

# CHALLENGING THE MLB DRAFT'S GRAND LABOR SLAM: A UNIVERSAL PROPOSAL FOR AN AMATEUR BALLPLAYER'S CHOICE OF TEAM

## I. INTRODUCTION

Imagine a scenario in which a brilliant student at one of America's top law schools fully excels during her time in law school: she performs at the top of her class, serves as editor-in-chief of her law review, and writes a note that gets cited by national media outlets. Her goal is to work in the sports labor department of a premiere law firm in New York City so that she can be close to her family.

Then, on graduation day, she gets a call from a poor-performing environmental law firm in Seattle exclaiming "Congratulations, you've been drafted to our firm!" She is told that she is only allowed to practice law for this one firm, or else she would have to sit out of the legal profession for at least a full year. Despite her desire to live in the Northeast and work for a firm regularly placed at the top of the Vault 100, she may only agree to an offer from this struggling firm across the country. Compounding matters, because she is disallowed from interviewing with other firms, she has limited leverage to negotiate salary, and consequently her income will likely be a fraction of her worth on the open market.

This hypothetical scenario highlights the inherent regulatory absurdity unique to American professional sports drafts. While most workers in non-sports industries have the freedom to negotiate their company of employment, city of residence, job role, and contractual benefits, domestic athletes entering the professional baseball job market—Major League Baseball ("MLB") and its 30 franchises—are not typically afforded these liberties.<sup>1</sup>

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<sup>1</sup> Rany Jazayerli, *Abolish the MLB Draft*, GRANTLAND (June 6, 2013), <http://grantland.com/features/the-mlb-draft-work-quite-possibly-immoral-replace-it/>.

Instead, domestic amateur players—specifically those from the United States, Canada, and Puerto Rico—are subject to an amateur draft held each June, after which players can negotiate a professional contract only with their drafted team.<sup>2</sup> Alternatively, foreign players enter the league through a different mechanism: a signing day system, in which eligible players can freely negotiate and sign with any team beginning on July 2 of their first year of eligibility.<sup>3</sup>

The 2016 collective bargaining negotiations between the MLB Commissioner’s Office and Major League Baseball Player’s Association (“MLBPA”) explored the possibility of unifying these two amateur player entry systems into one cohesive, coherent process.<sup>4</sup> Towards this goal, nearly all serious public attention focused on the possibility of instituting an international draft.<sup>5</sup> The MLBPA refused, however, by arguing that an international draft could have disastrous effects that would diminish the incentives for low-income Latin Americans to pursue careers in baseball.<sup>6</sup> Ultimately, the parties were unable to come to an agreement on one overall player entry system and instead adopted a variation of previous separate domestic and foreign player entry systems.<sup>7</sup> When the current Collective Bargaining Agreement (“CBA”) expires in 2021, both parties are expected to revisit these discussions.<sup>8</sup>

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<sup>2</sup> MAJOR LEAGUE BASEBALL, 2017-2021 MAJOR LEAGUE BASEBALL COLLECTIVE BARGAINING AGREEMENT (2016).

<sup>3</sup> *Id.*

<sup>4</sup> Jorge L. Ortiz, *Why the International Draft is Hindering MLB's Collective Bargaining Efforts*, USA TODAY SPORTS (Nov. 24, 2016), <https://www.usatoday.com/story/sports/mlb/2016/11/24/mlb-collective-bargaining-agreement-international-draft-lockout/94381330/>.

<sup>5</sup> *Id.*

<sup>6</sup> Mike Axisa, *With MLB Lockout Looming, Latin American Players Take Stand vs. International Draft*, CBS SPORTS (Nov. 28, 2016), <https://www.cbssports.com/mlb/news/with-mlb-lockout-looming-latin-american-players-take-stand-vs-international-draft/>.

<sup>7</sup> 2017-2021 MLB COLLECTIVE BARGAINING AGREEMENT.

<sup>8</sup> Ortiz, *supra* note 5.

