

Dodging Antitrust: Nostalgia, Big Business, and the Baseball Monopoly

Emile Warot
Undergraduate Senior Thesis
Department of History
Columbia University
March 29, 2021

Seminar Advisor: Professor Marc Van De Mieroop
Second Reader: Professor Richard R. John

Contents

Acknowledgments	3
Introduction: “The Boys of Summer”	5
I. Top of the Inning: Baseball, Nostalgia, and Antitrust in 1922	10
1. <i>Federal Baseball</i>	10
2. ‘Experience’	13
3. Sport and Business	15
4. Baseball as Reform	17
5. Corruption	19
6. A Virtuous Monopoly	21
7. Sportswriting	23
8. Nostalgia	25
II. Middle of the Inning: Baseball and Antitrust, 1922-1951	26
1. Baseball as Mass Entertainment	26
2. Baseball as Big Business	29
3. Baseball as Anticommunism: <i>Gardella</i>	30
4. The Reserve Clause	33
III. Bottom of the Inning: The Exemption, 1951-1953	36
1. The Investigation	37
2. The Leagues’ Testimony	37
3. A Labor Struggle	41
4. The Report	46
5. <i>Toolson and Flood</i>	49
6. Nostalgia for the Present	56
An Extra Inning: The Negro Leagues and the “Reverse Mirror Image”	58
Conclusion	61

Acknowledgments

Over the last twelve months, I have too often forced too many people to discuss baseball's antitrust exemption with me. There is one man, though, that I could not talk with but whom I could not have written this piece without—Corbin, this thesis is for you.

To Ramsay, Julia, Kayla, and Alena, thank you for all the sleepless nights spent working together. To Jack, Mike, Matt, and Marwan, thank you for being by my side throughout the last four years. To Zoë, thank you for all your love, support, and especially patience. And to my parents—thank you for everything.

So many professors and their unique qualities have guided and inspired me along the way: Richard John and his infectious passion; Marc Van De Mieroop and his thoughtful wisdom; Anne Higonnet and her 'no disclaimers'; David Freeman and his dorky advice; Brent Shaw and his laughter; Kate Brassel and her love.

“What is new in America is the clash of the first level (primitive and wild) and the ‘third kind’ (the absolute simulacrum). There is no second level.”

Jean Baudrillard, *America*

“Gentlemen, we have the only legal monopoly in the country, and we’re fucking it up.”

Ted Turner, Owner, Chicago Cubs

Introduction: “The Boys of Summer”

In theory, *The Boys of Summer*, a 1972 book by sportswriter Roger Kahn, tells the history of the Brooklyn Dodgers’ victory in the 1955 World Series. In practice, surprisingly little of the tome is dedicated to that narrative. The best chunk of *The Boys of Summer* is a memoiristic account of Kahn’s youth, which he spent “within shouting distance” of the Dodgers’ stadium at Ebbets Field.¹

Kahn prefigured his account of baseball history with his childhood experiences as a baseball fan. His work as a journalist and a historian, as an observer and interpreter of the sport, is inseparable from his earliest memories of cheering on the Dodgers or hitting balls in Brooklyn parks. He makes no pretense to objectivity—perhaps even more than the Dodgers themselves, Kahn is one of the ‘boys of summer.’

Today, the book reads as an exercise in kitsch. Not a page goes by without hyperboles like “a child casts stones. But between the casting child and the pitching major leaguer lies the difference between a boy plunking the piano and an artist performing,” or “athletes, like surgeons and concert violinists, know the dry mouth of pressure.”² To top off a description of a pitcher’s windup, Kahn unironically writes that “art proceeds subsequently.”³

Remarkably, this register worked. Almost unanimously, critics noticed the book’s saccharine writing—and loved it. Far from a self-indulgence, *The Boys of Summer*’s structure and

¹ Roger Kahn, *The Boys of Summer* (New York: HarperCollins, [1972], 2011): The cover to the first edition of Kahn’s book (New York: Harper & Row, 1972) is subtitled, “a warm, delightful narrative of growing up within shouting distance of Ebbets Field, working for the *Herald Tribune* in the Jackie Robinson years... and what’s happened to everybody since.”

² Kahn, *Boys of Summer*, 138, 142.

³ Kahn, *Boys of Summer*, 143.

tone were a rhetorical move Kahn devised to sway his target audience. His hope was that when adults of his generation took in the first part of his book, with all its subjectivity and flowery language, they would vividly recall their childhood memories of baseball. That feeling would color under rose-tinted lenses their reception of his historical account of the 1955 season, and of his book as a whole. This trick falls flat on today's reader. In 1972, though, it got through to even the most seasoned of critics: the nostalgia Kahn awakened in them overrode their professional standards as 'objective' evaluators of literature.

"Here is a book that succeeded for me despite almost everything about it," wrote critic Christopher Lehmann-Haupt in the *Times*. "All I can say," he went on, "is that I kept bristling over phrases such as 'a manager pouring the totality of his being into a pennant winner,' but kept reading nonetheless. And, despite all better judgment, kept feeling the warming glow of a simpler, better, by-gone way of life—by which I mean the days when all that mattered was what happened at the ball park, what came over the radio on summer afternoons and what they printed on the sports pages."⁴

For a literary critic, using the words "despite all better judgment" is damning. Lehmann-Haupt was tasked with seeing through authors' emotional appeals to appraise the literary value of a text; he openly admitted that he was blinded by Kahn's pathos. *Boys of Summer* did not succeed for him "despite" its overwrought writing but *because* of it—because it awakened his nostalgia for the game as he knew it as a child.

This was far from an isolated case. Again in the *Times*, critic Grace Lichtenstein opened her review by gushing over how much she "cherishes the memories of those magic years" and mentioning that she had just dug up "one of the Dodger yearbooks I have saved." She ended it by

⁴ Christopher Lehmann-Haupt, "Where Are They All Now?" *New York Times*, February 25, 1972.

declaring, “those were simpler times, before baseball was toppled from its throne as the national pastime, and the intervening years have not been kind to the sport or its players.”⁵ She spent very little time talking about the book itself, and very much about the nostalgia it made her feel.

Yet another critic, Heywood Hale Broun, wrote in the *Washington Post* that while “some may find all this unrealistic and sentimental... it doesn’t seem so to a once-young man who walked out of Yankee Stadium on a terrible April day long ago, when a stranger ran out to right field wearing Babe Ruth’s number on his back.”⁶ The book’s reviews all read so similarly that it seems Kahn put his finger on an experience universal to his generation.

But what exactly was that experience? Kahn describes baseball in the language of the sublime, as a larger-than-life drama with existential stakes. “In the dead sunlight of a forgotten spring,” he writes, “the major leaguers were trim, graceful and effortless. They might even have been gods for these seemed true Olympians to a boy who wanted to become a man.”⁷ We have to wonder whether Kahn and his readers, as children, really saw the sport this way—or only thought they did. Like Julian Barnes once wrote, “what you end up remembering isn't always the same as what you have witnessed.”⁸

The fact that some literary critics in the seventies could not impartially review a book about baseball may not, by itself, seem particularly meaningful. It becomes more significant when we realize it is part of a pattern that holds true across eras and occupations. As one political science professor wrote about baseball, “the *good old days* phenomenon seems to find its way into the sentimental lexicon of every generation,” and since the advent of professional baseball in the

⁵ Grace Lichtenstein, "The Boys of Summer: By Roger Kahn," *New York Times*, March 5, 1972.

⁶ Heywood Hale Broun, "Brooks, Bums, Dodgers, Men: The Boys of Summer by Roger Kahn," *The Washington Post, Times Herald*, February 27, 1972.

⁷ Kahn, *Boys of Summer*, 43.

⁸ Julian Barnes, *The Sense of an Ending*, (London: Vintage, 2012): 4.

1870s, all sorts of Americans have found their judgment clouded when their work has involved the sport.⁹

This thesis focuses on two moments, one in the early twenties, the other in the early fifties, during which baseball's major leagues entered the judicial and political spheres first to secure, then to maintain an exemption from American federal antitrust law—effectively making the sport a legal monopoly. This exemption originated in *Federal Baseball v. National League*, a 1922 Supreme Court case. It stood largely undisputed until the fifties, at which point it came to face a congressional investigation (in 1951) and a second Court challenge in *Toolson v. Yankees* (1953).

Generally speaking, there are two types of works that pertain to this topic: traditional histories of baseball and legal studies of its antitrust exemption. The former, the most seminal of which are Harold and Mills Seymour's *Baseball* trilogy, G. Edward White's *Creating the National Pastime*, and David Voigt's *American Baseball*, are all comprehensive in their treatment of baseball's cultural context and development. They tend to be less sensitive, however, to the effects of legal and legislative decisions concerning the sport, and to span limited time frames that leave out some of the critical moments in baseball's relationship with antitrust.

The latter, most notably Roger Abrams' *Before the Flood*, Justice Samuel Alito's "The Origin of the Baseball Antitrust Exemption," and Ed Edmonds' "Over Forty Years in the On-Deck Circle," are by their nature highly perceptive about the nuances of baseball's legal issues. Nevertheless, as they are often the works of trained legal scholars and published in law reviews, they dedicate little time to broader contextualization of the cases at hand.

⁹ Jerold J. Duquette, *Regulating the National Pastime: Baseball and Antitrust* (Westport, CT: Praeger, 1999): 15.

Scholarship that exclusively studies baseball's antitrust exemption and exists at the intersection of the historical and legal approaches is rare. Two books, Stuart Banner's *The Baseball Trust* and Jerold Duquette's *Regulating the National Pastime*, occupy this niche. They lie on opposite ends of a spectrum—Banner's tends more towards the historical survey, and Duquette's towards the legal analysis. In relation to that existing corpus, this thesis is situated closest to the last category. It seeks to put the legal and political sources surrounding the antitrust exemption in conversation with the intellectual and cultural contexts of their time, and it attempts to differentiate itself from Banner and Duquette's work by focusing specifically on the argumentative strategies used by the major leagues in its selected historical periods.

This thesis contends that baseball's major leagues obtained their exemption from antitrust law in two distinct moments. In the twenties, they painted the exemption as a salve for America's difficult growth into an urban-industrial society and a solution to its nostalgia for amateur baseball. In the fifties, they used the country's nascent pro-business, anticommunist climate to their advantage by depicting baseball as both an idiosyncratic industry and a key piece of Americana whose economic and cultural particularities entitled it to its exemption.

While these two strategies diverged in their details, they followed the same structures and conceits. They each adapted their portrayals of baseball to fit their time's dominant cultural concerns. Despite the antitrust exemption being a predominantly legal issue, both approaches circumvented the judicial and political spheres and used the cultural one instead.

I. Top of the Inning: Baseball, Nostalgia, and Antitrust in 1922

1. *Federal Baseball*

The history of MLB's legal monopoly over professional baseball in the United States began in 1922, with the Supreme Court's decision in *Federal Baseball Club of Baltimore v. National League*. At the turn of the twentieth century, the National League (also known as 'organized baseball'), today one of MLB's constituent leagues, was the preeminent force in baseball. In 1913, though, a group of upstart owners set up the Federal League as competition. While the magnates in charge of the National League had been confronted with challengers before, they felt uniquely threatened by the Federal League's aggressive policy towards snapping up National League players. The Federal League enticed National League players to switch allegiances, largely by offering them fatter contracts and friendlier labor policies.¹⁰

The National League used its comparative financial might to retaliate. Usually by buying Federal League teams outright, it induced every team save for one to leave the association. That last one standing, the Baltimore club, sued the National League under the Sherman Antitrust Act.¹¹ Neither the National League's actions nor their monopolistic nature were in doubt. The only issue was a thorny provision of the Sherman Act that held it could only apply to 'interstate commerce.' Did that correctly describe organized baseball? The Court, in a unanimous decision penned by Oliver Wendell Holmes, Jr., declared that it should not. In his words, "the business is giving exhibitions of base ball [sic], which are purely state affairs."¹²

¹⁰ Harold Seymour and Dorothy Seymour Mills, *Baseball: The Golden Age*, (New York: Oxford University Press, 1971): 196-213.

¹¹ *Federal Baseball Club v. National League*, 259 U.S. 200 (1922): 207.

¹² *Federal Baseball*, 208.

Most legal scholarship that looks back on *Federal Baseball* finds this a reprehensible decision.¹³ Both by common sense and contemporary antitrust doctrine, professional baseball in 1922 seemed to be interstate commerce. As the Federal League’s lawyers pointed out, the National League was created for the explicit purpose of being an interstate “circuit” through which teams from different regions could coordinate games, and a significant portion of each team’s revenues came from the gate receipts of fans of opposing clubs who travelled across state lines to attend matches. Beyond this, the National League’s equipment standards had created ancillary interstate industries for the manufacture of balls, bats, and gloves, and the league’s popularity had led baseball media to develop on a national scale. “The continuous interstate activity of each [team] is essential to all the others,” wrote the plaintiffs.¹⁴

Holmes’ opinion is regularly cited in the courts as an example of poor legal thinking—most recently, as a judge on the Tenth Circuit, Neil Gorsuch called it a prime example of “precedential islands” that “manage to survive indefinitely even when surrounded by a sea of contrary law.”¹⁵ Prior to that, other judges and commentators called it, alternatively, “narrow,” “parochial,” “remarkably myopic, almost willfully ignorant of the nature of the enterprise,” “a derelict in the stream of the law,” “not one of Mr. Justice Holmes’ happiest days,” and “an impotent zombie.”¹⁶

¹³ Samuel Alito, *The Origin of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, (Journal of Supreme Court History: July 2009): 192. “It has been pilloried pretty consistently in the legal literature since at least the 1940s. Commentators have called it: “[b]aseball’s most infamous opinion”; a “clearly wrong” decision based on a “curious and narrow misreading of the antitrust laws and/or [an] utter misunderstanding of the nature of the business of baseball”; a “remarkably myopic” decision, “almost willfully ignorant of the nature of [baseball]”; and a “simple and simplistic” decision that forms “a source of embarrassment for scholars of Holmes.””; Roger I. Abrams, *Before the Flood: The History of Baseball’s Antitrust Exemption*, (Marquette Sports Law Journal: 1999): 309. “Holmes’ decision in Federal Baseball has been subjected to ridicule for decades... Judge Henry Friendly commented in *Salerno v. American League*... “[w]e freely acknowledge our belief that, Federal Baseball was not one of Mr. Justice Holmes’ happiest days.”

