabled Rickey, who has been called the 'Pharaoh who developed the bonds that held the minor leagues in their subordinate state,' to sign amateur players at a cheap rate and continuously maintain their property rights as they developed at different levels of the minor leagues."⁶¹ While sports economist Andrew Zimbalist notes that "the minors limped through the 1960s and 1970s, with only a minority of clubs earning (modest) profits," minor league baseball saw a revival in the last quarter of the twentieth century, with attendance doubling between 1975 and 1991.^{62,63} Despite this, minor leaguers have seen little benefit come their way, with a minimum salary well below the federal poverty level.⁶⁴ Paradoxically, this poor treatment of minor leaguers — some of whom will make it to the majors and become union members — has been much to the pleasure of the MLBPA.

Inning Three: History of Attempts to Organize Baseball Players

Founded in 1953, the Major League Baseball Player's Association is the most recent and by far the most successful attempt to organize baseball players, building off of the successes and learning from the failures of previous organizations. The first of these, the Brotherhood of Professional Base Ball Players, was formed in 1885 by nine players. The most notable of the nine was star John Montgomery Ward, who sought to fight against baseball's reserve clause and a proposed cap on player salaries.^{65,66} However, the National League, then the most popular and established of the professional leagues and led by former player and sporting goods magnate Albert G. Spalding, undermined player solidarity by attacking Ward and other unionists in words that are still used today when referring to unions: "anarchists, socialists, and radical conspirators."⁶⁷ Although they challenged owner power and

54 "Understanding Minor League Levels."

55 Ben Lindbergh, "Overthinking It: Promoting Prospects," *Baseball Prospectus*, February 22, 2011, Accessed March 01, 2016. <http://www.baseballprospectus.com/article.php?articleid=13018>.

56 "Bryce Harper Register Player Page."

57 Zimbalist, *Baseball and Billions*, 197.

58 Broshuis, *Touching Baseball's Untouchables*, 59.

59 Rickey is of course best known for signing Jackie Robinson to a pro contract in 1945, who would in 1947 become the first black ballplayer to play in the major leagues since the formation of the "Gentleman's Agreement" in 1886, which banned black players from professional baseball. (Burk, *Much More Than a Game*, 95-97.) It is somewhat ironic that the man who helped usher in a remarkable Civil Rights victory actively worked to suppress the rights of minor leaguers.

60 Broshuis, *Touching Baseball's Untouchables*, 59.

61 Broshuis, *Touching Baseball's Untouchables*, 59.

62 Zimbalist, *Baseball and Billions*, 112.

63 Zimbalist, *Baseball and Billions*, 112.

64 Dave Zirin, "It's Not Just Anti-Union. It's Anti-Worker? NFLPA and MLBPA Join Fight Against Michigan Right-to-Work," *The Nation*, December 9, 2012, Accessed March 24, 2016. <http://www.thenation.com/article/its-not-just-anti-union-its-anti-worker-nflpa-and-mlbpa-join-fight-against-michigan-right/>.

65 According to David Stevens in *Baseball's Radical for All Seasons: A Biography of John Montgomery Ward*, the man has no relation to the former retail giant Montgomery Ward and its founder, Aaron Montgomery Ward.

66 "History of the Major League Baseball Players Association."

67 Voigt, *The Business of Professional Sports*, 103.

made marginal gains toward increasing salaries, the union fell by the wayside when the Players League collapsed in 1891 after only one season, leaving the National League to reign supreme.⁶⁸

The Players' Protective Association, founded in 1900, was the next attempt to organize after a decision by National League owners to reduce the number of teams from twelve to eight — curtailing the number of players by one-third — due to concerns about plummeting attendance.⁶⁹ However, according to baseball historian and former president of the *Society for American Baseball Research* David Q. Voigt, "...rampant individualism and unwillingness to be linked with labor organizations" was a key reason why the organization's collective bargaining power was limited.⁷⁰ The Association faded into obscurity in 1903.

In 1912, a former player turned lawyer, David Fultz, founded the Baseball Players Fraternity. As a "professional association," Fultz sought to distance the Fraternity from the Brotherhood of the previous century, which embraced talk of strikes and player-created leagues.⁷¹ While membership reached over 1,000 members in 1914 and even included minor leaguers, many of whom shared concerns with their major league counterparts, this embrace of minor leaguers ultimately contributed to the Fraternity's downfall when they lost a key battle to improve conditions for minor leaguers and created a rift within the ranks.⁷²

With the failure of the Baseball Players Fraternity in 1917, players continued to grumble while earning low wages, operating under the reserve clause and without a pension or health coverage. The National Baseball Players' Association of the United States came to life in 1922. Led by Raymond J. Cannon (like Fultz, another player turned lawyer), at its peak the Association had 225 members, just over one-third of all major leaguers.⁷³ Though owners agreed to discuss a pension fund, this willingness evaporated once the union disbanded.⁷⁴

The American Baseball Guild, led by a labor lawyer — and notably not a former player — named Robert Murphy, was born in 1946. Among the Guild's demands were a higher minimum salary, an end to the reserve clause, and a substantive pension program.⁷⁵ The threat of organization was enough for the owners to capitulate to some demands, most notably a pension program and a \$5,500 minimum salary.⁷⁶ This marked a victory that players had been hoping to achieve since the nineteenth century and a tool that would prove instrumental in building player solidarity by the next union, the MLBPA.

In time, the Major League Baseball Players Association would capitalize where the previous attempts to organize had failed. Unlike the Brotherhood, it did not try and create a rival league; unlike the Players' Protective Association, it achieved remarkable player solidarity; unlike the Fraternity, it did not attempt to organize minor leaguers or join a separate union; unlike the National Baseball Players' Association, it did not hire a lawyer or ex-player to run the organization; and unlike the Guild, the MLBPA would not fade into obscurity once a few demands were met. Sidestepping the pitfalls that befell other attempts to organize, the MLBPA, like many unions in the mid twentieth century, made tangible changes in the lives of those within its ranks. Yet at the outset, it appeared that the organization would be doomed to failure like the other attempts at collective bargaining.

i. Marvin Miller & the Rise of the MLBPA

The most important non-player in baseball history almost didn't get into baseball. "I'm no longer a candidate," he said bluntly.⁷⁷ After a protracted interview process and initially being turned down for the job, Marvin Miller felt that he had gone through enough. In addition, while he had been contemplating a change in scenery after sixteen

68 Ben Lisle, "The Brotherhood," American Studies at the University of Virginia, Accessed May 03, 2016, <http://xroads.virginia.edu/~hyper/incorp/baseball/ward.html>.

69 Voigt, *The Business of Professional Sports*, 105.

70 Voigt, *The Business of Professional Sports*, 107.

71 Voigt, *The Business of Professional Sports*, 108.

72 Voigt, *The Business of Professional Sports*, 110.

73 Burk, *Much More Than A Game*, 7.

74 Burk, *Much More Than A Game*, 7.

75 Voigt, *The Business of Professional Sports*, 113.

76 Voigt, *The Business of Professional Sports*, 113.

77 Marvin Miller, *A Whole Different Ball Game: The inside Story of the Baseball Revolution* (Chicago: I.R. Dee, 2004), 34.

years with the Steelworkers Union, he was more likely to go into academia than a career in baseball. Miller had originally been contacted by the MLBPA to be the Executive Director in 1965 after a chance encounter with his former boss at the War Labor Board, Dr. George W. Taylor, who mentioned that the union was looking for a new leader.⁷⁸ While Miller agreed to an interview, which went well aside from blasting the players' desire to interview Richard Nixon as a candidate, the union originally selected former MLBPA President and puppet of the ownership Robert Cannon as Executive Director.^{79,80} Now that he was being informed that Cannon had "pissed off a number of player reps by demanding additional conditions," Miller was skeptical whether or not he wanted to put himself in the running again.⁸¹

Perhaps this was just as well. After all, when Miller had interviewed, the player representatives⁸² stated that the players as a whole were quite conservative and skeptical of a unionist running their organization.⁸³ Bob Feller, the Hall of Fame pitcher and first player-president of the union said in 1956, "you cannot carry collective bargaining into baseball."⁸⁴ Bob Friend, the second player-president of the MLBPA stated, "I firmly believe that a union ... simply would not fit the situation in baseball."⁸⁵ Furthermore, the owners persuaded the players to hire Cannon as the first president in 1959, a man who Miller said, "never met an owner he didn't like."⁸⁶ All of this combined to make the MLBPA a "classic company union" during its first decade, incapable of adequately representing its membership.^{87,88}

If he decided to take the job, Miller would face four main obstacles to building a powerful organization — unlike anything he had previously experienced. First, he would face the challenge of unifying a large number of players who did not care for a union and who believed it would ruin the game. Next, Miller's background as a union man — and not being part of the "old boys club" of former players — would make players less likely to trust him and less likely to go along with his proposed plans.⁸⁹ Third, Miller would have to overcome the challenge of leading an organization that had no financial structure, no dues paying members, and less than \$6,000 in total assets.⁹⁰ Finally, all this had to be accomplished by fighting against the entrenched interests of the owners and the staggering amount of power they held over their players and the union.⁹¹ A man who spent his entire career forged by unionism, with stints at the Department of Labor, the International Association of Machinists, the United Auto Workers, and most notably as the chief economist and top negotiator of the United Steelworkers couldn't possibly fit in.⁹² But the challenge suited someone who had fought for justice his entire life. Miller accepted the job two days after pitcher Bob Friend — the man who had sabotaged Miller's election — called him to apologize.⁹³

78 Miller, *A Whole Different Ball Game*, 5.

79 Miller irritated a couple of players on the selection committee when he told them, "if you were to rank all the people in the country in terms of their fitness to be a union counsel, Richard Nixon might be at the very bottom of the ranking." (Miller, *A Whole Different Ballgame*, 10.)

80 Miller, *A Whole Different Ball Game*, 34.

81 Miller, *A Whole Different Ball Game*, 34.

82 Robin Roberts, Harvey Kuenn, and Jim Bunning. (Miller, *A Whole Different Ballgame*, 3.)

83 Miller, *A Whole Different Ball Game*, 10.

84 Robert C. Berry, William B. Gould, and Paul D. Staudohar, *Labor Relations in Professional Sports*, (Dover: Auburn House Pub., 1986), 52.

85 Berry, Gould, Staudohar, *Labor Relations in Professional Sports*, 52.

86 Miller, *A Whole Different Ball Game*, 6.

87 Korr, *The End of Baseball As We Knew It*, 13.

88 In fact, although founded in 1953, the Major League Baseball Players Association would not be recognized as a union until 1966. (PR Newswire. "MLBPA to Celebrate Its 50th Anniversary as a Labor Organization." Morningstar.)

89 That is part of the reason why a significant number of players lobbied for Hall of Fame pitcher Bob Feller to take over the MLBPA instead of Miller. (Miller, *A Whole Different Ballgame*, 7.)

90 Miller, *A Whole Different Ball Game*, 9.

91 For instance, prior to Miller's arrival, the MLBPA player representatives assured Commissioner William Eckert that no one who did not have his approval would be selected as Executive Director. (Miller, *A Whole Different Ball Game*, 107.)

92 Ross E. Davies, "Along Comes the Players Association: The Roots and Rise of Labor Unionism in Major League Baseball," *NYU Journal of Legislation and Public Policy* 16, no. 2 (Spring 2013): 334.

93 Miller, *A Whole Different Ball Game*, 34.

Despite the aforementioned obstacles, Miller began to achieve staggering success when he took over in 1966, which stemmed from the use of tactics employed from his vast union experience. Such methods ranged from securing player solidarity through building trust and educating players, as well as using the media to his advantage, leveraging the personality of star players like Willie Mays and Mickey Mantle in labor disputes.⁹⁴ This solidarity, which no other attempt at player organization achieved in over seventy-five years, was a crucial factor in the success of the union. Within a year of holding office, Miller secured a pension that “virtually doubled players’ benefits,” and in 1968 pioneered a Collective Bargaining Agreement, the first in the history of professional sports.^{95,96}

Since 1968, the Collective Bargaining Agreement (CBA) between players and MLB owners has been the bedrock of agreement and strife within professional baseball. In it, the two sides agree on everything from minimum player salaries, to what times games will start, to what travel expenses clubs will provide when their teams go on the road.⁹⁷ While virtually every major leaguer has a personal agent who handles salary negotiations and individual player needs, the CBA is the foundation of the labor pact between players and owners. Illustrating the contentious nature of the relationship between the MLBPA and MLB, negotiations over the CBA resulted in player strikes in 1972, 1980, 1981, 1985 and notably in 1994, which cancelled the World Series.^{98,99} In addition to these strikes, MLB owners instigated lockouts — barring games from taking place — in 1973, 1976 and 1990.^{100,101}

Over a period of thirty years, the MLBPA became unrecognizable. Historian Charles P. Korr states that the MLBPA had “gone from a classic company union that appealed to the owners for trivial concessions to an aggressive union that many observers thought had become the senior partner in a relationship with the owners.”¹⁰² From John Montgomery Ward through Marvin Miller and today with Tony Clark — the current head of the MLBPA — the organization of baseball players has evolved from a tawdry and ineffective collaboration to a seemingly ironclad juggernaut. But paradoxically, the rise of the MLBPA has coincided with a decrease in union power in the United States. When the MLBPA was founded in 1953, private sector unionization was about at its peak, with roughly 40% of private sector workers unionized.¹⁰³ Today, as the MLBPA has grown into a behemoth and the most powerful union in the country, private sector unionization has dropped to an historic low of 7%.¹⁰⁴ While this increase in union power may seem like a bright spot for unionization at a time when it is desperately needed, the MLBPA has actually exacerbated the trends of deunionization. The difference is that while most of these developments in the U.S. as a whole have come in spite of organized labor’s objections, the MLBPA has found a way to achieve the same gains through organized labor itself.

Inning Four: The New Gilded Age, Neoliberalism & Baseball

In 1873, Mark Twain and Charles Dudley Warner published a novel entitled *The Gilded Age: A Tale of Today*,

94 Korr, *The End of Baseball As We Knew It*, 76.

95 Broshuis, *Touching Baseball’s Untouchables*, 70.

96 Broshuis, *Touching Baseball’s Untouchables*, 70.

97 “2012-2016 BASIC AGREEMENT,” Major League Baseball, Accessed January 31, 2016, http://mlb.mlb.com/pa/pdf/cba_english.pdf.

98 and only concluded when a National Labor Relations Board judge by the name of Sonia Sotomayor ruled that MLB owners could not unilaterally implement terms of employment. (Jennings, *Swings and Misses*, 145.)

99 “Along Comes the Players Association: The Roots and Rise of Labor Unionism in Major League Baseball,” 345.

100 “Pro Sports Lockouts and Strikes Fast Facts,” CNN. January 28, 2015, Accessed May 03, 2016, <http://www.cnn.com/2013/09/03/us/pro-sports-lockouts-and-strikes-fast-facts/>.