This paper challenges the unified international draft proposal by exploring whether MLB's signing day system for foreign players could serve as a viable model for a unified player entry system. The paper proceeds in the following manner: Part II explains the model of the current signing day system for foreign amateur players. Part III explores the merits of a unified signing day system on the basis of several key criteria and consequences, including player autonomy, free-market competitive principles, game parity, team strategy, and perverse incentives. Part IV concludes that the negative moral and economic implications under the draft system would likely be ameliorated by a unified international signing day system.

## **II. MLB'S CURRENT SIGNING DAY SYSTEM FOR FOREIGN AMATEUR PLAYERS**

Unlike domestic amateur players, foreign amateur players have never been subject to an amateur draft or constrained to negotiating with just one team. Instead, under the 2016 CBA, foreign amateur players are free to negotiate and sign a contract with any team each year beginning on July 2, known as international signing day.<sup>9</sup>

Similar to the draft's bonus pools, in the foreign signing day system each MLB team has a total amount of money, or an international bonus pool, which it is permitted to spend on international amateur players.<sup>10</sup> Similar to the domestic market, teams cannot spend more than their total international bonus pool amount without incurring severe penalties.<sup>11</sup> However, instead of being based on winning percentage, international bonus pools are relatively standard across all teams, with small market teams permitted extra money for their bonus pools.<sup>12</sup>

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<sup>9</sup> 2017-2021 MLB COLLECTIVE BARGAINING AGREEMENT.

<sup>10</sup> Ben Badler, *New MLB International Signing Rules*, BASEBALL AMERICA (Dec. 2, 2016), <https://www.baseballamerica.com/international/new-mlb-international-signing-rules/#oMLB76x9wJ8FQ5My.97>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

A potential MLB domestic amateur player signing day also has some striking parallels to the process by which high school athletes commit to play at the collegiate level, known as NCAA Signing Day. Here, NCAA athletes must sign a national letter of intent within an established period of time.<sup>13</sup> Similar to the role of MLB bonus pools in salary suppression, the NCAA also severely restricts athletes' earning power by prohibiting college athletes to make money.<sup>14</sup> Instead, each collegiate program is allowed to offer the same basic services to amateur players, such as the opportunity to pursue an undergraduate degree, education and tutoring resources, and fitness and training facilities.<sup>15</sup> As such, in hoping to create a competitive recruiting advantage, many collegiate programs invest in high quality coaches and fitness facilities that may spur high school athletes to choose their program.<sup>16</sup>

### **III. ANALYZING THE MERITS OF A UNIFIED SIGNING DAY SYSTEM**

#### **A. Autonomy**

The strongest criticism of the current MLB draft system is that domestic amateur players have extremely limited autonomy of the eventual fate of their careers. In other words, whereas most workers in non-sports industries have the freedom to negotiate their company of employment, city of residence, job role, and contractual benefits, domestic amateur ballplayers are not typically afforded these liberties.<sup>17</sup> Instead, upon being drafted, domestic amateur players forfeit the right to choose their employer, and at least the first six years of their career<sup>18</sup> are

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<sup>13</sup> Michael McCann, *Why the NCAA Lost Its Latest Landmark Case in the Battle Over What Schools Can Offer Athletes*, SPORTS ILLUSTRATED (Mar. 8, 2019), <https://www.si.com/college-football/2019/03/08/ncaa-antitrust-lawsuit-claudia-wilken-alston-jenkins>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Jazayerli, *supra* note 2.

<sup>18</sup> 2017-2021 MLB COLLECTIVE BARGAINING AGREEMENT.

largely determined without their input. This lack of agency may cause friction between players and teams, particularly for those players who are accustomed to certain training regimens or those who desire to play multiple positions but are locked into franchises that prevent them from doing so. For example, before the 2011 draft, then-prospect Trevor Bauer was adamant about being drafted to a team who accepted his unorthodox training regimen and was fortunate to be selected by a team that respected his wishes.<sup>19</sup>