¹⁴ *Federal Baseball*, 201-5.

¹⁵ *Direct Marketing Association v. Brohl*, 2016, Tenth Circuit: 44.

¹⁶ Kevin McDonald, “Antitrust and Baseball: Stealing Holmes,” (Journal of Supreme Court History, 1998): 90.

Nevertheless, a few recent commentators have tried to defend the Court's decision as a routine application of 1920s-era antitrust law. In 2008, Supreme Court Justice Samuel Alito argued that when *Federal Baseball* was heard, the reigning legal definition of 'commerce' was much narrower than it became later on. To support his view, he quoted one of the lower court decisions that led up to *Federal Baseball*:

"The players, it is true, travel from place to place in interstate commerce, but they are not the game. Not until they come into contact with their opponents on the baseball field and the contest opens does the game come into existence. It is local in its beginning and in its end."¹⁷

In so doing, Alito echoed political scientist Jerold Duquette's interpretation that,

"Progressive Era jurisprudence was shaped in many cases by preindustrial, nineteenth-century legal definitions... When Holmes wrote his 1922 opinion for the court the term trade was associated with the buying and selling of products. It was not associated with the buying and selling of personal services. The term commerce was associated with the traffic of goods, but not the goods themselves. Nor was commerce associated with the production or manufacture of goods."¹⁸

While they make intriguing claims, these arguments make up a small minority of the commentary surrounding *Federal Baseball*. They are also unconvincing in light of the legal context of the case. *Gibbons v. Ogden*, the landmark decision that first defined interstate commerce reads that "commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches."¹⁹ It is difficult to see how this broad definition of commerce as "intercourse" squares with Holmes' narrow distinction between the business of playing games and all the "incidental" movement required to set them up.²⁰ Moreover, as law professor Roger Abrams pointed out,

"If commerce meant only the production of goods, then Holmes might have had it right under contemporary notions of the limitations of federal power. Yet the following term, again writing for a unanimous court, Holmes found vaudeville to fall within interstate commerce. The only distinction between the two cases is that the first involved baseball, the second did not."²¹

¹⁷ Alito, *Origin of the Baseball Antitrust Exemption*, 191.

¹⁸ Duquette, *Regulating the National Pastime*, 18.

¹⁹ *Gibbons v. Ogden*, 22 U.S. 1, 81.

²⁰ Alito, *Origin of the Baseball Antitrust Exemption*, 191.

²¹ Abrams, *Before the Flood*, 309.

Scholarly attempts to make *Federal Baseball* make sense on purely legal grounds have failed. Because of its unanimity, the decision cannot, either, be interpreted as a one-off misjudgment that could have swung either way. This means that there was something about baseball, something outside the law, that influenced the justices' ruling.

2. 'Experience'

Holmes' own philosophy gives us a clue about what that *something* is. Occasionally described as a Pragmatist in the tradition of William James and John Dewey, he shared their disdain for "a priori reasons... fixed principles, closed systems, and pretended absolutes and origins."²² As a judge, this outlook translated into a dim view of legal doctrines—"General propositions do not decide concrete cases," he wrote in one often-quoted dissent.²³ Holmes had a habit, while he sat on the Court, of challenging the eight other justices to give him a random legal principle and using it to argue for and against the case at hand.²⁴

If to Holmes, legal principles didn't decide cases, then what did? He centered a series of lectures he gave at Harvard around the idea that "the life of the law has not been logic; it has been experience."²⁵ In essayist Louis Menand's interpretation, Holmes used 'experience' as "the name for everything that arises out of the interaction of the human organism with its environment: beliefs, sentiments, customs, values, policies, prejudices—what he called 'the felt necessities of the time.' Another word for it is 'culture.'"²⁶ To Holmes, legal philosophies gave judges a range

²² William James, "What Pragmatism Means," [1907], from David Hollinger and Charles Capper, ed., *The American Intellectual Tradition: 1865 to the Present* (New York: Oxford University Press, 2016): 166.

²³ *Lochner v. New York*, 198 U.S. 45.

²⁴ Louis Menand, *The Metaphysical Club: A Story of Ideas in America*, (New York: Farrar, Straus, & Giroux, 2002): 340.

²⁵ Menand, *Metaphysical Club*, 341.

²⁶ Menand, *Metaphysical Club*, 342.

of options to ultimately rule with, but the original impetus for their decisions came from their personal perception of and relationship to the culture of their times. So, to understand the Court's decision in *Federal Baseball*, we have to understand what its 'experience' of baseball would have been.

The Taft court's justices were members of the last generation of Americans whose childhood experience of baseball was not mediated through the prism of professional sports. Holmes, the oldest, was born in 1841; James McReynolds, the youngest, in 1862. All but three were children of the fifties. This means they all grew up when baseball only existed as the "simple, informal ball game" Harold Seymour describes in his comprehensive history of its early years.²⁷ Seymour's picture of nineteenth-century baseball, although itself ironically tinged with nostalgia, deserves to be printed in full:

"The ball games of the period were admirably suited to a young, essentially rural America. Few people had great wealth or leisure. Playing sites were plentiful and convenient. Only the rudest preparation was necessary—laying "goals" or bases by driving sticks into the ground or placing flat rocks at approximate distances. Equipment was cheap and easy to come by. Any stout stick, wagon tongue, ax or rake handle made a capital bat, and a serviceable ball could be made by winding yarn around a buckshot or chunk of india rubber and then sewing on a leather cover, perhaps cut to size by the local shoemaker, to prevent unwinding. No other paraphernalia were needed. Projecting one's power by swatting and throwing an object hard and far, and experiencing the excitement of the race to reach base ahead of the ball, satisfied elementary human urges. All these factors made for popularity and wide participation. Relatively few people watched games. Commercialized amusements were still unknown, and the promoter who sold baseball games as entertainment was not to appear until a later day when American society became more urbanized. Meager press coverage further indicated the unorganized character of amusement. Ball playing and recreation were more synonymous than they are in our day of mass spectator sports and vicarious thrills."²⁸

The difference between these local games and 1920s professional baseball, with its standardized equipment, large stadiums, loyal fans, media coverage, and financial stakes, cannot be overstated. It also helps explain a habit of mind crucial to the justices' decision in *Federal Baseball*: the inability to think about the sport and the business of baseball as one and the same.

²⁷ Harold Seymour, and Dorothy Seymour Mills, *Baseball: The Early Years*, (New York: Oxford University Press, 1989): 7.

²⁸ Seymour, *Early Years*, 7-8.

3. Sport and Business

This habit endured long past the twenties. In his 1972 review of *Boys of Summer*, Heywood Hale Broun wrote caustically that “It’s nice to know that though the medicine show moguls of baseball can, with a wave of a ledger, take our teams away, a thousand accountants with a thousand erasers cannot obliterate the memories Roger Kahn has saved here for us.”²⁹ Broun’s tone reveals the then-dominant conception of the relationship between the ‘professional’ and the ‘sport.’ Business was seen as a greedy invention grafted onto an innocent pastime. In his view, his boyhood club was ‘taken away’ from him by the profit-seeking whims of accountants, who played with sports as brokers with stocks.

The idea that his team itself was a business, run by coaches and players who saw themselves as businessmen, would have been foreign to Broun. This partly reflects one of the strokes of genius of professional sports: no matter how much money is poured into the industry or to what extent it becomes structured as an anodyne corporation, it continues to be marketed and presented as a game—as the opposite of the grown-up world of ledgers and stock-tickers.

In 1922, this mental distinction between the business that occurred in backrooms and the romance that played out on the pitch was even more exacerbated than in Broun’s time because adults could still remember a world where professional sports simply did not exist. Seen through this lens, some perplexing aspects of *Federal Baseball* become clearer.

Federal Baseball was the culmination of a series of lower-court antitrust challenges to the Major Leagues that played out through the 1910s, the telling language of which sets the scene for Holmes’ opinion. In one similar case that revolved around the reserve clause, Justice William

²⁹ Broun, “Brooks, Bums, Dodgers, Men.”

Potter of the Pennsylvania Supreme Court ruled that baseball should be considered not as “business,” but as “sport.”³⁰ In another, Kenesaw Mountain Landis, a federal judge who in 1920 became the first Commissioner of Baseball, wrote that, “as a result of thirty years of observation, I am shocked because you call playing baseball labor.”³¹ In this case, Landis’ long experience watching and playing baseball deeply clouded his view. He still had in mind the game he had known “thirty years” prior, played in leisure time on sandlots with makeshift balls and bats. Of course, no one then would have called playing baseball “labor”—it was respite from a hard day’s work. He could or would not conceive that baseball had since become, to some, a precarious salaried profession.

This generalized refusal to admit that the game had turned into a business led directly to the *Federal Baseball* decision. Holmes’ opinion upheld the District of Columbia Court of Appeals’ judgment that “baseball was not ‘trade or commerce,’ but ‘sport,’” and rejected the Federal League’s enjoinder to “distinguish between baseball as a sport, that is, where it is played merely as a means of physical exercise and diversion, and this business of providing exhibitions of professional baseball.”³² In a sense, for the Court, to regulate the National League under antitrust law would have been to implicitly recognize that it was more of an industry than a game, and the justices’ lifelong experience of baseball closed off that line of thought for them. *Boys of Summer* neatly sums up the paradox that plagued the Taft court: “it’s too much a business to be a sport and too much a sport to be a business.”³³

³⁰ G. Edward White, *Creating the National Pastime: Baseball Transforms Itself, 1903-1953*, (Princeton: Princeton University Press, 1996): 58.

³¹ Duquette, *Regulating the National Pastime*, 17.

³² *Federal Baseball*, 202; White, *Creating the National Pastime*, 78.

³³ Kahn, *Boys of Summer*, 27; Seymour, *Early Years*, 3: “Baseball in America is many things. But, contrary to widespread belief, professional baseball is not a sport. It is a commercialized amusement business. Strictly defined, sport means participation in some physical activity for its own sake—for the sheer pleasure and recreation one gets from it. Sandlot and college baseball may fit that definition, but professional baseball does not.” Some scholars, like Seymour, would even have professional baseball be exclusively a business and not at all a sport. To me, this is too

4. Baseball as Reform

Another key piece of the Court's 'experience' of baseball was the sport's relationship to progressive-era reform thought. Progressivism was a reaction to the United States' transition from a largely rural, agrarian society into an urban and industrial one. While it saw industrialization as inevitable and in some measure beneficial, it also considered it the cause of inhumane labor and living conditions, corruption in business and politics, and American moral decline. Progressive thinkers focused on finding ways to preserve industrialization's positive aspects and mitigate its negative ones. One of these was antitrust legislation—the Sherman and Clayton Antitrust Acts emerged out of the Progressive impulse to dampen the coercive power and corruption the movement thought of as inherent to big business.

Baseball was another. Progressive thinkers saw it as a reform tool—specifically, they saw the promotion of baseball among the people as a way of “displacing lower-class, ethnic behavior and ways of life with an upper-class, nativist, and Protestant morality in the workplace, the voting booth, and the ballpark.”³⁴ This is consistent with the idea that in the twenties, nostalgia for baseball was equivalent with nostalgia for the virtuous, pastoral, pre-industrial lifestyle it had embodied in the late nineteenth-century.

Reformers—perhaps nostalgic for their own childhood baseball games—also began to see the sport as an educational tool. John Dewey, the most prominent educator of his time, sought to “embed sports and games pedagogically” into his philosophies and models of teaching as early as

extreme a view—professional sports straddle the line between the two, as shown for instance by the litany of comments by professional sports players speaking about their job as though it were a game (even if the vocabulary and idioms they use have pretty much become the *only* language available to us to discuss sports).

³⁴ Duquette, *Regulating the National Pastime*, 21.

1910.³⁵ Simultaneously, baseball, previously mainly a collegiate sport, made its way into organized middle and high school leagues.³⁶

Baseball was also seen as a panacea for the many public health concerns of the time by Progressives and Christian Social Gospel reformers alike. At the top of their long list of worries were the dangerous physical and mental effects of factory work and city life. In 1907, theologian Walter Rauschenbusch wrote that the urban working class were “not advancing, but receding in stamina, and bequeathing an enfeebled equipment to the next generation.” He bemoaned “the competitive necessities of industry” that “crowd[ed] the people together in the cities,” and compared the living situations of tenements to “social murder.” He was also especially concerned with the state of the youths who grew up in these conditions and were subject to child labor.³⁷

One solution, to Rauschenbusch, was simply “space, air, and light,” all of which baseball could provide.³⁸ This was not in itself a novel idea—as early as 1846, Whitman had written:

In our sun-down perambulations, of late, through the outer parts of Brooklyn, we have observed several parties of youngsters playing ‘base,’ a certain game of ball. We wish such sights were more common among us... let us go forth awhile, and get better air in our lungs.³⁹

What was new was a concerted effort to build an infrastructure for baseball in urban settings. Where games used to be held in alleyways or on vacant lots, municipal governments—which had at one point discouraged baseball as a rowdy pastime—began to seriously build

³⁵ David Jaitner, "Dewey and Sports: An Overview of Sport in His Work," (Education and Culture, 2016): 39.

