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Antitrust Law and the Minor League Reserve System

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graduated from the University of Kentucky Summa Cum Laude in May of 2007. I received a Bachelor of Science degree with honors in mathematics, and a minor in statistics. During my tenure at UK, I spent time working as a peer mentor in the AMSTEMM program; as an ambassador for the College of Arts and Sciences; as a math tutor in coordination with the Appalachian Math Science Partnership; and as the baseball beat reporter for the student-run Kentucky Kernel. I am a National Merit Scholar, have appeared on the Dean’s List seven times, and last year received the Carolyn S. Bunyan Scholarship for outstanding mathematics undergraduates.

Upon graduation, I plan to attend law school, where I will continue to pursue my dream of working in the front office of a major league baseball team. I am currently employed for the third consecutive season by the Lexington Legends, where I perform game-day duties in the press box. Everyday, I see the results of baseball’s antitrust exemption played out before me.

I would like to thank Professors Joanna M. Badagliacco, Robert S. Tannenbaum, and Harold R. Weinberg for their help in getting this project off the ground. Without the careful guidance they each provided, this project likely would have never even taken place. All of them have proven critical to the success of this task.

Antitrust Law and the Minor League Reserve System

Abstract
Minor League Baseball is a half-billion dollar a year industry in the United States. It has grown to its current state under an umbrella of protection from U.S. antitrust statutes. Beginning with the Federal Baseball decision in 1922, the Supreme Court has consistently ruled that professional baseball is exempt from both the Sherman and Clayton Acts—the seminal federal government statutes regarding antitrust. This status is unique; no other professional sport enjoys such immunity. If the exemption were lost, the effects on this staple of American culture would likely be extremely disruptive. Throughout this project, I analyzed the effects that a change in the application of federal antitrust law would have on two aspects of the game: 1) the player development agreements between the major league franchises and their minor league affiliates, and 2) the standard player contracts signed by every minor league player, which bind them to the team that drafted them until well after they make it to the major leagues. After finding that a change in the way the courts interpret past decisions would prevent both of these aspects from operating the way they have in the past due to concerns over their anticompetitive effects, I consider the likelihood that these changes would actually be made. The court system’s reluctance to violate precedent; the effect of the antitrust “rule of reason,” which allows for some anti-competitive activity provided that the actions yield even greater “pro-competitive benefits;” and the antitrust exemptions provided specifically for labor agreements arranged through collective bargaining are all considered during the process of finding that Minor League Baseball is most likely secure in its desire to remain unimpacted by federal antitrust law.

While previous discussions have focused solely on the major leagues, this study builds on their work to look at the effects the antitrust laws have on the minor league game.
Introduction
Antitrust law and baseball are intertwined in such a way that they may never be completely separated. Ever since the Federal Baseball decision in 1922, baseball has been exempt from the governance of federal antitrust law. Although its effect on the player-owner relationship in the major leagues is barely felt today, the exemption’s power still holds strong in the minor leagues, where players work at their craft under an antiquated reserve system that stifles their ability to earn what they are truly worth. Ironically, it is that very reserve system that allows the minor leagues to exist. This discussion will cover several relevant points of interest to this topic, including the genesis of the antitrust laws; the creation of baseball’s exemption to those laws; the players’ struggle to skirt that exemption; and, finally, the piece will settle on a discussion of what this situation means to the minor league franchises and cities that thrive on baseball’s lower ranks.

Antitrust Law and Sports
The legislators of the late nineteenth century were concerned with business concentration; the acquisition of monopoly power by American companies; subsequent wealth transfers from consumers to monopolists; and the ever-present links between economic and political power. In an effort to respond to these populist concerns, encouraging competition and lowering prices for consumers in the process, Congress passed the Sherman Antitrust Act in 1890 (Sullivan and Harrison, 2003, p. 3). Section One of the Act states:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (15 U.S.C. §2)

