THE FREE AGENCY PHENOMENON

THE BASEBALL ANALOGY

G. Edward White

IN HIS RECENT BIOGRAPHY OF CURT FLOOD, the baseball player who in 1972 unsuccessfully challenged major league baseball's "reserve clause" practice as a violation of the antitrust laws, Brad Snyder portrays Flood as the catalyst for the onset of free agency in baseball. And Snyder goes further. These days, he says, free agency describes the working life of Americans generally. "The days when people worked for the same company or even in the same occupation for their entire lives," Snyder claims, "are long gone."

> People are always on the lookout for a better job or a better deal. "We may not want to admit it, but there's a little Curt Flood in all of us. If baseball is an analogy for life, then we have become a society of free agents."[1]

The Supreme Court's decision in Flood's case[2] left the reserve clause practice intact, which meant that clubs continued to reserve

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[1] Brad Snyder, *A Well-Paid Slave* 350 (2006) (quoting Loren Steffy).

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

the right to renew all their players' service contracts, on terms to be determined, for a year after the players' current contracts expired. No other clubs would bid for the players, so if a player was dissatisfied with his situation his only options were to negotiate with the club (with limited leverage), retire, or sit out of baseball for a year. The reserve clause, coupled with the refusal of teams to bid for other teams' players, was an obvious illustration of a conspiracy to restrain competition in the market for major league baseball players' salaries. Neither the Supreme Court nor Congress, over a fifty-year period beginning in the 1920s, chose to do anything about that situation.

But in 1975 everything changed. The baseball players' union, which in 1970 had won the right to refer player grievances to binding arbitration, encouraged two players who had been traded without their consent to challenge the reserve clause before Peter Seitz, a designated arbitrator. Seitz construed the clause so narrowly as to invalidate it for all practical purposes, and a year later a new agreement between the players and club owners instituted free agency in baseball.

Snyder's book on Flood is mainly about Flood's life and career, both before and after his challenge to the reserve clause. Flood was 31 when, in 1969, he refused to accept a trade from the St. Louis Cardinals to the Philadelphia Phillies, setting off a chain of events that led to his retiring from baseball before the Court's decision, moving to Denmark, fighting alcoholism, becoming temporarily bankrupt, and dying from throat cancer before his 60th birthday. It is only at the very end, almost as a throwaway line, that Snyder suggests we have become a society of free agents. But it is an intriguing thought: Has free agency migrated from its origins in professional sports to become a contemporary cultural phenomenon?

One might argue that baseball, at least in the major leagues, is not a very good analogy for life. Major league baseball players are persons so accomplished at a particular sport that members of the public are willing to pay money to watch them display their skills. In the 1922 *Federal Baseball* case, which held that major league baseball was not subject to federal antitrust laws, Justice Holmes re-

ferred to baseball games as "exhibitions,"[3] a term that might seem quaint to dedicated contemporary baseball aficionados. But a major league baseball game is in essence an "exhibition," a form of entertainment in which spectators pay to watch players perform athletic feats at levels well beyond the reach of the average person.

Ordinary working life does not seem analogous. Members of the public, with very few exceptions, do not possess the gifts and have not developed the skills to make a living by performing before audiences for pay. The only analogous persons in the population would seem to be entertainers, suggesting that it is no accident that the worlds of professional sports and entertainment are so commonly linked. Numerous other successful people in business and the professions owe their success to a particular skill set for which there is a demand in some market, but that skill set is not usually related to physical abilities, and it is typically not "performed" in an "exhibition."

So the claim that playing major league baseball furnishes an analogy for the working life of most Americans has difficulties. But it still seems possible to posit a connection between the emergence of the free agency phenomenon in baseball and in other sectors of the American workplace. That connection flows from the fact that major league baseball in America is a cultural institution, embodying social attitudes and values and responding to changes in those attitudes and values. Moreover, when one explores the cultural dimensions of free agency in baseball, a history of the 20th-century baseball workplace surfaces, in which free agency represents a late-century transformative event. Free agency, in that history, can be seen not as an isolated, accidental phenomenon, the result of some bungling by major league baseball owners in the aftermath of the Flood case, but as a culturally inevitable development, one that emerged in major league baseball because its time had come. The same might be said of free agency as a general phenomenon in American working life.

