PROFESSIONAL BASEBALL AND THE ANTITRUST LAWS

APPROVED:

[Signatures]

Major Professor

Minor Professor

Director of the Department of History

Dean of the Graduate School
PROFESSIONAL BASEBALL AND THE ANTITRUST LAWS

THESIS

Presented to the Graduate Council of the North Texas State University in Partial Fulfillment of the Requirements

For the Degree of

MASTER OF ARTS

By

Guy Thomas Strother, B. A.
Fort Worth, Texas
June, 1968
# TABLE OF CONTENTS

**INTRODUCTION** ................................................................. 1

**Chapter**

I. THE POLITICS OF AMERICAN BASEBALL .................................. 4  
II. PROFESSIONAL BASEBALL: ITS DEVELOPMENT; STRUCTURE, AND COMMERCIAL PROBLEMS .......... 29  
III. BASEBALL IN THE COURTS .................................................. 51  
IV. BASEBALL AND CONGRESS .................................................... 77  
V. BASEBALL AS AN AMERICAN INSTITUTION ................................ 95  
VI. CONCLUSION ........................................................................ 108

**BIBLIOGRAPHY** ...................................................................... 115
INTRODUCTION

Baseball is a game played by people of all ages in vacant lots and schoolyards with any available equipment. In its professional form, however, it is a business network spread over thirty seven states and three countries. This organization contains nearly six hundred players at the major league level and hundreds more in lower classifications, and generates an annual income approaching one hundred million dollars. While it is a major form of entertainment, it has contributed more to America than pleasure. Baseball has been praised for its role in teaching sportsmanship, developing the competitive spirit, and inculcating democratic principles. Its link with the nation is emphasized by the fact that it is the only American sport whose season is officially opened by the President of the United States. Baseball, then, in its role as the "national pastime," is a combination of sport, business, folklore, and ritual.

This study is an account of a problem faced by professional baseball and how the problem was met. More specifically, it concerns the threatened imposition of the antitrust laws and the response of the sport, both in
court action and in pressures upon Congress. Strictly speaking, it is neither an historical nor economic nor legal study of baseball, but encompasses all three of these areas.

Baseball enjoys the privileged but not unique position of being exempt from the antitrust laws. Because this is a situation shared by other businesses, the general area of antitrust exemption will be discussed in Chapter I. There an attempt will be made to ascertain patterns regarding the kinds of economic groups that seek and obtain exemptions, and the conditions that precipitate such action. As will be noted, these conditions frequently involved serious competitive problems. Such was the case with baseball, and in Chapter II, an effort will be made to trace the evolution of the game into a multi-million dollar business, bring out the problems of the businessmen involved, and describe the anti-competitive arrangements that they developed. In Chapter III, the discussion turns to the game's experiences before the courts, from whence came the antitrust exemption under which baseball has operated for the past forty five years. Chapter IV focuses on the campaign for a supplementary legislative exemption, undertaken when it appeared that the business might lose its judicial
immunity. And finally, in the last portion of the study, the patent appeal of baseball as an American institution and symbol is explored.

While this is an account of the troubles faced by a particular business, possessing some peculiarities and enjoying some advantages, it might also be viewed, in more general terms, as an example of how a business achieving order, obtains legal sanction for its achievement, and defends its special status in the face of outside opposition and governmental pressure.
CHAPTER I

THE POLITICS OF ANTITRUST EXEMPTION

American industry, declared Irving Olds of U. S. Steel, is "faced with two alternatives—either to seek remedial legislation or to educate the Supreme Court."¹ The occasion was the Court's decision in April 1948, in the Cement Institute case that the basing point price system violated the antitrust laws.² A third possible alternative, compliance with the law, was not mentioned. Olds' statement suggested no new policy, but merely reflected what had been occurring for decades, as business groups sought immunity from the antitrust laws either from a benevolent court or a charitable Congress. The fact that many such groups succeeded meant that a large sector of the economy was permitted to operate free from the hazards of competition.


Accordingly, if one is to understand the antitrust status of professional baseball, there must be some examination of these broader patterns, particularly in regard to the kinds of exemptions that have been granted, the groups that have sought them, and the conditions that precipitated them. One should not presuppose that professional baseball is representative of the type of business receiving an exemption; however, it would be helpful to have some understanding of the antitrust laws, their effectiveness, and the attitudes with which most business groups have viewed them.

Enacted as a response to the emergence of giant industrial corporations and combinations in the late nineteenth century, the antitrust laws purported to honor the American ideal of competition, which, by that time, had become more of a myth than a reality. By 1890 almost half the states had some such measure, either as a statute or a constitutional provision. Yet these state laws were unable to deal effectively with large interstate corporations whose financial resources were often superior to those of a state government. The result was growing sentiment

---

for a federal law, and this, in 1890, finally culminated in the passage of the Sherman Act, the measure that has served ever since as the foundation of American antitrust policy.

Titled "An Act to protect trade and commerce against unlawful restraints and monopolies," the Sherman Act contained, in its first two sections, the essence of the antitrust idea. Section one declared "every contract, combination in the form of trust or otherwise or conspiracy in restraint of trade or commerce..." to be illegal. Section two declared "every person who shall monopolize any part of the trade or commerce" among the states or with foreign countries to be guilty of a misdemeanor. And in subsequent sections, the act provided remedies, both through criminal penalties and by allowing injured parties to sue for treble damages.

From the beginning, however, the act served more as an embodiment of ideals rather than a practical guide to

---

4 Congressional Record, XXI, 51st Congress, 1st Session, pp. 3153, 6314. The passage of the law came by a near unanimous vote in each house of Congress. The Senate vote, on April 8, was 52-yeas, 1-nay, 29 not voting; the House vote, on June 20, was 242-yea, 0-nay, 85 not voting.

5 U. S. Statutes at Large, XXVI, Part I, 209 (1890).
action. In the words of Richard Hofstadter, it was purposely vague and was recognized only "as a gesture, a ceremonial concession to an overwhelming public demand for some kind of reassuring action against the trusts." In the 1890's the Supreme Court also emasculated it. In the United States v. E. C. Knight case (January 21, 1895), it ruled that even though the Knight company had gained control of ninety-five percent of the sugar production in the United States, the Sherman Act did not apply. This measure, the Court said, "denounced ... monopoly and restraint of interstate and international trade or commerce." It did not apply to manufacturing or a monopoly of production.

The first serious prosecutions under the Sherman Act came during the administration of Theodore Roosevelt. The Antitrust Division of the Department of Justice had its beginning in 1903, when Congress appropriated five hundred thousand dollars "for conducting proceedings, suits, and prosecutions under the antitrust laws of the United States."

---


7 United States v. E. C. Knight Company 156 U. S., 1, at 10 (1895).

8 U. S. Statutes at Large, XXXII, Part I, 903, at 904, (1903).
Subsequently, Roosevelt acquired the reputation of "trust buster," and his successor, William Howard Taft, was even more vigorous in his enforcement policy; but neither had much success in solving the trust problem or altering the basic structure of American industry.

In practice, then, the Sherman Act seemed ineffective; and because of this ineffectiveness, the progressive reformers sought new legislation that would supplement and clarify the measure. By this time, moreover, many business groups favored measures that would stabilize competition. They, too, were thinking in terms of a federal trade commission. And the eventual result was the passage of two measures in 1914, the Federal Trade Commission Act and the Clayton Act. The former created a five-man commission, empowered to "prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce." The latter dealt with more specific business practices than did the Sherman law. Under it, price discrimination (section two), tying contracts and exclusive

---


10 U. S. Statutes at Large, XXXVIII, Part I, 717 (1914).
dealing arrangements (section three), purchase of stock in one company by another (section seven), and interlocking directorates when one of the companies had a net worth of more than one million dollars (section eight) were all forbidden if these practices substantially reduced competition or created a monopoly.\textsuperscript{11}

These new laws, however, were not accompanied by a vigorous enforcement policy. On the contrary, World War I brought a temporary suspension of antitrust activities and while the administrations of the 1920's engaged in occasional flurries of prosecution, the main drift of postwar policy was toward building business combinations rather than dissolving them. The provisions of the Clayton Act were largely interpreted away, and the Federal Trade Commission became an agency for promoting trade association agreements, most of which fostered collusion rather than competition.\textsuperscript{12}

With the onset of the Great Depression, many business groups advocated repeal or modification of the antitrust laws as the way out. Other groups, too, were turning to the idea of economic planning, and eventually the agitation

\textsuperscript{11}Ibid., 730.

along this line led to the creation of the National Recovery Administration in 1933.\(^{13}\) For two years the antitrust laws were to be suspended while the government promoted a series of business cartels. In operation, however, the NRA program failed to work well, and after it had been destroyed by the Supreme Court, Franklin Roosevelt, searching for other methods by which to bring about recovery, finally turned to an antitrust approach. A revitalized Antitrust Division, under the leadership of Thurman Arnold, pursued an active policy of trust busting until 1941, when wartime developments curtailed its activities.\(^{14}\)

The antitrust policy of the later New Deal established a pattern that was followed after the war. The Justice Department attacked many industrial giants, and while not always successful in the prosecution of its cases, brought into court such organizations as the Aluminum Company of America, the American Tobacco Company, Dupont, the Great Atlantic and Pacific Tea Company, the International Boxing Club, and Paramount Pictures. Such activity, moreover, did not occur only under the Democrats. The Justice Department


\(^{14}\)Ibid., pp. 440-441.
under Dwight Eisenhower initiated more suits in the five years from 1953 to 1958 than in the previous sixty three years.\textsuperscript{15}

The antitrust laws, then, have never been consistently enforced; yet there was always the possibility of enforcement, and frequently they have become potent weapons in the hands of disgruntled competitors, large-scale customers, and those entrepreneurs who wanted to disrupt the status quo. Consequently, the attitude of business toward them has often been ambivalent. As an American ideal, a check against governmental regulation, or a weapon against rival groups, they have enjoyed considerable business support; yet, at the same time, a variety of business groups have worked diligently to secure special exemptions, to convince either the courts of Congress that enforced competition was fine for their rivals but ruinous for them.

Traditionally, judicial exemptions have been easier to secure than legislative ones; and hence a variety

of economic groups have felt that their best chance lay in finding legal loopholes through which sympathetic judges would allow them to escape the literal meaning of the law. One of the greatest loopholes of this sort, for example, one that in effect sanctioned the oligopolistic structure of America's basic industries, was the "rule of reason," first enunciated in the Standard Oil case of 1911 and later broadened in the United States Steel and International Harvester cases of the 1920's. Restraint of trade, so the Supreme Court held in these cases, must be "unreasonable" in order to violate the antitrust laws. "Mere size" or "the existence of unexerted power" were not crimes. And uniformity of prices throughout an industry indicated neither collusion nor excessive domination by one company.

Under this interpretation the super-corporations of American industry, those that had already acquired market power, could operate without any real fear of prosecution.

16 Standard Oil Company of New Jersey et al. v. United States, 221 U. S., 1, at 52; United States Steel Corporation et al., 251 U. S., 417, at 447-453, 451 (1920); United States v. International Harvester Company et al., 274 U. S., 693, at 708-709 (1927). This doctrine has been modified and, at times, rejected by later courts, such as in the 1946 American Tobacco case and Schine Chain Theatres, Inc. et al. v. United States, 334 U. S., 116 (1948). In the Schine case, the court declared that "mere existence of power to monopolize, together with purpose or intent to do so, constitutes an evil at which the Act is aimed."
Because of the oligopolistic structure of their industries, price stabilization was almost automatic; and hence, they had little need for collusion or further consolidation. In the words of John Kenneth Galbraith, "the most important effect" of this policy was "to deny market power to those who do not have it or have difficulty in exercising it while according immunity to those who already have such power." 17

With those who were trying to secure economic power or who needed collusion to maintain it, the courts have been less sympathetic. In practice, the specific provisions of the Clayton Act have been easier to apply to small businessmen than large, and typically, the courts have held that overt price and production agreements were illegal per se, regardless of their reasonableness. 18 At various times in its history, however, the Supreme Court has accepted the idea that excessive competition is ruinous, that stability is in the public interest, and that the "rule of reason" could be stretched to cover groups that were trying to achieve this stability. In 1933, for example, at the depth of the Great Depression, it ruled


that the selling cartel established by the Appalachian Coal Company did not violate the Sherman Act. The conditions in the coal industry, it felt, were such that price fixing was almost impossible, and consequently, the stability afforded by the Appalachian combine did not stifle competition. On the contrary, it would allow the coal business to compete with other fuel industries. 19

Somewhat similar reasoning also underlay the McLean Trucking case in 1944. Here the merger that created a New England trucking monopoly was held to be reasonable and in the public interest. 20

Still another possibility for judicial exemption lay in the limited constitutional base for federal action, in the fact that the antitrust laws were based on the power over "interstate commerce," which, in turn, could be defined and interpreted by the courts. Two of the businesses benefiting from such limited definitions of interstate commerce were insurance and professional baseball. 21 The court's decision in the Knight case had the same effect on the early sugar monopoly.