101 The last CBAs were agreed to in 2002, 2006, 2011 and most recently in 2016, which will expire after the 2021 season. (“MLB, MLBPA Reach Five-year Labor Accord,” MLB.com.)

102 Korr, *The End of Baseball As We Knew It*, 245.

103 Emin M. Dinlersoz and Jeremy Greenwood, “The Rise and Fall of Unions in the U.S.,” National Bureau of Economic Research. June 2013, Accessed May 1, 2016, <http://www.nber.org/papers/w18079.pdf>.

104 Dinlersoz and Greenwood, “The Rise and Fall of Unions in the U.S.,” 1.

which castigated the superficiality, greed, and corruption present in America.¹⁰⁵ They criticized the fact that while the economy boomed, doubling in size from 1877 to 1893, the profits went disproportionately to those at the top of the economic ladder, leaving many working Americans to toil in abject poverty.¹⁰⁶ Wealthy titans of industry, such as John D. Rockefeller, Jay Gould, and J.P Morgan, were called “robber barons,” known for suppressing business competition and labor revolts while using government policies to become spectacularly wealthy.¹⁰⁷ Twain and Warner’s work would classify the era from the 1870s to the turn-of-the-century as the Gilded Age.

Since 1975, similar developments have taken place. The American economy has boomed, yet the average American is worse off relative to where they were in the 1970s. Productivity increased 143% from 1975-2013, while the real median family income ticked up only 36.5%, failing to keep up with inflation.¹⁰⁸ The Dow Jones Industrial Average, around 600 in 1975, eclipsed a record-high of 20,000 in 2017, but ownership of stocks is concentrated amongst the wealthy with the top 10% of households owning roughly 80% of them.^{109,110} Prices for goods like electronics and clothes have sharply declined, but there are fewer “good jobs” that enable Americans to buy them.^{111,112} Influential economist and author of *Capital in the Twenty-First Century* Thomas Piketty, 2008 Nobel Prize in Economics winner Paul Krugman, and former Secretary of Labor Robert Reich all believe that the world has entered a new era — or rather has returned to a former one — a New Gilded Age.¹¹³ These developments are a result of a nationwide shift toward neoliberalism — an economic, social, and political theory that harkens back to the laissez-faire capitalism of the late nineteenth century.¹¹⁴ The proliferation of neoliberal policies in the New Gilded Age also helps explain the puzzling rise in power of the MLBPA at a time when unions around the country are being decimated.

Neoliberalism, according to David Harvey in *A Brief History of Neoliberalism*, is “a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.”¹¹⁵ In practice, this means the belief in the transfer of control from the public sector (i.e. government) to the private sector (i.e. businesses and individuals). Since the 1970s, there has been “an emphatic turn” toward this both in theory and in practice.¹¹⁶

Free agency in baseball is an illustrative example of how these theories have permeated the far-reaching corners of American life. Like many free-market policies, the victory for free agency in 1975 has benefited a handful of players but has resulted in negative repercussions for workers at the bottom of the wage scale.¹¹⁷ Prior to free agency, players could only negotiate with the team that had previously owned their contract, which

105 T. Jackson Lears, “The Gilded Age,” The Gilder Lehrman Institute of American History, Accessed April 25, 2016, <https://www.gilderlehrman.org/history-by-era/gilded-age/essays/gilded-age>.

106 “The Gilded Age.”

107 T.J. Stiles, “Robber Barons or Captains of Industry?,” The Gilder Lehrman Institute of American History, Accessed May 03, 2016, <https://www.gilderlehrman.org/history-by-era/gilded-age/essays/robber-barons-or-captains-industry>.

108 “Productivity and Real Median Family Income Growth 1947-2009,” Economic Policy Institute, September 29, 2014, Accessed March 16, 2016. <http://stateofworkingamerica.org/charts/productivity-and-real-median-family-income-growth-1947-2009/>.

109 Robert B Reich, *Supercapitalism: The Transformation of Business, Democracy, and Everyday Life*, (New York: Alfred A. Knopf, 2007), 4.

110 Robert B. Reich, “How to Shrink Inequality,” Robert Reich, May 12, 2014, Accessed May 03, 2016, <http://robertreich.org/post/85532751265>.

111 “Good jobs” are defined by the *Center for Economic and Policy Research* as paying at least \$37,000 per year, providing employer-based health insurance, and an employer-sponsored retirement plan. (John Schmitt, and Janelle Jones, “Where Have All the Good Jobs Gone?”)

112 Reich, *Supercapitalism*, 3.

113 Paul Krugman, “Why We’re in a New Gilded Age,” The New York Review of Books, May 8, 2014, Accessed March 9, 2016, <http://www.nybooks.com/articles/2014/05/08/thomas-piketty-new-gilded-age/>.

114 Stephen Nathan Haymes, Maria Vidal De Haymes, and Reuben Jonathan Miller. *The Routledge Handbook of Poverty in the United States*. (Abingdon: Routledge, 2015), 7.

115 Harvey, David. *A Brief History of Neoliberalism*. Oxford: Oxford University Press, 2005. 2.

116 Harvey, *A Brief History of Neoliberalism*, 3.

117 Conveniently sandwiched between 1974 and 1976, the years when influential neoliberal economists Friedrich Hayek and Milton Friedman won their Nobel Prizes in Economics. (“Nobel Laureates at Cato,” Cato Institute.)

severely reduced players' negotiating power. The advent of free agency drastically increased the competition for the most talented ballplayers, sending salaries skyrocketing in the same way that competition for talented CEOs has driven executive pay to astronomical levels. CEOs in the late 1970s made, on average, roughly thirty times more than the average worker.¹¹⁸ As of 2013, the average CEO makes almost 300 times as much as a typical worker, with a peak of 383 times as much before the stock market crash in 2000.¹¹⁹ The same has happened in baseball. The average major league player salary has risen from \$44,000 in 1975 to over \$3 million in 2011 while the average salary for minor league players has failed to keep up with inflation.¹²⁰ All told, entry-level wages and conditions have been depressed and kept as low as possible, enabling teams and companies to spend more money on hiring the best — and most expensive — talent.

i. Wealth Inequality

The relative pittance for minor league players in baseball and minimum-wage workers in the American economy is symptomatic of wealth inequality — defined as the gap in wealth between rich and poor as the result of an unequal distribution of assets — a key outcome of neoliberal policies.¹²¹ In the United States today, wealth and income inequality have exceeded the previous records set in 1929 and are at greater levels than those of any other developed nation.^{122,123} According to a 2005 *New York Times* piece, the 400 richest Americans on *Forbes*'s rankings saw their wealth more than quadruple over the previous 20 years, gilding them with a combined net worth in 2005 that exceeded the GDP of Canada.¹²⁴ These 400 individuals also own more wealth than the bottom 50% of Americans combined, as those at the bottom of the economic rung have been squeezed tighter and tighter.¹²⁵ Today, while the top 1% of Americans now own 35% of America's total net worth, the bottom 40% of Americans own 0%.¹²⁶ UC Berkeley sociologist Peter Evans and University of Chicago historian William H. Sewell, Jr. underline the link between neoliberal (i.e. deregulatory) policies and inequality by saying, "If a shifting balance of political power and corresponding changes in tax and regulatory policy are the most striking features of the politics of the neoliberal era in the United States, rising income inequality is the most prominent feature of its social effects."¹²⁷

According to former Secretary of Labor Robert Reich, this increase in wealth inequality is a result of the powers of American capitalism overshadowing American democracy, which has made it harder to have a government responsible to its citizenry and has decoupled our economic actions from our underlying democratic values.^{128,129} One need only look inside the world of baseball to see this.

118 Alyssa Davis and Lawrence Mishel, "CEO Pay Continues to Rise as Typical Workers Are Paid Less," Economic Policy Institute, June 12, 2014, Accessed May 03, 2016, <http://www.epi.org/publication/ceo-pay-continues-to-rise/>.

119 "CEO Pay Continues to Rise as Typical Workers Are Paid Less"

120 Cork Gaines, "CHART OF THE DAY: Baseball's Salaries Up 6,600% Thanks To Free Agency," Business Insider. 2011, Accessed March 16, 2016, <http://www.businessinsider.com/chart-of-the-day-major-league-baseball-salaries-since-1970-2011-1>.

121 "Wealth Inequality," Institute for Policy Studies, Accessed April 29, 2016, <http://inequality.org/wealth-inequality/>.

122 "Wealth Inequality"

123 Erik Sherman, "America Is the Richest, and Most Unequal, Country," *Fortune*, September 30, 2015, Accessed May 03, 2016, <http://fortune.com/2015/09/30/america-wealth-inequality/>.

124 Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age*, (Princeton: Princeton University Press, 2008), 11.

125 Tom Kertscher, "Michael Moore Says 400 Americans Have More Wealth than Half of All Americans Combined," Politifact, March 10, 2011, Accessed May 03, 2016. <http://www.politifact.com/wisconsin/statements/2011/mar/10/michael-moore/michael-moore-says-400-americans-have-more-wealth-/>.

126 Christopher Ingraham, "If You Thought Income Inequality Was Bad, Get a Load of Wealth Inequality," *Washington Post*, May 21, 2015, Accessed May 03, 2016. <https://www.washingtonpost.com/news/wonk/wp/2015/05/21/the-top-10-of-americans-own-76-of-the-stuff-and-its-dragging-our-economy-down/>.

127 Peter B. Evans, and William H. Sewell, Jr. *Neoliberalism: Policy Regimes, International Regimes, and Social Effects*, (Cambridge: Cambridge University Press, 2012), 50.

128 Reich, *Supercapitalism*, 5.

129 This is also due to neoliberal policies. In the 1970s, the American Enterprise Institute and the Institute of Economic Affairs, both conservative think-tanks in the same vein as Hayek and Friedman, began to popularize the idea that social and economic unequal-

Former pro Brett Jackson, a former first-round pick out of UC Berkeley who spent a total of seven years in the minors and had a few stints in the majors with the Chicago Cubs, the Arizona Diamondbacks, and the San Francisco Giants, illustrates the conflict between economic and democratic values. When asked about the conditions in minor leagues, he replied earnestly, “They suck. I don’t wish that experience on anyone.”¹³⁰ Despite circumstances like arduous interstate bus travel, playing 144 games in 152 days, and rock-bottom salaries, Jackson said that few major leaguers would realistically be willing to strike to help their minor league counterparts avoid the same subservient conditions under which they toiled.¹³¹ Jackson’s remarks illustrate an underlying displeasure about the minor league system on the part of major leaguers but a simultaneous unwillingness to take the selfless action required to change it. This is not unlike the way in which consumers will say that they prefer to shop at their local bookstore — until they are faced with the choice whether or not to buy the same book on Amazon, delivered directly to their doorstep for half the cost and in a fraction of the time, padding the coffers of large corporations while putting locally-owned stores out of business. In both baseball and the American economy as a whole, the prioritization of economic self-interest has resulted in the growing gulf between those at the top and bottom of the economic ladder.

ii. Deunionization

In tandem with growing wealth inequality, deunionization has been a characteristic feature of the New Gilded Age, making it even more surprising that the Players Union has grown to such prominence. In the mid 1950s, private sector unions in the United States reached their apex at 40%.¹³² Today, the number of unionized workers in the private sector has dipped below 7%, its lowest level since the dawn of the twentieth century.^{133,134} While the number of unionized workers has decreased, so too has the power of labor unions themselves. President Richard Nixon quipped in 1971 that, “no program works without Labor cooperation.”¹³⁵ In addition, Jake Rosenfeld, in *What Unions No Longer Do*, makes the case that unions were “once the ‘core equalizing institution’ of the ‘golden age’ of welfare capitalism in the U.S.”¹³⁶ This is the case no more, as the erosion of union power has enabled employers to further impose an anti-union agenda.

For white-collar and blue-collar unions alike, the trends have been the same. To this effect, Rosenfeld states, “labor unions have receded from American workers’ livelihoods, leaving workers increasingly exposed to the vagaries of the market.”¹³⁷ While this has benefited certain highly-skilled workers, such as those in the technology sector or corporate executives whose in-demand nature provides them with negotiating leverage, less-educated workers have suffered due to severe competition for poor jobs, driving bargaining power for better working conditions and pay downwards.¹³⁸ While these highly-skilled workers benefit, the primary mechanism for participating in collective organizations for many American workers has been severely disabled.¹³⁹ This public assault on organized labor coincided with a major push for deregulation throughout the American economy.¹⁴⁰ It is intriguing that the MLBPA would emerge and gain prominence as the most powerful union in the world, scoring major victories over management, at a time when labor unions around the country are enmeshed in one of the darkest periods in their history.

ity were necessary in order to achieve social and economic progress. (Daniel Stedman Jones, *Masters of the Universe*.)

130 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

131 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

132 Dinlersoz and Greenwood, “The Rise and Fall of Unions in the U.S,” 1.

133 Dinlersoz and Greenwood, “The Rise and Fall of Unions in the U.S,” 1.

134 Rosenfeld, *What Unions No Longer Do*, 1.

135 Rosenfeld, *What Unions No Longer Do*, 2.

136 Rosenfeld, *What Unions No Longer Do*, 2.

137 Rosenfeld, *What Unions No Longer Do*, 8.

138 Rosenfeld, *What Unions No Longer Do*, 8.

139 Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age*, 2.

