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Emily B. Ottenson
Washington University School of Law

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THE SOCIAL COST OF BASEBALL: ADDRESSING THE EFFECTS OF MAJOR LEAGUE BASEBALL RECRUITMENT IN LATIN AMERICA AND THE CARIBBEAN

Baseball is the U.S.-American pastime.¹ Even endless debates over the significance of gradually declining ticket sales² and television ratings³ have not altered the game's special place in the hearts of many North Americans. Its revered place in the social fabric of the United States is evident: from its historic ties to cultural ideals of "Americanism,"⁴ to the government's fervent attempts to protect it from the tarnish of scandal,⁵ to

1. When baseball's popularity began to rise in the early 1900s and it became a more commercial enterprise, "some promoters and former amateur players called for a return to the pre-commercial era when money was not associated with the game . . . help[ing] create the myth of baseball's history as one defined by a pre-industrial pastoral heritage that was uncorrupted by the marketplace. This hearkening back to a "golden age" demonstrated the ambivalence felt toward associating baseball with the marketplace." Robin F. Bachin, *At the Nexus of Labor and Leisure: Baseball, Nativism, and the 1919 Black Sox Scandal*, 36 J. OF SOC. HIST. 941, 945 (2003). As a result, different groups called for baseball to be formally crowned the American pastime. Baseball's owners, promoters, and fans embraced the idea of a pastoral heritage, separate and distinct from the capitalist marketplace. *Id.*

2. See, e.g., Patrick Rische, *Reality Check Regarding Downward Trends For 2013 MLB Attendance*, FORBES, June 1, 2013, <http://www.forbes.com/sites/prishe/2013/06/01/reality-check-regarding-downward-trends-for-2013-mlb-attendance/>; Ira Boudway, *Why Are Baseball Fans Staying Home?*, BLOOMBERG BUSINESSWEEK, May 9, 2013, <http://www.businessweek.com/articles/2013-05-09/why-are-baseball-fans-staying-home>.

3. See, e.g., Andy Benoit, *Football, Baseball, and the Evolving Taste of Fans*, THE FIFTH DOWN: THE NEW YORK TIMES N.F.L. BLOG, Apr. 17, 2012, http://fifthdown.blogs.nytimes.com/2012/04/17/football-baseball-and-the-evolving-tastes-of-fans/?_php=true&_type=blogs&_r=0; Joey Spitz, *Is America's Pastime Dying a Slow Death?*, HUFFINGTON POST SPORTS, Aug. 1, 2013, http://www.huffingtonpost.com/joey-spitz/is-americas-pastime-dying_b_3686366.html; Craig Calcaterra, *Doomsayers Be Damned: Baseball is Healthy and Ratings Are Strong*, NBC SPORTS HARDBALLTALK, Oct. 28, 2013, <http://hardballtalk.nbcsports.com/2013/10/28/doomsayers-be-damned-baseball-is-healthy-and-ratings-are-strong/>.

4. Play and recreation became central elements in the fight to promote Americanism at home, both during and after World War I. Civic leaders looked to the organized play movement as a source for instilling patriotic values in working class ethnic youth in the cities. . . . The most effective game for promoting team spirit, according to play promoters and reformers, was baseball. They looked to baseball and its rules promoting discipline, order, and self-sacrifice as a means of instilling nationalism and loyalty in the urban working-class. Bachin, *supra* note 1, at 943-44.

5. In the 1920s, following allegations of illegal fixing of baseball games, then-Illinois State's Attorney Maclay Hoyne began an investigation into the sport. *Id.* at 950. What resulted was the discovery of the infamous 1919 "Black Sox" scandal, in which eight White Sox players were revealed to have fixed the results of the 1919 World Series. They were charged with "conspiracy to defraud the public, . . . conspiracy to commit a confidence game. . . and conspiracy to injure the business of [White Sox owner] Charles A. Comiskey." *Id.* at 952. The scandal is still well-known and has been memorialized in both print and cinema. See also Eliot Asinof, EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES (1963); EIGHT MEN OUT (MGM 1988).

More familiar to many Americans will be the Congressional investigation into baseball's steroids scandal during the early 2000s. In 2005, the United States Congress opened an investigation into the

its prominent and highly sentimentalized role in first the preservation then the dismantling of racial segregation.⁶ But baseball also embodies a more controversial reputation of U.S.-American culture: globalization, the neo-colonialism.⁷ Overseas, the game is very much alive and thriving. For baseball, the concerns surrounding its expanding global influence are as troubling and significant as for any corporation calling the United States its home.⁸

use of steroids in baseball, citing as one motivation for its attempts to redeem the purity of the game the negative influence that steroid use by baseball's superstars would have on young athletes in the United States. Maria Newman, *Congress Opens Hearings on Steroid Use in Baseball*, N.Y. TIMES, Mar. 18, 2005, http://www.nytimes.com/learning/teachers/featured_articles/20050318friday.html. See also *Report to the Commissioner of Baseball of an Independent Investigation into the Illegal Use of Steroids and Other Performance Enhancing Substances by Players in Major League Baseball* ("The Mitchell Report"), Dec. 13, 2007, available at <http://files.mlb.com/mitchrpt.pdf>.