³⁶ Dorothy Seymour Mills, and Harold Seymour, *Baseball: The People's Game*, (New York: Oxford University Press, 1992): 36.

³⁷ Walter Rauschenbusch, *Christianity and the Social Crisis* [1907]. From Walter Rauschenbusch, Anthony Campolo, Paul B. Rauschenbusch, et al., *Christianity and the Social Crisis in the 21st Century: The Classic That Woke Up the Church*, (New York: HarperOne: 2007): 197-199.

³⁸ Rauschenbusch, *Christianity and the Social Crisis*, 197.

³⁹ Seymour, *People's Game*, 40.

dedicated baseball fields in the 1910s. Churches, especially through the YMCA, started to offer baseball as one of their social services around the same time.

Organized baseball, despite only providing physical exercise for its paid athletes, was eager to jump on the trend. One of professional sports' brilliant inventions has been to manufacture the idea that spectators are themselves athletes—that by attending a game, fans somehow physically and mentally exert themselves by osmosis with players. It is easy to feel jaded about this notion today, but it was much harder in the twenties, when the memory of baseball as a game that only existed as physical recreation was still fresh in people's minds. The design of baseball stadiums no doubt contributed to the association of the sport with healthy, outdoor living. Seated in one of them, all one can see is the grass of the diamond and the sky above its tall enclosures—they are, quite literally, just Rauschenbusch's "space, air, and light."

Duquette argues that the progressive perception of professional baseball as a reform tool explains its immunity from the progressive impulse towards breaking up big business. In his view, baseball was seen as an ally in the fight against trusts, not as one of them, and so it made sense in that it would be exempt from antitrust law.⁴⁰ While this is true, the relationship in the progressive imagination between professional baseball and antimonopoly initiatives went further than that.

5. Corruption

Federal Baseball partly came out of a belief, inspired by nostalgia for nineteenth-century amateur baseball, that granting the National League a legal monopoly could cleanse the sport of the impurity associated with business in the early twentieth century. The progressive era was gripped by a widespread anxiety over the corruption and impropriety that seemed to accompany

⁴⁰ Duquette, *Regulating the National Pastime*, 21.

the rise of political machines and large corporations. In 1914, journalist Walter Lippman wrote of his time that “the sense of conspiracy and secret scheming which transpire is almost unlikely,” and that its public was “willing to recognize as corrupt an incredibly varied assortment of conventional acts.”⁴¹ Baseball was not exempt from this mindset.

1919 marked what Seymour dubbed “baseball’s darkest hour”: the fix, by gamblers, of the World Series.⁴² In one fell swoop, that scandal validated decades of rumormongering about the corruption inherent to baseball’s professionalization, which are perhaps best encapsulated in *The Great Gatsby*.⁴³ In it, Fitzgerald—himself a sports fanatic—presents professional sports as a greasy, grimy thing, rife with cheating, the domain of the two most immoral groups in America: the working class and the industrial nouveau riche. One of Gatsby’s more unsavory connections is the stereotyped Jewish crook Meyer Wolfsheim, “the man who fixed the World’s Series back in 1919.”⁴⁴ College sports, in contrast, are the purview of Tom Buchanan and his Puritan, old-money milieu. The first thing the reader learns about him is that he “had been one of the most powerful ends that ever played football at New Haven—a national figure in a way, one of those men who reach such an acute limited excellence at twenty-one that everything afterward savors of anti-climax,” and that he “would drift on forever seeking a little wistfully for the dramatic turbulence of some irrecoverable football game.”⁴⁵

For Fitzgerald and his readers, the contrast between the morality of college sports and immorality of professional ones had everything to do with business. College athletes were (and still are) unpaid, and that lack of financial stakes ennobled the game in its spectators’ eyes by

⁴¹ Walter Lippmann, *Drift and Mastery* [1914], (Madison, The University of Wisconsin Press: 1985): 23, 25.

⁴² Harold Seymour, and Dorothy Seymour Mills, *Baseball: The Golden Age*, (New York: Oxford University Press, 1971): 294.

⁴³ Which is coincidentally set in 1922, the year of the *Federal Baseball* ruling.

⁴⁴ F. Scott Fitzgerald, *The Great Gatsby* [1925], (London: Wordsworth Classics, 1993): 47.

⁴⁵ *Ibid*, 6.

bringing it closer to the amateur sport they were nostalgic for. Think back to Landis' anger at the idea that baseball could be considered labor—it was easier to believe that players were competing out of pure love for the game and dedication to Olympic ideals when they were not salaried workers. In fact, it was the 1919 fix that led to Landis' appointment as Commissioner of Baseball on a mandate to purge the league from the baseness associated with business and return it to its innocent nineteenth century roots.

The contemporary perception of professional baseball as an immoral institution throws a wrench into the reform argument. How could people see a corrupt industry as a tool for moral renewal? The answer is that they did—but that before they could use it that way, they had to reform baseball itself, and they saw the antitrust exemption as the best way of doing so.

6. A Virtuous Monopoly

In the 1910s and 1920s, trust-busting was not the only solution on the table for industrial immorality. A countervailing trend held that in some fields, allowing monopolists or quasi-monopolists to dominate markets would benefit consumers more than fierce competition between many small businesses, so long as those monopolists were led by ethically-minded managers. Crowded markets, the thinking went, often ended up in a race to the bottom when corporations sacrificed morals to produce goods at lower costs and undercut competitors; they also had no way of ensuring industry-wide standards of quality or values. A virtuous monopolist, on the other hand, could impose standards on the entire business.⁴⁶

The National League justified its potential for antitrust exemption by presenting itself as such a virtuous monopolist. In its earlier years, it drew a contrast between itself and other leagues,

⁴⁶ Lippmann, *Drift and Mastery*, 80-88.

most notably by claiming to ban betting and drinking at stadiums and charging a high entry fee to exclude working-class spectators from games.⁴⁷ After the 1919 scandal, it sought to restore its image by hiring Landis, who immediately announced he would undertake an “untiring effort” to root gambling out of the sport. Of the players involved in the fix, he said—before their trial had even begun—“There is absolutely no chance for any of them to creep back into Organized Baseball. They will be and will remain outlaws.”⁴⁸ In short, from a public relations perspective, the National League marketed itself as the closest professional league to the nostalgic ideal of baseball as a game. Its hope was that neither justices nor fans would have to worry about distinguishing business from sport, because the business side was kept as ethical and repressed as possible.

Justices were attuned to be receptive to these types of appeals. To begin with, some were National League fans themselves. Chief Justice Taft, for instance, had in 1910 become the first President of the United States to throw the first pitch at a game; he had also been asked ahead of Landis to become Commissioner of Baseball. One obituary to Justice William Day read simply, “Justice Day had one hobby. It was baseball.” During oral arguments, Day is said to have regularly asked his clerks to surreptitiously pass him notes updating him on the scores of games. Following baseball does not constitute grounds for recusal, but it did make Taft and Day keenly aware of the character the National League projected.⁴⁹ More broadly speaking, as Holmes said, judges each have their own vision of the American ‘experience,’ none of which in 1922 would have been complete without baseball.

⁴⁷ David Q. Voigt, *American Baseball* (Norman, OK: University of Oklahoma Press, 1966): 60-70.

⁴⁸ Seymour, *Golden Age*, 323.

⁴⁹ Ross E. Davies, *A Crank on the Court: The Passion of Justice William R. Day*, (Baseball Research Journal: 2009).

7. Sportswriting

The National League's appeals to popular nostalgia were amplified by sportswriting, which had already developed into a national-scale medium. "Millions of people follow the daily reports of [game] results in the press, and in the large cities gather in the afternoons around the newspaper offices to see the bulletin reports of the scores," relates the text of *Federal Baseball*.⁵⁰

Despite its wide circulation, the genre was not exactly held to 'objective' media standards. For one thing, most sportswriters entered the industry because they were sports fans themselves, and "were too close to the game to be unbiased."⁵¹ Their ties to the game were not just emotional, but also financial. Opportunistic publishers struck agreements that entailed leagues and teams paying part of their writers' costs in exchange for positive coverage, meaning writers faced pressure from editors and club executives to parrot company lines. Most of these deals were made with the National League—one of the many benefits of being a monopolist. Newspaper cartoons, at the time the main visual representations of games, frequently poked fun at sportswriters' biases. One, a 1922 obituary for club president George Weiss, pictures him conversing with sportswriters in a panel subtitled "Has year round office at Taft Hotel where players, scribes and photographers gather."⁵² Another, depicting a Washington Senators game, is captioned "Even in the press coop the Senators had help."⁵³ It was in sportswriters' personal interest as fans and professional interest as employees to become the media arm of the league's appeals to 1920s nostalgia and arguments in favor of the antitrust exemption.⁵⁴

⁵⁰ *Federal Baseball*, 205.

⁵¹ Patrick Washburn and Chris Lamb, *Sports Journalism: A History of Glory, Fame, and Technology*, (Lincoln: University of Nebraska Press, 2020): 51.

⁵² See Annex, 1.

⁵³ See Annex, 2.

⁵⁴ Washburn and Lamb, *Sports Journalism*, 30.

The media coverage of the series of antitrust cases was almost uniformly tilted towards the National League. Sportswriters' biases distorted their choice of words, as the National League became "Organized Baseball" and the Federal League "outlaws" committing "raids."⁵⁵ The National League was often described in the language of sports, and Federal League in that of business. Sportswriters were no legal experts, and in their interpretations of the suits deferred straight to National League-affiliated sources.⁵⁶ Occasionally, statements from the National League or its teams would be printed in full without any journalistic commentary or nuance. Fearmongering about the consequences of successful antitrust regulation was rampant, as papers spread without providing evidence the idea that it "threaten[ed] the entire fabric of... baseball."⁵⁷

Sportswriters were at the time the only interpreters of the workings of professional leagues, and their words accordingly weighed heavily on public perceptions. In the absence of radio and television, they were tasked with conveying the events in a visual, emotional manner, and they did so in ways that perpetuated and reinforced fans' nostalgia for the bygone days of the amateur game. They played a major role in establishing the National League's image as the sole institution that could preserve the experience of that game into the industrial, professionalized era—and they weaponized that nostalgia to pressure their public into supporting the league's antitrust exemption.

8. Nostalgia

The *Federal Baseball* decision was the product of several different threads—judges' insistence on legally distinguishing 'business' from 'sport,' the progressive desire to use baseball

⁵⁵ "Outlaws Fire Heaviest Gun," (*Courier-Journal*: January 6, 1915); "Herzog to Join Outlaws," (*New York Times*: October 31, 1913); "Federal League Raids Stir Tense: President of National League Takes Up Defense of 'Organized Baseball'" (*New York Times*: January 8, 1914).

⁵⁶ "Organized Baseball Sued Under the Anti-Trust Law," (*St. Louis Post-Dispatch*: January 5, 1915).

⁵⁷ "Federalists Attack Organized Ball as Conspiracy," (*The Hartford Courant*: January 6, 1915).

as a tool for social reform, and the belief that a monopolistic National League could return the game to its moral roots, all of which were amplified by a one-sided sports media. Nostalgia ties all these threads together. Some of this nostalgia was 'real', so to speak, in the sense that the American experience of baseball had dramatically changed from the nineteenth century to the twenties. Some of it was a mirage, tied up in wider anxieties over the shift from agrarian and rural to industrial and urban life. Some of it was manufactured by professional leagues and allied sportswriters, who quickly realized that nostalgia sells tickets. All of it came together in what Holmes called 'experience.' The American experience of baseball at the time was primarily one of nostalgia, and the meaningful question then, just as for Jay Gatsby, was not what exactly that nostalgia was for but how to recapture it in the present. That was a fruitless endeavor, since we are only nostalgic for things we can never have again, but it did not stop people from trying.

II. Middle of the Inning: Baseball Between the Twenties and Forties

1. Baseball as Mass Entertainment

In the twenties, baseball's advocates promoted its antitrust exemption as a means of preserving its rural, amateur values into the industrial age; by the fifties, however, baseball had become a symbol of urbanization and industrialization, and those earlier values had been all but forgotten. The dominant experience of baseball in the twenties was as an athletic activity, associated with memories of playing in makeshift fields with local communities. In the fifties' consciousness, though, baseball had turned into a national spectator sport. America's pastime became watching—not playing—baseball.

These shifts were illustrated in the evolution of baseball's representative language away from the registers of the pastoral, athletic, and local and towards those of urbanism, consumerism, and the mass. Earlier baseball novels had largely ignored the major leagues, preferring to convey to their readers the familiar experience of amateur baseball. They were rife with sensory descriptions (“the wide free field, the smell of early grass, the ripple of soft breezes over flushed faces, the damp give of springy turf...”), detailed psychological portraits of players, and minutiae about team gossip.⁵⁸ All of those appealed to audiences who mainly played baseball rather than watched it, and who wanted, in the words of one author, “not a prodigy or a caricature” but a hero they could identify with.⁵⁹

In contrast, when the mainstream literature of the fifties engaged with baseball, it was to glorify the professional sport and its icons. In 1951's *The Old Man and the Sea*, Ernest Hemingway ceaselessly referenced “the great DiMaggio” despite his novel having very little to do with

⁵⁸ Seymour, *People's Game*, 34.