On the contrary, under a signing day system, players would maintain the freedom to choose their employer. In this way, players would have discretion to determine the best match for their preferences (e.g. weather, city location, training philosophy, team philosophy, flexibility of positions, etc.). Incorporating these factors into a signing day system would ultimately yield more favorable player outcomes and productivity.<sup>20</sup> Unlike Bauer's potential ill fate, because international phenom Shohei Ohtani was permitted to sign with any team through the current signing day system in 2017, he did not have to worry about being stuck with a team who refused to adhere to his desire to both hit and pitch.<sup>21</sup>

Further, by allowing domestic amateur players to choose their teams, a number of positive externalities for the sport of baseball would likely result. In order to gain an edge on recruiting and improve the chance of signing top amateur talent, franchises would likely be

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<sup>19</sup> Lee Jenkins, *Trevor Bauer Will Not Be Babied*. SPORTS ILLUSTRATED (Aug. 15, 2011), <https://www.si.com/vault/2011/08/15/106097876/trevor-bauer-will-not-be-babied>.

<sup>20</sup> Jonah Keri, *Braves GM Drama Shows It's Time to Put an End to Sports Fans' Sense of Entitlement*, CBS SPORTS (Oct. 2, 2017), <https://www.cbssports.com/mlb/news/braves-gm-drama-shows-its-time-to-put-an-end-to-sports-fans-sense-of-entitlement/>.

<sup>21</sup> Buster Olney, *Where Does Shohei Ohtani Want to Go? The Mystery of MLB's Most Coveted Superstar*, ESPN (Dec. 1, 2017), [http://www.espn.com/blog/buster-olney/insider/post/\\_/id/17714/where-does-shohei-ohtani-want-to-go-the-mystery-of-mlbs-most-coveted-superstar](http://www.espn.com/blog/buster-olney/insider/post/_/id/17714/where-does-shohei-ohtani-want-to-go-the-mystery-of-mlbs-most-coveted-superstar).

incentivized to improve minor league conditions, such as better housing, facilities, meals, and resources.<sup>22</sup> Because minor league players are not represented by a union, they are often subject to poor conditions, such as unlivable wages, inadequate housing, unhealthy food offerings, and limited resources.<sup>23</sup>

Additionally, teams may be incentivized to increase their support for local youth baseball programs in hopes of coddling local players to give the team a local hometown discount on their first contract. This incentive is currently evident in the Dominican Republic and other Latin American countries, where some MLB franchises have invested in academies to train unsigned amateur players in hopes of signing them to contracts when they become eligible.<sup>24</sup>

In turn, this would likely increase fan interest in college and high school baseball. The fact that every team could theoretically sign their local star player would likely encourage enthusiasm and interest in amateur baseball, which is currently limited or nonexistent under the draft system.<sup>25</sup>

Instead, Puerto Rico serves as an example of how the draft, through its role as a salary suppressor, has depressed interest in the draft.<sup>26</sup> Once the draft was expanded to include Puerto

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<sup>22</sup> Ted Berg, *Should MLB Do Away with the Amateur Draft Entirely?* USA TODAY (Feb. 5, 2015), <http://ftw.usatoday.com/2015/02/should-mlb-do-away-with-the-amateur-draft-entirely>.

<sup>23</sup> Dirk Hayhurst, *An Inside Look into the Harsh Conditions of Minor League Baseball*, BLEACHER REPORT (May 14, 2014), <http://bleacherreport.com/articles/2062307-an-inside-look-into-the-harsh-conditions-of-minor-league-baseball>.

<sup>24</sup> Enrique Rojas, *Baseball Academies Thrive in the Dominican Republic*, ESPN (July 1, 2015), [http://www.espn.com/blog/onenacion/post/\\_/id/710/baseball-academies-thrive-in-the-dominican-republic](http://www.espn.com/blog/onenacion/post/_/id/710/baseball-academies-thrive-in-the-dominican-republic)

<sup>25</sup> Dave Cameron, *Abolish The Draft*, FANGRAPHS (Aug. 20, 2009), <https://www.fangraphs.com/blogs/abolish-the-draft/>.