140 Harvey, *A Brief History of Neoliberalism*, 26.

II. THE MLBPA & THE SUPPRESSION OF NON-MEMBERS

“Baseball is built on the American Dream — the idea that if you suffer enough and work hard enough, then you can reach the majors.”¹⁴¹ Brett Jackson knows a thing or two about suffering and working hard enough. As a top prospect with the Chicago Cubs, Jackson was lauded for his notable work ethic and intensity, even when it meant bodily injury.¹⁴² But there is a different type of suffering off the field — a “grinding” to which Jackson and other pros refer — that characterizes the minor leagues. In addition to a month of spring training games, minor league players at most levels have to grind through an arduous five-month season away from their families and in a perpetually fatigued state that inhibits athletic performance. “If I have nightmares these days, it’s about travel — it was bad at each level. In Triple-A in 2011, we had 144 games in 152 days. I was tired all the time,” Jackson said.¹⁴³ He continued, “The last game of a series in Des Moines¹⁴⁴ was usually a night game. The next day, we would take a 3:30 or 4AM bus to the airport for a 6AM flight, and after a layover, would arrive in a place like New Orleans around noon, and we would have a game that night.” Travel in the lower levels was just as arduous. “We would use buses for travel in AA and below. These were normal buses, so on rides through the night, guys would sleep on the ground and in the aisles,” he said.¹⁴⁵

Dirk Hayhurst, who spent parts of nine seasons in the minor leagues with affiliates of the San Diego Padres, Toronto Blue Jays, and Tampa Bay Rays, said that in the minors he was “a poor twenty-six-year-old professional athlete who live[d] on the floor at his grandma’s. I [didn’t] make enough money during the minor league season to afford living any other way in the offseason, and as long as I want[ed] to keep chasing my dream, [I’d] have to sacrifice.”¹⁴⁶ Hayhurst’s story — like Jackson’s — is not uncommon, as most minor league players live below the federal poverty level, making less than \$10,000 per year.¹⁴⁷ Dan Peltier, a former major leaguer who played parts of nine seasons in the minors was the only player, past or present, to speak on behalf of minor league rights during a Congressional hearing in 1997.^{148,149} He testified that:

A minor league baseball player has very few rights. Baseball’s reserve clause is very much like the indentured servitude of the 1700’s. When you first sign, you are owned by that team for basically seven seasons. A team can buy you, sell you, send you to another country, or fire you whenever they want. They can cut you if you get hurt... a player is required to waive all rights to appeal any action by the team in State or Federal court. You can appeal to the commissioner of baseball, except there has been no commissioner for almost five years. In addition, you are pushed to leave college or not to attend in the first place.¹⁵⁰

Certainly not the cushy life that is commonly associated with being a professional baseball player. Jackson, Hayhurst, Peltier, and tens of thousands of others have slogged through the minor leagues. They’ve eaten at fast food joints on game days because of paltry \$20 per day meal stipends that pale in comparison to what college athletes receive on road trips, played in games that they wouldn’t be able to afford a ticket to attend on their salaries, and stayed in hotels that Hayhurst notes commonly resembled “bad truck stop[s], with mysterious stains on the bathroom floors, racks of stick-paged magazines, and shady travelers, [combined] with a dilapidated bingo

141 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

142 Carrie Muskat, “Cubs, Fans Eager to See Prospect Jackson,” Major League Baseball, March 01, 2012, Accessed May 03, 2016, <http://m.mlb.com/news/article/26934282/>.

143 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

144 Referring to the Iowa Cubs, the Triple-A affiliate of the Chicago Cubs.

145 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

146 Hayhurst, *The Bullpen Gospels*, 23.

147 Broshuis, *Touching Baseball’s Untouchables*, 63.

148 “Dan Peltier Statistics,” Baseball-Reference, Accessed April 22, 2016, <http://www.baseball-reference.com/players/p/peltida01.shtml>.

149 Major League Baseball Antitrust Reform : Hearing Before the Committee on the Judiciary, United States Senate, 105th Cong., 1997, https://archive.org/stream/MajorLeagueBaseballAntitrustReform/SJud061797_djvu.txt

150 Major League Baseball Antitrust Reform : Hearing Before the Committee on the Judiciary, United States Senate, 105th Cong., 1997, https://archive.org/stream/MajorLeagueBaseballAntitrustReform/SJud061797_djvu.txt

hall.”^{151,152}

Conditions are much rosier in the majors. In addition to salaries that can regularly eclipse \$10 million as well as a cushy pension, no expense is spared to make players as comfortable as possible during an arduous 162-game major league season. Teams travel on chartered jets, stay in luxury-brand hotels, and their luggage is transported for them, from the clubhouse to the hotel door.¹⁵³ Ballpark amenities for players are second to none. At the beginning of the 2016 season, the Chicago Cubs opened a 30,000 square foot clubhouse for players, complete with a “weight room, three pools for rehab, a yoga room, coaches’ lounge, and celebration room for victory parties,” among other amenities.¹⁵⁴

Despite the fact that 6.2% of total MLB revenues — roughly \$550 million — goes to minor league expenses every year, minor league players toil under conditions that would be considered illegal if not for major league baseball’s antitrust exemption that blankets minor leaguers.¹⁵⁵ This poor treatment is also in spite of the fact that valuations of minor league teams have skyrocketed. Even low-level teams, like the Single-A team in Prince William County, Virginia, enjoy a valuation of over \$15 million, a thirtyfold increase in twenty-five years.¹⁵⁶ In 2014, a Single-A affiliate located in Dayton, Ohio was sold for a record \$40 million. In addition, more fans went to minor league baseball games than NFL, NBA, or NHL games in 2013, around forty million in all.¹⁵⁷ Yet since 1976, minor league player salaries have increased by only 75%, while inflation has gone up over five times that growth.¹⁵⁸

Historian and former minor league pitcher Garrett Broshuis notes that, “With major league owners paying salaries of players not immediately contributing to their chief product, there is an incentive to keep wages at a minimum while still maximizing the number of prospects under contract in their organizations. Consequently, salaries remain strikingly low and off-the-field working conditions poor.”^{159,160} One would imagine that the MLBPA would fight ownership for the sake of their future members — just as they’ve fought to increase major league salaries — yet this is not the case.

The MLBPA stands in contrast to the traditional union model — which generally produces tangible gains for unionized and non-unionized workers — by suppressing the rights and spoils of nonmembers. According to a 2003 study by the Economic Policy Institute, unions on average raise wages of unionized workers by 20%, and total compensation (in the form of wages and benefits) by 28%.¹⁶¹ The same study found that the gains for

151 Broshuis, *Touching Baseball’s Untouchables*, 92.

152 Hayhurst, *The Bullpen Gospels*, 131.

153 Sean McAdam, “First Class All the Way,” ESPN. June 10, 2005, Accessed May 03, 2016, <http://espn.go.com/mlb/columns/story?id=2082030>.

154 Bruce Levine, “New Clubhouse Amenities Part Of Cubs’ Allure,” CBS Chicago, April 12, 2016, Accessed April 29, 2016, <http://chicago.cbslocal.com/2016/04/12/levine-new-clubhouse-amenities-part-of-cubs-allure/>.

155 Andrew Zimbalist, “There’s more than meets the eye in determining players’ salary shares,” Sports Business Daily, March 10, 2008, Accessed March 26, 2017.

<http://www.sportsbusinessdaily.com/Journal/Issues/2008/03/20080310/Opinion/Theres-More-Than-Meets-The-Eye-In-Determining-Players-Salary-Shares.aspx>

156 Bruce Schoenfeld, “Minor League Teams, but Mighty Big Numbers as Franchise Values Soar,” Sports Business Daily, August 4, 2014, Accessed May 03, 2016. <http://www.sportsbusinessdaily.com/Journal/Issues/2014/08/04/Franchises/Minor-league-teams.aspx>.

157 “Minor League Teams, but Mighty Big Numbers as Franchise Values Soar”

158 Ted Berg, “Many Minor League Baseball Players Earn Less than Minimum Wage,” For The Win, March 08, 2015, Accessed March 03, 2016, <http://ftw.usatoday.com/2015/03/minor-league-baseball-players-lawsuit-mlb-mlbpa>.

159 Broshuis, *Touching Baseball’s Untouchables*, 62.

160 The exception to this are minor leaguers who are drafted early — within the first 10 rounds of the 40 round draft. While they still have to grind through the minors, they do so on a much more comfortable financial cushion. Under the 2011-2016 Collective Bargaining Agreement, prospects are privy to high one-time signing bonuses roughly equivalent to the “slot values” of their pick in the draft, with the first pick in 2015 worth a signing bonus of over \$8.6 million, and the last pick in the 10th round at just under \$150,000. While teams can pay more or less for a draft pick, they are penalized for spending over the slot value for a player, with penalties as severe as a forfeiture of future first-round draft picks in two subsequent drafts. A handful of players receive these hefty sums, but the vast majority of draftees only receive between \$1,000 and \$2,500. (Broshuis, *Touching Baseball’s Untouchables*, 64.)

161 “How Unions Help All Workers”

non-unionized workers were almost as substantial as those for union members. In 1980, Fred K. Foulkes, of Boston University, said, “It would be acceptable to say that the activities of many unions in the United States are benefitting many nonmembers; in other words, unions are doing much good for people who do not pay them any dues.”¹⁶²

Part of this is due to the “union threat effect,” where employers, in an attempt to disincentivize their employees from forming a union, grant concessions to their non-unionized workforce.^{163,164} Unions have also helped establish business practices and norms throughout the economy, effectively raising the standard of living for non-union workers. This doesn’t just apply to wages. The same has been true for pensions, health insurance, and due process for workers, which originally started out as union-only.¹⁶⁵ While difficult to measure, there has nevertheless been a substantial, mostly positive, effect of union activity for non-union workers. When unions do well, non-union workers in the same industry tend to do well, too. This is not the case when it comes to professional baseball.

Inning Five: The Effects of Collective Bargaining on Minor Leaguers

The 2012-2016 Collective Bargaining Agreement (CBA) negotiated between the thirty major league clubs and the MLBPA explicitly states, “In making this Agreement the Association represents that it contracts for and on behalf of the Major League Baseball Players and individuals who may become Major League Baseball Players.”¹⁶⁶ One would imagine that the “individuals who may become Major League Baseball Players” would refer to the thousands of players toiling in the minor leagues, yet this has never been the case. Gene Orza, the recently retired MLBPA No. 2 lawyer said in 2012, “We [the MLBPA] don’t represent them [minor leaguers]... and have no obligation.”¹⁶⁷ This narrow interpretation of the CBA language has been substantiated by the industry and the courts as well.¹⁶⁸ The results have been, “limited player mobility, limited bargaining power, and salaries placing many players below the federal individual poverty level.”¹⁶⁹ When it has come to matters of collective bargaining, the MLBPA has been not a friend, but rather a foe for most minor leaguers, oppressing without hesitation.

Minor leaguers haven’t exactly helped themselves. Broshuis notes that “[e]very single player you talk to, even if they realize [a union] would be a good thing, is also scared to death to talk to another player about it.”¹⁷⁰ This fear on the part of minor leaguers stems from the idea of pitting themselves against the very organizations that have unilateral control over whether or not they will one day make it to the major leagues. This is not unlike threatened retribution by employers whose workers attempt to unionize. The *Wall Street Journal* reported in 2006 that 23,000 workers are fired or discriminated against every year for attempting to unionize.¹⁷¹ What makes the situation in baseball different is the fact that not only do the employers (i.e. minor and major league baseball) not want minor leaguers to unionize, but the actual union that could represent these players wants nothing to do with them, either.

J. Gordon Hylton, an expert on the legal history of baseball, addresses this reluctance for the MLBPA to embroil themselves in minor league player rights by saying that there’s a “growing awareness on the part of established baseball players that we don’t want to make the entry-level arrangement too good, because that’s

162 Rosenfeld, *What Unions No Longer Do*, 74.

163 “How Unions Help All Workers”

164 This effect is not largely present in minor league baseball, where players have no established union to join and are unlikely to create one anytime soon.

165 “How Unions Help All Workers”

166 2012-2016 BASIC AGREEMENT,” 1.

167 Lily Rothman, Lily, “Emancipation of the Minors,” *Slate Magazine*, April 03, 2012, Accessed February 03, 2016, http://www.slate.com/articles/sports/sports_nut/2012/04/minor_league_union_thousands_of_pro_baseball_players_make_just_1_100_per_month_where_is_their_c_sar_ch_vez_.html.

168 Broshuis, *Touching Baseball’s Untouchables*, 73.

169 Broshuis, *Touching Baseball’s Untouchables*, 52.

170 “Emancipation of the Minors”

171 Anna Burger, “Workers Fear Retribution For Organizing Unions,” *Wall Street Journal*, September 16, 2006, Accessed April 26, 2016. <http://www.wsj.com/articles/SB115837129307865267>.

money that might be going to mid-level or low-level [major-league] players.”¹⁷² While it is hard to imagine a justification for complaints of well-paid major league baseball players that they would be substantially affected by increased benefits to minor leaguers, there is some cause for concern. Specifically, the share of revenue going to players in the majors is actually decreasing.¹⁷³ The fact that each team spends roughly \$20 million per year on minor league player development and salaries (\$600 million for all thirty teams combined, roughly 15% of the \$9 billion in total MLB revenue) is only a sliver of the problem, yet the MLBPA sees value in framing the situation as a zero-sum game between major and minor leaguers, allowing them to justify the repression of workers within their own industry.¹⁷⁴

i. The Declining Share of Total Revenue Going to Major Leaguers

The share of league revenue going to major league players has vastly increased since the formation of the MLBPA, and today salaries are as bloated as they have ever been. Paul Weiler of Harvard Law School notes that since 1967, unionization has helped MLB players increase their share of total revenue from around 20% to roughly 60% by the end of the century.¹⁷⁵ However, since this peak, MLB players have received a smaller and smaller slice of the pie — today just 40% of league revenues, a decline of one-third in just over a decade.¹⁷⁶

Professor Nathaniel Grow of the Terry College of Business at the University of Georgia gives three reasons for this sharp decline. First, while salaries are still increasing, teams are less willing to shell out millions of dollars to aging veterans as they were in the past,¹⁷⁷ instead signing budding superstars to more team friendly extensions, as was the case with Mike Trout and the Los Angeles Angels, or Evan Longoria with the Tampa Bay Rays.¹⁷⁸ Furthermore, changes to the revenue sharing model in 2002 have left big-market teams like the New York Yankees with less incentive to maximize profits. Prior to revenue sharing, MLB teams would keep 100% of their local revenue, including but not limited to money from TV contracts, gate receipts, merchandise, and beverage sales.¹⁷⁹ After 2002, the CBA stipulated that 31% of every team’s local revenue go into a large central fund to be distributed evenly amongst all 30 teams.¹⁸⁰ In practice, this means that teams like the New York Yankees, who made \$516 million in 2015, subsidize less lucrative franchises like the Tampa Bay Rays, who made a “paltry” \$193 million, perhaps reducing the former’s incentive to spend on big-name free agents because of the mitigated returns.¹⁸¹ These changes, which have made teams more reluctant to spend money on player payroll, have coincided with a flood of television broadcast agreements like the 8-year pacts that MLB signed with FOX, TBS, and ESPN in 2012 that will bring \$12.4 billion, doubling the national TV revenue from the previous contract.¹⁸² The result has been a skyrocketing increase in franchise revenues while the increase of player salaries has lagged behind, thereby reducing the percentage of revenue that MLB players receive.

A declining share of revenue is a problem that many unions in the United States face today. While companies continue to make skyrocketing profits, workers have been shut out from most of the gains. According to the *New*

172 “Emancipation of the Minors”

173 “The MLBPA Has a Problem”

174 Zimbalist, *Circling the Bases: Essays on the Challenges and Prospects of the Sports Industry*, 88.

175 Donald H. Wollett, *Getting on Base: Unionism in Baseball*, (New York: IUniverse, 2008), 88.

176 “The MLBPA Has a Problem”

177 Such as: The Colorado Rockies’ 2001 pact with Mike Hampton for \$121 million, Barry Zito’s \$126 million pact with the Giants in 2006, and Alex Rodriguez’s \$275 million extension with the New York Yankees in 2008. Bloated contracts to aging superstars still occur (see: Fielder, Prince — Detroit Tigers, 9-years, \$214 million), but Grow’s point is that these albatrosses are becoming less commonplace. (“Worst Contracts in MLB History,” ESPN.)