19 Appalachian Coal, Inc. et al. v. United States, 288 U. S. 344 (1933).


For a number of groups, however, judicial exemptions have been difficult to obtain or inadequate when granted. As noted previously, industries with atomistic structures, who have had trouble in acquiring or maintaining market power, have not received much sympathy from the courts. Non-business groups, such as farmers and laborers, have also had difficulty in winning legal victories, and the recent tendency to broaden the scope of the commerce power had undercut exemptions that once seemed secure. Consequently a variety of economic groups, among them labor unions, agricultural co-operatives, exporting firms, transportation organizations, defense plants, and the insurance business, have turned to Congress, sometimes with the idea of reversing an unfavorable court decision or strengthening a favorable one, but more often with the notion that legislative action could succeed where judicial action could not. In a number of cases, moreover, where the group concerned has possessed the necessary lobby and a convincing rationale, it has been able to secure special treatment.

The first groups to seek such exemptions were the labor unions and agricultural co-operatives, who agitated for such a provision in the Sherman Act. Failure to

22. Thorelli, p. 231.
obtain this led to decades of difficulty for labor organizations, which, in turn, produced a campaign on their part to secure legislative exemptions. The eventual result, in 1914, was a section in the Clayton Act, which, in theory, exempted labor and agricultural groups from the antitrust laws. In practice, however, this provision turned out to be an exemption in name only. It was interpreted away in the courts. And it was not until the 1930’s, with the passage of the Norris-Laguardia and Wagner Acts, that labor, encouraged by a friendly Democratic administration, finally achieved a broad exemption and a position of economic strength.

In the meantime, agricultural organizations were also working for a broad exemption, and on the whole, were receiving more favorable treatment than the unions. The nation, after all, had been populated originally by farmers. Farm movements, unlike their labor counterparts, were never associated with foreign or alien ideologies. And the


24 U. S. Statutes at Large, XXXVIII, Part I, 730, at 731.

25 Herman, p. 219; Bernstein, pp. 210-213; Some of the important decisions were Truax v. Corrigan, 257 U. S., 312 (1921), and Coronado Coal Company v. United Mine Workers, 268 U. S., 295 (1925).
result was a favorable public image, which politicians respected, and which enabled farm groups to escape the prosecutions that harassed organized labor.

By the early 1920's, farm spokesmen were arguing that the individual farmer was too weak economically and politically to market his produce profitably or to bargain effectively for fair prices. And this argument had considerable appeal. Under the Capper-Volstead Act of 1922, agricultural co-operatives won the absolute right to operate unrestricted by the antitrust laws. "Persons engaged in the production of agricultural products" now had the right to "act together in associations, corporate or otherwise ... in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged." For agriculture, however, mere exemption was not enough. When private actions proved inadequate, there was growing agitation for government-supported price and production controls, and with the New Deal in 1933, these became a reality. Under the new dispensation, moreover,

---

26 U. S. Statutes at Large, XLII, Part I, 388 (1922).
agricultural groups were able to secure government backing for their co-operative arrangements. Under the Agricultural Adjustment Act of 1933 and the Agricultural Adjustment Marketing Act of 1937, the Secretary of Agriculture could approve marketing agreements, and once approved, these had the force of law and were exempt from the antitrust statutes.  

Another area in which competition seemed excessive and ruinous, at least from the standpoint of the businessmen involved, was that of transportation; and here, just as in agriculture, there was strong agitation for regulatory schemes and industry-wide co-operation. Many of the railroad measures that followed the Interstate Commerce Act were designed to stabilize and aid the industry itself, and this was particularly true of the Transportation Act of 1920, the postwar measure that returned the railroads to private hands. Providing a foundation for future consolidation, this law directed the ICC, "as soon as practicable," to "prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems."

27 U. S. Statutes at Large, L, Part I, 246 (1937).
28 Kolko, p. 59.
Mergers, pooling, and cartelization, if undertaken in accordance with the act, could not be prosecuted under the antitrust laws. The Transportation Acts of 1933 and 1940 also adopted the same approach, and in 1948, after the Supreme Court had finally brought the rate-fixing and traffic associations within the scope of the Sherman Act, the Reed-Bulwinkle Act granted a special exemption to these groups.

Also asking for and securing special consideration was the American shipping industry. In 1916 Congress passed the Shipping Act, creating a five-man Shipping Board, the duties of which were to regulate common carriers by water, in the United States and its territories, on the Great Lakes, and on the high seas. Under the new arrangement, shippers could make agreements regarding rates and services, subject to approval and possible cancellation by the Board, and once approved, these were exempt from the antitrust laws. Four years later the Merchant Marine

29 U. S. Statutes at Large, XLI, Part I, 456 (1920).
30 U. S. Statutes at Large, XLVIII, Part I, 211 (1933); LIV, Part I, 898 (1940); LXII, Part I, 472 (1948).
31 U. S. Statutes at Large, XXXIX, Part I, 728 (1916).
Act expanded the Board to seven commissioners and exempted associations of marine insurance companies. Another act, passed in 1936, offered additional aid to the troubled industry. 32

The placing of these older branches of transportation under government regulation and the granting of at least partial exemption from the antitrust laws established a precedent that could be extended throughout the field. The Civil Aeronautics Act of 1938, for example, followed the pattern set by the earlier legislation. Under it, a five-man board, appointed by the President and given general regulatory powers over aviation, might approve and grant antitrust exemptions to mergers and consolidations. 33 Trucking and inland waterways were also brought within the system. 34 And the result, eventually, was a broad area of the economy in which direct regulation and co-operative arrangements had supplanted the operation of a free market.

American exporters were still another group that argued for special treatment. In the export trade, they

32 U. S. Statutes at Large, XLI, Part I, 988 (1920); II, Part I, 1985 (1936); Hawley, pp. 237-238.
33 U. S. Statutes at Large, LII, Part I, 973 (1938).
34 Hawley, pp. 233-234, 239.
claimed, Americans were at a disadvantage because the foreign cartels often controlled the markets, and this situation, they argued could be alleviated only by permitting joint action by American firms. Some congressmen, to be sure, were skeptical. Senator William Borah, for example, suggested that if monopolies were beneficial for American trade abroad, then they would be good for American domestic trade, and such men as Gilbert Hitchcock and Albert Cummins cited statistics to show that American trade was not suffering from unfair competition. A majority of Congress, however, seemed to agree with the exporters, and the result was the Webb-Pomerene Act of 1918, permitting American companies to form export associations whose activities were immune from the antitrust laws.

Other exemptions have been secured during periods of national emergency, when American leaders have been willing to resort to unusual and otherwise unacceptable methods, and when business groups could argue that a relaxation of antitrust policy was in the public interest or would

35 Edwards, p. 50.

36 Congressional Record, LVI, 65th Congress, 2d Session, pp. 71, 111, 117.

37 U. S. Statutes at Large, XL, Part I, 516 (1918).
contribute to national defense. The economic depression of the 1930's, for instance, presented to businessmen an opportunity to call for repeal, or at least modification, of the antitrust laws. Claiming that ruinous cutthroat competition throughout the preceding decade had precipitated a series of events resulting in the current economic crisis, they argued that only through self-regulation, curtailing the harmful excesses of competition, could business recover. 38

While Herbert Hoover was not particularly receptive to these ideas, Roosevelt, in searching for a weapon with which to combat the depression, came to believe that some relaxation of the antitrust laws, allowing business co-operation and collaboration, would facilitate recovery. 39 The result was the National Industrial Recovery Act of 1933, allowing business groups to draw up industrial codes, which, when approved by the President, were exempt from the antitrust laws. 40 In practice, this system lasted only two years, but even after its dissolution, a number

38 Hawley, pp. 39-41.
39 Ibid., p. 42.
40 U. S. Statutes at Large, XLVIII, Part I, 195 (1933).
of the code provisions like those in bituminous coal or 
retail trade, were retained through special legislation.  

The other type of emergency situation used to justify 
exemptions was that of war. The antitrust laws, so busi-
nessmen argued, interfered with national defense, and 
consequently, they were usually set aside. During World 
War II, for example, the Small Business Mobilization Act, 
exempted monopolistic practices, so long as they were 
approved by the War Production Board, were "requisite to 
the prosecution of the War," and were "deemed in the public 
interest." And during the Korean War, the Defense Pro-
duction Act of 1950 granted antitrust exemptions to volun-
tary agreements, provided they had the approval of the 
President and were either "in the public interest" or 
contributory to "the national defense." Extensions of 
this act were still in effect in the 1960's, granting 
exemptions to manufacturers of such products as artillery, 
small arms, ammunition, explosives, and propellants.  

\[41\] Hawley, pp. 206-212.  
\[42\] U. S. Statutes at Large, LVI, Part I, 351 (1942).  
\[43\] U. S. Statutes at Large, LXIV, Part I, 798 (1950).  
\[44\] Hund, p. 168.
All of the groups discussed thus far—unions, agricultural co-operatives, exporters, transportation companies, and producers of defense items—have had one thing in common. All were originally subject to the antitrust laws, and therefore required special legislation to become wholly or partially exempt. There were other groups, however, who were originally held exempt by the courts, and whose legislative activities stemmed either from a change in status or a desire to strengthen the original exemption and block attempted regulation.

One such industry was insurance. In 1869, in the case of Paul v. Virginia, the Supreme Court had declared emphatically that "issuing a policy of insurance is not a transaction of commerce," and that "these contracts are not articles of commerce in any proper meaning of the word."45 Hence, the insurance business presumed that it lay outside the scope of the Sherman Act, and for some fifty-four years after the passage of the law, the industry continued to operate under this doctrine, establishing a thorough system of self-regulation, restrained only by state law. Not until the early 1940's, when the Department of Justice began investigating the activities of the

South-Eastern Underwriters Association, was there any threat to the system. And, accordingly, it was at this point that the industry began seeking special legislation. In November 1943, Representative Francis Walter of Pennsylvania, who would later sponsor similar legislation pertaining to baseball, introduced a bill that would grant a total exemption to insurance companies. Congressman William J. Miller, in the insurance business himself, also supported the measure, stressing the argument that an unfavorable court decision would destroy the system of state regulation.

In June 1944, the fears of insurance executives finally materialized. Delivering the majority opinion in the South-Eastern Underwriters case, Justice Hugo Black asserted that insurance was "commerce" and that Congress had no intention of exempting it from the antitrust laws. It was difficult, he said, to conceive of any language more comprehensive than that used in the Sherman Act. Immediately, the decision was denounced in Congress, as

46 Congressional Record, LXXXIX, 78th Congress, 1st Session, p. 9710.
47 Ibid., p. 10659.
being, among other things, a step toward the destruction of states' rights and the growth of big government. New legislation, it seemed, was imperative. As Emmanuel Celler put it, the industry's leaders were determined "to get absolution for their sins."\(^ 50\) And the result was the passage of the McCarran-Ferguson Act, signed into law on March 9, 1945. Under its provisions, the federal antitrust laws would be applicable to the insurance business only where it was not covered by state regulation.\(^ 51\) In the words of one critic, the law amounted to an "unpromising experiment which makes excessive concessions to pressure from an industry that has learned its way about legislative halls."\(^ 52\)

A wide variety of groups, then, from labor unions to the insurance business, have viewed the antitrust laws as an obstacle in their quest for greater market control. Some groups, such as labor, agriculture, and the transportation industries, have wanted not only permission to

\(^{49}\) Congressional Record, XC, 78th Congress, 2d Session, p. 6559.

\(^{50}\) Ibid., p. 6449.

\(^{51}\) U. S. Statutes at Large, LIX, Part I, 33 (1945).

\(^{52}\) Edwards, p. 75.
develop controls, but also government support of them; and to get this, they have been willing to pay the necessary price. Others, like the exporters, have wanted only an exemption, a law that would permit them to combine without fear of prosecution. And still others have been interested in legislative action only when their judicial exemptions have been threatened or withdrawn. Like the insurance industry, they have been content with self-regulation, and have merely wanted to be left alone.

For the most part, as subsequent chapters will show in more detail, the activities of organized baseball would appear to fall in the third category. Like the insurance executives, baseball leaders were able to obtain a judicial exemption. Under cover of this, they developed a system of self-regulation, and later, when the system was threatened by a newer definition of interstate commerce, they sought to reinforce and maintain their existing status through special legislation. The difference, perhaps, lay in the nature of their rationale. For here, in addition to the symbol of states' rights, the baseball organizations could draw upon the whole gamut of special appeals. Like the labor unions, they argued that they were not producers of a tangible product, and for this reason, should be exempt. Like farm groups, they maintained a favorable
image by appealing to the traditional symbols of Americanism. And like exporters and transportation leaders, they argued that rigidly enforced competition would be harmful because of the peculiarities of their business.