⁵⁹ *Ibid*, 33.

baseball. There, Hemingway's conceit was that DiMaggio's fame was so widespread that he had become, even in a small Cuban town, both a quasi-divine figure and a perennial subject of conversation. In a 1960 article about Red Sox left fielder Ted Williams' final game, John Updike—usually so wry and realistic—described him as “Achilles,” “Hamlet,” and “Leonardo” before writing:

“Though we thumped, wept, and chanted ‘We want Ted’ for minutes after he hid in the dugout, he did not come back. Our noise for some seconds passed beyond excitement into a kind of immense open anguish, a wailing, a cry to be saved. But immortality is nontransferable. The papers said that the other players, and even the umpires on the field, begged him to come out and acknowledge us in some way, but he never had and did not now. Gods do not answer letters.”⁶⁰

Around these times, avant-garde writers gained a sudden interest in baseball, which had in the past been the purview of less cutting-edge authors. In one study, for instance, literary scholar Richard Parker argued that Objectivist writers consistently used “the game's modern paraphernalia (mass spectatorship, commercialization, and the personality cult of the star player)” as a window into mass culture, consumerism, and corporate power—the social and economic phenomena they sought to critique. They also, according to Parker, saw echoes of the development of propaganda and rise of fascism in baseball's “ability to mobilize humanity, to anonymously communicate and persuade.”⁶¹ Fifties' baseball literature, whether Hemingway's, Updike's, or the Objectivists', took the spectator's point of view, was set in urban environments, and focused on the sport's relation to mass culture—all of which would have been anathema to the baseball writers of the twenties.

These literary and cultural changes reflected material developments in professional baseball. Between the twenties and the fifties, the major leagues used the latitude afforded them

⁶⁰ John Updike, “Hub Fans Bid Kid Adieu,” (*The New Yorker*, October 22, 1960).

⁶¹ Richard Parker, “Baseball over tea-cakes: Major League Baseball in American avant-garde poetry from Imagism to L=A=N=G=U=A=G=E,” (Lincoln: University of Nebraska Press, 2012): 88, 91.

by *Federal Baseball's* antitrust exemption to monopolize the baseball business and become organs of mass culture. The exemption facilitated this development most directly by allowing the major leagues to either stifle their competitors or subsume them into their 'farm system' of affiliated minor leagues. It also worked in more ancillary ways; for instance, the leagues' monopolistic deals with radio broadcasting networks, which played a significant role in turning baseball into a mass spectator sport, were only rendered possible by the exemption.⁶²

To be clear, other factors, such as the country's continuing urbanization, also contributed to this transformation. Nevertheless, the exemption set its foundations. The mere fact of enabling the major leagues to operate without competition allowed the major leagues to sell cheap tickets, attract the best players, and, perhaps most importantly, standardize the sport. In the fifties, there were sixteen major league clubs, which is about as many as there are main characters in the Marvel Cinematic Universe today. This was no accident: their relative paucity and stability allowed them to cement themselves as universally recognizable icons with visual attributes, 'personalities,' and histories. You don't need to have watched *Iron Man* and *Iron Man 2* to enjoy *Iron Man 3*—not only do you pretty much know what to expect, but you have probably also gleaned enough from our ambient culture to understand what happens. A casual fan watching game four of the Yankees-Dodgers World Series in 1949 would have felt largely the same.

In the late forties and early fifties emerged a new wave of interest in regulating baseball under the antitrust laws. The rationale behind *Federal Baseball*, already shaky in 1922, had come to seem even weaker. Not only had baseball acquired further trappings of interstate commerce due to its new status as mass entertainment, but the jurisprudence surrounding the Commerce Clause

⁶² For a comprehensive overview of baseball's relationship to radio, see White, *National Pastime*, 206-244.

had also significantly loosened. It seemed only a matter of time to legal commentators that the Court would reverse its earlier ruling and end the baseball monopoly.⁶³

Despite that, the major leagues successfully formulated a new narrative, in tune with the prevailing economic and cultural concerns of the times, to defend the exemption. The argumentative strategy the leagues had employed in the twenties, which relied on appeals to nostalgia for rural, amateur baseball, found itself out of date in the fifties. To replace it, the leagues painted baseball as both a unique industry that would not be commercially viable if subject to antitrust law and as a central piece of Americana. The leagues argued that the exemption and its associated behaviors were ‘natural’ and fundamental elements of the baseball business—and that baseball’s cultural weight entitled it to a legal treatment that acknowledged its supposedly unique economic nature.

2. Baseball as Big Business

The leagues’ new arguments were well-tailored to the country’s contemporary intellectual climate on business issues. In contrast to the twenties, during which Lippmann’s view of businessmen as money-grubbing “little profiteers” was the norm, the fifties were marked by a high degree of optimism towards the prospect of corporations dominating American life. Roosevelt-era public administrator David Lilienthal captured this atmosphere in *Big Business: A New Era*, a panegyric to the large company that can be summarized in one quote: “Bigness is our ally.”⁶⁴ To Lilienthal, “Big Business” represented not only productivity and efficiency, but also “a great social asset” and an “institution that promotes human freedom and individualism.”⁶⁵ These benefits, he

⁶³ Stuart Banner, *The Baseball Trust: A History of Baseball’s Antitrust Exemption*, (Oxford: Oxford University Press, 2013): 95.

⁶⁴ David Lilienthal, *Big Business: A New Era*, (New York: Harper, 1953): 43.

⁶⁵ *Ibid*, ix, 34.

wrote, demanded a softening of antitrust policy—he suggested that monopolies should be left alone if they fostered the positive social effects he described.⁶⁶

Pro-business views like Lilienthal’s dominated mainstream thought in the fifties. They could be found in works as varied as those of economist John Kenneth Galbraith, historian Richard Hofstadter, and management theorist Peter Drucker.⁶⁷ Perhaps surprisingly, they even found their way into the left. Sociologist C. Wright Mills, for instance, scorned the “rhetoric of competition” that underpinned the antitrust movement and argued that large conglomerates were a more desirable quantity than small, inefficient businesses.⁶⁸

The era’s widespread embrace of corporations as a positive social force allowed the leagues to abandon one of the tenets of their twenties’ argumentation: that baseball was a sport and not a business. In a time in which Drucker could write (with an unintentional nod to our previous chapter) that “to raise the question whether Big Business is desirable or not is... nothing but sentimental nostalgia,” it was advantageous for the leagues to present themselves as big businesses with positive social effects.⁶⁹

3. Baseball as Anticommunism: *Gardella*

Far from coming out of a vacuum, the fifties’ embrace of big business was intimately tied to the patriotic, anticommunist rhetoric that characterized American public discourse in the early

⁶⁶ For Lilienthal’s complete discussion of antitrust policy, see “Trust-Busting: Does It Make Sense Today?” in *Big Business*: 167-181.

⁶⁷ Matt Stoller, *Goliath: The Hundred-Year War Between Monopoly Power and Democracy*, (New York: Simon & Schuster, 2020): 504.

⁶⁸ C. Wright Mills, *White Collar: The American Middle Classes* (New York: Oxford University Press, 1951): 34. Mills develops his critique of competition in Chapter 3 (34-62), and expresses his distaste of small businessmen, which he dubs the “lumpen-bourgeoisie,” from 28-33. Interestingly, the view Mills adopted in the fifties closely mirrored the one Walter Lippman expressed earlier in the century when he castigated “the little profiteer” and characterized antitrust initiatives as ineffective. An informative discussion of Lippmann’s ideas can be found in Heinz Eulau, “Man Against Himself: Walter Lippmann’s Years of Doubt,” (*American Quarterly*: 1952).

⁶⁹ Peter Drucker, *Concept of the Corporation*, (New York: John Day, 1946): 5.

years of the Cold War.⁷⁰ Then, the large corporation became a model to be opposed to Soviet state planning—and it became easy to paint actors seen as hostile to that model, such as antimonopolists, as communist sympathizers.⁷¹ The leagues seized on this nascent rhetoric to bolster their defense of the exemption. By casting baseball as uniquely American in both cultural and economic terms, they sought to taint any challenges to the exemption as unpatriotic and subversive.

The leagues' efforts to deploy anticommunism in support of the exemption were most saliently expressed in *Gardella v. Chandler*, a 1949 case that opposed Danny Gardella, a player, to Albert 'Happy' Chandler, baseball's commissioner. In 1946, legions of young, able-bodied American men returned from war and flooded baseball's labor market. Due to this influx of competition, older players like Gardella found themselves less valued, and were offered considerable reductions in salary. Simultaneously, a pair of ambitious and nationalist Mexican businessmen, the Pasquel brothers, sought to invigorate the Mexican League by poaching those unsettled players from the United States. The Pasquels offered Gardella a \$9,000 contract—double what the New York Giants had just offered him—and he promptly crossed the border. Three years later, however, the Mexican League collapsed, and Gardella wanted to return to the majors. Chandler did not take kindly to this attempt. He blacklisted him from the leagues, and Gardella responded by alleging that Chandler's behavior constituted an anticompetitive restraint of trade.⁷²

The facts in *Gardella* were remarkably similar to those in *Federal Baseball*: the issues in both cases were the major leagues' attempts to punish competition from rival leagues. The main

⁷⁰ Lilienthal, *Big Business*, 34: "America is a country with a special talent for Bigness," writes Lilienthal, identifying big business as an indigenously American institution opposed to the Soviet economic model.

⁷¹ Stoller, *Goliath*, 487: Stoller describes the process by which "antimonopolists became targets" of the House Un-American Activities Committee; a more general description of pro-business sentiment and its links with anticommunism can be found in William Chafe, *The Unfinished Journey: America Since World War II*, (New York: Oxford University Press, 2011): 91-95.

⁷² Ed Edmonds, "Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemption," (Houston: Thurgood Marshall Law Review, 1994): 632-4; Ron Briley, "Danny Gardella and Baseball's Reserve Clause: A Working-Class Stiff Blacklisted in Cold War America," 52-6.

material difference between the two was that in *Gardella*, the rival league in question was from another country. That international dimension was in fact illustrative of the success of the major leagues' monopolization; they so fully dominated the domestic market that the only possible external challenger to their exemption was a foreign entity.

Gardella's cross-border nuance gave the major leagues an ideal opportunity to test out their new patriotic defense of the exemption. Knowing their case was weak, the leagues' lawyers blitzed the court of public opinion with anticommunist rhetoric to pressure *Gardella* into settling.⁷³ In one press conference, Branch Rickey, an executive for the Brooklyn Dodgers, described *Gardella* and his lawyers as men "of avowed communist tendencies who deeply resent the continuance of our national pastime."⁷⁴ In a public speech, John Bricker, a Senator from Ohio, claimed that "while the marching hordes in China are spreading the doctrine of communism, officials of the national pastime are helping make democracy work in this country."⁷⁵ Their message was clear: the leagues were venerable American institutions, and *Gardella*—who had, after all, left the country to play—was disloyal and dangerous.

This version of events was amplified by sportswriters, which, still affiliated with the leagues, frequently offered their executives interviews and editorials. One columnist, for instance, accused *Gardella* of disturbing "the serene flow of this intensely American sport," while a congressman implored "any player who would destroy baseball for personal gain" to, "for the sake of American youth, reconsider his action before it is too late."⁷⁶ The leagues' rhetorical strategy

⁷³ White, *National Pastime*, 295. Banner, *Baseball Trust*, 101.

⁷⁴ Ron Briley, "Danny *Gardella* and Baseball's Reserve Clause: A Working-Class Stiff Blacklisted in Cold War America," (Lincoln: University of Nebraska Press, 2010): 55. For an overview of sportswriters' role in spreading this point of view, see 61-2.

⁷⁵ Briley, *Danny *Gardella* and Baseball's Reserve Clause*, 61.

⁷⁶ Ted Smits, "Players, Owners, Fans Await Decision in *Gardella* Lawsuit: Who is *Gardella*? Clause a Promise," (*The Christian Science Monitor*: Apr 4, 1949); "Congressman Urges *Gardella* Reconsider," (*Boston Globe*: Feb 11, 1949).

may have been best illustrated by Chandler himself, who consistently described Gardella as “disloyal” to hint at a double meaning: by betraying baseball, he had betrayed America.⁷⁷

The leagues’ appeals were, from their point of view, wildly successful. Not only did Gardella bow to public pressure and settle, but the leagues’ control of the case’s narrative managed to obscure its central paradox: Gardella was essentially a free market advocate, and the blacklist essentially anticapitalist.⁷⁸ Beyond that, the Pasquel brothers, facing the threat of bankruptcy, struck a deal according to which the Mexican League joined the minor league system. In other words, the baseball monopoly managed to swallow up even a foreign, nationalist rival.⁷⁹ *Gardella* demonstrated the major leagues’ adaptation to the pro-business, anticommunist sentiment of the fifties. Their argumentative strategy—claiming that baseball, as a unique industry and a key part of Americana, deserved its exemption—became their blueprint for responding to the more serious antitrust challenges on the horizon.

4. The Reserve Clause

These more serious challenges mainly concerned the legality of the reserve clause, an anticompetitive contractual practice performed by baseball teams that *Federal Baseball* had ruled permissible. The clause stated that, when a player signed his first contract with a team, said team ‘reserved’ his ‘rights’ into perpetuity. As a result, said player was forbidden from negotiating contracts with any other teams—even after his contract’s expiry. The only ways he could move to a different club were by being either traded (his ‘rights’ were traded along with him) or released

⁷⁷ Briley, *Danny Gardella and Baseball’s Reserve Clause*, 56.

⁷⁸ Banner, *Baseball Trust*, 103-4. White, *National Pastime*, 294-5.