These two sections make up the primary provisions of the Sherman Act, which spans seven sections. Sections One and Two create a sort of dichotomy, whereby defendants are usually only reasonably eligible to be prosecuted under one rule or the other, although it is quite common for a plaintiff to allege violations of both sections as a legal strategy. This application of the law rises from the idea that it would be impossible for a firm to “combine” with itself and thus violate Section One. Therefore, although it is possible for a single entity to violate the Sherman Act’s first section by restraining trade through a monopoly, single entities are normally liable under the first section only if there is a strong case against the firm in question under Section Two, which forbids monopolization of an industry. Similarly, it would be difficult to prosecute multiple firms under Section Two, because a monopoly, by definition, involves only one firm providing a product or service. Of course, there are exceptions to this rule as well, as “shared monopoly” theories exist. However, in general, plaintiffs alleging actions by two or more firms conspiring in restraint of trade would be advised to bring complaints under Section One.

Sports leagues are typically prosecuted under Section One, and so a league will commonly claim to be a single entity in defense of its actions. Prosecution of a league under Section Two, while possible, is difficult. It must not only be shown that the league has monopoly power, but that it also has undergone efforts other than market competition to achieve or maintain this power. (Sullivan and Harrison, 2003, p. 299)

Assuming that a league is not a single entity, there is still another hurdle for potential plaintiffs to scale. Antitrust court decisions fall into one of two categories: “per se” violations are actions that violate the antitrust laws so directly that it is very unlikely that any legal justification can be given; “rule of reason” violations, on the other hand, must be shown to have anti-competitive effects that are so great that they outweigh any pro-competitive benefits the agreement in question provides. Since the Supreme Court decision in National Collegiate Athletic Association v. Board of Regents (1984), in which the NCAA (the National Collegiate Athletic Association) was sued by The Universities of Oklahoma and Georgia for its restrictive football television contracts, sports leagues have been evaluated under the “rule of reason” doctrine. This decision has automatically added an extra layer to any antitrust proceeding involving a sports
league. The Court explained its decision to move to a “rule of reason” approach by acknowledging that some restraints on competition are necessary for sports leagues to exist (468 U.S. 85 at 103).

Another prominent antitrust statute that has importance to the operation of sports leagues is the Clayton Antitrust Act. It was passed in 1914, and was meant to close perceived gaps in the Sherman Act. Additionally, the legislature was not pleased with the construction of the “rule of reason,” which was crafted in the court system. Many parts of the Act, which spans sixteen sections, have few applications to sports, and are rarely if ever seen in sports antitrust trials. However, Section Six of the Act has produced an important consideration for negotiations with a union:

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws. (15 U.S.C. §17)

This section was crafted in response to some court decisions in which labor unions were found to be in violation of the Sherman Act. (Kaiser, 2004, p. 239) The language here essentially allows labor unions to exist, exempting them from antitrust legislation. This is known as the “statutory” labor exemption. Furthermore, the Supreme Court has adopted a “nonstatutory” exemption for labor regarding the results of the process of collective bargaining. Out of deference to the National Labor Relations Act (NLRA), courts have held that terms agreed upon during collective bargaining are exempt from antitrust law, no matter how uncompetitive the terms are. (Kaiser, 2004, p. 240)

The antitrust laws described to this point have caused sports leagues in the United States some problems in the past. As was mentioned above, a pair of universities successfully sued the NCAA under federal antitrust law for forcing its member institutions to enter into television contracts that limited their potential exposure and revenue in order to give other institutions an unfair advantage. (Kaiser, 2004, p. 240) The decision in this case, a team from Baltimore that was a member of the Federal League sued the major leagues. The Federal League was the last legitimate rival to the National and American Leagues at that time. The Baltimore Terrapins claimed that the major leagues had conspired to prevent Baltimore from becoming a viable franchise by denying them access to major league players with the reserve system, which bound players indefinitely to the franchises that had signed them originally.