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[3] Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200, 208 (1922).

In 1951, a subcommittee of the House Judiciary Committee held extensive hearings on "monopoly power" in Organized Baseball, the entity concerned with the operations of the major and minor leagues.[4] The hearings came at a time when some of baseball's traditional practices had come to be perceived as conspicuously monopsonistic.[5] The most obvious example was the reserve clause, whose antitrust implications were accentuated by the fact that all the major league clubs sold radio and television rights to their games, which were carried on networks and stations operating in interstate commerce. But there were others.

The "territoriality" principle, which had governed the conduct of major league franchises since 1903, stipulated that each club could prevent any competitive franchise from operating within its "territory" – defined by the major league club owners – without its consent. That principle was subsequently interpreted as giving owners control over the prospective transfer of clubs from one location to another, as well as over the prospective expansion of the major leagues to include teams from new cities. Both measures required the unanimous, or nearly unanimous, consent of all owners. The result was that the franchise map of major league baseball remained constant for five decades. In 1951 New York (counting Brooklyn) had three teams, Boston, Philadelphia, Chicago, and St. Louis two, and Washington, Pittsburgh, Cleveland, Detroit, and Cincinnati one each. This was the identical allocation of franchises made in the original 1903 National Agreement between the two "Major Leagues," the National and the American.

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[4] For more detail on the hearings, see G. Edward White, *Creating The National Pastime* 301-06 (1996).

[5] A monopsony is a "buyer's monopoly," in which the absence of competition among those buying goods or services results in prices being artificially depressed. This was the effect of the reserve clause. Because teams would not compete with one another to buy players in an open market, a player could not command a salary any higher than the one his current club was prepared to offer.

But by 1951 several cities, such as Atlanta, Dallas, Denver, Minneapolis/St. Paul, and especially Los Angeles and San Francisco, had populations exceeding those of some of the original franchise hosts. Moreover, between the 1930s and the 1950s some clubs in "two team" cities, such as the Boston Braves, Philadelphia Phillies, and St. Louis Browns, had quite poor attendance records and were consistently low in the pennant race standings. Those franchises were not profitable, and their ballparks, built before the 1920s, were deteriorating. In contrast, cities such as Kansas City, Los Angeles, San Francisco, and Minneapolis had thriving minor league franchises, especially after the end of World War II. Nevertheless, major league baseball owners rebuffed efforts to transfer weak "two team" franchises to other cities and took no steps toward expansion.

A final practice that came to the subcommittee's attention was the "farm system," the term describing efforts by major league franchises to control the future disposition of players on the rosters of minor league clubs by having exclusive agreements with those clubs or owning them outright. The system was a response to the haphazard fashion in which players were recruited and developed by the major league franchises in the years after the signing of the National Agreement in 1903. Most major league players came from the rosters of minor league franchises, which were initially independent entities. A classification of minor leagues, based on the ability of the players, had been put in place by the major league clubs in 1911, and compensation levels for players "drafted" from minor league rosters had been fixed. But the minor and major leagues were not able to arrive at any common procedure for the acquisition of players by the major league clubs, and some minor league owners chose to opt out of the draft and sell their players to the highest bidders.