⁷⁹ Alan Klein, “Baseball Wars: The Mexican Baseball League and Nationalism in 1946,” (*Studies in Latin American Popular Culture*, January 1994): 33.

from his contract altogether. The clause effectively restricted players' market for their services and diminished their leverage in contractual negotiations.⁸⁰

In the reserve clause era, which perdured until 1975, teams did not have to worry about their players finding employment elsewhere, and so almost exclusively offered them one-year contracts. Players found themselves in a precarious position: all it took was one poor season or one debilitating injury to leave them unemployed. Beyond that, if they broke the clause, they were, just like Gardella, blacklisted from the entire system—which, since it was a monopoly, meant they were banned from professional baseball altogether.⁸¹

The clause originated in the late nineteenth-century, nominally as a brake to the bidding wars that then frequently bankrupted teams and doomed entire leagues. By enabling clubs to pay players far less than what they would have commanded in a more open market, the clause also allowed clubs to reap significant profits.⁸² In the fifties, as the memory of earlier bidding wars became more distant and their prospect more remote, the leagues developed a secondary rationale for the clause's existence. By binding players to teams, the leagues argued, the clause promoted both competition and public interest in the game. If players operated in a free market, their thinking went, the wealthiest clubs would hoard all the best players—and baseball would become a boring spectacle. This justification, which betrayed its *a posteriori* nature by reflecting concerns particular to the later conception of baseball as mass entertainment, played a key role in the antitrust debates of the fifties by underpinning the leagues' contention that baseball was a unique business that had naturally developed anticompetitive practices in order to survive.

⁸⁰ Banner, *Baseball Trust*, 6.

⁸¹ *Ibid.*

⁸² *Ibid.*

Given the harsh constraints the clause imposed upon players, one might expect its public perception to have been unfavorable—yet it was not so. This was partly a result of the leagues’ effective rhetoric surrounding the clause’s fundamental role in the baseball business. Mostly, though, it was due to the difficulty felt by the public of relating to the plight of professional athletes. In the popular imagination, baseball mainly signified the major leagues, in which players earned far more than the average worker despite the clause, and not the minor leagues, which featured meager contracts and little to no labor protections. One player, bemoaning this limited public perception, summed it up in these words: “the baseball player is a slave held in bondage... but he is the best treated, most pampered slave of history.”⁸³

⁸³ Banner, *Baseball Trust*, 11.

III. Bottom of the Inning: The Exemption, 1951-1953

1. The Investigation

In 1951, the House Judiciary Committee's Subcommittee on the Study of Monopoly Power opened an investigation into the leagues' relationship with the antitrust laws. The subcommittee's most immediate motivation for doing so was that, in the wake of *Gardella*, baseball's antitrust exemption had spawned a significant corpus of pending litigation and legislation. Several recently filed court cases which revolved around the reserve clause sought to overturn the exemption; simultaneously, several bills introduced to Congress sought to enshrine the exemption in law and protect the leagues from further challenges. Given these developments, the subcommittee hoped to reach a better understanding of the baseball business that would help it determine whether, and if so, how, to regulate it.

The subcommittee was at the time chaired by Emanuel Celler, a complex figure with a conflicted relationship to the subject at hand. Generally speaking, Celler had been a strong critic of monopolies and advocate for the modernization of antitrust policy. In 1950, shortly before the start of the investigation, he had guided the landmark Celler-Kefauver Act through Congress—a bill which prohibited new forms of mergers that exploited loopholes in earlier laws.⁸⁴ Celler was also, however, usually a proponent of baseball. Not only was he professedly a fan of the game, but his congressional district also doubled as the home of the Brooklyn Dodgers: his constituents expected him to legislate in the leagues' (or at least the team's) favor.⁸⁵

Throughout the set of hearings that accompanied the investigation, the leagues' representatives deployed their new argumentative strategy. They started by depicting baseball as

⁸⁴ Stoller, *Goliath*, 443.

⁸⁵ Banner, *Baseball Trust*, 107-9; *Hearings*, 3.

a fundamental part of American culture. Then, they described it as a unique industry that had naturally developed anticompetitive practices such as the reserve clause and could not survive without them. Finally, they tied those two strands together by claiming that baseball's cultural status entitled it to the antitrust exemption it supposedly required to remain viable.

2. The Leagues' Testimony

From the outset of the hearings, the leagues' leaders equated baseball as mass entertainment with Americana. Ford Frick, the sport's newly installed commissioner, testified from the perspective of a spectator and in the language of the sublime, and in doing so mirrored the characteristic style of the fifties' baseball literature. Through his opening line, "I am fundamentally a fan," he identified himself with the sport's public and implicitly recognized baseball's status as mass culture.⁸⁶ He went on to describe baseball stars as "idols," "titans of competition," "only a whit less than divine," and "paragons of all the virtues," and in doing so attempted to cast the sport in a quasi-religious light.⁸⁷

Frick continued developing this theme to cast the spectatorship as a central piece of American culture. He enumerated, for instance, "hot dogs and peanuts," "arguments and enthusiasms," "the shirt-sleeve fan in the stands," and "the sports writer in the press box" as baseball's key elements.⁸⁸ Other testimonies by the leagues' allies followed this vein—for former commissioner Chandler, the mere fact of attending baseball games was "a great American tradition."⁸⁹

⁸⁶ *Hearings*, 24.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, 25.

⁸⁹ *Ibid.*, 253, 37: Similarly, for Frick, spectatorship was part of the "American heritage."

Frick and his peers used their glorification of spectatorship to set up a domino effect. “Any single action taken against any one of the facets of this broad operation is certain to be felt throughout the entire structure,” he warned.⁹⁰ By drawing explicit links between baseball’s business practices and fans’ lived experiences, the leagues set up a paradigm in which antitrust regulation would imperil American culture itself.

In making this case, the leagues’ representatives abandoned the notion, fundamental in 1922, that baseball was a sport and not a business—and instead argued that the opposite was true. As one report submitted from the commissioner’s office to the subcommittee read, “professional baseball... is more than a game. It is BIG BUSINESS—a \$100,000,000 industry—actively engaged in providing the American public with its greatest, and, next to the movies, its cheapest entertainment buy.”⁹¹ The leagues promoted the novel view that the business and sport of baseball had become inseparable—and occasionally ventured even further. Frick, in one of his answers, said that “organized baseball today is something *more* than a consolidated balance sheet and a bank account,” as if business was baseball’s most fundamental piece and had simply occasioned the sport.⁹² This line of thought was so crucial to Frick’s overall testimony that it bled into his discussions of tangential topics. In his description of the leagues’ contributions to American society, for instance, he focused on their material, charitable actions: their philanthropy and role in selling war bonds.⁹³

The leagues’ representatives emphasized the melding of sport and business to a considerable degree in their discussions of the reserve clause. One of Frick’s more telling statements was that “the reserve clause cannot be considered apart from this unique nature of

⁹⁰ *Hearings*, 25.

⁹¹ *Report*, 474.

⁹² *Hearings*, 26.

⁹³ *Ibid*, 40.

baseball,” because “baseball is a sport—a game.”⁹⁴ That phrase’s aporia—baseball was a *sport*, yet a contractual detail was in its *nature*—was part and parcel of Frick’s effort to associate the clause with baseball’s cultural significance.⁹⁵

For the leagues, the clause’s determining role in the pending lawsuits against the exemption made its defense their central goal in the hearings. The leagues’ representatives uniformly described the clause as “necessary,” “fundamental,” and “as important to baseball as balls and bats,” and underscored its importance not only to clubs but to “players and fans as well.”⁹⁶ Without the clause, said the president of one minor league, “the very foundation of professional baseball is quicksand... it cannot go on.”⁹⁷ In support of the clause, they deployed both its original justification—maintaining stability within the leagues—and its newly devised one—promoting entertainment by ensuring competitive parity between clubs.⁹⁸ Both arguments, taken to their respective logical extremes, led to the same conclusion: without the clause in place, professional baseball would cease to be financially viable.

In another substantial deviation from the leagues’ rhetoric in the twenties, their arguments in the hearings led them to attribute baseball’s sporting values to the clause itself. In the words of one league-affiliated sportswriter, the clause was “the very core of the competitive spirit that marks the game.”⁹⁹ To Frick, by precluding players’ negotiations with other teams, the clause was the

⁹⁴ Ibid, 35.

⁹⁵ Ibid, 26.

⁹⁶ *Hearings*, 828, 42, 65, 214.

⁹⁷ Ibid, 378.

⁹⁸ Ibid, 36: The clause’s original justification was expressed by Frick, who described the state of professional baseball before its inception in these words: “The new organization had no reserve rules of any sort and the result was chaos. Clubs raided each other for playing talent; contract jumping became commonplace; there was no balance of competition; clubs were organized and then folded up like falling leaves; gambling flourished; thrown games were an accepted occurrence; even honest players were under suspicion, and public confidence was entirely destroyed.”; *Hearings*, 216: George Trautman, the president of the National Association of Professional Baseball Clubs, used the clause’s secondary justification to argue that without it, “the richer clubs would corral the better players.” The hearings are rife with similar statements, especially with regards to the secondary justification.

⁹⁹ Ibid, 894.

source of baseball’s “heritage of sportsmanship” and of “fair play.”¹⁰⁰ All these values that, in 1922, the leagues had characterized as inherent to the sport became, in 1951, outgrowths of the business.

In keeping with the cultural link between the fifties’ pro-business sentiment and anticommunist rhetoric, the leagues’ defense of the clause often invoked patriotic principles. Frick argued that, were the clause abolished, “a Marxian principle of standardized remuneration on the basis of occupation would replace the American principle of reward on the basis of merit and capacity.”¹⁰¹ That quote illustrates one of the through-lines in his testimony: crediting the clause with establishing a classically American meritocracy within the leagues.

Frick’s meritocratic thinking—he also described baseball as a “trial by fire” in which “many are called but few are chosen”—aligned with the leagues’ broader attempts to insert the exemption into an organic vision of American capitalism.¹⁰² Ed Johnson, a Senator and league ally, called baseball’s anticompetitive behaviors “a natural arrangement” that had “grown slowly like a great oak.”¹⁰³ Philip Wrigley, a chewing-gum baron and owner of the Chicago Cubs, declared that:

“Baseball, as an institution that has existed for 75 years, has evolved itself. It just sort of grew, and the things that come into it and so forth. I think it is very remarkable that it has developed the way it has, but it has its own—I don’t know just how to describe it—balances within itself.”¹⁰⁴

In a manner reminiscent of the leagues’ efforts to hide the paradox in *Gardella* (accusing Gardella of anticapitalism to defend anticompetitive policies), the leagues deployed the diction of

¹⁰⁰ *Hearings*, 37.

¹⁰¹ *Ibid.*, 34.

¹⁰² *Ibid.*, 33.

¹⁰³ *Ibid.*, 380, 387.

¹⁰⁴ *Ibid.*, 733.

nature in order to imbue the clause and the exemption with a certain free-market connotation and prevent them from being labeled as artificial restraints of trade.

3. A Labor Struggle

The congressional hearings acted as a forum in which a dispute over the reserve clause between players themselves was brought to the fore. While one may have expected players to uniformly oppose the clause, seeing as it limited both their earnings and their personal freedoms, the reality—at least in the fifties—was more nuanced. One subset of players in particular—established major leaguers who were not too adversely affected by the clause—staunchly defended it.

At the hearings, this group was personified by baseball legend Ty Cobb, who essentially parroted the leagues' line on the clause. Cobb's outlook was largely based on the shibboleths that characterized the leagues' argumentation in the fifties. "Baseball is the national pastime," he said, "[it] is a great force in our country, and there must be something, I feel, for the protection of baseball as we have it today."¹⁰⁵ He painted the clause's adversaries as selfish, short-sighted individuals whose crusade could destroy the professional sport, and with it, all of their livelihoods.¹⁰⁶ In his view, he and his peers had to accept the clause's constraints for the good of the leagues.

In Cobb's testimony, we are once again confronted with the paradoxical idea that *because* they belong to a uniquely American (and anticommunist) institution, baseball players must put aside their self-interest for the supposed good of the whole. It is especially striking to see this

¹⁰⁵ *Hearings*, 11.

¹⁰⁶ *Ibid*, 16: "It would be in his interest, yes, the baseball player, but it certainly wouldn't be in the interest of baseball as an organization."

counterintuitive proposition made by a player, rather than a league official—and the strange feeling that Cobb argued against his own welfare pervades the rest of his interventions.

Cobb explicitly presented himself as nothing more than an athlete: he contented himself with doing his job on the field and trusted the leagues to deal with any non-sporting issues that might arise. As such, he often opened his statements by downplaying his competence with the legal and financial questions at hand before deferring to the leagues' boilerplate views.¹⁰⁷

One of the roots of Cobb's self-deprecation is unearthed by the testimony of minor leaguer Ross Horning, who claimed:

“The general public, or baseball fan, when he thinks of baseball, thinks of major leagues. He thinks of Joe DiMaggio or Ted Williams. He thinks of huge salaries, of terrific baseball parks and beautiful lights and marvelous conditions, hotels, trains. That is baseball. Only five percent of baseball players in the United States play that way...”¹⁰⁸

Horning's goal before Congress was to advocate for those on the fringes of professional baseball. In his telling, the public perception of baseball as a glamorous business was a smokescreen that hid the difficult conditions of the sport's less visible players, whom the clause prevented from making a living wage and obtaining job security. So long as the archetypal baseball man remained a ritzy major leaguer, Horning thought, fans and Congressmen alike would be unable to take the debate over the reserve clause seriously: it is difficult to argue that the already well-off should make even more. “If your committee only calls outstanding players, managers, and owners, it will not reach the core of the reserve clause controversy,” he wrote to Celler before the hearings.¹⁰⁹

¹⁰⁷ *Hearings*, 14: Asked what he thought the reserve clause's negative aspects were, Cobb simply answered, “I really do not feel competent to go into it.”