Initially, the Supreme Court of the District of Columbia ruled in favor of the plaintiff for damages of $80,000, which were trebled under Section Four of the Clayton Act. (15 U.S.C. §15) However, the Court of Appeals of the District of Columbia reversed the decision on the major leagues’ appeal, and the U.S. Supreme Court unanimously affirmed the reversal. Associate Justice Oliver Wendell Holmes, Jr. wrote the opinion for the Court and memorably proclaimed:

The business is giving exhibitions of base ball, which are purely state affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States. But the fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business. (259 U.S. 200 at 208)

Justice Holmes was addressing one of the primary requirements for a federal antitrust violation, that is, the defendant must have been involved in interstate commerce for prosecution under federal law. Having found that baseball did not involve interstate commerce, Holmes rationalized that Baltimore’s antitrust claim could go no further. This decision, however, did not simply prevent the Baltimore club from receiving damages. It effectively exempted professional baseball from federal antitrust statutes altogether.

Thirty-one years later, George Toolson tested baseball’s exemption in Toolson v. New York Yankees (1953). Toolson was a player in the Yankees’ farm system. When the Yankees attempted to demote him from his position with Newark of the International League to a team in Binghamton of the Eastern League, he refused to report. The Yankees “blacklisted” him, effectively ending his baseball career, and Toolson brought action against the team in protest of the reserve system.

In a one paragraph opinion, the Court reaffirmed by a 7-2 margin the existence of baseball’s exemption, and explained that Congress had done nothing to attempt to alter the decision in Federal Baseball; baseball had been permitted to develop since the Federal Baseball decision with the understanding that it was exempt from federal antitrust law; and legislation should be the means by which this exemption is overturned in order to follow the doctrine of stare decisis, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation (346 U.S. 356 at 357).

In 1972, the Supreme Court heard an argument against the reserve system and the antitrust exemption
for the final time in *Flood v. Kuhn* (1972). Curt Flood was a center fielder for the St. Louis Cardinals. In 1969, he was traded to the Philadelphia Phillies, a move which he opposed. He petitioned Bowie Kuhn, baseball’s commissioner at the time, for free agency, but was rejected. In response, he brought suit against the commissioner.

This scenario was similar to the one presented in *Toolson* in many ways, and predictably, a verdict similar to the one given in *Toolson* was delivered. Associate Justice Harry Blackmun wrote the opinion of the Court, which decided by a 5-3 margin. In his opinion, Justice Blackmun acknowledged that baseball’s exemption was unique, but refused to overturn *Federal Baseball* for the same reasons mentioned in *Toolson*. He repeated the *Toolson* Court’s demand that Congress make any changes in the application of this precedent.

Considering the weight of precedent in the court system’s decision-making process, baseball’s exemption seemed almost impenetrable. The reserve system looked like an immovable establishment. However, by 1968, the seeds had already been planted for the end of baseball’s reserve system in the major leagues.

### The End of the Major League Reserve System

The Major League Baseball Players Association (MLBPA) had been the players’ formal bargaining representative since 1954, but the players had not taken the initiative of negotiating a collective bargaining agreement (CBA) under the National Labor Relations Act until 1968. The first CBA was simple, and essentially maintained the status quo, but it was important because it established a dialogue between the MLBPA and baseball’s owners.

In 1970, the players and owners established an arbitration panel with a mutually selected chairman. The panel would resolve disputes between the two sides involving any subject besides “the integrity of baseball,” which remained under the commissioner’s discretion. Three years later, at the expiration of the 1970 agreement, the players asked the owners for free agency. After a bargaining session, the owners agreed to allow players with two full seasons of major league experience to have their salaries determined by an arbitrator. The agreement also contained language that gave players who had played in the league for at least ten years, the last five of which having been with the same team, the right to veto any trade involving himself (Major League Rule 9(e)). If this agreement had been made four years earlier, Curt Flood would have had the right to choose to stay with the Cardinals.

Finally, at the conclusion of the 1975 season, the MLBPA was able to end the reserve system in the major leagues just three years after the *Flood* decision. Two players, Andy Messersmith and Dave McNally, refused to sign their standard contracts. They took their cases to arbitrator Peter Seitz, whose role had been written into the previous CBA. Seitz determined that the reserve clause did not constitute an indefinite right of renewal, but rather entailed a one-year team option — in other words, the clause only gave the team the ability to renew the player’s contract for one year after the first contract was signed. Essentially, the players had been granted free agency.