178 “The MLBPA Has a Problem”

179 “The MLBPA Has a Problem”

180 “Revenue Sharing,” FanGraphs Sabermetrics Library, May 3, 2016, Accessed May 03, 2016, <http://www.fangraphs.com/library/business/revenue-sharing/>.

181 “Teams of Major League Baseball Ranked by Revenue in 2015,” Forbes. 2015, Accessed May 1, 2016, <http://www.statista.com/statistics/193645/revenue-of-major-league-baseball-teams-in-2010/>.

182 Mark Newman, “MLB Has Reached an Eight-year TV Agreement with FOX, Turner Sports,” Major League Baseball, October 02, 2012, Accessed April 15, 2016. <http://m.mlb.com/news/article/39362362/>.

York Times, in 2014, corporate profits reached their highest levels in 85 years, while worker compensation fell to its lowest level in 65 years.¹⁸³ Part of this is due to the dismantling of private sector unions, who no longer have as much power to represent their workforce. In MLB, it's the same dynamic but with billionaire owners versus millionaire players: revenues are as high as ever, and unlike the rest of the economy, the total revenue going to players is still increasing, but the share of income that players receive is as low as it has been in at least 20 years.^{184,185} This fear of gains going to minor league players at the expense of major leaguers provides a lens through which one can view the actions that the MLBPA has taken to undermine minor league player solidarity.

Inning Six: Rick Reed & the Fate of Replacement Players During the 1994 Player Strike

Rick Reed was caught on the horns of a dilemma. The year was 1995 and MLB was embroiled in its worst-ever labor conflict, which had cancelled the 1994 World Series for the first time in over 90 years.¹⁸⁶ Reed, who had pitched fewer than 250 innings in the majors and had most recently pitched for the Triple-A affiliate of the Cincinnati Reds, found himself in the crossfire between irate MLB owners and major league players. During the strike, he was told by management to cross the picket line and play in a "replacement game" or else he would be released and blackballed from ever playing again in the majors.¹⁸⁷ However, the choice to play would alienate his friends and draw the wrath of the union.

During the 1994 player strike, incensed owners planned to undermine MLBPA solidarity by entering the 1995 season using replacement players — mostly minor leaguers along with some retired veterans. The MLBPA went to great lengths to ask for the support of minor leaguers and urged them not to play, going so far as to ask agents to advise their minor league clients not to participate in replacement games.^{188,189} In addition, Don Fehr, the head of the union, met with minor league players in three different meetings in spring training in 1995, urging that players not on 40-man MLB rosters (i.e. minor leaguers with no ties to the majors) should not report to Spring Training.¹⁹⁰ The combination of incentives like free flights home and threats (Fehr said that replacement players "would be labeled 'scabs' by major league players, who were sacrificing millions of dollars to maintain a compensation system benefiting both minor and major league players") worked surprisingly well.¹⁹¹ Fearing for their careers and wanting to protect their dreams of playing in the majors, almost two-thirds of minor league baseball players polled by the Associated Press in February 1995 said they would refuse to play in Spring Training games. This is quite a staggering number considering that the MLBPA did little to endear itself to minor leaguers and promised no benefits for minor leaguers as a whole as a result of the strike.¹⁹²

Teams, opposed to the union's desire for minor leaguers to sit out, reacted by putting a notice in every single minor league spring clubhouse reading in part, "Minor leaguers are not members of the union and do not

183 Floyd Norris, "Corporate Profits Grow and Wages Slide," *The New York Times*, April 04, 2014, Accessed April 29, 2016, http://www.nytimes.com/2014/04/05/business/economy/corporate-profits-grow-ever-larger-as-slice-of-economy-as-wages-slide.html?_r=1.

184 "The MLBPA Has a Problem"

185 *Fangraphs*' data of MLB player payroll with respect to overall revenue only go back to 1996, but it is likely that the share going to players has decreased going back much further.

186 Zimbalist, *Circling the Bases: Essays on the Challenges and Prospects of the Sports Industry*, 150.

187 "Replacement Players in the Major Leagues," *Baseball Almanac*, Accessed April 03, 2016, http://www.baseball-almanac.com/legendary/replacement_players.shtml.

188 Broshuis, *Touching Baseball's Untouchables*, 79.

189 Gene Orza, who was formerly quoted in this piece as saying in 2012 that the MLBPA does not represent minor leaguers, made a stunning admonition during the strike saying that arguably the biggest star at the time, Dave Winfield, wasn't striking for himself. "He has nothing to gain from it. He's doing it for the players who are in the minor leagues now." This pandering to minor leaguers came at a time when the union was fighting a high-stakes battle and could use all the help it could get. (Broshuis, *Touching Baseball's Untouchables*, 79.)

190 Kenneth M. Jennings, *Swings and Misses: Moribund Labor Relations in Professional Baseball*, (Westport: Praeger, 1997), 126.

191 Jennings, *Swings and Misses*, 126.

192 Jennings, *Swings and Misses*, 126.

derive any of the benefits from the union. The strike is not their fight and to include them, as the union appears to be doing, is unfair.”¹⁹³

Reed, who had spent ten seasons in professional baseball, knew what the potential consequences were, as the ‘scab’ title could brand him as an enemy of his teammates if he were to return to the majors after the strike.¹⁹⁴ However, with a sick mother relying on him to pay her medical bills, an enticing salary of \$115,000 — more money than many could make during a lifetime in the minors — and a fear of being released if he did not comply, Reed decided to cross the picket line as one of 1,554 replacement players.^{195,196,197}

Late in the 1995 season and after the strike ended, the Reds were in a pennant race and desperately needed pitching.¹⁹⁸ Jim Bowden, the Reds’ General Manager, called a team meeting to announce that he was calling Reed up from Triple-A to the Reds. The decision was much to the consternation of his future teammates, one of whom screamed that he would never be a teammate with a “scab” — a title that would linger for the entirety of Reed’s career.¹⁹⁹ According to the Cultural Encyclopedia of Baseball, a player making the average salary in 1995 lost over \$350,000 due to the strike, roughly \$7,000 per day.²⁰⁰ It is no wonder why so many players were incensed with the replacement players who crossed the picket line. Yet, a *Sport Magazine* survey of 109 major leaguers during the strike found that “nearly three-quarters of them ‘did not feel a financial pinch’ because of it.”²⁰¹ This figure helps underscore the unique nature of the MLBPA; few, if any, Teamsters would say that they wouldn’t feel a financial pinch because of a 232-day strike.

When the strike finally ended in 1995, the union vowed to come down hard on replacement players like Reed who acquiesced and signed contracts despite the MLBPA’s objections. Thirty-eight players, thirty-six of whom had no prior major league experience,²⁰² would make it to the major leagues after the strike, and each would be barred for life from membership within the MLBPA’s ranks.²⁰³ This meant that replacement players would never have voting privileges, nor would they be entitled to licensing revenue or have their likenesses used on official MLB gear. While replacement players do receive a pension, they do not have to pay union dues.²⁰⁴ In fact, over a decade after the strike, well known players like Kevin Millar and Cory Lidle were still replaced in video games.²⁰⁵ Teammates were also hesitant to accept Reed. After being excluded from a union meeting in 1996, Reed said, “I decided to do what I did and I had my reasons, but in a way I feel differently now. I don’t feel like I’m part of the team. I wouldn’t say I’ve been ignored. But I’m not one of the boys.”²⁰⁶

It is astonishing how minor league players were punished by the MLBPA for the rest of their professional careers for a decision they made when they were not part of the union. This episode also shows a way in which the MLBPA has gone out of its way to make life difficult for minor leaguers, even when those players were eligible to enter the ranks of the union. According to Mike Twardoski, a career minor leaguer who decided to play during the strike, “it’s player against player. Minor leaguers are trying to make a living down here against major

193 Jennings, *Swings and Misses*, 127.

194 “Rick Reed Statistics and History,” Baseball-Reference, Accessed April 29, 2016, <http://www.baseball-reference.com/players/r/reedri01.shtml>.

195 Broshuis, *Touching Baseball’s Untouchables*, 79.

196 Tim Kurkjian, “The Replacements,” *ESPN The Magazine*, August 29, 2002.

197 Broshuis, *Touching Baseball’s Untouchables*, 79.

198 “The Replacements”

199 “Replacement Players in the Major Leagues”

200 “Replacement Players in the Major Leagues”

201 Jennings, *Swings and Misses*, 138.

202 The other two were Reed and Joe Slusarski, who each had less than 250 innings pitched in the majors. (“Replacement Players in the Major Leagues,” *Baseball Almanac*.)

203 “Replacement Players in the Major Leagues”

204 Patrick Mondout, “1995 ‘Replacement Players’” *Baseball Chronology*, Accessed April 22, 2016, http://wap.super70s.com/Baseball/Background/Special_Lists/Scabs.asp.

205 Owen Good, “The Replacements, Still Replaced in Video Games,” *Kotaku*, January 30, 2010, Accessed May 03, 2016, <http://kotaku.com/5460160/the-replacements-still-replaced-in-video-games>.

206 George Willis, “A Man Without a Position Prepares for Them All,” *The New York Times*, March 03, 1996, Accessed March 17, 2016, <http://www.nytimes.com/1996/03/03/sports/baseball-notebook-a-man-without-a-position-prepares-for-them-all.html>.

leaguers who can survive losing a million dollars a month.”²⁰⁷ Minor leaguers like Twardoski and Reed were directly affected by the 1994-1995 strike, unable to stay neutral in fearing punishment, and with little to gain from either the MLBPA or MLB if they were to side with one or the other. Perhaps hoping for good will, some stood in solidarity with their superstar counterparts, supporting the MLBPA and staying on the sidelines. However, any possibility of MLBPA support for minor leaguers would evaporate when the union collaborated with MLB and Congress to shut out minor league players from one of the most substantial player rights victories of the twentieth century just a few years later.

Inning Seven: The Rollback of MLB’s Antitrust Exemption & its Impact on Minor Leaguers

Article XXVIII of the 1997 Collective Bargaining Agreement between MLB and the MLBPA set the stage for one of the most consequential changes in the relationship between owners and players in baseball history: the rollback of baseball’s antitrust exemption for major league players. The Article represented an agreement between MLB and the MLBPA to change part of baseball’s antitrust exemption to give major leaguers the same antitrust protection that other professional sports stars enjoy, such as the ability to challenge rules regarding the amateur draft, a minimum salary threshold, free agency rules, and the drug-testing program.²⁰⁸ While this represented a major breakthrough in major league player rights, MLB and the MLBPA explicitly locked minor leaguers out of these fruitful benefits. Article XXVIII of the 1997 CBA makes this explicit:

The Clubs and the Association will jointly request and cooperate in lobbying the Congress to pass a law that will clarify that Major League Baseball Players are covered under the antitrust laws (i.e., that Major League Players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), *along with a provision that makes it clear that the passage of that bill does not change the application of the antitrust laws in any other context or with respect to any other person or entity.*[emphasis mine.]²⁰⁹

Getting MLB owners to agree to lobby Congress to revoke part of their own antitrust exemption²¹⁰ was a major victory for the MLBPA. This 1997 agreement was a prerequisite to the passage of the Curt Flood Act in 1998.²¹¹ Like Article XXV, the law would only apply to major league players. The final draft of the law provides a provision detailing that there can be no antitrust claim, “at the minor league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players.”²¹² This passage effectively denied minor league baseball players the same rights as their major league counterparts, depriving them of the ability to appeal rules and regulations believed to be unfair, such as earning as little as the equivalent of \$1.76 per hour during a championship season.²¹³ This exclusion of minor leaguers from antitrust benefits came about thanks, in part, to the MLBPA’s lobbying efforts.

The union could have pushed for language that encapsulated all professional baseball players, including soon-to-be major leaguers, yet chose not to. In Congressional testimony given on June 17, 1997, Don Fehr,

207 Wollett, *Getting on Base*, 74.

208 Russell Yavner, “Minor League Baseball and the Competitive Balance: Examining the Effects of Baseball’s Antitrust Exemption,” *Harvard Journal of Sports & Entertainment Law* 5, no. 2 (November 21, 2014): 278, Accessed April 23, 2016. <http://harvardjsel.com/wp-content/uploads/2014/11/Yavner.pdf>.

209 “1997-2000 (2001) BASIC AGREEMENT,” Vanderbilt. Accessed April 23, 2016, <http://www.vanderbilt.edu/econ/faculty/Vrooman/1997-2001-cba.pdf>.

210 Only the exemption relevant to major league players would be jointly-lobbied, neither the MLBPA nor MLB had a desire to repeal other parts of it.

211 Edmund P. Edmonds, “The Curt Flood Act of 1998: A Hollow Gesture After All These Years?” *Marquette Sports Law Journal*, Spring, 9, no. 2 (1999): 315, Accessed April 3, 2016. <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1427&context=sportslaw>.

212 Edmonds, “The Curt Flood Act of 1998: A Hollow Gesture After All These Years?” 326.

213 Greg Steinman, “Social Injustice in Minor League Baseball: How Major League Baseball Makes Use of an Antitrust Exemption to Exploit Its Employees,” *University of Miami Race & Social Justice Law Review*, 5 (January 5, 2015): 153.

Executive Director of the MLBPA, assuaged fears of any disruption to the minor leagues as a result of the passage of the Curt Flood Act. The head of the union said, “I do believe that a fair reading of this suggested language should reassure any third party, be they the minor leagues or otherwise, that the passage of this legislation would have no effect one way or another on their rights under law as existed otherwise with respect to this legislation.” Fehr, explicitly stating that non-union workers were not to be affected by this law, shows how the MLBPA actively suppressed minor league player rights for the benefit of those in the majors. This is supported by the fact that in 1995, MLB and the MLBPA agreed in principle to repeal the antitrust exemption that applied to all professional baseball players.²¹⁴ However, both entities would soon abandon the idea due to fears that changing the system for minor leaguers would embolden action on the part of minor leaguers that could have negative repercussions for players in the majors and jeopardize passage of the entire bill.²¹⁵ In addition, minor league interests mounted a substantial lobbying effort in order to remove minor leaguers from the proposed law, ensuring that salaries would remain low and playing conditions poor.²¹⁶

The MLBPA’s logic to forgo gains for minor leaguers in order to lock in benefits for their major league members should come at little surprise. At a time when the players’ share of revenue was decreasing, monetary gains for minor league players could have been another drain, imperiling major league salaries — especially if the factors driving the overall revenue increase, like bloated broadcast contracts, were to burst, as some have speculated they could.²¹⁷ This is especially the case considering that according to baseball expert J. Gordon Hylton, gains for low-level minor leaguers would mean less money for major leaguers at the lower end of the salary scale.²¹⁸

While it is important to note that the MLBPA is partially responsible for the treatment of minor leaguers, members of Congress felt the same way as Fehr and the MLBPA.²¹⁹ During a debate on the law, the chairman of the Minor League Baseball Caucus, Rep. Sherwood L. Boehlert (R-NY), made sure to point out “the importance of the legislation’s maintenance of the antitrust exemption for minor league baseball and its 35 million fans.”²²⁰ Similarly, Orrin Hatch (R-UT) said, “this legislation has always been aimed at Major League Baseball labor relations, not at addressing any issue regarding the minor leagues.”^{221,222} Boehlert and Hatch’s positions that minor leaguers are not privy to the same rights as MLB players was shared by those in power within minor league baseball who were unwilling to rock the boat and potentially upend a profitable system for minor league owners.²²³ To make matters worse, despite open invitations, no current minor league player dared to testify in front of Congress during the deliberation of the Curt Flood Act, likely for fear of retribution.²²⁴

Despite his urging of Congress to make law a distinction between the rights of major and minor leaguers, Fehr was at a loss in explaining why the antitrust exemption should be lifted solely for major leaguers. Senator

214 Josh Leventhal, “Meet Stan Brand: Baseball’s Power Broker On The Hill.” *Baseball America*. April 10, 2015, Accessed April 06, 2016, <http://www.baseballamerica.com/minors/meet-stan-brand-baseballs-anonymous-power-broker/#JZgAamu22QOaUzOl.97>.