By a variety of appeals and devices, then, similar to those used in other industries, baseball was able to secure and maintain antitrust immunity, a situation that permitted it to develop and operate with relative freedom, governed only by the desires of its leaders to create stability and to eliminate friction. The precise methods by which this was accomplished will be discussed in the following chapter, with subsequent portions of this study dealing with baseball's confrontation with the courts, and its experiences before Congress, in search of legislative help.
CHAPTER II

PROFESSIONAL BASEBALL: ITS DEVELOPMENT, STRUCTURE, AND COMPETITIVE PROBLEMS

Baseball, says Warren Giles of the National League, is "too much of a business to be a sport and too much of a sport to be a business and therefore it must be both."¹

As a sport it is a principal leisure activity of both children and adults in the United States and in numerous foreign countries, and although not everyone likes it, no one really begrudges the pleasure that others receive as participants in or spectators of the game. As a business, it is a tightly-controlled organization, composed of professional players, administrative officials, and corporate personnel, and while these people undoubtedly enjoy their involvement with baseball, they can, if successful, enjoy considerable financial rewards. Consequently, it is the

business structure of baseball, not the athletic aspects, that occasionally arouses the interest of Congress or forces baseball officials into court rooms.

By American standards, baseball is an old game. A derivation of an English game called "stool ball," it was played in its primitive form in that country as early as 1700. In America it appeared under various names and was already being played by the time of the Revolution. Its evolution continued throughout the early years of the nineteenth century, accompanied by an increasing standardization of the playing procedures. In 1842, for example, a group of prominent New Yorkers formed the Knickerbocker Baseball Club, primarily as an exercise society, and in 1845 the club organized formally and wrote a system of rules that provided some uniformity for the future. It was this baseball of the cities, as played by the Knickerbocker Club and its imitators, and not the unorganized participation of the countryside, that was the most significant in the development of a commercial spectator sport.

---

3 Ibid., pp. 136-137. 4 Ibid., pp. 161-165.
The essence of this urban form of baseball in the 1840's and 1850's was the spirit of genteel amateurism. Participants in the game, mostly members of clubs in the large eastern cities, were expected to reflect the values and attitudes of the upper classes, and many of them clung strongly to their position as amateurs, contributing their own money for equipment, uniforms, and maintenance of playing facilities, and even refusing reimbursement for travel expenses. In 1859, several of these amateur groups organized the National Association of Base Ball Players. By the following year sixty clubs were members. And in 1871 this organization became the National Association of Professional Base Ball Players, a group that served as the foundation for organized baseball until the creation of the National League in 1876. The single word added to the association's name indicated the basic factor that had altered the character of the game.

As the country approached the Civil War, the "more traditional American values" of commercialism and competition were supplanting the gentlemanly amateurism that had characterized the earlier game. By 1858 some clubs

\[6\text{Ibid.}, \text{pp. 8-10.}\]
were already charging admission, and during the war period, because of intermingling of troops from all sections of the country, interest and participation, once limited largely to the more affluent from the northeast, spread rapidly to the working classes. In 1859, a writer in Harper's Weekly had doubted that baseball or any other game was popular enough to be called the national game. Six years later the same newspaper announced the impending trip of the Philadelphia Athletics to the New York area, noting that at times more than ten-thousand persons, including ladies, attended baseball games. "There is no nobler or manlier game than base-ball," declared the writer, "and the more it is cultivated the better for the country."

This increasing popularity of baseball also created a demand for skilled players; those who possessed the skills demanded payment for their services; and the result was a change in the kind of person who became a player, a shift from the leisure class gentleman to men of the working class. At least three factors contributed to this.

---

7Ibid., p. 10.
10Voigt, pp. 19-20.
In the first place, the more sophisticated gentlemen found the new atmosphere of commercialism and fierce competition distasteful. Secondly, the promise of financial reward was a strong inducement to a laborer. The rosters of nineteenth century teams, with their abundance of players with Irish names, suggest that many men of that immigrant group, unskilled and forced into the worst jobs, used professional baseball as a step toward an easier life. And thirdly, the men of the working class were probably better players.

One of the many myths of baseball is that the Cincinnati Red Stockings of 1869 were the first professional team. Actually, payment to the better players, in the form of shared gate receipts, bribes from gamblers, lucrative jobs in industry, or positions in political machines, had begun several years earlier. According to one writer, the United States Department of the Treasury was chiefly responsible for the growth of baseball in Washington, D.C., primarily because it served as a source of patronage to players. The Red Stockings, however, were the first players to receive a negotiated salary.

11 Ibid., pp. 14-18.
12 Ibid., p. 18.
Their season payroll for a ten-man squad in 1869 was 9,300 dollars. Shortstop George Wright, the highest paid, received a salary of 1,400 dollars.\textsuperscript{13}

Generally speaking, such organizations as the Red Stockings and those that followed in its wake were player oriented, and frequently the result was economic anarchy. Players were able to sign contracts with whomever they chose, they continually switched teams whenever more money could be made, and because the wealthier teams could buy the better players, a great imbalance developed. Baseball magnates saw the dangers of such a situation, realizing that public interest in their business, and with it, income, were dependent upon the relative playing strengths of the different teams. Thus, to insure that one team was neither too superior nor too inferior to the rest of the league required that unbridled competition be confined to the playing field while the business offices regulated economic competition through different forms of collusion.\textsuperscript{14}

\textsuperscript{13} Ibid., pp. 21, 27.

This realization, in 1876, produced the National League of Professional Baseball Clubs, designed to achieve greater stability by imposing controls over players.

By this time, too, baseball was taking on more and more characteristics of a business enterprise. As early as 1868, Henry Chadwick, the father of American sports-writers, had noted this tendency, and once the formation of the National League produced relative stability, the stage was set for the emergence of a big business. "What was formerly a pastime," wrote John Ward in 1886, "has now become a business, capital is invested from purely business motives, and the officers and stockholders of the different clubs include men of social standing and established business capacity." Before the end of the next decade, another writer claimed that no business "is conducted more in the Vanderbilt-public-be-damned principle than baseball."

Following its inception, the National League faced numerous challenges from rival organizations, among them the Union Association, the American Association, and the Players League. Only one of these, however, had any

---

15 Voigt, p. 21.


lasting success. In 1901, the American League proclaimed itself of major league status and thus ended a ten-year monopoly by the National. As it turned out, though, uncontrolled competition between the two proved to be short lived. The leaders of the older league recognized the business and organizational talents of the new men, particularly of American League president Bancroft Johnson. They felt, too, that controlled competition, regulated by a sound, business-like organization, would be beneficial to all, a sentiment shared by most of the American Leaguers. And accordingly, in 1903, they made peace, wrote the National League's player restrictions into a general agreement, and established two eight-team leagues, a structure that would remain unchanged for fifty years. In practice, moreover, the new system proved to be more effective and profitable than the total monopoly enjoyed earlier by the National League.

In the decade following 1903, the baseball business enjoyed unequalled prosperity. Attendance continued to rise, and the teams accommodated the new fans by replacing their old wooden facilities with new concrete and steel

---

stadiums. The inauguration of the World Series in 1903 also stimulated public interest, since it provided a suitable culmination to the baseball season and allowed a single champion to be determined from a playoff between the winners of the two leagues. Player salaries, too, had begun to increase from the austere levels of the 1890's. By 1913, the salary of the average major leaguer was an estimated two thousand dollars a year. Some figures, such as John McGraw of the New York Giants, were making as much as eighteen thousand. And some of the more illustrious players, such as Napoleon Lajoie, Rube Waddell, and Smokey Joe Wood, were supplementing their income by proclaiming the benefits of drinking Coca Cola or wearing Regal shoes. All members of the industry, businessmen and athletes alike, were obviously benefiting from the prosperity afforded by the new stability. The pattern for modern commercial baseball had been established.


By this time, too, the term "organized baseball" had come to encompass almost all of professional baseball, since people found it difficult to operate teams outside the existing framework. The basic component of that framework remained the league, with a membership ranging from six to twelve teams, and the pattern crystalized into that of two major leagues and numerous minor leagues. Subsequently, American baseball developed working agreements with leagues in Canada, the Caribbean, and Latin America, and the result was a monolithic structure, outside which a professional player was unable to perform.

Heading this vast organization was the Commissioner of Baseball, a position created in 1920 to supplant the relatively weak three-man commission system, which had received much criticism following the 1919 World Series.

---

22 House, Committee on the Judiciary, Organized Baseball, pp. 5, 188. 1951 was a peak year for minor league baseball. As a side-effect of post-war prosperity, some fifty leagues, with 348 teams were operating. Since that time the size of the minor leagues has dwindled, primarily because of the telecasting of major league games into minor league areas. In 1967, 19 leagues, with 138 teams were in operation.

By this time, moreover, power had gravitated to the owners of the major league clubs, and they alone elected the commissioner. Neither the minor leagues nor players at any level had any voice in his selection, although he did have widespread powers over these groups, particularly over the players. Generally speaking, he could investigate any activity he thought to be detrimental to the game, could rule on any dispute between the leagues or between players and owners, and could impose punitive sanctions ranging from a reprimand to permanent ineligibility.

Holding the Commissioner's domain together were a series of agreements, one group of which dealt with


26 Major League Agreement of 1960, printed in Senate, Committee on the Judiciary, Professional Sports Antitrust Bill—1962, pp. 150-151. The owners chafed under the power they had given the Commissioner, and the clause promising acquiescence in all his decisions, which had been in the contracts of the first Commissioner, Kennesaw Mountain Landis, and his successor, Happy Chandler, was omitted when Ford Frick took office in 1951. John Davenport, "Hobble at Home Plate," Town and Country (April, 1958), printed in U. S. Senate, 85th Congress, 2d Session, Committee on the Judiciary, Organized Professional Team Sports (Washington, 1958), p. 632.
territorial rights. These had become necessary, so the
argument ran, after the attempts of "outlaw" leagues to
place rival teams in major league cities had escalated
into ruinous economic warfare. After the National League
and the American Association concluded the first such
agreement in 1873, a number of others followed. In the
opinion of John Ward, an outstanding player of the period,
a member of baseball's Hall of Fame, and a graduate of
Columbia University's Law School, the arrangement created
a trust "as compact and effectual" as Standard Oil. 27

In the twentieth century this principle of protected
territory remained a basic feature of the baseball struc-
ture. Section 34 of the National League Constitution gave
each team exclusive control of its city and area to a dis-
tance of five miles from the corporate limits. Within
that territory no other teams could play without the
permission of the local club. 28 And for minor league
teams, the Major League-Minor League Rules afforded sim-
ilar protection. 29

27 John Montgomery Ward, "Our National Game," The
Cosmopolitan, V (October, 1888), 444-445.

28 U. S. House of Representatives, 82d Congress, 1st
Session, Committee on the Judiciary, Study of Monopoly
Power, part 6, Organized Baseball (Washington, 1951),
p. 1101-1102.

29 U. S. House of Representatives, 85th Congress, 1st
Session, Organized Professional Team Sports (Washington,
Even more important, however, in achieving unity and stability, was the Uniform Player Contract, particularly section 10b. This was the controversial "reserve clause," first instituted in 1879 as a solution to the problem of "revolving," the tendency of ball players to uphold the American tradition of going where the money was. As players like Ward saw it, it was designed essentially to "make the business of baseball more permanent," reduce salaries, and "secure a monopoly of the game." In specific terms, it restricted a player to one team for as long as that team desired his services, and required him, when signing his contract, to agree that he would not sign with another team after his contract expired. The clause, moreover, was virtually mandatory. Rule 3a of the Major League rules forbade, except with permission from the Commissioner, any other than the uniform contract.

---

30 Voigt, p. 21; John Montgomery Ward, "Is the Baseball Player a Chattel?" *Lippincott's*, XL (August, 1887), 310.

31 Ward, "Is the Baseball Player a Chattel?" 311.


When pressed on the matter, baseball men would admit that any contract signed by a player, was, in effect, a lifetime obligation. 34

Since all participants in organized baseball recognized the validity of the reserve clause, it prevented teams from engaging in competitive bidding for a player's services. Viewed from a different angle, it prevented a player from offering his services to all interested teams and accepting the most advantageous offer. It was only when some "outlaw" league, one that did not operate within the structure of organized baseball, and thus did not recognize the reserve clause, began luring players away that difficulties arose, and professional baseball found itself and its antitrust exemption under the scrutiny of the federal courts.

When such cases arose, moreover, the reserve clause became the subject of heated controversy. Its defenders asserted that without it baseball would revert to the conditions of earlier times, to a chaotic scramble for players with the wealthier teams able to collect the best and thus to dominate the leagues year after year. Critics replied by pointing to the long periods of success enjoyed by the New York Yankees and the Brooklyn-Los Angeles

34 Testimony of former Commissioner Ford Frick, in Study of Monopoly Power, p. 64.
Dodgers, success that had been achieved despite or because of the reserve clause. Admitting that it might be somewhat unfair, others defended the rule by pointing out that the high salaries paid to baseball players compensated for any inconvenience inflicted. Yet many would agree with Judge Jerome Frank, who, in an important case of the 1940's, declared that "only the totalitarian-minded will believe that high pay excuses virtual slavery." Other arguments against the clause were that it wasted talent by keeping possible starters on one team as substitutes on another, that it kept some players in the minor leagues too long, and that it kept good players on perennially weak teams, all of which restricted earning power.

However much one might object to protective agreements and restrictives contracts, he could not seriously assert that they were unique to baseball. Actually these were but variations on methods long used by American

38 Seymour, pp. 112-114.
businessmen, similar to those employed by such men as John D. Rockefeller, Andrew Carnegie, and Cornelius Vanderbilt in developing their industrial empires. The baseball magnates of the 1890's, in fact, saw themselves as counterparts of those men. Nor were the reasons for resorting to such techniques, the elimination of competition and consolidation of economic power, especially different.