The owners attempted a lockout in response, but Commissioner Kuhn ordered the spring training camps to open to begin the 1976 season. A new CBA was reached during the summer, and free agency was officially written into the agreement. The players accepted a few owner-proposed restrictions that delayed true free-agency for several years after a player’s big-league career had begun, but the major league reserve system was weakened beyond the point of recognition.

Additionally, in 1998 Congress passed the Curt Flood Act. The Act proclaimed that baseball’s exemption from antitrust law as it concerned the relationship between players and management had been repealed (15 U.S.C. §26b). Occurring forty-five years after the *Toolson* Court had made its initial plea for a Congressional ruling, the Act amounted to little more than political posturing. It came in the wake of the struggle that characterized the relationship between the players and the owners in the 1990s, which saw a player strike that resulted in the cancellation of a World Series. Now that the players and owners negotiate by means of CBAs, federal antitrust law has little, if any, effect on the discussion. The nonstatutory labor exemption exempts the owners from prosecution for any anticompetitive measures they might choose to take, and the players have no need to use antitrust to get their way; the NLRA allows them all the bargaining weapons they require (Kaiser, 2004, p. 230).

It may have taken a century of work and negotiation, but the reserve system has been put to rest in the major leagues. However, its legacy lives on in another form: Minor League Baseball, without the benefit of a players’ union, has maintained a reserve system since its establishment.

### The Minor Leagues

Minor League Baseball (MiLB) is a collection of twenty professional baseball leagues comprised of the affiliates of Major League Baseball (MLB) teams. These teams and leagues are independently owned, but operate in concert with MLB; this is most prominently demonstrated by the fact that the contracts of the players on each team are owned by the major league team with which the minor league franchise is affiliated. The minor leagues consist
of several distinct levels, namely Class AAA, Class AA, Class A, Short-Season A, and Rookie. Class A is further subdivided into Short Season Class A, Full Season Class A, and Class A-Advanced; Rookie leagues are also sub-classified as Rookie or Rookie-Advanced (National Association Agreement, Section 10.02(d)). Players are drafted and/or signed out of high school, college, or foreign countries by a major league team and assigned to a low-level minor league team. As their skills improve and they gain more experience, they are transferred to a team on a higher level, with the eventual goal of getting to AAA, and then to the major leagues.

The relationship between MLB and MiLB is governed by an umbrella contract called the Professional Baseball Agreement (PBA). It is re-negotiated every seven to ten years (the current PBA was made effective on October 1, 2004, and runs through September 30, 2014), and includes a provision allowing the agreement to be terminated in the event of a work stoppage or a change in the application of antitrust law to professional baseball (Professional Baseball Agreement, Article III (A) (1-4)). MLB and MiLB have negotiated PBAs since 1992. The PBA provides stability to the minor leagues, because the relationship between MLB and MiLB was only loosely organized before 1992 (Stein Interview). Among the issues governed by the agreement are: a provision for a percentage of MiLB’s ticket revenue to be paid to MLB (5.5% in 2007, set to escalate to 7.0% by 2011); a requirement that a minor league team should vacate a territory in return for fair compensation if a major league team should move into said territory; allowances for MLB to conduct marketing campaigns in minor league stadiums and have access to all telecast feeds of minor league games; and, most pertinent to this discussion, the assurance that the MLB teams will maintain a Player Development Contract (PDC) with each of at least 160 minor league teams each season.