¹⁰⁸ *Ibid.*, 373.

¹⁰⁹ Warren Corbett, “Voices for the Voiceless: Ross Horning, Cy Block, and the Unwelcome Truth,” (*Baseball Research Journal*, 2018).

Horning blamed the league, its sportswriters, and its highest echelon of players (directly naming Cobb in the process) for spreading an inaccurate picture of the baseball world. The league's reason for doing so, he said, was pure and simple profit.¹¹⁰ The sportswriters' was a mix of bias towards the majors and lack of research.¹¹¹ (The newspapers hit back, labeling Horning a "bush leaguer" who "can't hit a lick and has no chance to move up in baseball.")¹¹² And the players', he believed, was part fear of reprisals, part self-interest.

Horning compared the situation of some major leaguers to that of "an employee, say, in United States Steel without a union who has some grievance against United States Steel."¹¹³ Players would not dare bite the hand that feeds them, he argues, especially given organized baseball's history of blacklisting and bullying (as evidenced, for instance, by the Gardella case). The subtext of Horning's testimony, though, which leaks out in phrases like "only five percent of baseball players in the United States play that way," was that successful major leaguers were unwilling to speak against a system that worked well for them—and were willing to ignore the plight of their less fortunate peers in the process.

A good amount of scholarship has attempted to make sense of the considerable difficulty of establishing a labor consciousness within baseball. White's convincing explanation cites two governing factors: "the major league owners' determined resistance," and "the players' own belief (conscious or unconscious) that the reserve clause, and the structure of team competition and fan

¹¹⁰ *Hearings*, 359: Horning compares the farm system "to the mercantile theory of economics, whereby each major-league club has little colonies all over the United States, and the primary purpose of these little colonies or minor-league clubs is to produce baseball players for the parent club. That is the primary interest. They are secondarily concerned with the baseball fans in the minor-league club, or with the outcome of the local baseball owners, who have absolutely no control over their baseball club under a working agreement." Horning intentionally omits mention of minor league players from this description—implying they are not even the major-league clubs' third or fourth priorities.

¹¹¹ *Ibid*, 377: "Sports writers for large newspapers, I do not think most of them have ever seen a minor-league ball game," claims Horning.

¹¹² Corbett, "Voices for the Voiceless."

¹¹³ *Hearings*, 364.

support that it engendered, provided a kind of economic security for players so long as their skills remained intact.”¹¹⁴

That latter factor, which amounts to players buying into the leagues’ rhetoric about the clause’s central role in making baseball a viable entertainment business, goes a long way to explaining elements of Cobb’s, and even Horning’s, testimonies. Cobb, as we saw, was reluctant to venture into defenses of the clause that went beyond the leagues’ generalities. Yet the two concrete arguments he raised—that the clause “protect[s] the different teams of the league against each other” and “is the thing that attracts the fans”—line up with White’s characterization of players’ mindsets.¹¹⁵ Cobb, moreover, vehemently credited all his material success to the leagues: “I feel very fortunate, and I owe a lot to baseball.”¹¹⁶ Cobb really believed that the clause was fundamental to the institution that had taken him “from a little old small town in Georgia” and made him a national star.¹¹⁷ Just as the leagues had convinced the public that the clause was essential to the survival of baseball as mass entertainment, they had convinced Cobb that it had allowed him to reach his lofty station in sport and society.

As for Horning, it is telling that, while he decried the many stresses that the clause imposed on him, he did not refute the leagues’ basic premise that the clause ensured competition and fan interest. For Horning, it was just a matter of priorities: the immediate welfare of minor leaguers mattered more than the potential damage to the structure of organized baseball. The leagues’ basic argument was taken as fact, and so, most players’ views on the matter straddled the line between Cobb’s and Horning’s. Ned Garver, a pitcher for the St. Louis Browns, summed up this difficult

¹¹⁴ White, *National Pastime*, 63.

¹¹⁵ *Hearings*, 14, 12.

¹¹⁶ *Ibid.*, 11.

¹¹⁷ *Ibid.*

view when he wrote to the committee that “I do not think baseball could exist, as we know it now, without [the clause],” yet “a man should be allowed to play baseball wherever he chooses.”¹¹⁸

Ultimately, the internecine labor dispute that played out in the hearings only came to be because the leagues’ depiction of baseball as a special industry that required ‘natural’ monopolistic and monopsonistic practices in order to survive was universally accepted and unchallenged. The idea that the reserve clause was essential to the sport’s economic viability acted as a wedge between more and less successful players. Baseball stars defended the clause because they had come to believe their incomes depended on its existence. Minor leaguers could not refute the leagues’ arguments, yet the clause had driven them into contractual and financial predicaments so dire that they felt they had no choice but to fight it.

The deadlock between these two strata of players could only have been broken if they had both questioned the leagues’ premises surrounding the reserve clause. It took twenty-four years for that to occur. By then, the leagues’ sway over its players’ mindsets had been weakened by two critical developments. First, driven by the establishment of a players’ union, a genuine labor consciousness had taken root in the major leagues.¹¹⁹ Second, partly as a result of the union’s early victories, the extent to which the clause had constrained salaries became clear. Baseball’s 1970 collective bargaining agreement had provided that disputes between teams and players would be resolved by independent arbitration—a world away from the preceding era, in which the commissioner, biased by design towards team owners, had the final say on all such matters. One of the first cases to go to arbitration resulted in the termination of a player’s contract, and so, the creation of baseball’s first free agent. After negotiating with twenty teams on the open market, that

¹¹⁸ *Hearings*, 601-2.

¹¹⁹ For a detailed overview of the growth of the MLB Players Association and its role in shifting labor opinions against the reserve clause, see John Helyar, *Lords of the Realm: The Real History of Baseball*, (New York: Villard Books): 16-38.

free agent, Catfish Hunter, signed a five-year contract worth \$3.5 million. Not only did he obtain job security, but he also looked to earn twice as much as the next-highest paid player in the leagues. His example illustrated to all the union's members, in dollar terms, just how much they stood to lose by acquiescing to the clause's terms.¹²⁰

The reserve clause was ultimately struck down neither by Congress nor by the courts, but by a 1975 arbitrator's decision. It was no coincidence that the labor movement accomplished what legislative and judicial bodies did not. Those two organs, despite continuing to hear debate over the clause, had never freed themselves from the narratives the leagues had spun around their anticompetitive behaviors.¹²¹ Only the players' union, perhaps due to its inherently antagonistic stance towards the leagues' bureaucracies, found the capacity to question the truisms that had previously governed the debate over the clause.

The intra-labor argument that occurred at the congressional hearings indicates that back in 1951, the leagues were conscious that their players represented a third potential threat (along with Congress and the courts) to their anticompetitive practices. The leagues' aimed their rhetoric about the reserve clause's natural and fundamental role in the baseball business at the players just as much as any other constituency. When the hearings drew to an end, that rhetoric proved to have the same effect on Congress as it had had on the players: by implying that any modification to the reserve clause would snowball into the collapse of professional baseball as mass entertainment, it froze constructive debate on the subject and forced audiences into uncomfortable equivocations.

4. The Report

¹²⁰ Banner, *The Baseball Trust*, 220.

¹²¹ *Flood v. Kuhn*, 407 U.S. 258 (1972): Hence why in *Flood*, the Court upheld the antitrust exemption and the reserve clause on the grounds that they constituted "a recognition and an acceptance of baseball's unique characteristics and needs."

A lengthy congressional report, published in 1952, summed up the decision the subcommittee had made based on its hearings and investigations. The report laid out four potential courses for Congress to take. It could either outlaw the reserve clause, give baseball “an unlimited exemption” from antitrust law, create a federal agency to oversee the sport, or pass a “limited exemption” for the clause. Yet in its last few pages, the report described each of those options as unpracticable and opted for a fifth way: “that no legislation be enacted at this time.”¹²²

The congressional inaction embodied in that phrase can be directly traced back to the leagues’ rhetoric. The report’s conclusion opened by establishing as fact the leagues’ equation of baseball *qua* mass entertainment as a form of Americana:

Baseball is America’s national pastime. It is a game of American origin which has long exemplified the finest traditions of clean, vigorous sportsmanship. Its outstanding record of honesty and integrity, maintained in today’s chaotic world conditions, is a symbol to which the people of the United States may justly point with pride.¹²³

From there, it goes on to state that “baseball is a unique industry” which has “adopted a system of rules and regulation [*sic*] that would be entirely inappropriate in an ordinary industry.”¹²⁴ These two interlinked assumptions, that professional baseball was both a crucial element of American culture and a business that could not viably operate within the rules of the law, were taken by the subcommittee as truths that any legislative action had to contend with.

This report is a curious document. While it spends pages upon pages discussing rather tangential subjects, such as the etymology of the phrase “organized baseball” or the prevalence of gambling in the sport, it dedicates virtually no space to analyzing the premises set forth by the leagues.¹²⁵ It claims, for instance, that “on the basis of the evidence reviewed in this report...

¹²² *Report*, 229.

¹²³ *Ibid*, 228.

¹²⁴ *Ibid*.

¹²⁵ *Report*, 12, 11,

professional baseball could not operate successfully and profitably without some form of a reserve clause.”¹²⁶ Yet the entire document, despite including chapters titled “Economic analysis of organized baseball” and “The reserve clause,” only cites one piece of evidence to support that ambitious statement. A “comparison of pennant races before and after the adoption of the reserve,” it reads, “amply illustrates the initial effectiveness of this rule... The pennant winner’s won and lost percentage in the 1870’s averaged close to .800 reaching .899 in 1875. From 1881 to 1900, the National League champion’s won-and-lost percentage was less than .700 in all but 4 years.”¹²⁷ Not only is this claim only concerned with the health of inter-league competition (as opposed to the sport’s ‘success’ or ‘profitability’), but it is also misleading.

To begin with, the National League was only formed in 1876.¹²⁸ Chronologically speaking, this alone renders the report’s statistics rather doubtful. It turns out that the pre-1876 numbers that it cites are drawn from the records of one of the National League’s predecessors. That antecedent league was, on a structural level, designed to be less competitive. Most of its clubs were former amateur teams from small towns (Elizabeth, NJ; New Haven; Rockford, IL; Fort Wayne, IN, to name just a few) that could not financially rival their big-city counterparts. In fact, the impetus for the National League’s formation was the more professional clubs’ desire to break away from their less resourceful peers. All the discrepancy in win-loss percentage cited in the report is much more convincingly explained by the National League’s omission of less competitive teams than by the inception of the reserve clause.

In one passage, the report’s authors came tantalizingly close to seeing through the leagues’ rhetoric. “The original purpose of this rule [the reserve clause],” they wrote, “was to reduce costs

¹²⁶ *Report*, 228.

¹²⁷ *Ibid*, 105.

¹²⁸ Seymour, *Early Years*, 85.

by curtailing competition for star players' services. Subsequently, this rationale was supplemented by the view that the rule was necessary... to equalize competition among clubs with unequal resources."¹²⁹ Had the subcommittee's members gone one step further in their analysis, they could have realized that the leagues' competition-centric rationale was mainly a pretext designed to obscure the cost-saving one. Nevertheless, the subcommittee, just like the players who testified before it, was unable to look beyond the leagues' portrayal of the clause—and indeed the antitrust exemption as a whole—as natural developments in a unique business.

5. *Toolson and Flood*

Although the subcommittee mostly justified its inaction by leaning on the leagues' rhetoric, it did have one more arrow in its quiver: "legislation is not necessary until the reasonableness of the reserve rules has been tested by the courts."¹³⁰ Congress often deals with politically touchy situations by making them out to be the judiciary's problem, and the antitrust exemption was an ideal candidate for that pseudo-solution. Beyond having been created by the Court in *Federal Baseball*, the exemption was the subject of a case, *Toolson v. Yankees*, that sat on the Court's docket while the hearings were taking place. So, graciously noting its "earnest desire to avoid influencing pending litigation," the subcommittee declared that it was "unwise to attempt to anticipate judicial action with legislation."¹³¹

While the scope of *Toolson* encompassed the entirety of baseball's antitrust exemption, it was most explicitly preoccupied with the reserve clause. The case's plaintiff, George Toolson, was a pitcher for one of the Yankees' minor league teams. While the Yankees' roster was at the time

¹²⁹ *Report*, 111.

¹³⁰ *Ibid*, 231.

¹³¹ *Ibid*, 232.

unusually stacked with skilled pitchers, Toolson believed he could play for most other major league teams—however, he argued, the Yankees refused to trade him (which might mean strengthening one of their rivals), and the reserve clause precluded him from negotiating with other clubs.¹³²

Toolson played out before the backdrop of the subcommittee’s inaction, and so it was somehow fitting that the Court’s decision in the case was to do nothing at all. The justices published a terse, unsigned, and paragraph-long opinion to that effect, which—perhaps due to its sheer opacity—has since given rise to a voluminous amount of scholarship attempting to decode it.

The consensus view on that subject was summed up by economist Andrew Zimbalist, who accused the Court and Congress of playing “a game of cat and mouse.”¹³³ The subcommittee declined to act on the basis that the antitrust exemption was the Court’s prerogative; the Court saw fit to step aside because, in its own words, “Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation.”¹³⁴ While it is certainly true that the two bodies used each other as cover, this interpretation is unsatisfying in that it stops before identifying the motives that led the Court to its passivity.