The perfection of this organization structure was also accompanied and often motivated by the continued emergence of baseball as a big business with fixed costs and heavy investments. By 1963, total annual income for professional baseball in the United States had reached sixty-eight million dollars, and some of the more successful teams had become highly profitable. The Baltimore Orioles, for example, in their championship year of 1966, reported a total income of over four million dollars, out of which they made a net profit of $66,899 dollars. And the Braves, in their first year in Atlanta after leaving Milwaukee, reported a net income of almost one million dollars.

---

39 Voigt, p. 225.
dollars.\textsuperscript{42} The value of a team's assets, of its franchise, players and playing facilities had also grown proportionately. In 1966 the Cincinnati Reds were sold for a reported seven million dollars.\textsuperscript{43} Two years earlier the Columbia Broadcasting Company paid fifteen million for the New York Yankees.\textsuperscript{44} And when the National League added Houston and New York in 1961, these new teams each paid 1,800,000 dollars for twenty-two players.\textsuperscript{45} The wealthiest team in baseball by the 1960's was the Los Angeles Dodgers, whose stadium and property alone had an assessed value of thirty-two million dollars.\textsuperscript{46}

Often, too, the men who owned these organizations had extensive connections with other areas of American business, a fact that enhanced the aura of commercialism surrounding the sport. In 1965 only three of the twenty major league owners, Walter O'Malley of the Dodgers, 

\textsuperscript{42}Ibid.
Horace Stoneham of the San Francisco Giants, and Calvin Griffith of the Minnesota Twins, relied solely on their baseball teams for a livelihood. Owners of the others included the Columbia Broadcasting System, August A. Busch, the brewer, Phil K. Wrigley, the chewing gum manufacturer, Gene Autry, the country's wealthiest singing cowboy, and people with interests in insurance, real estate, broadcasting, investment banking, and mining.  

Baseball was of increasing economic importance, too, in its ability to generate income for other businesses. The sporting goods industry, for example, owed its original impetus to the development of the game. The Topps Chewing Gum Company got into antitrust difficulties because of its control of the bubble gum picture card market. And the efforts of civic groups to acquire new teams for their cities were strongly motivated by economic considerations. In 1965 the Twins and the football Vikings generated an estimated seventy-eight million

---


dollars in additional sales in Minnesota, and in 1966, the Braves brought a thirty million dollar increase to Atlanta.  

In addition, there was the tie between baseball and the communications media. Quite early baseball people saw that they could use the urban newspapers to cultivate public interest in the sport, supply free advertising and thus increase their profits. And the newspapers, once they realized that circulation could be increased by directing sports coverage toward the working class, were glad to change their stilted literary style. At best, however, they could provide only post-game reports. It was the newer electronic media that enabled baseball fans all over the country to enjoy simultaneous accounts of the game. From the initial radio coverage of the 1921 World Series, broadcasting of baseball became a daily, nation-wide affair.

The new media also had their effects on the composition and income of the industry. Baseball executives


52 Voigt, p. 33.

at all levels recognized the dangers inherent in forcing minor league teams to compete for fans with broadcasts, especially television, of major league games. In the late 1940's they tried to solve this problem by limiting major league telecasts to a fifty-mile radius from the point of origin, but pressure from the Department of Justice, on the grounds that such a rule might be a violation of the antitrust laws, forced its repeal. The eventual result was the decline of the minor leagues and the opening of a new source of income for baseball, most of which went to the major leagues.

By 1966 yearly income for the major leagues from broadcasting had reached twenty-seven million dollars. Yet this change had also brought a new threat to the stability of the industry. A number of people, including some federal judges, believed now that baseball games, because of radio and television coverage, were being played on an interstate basis. And for this reason,

---


they felt, the old doctrine, the view that baseball was not interstate commerce, had become obsolete.

Viewed in retrospect, then, baseball began as a sport, acquired some of the characteristics of business, and soon developed into both. It became a business when men recognized the potential profit to be gained from its growing hold on the American people; and once the players found that they could demand payment for their services, they tended to go where they could earn the most, a development that necessitated a tighter organization that could provide some restraint on the players and make the venture more profitable for the team owners. From such necessity was born the National League in 1876 with its territorial agreements and restrictive contracts. The stability created by this development served as the foundation for the growth of professional baseball in the United States into what some felt was a highly effective monopoly. In the decades that followed, investments and revenues increased, connections with other businesses, especially broadcasting, grew, while the leadership of the game increasingly was dominated by men from the business world.

Those injured by the system or excluded from its monopolistic structure often sought help from the courts.
Hence the legal definition of baseball, and more specifically the question of whether it was an interstate business subject to the federal antitrust laws, became a matter of prime concern. And it is this confrontation with state and federal courts that will be examined next.
Its fans are numbered in the millions, and it has long maintained a close relationship with political figures, but baseball in the United States has found its best friends in the Supreme Court. By engaging in monopolistic practices and adopting the patterns of big business, it risked a confrontation with the antitrust laws, brought on by people who felt that they had been abused by the system. Yet, when so confronted, the industry was able to turn to the Supreme Court for salvation. In effect it secured and maintained a judicial exemption, and to understand its peculiar legal status, it becomes necessary to examine in detail the circumstances that gave rise to this exemption, the arrangements to which it applies, and the methods that have been used to defend and perpetuate it.

During the seventy-seven years from 1890 to 1967 the framework of the baseball business was challenged at least twenty times in state and federal courts, almost always in cases involving conflicts between the established organization and now, unaffiliated leagues. When the
latter were unable either to gain entry into or destroy the established structure through an economic confrontation, they turned to the courts. The first series of cases, for example, developed from the fight with John Ward's Players League in 1890, the second from the American League war of 1901-1902, the third from the Federal League conflict of 1914-1915, and the fourth from the quarrel with the Mexican League in the late 1940's. Only in the most recent cases, those in 1953 and 1966, was there no challenge from a rival organization. In these the plaintiffs, a minor league player and a state, both originally a part of organized baseball had been excluded and went to court in attempts to gain readmission.1

By the 1880's, when the first difficulties arose, the team owners had replaced the players as the dominant element in organized baseball. Through use of the reserve clause and the national agreement, the National League and its allies had gained control over the players. The owners were enjoying unprecedented profits, and some of them were seeking means to establish salary ceilings.

Such a move, of course, was odious to the players.

John Montgomery Ward, who, as founder and leader of the Brotherhood of Professional Baseball Players, served as spokesman for the athletes, sought and received assurances that such a plan would not be implemented. In 1889, however, while Ward was on a European tour, the National League and the American Association did revive and adopt the plan. Upon his return, Ward reacted by securing financial support, hiring managers and umpires, and enlisting the players of his Brotherhood to create the Players League. To accentuate the confrontation, he placed teams in almost all of the National League cities.

Through the influence of the Brotherhood, which was more of a protective fraternal society than a union, Ward was able to persuade most of the better and more popular players to join his league. In doing this, they, of course, violated the reserve clause of their contracts, thus precipitating the first test of it in the courts. And in the resulting cases, the players were victorious. The courts denied injunctions to the older teams and ruled that the player contracts were unenforceable at law.

---

2 David Q. Voigt, American Baseball, From Gentleman's Sport to the Commissioner System (Norman, 1966), p. 159.

3 Ibid., pp. 160-161.
The New York Giants, for example, filed suit against two of their principal players, William "Buck" Ewing and Ward. In the Ewing case, a circuit court declared that the reserve clause, in a legal sense, was "merely a contract to make a contract if the parties can agree," and while Ewing's action was a breach of contract, it was "not the breach of one which the plaintiff can enforce."\(^4\) A New York state court delivered a similar verdict in Ward's case, maintaining that the contract was too indefinite to be enforced.\(^5\) A Pennsylvania state court also refused to grant an injunction against William Hallman of the Philadelphia Phillies, because, in its opinion, the contract was "too unfair in favor of the plaintiff."\(^6\) And in a number of cases involving minor leagues players, there were similar decisions.\(^7\)

While the Players League won the court decisions, and, because of its superior players, exceeded the

---

\(^1\) Metropolitan Exhibition Co. v. Ewing, 42 F. 198, at 204, 205.


\(^4\) These cases are summarized in volume 27 of American Digest, Century Edition, pp. 1706-1707.
National League attendance by more than 170,000, it could not compete financially. The National League possessed superiority in organization, financial resources, and leadership. The older, moreover, was successful in creating dissension and distrust between the players and financiers of its rival, and it was willing to lose money, an estimated three-hundred thousand dollars, to retain its supremacy. Consequently, it mattered not that the players had won their court battles. Once the Players League folded, they had nowhere else to go, if they wished to continue their careers, except back to the old organizations, which in revised wording, retained all of the former restrictions. From the players' standpoint, it was fortunate that the leaders of organized baseball were not yet meting out severe punishment for insubordination. Instead of penalizing Ward and his rebels, they welcomed them all back for the 1891 season.

With the threat of the Players League destroyed, the National League was left with but one rival, the weak and unstable American Association, with which it had maintained an uneasy truce since 1882. By 1891 this organization was already at the brink of collapse, and the

---

8 Voigt, p. 166. 
9 Ibid., pp. 168-169.
National League now accelerated the process by luring away its four strongest franchises. Thus, from 1892 until the emergence of the American League in 1901, the National League enjoyed a complete monopoly of major league baseball.

The monopoly, however, was not a profitable one. The League faced a large debt, incurred from the recent economic wars, and to erase it, began a program of retrenchment. The severe financial difficulties eventually led to dependence of the weaker clubs on the stronger ones, which, in turn, produced interlocking directorates and a system where owners shifted players from one team to another in attempts to stimulate public interest. By the end of the decade some of the owners were advocating a tighter organization of the league, one in which players, franchises, and profits would be pooled. Public dissatisfaction with the conditions of baseball also increased, and when other forms of entertainment appeared, such as the cycling craze of the late 1890's, many withdrew their allegiance to the sport. As a result, in the


12 _Ibid._, p. 38; Voigt, pp. 228-230.
last five years of the century, attendance dropped by five-hundred thousand, a twenty percent decrease. The press articulated the portent. The Cleveland Plain Dealer predicted the downfall of the "most absolutely selfish and soulless monopoly in existence." The "times are ripe," it declared, "for a revolution in baseball." 

The revolution occurred in 1901 with the formation of the American League. Whereas the earlier rivals of the National League had often been hurriedly organized or ineptly managed, the new competition was of superior foundation. It had operated in the Midwest for a number of years as the minor Western League, and from this base, it merely shifted some of its teams to eastern cities and proclaimed itself of major league status. Players were obviously eager for a new market in which to sell their talents, and many flocked to the new organization. Disregarding its experiences of a decade earlier, the National League again went to court and tried to get its players back.

One case followed the earlier precedents. A U. S. Circuit Court denied the Brooklyn Superbas an injunction.

---


14 Cleveland Plain Dealer, January 31, 1899, quoted in *Organized Baseball*, p. 38.
against Deacon Jim McGuire on the grounds that the player contract was unenforceable in equity. The National League, however, did win a case in April 1902. When Napoleon Lajoie, second-baseman of the Philadelphia Phillies, deserted his old club and signed a contract with the new Philadelphia team of the American League, the Phillies sought the usual injunction, and to get it, went all the way to the Pennsylvania Supreme Court. There Judge William Potter asserted that Lajoie might not "be the sun in the baseball firmament," but he was "certainly a particular bright star," and because of this outstanding ability, his defection had caused irreparable damages to the Phillies. Even this victory, though, was more nominal than real. The American League transferred Lajoie to its Cleveland franchise. Whenever that team came to Philadelphia to play, he would vacation in nearby Atlantic City. And consequently, the injunction could never be served. In 1903, however, the two leagues negotiated a truce, and wrote a new National Agreement.

---


17 House, Committee on the Judiciary, Organized Baseball, p. 41.
embodving the reserve clause and territorial prerogatives, thereby ending all legal conflicts, and making all such incidents irrelevant.

The agreement of 1903 fostered a prosperity shared by team owners and players alike. It also added to the strength and stability of the major leagues, making the establishment of a competitor much more difficult, particularly since financial strength was now coupled with new regulations, which would suspend indefinitely any player who broke his contract and bar for three years any who violated the reserve clause. In spite of these obstacles, however, a new league did appear in 1913. This was the Federal League, organized as a single corporation and backed by several wealthy businessmen, including the oilman Harry Sinclair. The new organization declared its major league status in 1914 and promised an antitrust suit if such action was necessary for it to become a part of organized baseball.

The usual economic war ensued; however, unlike the earlier interlopers, the Federal League was unable to

18 Ibid., p. 51.
20 House, Committee on the Judiciary, Organized Baseball, p. 50.
attract large numbers of established players, and those who did defect demanded long-term contracts at high salaries to counteract the probable punishment from the older leagues. The latter nurtured loyalty by raising salaries fifty to one hundred percent. And, consequently, the Federal League was able to operate only two seasons, 1914 and 1915. At the end of the two-year war, total losses for organized baseball were in excess of one million dollars.