The standard PDC is contained in Rule 56 of the Major League Rules, which are negotiated between MLB, MiLB, and the MLBPA. The PDC is not permitted to be changed, and a maximum $500,000 fine is written into the agreement as a deterrent to any team attempting to modify or add to the PDC (Major League Rule 56(a)). PDC agreements are made between a minor league and a major league club, are only permitted to be made for either two or four year periods, and terminate automatically if a new PBA is negotiated (Major League Rule 56(c)). The PDC divides all the expenses associated with the operation of a minor league franchise between the major league and minor league clubs, from travel expenses all the way down to the bats and balls used on the field, and even includes provisions for items such as telephone service to the field manager’s office in each clubhouse. While salaries for players, coaches, and trainers; some equipment expenses; and hotel rooms are paid for by the big league club, the minor league team is responsible for most of the day-to-day expenses associated with the operation of the team. In addition, Major League Rule 58 establishes minimum facility standards for minor league venues. This rule governs everything contained in a stadium, from the number of seats for spectators down to the brightness of the lights shining on the field (Major League Rule Attachment 58).

The minor league franchise has no control over what players, coaches, and trainers are assigned to it by the major league team with which it is associated. Players are commonly promoted or demoted one or more levels by the major league management. Often, a change in affiliation at the expiration of a PDC is not initiated by the major league club, but instead by a minor league club whose ownership feels it is not being provided enough talented players by the major league club to be a successful attendance draw (Stein Interview).

The minor leagues are a great asset to Major League Baseball. They are not only a place where many major league stars are developed, but also generate fan interest; supply a pool of readily available players when current major leaguers become injured or lose effectiveness; provide a place for major league players to rehabilitate from injury; and corner the market on nearly all available talent, making it essentially impossible for a rival league to form. Of course, there are other well-established barriers to entry for a potential rival league, including a lack of available baseball markets and the inability to attract media coverage.

A major league franchise will commonly have six or more minor league affiliates, four of which (Full Season Class A and above) play 140-game seasons beginning in April and ending in September. These minor leagues resemble the operation of the major leagues in many ways, with teams traveling from one member town to another to play three-to-four game series before moving on to another town or returning home to host a series. The leagues come complete with an all-star showcase at the season’s midway point, and hold playoffs in September, when the major leagues are conducting the final month of their season (Major League Rule 32(b)).

The teams that do not play full seasons begin play in late June, after the annual First-Year Player Draft. These leagues represent the lower levels of the minor leagues, and are typically stocked with players who have been acquired recently by the major league franchises out of high school or college.

Every player who is drafted must sign a Minor League Uniform Player Contract (MLUPC) in order to play in the minor leagues. The body of this contract is written in “eight point fine print and is divided into twenty-seven paragraphs covering subjects such as parties to the contract, schedule of payments, loyalty, dispute resolution, termination, governing state law, and pictures of players.” (Crownover, 1995, p. 228) This portion of the contract is not permitted to be changed. Another part of the contract allows for a signing bonus and other considerations. The minimum monthly pay schedule is strict and amounts to barely more than minimum wage for the players at the lowest levels. While baseball claims that player salaries are “open to negotiation,” a player has no leverage with which to
become an established major leaguer. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27. Many players enter the minor leagues at the age of 18, but an approximately equal number of players or 27. Many players enter the minor leagues at the age of 24, and studies have shown that the average player typically reaches his peak production at the age of 26 or 27.
the minor leagues to be in the hundreds of millions of dollars (Szuchman, 1996, p. 286). Allowing salaries to increase exponentially, the bill would quickly become too expensive to justify payment. It is no coincidence that none of the other major sports leagues in the United States have minor leagues that come close to rivaling baseball’s level of depth. The National Hockey League has two minor leagues (the American Hockey League and the East Coast Hockey League), while the National Basketball Association has a sole minor league, the National Basketball Developmental League. The National Football League does not have a minor league in the United States.

It is nearly certain that if the antitrust exemption were to be revoked, fewer players would be employed by Minor League Baseball. Without the ability to pay the players, the major league franchises would end their player development contracts with many of the minor league teams. Running on meager budgets, the newly abandoned minor league teams would not have the ability to pay player salaries, either. The degree of reduction in the number of affiliated players and teams would depend on what the major league franchises could afford, which would in turn depend on the extent to which salaries in the minor leagues increased. Minor League Baseball as we know it would be changed forever, and potentially eliminated.