215 Wolohan, “The Curt Flood Act of 1998 and Major League Baseball’s Federal Antitrust Exemption,” 368.

216 “Meet Stan Brand: Baseball’s Power Broker On The Hill”

217 Craig Edwards, “Diamondbacks Billion Dollar TV Deal and the Bubble That Refuses to Pop,” *Fangraphs*, February 20, 2015, Accessed May 03, 2016. <http://www.fangraphs.com/blogs/diamondbacks-billion-dollar-tv-deal-and-the-bubble-that-refuses-to-pop/>.

218 “Emancipation of the Minors”

219 Credit must also be given to Minor League Baseball. Vice President of MiLB, Stan Brand who represents the organization in Washington, has been lobbying Congress to classify minor league players as a labor force that is not entitled to receive minimum wage or overtime pay in order to minimize the potential of future lawsuits. While this is the current practice in MiLB, Brand seeks to write it in stone and eliminate all uncertainty. (Josh Leventhal, “MiLB Opposes Players, Supports MLB In Lawsuit,” *Baseball America*.)

220 Edmonds, “The Curt Flood Act of 1998: A Hollow Gesture After All These Years?” 328.

221 Major League Baseball Antitrust Reform : Hearing Before the Committee on the Judiciary, United States Senate, 105th Cong., 1997, https://archive.org/stream/MajorLeagueBaseballAntitrustReform/SJud061797_djvu.txt

222 Sen. Hatch and Rep. Boehlert’s positions probably had something to do with the power of the baseball lobby. In 1998-1999, MLB spent over \$3.2 million on lobbying efforts alone. (“Major League Baseball Commissioner’s Office,” *OpenSecrets*.)

223 Edmonds, “The Curt Flood Act of 1998: A Hollow Gesture After All These Years?” 319.

224 Major League Baseball Antitrust Reform : Hearing Before the Committee on the Judiciary, United States Senate, 105th Cong., 1997, https://archive.org/stream/MajorLeagueBaseballAntitrustReform/SJud061797_djvu.txt

Mike DeWine (R-OH) pressed Fehr on how the MLBPA could justify rolling back the antitrust exemption for major leaguers but not minor leaguers. During testimony, Senator DeWine said to Mr. Fehr, “isn’t there something a little ironic about going in and saying, well, we are going to remove the exemption for major league baseball, but minor league baseball — we are going to almost carve out an exception within an exception?”²²⁵ In an attempt to explain why the MLBPA supported a narrowly interpreted bill, Fehr said it was because, “those are the clients that I represent. It is very difficult for me to make a logical distinction as to why should have one and the other. [sic] I don’t think one can reasonably be made.”²²⁶ Stunningly, while the head of the Players’ Union was unable to justify the unequal treatment given to major and minor leaguers, the MLBPA nevertheless went on with its quest to eliminate minor leaguers from coverage under the law. Fehr’s statement also implies that the interests and rights of major and minor leaguers are aligned — that they are both entitled to antitrust protection. In throwing minor leaguers under the bus for no stated reason besides its advantage to the union, the MLBPA typifies the individualistic, winner-take-all mentality of the free-market era championed by Hayek and Friedman.

Around the same time, Fehr said, “Too much money is being wasted in the minor leagues.” He continued, “We should be pushing kids to college, subsidizing those programs and allowing them to play in professional summer leagues while they’re still in school, the way an acting student is allowed to take roles in summer stock.”^{227,228}

Few who have experienced the minor leagues would agree with Fehr that there is too much money being wasted on them. From 1975-2010, the average MLB player salary has increased over 6,600%.²²⁹ During the same period, non-unionized minor leaguers have only seen an increase of 74%, failing to even keep up with inflation.²³⁰ In fact, minor leaguers have actually *lost* ground. In 1964, all minor league rookies received \$500 per month, or \$3,375 in 2014 dollars. Today, the lowest level minor leaguer receives \$1,200 per month, just about one-third of what they would have been paid over a century ago.²³¹ Minor leaguers, who have no organized lobbying association, have been forced to scavenge for crumbs. For instance, a non-profit entitled Financial Aid Serving Families in the Minors (FASFIM), whose goal was to help minor league players who do not earn enough to support their families, sprang up in 2009.²³² Even Triple-A players, the best paid of the bunch, do not make enough (roughly \$13,500 per season) to be above the Federal Poverty Line.²³³

In its inability to challenge poor working conditions, the MLBPA has helped keep annual minor league salaries low through the passage of the Curt Flood Act, using its bargaining position to extract benefits for its own membership while exploiting the lack of solidarity between minor league players. Ironically, collective bargaining — a vehicle commonly used to empower workers and raise industry standards — has actually resulted in negative consequences for other members of the industry.

While one could say that Fehr and the MLBPA were simply advocating for the workers that they represent, Fehr’s admissions underscore how a large concentration of labor power shared by a select few workers within

225 Major League Baseball Antitrust Reform: Hearing Before the Committee on the Judiciary, United States Senate, 105th Cong., 1997, https://archive.org/stream/MajorLeagueBaseballAntitrustReform/SJud061797_djvu.txt

226 Major League Baseball Antitrust Reform : Hearing Before the Committee on the Judiciary, United States Senate, 105th Cong., 1997, https://archive.org/stream/MajorLeagueBaseballAntitrustReform/SJud061797_djvu.txt

227 Ross Newhan, “Fehr Ball or Foul? : Players’ Union Executive Head Stays Within Strict Guidelines When Forced to Deal With Baseball’s Intransigent Owners,” *Los Angeles Times*, April 10, 1994, Accessed April 01, 2016. http://articles.latimes.com/1994-04-10/sports/sp-44499_1_steve-fehr/4.

228 Leading up to the change in antitrust rules with the Curt Flood Act, Vice President of Minor League Baseball Stan Brand used this quote by Fehr to stoke fear amongst minor league officials and convince legislators to oppose exempting minor leaguers from antitrust protection. (Josh Leventhal, “Meet Stan Brand: Baseball’s Power Broker On The Hill,” *Baseball America*.)

229 “Baseball’s Salaries Up 6,600% Thanks To Free Agency”

230 Broshuis, *Touching Baseball’s Untouchables*, 92.

231 George Gmelch, “Minor League Pay: Baseball’s Antitrust Exemption Allows for Poverty Wages,” *San Jose Mercury News*, July 16, 2014, Accessed April 25, 2016, http://www.mercurynews.com/opinion/ci_26155052/minor-league-pay-baseballs-antitrust-exemption-allows-poverty.

232 Melissa Lockhard, “Lending Minor Leaguers A Helping Hand,” *Scout*, March 30, 2009, Accessed May 03, 2016, <http://www.scout.com/mlb/athletics/story/851931-lending-minor-leaguers-a-helping-hand?s=304>.

233 “Lending Minor Leaguers A Helping Hand”

an industry can be just as problematic for lower level worker rights as can be a large concentration of corporate power. Specifically, the repeal of baseball's antitrust exemption with regard to major league players, at the behest of the MLBPA, has further exacerbated the differences between players within the industry, exemplifying the changes of the New Gilded Age. In being unable to file a lawsuit to increase pay or improve working conditions due to MiLB's antitrust protection, the MLBPA has effectively done within baseball what is present in the rest of America: grow the gulf between the most and least well-off. While the power and salaries of major leaguers have increased, minor leaguers are stuck in neutral. It is easy to see why MLB ownership wanted this. Less money going to minor leaguers means more money in their own pockets. But the fact that the union would want to hold down the bonds that keep its future workers enfeebled is much more surprising. In essence, the union has created an image of a zero-sum game between major and minor leaguers, a game in which the former hold a substantial advantage.

Inning Eight: The MLBPA's Influence over the MLB Amateur Draft

Recent changes to the Rule 4 Amateur Draft (also known as the First-Year Player Draft) to minimize amateur bonuses also highlight the suppression of minor leaguers. Ironically, the majority of players affected by these changes are the ones most likely to make it to the majors and become part of the union. The MLB First-Year Player Draft was instituted in 1964 when worries about competitive imbalance and skyrocketing amateur salaries ran amok, so high that MLB teams spent over \$7 million on amateur talent, more than was spent on all major league players combined.²³⁴ Instead of sticking to the first-come, first-served system which reinforced the strong talent network built up by clubs like the St. Louis Cardinals and New York Yankees, MLB turned to a draft that would help level the playing field. The selection order of this draft is determined by the reverse MLB standings, so the team from either league that finishes with the worst record gets to pick first.²³⁵ When it was first instituted, the draft format allowed teams that were perennial losers of the time, like the Chicago Cubs and the Kansas City Athletics (now the Kansas City Royals), to have access to the best amateur talent.²³⁶ This was also a cost saving measure for MLB teams because it permitted an amateur to negotiate with only one team at a time. For this reason, the 1964 bonus of \$205,000 given to Rick Reichardt — who would turn out to be an average player — remained the highest in history, exceeding those of future superstars Ken Griffey Jr., Will Clark, Darryl Strawberry, Mark McGwire and others until Bo Jackson received a contract of over \$1 million in 1986.²³⁷ Draft compensation would continue to grow astronomically as first-round picks like Mark Prior (2001, \$10.5 million), Mark Teixeira (2001, \$9.5 million), David Price (2007, \$8.5 million), and Stephen Strasburg (2009, \$15.1 million) commonly received contracts that made those given out just a decade before seem miniscule in comparison.²³⁸

While the MLBPA does not represent amateur players (i.e. those to be drafted), the draft nevertheless has an effect on MLB player compensation, which has allowed the MLBPA to influence how it is run. Before 2012, free agents (major leaguers whose contracts had expired and were eligible to sign with any team that desired them) were assigned a Type A or Type B status. Type A status was given to players who the Elias Sports Bureau determined were the top 20% performers of their position.²³⁹ In 2011, Superstars like Albert Pujols fell into the Type A category, while less valuable players like Dan Wheeler were considered Type B.²⁴⁰ Teams who signed Type A free agents forfeited their first-round pick during the next year's draft which would then be transferred to the free agent's former team to make up for the loss of such an integral part of the roster. In addition to this first-

234 "The History and Future of the Amateur Draft"

235 "First-Year Player Draft FAQ," Major League Baseball, January 20, 2016, Accessed April 26, 2016, <http://mlb.mlb.com/mlb/draftday/faq.jsp>.

236 "The History and Future of the Amateur Draft"

237 "The History and Future of the Amateur Draft"

238 Jim Callis, "Draft: No Matter The Slots, Teams Spent Freely In 2011," Baseball America, August 18, 2011, Accessed April 27, 2016. <http://www.baseballamerica.com/today/draft/news/2011/2612233.html>.

239 Jim Callis, "Prospects: Ask BA," Baseball America, October 20, 2008, Accessed April 22, 2016, <http://www.baseballamerica.com/today/prospects/ask-ba/2008/267067.html>.

240 Tim Dierkes, "Official Elias Rankings," MLB Trade Rumors, October 31, 2011, Accessed April 19, 2016, <http://www.mlb-traderumors.com/2011/10/official-elias-rankings.html>.

round pick, the team losing their valuable player would also receive an additional “sandwich pick” — so named because it falls between the first and second rounds of drafting.²⁴¹ In the case of Pujols, who inked a ten-year \$240 million deal with the Los Angeles Angels of Anaheim, this meant that the Angels sent the St. Louis Cardinals — Pujols’ former team — their 2012 first-round pick (19th overall) and a sandwich pick, the 36th overall choice.²⁴²

The format has changed since 2012, especially with the CBA that was signed after the 2016 season, which will run through 2021.²⁴³ Instead of using the Type A or B system, teams with free agents can now offer their departing player a one-year contract at the league average salary of the top 125 paid players (\$15.8 million in 2015), provided that they have not previously received one of these “qualifying offers” in their career.^{244,245,246} If that player declines the one-year offer then they are tied to draft pick compensation, mandating that the team that signs the player will forfeit a high draft pick as well as suffer a cut to the money that the team is allowed to spend on international talent.^{247,248} Because of this draft pick compensation, John Manuel of the *Society for American Baseball Research* states, “the union has argued successfully that, in essence, this makes the draft its business.”²⁴⁹

Despite the fact that the MLBPA has not always been the instigator of these draft modifications, they — along with MLB — have recently signed off on changes to the draft, effectively negotiating the futures of young men they do not represent and who have little power to negotiate for themselves. In 2011, the MLBPA agreed to a Collective Bargaining Agreement which severely inhibited the ability for teams to spend money on amateur players, thereby freeing up more money for its union members. Instead of teams being able to spend without restraint, “signing bonus pools” made it so teams faced severe penalties for spending too much on the draft.²⁵⁰ These signing bonus pools per team were based on values given to each numbered pick in the first ten rounds. The team that finished with the worst record in the preceding year would have the most money to spend on their picks. In 2015, the first pick was worth a signing bonus of over \$8.6 million, and the last pick in the 10th round was valued just under \$150,000.²⁵¹ Teams that exceeded the amount of their signing pool money (in 2015, the smallest of which was \$3.6 million for the New York Mets and the the largest of which was \$17.3 million for the Houston Astros) faced severe penalties, including a 100% tax on the overage in addition to the loss of two future first round draft picks for exceeding the bonus pool money by more than 15%.^{252,253}

The 2017-2021 CBA makes even more drastic changes to the rules. The first overall pick in 2017 receives

241 “Prospects: Ask BA”

242 “First Round of the 2012 MLB June Amateur Draft,” Baseball-Reference, 2012, Accessed April 19, 2016, http://www.baseball-reference.com/draft/index.cgi?year_ID=2012.