Another result of the conflict was a new series of court cases, involving enforcement of the player contract, and increasingly, the new decisions favored the established leagues. The Cincinnati Reds, for example, obtained an injunction from a federal district court in Missouri preventing Armando Marsans from playing with a Federal League team. The Philadelphia Phillies also benefited from a court decision, involving their catcher "Reindeer Bill" Killifer, who had signed a contract with the Federal League's local franchise but had reneged when his old team made a more lucrative offer. Although District Judge Clarence Sessions regarded Killifer as "a person on whose

---

21 Ibid., pp. 51-52.  
22 Ibid., p. 56.  
23 Cincinnati Exhibition Company v. Marsans, 216 F., 269 (1915).
pledged word little or no reliance can be placed," he ruled that the Federal League team's contract could not be enforced because it had been negotiated with knowledge that Killifer was already under contract, thus violating the "clean hands" principle of equity cases.24

One decision, involving the Chicago White Sox of the American League and their first baseman, Hal Chase, did go against the baseball establishment, but even here an idea was enunciated that later proved to be of considerable importance. While a New York court ruled that Chase's contract with the White Sox was unenforceable because of a lack of mutuality, it concluded that baseball, even though it might be a monopoly, was not within the scope of the antitrust laws.25

Nevertheless, the Federal League did initiate antitrust proceedings in the federal courts. Litigation began in January 1915, in the Chicago district of Judge Kennesaw Mountain Landis. There, after three weeks of arguments and eleven months of delay, the case was settled out of court. The American and National Leagues


paid damages to seven of the eight Federal League teams, and they, in turn, agreed to disband. The trial, it might be noted, served to introduce Judge Landis to baseball officials, who, five years later, rewarded his apparent reluctance to destroy their business by making him Commissioner at fifty thousand dollars a year.

The one Federal League club that was not included in the settlement was Baltimore, to whom the terms had been unsatisfactory. Baltimore first filed a complaint with the Antitrust Division, but when Assistant Attorney General William Todd expressed an opinion that organized baseball was not violating the antitrust laws, it turned to the courts, filed suit in Washington, D. C., and won the initial case. The district court awarded the team treble damages of $40,000 dollars. The National and American Leagues then appealed the decision, won a reversal in December, 1920, and thus set the stage for

---

27 House, Committee on the Judiciary, Organized Baseball, p. 57.
28 Ibid.
a final appeal to the United States Supreme Court, where the case was argued in the spring of 1922.

In their appeal, attorneys for Baltimore maintained that it was necessary to differentiate between baseball, as a game, and professional baseball, as a business, and the latter, they argued, was interstate in nature. The various teams were located in different states and could not operate without interaction with one another. Counsel for organized baseball, on the other hand, argued that attempts to secure the necessary skilled players was not an attempt to monopolize commerce, and that baseball, in fact, was not commerce, because it was "personal effort, not related to production." Justice Oliver Wendell Holmes, delivering the opinion of the court, agreed with this point. "That which in its consummation is not commerce," he declared, "does not become commerce among the States because the transportation that we have mentioned takes place." And thus was erected the legal foundation for baseball's exemption from the antitrust laws and federal regulation.

31 Ibid., at 201.
32 Ibid., at 206.
33 Ibid., at 209.
With this last American-based threat ended, organized baseball embarked upon a two-decade period of tranquility, characterized by atmosphere of integrity emanating from the stern Landis. It shared in the general prosperity of the twenties, benefiting particularly from the appearance of a demi-god in the person of Babe Ruth. It suffered with the nation through the depression of the 1930's, when its supporters, many of whom were from the working class, were unable to express their support with money. And while the coming of World War II delayed a return to prosperity, it also created conditions for an unparalleled postwar boom.

In 1946, then, baseball officials anticipated the season with enthusiasm. Fans were more numerous than ever, and the pre-war players were returning from the service. No longer would it be necessary to rely on the collection of pretenders that had staffed the major league teams during the war, on teenagers, men past draft age, the physically unfit, including a one-armed outfielder, and foreigners, mostly from the Caribbean. Everything seemed to point to an era of well-being, and it was in this atmosphere that the system was again threatened by the actions of a colorful but not very proficient outfielder, Danny Gardella of the New York Giants.
In the winter of 1946, Gardella rejected an offer of five thousand dollars and became embroiled in a contract dispute with the Giants. He went to Miami, the site of their spring-training camp, and, when not allowed to join the team, supported himself by performing with a local aquacade. The Giants, busy reassembling their collection of home run hitters, seemed not too concerned about Gardella, at least not until February 18, when he announced that he was taking his "gifted talents to Mexico." Unable to negotiate with the Giants, he had signed a contract with the Mexican League.

The latter organization was an eight-team affair, operated and financed almost exclusively by five wealthy Mexican businessmen, the Pasquel brothers. It was not a party to the National Agreement, and, as evidenced by the signing of Gardella, did not respect the reserve clause. Gerardo Pasquel said that he and his brothers had forty million American dollars with which to finance their operations and that they intended to lure more major leaguers into Mexico. Nor was the threat an idle one.

The day that Gardella announced his signing, five other players also agreed to play in the Mexican League.

These events evoked a stern response from organized baseball. On March 10, the new Commissioner, former Kentucky senator and governor, A. B. "Happy" Chandler, announced that all players who signed Mexican League contracts and did not return before opening day of the major league season would be suspended for five years.37 This threat did not deter others from breaking their contracts, but at first, most of those who did were of Gardella's caliber, and their departure was not regarded as a great loss. It was only when the Pasquel brothers began recruiting more prominent players, such men as Dodger catcher Mickey Owen, Cardinal pitcher Max Lanier, and Browns shortstop Vern Stephens, and when lucrative

37 New York Times, March 11, 1946, p. 20. Eighteen major league players were declared ineligible. These were Ace T. Adams, Harry Feldman, Gardella, George Laumann, Sal Bagnie, Nap Aeyes, Adrian Zabala, and Roy Zimmerman of the Giants; Lou Klein, Max Lanier, and Fred Martin of the St. Louis Cardinals; Boland Gladu, Mickey Owen, and Louis Clino of the Brooklyn Dodgers; Bobby Estrella of the Philadelphia Athletics; Alejandro Barrequev of the Chicago White Sox; Murray Franklin of the Detroit Tigers; and Rene Monteagudo of the Phillies. House, Committee on the Judiciary, Study of Monopoly Power, p. 1303. One other player, Junior Stephens of the St. Louis Browns, signed a Mexican League contract but returned before opening day and was not suspended.
offers had been made to Stan Musial, Enos Slaughter, and Pete Reiser, that some teams began taking preventative measures. Eventually, the Giants, Dodgers, and New York Yankees all obtained restraining orders enjoining the Pasquels from talking to their players.

For a time the feud reached the point where federal officials were afraid that it might endanger American foreign policy. A State Department official announced that the government had been following the conflict closely and hoped that "baseball would show indication of a desire to clean up" its differences with the Mexican League.

"Baseball is making it tough on us," he said. "We try to build up good will and this sort of thing tears it down." Before long, however, the situation began to resolve itself. Complaints from the Americans about Mexican food, stadiums with no showers, a railroad track that traversed the outfield of one park, and the distracting effect of reflected sunlight from spectators' pistols began to filter northward.
Some of the players returned to the United States before the end of the 1946 season, and few played in Mexico the following year.

Several of the players, led by Owen, spent much of the next two years pleading with Chandler for reinstatement, but the five-year banishment stood. Cardella resorted to other means. In July 1948, he filed a suit in federal district court in New York claiming that he had been deprived of a job through a conspiracy in restraint of trade, a violation of sections one and three of the Sherman Act, and of section fourteen of the Clayton Act. The suit asked for one hundred thousand dollars in damages.\(^4\)\(^2\)

In the lower court Judge Henry Goddard, using the 1922 Federal Baseball Club decision as authority, dismissed the case.\(^4\)\(^3\) But on appeal, Cardella received a more satisfactory verdict. While Judge Harrie Brigham Chase agreed with Goddard, Judges Learned Hand and Jerome Frank found grounds for an antitrust suit.\(^4\)\(^4\) There were discernible differences, they argued, between the situation in 1949 and that in 1922. Here travel per se, or

\(^4\)\(^2\)Ibid., at 263.
the telegraph transmissions of game results, might not be of sufficient importance to place baseball in the realm of interstate commerce, but there was a great difference between a telegraph message and a radio or television broadcast. The latter, they felt, particularly when it was considered in terms of the new and broader definitions of "interstate commerce," meant that baseball was now played "interstate as well as intrastate." Frank also commented on the defendants' contention that baseball could not exist without the reserve clause. There was no way, he said, to judge the truth of this assertion, and under the circumstances, no court "should strive ingeniously to legalize a private (even if benevolent) dictatorship." The case was ordered back to the lower court for trial.

Gardella's success encouraged others, and before long Max Lanier, Fred Martin, and Sal Maglie had all initiated their own proceedings. This crisis provoked varied responses from baseball officials. Branch Rickey, President of the Brooklyn Dodgers, charged that opponents of

\[45\text{Ibid., at 407.}\]  \[46\text{Ibid., at 403-410.}\]  \[47\text{Ibid., at 415.}\]  \[48\text{New York Times, March 9, 1949, p. 34; March 23, 1949, p. 39.}\]
the reserve clause were "persons of avowed Communist tendencies" who "deeply resent the continuance of our national pastime." Commissioner Chandler reacted more constructively. On June 6, 1949, he lifted the suspension, announcing that reinstatement would be almost automatic, that all a player had to do was file an application with either league president. This action obtained the desired results. After some weeks of negotiations, Lanier, Martin, and Neglie announced that they had signed contracts with their former teams and were dropping their suits. Gardella held out a while longer, but on October 7, he, too, announced that he was dropping his suit. For doing so, he received a reported sixty thousand dollars in an out-of-court settlement. Baseball had survived the ordeal, shaken but unscathed.

By this time, moreover, the players seemed relatively well satisfied. After all, the turmoil of 1946 had brought increased salaries and an improved player contract, one that still contained the reserve clause, but that made

---

provisions now for a minimum salary of five-thousand dollars, with an added stipulation that one's salary could not be cut more than twenty-five percent in a single season. The players had also won some fringe benefits, in the form of a generous pension plan and the right to select player representatives from each team to act as emissaries to the management.

These gains, however, had come only in the major leagues. The status of the minors had remained unchanged, and it was from then, specifically from Earl Toolson, a member of the New York Yankee organization, that the next challenge came. In 1950, while playing for Newark in the International League, Toolson was reassigned to Binghamton. Because this constituted a demotion, he refused to report to his new club, and after being placed on the ineligible list with an indefinite suspension, he sought legal remedies. In 1953, three years after his suspension, his case reached the United States Supreme Court.

53 U. S. House of Representatives, 82d Congress, 1st Session, Committee on the Judiciary, Study of Monopoly Power, part 6, Organized Baseball (Washington, 1951), p. 291. For player comments on resulting salary increases, see testimony of Bruce Rease, p. 351. The present minimum salary is ten thousand dollars.

54 Ibid., p. 269; Turkin, p. 383.

The new case presented an opportunity for the Court to re-examine the legal status of baseball, but generally speaking, it refused to do so. Any change, it thought, should come through legislation, and since Congress had expressed no "intention of including the business of baseball within the scope of the federal antitrust laws," the old doctrine, as established by the 1922 decision, would be upheld. In their dissent, Justices Harold Burton and Stanley Reed agreed with the opinion of Hand and Frank in the Gardella case. Because of its "well-known and widely distributed capital investments," receipts transmitted between states, purchases of materials in interstate commerce, radio and television broadcasts, and interstate and international connections with the minor leagues, they, argued, organized baseball was obviously in interstate commerce. But their opinion was not the one that counted.

Their business having twice been declared by the Supreme Court to be outside interstate commerce, baseball officials apparently felt that they could discard their conservatism and expand their activities. During the fifty years following 1903 the membership of the two leagues

---

57 Ibid., at 357-358.
had remained unchanged, but beginning in 1953, some six teams moved to new cities in an obvious pursuit of greater receipts from the shifting American population. The Braves, the team that began the process in 1953 with their move to Milwaukee from Boston, created new disorders in 1965 when they sought to move again, this time to Atlanta. The state of Wisconsin attempted to use its antitrust laws to compel the Braves to remain in Milwaukee, but again the attempt ended in failure. The state supreme court held that because of federal court decisions and Congressional silence on the matter, state laws could not be applied to baseball. And when Wisconsin appealed to the United States Supreme Court, that body refused to review the case.

Baseball's experiences in court followed a pattern. As long as the outsiders contested only the validity of the player contract, as in the Players, American, and early Federal leagues cases, organized baseball generally lost the court decision, but won the economic wars. When the dissidents, such as Baltimore of the Federal League, or Earl Toolson, broadened the scope of their attacks,

however, and attempted to have the antitrust laws applied, organized baseball won both the judicial and economic battles.