Another line of thought, this one advanced by Stuart Banner, argues that the Court, behind its veneer of inertia, *did* act in a subtle yet meaningful way. The very last line of its opinion reads, “the judgments below are affirmed on the authority of *Federal Baseball*... so far as that decision determines that Congress had no intention of including the business of baseball within the scope

¹³² Andrew Zimbalist, *May the Best Team Win: Baseball Economics and Public Policy*, (Washington: Brookings Institution Press, 2004): 19.

¹³³ *Ibid.*

¹³⁴ *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953): 357.

of the federal antitrust laws.”¹³⁵ At first glance, this appears to be a standard example of *stare decisis*—respect for precedent. Banner, however, rightly points out that the final few clauses of that phrase amount to a complete revision of *Federal Baseball*.¹³⁶

The antitrust exemption set out in *Federal Baseball* rested solely on interstate commerce grounds, yet the exemption described in *Toolson* makes no mention of the Commerce Clause. Instead, *Toolson* claimed that when Congress passed the Sherman and Clayton Acts in 1890 and 1914, respectively, it “had no intention” of bringing baseball under their purview. With just a handful of words, argues Banner, *Toolson* shifted the basis of the antitrust exemption from interstate commerce to congressional intent.¹³⁷

In picking up on the nuances of the Court’s legalese, Banner’s reading of the case goes far beyond the classic “cat and mouse” interpretation—yet he, too, struggles with the question of the Justices’ motivations. The most significant effect of their pivot towards congressional intent, he argues, was that after *Toolson*, “there was no doubt about Congress’s authority to subject baseball to whatever antitrust regime it chose.”¹³⁸ While this is a meaningful observation, without further insight into the Justices’ thought process, it leaves us in a similar place as before: the Court sent the exemption back to the subcommittee, and made clear that it was Congress’ responsibility to grapple with it.

Banner proposes two reasons why the Court may have done so. The first, put simply, was optics. The Yankees, he writes, had won their fifth consecutive World Series as *Toolson* was under debate—and if they “could be so strong even with the reserve clause, baseball fans might have

¹³⁵ *Toolson*, 357.

¹³⁶ Banner, *Baseball Trust*, 120-1.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

worried, imagine how lopsided baseball would become without it.”¹³⁹ The second possibility was “retroactive liability”: the Court worried that overruling *Federal Baseball* would open the door for any manner of plaintiffs to sue the leagues based on conduct that was legal when it occurred, a concern that congressional action could mitigate.¹⁴⁰ These explanations—especially the latter—are intriguing, but leave us with more questions than they answer. If the Court’s primary concern was retroactive liability, for instance, why did it express itself so obtusely instead of openly making the case against the leagues and enjoining Congress to follow suit?

Thankfully, we are not the only ones who have attempted to perform an exegesis of *Toolson*. In 1975’s *Flood v. Kuhn*, another reserve clause case, the Court itself was essentially tasked with interpreting what its previous set of members had intended in 1953. Seen through this lens, the *Flood* decision is the document that can best illuminate the Court’s opinion in *Toolson*.

Flood, which once again upheld the antitrust exemption, is best described as an attempt to make explicit everything *Toolson* left implicit. Where *Toolson*’s opinion was neutral in tone and attitude towards baseball, *Flood*’s is the exact opposite. Composed by Harry Blackmun, it begins with a four-page encomium to (of course) the “national pastime,” replete with the sport’s foundational myths and featuring an enumeration of the judge’s eighty-eight favorite players of all time. As Blackmun put it, with no self-awareness whatsoever, “the list seems endless.”¹⁴¹

This decision was to the legal field what the reviews of *The Boys of Summer* were to literary criticism. Blackmun’s opinion, in both senses of the word, was clouded by his nostalgia for the sport and concomitant desire to preserve its existing structure. In one telling passage, he retold as if it were historical truth the legend, manufactured by the leagues, of baseball’s invention by Civil

¹³⁹ Banner, *Baseball Trust*, 121.

¹⁴⁰ Ibid. Also see *Toolson*, 357.

¹⁴¹ *Flood*, 261-4.

War hero Abner Doubleday—foreshadowing the way in which he went on to uncritically accept the leagues’ narratives surrounding the antitrust exemption. Keeping in mind that *Flood’s* *raison d’être* was to make *Toolson’s* subtext explicit, all this suggests that the 1953 majority shared Blackmun’s view of baseball and diplomatically hid it behind an impenetrable prose and a liberal use of the passive voice.

This *rapprochement* between the two decisions is supported by *Flood’s* treatment of both the congressional investigation and the *Toolson* opinion. Where *Toolson* attempted to remain agnostic about the subcommittee’s report, only mentioning it insofar as it demonstrated congressional inaction, *Flood* openly cited the report’s misleading passage about the reserve clause as evidence in favor of the exemption.¹⁴² In so doing, *Flood* sheds light on *Toolson’s* gambit: the 1953 court sent the case back to Congress knowing that the subcommittee would take no further action.

Flood’s analysis of the *Toolson* court’s motivations is similarly revealing. For the most part, it fleshed out in plainer English what *Toolson* had left barely said. The Justices ruled as they did, claimed *Flood*, because of “congressional inaction,” “a reluctance to overrule *Federal Baseball* with consequent retroactive effect,” and a “desire that any needed remedy be provided by legislation rather than by court decree.” So far, so good. Yet *Flood* went on to add a motivation that was hidden in *Toolson’s* text: “the fact that baseball was left alone to develop for that period upon the understanding that the reserve system was not subject to existing federal antitrust laws.”¹⁴³

The phrase in *Toolson* that spawned that interpretation—“the business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust

¹⁴² *Flood*, 272.

¹⁴³ *Ibid*, 273-4.

legislation”—was intentionally ambiguous.¹⁴⁴ If read through a solely legal lens, it sounds innocuous. If considered outside the context of a court opinion, though, it conveys a sense of cultural anxiety: a fear that as a result of *Federal Baseball*, the sport had naturally developed anticompetitive practices and would not survive their regulation. The phrase reflects the very premises and worries that the leagues had spread to congressmen, players, and the public alike in 1951. Most importantly, it has nothing to do with the law.

Flood leads us to understand that the *Toolson* court’s guiding motivation, intentionally obscured to commentators by its exaggeratedly legal style, was none other than the extrajudicial belief that ending the reserve clause would irretrievably change professional baseball. When scholars have engaged with this interpretation in any of baseball’s three major antitrust cases, they have become mired in investigations of specific Justices’ personal dealings with the sport. There exists in the literature a sense that attributing a judge’s decision to anything other than cold legal syllogisms is such a bold accusation of impropriety that it must be backed up by mountains of evidence to be fit for publication. Our discussion of *Federal Baseball* and Holmesian *experience*, however, makes that a moot point.

As Holmes articulated so well, it is not unreasonable to expect a judge’s opinion to be based on a broad swath of lived experience rather than a narrow piece of abstract reasoning, and it is naïve to ignore that legal theories often act as after-the-fact justifications for more intuitive feelings. Moreover, a Justice does not have to hold deep personal ties to baseball to undergo the thought process we have described. Insofar as the predominant views in the country were that baseball was an integral expression of Americana and that the reserve clause underpinned its

¹⁴⁴ *Toolson*, 357: This phrase’s ambiguity becomes clearer in its fuller context. “The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.”

viability as a spectator sport, we can say that those views constituted the Justices' experiences of the sport and informed their attitudes towards *Toolson*.

Flood's conclusions—or put more accurately, *Flood's* more explicit restatements of *Toolson's* conclusions—are best understood from this angle. *Flood* claimed that “Congress as yet has had no intention to subject baseball’s reserve system to the reach of the antitrust statutes,” and deemed that inaction to mean “something other than mere congressional silence and passivity.”¹⁴⁵ *Flood* also said, outright, that “professional baseball is a business and it is engaged in interstate commerce.”¹⁴⁶ In those two sentences, *Flood* cut through *Toolson's* equivocal relationship with the congressional investigation and its ambiguous silence on Commerce Clause matters.

The *Toolson* court believed that Congress had no intention of interfering with the exemption, and so, that sending the case back to the subcommittee amounted to maintaining the exemption into perpetuity. *Toolson's* Justices shifted the exemption’s origins towards congressional intent to protect it from further litigation. Aware that newly broad Commerce Clause jurisprudence and the sport’s undeniable status as mass entertainment could easily combine to strike down *Federal Baseball's* interstate commerce rationale, they moved the case’s goalposts to a different field.¹⁴⁷ In the words of *Flood's* opinion, the exemption became “an exception and an anomaly... an aberration confined to baseball” that “rest[ed] on a recognition and an acceptance of baseball’s unique characteristics and needs.”¹⁴⁸ *Toolson* (and *Flood*) invented a legally unassailable and utterly circular mode of justification: baseball was exempt from antitrust law because baseball is a unique business that requires exemption from antitrust law.

¹⁴⁵ *Toolson*, 284.

¹⁴⁶ *Flood*, 282.

¹⁴⁷ Zimbalist, *May the Best Team Win*, 19.

¹⁴⁸ *Flood*, 282.

Thinking they were translating their experience of baseball into legal terms, the *Toolson* and *Flood* courts baked the leagues' rhetoric into their reasoning for the exemption. In order to undo the knot that held together their justification, one would have to attack the premise that the antitrust exemption was a natural and essential component of the baseball business. There stood, in the form of a court ruling, the predicament that players and congressmen had been faced with in 1951. Just as they had done decades before in *Federal Baseball*, the leagues exploited their control over public perceptions and representations of the sport in order to fashion a legal opinion that aligned with their economic interests. *Flood's* exemption still stands to this day; had the labor movement not adopted extrajudicial means in 1975, the clause likely would as well.

6. Nostalgia for the Present

In the aftermath of *Federal Baseball*, the leagues used their newfound antitrust exemption to evolve in a completely different direction than the one the Court had then intended. Instead of preserving its amateur values, baseball furthered its transformation into mass entertainment and big business. Environmental historian William Cronon once said about the 'wilderness' that it "quietly expresses and reproduces the very values its devotees seek to reject," a phrase which encapsulates baseball's post-twenties development.¹⁴⁹

In the fifties, the leagues' argumentative strategy as well as the positive response it elicited reflected broader cultural and intellectual attitudes about business and patriotism. They were also the product of what we might call a nostalgia for the present. Congressmen, judges, and the public

¹⁴⁹ William Cronon, "The Trouble with Wilderness: Or, Getting Back to the Wrong Nature," (*Environmental History*, 1996): 16. While baseball's exemption and wilderness conservation seem very distant subjects, they are in fact tightly linked: for instance, they both sought to preserve 'frontier' values and combat urbanization, and they both heavily leaned on the language of the sublime. There is a wide open niche in the literature for a comparison of the two.

alike had come to cherish the experience of baseball as mass entertainment and worry about its potential erosion—the opposite, ironically, of what the *Federal Baseball* court had hoped for.

An Extra Inning: The Negro Leagues and the “Reserve Mirror Image”¹⁵⁰

The story we have told is one that continually prods us with a *what if*—what if the antitrust exemption had never existed? How would baseball, which today seems such a settled part of American culture, be different without it? The Negro Leagues, the blanket term for all segregated black baseball associations, give us a window into this alternate history.

The Negro Leagues, often described as their white counterparts’ ‘reverse mirror image,’ were their opposites in nearly every imaginable way. In terms of business, wrote White, “all the economic elements that white baseball’s hierarchy had fought to contain were set loose” in the Negro Leagues.¹⁵¹ Most notably, they never adopted a reserve clause. Black players and team owners alike, marked by the legacies of slavery and sharecropping, looked down upon the white leagues’ contractual system as a form of modern peonage.¹⁵²

In contrast to the white leagues’ elaborate system of constraints and punishments, the Negro Leagues appear as an oasis of personal freedom within baseball. “Players jumped contracts at will, shifting rosters in mid-season,” says White, and “no sanctions existed for transgressors.”¹⁵³ In an oral history, James “Cool Papa” Bell, one of the Negro Leagues’ mainstays, described his experience as one of overwhelming fun: he played the game on his own terms and had no master but himself.¹⁵⁴

The Negro Leagues also never entered the realm of mass entertainment. In part, this was because they were denied the intense media coverage granted to the white ones. It was also,

¹⁵⁰ White, *National Pastime*, 158.

¹⁵¹ *Ibid.*, 128.

¹⁵² Alfred Mathewson, *Major League Baseball’s Monopoly Power and the Negro Leagues*, (*American Business Law Journal*, 1998), 298.

¹⁵³ White, *National Pastime*, 158.

¹⁵⁴ Donald Honig, *Baseball When the Grass Was Real: Baseball from the Twenties to the Forties Told by the Men Who Played It*, (Lincoln: University of Nebraska Press, 1993): 171. Bell also describes teams “fighting over” him in free agency—an unthinkable phenomenon in the contemporary white leagues.

however, a conscious choice. The Negro Leagues, for instance, rarely kept official scores and tallies—a prerequisite for mass sports to be followed outside stadiums.¹⁵⁵ They remained eminently local institutions, and their games became meaningful social occasions in black communities.¹⁵⁶ In a related manner, the Negro Leagues did not undergo intense professionalization in terms of either sport or business. Athletically speaking, where training in white leagues consisted of mechanical drills, in the Negro Leagues, it was made up of a series of games.¹⁵⁷ Economically, in the Negro Leagues, “written contracts were the exception rather than the rule,” and obligations depended more on trust than legal enforcement.¹⁵⁸

All of this suggests that, during their existence, the Negro Leagues came the closest to preserving the amateur ideal of baseball that was the subject of twenties’ nostalgia. They maintained baseball’s local, communal quality, and above all continued to express the primacy of sport over business. Baseball, as it was longed for in the twenties, was a game and a pastime—a site of mirth and freedom—and it was the Negro Leagues that carried on that tradition. Ironically, while the white leagues’ magnates testified before Congress to predict baseball would collapse in the absence of a reserve clause, the thriving Negro Leagues stood as a built-in counterargument.