St. Louis Cardinals general manager Branch Rickey, frustrated at losing promising minor league players to larger market franchises in the majors, responded by forging arrangements with minor league teams in which the Cardinals, in exchange for financial support of those teams, were given a right of first refusal on promising players on their rosters. By the mid-1920s the Cardinals had begun to obtain controlling interests in minor league teams, and by the 1940s

they owned fifteen teams and had working arrangements with seventeen others. The success of the Cardinals' farm-system approach was evident. Even though they were a small market franchise in a two-team city, their teams were consistently good in the 1920s, 1930s, and 1940s, and they were able to make profits despite the fact that many of their minor league franchises lost money. Other major league clubs, such as the New York Yankees, Detroit Tigers, Cleveland Indians, and Brooklyn Dodgers, began to establish their own farm systems. The anti-competitive dimensions of the farm system were evident: through ownership and working arrangements, franchises such as the Cardinals could prevent minor league players, and other club owners, from entering the market for buying and selling those players. In short, the farm system depressed the market itself.

Members of Congress used the 1951 hearings to rail against the anti-competitive aspects of baseball. They invited players and baseball executives to discuss the reserve clause, the territoriality principle, the farm system, the exclusion from the majors of cities that did not have major league baseball franchises in 1903, and the treatment of players in the minor leagues. Their witnesses responded in ways that, from a contemporary perspective, might appear astonishing. Not a single player criticized the reserve clause, and several asserted that Organized Baseball could not survive without it. Although the owners and executives who testified were less resolute about territoriality, they uniformly thought that adding cities outside the existing circuit would be unmanageable. And although owners conceded that the farm system could negatively affect both the prospects and salaries of players in the minor leagues, they defended it as a way of preserving the viability of those leagues.[6]

Of those reactions, only one seems plausible on its face. The geographic circuit of baseball was relatively compact, extending only from Boston to St. Louis and no farther south than Washing-

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[6] For examples of testimony reflecting those attitudes, see White, supra note 4, at 302-05.

ton. Because the railroad remained the major form of long-distance travel in the United States – in addition to the relative infancy of the airline industry as a mass carrier, the interstate highway system had not yet been built – passenger trains between the cities housing clubs ran frequently, overnight accommodations on trains were widely available, and the duration of train rides was not unduly burdensome. Railroad travel to cities outside the major league circuit, however, was a different matter. Train travel to the west coast, even from cities such as St. Louis and Chicago, was a several-day undertaking. At the 1951 hearings the testimony of several executives revealed that they were having difficulty embracing the alternative of airline travel. Clark Griffith, owner of the Washington Senators, maintained that California was "entirely out of the major-league circuit," thinking of the "circuit" as a railroad network. Will Harridge, president of the American League, said that if he were a club owner he would not want his team to fly in airplanes.[7]

If those conceptions of long-distance travel are factored in, the resistance of major league owners to any modification of the existing map of baseball franchises may appear less of a conscious effort to retard competition in the industry than one might retrospectively suspect. But the remaining practices under review in the 1951 hearings were markedly, and deliberately, anti-competitive. Yet the testimony of players and executives at the hearings reveals that those who commented on the reserve clause, or on the farm system, believed that those practices were necessary to maintain close competition among major league teams, which was vital for the game's health. Everyone in baseball appeared to assume that limiting the bargaining power of the players by reducing competition for their services actually *increased* competition among clubs.

Given the history of competition in major league baseball, that assumption seems puzzling. By 1951, after Organized Baseball had operated with the reserve clause system for nearly fifty years, there was very little evidence of parity among the major league franchises.

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[7] Quoted in id., 308; see also Alex Reisner, *Baseball Geography and Transportation*, 35 Baseball Research J. 46 (2007).

On the contrary, franchises such as the Yankees, Giants, Dodgers, and Cardinals had consistently been contenders, while franchises such as the Braves, Phillies, Senators, and Browns had rarely been, and the other teams had had periods where they were in contention and periods when they were not. Moreover, there was a clear connection between the wealth of a franchise and its success. The Philadelphia Athletics and St. Louis Cardinals provide illustrations.