<sup>26</sup> Jorge Castillo, *Puerto Rico Traces Baseball's Slide to the Draft*, NEW YORK TIMES (Jan. 16, 2012), <http://www.nytimes.com/2012/01/17/sports/baseball/puerto-rico-traces-decline-in-prospects-to-inclusion-in-the-baseball-draft.html>.

Rican amateurs in 1990, investment in Puerto Rican amateur talent cultivation diminished significantly, to the extent that at least 64% less MLB players nowadays come from the island.<sup>27</sup>

### **B. Negotiating Leverage and Player Salaries**

From an economic perspective, the limitation of only one team possessing the rights to sign a player also prevents players from realizing their true market value. Under perfect free competition, any player would have the possibility to sign with any team for an agreed-upon price. Other teams competitively bidding on a player's skills has the potential to drive up that player's value. However, because the draft process limits a player's bidding to just one team, the absence of such competitive bidding results in diminished salaries.<sup>28</sup>

An incident in the 1996 draft illustrates the draft's role in salary suppression. After the draft, agent Scott Boras found a loophole in the rules that allowed four of his amateur clients to become free agents and sign with any team after being drafted.<sup>29</sup> The players signed for millions more than they would have earned if they had remained under the draft's limitations.<sup>30</sup>

Furthermore, the players with the least negotiating leverage can end up being exploited by the draft system. Whereas high school seniors can use the possibility of going to college as leverage in contractual negotiations with teams, college seniors usually do not have equivalently legitimate threats.<sup>31</sup> As a result, since the 2011 CBA, college seniors have been consistently exploited by teams and are left with no choice but to sign for minuscule bonuses in order to play

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<sup>27</sup> *Id.*

<sup>28</sup> Jazayerli, *supra* note 2.

<sup>29</sup> Kevin Goldstein, *Future Shock: Boras vs. Baseball—A Primer*. BASEBALL PROSPECTUS (Aug. 30, 2008), <https://www.baseballprospectus.com/prospects/article/8012/future-shock-boras-vs-baseball-a-primer/>.

<sup>30</sup> *Id.*

<sup>31</sup> Jonathan C. Gordon, *Foul Ball: Major League Baseball's CBA Exploits College Seniors in the MLB Draft*, 16 *Tex. Rev. Ent. & Sports L.* 141 (2015).

professional baseball.<sup>32</sup> The proposed signing day system, however, would allow teams to conceivably sign any player, and all players would retain legitimate leverage to sign with another team if a certain offer is undesirable.

### C. Game Parity

Although the draft was initially instituted for the purpose of salary suppression, over the years it has also become an equalizer for competition parity.<sup>33</sup> By giving low-performing teams the first attempt at acquiring the best new talent, the incidence of terrible teams has declined 90%, despite there being nearly twice as many teams today relative to 60 years ago.<sup>34</sup> Irrespective of this success in equalizing teams, the draft does not translate into perfect league parity. Most notably, the most talented amateurs are not always drafted first. While this was a larger problem under the conditions of the 2011 CBA, talented players and their agents have realized that by raising their demand for a high signing bonus, and thus by threatening to not sign with a drafting team who is unwilling to meet that demand, players can orchestrate a drop in the draft, most often to teams with larger bonus pools. A specific example occurred during the 2016 draft, when prospect Daz Cameron, a consensus top 10 prospect in the draft, floated high bonus demands to teams, causing him to drop to the end of the first round.<sup>35</sup>

Under a potential signing day system, as long as some salary pool equalizer is instituted to the extent that losing teams have a greater pool of money to spend on new amateur talent, parity will likely remain unchanged. While inevitably some amateur players will want to sign

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<sup>32</sup> *Id.*

<sup>33</sup> Jazayerli, *supra* note 2.