243 Maury Brown, “Breaking Down MLB’s New 2017-21 Collective Bargaining Agreement,” *Forbes*, November 30, 2016, Accessed March 27, 2016, <https://www.forbes.com/sites/maurybrown/2016/11/30/breaking-down-mlbs-new-2017-21-collective-bargaining-agreement/2/#5a63e40666ed>

244 Doug Miller, “2015 MLB Qualifying Offers,” Major League Baseball, November 07, 2015, Accessed March 15, 2016, <http://m.mlb.com/news/article/156584084/2015-mlb-qualifying-offers>.

245 “Summary of Major League Baseball Players Association - Major League Baseball Labor Agreement,” Major League Baseball, http://mlb.mlb.com/mlb/downloads/2011_CBA.pdf.

246 “Breaking Down MLB’s New 2017-21 Collective Bargaining Agreement”

247 “Summary of Major League Baseball Players Association - Major League Baseball Labor Agreement”

248 The rules governing which draft pick and how much money a team has penalized after signing a free agent who is offered a qualifying offer are quite complex. According to Maury Brown of *Forbes*, if the team in question spends more than the Luxury Tax threshold of \$195 million on player salaries in 2017, then they would lose their second-highest and fifth-highest remaining selections in the 2018 Rule 4 draft, and have the money that they are allowed to spend on international talent cut by \$1 million. Most other teams would forfeit their second-highest remaining selection and have their international talent pool money cut by \$500 thousand. Teams that operate in small markets that receive revenue sharing funds would only forfeit their third-highest selection in the draft. The goal of the rule is to level the playing field by penalizing already high-spending teams more than lower-spending teams for signing top talent.

249 “The History and Future of the Amateur Draft”

250 “Summary of Major League Baseball Players Association - Major League Baseball Labor Agreement”

251 “2015 MLB Draft Slot Values,” Baseball America, April 08, 2015, Accessed April 23, 2016, <http://www.baseballamerica.com/draft/2015-mlb-draft-slots/#ccZJ7dg4CGAb8TIB.97>.

252 “2015 MLB Draft Signing Pools,” Baseball America, April 08, 2015, Accessed April 23, 2016. <http://www.baseballamerica.com/draft/2015-mlb-draft-signing-pools/#5K33VmMcotRmAA1e.97>.

253 “Summary of Major League Baseball Players Association - Major League Baseball Labor Agreement”

a bonus slot of \$7.4 million, a reduction of 15% from 2015, while slots at the end of the 10th round are valued at \$125,000, a reduction of over 16%.²⁵⁴ Additionally, the CBA for the first time now mandates a hard cap on international amateur signings,²⁵⁵ between \$4.75 and \$5.75 million per team per year, with the Commissioner's Office allowed to impose strict penalties on any violators.^{256,257}

While it is too soon to tell the effect that the 2017 CBA will have on amateur spending, previous changes have resulted in significant cost savings for team owners at the expense of amateur players. In 2011, the last year without formal spending limits on the Rule 4 Draft, teams spent a record \$233 million combined.²⁵⁸ The next year, spending by the same thirty teams dropped 11% to roughly \$208 million.²⁵⁹ The 2011 spending record persisted until 2015, which saw \$248 million awarded to draftees.²⁶⁰ Still, the 2012-2016 CBA was effective at reducing the previously rapid increase of money spent on amateur talent. Teams saw it in their best interest to toe the line — in the first three years of the new draft format, no team overspent more than 5%, only paying a 75% tax on the overage and avoiding the forfeiture of a first-round pick.²⁶¹ This has been a boon to both MLB and the MLBPA. With a smaller percentage of revenue going to amateurs, teams have been free to spend more on players in the major leagues. In 2012, the first year that the slot value system was in effect, the average team payroll rose from \$92.9 million to over \$98 million, the largest increase since the 2007-2008 offseason.²⁶²

These rules only have a substantial effect on the one-quarter of total draftees who are taken in the first 10 rounds. Despite the fact that these draftees are still in for a large payday, it is unlikely that there will be another record-breaking contract like the \$15.1 million pact given to Stephen Strasburg in 2009.²⁶³ The bigger reward waits for them in the major leagues if they hit free agency. Still, it is alarming to note that these changes were deliberated and implemented without any input from the amateurs that would soon be affected by these regulations. More alarming still, the MLBPA risks alienating the star draftees, some of whom will choose to attend college instead of going straight to the professional ranks and are likely to be part of the MLBPA in the years to come.

The union's desire to change draft rules to minimize draftee bonuses is just another example of how the MLBPA has helped create an upward redistribution of wealth within baseball. With changes that specifically target the most well-off draftees, the MLBPA demonstrates that the priorities of minor leaguers (even those that are likely to someday make it to the majors and join the union) are generally²⁶⁴ far less important to the union than the well-being of those in the majors.

The MLBPA's negotiations and victories in the 1994-1995 player strike, the 1998 Curt Flood Act, and the Rule 4 First-Year Player Draft have left minor leaguers worse off relative to their major league counterparts. Though

254 Hudson Belinsky, "2017 MLB Draft Slots and Bonus Pools," *Baseball America*, January 26, 2017, Accessed March 28, 2016, <http://www.baseballamerica.com/draft/2017-mlb-draft-slots-bonus-pools/#PAOq3s9vQKK3tmq2.97>

255 International amateur signees are defined as any prospective player who is not a resident of the United States or Canada, and who has not played in a comparable professional league for six or more seasons while being over the age of twenty five.

256 "Breaking Down MLB's New 2017-21 Collective Bargaining Agreement"

257 "Breaking Down MLB's New 2017-21 Collective Bargaining Agreement"

258 "Draft: No Matter The Slots, Teams Spent Freely In 2011"

259 Associated Press, "Spending Drops 11 Percent Overall," *ESPN*, July 18, 2012, Accessed April 27, 2016, http://espn.go.com/mlb/story/_/id/8178376/spending-amateur-baseball-draft-drops-17-percent-first-round-11-percent-overall.

260 MLB.com, "2016 Draft: Signing and Bonus Tracker," July 15, 2016, Accessed March 30, 2017, <http://m.mlb.com/news/article/183906680/2016-draft-signing-and-bonus-tracker/>

261 Jim Callis, "Breakdown of 2015 Draft Signing Bonus Pools," *Major League Baseball*, June 05, 2015, Accessed April 27, 2016, <http://m.mlb.com/news/article/126797888/breakdown-of-2015-draft-signing-bonus-pools>.

262 Business Insider, USA Today, "Major League Baseball - Average Team Payroll 2002-2012," *Statista*. 2016, Accessed March 12, 2016, <http://www.statista.com/statistics/202547/average-payroll-of-major-league-baseball-teams/>.

263 In the 2011 Draft, first-overall selection Gerrit Cole actually received a higher signing bonus than Strasburg did in 2009 (\$8 million compared to Strasburg's \$7.5 million) but because of different draft rules, Strasburg was awarded a major league contract, allowing him to be paid above the standard minor league salary, paying him \$15.1 million in total. The rules have since changed to bar draftees from receiving major league contracts, who instead only earn signing bonuses and a poverty-level minor league salary. (Clint Longenecker, "Highest Draft Bonuses of All Time," *Baseball America*.)

264 There are however exceptional cases of star minor leaguers receiving favorable treatment by the MLBPA, to the detriment of a current union member. One such case will be explored later.

unsurprising to see why the MLBPA has a vested interest in reducing amateur and minor league compensation, it nevertheless represents a departure from a traditional union role. Herein lies a crucial distinction between the MLBPA and most unions. While neither is obligated to support workers who are not part of the union, it is quite atypical for a labor union to actively suppress the rights of those whom it does not represent. This is all the more perplexing considering the fact that around one in ten minor leaguers will eventually make it to the majors and become part of the union.²⁶⁵ Consequently, the MLBPA has helped to prevent a redistribution of wealth from the wealthy major leaguers to the players toiling in the minors. With minor leaguers unable to bring lawsuits challenging their squalid working conditions and meager pay, the MLBPA has effectively protected its members from earning a smaller slice of revenue than they would otherwise earn. Here lies a textbook example of the New Gilded Age — the repression of worker rights and a stratification of wealth — but instead of a large corporation responsible, there is a powerful union pulling the strings.

i. Kris Bryant & the Exception for Exceptionally Talented Minor Leaguers

While it is evident that the MLBPA has generally treated minor leaguers unfavorably, things are different for exceptionally talented minor leaguers. In the case of superstar prospects, the union has shown that it will bend the rules and represent their interests — even if it means throwing a low-level union member under the bus.

By all accounts, Kris Bryant was ready to become a superstar. After leading the minor leagues in home runs in his first full year of minor league baseball, the 2014 Minor League Player of the Year was the number one overall prospect in all of baseball going into 2015.^{266,267} Bryant, a tall, power-hitting third-baseman out of the University of San Diego had been touted as one of the most well-regarded prospects in years after putting up eye-popping numbers in the minors since he was taken as the second overall pick in the 2013 First-Year Player Draft by the Chicago Cubs.²⁶⁸ The expectation was that he would be called up to the majors on Opening Day 2015, and speculation only grew after a sizzling spring training in which he led the Cubs in batting average, home runs, and RBIs.²⁶⁹ But Theo Epstein, the Cubs General Manager, announced that Bryant would begin the season at Triple-A Iowa, instead giving the starting third base job to Mike Olt, who had a middling .159 batting average in 105 MLB games.²⁷⁰ On the surface, it makes little sense that the Cubs would relegate their anointed savior to the minors. However, the logic behind Epstein and the Cubs' decision lies in an examination of the rules governing free agency.

Major league players need to be on a major league roster for six full years — a full year defined as 172 of the 187 days in a major league season — before they are eligible for free agency and are able to sign with any team of their choice.²⁷¹ If a player falls short of this 172-day benchmark during his first year in the majors — even by a single day — his free agency will be delayed by a full year, giving the team an extra year of control over the player. This additional year under contract can be immensely valuable for the team, as they can keep a superstar under their control, at a salary under market value, for an extra year before he hits free agency. This is precisely what the Cubs did with Bryant. Instead of calling him up to the majors on Opening Day, they held him in the minors until a few games into the regular season, ensuring that he would only acquire 171 of the 172 service time days necessary to count toward a full season.²⁷² This means that the Cubs will have him under contract through

265 Wollett, *Getting on Base*, 73.

266 J.J. Cooper, “2014 Minor League Player Of The Year: Kris Bryant,” *Baseball America*, September 09, 2014, Accessed April 27, 2016. <http://www.baseballamerica.com/minors/kris-bryant-minor-league-player-year/#2T8teq5alDra1RQb.97>.

267 “Kris Bryant Fall & Minor Leagues Statistics & History,” *Baseball-Reference*, Accessed April 12, 2016, <http://www.baseball-reference.com/register/player.cgi?id=bryant001kri>.

268 “Kris Bryant Fall & Minor Leagues Statistics & History”

269 Jesse Rogers, “Cubs 15-15-1 in Spring, Kris Bryant Must Watch,” *ESPN*, April 1, 2015, Accessed April 12, 2016, http://espn.go.com/blog/chicago/cubs/post/_/id/29537/cubs-15-15-1-in-spring-bryant-must-watch.

270 “Mike Olt Statistics,” *Fangraphs*, Accessed April 12, 2016, <http://www.fangraphs.com/statss.aspx?playerid=10698>.

271 CJ Nitkowski, “Chicago Cubs Kris Bryant and the Service-time Game,” *FOX Sports*, March 11, 2015, Accessed May 03, 2016, <http://www.foxsports.com/mlb/just-a-bit-outside/story/chicago-cubs-kris-bryant-service-time-when-to-call-up-prospects-031115>.

272 David Brown, “Report: Kris Bryant, Maikel Franco File Service-time Grievances,” *CBS Sports*, December 7, 2015, Accessed April 27, 2016. <http://www.cbssports.com/mlb/eye-on-baseball/25405003/report-kris-bryant-maikel-franco-file-service-time>

2021, instead of 2020.²⁷³

The MLBPA was irate that Bryant, then not a member of the union, was kept in the minors. When the decision to leave Bryant off the Cubs' roster was announced, the MLBPA released a statement saying, in part, "Today is a bad day for baseball. We all know that if Kris Bryant were a combination of the greatest players to play our great game... the Cubs still would have made the decision they made today," illustrating the idea that no matter how good Bryant was, he would have been kept in the minors purely for business reasons.^{274,275} It is fascinating to note that the MLBPA saw fit to insert itself into a player-personnel decision — a decision solely up to the discretion of the team — over a minor league player who was not even part of the union. MLB capitalized on this by releasing a statement saying, "We do not believe that it is appropriate for the players' association to make the determination that Kris Bryant should be on the Cubs' 25-man roster while another player, who, unlike Bryant, is a member of its bargaining unit, should be cut or sent to the minor leagues."²⁷⁶ The fact that a member of the union would have had to have been cut in order to make room for Bryant, who was not represented by the union, further calls into question the role of the union in representing its membership.

While unable to change the Cubs' decision to keep Bryant in the minors, the MLBPA vowed to seek a rule change going forward, saying that "This decision, and other similar decisions made by clubs will be addressed in litigation, bargaining or both."²⁷⁷ This is only a more recent development in a long line of instances where the MLBPA has felt the need to insert itself into an issue that primarily involves minor leaguers. The Kris Bryant saga also demonstrates how the MLBPA can twist the rules to their liking. In the eyes of the union, the CBA language saying that the MLBPA will represent, "individuals who may become Major League Baseball Players" does not apply to the typical minor leaguer. But it does apply to a potential superstar in the minors. The handling of the Bryant situation exemplifies the way in which power and favorable treatment flow to those at the top in the midst of the New Gilded Age.

Inning Nine: The Relationship Between Inequality within Major League Baseball & the Breakdown in Player Solidarity

Not only has there been a growing disparity between union and non-union players (i.e. major and minor leaguers), but there has been a growing stratification of wealth amongst those *within* the major league ranks as well, characteristic of the New Gilded Age. The divide has become so stark that Frank Ackerman notes that "Today, Baseball Nation is approaching the levels of income inequality found in the world's most unequal countries."²⁷⁸ From 1970-2010, the average MLB player salary has skyrocketed from \$44,676 to \$3,014,572, an increase of 6,600%, yet these gains have not been distributed evenly.²⁷⁹ Data from *The Society for American Baseball Research* shows that the bottom quintile of major leaguers (those earning an average of just under \$500,000 in 2012) earn only 3% of the total salaries.^{280,281} The bottom 60%, who possess an average salary of roughly \$1.2

grievances.

273 Jesse Rogers, "Cubs Promote 3B Kris Bryant, to Hit Cleanup in Major League Debut," ESPN, April 17, 2015, Accessed April 27, 2016. http://espn.go.com/chicago/mlb/story/_/id/12705857/chicago-cubs-call-kris-bryant.

274 SI Wire, "MLBPA on Cubs' Kris Bryant Decision: 'A Bad Day for Baseball'" Sports Illustrated, March 30, 2015, Accessed April 27, 2016. <http://www.si.com/mlb/2015/03/30/chicago-cubs-kris-bryant-minors-mlbpa>.