From the early years of the century to the early 1930s the Athletics were regularly high in the standings. But on two separate occasions team owner Connie Mack, having concluded that once players had reached a certain salary level he could make more money trading them than keeping them, "broke up" his star-laden clubs. The Athletics promptly plummeted in the standings. By the 1940s and early 1950s the Athletics were a perennial doormat in the American League. Conversely, the Cardinals, outdistanced by the Browns in the first two decades of the century, emerged as contenders through Rickey's shrewd use of the farm system, increased their attendance, and by the years after World War II had become one of the premier, and perennially solvent, franchises in baseball. As the Athletics' baseball fortunes receded, so did their financial health, making it difficult for them to prevent Shibe Park, their ballpark, from deteriorating. The state of the park in turn contributed to their low attendance.[8] In the same time period the Cardinals, who also played in an old ballpark in the same two-team city, made enough money to keep their park attractive.

Thus, close competition among major league teams did not exist across the leagues as a whole in the first fifty-odd years of Organized Baseball, and the two major sources of a club's profitability were a winning record and a good ballpark. Despite the assertions of club owners that the reserve clause was necessary to maintain competition among clubs, the principal benefit of the clause to them was not maintaining that competition. The principal benefit was that the

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[8] On the deterioration of Shibe Park, see Bruce Kuklick, *To Every Thing a Season* (1991).

clause enabled them to keep payrolls low in a depressed market for player services.

But in the years between 1930 and 1950 another source of income for the clubs began to emerge, and by the 1951 hearings the impact of that source was acknowledged to be considerable.

Baseball games had first been broadcast sporadically on the radio in the 1920s. Initially the club owners were uncertain about whether games on the radio would help or hurt attendance, and did not even consider selling broadcast rights. Some teams, believing that broadcasting games would cut down on the number of spectators, barred broadcasts of their games. Others, suspecting that broadcasts might increase a club's fan base, permitted any interested radio stations to broadcast their games live, or recreate them from a studio, using a telegraph wire and simulated crowd noise. By the late 1930s most clubs had come to treat broadcasting as an asset. Some clubs were still declining to have their games broadcast, but they were a distinct minority, and the others had entered into exclusive agreements with radio stations and corporate sponsors to put many or all of their home games on the air. There was originally some uncertainty about whether clubs who denied radio stations access to their games could prevent the stations from "bootlegging" the games by placing employees carrying telegraphs in locations overlooking ballparks, from which they transmitted reports of games to studios to be recreated. But in 1938 a federal court held that ballgames were not the equivalent of "news," and thus that the Pittsburgh Pirates had a property right in their performances sufficient to allow them to limit all forms of radio access.[9]

By the 1950s most clubs had made agreements with stations for the live broadcasts of away games as well as home games, and were paying the salaries of announcers to travel with the teams. Several had established "networks" of stations carrying their broadcasts, which meant that their games reached audiences well outside the cities affiliated with the teams. Radio had not only been shown to improve attendance, the rights to games had turned out to be one of

[9] Pittsburgh Athletic Co. v. KQV Broadcasting, 24 F. Supp. 490 (W.D. Pa. 1938).

a club's most lucrative assets. None of the participants in the 1951 hearings, however, could have imagined that over the next decade the electronic media rights to games would transform the business, and ultimately the economic organization, of major league baseball.

In the decade of the 1950s the percentage of American households owning television sets went from 12.3% to 87%.[10] Clubs, taking advantage of their control over radio and television rights to their games, began to charge significant fees to local stations, advertisers, and eventually television networks for the broadcasts. By the 1960s radio and television rights had become the principal source of revenue for many clubs. All of this occurred while the American postwar population was rapidly growing, shifting south and west, and moving from central cities to suburbs.

The eventual break-up of the original franchise map, which took place in 1953 and 1954, was in part a response to demographics. Boston, Philadelphia, and St. Louis, which lost franchises to Milwaukee, Kansas City, and Baltimore respectively, were two-team cities with declining or stagnant populations, and Milwaukee and Kansas City were located in growing population centers. But another factor affecting the decision to move those three franchises was potential income from radio and television rights. In Boston the Braves competed with the Red Sox not only for spectators but also for listeners, viewers, broadcast networks, and sponsors. The same was true of the competition between the Athletics and the Phillies in Philadelphia and the Browns and the Cardinals in St. Louis. In Milwaukee, Kansas City, and Baltimore there would be only one major league team, capable of earning considerable income from its broadcast rights.