Their position repeatedly strengthened by the Court, baseball officials could feel relatively safe in the conduct of their business. Yet the logic of baseball's position did come under increasing attack, particularly after federal courts ruled that other professional sports were in interstate commerce and were therefore subject to the antitrust laws. In 1955, for example, when the United States brought charges against the International Boxing Club for monopolizing heavyweight championship fights, the Supreme Court ruled that the Federal Baseball case did not apply, that boxing was sufficiently interstate to make the antitrust laws applicable. Any exemption, it said, would have to come from Congress.60 A year later, a district court emphasized multi-state membership and the sale of broadcasting rights as reasons for the National Basketball Association being subject to the Sherman Act.61 And finally, in 1957, when a blacklist of William Radovich,

Formerly of the Detroit Lions, produced an antitrust case in professional football, the Supreme Court refused to grant an exemption there. Again, as in the boxing decision, it ruled that the 1922 baseball case did not apply, that professional football was in interstate commerce and was subject to the antitrust laws.

The Court itself, however, was aware that its logic was questionable. As it commented in the Radovich case, "were we considering the question of baseball for the first time upon a clean slate we would have no doubts." The difference, as the court saw it, was that baseball had a longstanding decision on which it relied for its status and "no other business claiming the coverage of those cases has such an adjudication." Baseball, therefore, in spite of the similarity of its organizational structure to that of other team sports, had a special status. And the illogic in this situation would have to be reconciled by Congress, not by the courts.

For the leaders of organized baseball, this reasoning posed an obvious danger, particularly when the experience of other sports tended to undermine the rationale used to

---

63Ibid.
justify the baseball exemption. Professional football, for example, was forced to abandon its reserve clause, yet this did not produce any chaotic scramble for players. On the contrary, the football business was more popular and more prosperous after the Radovich decision than before. Clearly, this experience might convince a future court that baseball players deserved more freedom.

Baseball, therefore, because of the decisions affecting other sports in recent years, could never feel completely safe. It had maintained its judicial exemption from the antitrust laws, in part, at least, because it appeared in court only at the instigation of other parties. When it became increasingly difficult to conceal the commercial aspects of the game, and when this problem was compounded by unfavorable decisions against other professional sports, baseball men began to look to Congress for help. During the twenty-five years following the Federal Baseball case, there was no apparent need for legislative aid. But when post-war problems clouded the picture, the game's leaders sought an exemption from Congress as insurance against the day when their business, too, might be declared in interstate commerce.
"If the sport is to continue," Ford Frick told Congress in 1958, "the business must be kept healthy and free from legal harassment under antitrust laws which were never intended for such a sports business." The occasion was a hearing before the Senate Judiciary Committee, and the remark, prompted by a desire for appropriate legislation, was typical of the attitude of baseball officials. Threatened by hostile legal actions and fearful that Congress might respond to the Supreme Court's plea for rationalization, as set forth in the football decision of 1957, they were determined to preserve their special status.

In practice, moreover, the leaders of organized baseball were remarkably successful in getting the issue before Congress. From the year 1951, when the first serious Congressional investigation was undertaken, through 1967, Congress considered some ninety bills, conducted

---


hearings eight times, compiled almost seven thousand pages of testimony, and questioned one-hundred twenty-six different witnesses, many of them several times. Yet from all of this, came very little legislation, and none that really affected the basic status of the industry.

While Congress undertook its first serious study of baseball in 1951, it had been introduced to the problem quite early in the twentieth century. In 1912, Representative Thomas Gallagher of Illinois, apparently reflecting the general public concern with abuses of big business, introduced a resolution authorizing an investigation of the "baseball trust." Neither this measure nor an identical one in 1913 emerged from the rules committee, but for a brief period in April 1913, when Ty Cobb became embroiled in a salary dispute with the Detroit Tigers, Gallagher did win the support of Senator Hoke Smith and Representative Thomas Hardwicke, both of whom expressed concern that their famous constituent could suffer such an injustice as his threatened suspension. Smith wrote to Cobb, requesting a copy of

---

2 Congressional Record, XLVIII, 62d Congress, 2d Session, p. 3176.

4 Congressional Record, XLIX, 63 Congress, 1st Session, p. 325.

his contract for study and providing an investigation if conditions were as he understood them to be. A few days later, however, Smith reportedly lost interest in the case. Cobb had signed a contract for twelve thousand dollars, considerably more than Senators of the period earned.

Twenty-five years passed before the issue of a baseball monopoly again arose in Congress. Then, in the spring of 1937, when Attorney General Homer Cummings was suggesting a re-examination of the antitrust laws, Representative Raymond Cannon of Wisconsin, in a letter detailing the alleged illegalities, asked for an investigation of professional baseball. Cummings expressed interest and ordered a study of the problem, but he was clearly unfamiliar with the earlier litigation. A week later, on April 15, after discovering the Holmes decision of 1922, the Justice Department dropped the investigation, whereupon Cannon introduced a resolution in the House but obtained no results.

---

9*New York Times*, April 8, 1937, p. 3; April 15, 1937, p. 25.
10*Congressional Record*, IX:333, 75th Congress, 1st Session, p. 4163.
Another long period elapsed before Congress was again confronted with the problem. And, whereas the earlier encounters had involved attempts by concerned Congressmen to apply the antitrust laws, the measures proposed after World War II were designed to secure antitrust exemptions. The initial impetus for this kind of action came from the close brush with the courts in 1949. Following the out-of-court settlement with Gardella, the major league magnates obviously desired a more solid legal foundation for their business.

In May 1951, four Congressmen, among them Senator Edwin Johnson of Colorado and Representative A. S. Herlong of Florida, both minor league presidents, introduced bills to exempt professional sports from the antitrust laws. Such measures became the basis for congressional hearings, and the House Judiciary Committee, in particular, decided to investigate the question as a part of its general study of the monopoly problem. Calling upon league presidents, team owners, and players, it sought the answers to a variety of question, but was especially interested in the

---

11 Congressional Record, XCVII, 82d Congress, 1st Session, pp. 3663, 3709. The other sponsors were Representatives Wilbur Mills and Melvin Price.
interstate nature of the business, the powers of the
Commissioner, the restraints imposed by contracts and
team agreements, and the form that any exemption might
take. 12

In testimony before the committee, baseball spokes-
men argued the case for a special legislative exemption.
Dodger president Branch Rickey, for example, insisted
that the business was unique in character, and for this
reason, it could not be compared with the steel industry
or any other field in which big business had developed. 13
Former commissioner Chandler also maintained that legis-
lation was needed. The industry, he admitted, had not
expected to win the Gardella case had it gone to trial,
and it should not be required to run such risks in the
future. Nor were there any real abuses that might be
corrected by application of the antitrust laws. 14 From
the players, the committee learned of the benefits derived
from the Mexican League war and found that most were
satisfied with their contracts.

12 U. S. House of Representatives, 82d Congress, 2d
Session, Committee on the Judiciary, Organized Baseball,
137-138.

13 U. S. House of Representatives, 82d Congress, 1st
Session, Committee on the Judiciary, Study of Monopoly
Lever, part 6, Organized Baseball (Washington, 1951),
pp. 989-990.

14 Ibid., pp. 290-291.
In 1951, however, Congress refused to go along with the recommendations of the industry. Legislation, the committee concluded, would be "premature . . . until the reasonableness of the reserve rule has been tested by the courts." Anticipating "judicial action with legislation," it thought, was unwise, and consequently, it recommended that any action be deferred.15

This, in effect, granted congressional sanction to existing conditions, and two years later baseball's position was strengthened by the Toolson decision. The only proposals considered by Congress in 1953 and 1954 were those stemming from the personal grievances of Senator Johnson, notably in regard to the telecasting of major league games into minor league areas and the purchase of the St. Louis Cardinals by August A. Busch. The spectacle of a brewery owning a baseball club, Johnson felt, debased all that the game represented, and besides Busch was using the Cardinals to help create a beer monopoly.16 In spite of such charges, however, neither of his measures received much attention.

15House, Committee on the Judiciary, Organized Baseball, pp. 231-232.
It was not until 1957, when the Supreme Court handed down the Radovich decision, that interest revived. There was a need now for reconciling the decisions on various sports, and there was the possibility that baseball might be declared an interstate business if the question ever again arose in court. Accordingly, Representative Emmanuel Celler introduced a bill that would apply the antitrust laws to professional team sports, but would exempt such matters as contracts, agreements, territorial rights, and broadcasting agreements, wherever these were "reasonably necessary" to the conduct of the business.17

This phrase provoked criticism both in and out of Congress. Some members maintained that it was vague and would invite constant litigation,18 and baseball officials felt that it did not go far enough. They supported a substitute bill sponsored by Senator Kenneth Keating and Representative Francis Walter, one that would delete the words "reasonably necessary."19 As lobbyists, moreover,

17 Congressional Record, CIV, 85th Congress, 2d Session, p. 13957; Senate, Committee on the Judiciary, Organized Professional Team Sports, 1958, p. 5.

18 Congressional Record, CIV, 85th Congress, 2d Session, p. 35477; Senate, Committee on the Judiciary, Organized Professional Team Sports, 1958, p. 7.

19 Congressional Record, CIV, 85th Congress, 2d Session, p. 12073.
the owners were able to exert considerable pressure. Celler claimed he had never seen so much of it in Congress. It was also responsible, he felt, for the shift of player support from his bill to the Walter-Keating measure. 20 And in the end, it had the intended effect. When the Celler bill passed the House, it contained the Walter amendment, striking out the objectionable phrase. 21

In the hearings before the Senate Judiciary Committee, however, the bill ran into the objections of the Department of Justice, which felt that the provisions permitting major league teams to restrict the telecasts of their games was much too lenient. The purpose might be relief for the minor leagues, said Robert Bicks of the Antitrust Division, but in practice the measure would "deprive the entire American public of the right to see over television any sports contest." 22 In this respect, it was "an exception completely unparalleled." 23 The committee, moreover,

20 Ibid., p. 12081.
21 Ibid., p. 12105.
22 Senate, Committee on the Judiciary, Organized Professional Team Sports, 1958, p. 116.
23 Ibid., p. 120.
seemed to agree. In any event, it voted to table the House bill 24 and thus to postpone any action for another year.

The following year brought more bills, sponsored by Kenneth Keating, Estes Kefauver, Thomas Hennings, and Everett Dirksen. 25 But by this time a new element had been added. In July 1959 William Shea of New York announced the formation of the Continental League, which was to begin play in 1961. Branch Rickey was president of the organization and former Senator Johnson, who had named it, served as an unofficial advisor. 26 To such men as Cellier and Kefauver, this was an important step toward expansion of baseball, and toward ending the monopoly of sixteen men over the business. Congress, they felt, was "duty bound" to help the Continental League become established. 27

In the Senate hearings of 1959, Kefauver was pleased by Commissioner Frick's promise of help to the Continental

---

24 Congressional Record, CIV, 85th Congress, 2d Session, 5517.
25 Congressional Record, CV, 86th Congress, 1st Session, pp. 590, 973, 1656.
27 Ibid., p. 30.
League, but was skeptical that much would be done. For the league to be successful, he thought, "there will have to be co-operation on the part of the present major leagues . . . or . . . some legislation will have to be passed reducing the control of the major leagues over the players." And such legislation, it seemed, was not in the offing.

On the contrary, the purpose of the bill finally drafted by Keefauver's subcommittee was to grant baseball-type exemptions to professional football, basketball, and hockey. And on this measure, Congress refused to take action. In 1960 Keefauver introduced another bill, this time including baseball, and providing for limitations on the number of players a team could control. Although a team could carry on its active roster a maximum of only forty players, and this number only at specified periods in the season, it could indirectly control up to four hundred. Keefauver would limit this to eighty, primarily to provide a pool of talent from which the Continental League could select players. This time, too, in spite of opposition

30. Congressional Record, CVI, 86th Congress, 2d Session, pp. 9498-9501.
from the major league owners, the Judiciary Committee reported the bill favorably.\textsuperscript{31} The report, however, contained no single majority view. This led the Senate to recommit it for further study.\textsuperscript{32} And shortly thereafter, the whole issue of releasing players for the new league became irrelevant. In August, when both the American and National Leagues announced plans to add two new towns, the Continental League expired.\textsuperscript{33}

In 1961 more bills were introduced,\textsuperscript{34} but there was little action until July, when a district court in Pennsylvania ruled that the National Football League, by acting as a unit in selling broadcasting rights, had violated the antitrust laws.\textsuperscript{35} In early September, Representative Celler introduced a bill that would permit such arrangements for all professional sports.\textsuperscript{36}

\textsuperscript{31}Ibid., p. 13306.
\textsuperscript{32}Ibid., pp. 14750-14751.
\textsuperscript{34}Congressional Record, CVII, 87th Congress, 1st Session, pp. 38, 42, 59, 142, 7762.
\textsuperscript{36}Congressional Record, CVII, 87th Congress, 1st p. 18653.
By the end of the month this measure has passed both houses, and subsequently, the President signed it into law. As finally passed, it exempted broadcasting contracts and restricted professional football teams from interfering with college games, but it said nothing about the status of player contracts, team agreements, and territorial rights.