Today, and for good reason, we consider baseball’s integration a success and its segregation a prejudiced evil. Yet one scholar, Alfred Mathewson, sought to nuance our understanding of integration by pointing out that by subjecting the Negro Leagues to the white leagues’ monopoly, the major leagues put an end to an entire way of experiencing baseball developed by black teams, players, and fans. Instead of allowing the Negro Leagues and their

¹⁵⁵ White, *National Pastime*, 134.

¹⁵⁶ Mathewson, *Major League Baseball’s Monopoly Power and the Negro Leagues*, 292; White, *National Pastime*, 141.

¹⁵⁷ White, *National Pastime*, 150.

¹⁵⁸ Mathewson, *Major League Baseball’s Monopoly Power and the Negro Leagues*, 298.

traditions to continue leading their parallel existence, the major leagues subjected them to their anticompetitive policies immediately after the color line was broken.¹⁵⁹ Ultimately, the Negro Leagues' disappearance reflected one of our narrative's most consistent themes. Baseball's monopoly did not only seek economic domination—it also sought to subsume and standardize whatever cultural practices and memories stood in its way.

¹⁵⁹ Mathewson, *Major League Baseball's Monopoly Power and the Negro Leagues*, 292.

Conclusion

Baseball's major leagues secured and maintained their exemption from antitrust law in two distinct phases. In the twenties, they argued that the exemption would soothe America's painful transition into urban-industrial modernity as well as sate its ambient nostalgia for amateur baseball. In the fifties, they claimed that baseball, as a form of mass entertainment, deserved its exemption because it was both a crucial element of Americana and a unique industry that could not viably obey the laws on the books.

These two arguments, while different and in many ways diametrically opposed, followed the same broad strokes. They each identified their time period's pressing cultural anxieties and adapted their portrayal of baseball accordingly. Moreover, despite the antitrust exemption's status as an eminently legal issue, the leagues' strategies had little to do with the law: they influenced judicial and political processes through the cultural sphere.

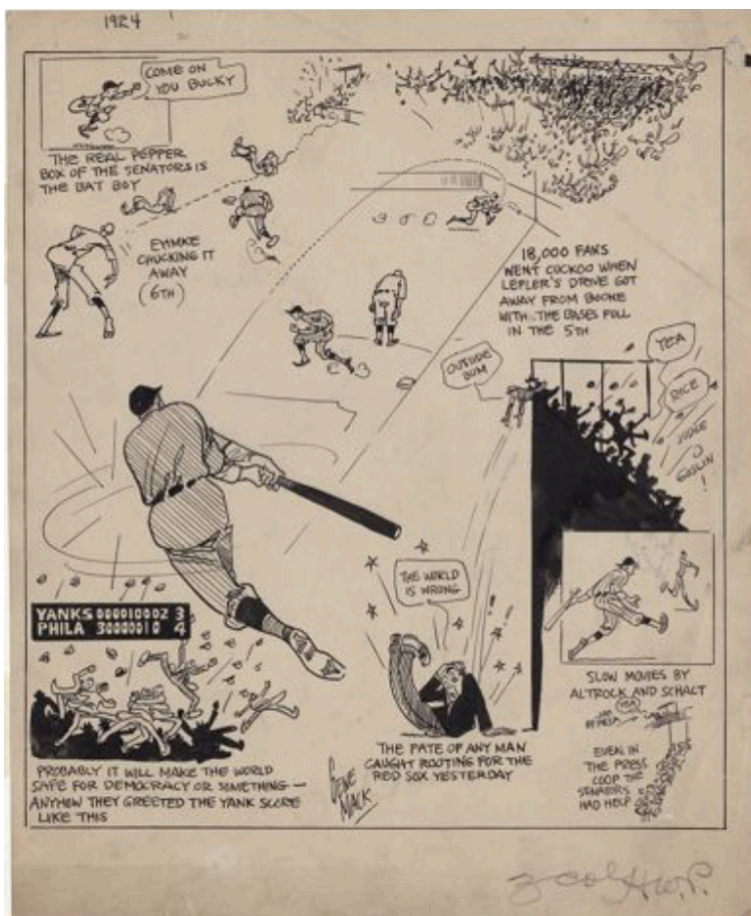
On one level, this analysis may shed light on broader trends in antitrust history. While scholars typically approach the subject from narrow, jurisprudential frameworks, the field could benefit from wider lenses that take into account the role of cultural context in determining the outcomes of antitrust issues.

On another level, this thesis is mainly about people whose decision-making was clouded by cultural and psychological biases such as nostalgia. After all, while the judges who debated *Federal Baseball* were well-intentioned, their ruling led baseball to become the antithesis of what they hoped. In that sense, this story concerns us all—it asks us to wonder which of our most minute thoughts and actions are guided by forces, instincts, and narratives we do not suspect.

Annex



1. Cartoon of baseball club president George Weiss, 1922.
<https://collection.baseballhall.org/PASTIME/george-weiss-cartoon-collage-1924-0>



2. Cartoon depicting a baseball game, 1924:
<https://collection.baseballhall.org/PASTIME/come-you-bucky-cartoon-september-29-1924>

Bibliography

Primary Sources

Official Documents

Direct Marketing Association v. Brohl, 2016, Tenth Circuit.

Federal Baseball Club v. National League, 259 U.S. 200 (1922).

Flood v. Kuhn, 407 U.S. 258 (1972)

Gibbons v. Ogden, 22 U.S. 1 (1824)

Lochner v. New York, 198 U.S. 45 (1905)

Toolson v. Yankees, 346 U.S. 356 (1953)

U.S. Congress. House. Committee on the Judiciary. Subcommittee on the Study of Monopoly Power. *Organized Baseball*. 82d Cong., 1st Sess., May 27, 1952. [referred to as *Report*]

U.S. Congress. House. Committee on the Judiciary. Subcommittee on the Study of Monopoly Power. *Hearings: Organized Baseball*. 82d Cong., 1st Sess. July 30, 31, August 1, 3, 6, 7, 8, 10, October 15, 16, 17, 18, 19, 22, 23, 24, 1951. [referred to as *Hearings*]

Books

Drucker, Peter. *Concept of the Corporation*. New York: John Day, 1946.

Eulau, Heinz. "Man Against Himself: Walter Lippmann's Years of Doubt." *American Quarterly*: 1952.

Fitzgerald, F. Scott. *The Great Gatsby*. London: Wordsworth Classics, [1925], 1993.

Kahn, Roger, *The Boys of Summer*. New York: HarperCollins, [1972], 2011.

James, William. "What Pragmatism Means." [1907]. From Hollinger, David and Capper, Charles ed., *The American Intellectual Tradition: 1865 to the Present*. New York: Oxford University Press, 2016.

Lilienthal, David. *Big Business: A New Era*. New York: Harper, 1953.

Lippmann, Walter. *Drift and Mastery*. Madison, WI: The University of Wisconsin Press, [1914], 1985.

Mills, C. Wright. *White Collar: The American Middle Classes*. New York: Oxford University Press, 1951.

Rauschenbusch, Walter. *Christianity and the Social Crisis* [1907]. From Rauschenbusch, Walter, Anthony Campolo, Paul B Rauschenbusch, et al. *Christianity and the Social Crisis in the 21st Century: The Classic That Woke Up the Church*. New York: HarperOne, 2007.

Stoller, Matt. *Goliath: The Hundred-Year War Between Monopoly Power and Democracy*, New York: Simon & Schuster, 2020.

Updike, John. "Hub Fans Bid Kid Adieu." *The New Yorker*, October 22, 1960.

Julian Barnes, *The Sense of an Ending*, London: Vintage, 2012.

Newspaper Articles

"Congressman Urges Gardella Reconsider." *Daily Boston Globe* (1928-1960), Feb 11, 1949. <http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/historical-newspapers/congressman-urges-gardella-reconsider/docview/839571559/se-2?accountid=10226>.

"Federal League Raids Stir Tener: President of National League Takes Up Defense of 'Organized Baseball'." *New York Times*, Jan 08, 1914. <http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/docview/97603214?accountid=10226>.

"Federalists Attack Organized Ball as Conspiracy." *The Hartford Courant*, Jan 06, 1915. <http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/docview/556186275?accountid=10226>.

"Herzog to Join Outlaws" *New York Times*, Oct 31, 1913. <http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/docview/97486219?accountid=10226>.

Heywood, Hale Broun. "Brooks, Bums, Dodgers, Men: The Boys of Summer by Roger Kahn." *The Washington Post, Times Herald*, Feb 27, 1972. <http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/docview/148220580?accountid=10226>.

"Judge Landis May End Baseball War: His Attitude Indicated That Decision Would Hurt Game" *New York Times*, Apr 27, 1915. <http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/docview/97696278?accountid=10226>.

"Organized Baseball Sued Under the Anti-Trust Law." *St. Louis Post-Dispatch*, Jan 05, 1915. <http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/docview/577966740?accountid=10226>.

"Outlaws Fire Heaviest Gun" *Courier-Journal*, Jan 06, 1915. <http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/docview/1035349812?accountid=10226>.

Lehmann-Haupt, Christopher. "Where Are They All Now?" *New York Times*, Feb 25, 1972. <https://archive.nytimes.com/www.nytimes.com/books/97/04/06/home/baseball-kahn.html>

Lichtenstein, Grace. "The Boys of Summer: By Roger Kahn." *New York Times*, Mar 05, 1972.
<http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/docview/119426217?accountid=10226>.

Smits, Ted. "Players, Owners, Fans Await Decision in Gardella Lawsuit: Who is Gardella? Clause a Promise." *The Christian Science Monitor*, Apr 4, 1949.
<http://ezproxy.cul.columbia.edu/login?url=https://www-proquest-com.ezproxy.cul.columbia.edu/historical-newspapers/players-owners-fans-await-decision-gardella/docview/508036162/se-2?accountid=10226>.

Secondary Sources

Abrams, Roger I. *Before the Flood: The History of Baseball's Antitrust Exemption*, Marquette Sports Law Journal, 1999.

Alito, Samuel. "The Origin of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs." *Journal of Supreme Court History*, July 2009.

Banner, Stuart. *The Baseball Trust: A History of Baseball's Antitrust Exemption*. Oxford: Oxford University Press, 2013.

Briley, Ron. "Danny Gardella and Baseball's Reserve Clause: A Working-Class Stiff Blacklisted in Cold War America." Lincoln: University of Nebraska Press, 2010.

Corbett, Warren. "Voices for the Voiceless: Ross Horning, Cy Block, and the Unwelcome Truth." *Baseball Research Journal*, 2018.

Cronon, William. "The Trouble with Wilderness: Or, Getting Back to the Wrong Nature." *Environmental History* 1, no. 1 (1996): 7-28.

Davies, Ross E., *A Crank on the Court: The Passion of Justice William R. Day*. *Baseball Research Journal*, 2009.

Duquette, Jerold J. *Regulating the National Pastime: Baseball and Antitrust*. Westport, CT: Praeger, 1999.

Edmonds, Ed. "Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemption." *Houston: Thurgood Marshall Law Review*, 1994.

Helyar, John. *Lords of the Realm: The Real History of Baseball*. New York: Villard Books, 1994.

Honig, Donald. *Baseball When the Grass Was Real: Baseball from the Twenties to the Forties Told by the Men Who Played It*, Lincoln: University of Nebraska Press, 1993.

Jaitner, David. "Dewey and Sports: An Overview of Sport in His Work." *Education and Culture*, 2016: 35-49.

Klein, Alan. "Baseball Wars: The Mexican Baseball League and Nationalism in 1946." *Studies in Latin American Popular Culture*, January 1994.

Mathewson, Alfred. "Major League Baseball's Monopoly Power and the Negro Leagues." *American Business Law Journal*, 1998.

McDonald, Kevin. "Antitrust and Baseball: Stealing Holmes." *Journal of Supreme Court History*, 1998.
Menand, Louis. *The Metaphysical Club: A Story of Ideas in America*. New York: Farrar, Straus, & Giroux, 2002.

Parker, Richard. "Baseball Over Tea-Cakes: Major League Baseball in American Avant-Garde Poetry from Imagism to L=A=N=G=U=A=G=E." Lincoln: University of Nebraska Press, 2012.

Seymour, Harold, and Seymour Mills, Dorothy. *Baseball: The Early Years*. New York: Oxford University Press, 1989.

Seymour, Harold, and Seymour Mills, Dorothy. *Baseball: The Golden Age*. New York: Oxford University Press, 1971.

Seymour, Harold, and Seymour Mills, Dorothy. *Baseball: The People's Game*. New York: Oxford University Press, 1992.

Voigt, David Q. *American Baseball*. Norman, OK: University of Oklahoma Press, 1966.

Washburn, Patrick S., and Chris Lamb. *Sports Journalism: A History of Glory, Fame, and Technology*. Lincoln: University of Nebraska Press, 2020.

White, Edward G. *Creating the National Pastime: Baseball Transforms Itself, 1903-1953*. Princeton: Princeton University Press, 1996.

Zimbalist, Andrew. *May the Best Team Win: Baseball Economics and Public Policy*. Washington: Brookings Institution Press, 2004.