Just how rapidly the attitudes of 1950s baseball owners were changing about broadcast rights as an asset can be illustrated by the joint decision of the New York Giants and Brooklyn Dodgers to move to San Francisco and Los Angeles in 1957. The owners of the Giants and Dodgers faced few of the concerns that had inclined the first group of owners to transfer their clubs to different cities. Their

[10] See James Edward Miller, *The Baseball Business* 62 (1990).

ballparks, although elderly and mired in inner-city locations with inadequate automobile parking, had not been allowed to deteriorate, and their attendance remained high. They were located in the nation's largest market. Both teams had long and continuing histories of success. Nor did they choose to go to cities with major-league quality ballparks, such as those in Milwaukee, Kansas City, and Baltimore: both recognized that Seals Stadium in San Francisco and the Los Angeles Coliseum were inadequate, and that new parks would have to be built.

The Giants and Dodgers went west for two principal reasons. One was to gain a foothold as sports franchises in vastly expanding west coast population centers. The other was to be the first comers in the biggest California markets for broadcasting baseball games. When the teams, shortly after arriving, built new ballparks, the construction was partly supported by public funds and the parks were erected in open spaces with large amounts of automobile parking. The expectation was that the clubs would draw fans from a large geographic area, including many who had been attracted to the teams in part by listening to the games on the radio and viewing them on television. The move was conceived of as a joint venture in order to create a natural rivalry between two major west coast cities. It was also an effort to divvy up the west coast broadcast market.

The Giants and Dodgers were operating with a new concept of what being a major league baseball fan meant. Baseball clubs had always thought of their fan bases as local, a slightly enlarged equivalent of the fan bases of European first-division soccer teams. The reserve clause and territoriality helped make the rosters of clubs relatively stable, eliminated the possibility of competitor franchises within a region, and depressed salaries sufficiently that most players needed to live – and work outside the baseball season – in the areas where their clubs were located. The associations between players and fans in a city helped contribute to the local character of, and local support for, each team. In addition, most spectators at games came on foot or by public transportation. They were residents of the cities that housed the teams. If they heard games on the radio,

they heard them in city residences, or from the windows, or on the stoops, of those residences. The broadcasts were on local stations, and featured, of course, their local club.

The Giants' and Dodgers' owners in 1957, Horace Stoneham and Walter O'Malley, anticipated that the fan bases of those clubs would be different. They would not necessarily be residents of the cities housing the teams, but might come from a far larger area. They would not likely have forged any local associations with the players. Their primary exposure to their new teams would be through the media. In the late 1940s, nationwide networks had begun to broadcast baseball, first on the radio and then on television. By 1957 many residents of Los Angeles and San Francisco would have seen the Brooklyn Dodgers or New York Giants play on a televised Saturday "game of the week," or in the All-Star Game or the World Series. In short, instead of establishing themselves in cities long before their games came to be broadcast on radio or television, the new major league teams of Los Angeles and San Francisco had had their games broadcast into those cities before they arrived. Their prospective fan base was not founded on watching games in person, but on contacts induced by the media.

Radio and television broadcasts, coupled with the airplane, the interstate highway system, and population dispersal, changed the meaning of what it was to be a baseball fan. It was possible to develop an allegiance to a team without being a resident of its city. This had been the case with some franchises on the original map, such as the St. Louis Cardinals and Chicago Cubs, which were quick to develop radio networks throughout the Midwest. By the 1950s, as population expanded away from eastern cities, it became more common. Most Californians were transplants from the East or Midwest, and many brought allegiances with them. Being a baseball fan was a way in which a new resident of an area could affirm his or her regional identification. The association of new major league cities with their teams gave those teams leverage when they needed new ballparks. As the automobile and demographic trends made the first generation of ballparks increasingly obsolescent after the 1950s, their replacements were often located outside city centers.