Congress did not seriously consider the problem again until 1964, when the Milwaukee Braves and the Kansas City Athletics were threatening to shift their franchises. Senators Edward Long and William Proxmire sought measures that would prevent indiscriminate franchise shifting.

Under Long's plan, an owner could not move his team until he had given a local group the opportunity to buy it, and under Proxmire's, a team would have to give a one year

---

37 Ibid., pp. 20664, 20666.
39In 1958, with the Washington Senators threatening to move to Minneapolis-St. Paul, Senator Karl Mundt had sponsored an unsuccessful measure to make an antitrust exemption contingent upon the maintenance of a team in Washington, D. C. In Mundt's opinion it was unthinkable that the nation's pastime would not be played in the nation's capital.
40 Congressional Record, CX, 86th Congress, 2d Session, pp. 16389-16390.
notice of intent to move, thus providing the city with an opportunity to take appropriate action to retain it.  

The Senate Judiciary Committee, however, refused to endorse such measures, saying that it would watch the problem with interest, but as yet, it could see no need for legislation.  

The committee, however, did report a measure to limit the applicability of the antitrust laws to professional sports. This bill had the support of Representative Celler in the house, and prior to August 1964, it appeared assured of passage. Then came the announcement that CBS had purchased the New York Yankees. A number of congressmen were worried, both because one of the country's largest corporations was now part of the baseball hierarchy and because this company would be both a buyer and seller of broadcasting rights. Accordingly, the bill was recommitted for further study and Celler now advised Milwaukee County officials, who were becoming embroiled with the transient Braves, to file an antitrust suit against baseball.  

Ibid., pp. 17491-17492.  


In 1965 Congress tried again to enact legislation that would exempt professional sports from the antitrust laws. Senator Phillip Hart of Michigan, a former official of the Detroit Tigers and son-in-law of the team's late owner, William Briggs, sponsored the bill. The Senate Judiciary Committee reported it favorably. And in August the Senate began consideration of the measure. The debate there revolved around two amendments, one offered by Senator Sam Ervin of North Carolina, the other by Proxmire. Ervin would outlaw the free-agent draft, the new system whereby players who had never signed professional contracts were selected on an orderly basis from a designated pool rather than by competitive bidding. If baseball was in such dire financial difficulties, Ervin declared, it should forego an antitrust exemption and seek to be placed under the poverty program. Proxmire, on the other hand, was concerned primarily with the shifting of franchises. His amendment would require an equal

---

\[4^4\] Congressional Record, CXI, 89th Congress, 1st Session, p. 1709.

\[4^5\] Ibid., p. 17173.

\[4^6\] The professional football leagues had used such a plan for years, but their contracts did not bind a man to one team for the duration of his career.

\[4^7\] Congressional Record, CXI, 89th Congress, 1st Session, pp. 22304-22305, 22313.
division of broadcasting proceeds, so as to discourage the
movement of teams in search of more lucrative television
markets.\footnote{Ibid., p. 22326.} Both proposals were eventually defeated.\footnote{Ibid., p. 22318, 22326.}
The Senate then passed the Hart bill in its original form.
But again the House failed to act and no legislation was
put on the books.\footnote{Ibid., p. 22329.}

Thus, after fifteen years of thorough study of the
problem, Congress had done nothing. It had neither passed
nor defeated any bill that would apply the antitrust laws
to baseball or exempt it from them. This is not to say,
however, that the congressional activities were without
influence. There is little doubt that major league ex-
pansion occurred because of pressure applied in behalf of
the Continental League. And in the fall of 1967, appar-
ently believing that Charles Finley's abandonment of
Kansas City would bring further trouble, the American League
promised to add two more teams, including one to replace
the departed Athletics. It yielded, moreover, to threats
from an angered Stuart Symington and agreed to move its
expansion date from 1971 to 1969.\footnote{The Sporting News, November 4, 1967, p. 33.} Although Congress
and baseball officials realized that failure to comply with these suggestions might bring a more vigorous response.

Organized baseball had friends enough in Congress to sponsor all the legislation necessary for providing an antitrust exemption. One Senate measure, in fact, attracted forty-five cosponsors.52 Furthermore, the business maintained an active lobby, headed by Paul Porter of the influential Washington law firm of Arnold, Porter, and Porter. Finally, the game possessed an image on which friendly congressmen and lobbyists could build their case for special treatment. The question, then, arises as to why baseball was never able to secure the exemption it desired.

One answer lies in the fact that some congressmen did not adhere to the traditional view about professional baseball. There were men like Estes Kefauver, Joseph O'Haraoney, and Thomas Dodd who were perturbed about the power and arrogance of the major league owners. The time, they felt, had "long since passed when sixteen individual owners should have the power to decide how our great national pastime is

---

52 S. 4070, 85th Congress, 2d Session.
to be operated.\textsuperscript{53} There were others such as Edward Long and Villicus Proxmire, representatives of regional interests that would be harmed by the moves of baseball franchises.

Nor did baseball officials always conduct their business in a manner conducive to gaining sympathetic action from Congress. Recent years have seen such activities as the purchase of the Yankees by CBS, the controversial flight of the Braves from Milwaukee, and the introduction of the free-agent draft, none of which were possible without approval by a majority of the club owners. These measures, introduced, as they were, while antitrust bills were before Congress, created doubt about the benign nature of the business. In addition, testimony such as that given by Robert Hicks of the Justice Department before the Senate Judiciary Committee must have made congressmen, no matter what their individual feelings about baseball, reluctant to grant a blanket exemption to the industry.

Finally, there were some practical reasons behind the long history of congressional inaction. For one thing, compared to other post-war problems, the applicability

of the antitrust laws to baseball was not especially urgent. As Representative Celler put it during debate on one of his bills, there were other issues that were "far more earth-shaking, far more important, far more paramount." The study of the problem, moreover, was always delegated to the Judiciary committees. They were busy with such important subjects as civil rights, crime, general antitrust problems, and communist activities. And consequently, they found little time to consider the matter.

Thus, for numerous reasons, Congress refused to act. On the one hand, it refused to sanction the sport's privileged position. On the other, it perfunctorily dismissed any restrictive measures, such as those offered by Froemire, Long, or Ervin. For the latter course of action, there were several explanations, including the presence of baseball men in Congress, but perhaps the most important was the status of baseball as an American institution, the kind of thing with which politicians were reluctant to tamper. Its unique position in American life reinforced its privileged legal position, and how it did so bears further discussion.

---

54 Congressional Record, CIV, 85th Congress, 2d Session, p. 12061.
"Whoever wants to know the heart and mind of America," wrote Jacques Barzun in 1954, "had better learn baseball." And Barzun was remarkably perceptive. The explanation of why baseball remained unregulated has several facets, but perhaps the most important factor was the image of the game, its role, in other words, as the "national pastime," a symbol of America, and an instiller of the values cherished by Americans. While baseball's political patrons have important in protecting the game from legislative harassment, they could not have achieved even their limited success without the favorable public image with which to work.

Organized baseball, like most other groups, has had its political friends. As early as 1870, one could find such people as "Boss" William Tweed among the owners of professional teams. Later the Taft family had financial

---


2David Q. Voigt, American Baseball, From Gentlemen's Sport to the Commissioner System (Norman, 1986), p. 20.
interests in National League teams, and it was William Howard Taft, in 1910, who initiated the custom of the President's opening the baseball season by throwing out the first ball. Another President, Warren G. Harding, owned a team in the Ohio State League, and included among his poker playing cronies such men as William Wrigley and Albert Lasker, the principal owners of the Chicago Cubs.

In addition, there were friendly congressmen. The presence of a former Senator such as "Happy" Chandler in the Commissioner's office, and of baseball officials such as Edwin Johnson, A. S. Merlong, and Phillip Hart in Congress had definite advantages. Others, who had no official connections with baseball were nostalgic about brief professional or collegiate careers. And still others, like Kenneth Keating and Thomas Jennings, had no experience in organized sports, but were still prone to extoll the benefits and contributions of baseball. It was the latter group, in fact, who were of the greatest importance. Without a large number of congressmen believing in the intrinsic values of the game, those few with direct connections would have had little influence.

2Edward Hoot Wollery, "The Business of Baseball," McClure's, XXXI (July, 1912), 245-246; The Sporting News, March 2, 1969, p. 9. Taft was also Chief Justice when the Supreme Court handed down its decision in 1922.

As the "national pastime," baseball has made a dual contribution. It has been a symbol of America, and it has taught the values requisite to becoming a good American.

As the country has changed, however, so has the symbolism of baseball. In the 1880's, when the United States was emerging as an industrial power, Mark Twain saw the game as the "very symbol . . . of the drive and push and rush and struggle of the raging, tearing, booming" period in which he lived. In the 1920's, the matured nation set about to enjoy some of its wealth and adopted as its principal hero George Herman "Babe" Ruth, a man who made more money than the President and had fun doing it, and who took neither himself nor his job too seriously. And as the giant corporation became the symbol of America, a counterpart could be found in baseball. Max Lerner saw the dominance of the game by the New York Yankees "as the triumph of Big Business organization applied to the task of developing pitching and hitting power." Allen Novins concurred in this sentiment, finding baseball to be

5Mark Twain, SPEECHES (New York, 1923), p. 145.
"peculiarly American" because it not only combined the
"zest of the amateur" with "the expertness of the pro-
fessional," but because it also offered "the business
appeal of the big gate."

As baseball the symbol has changed, so has baseball
the teacher. It did not, for example, teach racial har-
mony in the early twentieth century. It did fortify
Americans with other qualities. Writing in 1913, H.
Addington Bruce thought that the baseball diamond was at
least as important a factor in the "Republic's progress"
as the much extolled "little red school house." Among
the many traits that it developed, all "requisite as
never before for success in the life of an individual and
of a nation," were courage, honesty, patience, and "the
spirit of initiative combined with due respect for lawful
authority." 9

Later, others saw baseball as the teacher of different
qualities. Barzun, for example, saw as some of "the
American virtues that shine in baseball" not only profi-
ciency in physical skills but also the "possession of more
than one talent and the willingness to work in harness

8 Allen Novins, foreward to Voigt, American Baseball,
p. vii.

9 H. Addington Bruce, "Baseball and the National Life,"
The Outlook, CIV (May 17, 1913), 105, 107.
without special orders. Former President Herbert Hoover believed that the sportsmanship developed through training and teamwork was "second only to religion as a moral influence in our country."

The American virtues cited most often as products of involvement with baseball were belief in our adherence to democratic principles. In the first decade of the twentieth century, writers were pointing out this relationship. Rollin Hirtt asserted that "not even in the smoking car where hod-carriers hold converse with bankers, does democracy blossom more superbly than in the grandstand of a baseball stadium." To Allen Sangree, the game not only taught democratic principles, but helped to preserve them by serving as a "safety valve." While other governments were often threatened with violent revolution, that of the United States remained secure because baseball provided an outlet for aggressive emotions for people of all classes. "Baseball is second only to Death as a

10 Barzun, p. 161.

11 Herbert C. Hoover, Addresses Upon the American Road, 1905-1920 (Stanford, 1951), p. 164.

leveler," he asserted, and as long as it remained "our national game, America will abide no monarchy, and anarchy will be too slow." And writing at the outbreak of World War II, John R. Tunis saw in baseball "a direct analogy with the workings of democratic government in times of crisis." During the contest, he explained, the players subjected themselves to the directions of the manager. Once the game was over, however, the rigid controls were removed.

Tunis, though, was more realistic in his observations than most. Whatever its other contributions, he saw that baseball was especially undemocratic in its exclusion of Negroes, a policy that offended "equally the principles of democracy and sport." A few Negroes, to be sure, had played in the nineteenth century, but only at the risk of both verbal and physical abuse. Reportedly, for example, the feet-first slide into a base was developed as a means of crippling Negro infielders. And when Cap Anson, one of the powers of early baseball, refused to

---

13 Allen Sargree, "Fans and Their Frenzies," Everybody's, XVII (September, 1907), 367.
15 Ibid., pp. 23-29.
let his White Sox play an exhibition against some Negro players in 1887, the policy of professional baseball was established.16

So strong was the policy, moreover, that it took sixty years, a strong-willed owner, and a highly talented, intelligent, and dedicated Negro athlete to change it. In 1946 Branch Ricky of the Dodgers, in spite of considerable opposition from his colleagues, signed Jackie Robinson, a Negro and a former football star from UCLA, to a contract. To Eric Goldman, Robinson was a "revolutionist in a baseball suit," a harbinger of an era in which the barriers imposed against all minority groups would crumble.17 And five years later, in 1951, Senator Johnson could boast to the House Judiciary Committee that baseball was distinctly American because it judged men according to their ability rather than their color or religion. "The other night at Griffith Stadium," he related, "I saw an Indian pitching, a Cuban catching, a Pole strike out, a Negro hit a home run, and a Swede used as a pinch hitter."18


Because of its real or alleged contributions to American life, and because of the zealous approach to the game by many, baseball also developed into a quasi-religion. Early enthusiasts rationalized their interest in it by pointing out the moral advantages inherent in playing the game. Not only was it recommended as a means of exercising, but it provided wholesome activity for urban youth. By 1920, Morris Cohen was arguing that baseball had become the only religion "that is not sectarian but national," and this aura of religiosity has been evident in the descriptions given to the baseball Hall of Fame at Cooperstown, New York. This structure became a "shrine," a "pantheon," a "sanctuary," a hall of "relics," to which "pilgrimages" were made, and a place in which players chosen for membership were "enshrined," thus becoming "immortals."