<sup>34</sup> *Id.*

<sup>35</sup> J.J. Cooper, *In the 2016 Draft, It's All About The Money*, BASEBALL AMERICA (June 9, 2016), <https://www.baseballamerica.com/draft/2016-draft-money/>.



with acclaimed franchises such as the New York Yankees or Chicago Cubs, it is possible that just as many, if not more, will want to sign with the highest paying teams. Further, the choices of international amateur players on MLB's international amateur market indicate that most amateur players are primarily financially motivated and not attracted to any particular franchise.<sup>36</sup>

#### **D. Team Strategy**

Under the draft model, because draft picks are distributed such that each team typically receives one first-round pick, one second-round pick, and so on, the inherent structure of the draft limits teams from creatively pursuing talent at different levels. For example, teams drafting towards the end of the first round usually have no conceivable way of acquiring the highest level talent.<sup>37</sup>

With a signing day system, every team would have a theoretical shot at signing every player. As such, teams would have flexibility to pursue the types of players they wanted, which would allow for more efficient team building strategies.<sup>38</sup> Teams could sign a few dozen players, each at medium level signing bonuses; alternatively, they could go all-in and spend half of their budget on one player. By permitting franchises greater flexibility in their team-building strategies, franchises will have better opportunities to fill their needs and remain competitive long-term.<sup>39</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> Jack Moore, *Dreaming of A Free Amateur Market*, THE HARDBALL TIMES (July 7, 2017), <https://www.fangraphs.com/tht/dreaming-of-a-free-amateur-market/>

<sup>38</sup> Cameron, *supra* note 21.

<sup>39</sup> *Id.*

### E. Perverse Incentives

If an amateur signing day were to be implemented domestically with bonus caps, MLB would have to be cognizant of a negative externality common in other signing day systems: the temptation for teams to offer under the table benefits to sign players outside the rule boundaries.<sup>40</sup> A 2017 scandal involving the Atlanta Braves behaving unethically in the foreign amateur market highlights the potential dangers of such a system.<sup>41</sup> Additionally, the multiple NCAA recruiting scandals over the years<sup>42</sup> act as a parallel to this unintended consequence.

To prevent such behavior from occurring, MLB would have to disincentivize any such infractions by imposing severe, devastating penalties, just as they did in the Atlanta Braves scandal.<sup>43</sup> Similar to a step taken by the NCAA,<sup>44</sup> a further preventative measure that the league could take would be to require teams to hire recruitment compliance officials, who would be responsible for ensuring compliance and conformity to all league policies. By taking these measures, MLB can minimize the unintended consequences of a signing day system.

### IV. CONCLUSION

While most workers in non-sports industries have the freedom to negotiate their company of employment, city of residence, job role, and contractual benefits, athletes entering the professional baseball job market — MLB and its 30 franchises — are not typically afforded these liberties. Instead, American and Canadian high-school and college baseball players must

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<sup>40</sup> Jon Tayler, *MLB Takes Stand with Punishment of Braves, Coppolella*, SPORTS ILLUSTRATED (Nov. 21, 2017), <https://www.si.com/mlb/2017/11/21/mlb-punishment-braves-john-coppolella-kevin-maitan>.

<sup>41</sup> *Id.*

<sup>42</sup> Lance P. Kaltenbaugh, et. al., *A Preliminary Investigation of NCAA Division II Compliance Officers*, THE SPORT JOURNAL (Apr. 2, 2013), <http://thesportjournal.org/article/a-preliminary-investigation-of-ncaa-division-ii-compliance-officers/>.

<sup>43</sup> Tayler, *supra* note 38.

<sup>44</sup> Kaltenbaugh, *supra* note 40.

enter the MLB via a draft that sequentially determines players' fates and limits their contractual negotiating leverage. This reality poses several negative moral and economic implications to domestic amateur players, and indirectly, to the MLB and its 30 franchises.

Fortunately, MLB's system for acquiring foreign amateur talent serves as a model for an alternative to the draft. This system, known as international signing day, is a modified free-market, competitive economy in which all 30 MLB franchises have the ability to bid on contracts for all eligible amateur players, who in turn have the freedom to negotiate contracts with all 30 MLB franchises. Ultimately, under an amateur signing day system, the negative moral and economic consequences of the current draft system would likely be ameliorated.