Assuming a small increase in player salaries that could be managed by the major league clubs, free agency in the minor leagues would present still another problem. Obviously, along with free agency would come the ability for minor league players to change teams. As mentioned above, the major league clubs already invest a large amount of money in player development. Introducing the potential for players to "jump ship" after spending years in one club’s system would further discourage franchises from making such a large investment in player development (Stein Interview).

Some teams might revert to the independent minor league system that existed before Branch Rickey created the modern “farm system” in the 1930s. The independent leagues still exist today, on a much smaller scale. Major League Baseball would probably attempt to retain a small portion of the current minor league system by purchasing franchises in order to internalize the minor leagues and give them the protections associated with the labor exemption, but with the increased salaries, maintaining more than one team might not be possible. All MLB teams currently carry a 40-man roster, but only 25 players can be active major league players at one time. The remaining 15 players are held on minor league franchises, and the clubs could probably find the funds to pay these players, even in an inflated salary environment. In a predominately independent minor league system, players would play on low-budget teams for salaries at rates of pay likely commensurate with what they are paid in the minor leagues today, hoping to be noticed by a big league team. Top performers in the independent leagues would be signed by the major leagues and put directly onto team rosters. Most high school players would probably opt for college instead of the independent leagues, with few having the ability to leap straight to the major leagues. With Major League Baseball searching for methods to develop players, not only would the college ranks become a chief breeding ground for major league talent, but the international leagues would also play an increased role (Brand and Giorgione, 2003, p. 59).

**Will Minor League Baseball Lose its Exemption?**

Luckily for Minor League Baseball, there is little chance of a court ever ending its reserve system. Unwilling to overturn past precedent, the Supreme Court went so far in Toolson and Flood as to ask Congress for help in correcting the exemption. However, the Flood decision narrowly fell in management’s favor. If one Justice who had joined in the majority opinion had switched to the opposite side, the Flood Court would have reached a 4-4 split. With such a tenuous grasp of the majority, it makes sense to think about the ramifications if the minor league system were evaluated under the rule of reason.

Minor League Baseball is a half-billion dollar a year industry. Nearly forty million people attend games annually (“History”). It is safe to say that the minor leagues are a staple of American culture. As such, it is clear that the minor leagues have merit as an institution and, hence, should be evaluated with care. The minor leagues would argue that the pro-competitive benefits of the reserve system outweigh any anti-competitive effects. In fact, the idea that the minor leagues could not exist as they currently do without the reserve system would be one of the league’s strongest arguments. However, if the minor leagues were to adopt this argument, they would still be required to adopt the least restrictive means of maintaining the aforementioned pro-competitive benefits (Spander, 1995, p. 113).

Another potential argument would be that the minor leagues operate as a single entity, with the goal of producing major league players. Unlike the major leagues, winning a championship is often a secondary goal for minor league franchises. Indeed, the games often take on a side-show quality at the lower levels. Allowing the single-entity defense would remove the minor leagues from consideration under Section One of the Sherman Act, because a single firm cannot commit an antitrust violation against itself. This defense has not always worked well for other sports leagues (726 F.2d
1381), but the Supreme Court has never ruled definitively on whether sports leagues should be treated as single entities. Also, MiLB is different from other leagues that have attempted the single-entity defense because of its role in the larger industry of professional baseball.

Additionally, the minor leagues might argue that the graduated pay scale negotiated into the MLUPC provides rewards for increased performance and simulates market conditions. Also, variations in signing bonuses offered to players creates salary dispersion, indicating competition. However, the Major League Rules specifically forbid monetary bonuses associated with improved performance (Major League Rule 3(b) (5)), so it would appear that if baseball is attempting to simulate a market, it does not wish to do so very accurately. The signing bonuses certainly provide some dispersion of minor league compensation, but a player loses all of his power of negotiation the moment he signs a MLUPC. If a player finds that his ability has improved after signing a contract, his only recourse is to hope to make the major leagues in order to receive commensurate pay. Again, there are certainly less restrictive options available.