For have other sports ever been able to develop the same degree of devotion and respect. To Roger Kahn, for example, football was "violence and cold weather and sex and college rye" while basketball exhausted one with its

---


21 Seymour, p. 4.
"climax upon climax." Baseball, on the other hand, was
"for the leisurely "afternoon of summer" and for the un-
outhing dream."22 Or as Jim Brossman, a former pitcher,
argued in 1963, professional football, despite its in-
creasing popularity, would never supplant the "national
posture." It was simply "too complicated at the profes-
sional level," and "too brutal for amateurs."23

Whether or not these contentions were true, baseball
officials encouraged belief in them. And although some
sportswriters, like John Lardner, might deplore the hypoc-
ocrisy of those who tried to pass the baseball business off
"as a patriotic ritual, a national youth movement, a nadel
of character, a prophetic 'propaiad message from Thomas
Jefferson,"24 many Americans did regard it as being all of
these things. As Ralph Androano wrote, "It is inconceivable

22 Roger Lahn, "Intellectuals and Ballplayers,"
American Scholar, XXVI (Winter, 1957), 349.

23 Jim Brossman, "A Big-League Pitcher Views World
Series and Baseball's Future," The Wall Street Journal,

24 John Lardner, "Baseball's Big Combosale," Sport,
XXXI (May, 1947), 47. (Originally appeared in Sports
magazine, 1946). If, indeed, baseball officials ever
invoked the name of Jefferson, they claimed undeserved
support. Jefferson, himself, doubted that the ball games
of his day could match sports involving horses or guns
at character building. Voigt, p. xxv.
that baseball could have required its unique position in the scale of social values unless those who participated in the game, as well as the game itself, embodied the personal values that the nation admired and believed in."

From the beginning, too, baseball owners and officials have been intent upon preserving and adding to the favorable image. As early as 1907, for example, a special committee created by sporting goods tycoon Albert Spalding set about providing the "national pastime" with an authentic American background. Commissioned to discover the origins of the game, the committee disregarded all evidence pointing to vague English sources and created the myth that General Abner Doubleday, a Civil War figure, originated in Cooperstown in 1839.

In subsequent years, the preservation of this favorable posture remained an official policy. In its constitution, the National League emphasized its intention "to immortalize Baseball as the National Game of the

---


26 Robert Henderson, Past, Ball and Bishop, The Origin of Ball Games (New York, 1937), pp. 170-1-9, etseq. By 1939 the myth had gained enough credence to permit the Post Office Department to issue a commemorative anniversary postage stamp.
And to insure that the players did nothing to damage this image, the professional clubs insisted upon censorship rights over player appearances and public statements. In the words of Jim Bronson, the players were expected to appear as "noble, self-sacrificing, boy, pure of heart and mind, batting balls for joy and applause."28

The choice of individuals for the position of Commissioner has also contributed to the maintenance of a favorable public image. The first commissioner was a federal judge, the second a former senator and governor, and the fourth and present commissioner, a retired general. Prominent public figures, now like William Howard Taft, John Pershing, Leonard Wood, and William Gibbs McAdoo were all considered for the post before Kenesaw Mountain Landis was chosen in 1920.29 And while looking for a new commissioner in 1965, baseball officials considered such people as Kenneth Keating and Richard Nixon

27U. S. House of Representatives, 82d Congress, 1st Session, Committee on the Judiciary, Study of Monopoly Power, part 6, Organized Baseball (Washington, 1951), pp. 709-790. The constitution also contains this awkwardly worded declaration: "This League shall be operated not for profit."  
29J. G. Taylor Spink, Judge Landis and Twenty-Five Years of Baseball (New York, 1947), p. 64.
before awarding the post to General William Hebert.

Interestingly, it was during the tenure of Ford Frick, the only career baseball man ever to hold the position, that the business found itself under constant scrutiny by Congress.

As Commissioner Chandler pointed out in 1951, the preservation of a favorable image was the key to maintaining a special legal status. Some of the new owners, he felt, were not fully aware of this, and he disparaged of the day when they might convince the American people that baseball was "essentially a big business" rather than a sport. 30

In retrospect, however, it seems probable that Chandler was worrying prematurely. The fans, generally speaking, remained interested only in the sport; unless baseball officials developed a total disregard for them, they were unlikely to agitate for any regulation. The players, too, had been pacified with high salaries and lucrative fringe benefits. Nor was there much likelihood that baseball would again be forced into court because of the minor leagues. The old order, characterized by the independent operator, had yielded to a system

30 House, Committee on the Judiciary, Study of Monopoly Lienor, p. 292.
subsidized by the majors, and the era that saw men of mediocre talent make a career out of minor league baseball had become a thing of the past. The goal of the beginning players was to reach the major leagues as quickly as possible, and those who did not achieve this within a few years usually quit and entered some other profession.

With most fans relatively unconcerned about the economic aspects of baseball, the players satisfied, and the minor leagues under control, the source of any change would be Congress, and if the recent history of the issue was any indication of the future, the chances that Congress would impose any stringent form of regulation seemed minimal. Most congressmen were convinced that the baseball business was unique, and so long as it did not abuse its privileged position, its judicial exemption seemed likely to stand.
Organized baseball, that, one hundred seventeen years after the formation of the first professional league, enjoyed a position exalted yet beset with challenges. On the one hand, the game of baseball was held up as the national pastime. On the other, the business of baseball was open to attack through the courts and Congress. Numerous fans and sportswriters were becoming disillusioned, and it was even threatened by other sports seeking its crown as the national game. The result was that, while attendance figures confirmed that the game was more popular than ever, professional baseball could not rely solely on its reputation or image as a safeguard against the menace of change.

Organized baseball, which began as a rather exclusive activity of affluent customers, became a game followed by people of every social class in every region of the country. It was rescued from the fate of other early American games that never developed past the schoolyard stage by urban groups such as the Knickerbocker Club of New York. These amateur groups formulated rules and playing procedures,
thereby giving to the game new stability and order, and beyond this, they established the foundation for professional baseball by forming an association of teams that accepted the rules.

Given a basic organizational structure, baseball underwent two more changes that altered for all time its nature. The first of these was the adoption of the game by the general public. As baseball broadened its appeal, the opportunity was open for it to become mass entertainment. This phenomenon produced the second change, the transformation of baseball from an amateur to a predominantly professional affair. The fans' demand for the best available players forced the team owners to offer money to secure them.

Then, once men began to invest policy in such a venture, they desired and needed more economic stability. To achieve this, they formed the National League and imposed restraints upon players; and the eventual result was the emergence of the team owner as the dominant figure in professional baseball, a development that opened the road to pure commercialism. The development took place, moreover, during a period in which laissez-faire was the prevailing attitude of government toward business. By the latter part of the nineteenth century, when reform measures such as the
Sherman Act had begun to operate, the National League had already perfected methods of operation that would be used for the next seventy years.

In practice, too, the methods were remarkably effective, and challenges to them were slow to develop, partly because the idea of baseball as a business was slow to take root. During the Progressive Era, a few politicians talked about a "baseball trust" but Congress showed no real interest; and the anti-competitive arrangements in the field, similar to those in other industries, never generated any threat of dissolution. On the contrary, the National League was enjoying considerable success in beating down rival organizations, absorbing its major competitor, the American league, and consolidating its power. Those injured by these actions, to be sure, often went to court, but they limited their challenges to the baseball contract, with its reserve clause, and the typical outcome, even when the suits were successful, was an empty legal victory. It was not until twenty-five years after the passage of the Sherman Act that anyone sought to apply the antitrust laws to professional baseball. And from this case, involving the defunct Federal League, the established organizations emerged even stronger, for the Supreme Court declared that
Baseball was not in interstate commerce and was, therefore, exempt from the antitrust laws. Thus, the status quo was sanctioned by the court.

Baseball continued to operate, then, with no apparent legal worries, through World War II. It was not until after the war, by which time the court had broadened its views of interstate commerce and the nature of professional sports, that the game's leaders, under new legal threats, began to worry. Even though the Supreme Court reaffirmed the earlier decision in 1953, baseball officials began to pressure Congress for legislation that would preserve the economic structure of their business in the face of any future decision. The result was extensive lobbying, beginning during the mid-1950's and continuing for the next dozen years, yet out of this came little, in the way of legislation. Only a single bill, permitting joint action in selling broadcasting rights, passed Congress. The legislators seemed sympathetic, but preoccupation with other matters, the strength of the antitrust ideal, and unpopular actions by team owners combined to prevent action.

At the time of this writing, it has been fifteen years since the Supreme Court reaffirmed baseball's antitrust exemption in the Toolson case. Yet one cannot assume absolutely that professional baseball will not be brought into court again. It is unlikely, if only because of the cost
involved, that any challenge from an outside organization will again threaten baseball, and the possibility is equally remote that an established professional athlete will initiate legal proceedings. There is, however, a possibility that some college athlete would prefer to negotiate with all interested teams rather than just the one to which he had been allotted in the free-agent draft, and, being refused this, might seek legal remedies.

If, for this or any other reason, someone or something forces professional baseball back into court, there is also the possibility that the Supreme Court might reassess its old position. If this did occur, and baseball's long-standing judicial exemption was erased, Congress, in all probability, would finally take action. Such was the case when the Court brought the insurance business under the antitrust laws. The reaction was similar when the Court ruled against rate-fixing associations among railroads. And the only legislation pertaining to baseball, the sports broadcasting bill of 1961, was the result of the same kind of challenge. Thus, only if a real emergency arises, such as an adverse decision by the Supreme Court, can baseball expect sympathetic action from Congress. Until this occurs, the game, in all likelihood, will continue to operate as it has in the past, relying on
self-regulation, dictated by what it has an economic necessity, while its more influential followers were more cynical about the purity of the "national pastime."

Finally, baseball provides an illustration of how a group successfully maintained an antitrust exception. For decades baseball's image as a game overshadowed its business aspects so that, when an antitrust case finally arose, the Supreme Court could declare unequivocally that it was not commerce. The business, then, enjoyed the protection of the Court as it followed a non-competitive policy. When the Supreme Court, following World War II, ceased in the process of being re-educated in the area of interstate commerce, baseball officials undertook an extensive campaign to get their exemption written into law. They were working from a strong base, politically, not only because they had some of their own people in Congress, but also because their business, as a product, required little selling. Baseball was more than a mere game or business; it was an integral part of American civilization, and, as such, deserved special consideration. Furthermore, baseball officials could make forceful arguments regarding the peculiarities of their business and could draw frightful pictures of what would happen if it were subjected to
the rules governing others. And if these men were not yet successful in obtaining from Congress what they wanted, they had at least presented their case thoroughly, so that the legislators were familiar with the problem and would be able to react properly should events necessitate action.
Government Documents

Congressional Record, 1890-1966.


United States Statutes at Large.

Court Decisions


Appalachian Coal, Inc. et al. v. United States, 288 U. S., 394 (1933).


Cincinnati Exhibition Company v. Harders, 216 F., 269 (1914).


Metropolitan Exhibition Company v. Roehr, 42 F. 198 (1930).


Philadelphia Fall Club, Ltd. v. Lajoie, et al., 51 A., 973 (1902).


United States v. The New York Athletic and Baseball Base
Company, 173 F. 2d, 75 (1949).

United States v. Texas Mutual Insurance, Inc., et al., 334
U. S., 151 (1947).

United States v. South-Eastern Underwriters Association,
122 U. S., 599 (1907).

United States v. United States Steel Corporation, et al.,
251 U. S., 377 (1920).

Washington Professional Baseball Corporation, Inc. v.
National Baseball Association, 147 F. Supp, 156
(1956).


Books

Cobb, Ty, with At Stump, My Life in Baseball, The True

Hickel, Francis C., editor, Beach's Official American
League Baseball Guide for 1902, Philadelphia,
A. J. Beach Company, 1903.

Periodicals

Ward, John Montgomery, "Is the Baseball Player a Chattel?"
Lippincott's, XI (August, 1887), 310-319.

Ward, John Montgomery, "Notes of a Base-Ballist," Lippinc-
cott's, XXXII (August, 1888), 213-220.

Ward, John Montgomery, "Our National Game," The Cosmopolitan,
V (October, 1888), 543-55.
Newspapers


Farmer's Weekly, October 15, 1859; July 17, 1865.


SECONDARY MATERIAL

Books


Voigt, David Bertin, American Baseball, From Gentleman's Sport to the Joint-Stock System, Norman, University of Oklahoma Press, 1933.


Periodicals


Bruce, N. Addington, "Baseball and the National Life," The Outlook, CLI (May 17, 1913), 104-107.


Kahn, Roger, "Intellectuals and All-Years," Marxist Scholar, XCI (Winter, 1957), 242-249.


Sagree, Allen, "Fans and Their Frenzies," Everybody's, XVII (September, 1907), 378-387.