275 Theo Epstein, General Manager of the Chicago Cubs, would dispute this claim, but the facts say otherwise.

276 Noam Scheiber, "Kris Bryant, the Baseball Players' Union and a Lesson for Labor," *New York Times*, April 6, 2015, Accessed April 27, 2016. <http://www.nytimes.com/2015/04/07/business/kris-bryant-the-baseball-players-union-and-a-lesson-for-labor.html>.

277 "MLBPA on Cubs' Kris Bryant Decision: 'A Bad Day for Baseball'"

278 Ackerman, *The Political Economy of Inequality*, 72.

279 "Baseball's Salaries Up 6,600% Thanks To Free Agency."

280 Barry Krissoff, "Average Baseball Salaries by Income Quintiles, 1987–2012 (in Dollars)," Society for American Baseball Research, 2012, Accessed March 16, 2016, <http://sabr.org/content/table-1-average-baseball-salaries-income-quintiles-1987-2012-dollars>.

281 Barry Krissoff, "Society and Baseball Face Rising Income Inequality," *Baseball Research Journal* 42, no. 1 (Spring 2013), Accessed April 12, 2016, <http://sabr.org/research/society-and-baseball-face-rising-income-inequality>.

million, together only take home 13% of the total salary pie.²⁸² In contrast, the top 20% of earners (making \$11.1 million on average) take home the majority of the salary — 65%. Income inequality in the United States pales in comparison. The bottom 60% of Americans together take in roughly 30% of total income, while the top quintile make just less than half of the aggregate.²⁸³

Data from 1987-2012 also show that this divergence between the most-paid and least-paid major leaguers has been growing, the same way in which there has been an increase in the upward redistribution of income to the wealthy in the United States. While the bottom 80% of earners in MLB have seen significant salary increases, their share of the total revenue pie has dropped 45%.²⁸⁴ The bottom 20% have seen only a modest decrease from 3% of total revenues in 1987 to 2.8% in 2012. (By comparison, the lowest 20% of earners in the United States took home 3.2% of the income in 2012.)²⁸⁵ However, the differences have been more pronounced for those in other brackets, as the second and third quintiles of earners have seen their share of income drop 66.7% and 78.8%, respectively, far outpacing the decrease in the same brackets amongst Americans as a whole.^{286, 287, 288}

Furthermore, while the share of total income earned by the top 1% in MLB (7.2%) is not as high as the share of total income going to the top 1% of Americans (20.1% in 2013) this share of income for the top 1% in baseball has been increasing at a faster rate than that of the most elite Americans.^{289,290} This is especially surprising considering the attention that has been given to the vast rise in salaries amongst the top 1% of Americans since the mid-1970s. Since 1987, the top 1% of baseball players have seen their share of total income rise by 60%, while the top 1% of Americans have seen theirs increase by roughly 19% during the same period.^{291,292}

The plight of the lower and middle class of Americans, many of whom are faced with a reality of meager wages, decreased government subsidies, and little opportunity for social mobility, is not comparable to major leaguers at the lower end of their still very large pay scale. It is hard to feel sympathy for a star who “only” makes about \$500,000 per year. However, the data illustrate that the same income inequality in America, characteristic of the New Gilded Age, applies to baseball as well — yet arguably to a much, much greater extent. It is necessary to investigate the role that the MLBPA has played in growing the disparity between the major leaguers within its ranks. A large part of it can be attributed to the breakdown in solidarity between stars and those at the bottom of the major league wage scale.

i. The Prior Importance of Solidarity Within the MLBPA

Tim McCarver scowled as if he’d “just been nailed by a foul tip.”²⁹³ \$8,500 was just too low. McCarver, an All-

282 “Society and Baseball Face Rising Income Inequality”

283 “The Distribution of Household Income and Federal Taxes, 2011,” Congressional Budget Office, November 2014, Accessed April 16, 2016, <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/49440-Distribution-of-Income-and-Taxes-2.pdf>.

284 Barry Krissoff, “Average Baseball Salaries by Income Quintiles, 1987–2012 (in Percent),” Society for American Baseball Research, Accessed March 16, 2016, <http://sabr.org/content/table-1-average-baseball-salaries-income-quintiles-1987-2012-percent>.

285 , Craig K. Elwell, “The Distribution of Household Income and the Middle Class,” *Congressional Research Service*, March 10, 2014, Accessed April 27, 2016, 3, <https://fas.org/sgp/crs/misc/RS20811.pdf>.

286 “Average Baseball Salaries by Income Quintiles, 1987–2012 (in Percent)”

287 US Census Bureau, “Shares of Household Income of Quintiles in the United States from 1970 to 2014,” Statista. 2016, Accessed April 24, 2016, <http://www.statista.com/statistics/203247/shares-of-household-income-of-quintiles-in-the-us/>.

288 Note that these quintiles can be more fluid than they are for the average American. If a player is lucky enough to reach free agency, they become much more likely to enter the higher income brackets.

289 “Average Baseball Salaries by Income Quintiles, 1987–2012 (in Percent)”

290 Joseph Lawler, “Top 1 Percent Share of Income Grew in 2014 despite New Obama Taxes,” *Washington Examiner*, June 29, 2015, Accessed April 15, 2016. <http://www.washingtonexaminer.com/top-1-percent-share-of-income-grew-in-2014-despite-new-obama-taxes/article/2567217>.

291 “Average Baseball Salaries by Income Quintiles, 1987–2012 (in Percent)”

292 Alvarado Facundo, Anthony B. Atkinson, Thomas Piketty, and Emmanuel Saez, “The Top 1 Percent in International and Historical Perspective,” *Journal of Economic Perspectives* 27, no. 3 (Summer 2013): 3, Accessed April 23, 2016, <https://eml.berkeley.edu/~saez/alvarado-atkinson-piketty-saezJEP13top1percent.pdf>.

293 Miller, *A Whole Different Ball Game*, 160.

Star catcher and representative for the St. Louis Cardinals who in 1967 was second in Most Valuable Player (MVP) voting, was locked in an intense negotiation, trying to help the MLBPA raise the minimum player salary from \$6,000 per year.^{294,295} Despite the fact that McCarver made \$37,500 per year, was due a handsome raise in 1968, and had little to gain personally from a higher minimum player salary, he still played a key role in these negotiations on behalf of the MLBPA.²⁹⁶ Before the meeting, McCarver asked a MLBPA negotiator, Dick Moss, what to do when the MLB officials made an offer during the negotiation. Moss said, “If the offer is below twelve grand it would be very helpful if you could throw up on the table.” It might have been the grimace that did the trick; with the support of stars like McCarver, the MLBPA secured an agreement to raise the minimum salary for players on the Opening Day roster from \$6,000 to \$10,000.²⁹⁷

When Marvin Miller was head of the MLBPA in its heyday from 1966-1982, taking it from powerlessness to prominence, a defining feature of his success was the solidarity he achieved between players of all different backgrounds. Professor Daniel A. Gilbert of the University of Illinois stated, “solidarity between the star players and the lesser ones has been critical to their bargaining successes since the mid-1960s.”²⁹⁸ In his retrospective on the 1981 strike, which cancelled over one-third of the major league schedule and was instigated by MLB owners who were keen on reversing gains made by the union in recent years (especially within the realm of free agency compensation), Miller stated, “From the standpoint of labor it was the most principled strike I’ve ever been associated with. Many of the players struck not for a better deal for themselves but for a better deal for their colleagues, and for the players who would be coming into baseball in the future.”²⁹⁹ As the 1981 strike, as well as McCarver’s negotiation ploy, show, Miller helped build a cohesive union whose members had an extraordinary aptitude for selflessness.

Even Jim Bunning, who would go on to serve as a Senator from Kentucky from 1999-2011, flaunting a 0% rating from the AFL-CIO (indicating a staunchly anti-union voting record in Congress), supported his union and its leader by acting as a player representative for the Philadelphia Phillies.³⁰⁰ Bunning, whom Miller described as “one of the stalwarts of the Players Association,” said in 1970, words that would seem hypocritical years later as he fought to dismantle private sector unions: “I know that baseball people resent our new leader ... I have news for them. Marvin Miller will be around for a long time!”^{301,302}

In 1969, Mickey Mantle would embody the same selflessness that McCarver exhibited to help his fellow players without any personal gain flowing to himself. Mantle, who would be elected to the Hall of Fame in 1974 and be part of the prestigious All-Century Team in 1999, had made the decision to retire after the 1968 season.³⁰³ However, Miller decided it would be best for the union if Mantle agreed to postpone his public retirement announcement in order to use his name on a list of players that had refused to sign contracts for the upcoming year due to an ongoing labor dispute over negotiations of a benefit plan.³⁰⁴ Miller stated in his autobiography that Mantle’s only question when he was approached was, “Would it help the players and the Association?” When

294 “Tim McCarver Statistics and History,” Baseball-Reference, Accessed March 30, 2016, <http://www.baseball-reference.com/players/m/mccarti01.shtml>.

295 Miller, *A Whole Different Ball Game*, 158.

296 “Tim McCarver Statistics and History,” Baseball-Reference, Accessed March 30, 2016, <http://www.baseball-reference.com/players/m/mccarti01.shtml>.

297 Miller, *A Whole Different Ball Game*, 163.

298 “Kris Bryant, the Baseball Players’ Union and a Lesson for Labor”

299 Miller, *A Whole Different Ball Game*, 120-121.

300 “Jim Bunning on the Issues,” On the Issues, Accessed March 13, 2016, http://www.ontheissues.org/Senate/Jim_Bunning.htm.

301 Miller, *A Whole Different Ball Game*, 163.

302 Bunning, as one of four players on the MLBPA search committee, was instrumental in the hiring of Miller as the Executive Director in the first place. This is all the more perplexing considering that the man who helped create the most powerful union in the world would later be described by a Kentucky AFL-CIO official as “one of the most anti-union Senators in Washington.” (Berry Craig, “State Lawmaker to Democrats Vying for Bunning’s Seat,” *The Rural Democrat*.)

303 Miller, *A Whole Different Ball Game*, 100.

304 Miller, *A Whole Different Ball Game*, 100.

Miller replied affirmatively, Mantle said, “Then hell yes... Use my name.”³⁰⁵

Mantle’s and McCarver’s selflessness demonstrates a defining characteristic of the MLBPA — and broader American society — in the 1960s and 1970s. The concern for others represents a different era, in which Americans, according to Robert Reich, were much more focused on the welfare of all and seeking the common good.³⁰⁶ However, as neoliberal policies took hold in the 1970s, the notion of individual freedom gained in prominence, which undermined collective benefit. For the MLBPA, which needed to overcome daunting problems like creating a union consciousness where one had never existed and extinguishing anti-union sentiment among players, Miller helped to foster the idea that the needs of the collective came before those of the individual. Like in American society as a whole, this concern for the fellow neighbor is no longer of significant importance, which has led to a growing divide between stars and scrubs in MLB.

ii. **The Effect of Declining Union Solidarity and Increasing Inequality in MLB**

Part of this breakdown is due to the spectacular wealth that some major leaguers enjoy. In a study conducted by Daryl D’Art and Thomas Turner and depicted in *The Decline of Worker Solidarity and the End of Collectivism?*, the authors found that blue-collar workers had significantly higher levels of wage-earner solidarity than their white-collar counterparts.^{307,308} Wage-earner solidarity is defined as solidarity of “immediate interests,” such as salaries, hours, and working conditions as well as “instrumental interests,” defined as recognition, strike action, and political representation.³⁰⁹ By this logic, as the wealth of workers increases, the desire to fight for collective issues like a pension program declines. The MLBPA takes this dynamic to the extreme, as the jaw-dropping salaries of some members, combined with the vast inequality present in the union, have broken the bonds of solidarity that were a defining feature of the union in the 1960s and 1970s.

Former salary arbitrator and labor lawyer Don Wollett believes that the MLBPA shoulders the blame for the free and unregulated player market that has sent annual salaries into the stratosphere. He says, “They [the MLBPA] are responsible for enshrining the market where what you can get is the measure of merit.”³¹⁰ Therefore, while the MLBPA has helped to drastically increase the salaries of its players (and especially its superstars), they have also helped create a rift amongst the players themselves, undermining union solidarity and begging the question whether the union actually represents the players on the whole or primarily a select few stars.

This is ironic considering that the MLBPA had gone to great lengths to secure every salary increase that it possibly could, going as far as to strike three times between 1972 and 1985. But this would cause the cohesion formerly present within the union to begin to fissure, as cracks began to show during negotiations in 1985. Miller notes, “the dramatic increase in salaries over the years was eroding one of the bonds that had traditionally held the players tightly together: the pension plan.”³¹¹ During the first decade of Miller’s tenure as Executive Director, players young and old, well-paid and not-so-well-paid, coalesced over the vital need for a pension plan. Miller notes that even players making the maximum salary in the early 1960s (\$100,000 – which in 1949 when Joe DiMaggio earned it, was earning only thirty times more than the average American³¹²) had a serious interest in the pension plan. But in 1985, when the average salary was over \$350,000 and the maximum salary eclipsed \$2 million (not including endorsement deals) it is not difficult to see why players in the upper pay echelons would be

305 Miller, *A Whole Different Ball Game*, 100.

306 Daniel Gross, “Q&A: Robert Reich on Supercapitalism,” *Newsweek*, September 09, 2007, Accessed April 03, 2016, <http://www.newsweek.com/qa-robert-reich-supercapitalism-100311>.

307 Daryl D’art, and Thomas Turner, “The Decline of Worker Solidarity and the End of Collectivism?” *Economic and Industrial Democracy* 23, no. 1 (February 2002): 28, Accessed May 1, 2016, <http://eid.sagepub.com/content/23/1/7.full.pdf.html>.

308 While the author’s study took place in Ireland, the findings speak to the recent changes that unions have undergone in industrialized societies as a whole, and are therefore relevant to American unions.

309 Daryl D’art, and Thomas Turner, “The Decline of Worker Solidarity and the End of Collectivism?” *Economic and Industrial Democracy* 23, no. 1 (February 2002): 12, Accessed May 1, 2016, <http://eid.sagepub.com/content/23/1/7.full.pdf.html>.