Finally, there is potential for a convincing argument in the arena of consumer welfare. MiLB might argue that restraints on player salaries keep ticket prices down, therefore benefiting consumers, one of the main groups that the antitrust laws are designed to protect. The minor leagues are making money right now, but in order to maintain profitability in an era of minor league free agency, one of the first approaches most teams would be forced to attempt would be a ticket price hike. The Supreme Court has not yet heard this argument, either, so it has interesting potential as a defense.

Of course, allowing these arguments to be heard before the court does not indicate that they will succeed. The players would need only to continue the discussion that Curt Flood started in order to make a reasonable beginning to a case for the reserve system’s abolition. No precedent exists to confirm or deny that a player would succeed in bringing suit against baseball. This situation is unique in that the player would not belong to a union; hence, the statutory and nonstatutory labor exemptions would not come into play as they have in other cases. For example, in Brown v. Pro Football (1996), the Supreme Court ruled that because practice squad salaries had been collectively bargained, they were exempt from antitrust law. This is a typical decision in the realm of player challenges to management implemented conditions. At least one legal scholar has already made an argument that restraints in the minor leagues violate Section One of the Sherman Act (Spander, 1995, p. 129).

If MiLB were to lose its exemption, and the courts subsequently deemed the minor leagues to be in violation of the laws to which it had been newly subjected, where then would MiLB turn? To the people who make the laws, of course. With franchises in about 40 percent of Congressional districts, Minor League Baseball has an exceptionally well-oiled lobby. In 1998, MiLB successfully lobbied to change the Curt Flood Act to explicitly state that it would have no effect on the antitrust laws’ effect on the minor leagues. The Curt Flood Act was mostly a political move made in the wake of the 1994 baseball strike to help foster a better relationship between MLB and the MLBPA. Written into the CBA that was ratified in December, 1996, was Article 28, a single paragraph that stated that MLB and the MLBPA would work together to make major league labor negotiations subject to federal antitrust law (2007-2011 Basic Agreement, Article XXVIII). When legislators eagerly adopted this opportunity for political point-scoring, they were met with fierce opposition from MiLB, which had a laundry list of concerns with the bill. In the end, MiLB was able to have all of its concerns addressed (Roberts, 1999, p. 437). This success indicates that legislators consider the minor league lobby to be an important one, and signifies that future successes might be obtained. The sheer number of fans who would be unhappily disenfranchised in the event of a minor league collapse under the weight of federal antitrust law would be reason enough for federal legislators to become involved.

Lastly, one quite obvious possibility has been overlooked during almost this entire discussion. What if the minor league players were to unionize? It worked for the major leaguers, as the MLBPA has expanded rights, freedoms, and salaries for MLB players since it began to flex its muscle in the 1970s. There is no question of the minor league players’ legal ability to create a union (Szuchman, 1996, p. 297). Of course, the union would begin slowly, seeking few concessions in the beginning. Eventually, however, players would request salary hikes. A minor league union would not have the leverage that the MLBPA possesses — players in the minor leagues make less money; are more easily replaceable; and are more desperate to work, because good performance in the minors is a minor league player’s only viable route to the major leagues. Still, MLB would be forced to bargain with the players under the NLRA. While the players might not gain free agency, salaries would eventually rise. Many of the same outcomes discussed above would likely occur as a result of the increased costs. With major league teams already eating into some of the profits of their minor league clubs by asking for a larger and larger percentage of ticket revenue, increased salaries for players would put an even tighter squeeze on minor league ownership (Stein Interview). While the presence of a union might not have the drastic effects on MiLB that a change in federal antitrust law would, the unionization
of minor league players would undoubtedly have visible effects on the game.

Conclusion
Minor League Baseball relies heavily on the antitrust protection it has enjoyed since the dawn of its existence. It has developed with an understanding that the rules do not apply to it in the same way that they do to other leagues and businesses. While not necessarily devastating, destroying one of the cornerstones of this industry’s foundation would create a tremor that would be felt by citizens in every corner of the United States. Our system of laws and lawmaking makes the possibility of such an event somewhat remote, but as long as there are people behind these laws and their interpretation, anything is possible. There is no doubt that Minor League Baseball will maintain a vigilant eye with the goal of protecting its share of our national pastime.

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