By 1969, when Curt Flood resisted his trade to the Phillies, the economics of baseball had radically changed. Radio and television rights had become a major source of revenue for clubs, especially those in large media markets. The costs of ballpark construction and maintenance had increased so significantly that only the wealthiest owners could afford to upgrade parks without public support. Once the original franchise map had been broken up, clubs could extract concessions from their host cities by threatening to move. The "large market"/"small market" division of clubs, a product not just of the size of cities but also of their area media markets, was already in place. The reserve clause remained, but the players' increasingly aggressive labor union had highlighted the gap between team revenues and player salaries and convinced the owners to direct some of their radio and television revenues to increasing pension benefits for players. A players' strike nearly occurred in 1969, and one did happen in 1972, when players missed 86 games. Free agency would come three years later. Looking back, it was an inevitable consequence of the transformation of baseball economics brought about by postwar demographics and the electronic media.

Revenue from radio rights had become an important element of baseball economics by 1951, but those who testified at the Congressional hearings had had trouble imagining a modification of the original franchise map, let alone the reserve clause. Something else would change as well in the two succeeding decades. Americans, both within and outside baseball, modified their geographic associations. Just as it became common for families to disperse, with children living long distances from their parents, so it also became common for major league players to have residences away from the cities hosting their teams, and even to commute occasionally from those residences to ballparks. When the Yankees' catcher Thurman Munson was killed in an airplane crash in August, 1979, he was flying a private plane near his home in Ohio during a brief break in the team's regular season schedule.

The common allegiances forged among residents of a city, their teams, and the players on those teams were breaking down as new generations moved to different locations and players were less in-

clined to live near their host city in the off-season. Meanwhile a new set of allegiances to teams emerged, the allegiances of fans who followed teams primarily on the electronic media, contributing to the revenues of clubs not so much by attending games in person as by listening to or watching them. As the ubiquity of the electronic media increased, it became much easier for Americans to have long-distance allegiances to baseball clubs. Those allegiances, if formed early in life, might surmount the local affiliations brought about by residency.

When free agency came to baseball, constant roster change came with it. A primary source for cementing relationships between teams and their localities was removed. But that happened at a time when the associations between teams and their local fans were already weakening, and when a team's fan base might extend across a much larger geographic area. In this setting, loyalty to a team became less identified with loyalty to a particular set of players who remained on a team's roster and were visible in the team's city during the off-season. For fans, loyalty to a team became more akin to loyalty to one's relatives, who might well not live near one but who figured prominently in early associations. As long-distance travel and changing residences became common American experiences, local identities receded. So did the local and regional identities of baseball clubs. In the 1980s the Atlanta Braves, whose owner also owned a cable television network, developed the idea of televising the Braves' games to a host of cities and marketing the Braves as "America's team." That approach captured the way in which fan bases could be built in the age of a mobile and continually dispersing population with ready access to electronic media.

Perhaps by "a nation of free agents" Snyder means to refer to the contemporary world of American demographics and communications. "Free agency" becomes a metaphor for the severing of rooted associations that come from a long experience of place. Place can signify a family residence, but it can also signify an institutional affiliation. Americans have become accustomed to severing rooted

associations. Developments in transportation and communication have made that severance easier.

Here the baseball analogy may be apt. Free agency emerged in baseball, in large part, because new demographics and modes of communication changed the economics of the game, including the nature of a club's fan base. With free agency, baseball players have become used to changing teams and moving residences over the course of careers, following the money. At the same time developments in transportation and communication have made those dislocations less acute. The careers of players are short, and the income from those careers very high, so players naturally follow the money. But because changing one's place has become easier for contemporary Americans, moving in pursuit of better economic opportunities is less wrenching. The working lives of most Americans are much longer than those of baseball players. But they are affected by the ease of long-distance transportation and communication as well. Free agency was a phenomenon whose time came in baseball. It may now have expanded to the more ordinary sectors of American economic life.