310 Wollett, *Getting on Base*, xv.

311 Miller, *A Whole Different Ball Game*, 336.

312 Michael Hauptert, “Baseball’s Major Salary Milestones,” *Baseball Research Journal* 40, no. 2 (Fall 2011), Accessed May 01, 2016, <http://sabr.org/research/baseball-s-major-salary-milestones>.

much less concerned with a pension program than their underpaid predecessors.^{313,314}

In tandem with a diminished concern for less-well paid players, older players began to separate themselves from their younger major league counterparts. One such player, Milt Wilcox, said in 1985, when the owners pressed the union to agree that players who had been in the Majors for fewer than three years should be forced to accept a non-negotiable salary, “We want them [the union] to know that we don’t want to ... lose a lot of money over something like the arbitration thing that would only affect a few players.”³¹⁵ Not only did this statement undermine union leadership, but it also exposed a rift amongst veterans — many of whom received important rights victories, like salary arbitration when they were younger — that sought to minimize the concerns of their newly-minted colleagues. This complacency was shared amongst many high-profile players, like Hall of Famers Reggie Jackson and Mike Schmidt, the latter of whom earned the highest salary in baseball in 1985.³¹⁶

This change in player attitudes toward the union in less than a quarter century is significant and continues to worsen. Miller sums it up, “These players, no doubt, had ‘paid their dues,’ but they also had benefited beyond their wildest expectations, and their bellyaching didn’t seem to take into account that there were stars before them — Willie Mays for example — who had made similar sacrifices without ever having reaped anywhere near the same rewards.”³¹⁷ This public undermining of the union would continue in 1990, when Bob Boone and future Hall-of-Famer and Minnesota Twins manager Paul Molitor made public statements in support of MLB ownership and against the actions of the MLBPA.³¹⁸

If there was any question as to why this breakdown occurred, Miller answered it by sharply criticizing his successor, saying that “by 1985 the players had lost touch with their own history. This was the union’s fault — Don Fehr’s fault.”³¹⁹ The diminishing of the importance of the MLBPA’s history continues to this day. In an interview, former major leaguer Brett Jackson stated, “Most players don’t have a sense of history of the union, now more than ever. They don’t have a sense of anything besides baseball. Some are savvy and aware, but mostly players are concerned about playing ball.”³²⁰ He went on to say that few players would know the name Marvin Miller and even fewer would be ashamed about that.³²¹ In some ways this decrease in solidarity has actually benefitted the MLBPA, which has done a spectacular job ensuring that their highest profile clients continue to have the opportunity to earn record-breaking contracts, which have maxed out at over a third of a billion dollars — \$325 million for the Marlins’ Giancarlo Stanton.³²² However, this episode also shows the ways in which the MLBPA has both profited and been hampered by the increasing divide between the richest and least well-off in the union. While star players have continued to receive record-breaking contracts, this disparity between those on the pay scale has created a serious problem for the MLBPA. Miller echoes a common refrain of labor unions when he said of the 1985 negotiations that fell well short of expectations, “I had not expected the union to lose ground while the owners were making such fabulous sums of money.”³²³

This breakdown in solidarity has been amplified by the influx of players from foreign countries who speak little English and have little conception of what the MLBPA or even a labor union is. Don Wollett, a former baseball salary arbitrator challenges how a union can operate democratically when a large number of its members can speak or write little to no English.³²⁴ On Opening Day 2015, over one quarter of all major league

313 Vin Getz, “Major League Baseball’s Average Salaries 1964-2010,” Sports List of the Day, December 05, 2011, Accessed May 01, 2016, <https://sportslistoftheday.com/2011/12/05/major-league-baseballs-average-salaries-1964-2010/>.

314 Michael Hauptert, “MLB’s Annual Salary Leaders, 1874-2012,” Society for American Baseball Research, Fall 2012, Accessed May 01, 2016, <http://sabr.org/research/mlbs-annual-salary-leaders-1874-2012>.

315 Miller, *A Whole Different Ball Game*, 336.

316 Miller, *A Whole Different Ball Game*, 336.

317 Miller, *A Whole Different Ball Game*, 336.

318 Miller, *A Whole Different Ball Game*, 337.

319 Miller, *A Whole Different Ball Game*, 338.

320 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

321 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

322 “Stanton Wanted Flexibility for Marlins.”

323 Miller, *A Whole Different Ball Game*, 339.

324 Wollett, *Getting on Base*, 82.

players — 230 in total — were born outside the United States.³²⁵ Seven teams had ten players or more who were not born in the U.S., and the Texas Rangers had fifteen of their twenty-five player roster coming from foreign countries.³²⁶ While some of these players speak excellent English, many have trouble, especially those who have only recently arrived to the United States. The number is even more staggering for minor leaguers, as almost half of them — 3,382 in total — were born outside the U.S. in 2012.³²⁷ Despite the presence of foreign (mostly Spanish speaking) players, it wasn't until 2016, at the behest of star Carlos Beltran, that the MLB and MLBPA agreed to subsidize a Spanish-language translator program, mandating teams to hire a bilingual employee to help with interviews and media relations with players who speak little to no English.³²⁸ Furthermore, it wasn't until the 2017 CBA was passed that teams were mandated to provide English Language learning opportunities to their Spanish-speaking players.³²⁹ By sourcing talent from non-English speaking countries, professional baseball has achieved the same results as outsourcing, just in an inverse fashion. In the same way that American companies moving operations abroad sidesteps labor regulations in the U.S. and diminishes the prospect of a union, MLB has become increasingly reliant on international players who have very little union consciousness, come from impoverished backgrounds, and care little about what the MLBPA does or can do for them.

Miller said of his time in the union, “it is important that all of the important decisions have input from the members. In addition to encouraging informal meetings with all the players, we used to encourage the players to visit the union at all times... The closer you can come to having the leadership and membership meet frequently, the better off you're going to be.”³³⁰ Current leadership seems to have forgotten this. Wollett says, “Collective bargaining in baseball is handicapped by the fact that the views of players, particularly former major league players, are an untapped resource.”³³¹

In fairness, Tony Clark, the current Executive Director of the MLBPA, is a former major league player, and is well liked by membership.³³² Clark's predecessor Michael Weiner was beloved by all accounts, and Brett Jackson called his passing a “tragic day for the players.”³³³ In addition, Jackson notes that many players are ready to “step up” if need be during a strike or period of labor strife, but that in most cases it's a “if we need you, we'll let you know” approach, minimizing player involvement so that these million dollar men do not become distracted from their on-the-field performance.³³⁴ While this laissez-faire approach helps players focus on baseball, it has also led players to turn a blind eye to the injustices that the organization perpetuates.

While the MLBPA is as strong as it has ever been, and is in the midst of over two decades of labor peace, the prioritization of high-profile individual members over the concerns of the collective has created problems within its ranks. The MLBPA has managed to achieve substantial gains despite a decrease in that solidarity, as “rampant individualism” was the very thing that brought down many of the baseball player unions before the MLBPA arrived. Yet the fact that the Players Association has functioned primarily for its stars at the top of the pay scale and is less concerned with the general welfare of the group has created the very same problems present in the New Gilded Age of America. The individualism that has permeated American society as a whole has not escaped organized labor within baseball. The difference is that unlike present-day America, which finds itself in the midst of strife due to growing inequality, the rising tide of revenues for both the most well-off and the least well-off players is currently substantial enough to placate the average major leaguer.

325 “Opening Day Rosters Feature 230 Players Born Outside the U.S.,” Major League Baseball, April 06, 2015, Accessed April 16, 2016, <http://m.mlb.com/news/article/116591920/opening-day-rosters-feature-230-players-born-outside-the-us>.

326 “Opening Day Rosters Feature 230 Players Born Outside the U.S.”

327 Associated Press, “Percentage of Foreign Players Rises,” ESPN, April 5, 2012, Accessed April 27, 2016, http://espn.go.com/mlb/story/_/id/7779279/percentage-foreign-major-league-baseball-players-rises.

328 Jesse Sanchez, “Carlos Beltran Gets Spanish Translator Program,” Major League Baseball, January 14, 2016, Accessed March 27, 2016. <http://m.mlb.com/news/article/161857500/carlos-beltran-gets-spanish-translator-program>.

329 “Breaking Down MLB's New 2017-21 Collective Bargaining Agreement”

330 Wollett, *Getting on Base*, 78.

331 Wollett, *Getting on Base*, 81.

332 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

333 New York Daily News Staff, “Reaction to Death of MLB Players' Union Head,” NY Daily News, November 21, 2013, Accessed April 27, 2016. <http://www.nydailynews.com/sports/baseball/reaction-death-mlb-players-union-head-article-1.1525417>.

334 Brett Jackson (Retired Major League Baseball Player) in discussion with the author, April 2016.

Postgame Press Conference: Conclusion

Key actions and characteristics of the MLBPA — repressing non-union worker rights and salaries, a stratification of salaries within the industry, and a breakdown in solidarity within its ranks — are all key features of the New Gilded Age. Extreme concentrations of corporate power at the expense of labor unions in the United States have coincided with a decline in worker rights and salaries, contributing to growing inequality. But the MLBPA represents how an extreme concentration of *labor power* on the other end of the spectrum can lead to the same results. This concentration of labor power is as representative of neoliberalism and the New Gilded Age as is concentrated corporate power, leading to the idea that the MLBPA is neoliberalism applied to organized labor.

Despite their decline, traditional labor unions have helped to mitigate some of the effects of the New Gilded Age. By contrast, the MLBPA, in fighting for salary increases and rights victories for its already well-off membership at the expense of the minor leaguers in the industry, has used the realm of organized labor to actually exemplify the trends of the New Gilded Age — whether intentional or not. This transformation from a traditional union to a union for the few is demonstrated by the labor peace between MLB and the MLBPA. Michael Weiner, who spent over two decades in the MLBPA and served as Executive Director from 2009-2013 said in 2009, “When I started, I think there were substantial factions of people on the management side who begrudged the union or viewed the union clearly as an enemy. At this point, there is a respect or an understanding that the union is a part of the picture and a part of the picture that can be positive.”³³⁵ The “respect or an understanding” of the union on the part of MLB owners doesn’t just represent a begrudging acceptance of the MLBPA. Instead, both the union and ownership have found a way to work together to further their mutual aims, such as keeping overall revenue high and repressing minor league working conditions. It is perhaps not a coincidence that this “greater acceptance” to which Weiner refers has come during a time of remarkable labor peace, of over two decades without a strike or lockout over CBA negotiations. While this positive relationship is certainly advantageous for both the ownership and union, it has led to a tag-team effort against minor league players, with both MLB and the MLBPA incentivized to mitigate the influence of the already struggling average minor leaguers.

The transformation of the MLBPA since Miller was at the helm is signified by those who are in power. Don Wollett, who in 2012 was known as “the only person left who’s pushing for a minor-league union” criticized the MLBPA’s transition of power from labor leaders like Marvin Miller to lawyers like Don Fehr, Gene Orza, and Michael Weiner.^{336,337,338} Not to automatically negate the leadership of lawyers. When Fehr was installed as the head of the MLBPA, Miller said, “...all baseball fans should know that I found him [Fehr] to be a skillful, bright, hard-working lawyer who was totally compatible with the players.”³³⁹ Nevertheless, having a leadership comprised mostly of attorneys has coincided with a change in the way that the MLBPA operates. Instead of being run as a labor organization, Wollett says that the MLBPA is “run like a law firm.”³⁴⁰ He goes on to say that “[MLBPA] membership meetings have the flavor of a corporate board of directors’ self-serving report at the annual stockholders meeting, not a group of active trade unionists...”³⁴¹ In an economic era where corporations prioritize profits over all else, the MLBPA has found a way to maximize returns in the same way. The change in leadership of the MLBPA represents a significant departure from Miller’s union ideology. Current leaders do not intend to operate as a traditional union like in the days of Marvin Miller. Instead, they have a pronounced style of leadership that prioritizes the needs of those at the top, favoring a free market approach to contracts and worker rights.

335 Alan Schwarz, “Michael Weiner, Behind-the-Scenes Force, Is Set to Move to Forefront of Major League Union,” *New York Times*, June 23, 2009, Accessed April 23, 2016, http://www.nytimes.com/2009/06/24/sports/baseball/24union.html?_r=0.

336 Emancipation of the Minors”

337 Wollett, *Getting on Base*, 78.

338 Wollett’s work, *Getting on Base* was written in 2008 before Tony Clark was elected in 2013 as the first ex-major league player to become Executive Director. Still, the MLBPA’s leadership consists largely of lawyers. (Paul Hagen, “Tony Clark Appointed Executive Director of Major League Baseball Players Association,” Major League Baseball.)

339 Miller, *A Whole Different Ball Game*, 280.

340 Wollett, *Getting on Base*, 98.

341 Wollett, *Getting on Base*, 98.

With respect to minor leaguers, things sadly do not look like they are going to be changing anytime soon. The barriers to unionization for minor leaguers are steep: The turnover of over 1,000 players in the system per year, the geographic dispersion, and an unwillingness for current minor leaguers to jeopardize their opportunity to live out their dream and play in the majors are all daunting obstacles to overcome.³⁴² Even Marvin Miller in 2012 said that, “The notion that these very young, inexperienced people were going to defy the owners, when they had stars in their eyes about making it to the major leagues — it’s just not going to happen.”³⁴³

While the prospect of unionization for minor leaguers remains dim, the MLBPA has provided a template for other unions to follow in their respective industries; the union that has stayed viable is the one that has concentrated power for an ultra-elite group. There’s evidence that unions might be starting to follow the MLBPA’s lead. Some unions, faced with limited bargaining power, are acquiescing to a two-tiered wage system, which provides a substantially lower salary for new hires than it does for older union members.³⁴⁴ Despite the fact that this violates the basic union tenet of equal pay for equal work, unions like the United Auto Workers begrudgingly accepted the demands of a two-tiered wage system during the period of uncertainty around the auto industry in 2007-2008.³⁴⁵ Since then, two-tier wages have been a “cornerstone” of the auto-industry, pitting longtime employees against new hires.³⁴⁶ All of this shares a striking resemblance to how the MLBPA treats minor leaguers and those on the lower end of the pay scale.

Altogether, it is unsurprising that the MLBPA would suppress minor leaguers, as there is a financial incentive to do so. The surprising part is that the MLBPA is still regarded as a union — just like the United Steelworkers or the Service Employees International Union — helping to contribute to the innocence associated with baseball in movies like *Field of Dreams*. While it remains to be seen if the MLBPA represents a blueprint for “other” unions to follow, it is clear that the MLBPA requires a different classification of unionism — one that recognizes that it imperils the interests of the many for the benefit of the few.

342 Broshuis, *Touching Baseball’s Untouchables*, 100.

343 “Emancipation of the Minors”

344 James E. Martin, and Melanie M. Peterson, “Two-Tier Wage Structures: Implications For Equity Theory,” *Academy of Management Journal* 30, no. 2 (June 1987): 297, http://www.jstor.org/stable/256275?seq=1#page_scan_tab_contents.

345 Nick Bunkley, “U.A.W. Open to More Jobs At a Second-Tier Pay Level,” *New York Times*, March 29, 2011, Accessed April 22, 2016. <http://www.nytimes.com/2011/03/30/business/30auto.html>.

346 Bill Vlasic, “Detroit Sets Its Future on a Foundation of Two-Tier Wages,” *New York Times*, September 12, 2011, Accessed April 22, 2016, <http://www.nytimes.com/2011/09/13/business/in-detroit-two-wage-levels-are-the-new-way-of-work.html>.

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