6. Although baseball was somewhat integrated in the late 1800s, the game gradually became increasingly subject to racial prejudices, becoming completely segregated by the early 1900s. Daniel A. Nathan, *Bearing Witness to Blackball: Buck O'Neil, the Negro Leagues, and the Politics of the Past*, 35 J. OF AM. STUD. 453, 456 (2001). As the fight for racial equality rose to the forefront of social consciousness following World War II, baseball resisted change, despite mounting pressure. *Id.* In the words of author Robert Peterson, "Organized baseball was steeped—perhaps a better word would be pickled—in tradition. [S]ince there had not been a Negro in the organized leagues in the memory of most baseball men, it must be part of God's plan that there should be none." ROBERT PETERSON, *ONLY THE BALL WAS WHITE: A HISTORY OF LEGENDARY BLACK PLAYERS AND ALL-BLACK PROFESSIONAL TEAMS* 175 (1970); see also Bill L. Weaver, *The Black Press and the Assault on Professional Baseball's "Color Line," October, 1945–April, 1947*, 40 PHYLON 303, 304 (1979). Branch Rickey, the owner of the Brooklyn Dodgers, unexpectedly announced Jackie Robinson's signing on October 29, 1945. Robinson played his historic first game in the Major Leagues on April 15, 1947, tolling the bell for the segregation era in Major League Baseball. *Id.* at 305; See also PETERSON, *ONLY THE BALL WAS WHITE* at 198. For a thorough history of Jackie Robinson's role in the integration of baseball, see TYGIEL, *JULES, BASEBALL'S GREAT EXPERIMENT: JACKIE ROBINSON AND HIS LEGACY*, expanded ed., (1997).

7. "A. G. Spalding, one of the game's first great stars and its first significant entrepreneur, boldly proclaimed in 1910 that the function of baseball was to 'follow the flag around the world.'" Alan M. Klein, *Culture, Politics, and Baseball in the Dominican Republic*, 22 LATIN AMERICAN PERSPECTIVES 111, 113 (1995) [hereinafter Klein, *Culture, Politics, and Baseball*]. Author Alan M. Klein explains the theory of neo-colonialism as it applies to baseball:

Andre Gunder Frank was among the first to explore the impact of colonialism in Latin America from a perspective focusing on dependency. In his view the relationship between colonialist nation (core) and colony (periphery) is one of simultaneous development and underdevelopment. The core nation expropriates the colony's resources and imports them for processing and manufacture. Finished products are consumed in the home market as well as reexported to the colony. This dynamic results in the enrichment of the core and the impoverishment of the periphery. The system is often guaranteed at first by a direct military presence; in a neocolonial setting it can usually be sustained simply by the threat of force and the political and economic power of the multinational. . . . The same principles can be seen operating in the world of baseball.

ALAN KLEIN, *SUGARBALL: THE AMERICAN GAME, THE DOMINICAN DREAM* 55 (1991); see also Klein, *Culture, Politics, and Baseball*, at 151 (discussing the colonial roots of baseball in the Caribbean).

8. As is the case for many major U.S. corporations, MLB teams are increasingly outsourcing to meet their needs. While overseas recruitment of players has notably increased over the past several decades, baseball can also thank Costa Rica for its baseballs (previously manufactured in Haiti) and

In the late 1800s, the emerging pastime of the United States was introduced in Cuba, where it quickly took root before spreading south and west, making its way onto fields throughout Central America and the Caribbean.⁹ In the United States, baseball's expansion was similarly rapid. The first professional league, the National Association of Professional Baseball Players, started in 1871 and was closely followed by the National League in 1876.¹⁰ The American League began in 1901 and quickly became the National League's most successful competitor at the ticket window. In 1903, the National League and American League played the first World Series.¹¹ Major League Baseball never looked back. Professional baseball is firmly entrenched as a sporting institution in the United States. In 2000, the National and American Leagues officially disbanded, and were re-organized collectively as Major League Baseball ("MLB"), the corporate entity that serves as the collective nerve center of thirty teams operating in the United States and Canada.¹² The Office of the Commissioner of Baseball in New York City manages the MLB.¹³

Today, baseball's popularity in Latin America and the Caribbean is obvious. With each passing MLB season, more and more Latin American and Caribbean baseball players compete on Major League teams.¹⁴

Taiwan for its baseball gloves. KLEIN, SUGARBALL, *supra* note 7, at 57; Leslie Josephs, *Made in Costa Rica: U.S. Major League Baseballs*, REUTERS, Mar. 9, 2010, <http://www.reuters.com/article/2010/03/09/us-costarica-baseballs-idUSTRE62831Z20100309>.

9. Baseball was first introduced to Latin America in the 1860s. See ROB RUCK, *THE TROPIC OF BASEBALL: BASEBALL IN THE DOMINICAN REPUBLIC 1-2* (1991) [hereinafter RUCK, *THE TROPIC OF BASEBALL*]. Cubans, who learned to play the game while visiting the United States, along with Americans traveling to the island country, helped to popularize the sport in Cuba. *Id.* Cuban players traveling in Latin America then spread the game throughout the Caribbean. Jose M. Alamillo, *Peloteros in Paradise: Mexican American Baseball and Oppositional Politics in Southern California, 1930-1950*, 34 W. HIST. Q. 191, 192 (2003). See also Rob Ruck, *Baseball's Recruitment Abuses*, AMERICAS QUARTERLY (2011), <http://americasquarterly.org/node/2745> [hereinafter Ruck, *Baseball's Recruitment Abuses*].

10. MLB.com, *The Commissioner's: A Historical Perspective*, MLB, http://mlb.mlb.com/mlb/history/mlb_history_people.jsp?story=com (last visited Mar. 28, 2014).

11. *Id.*

12. *Company Overview of Major League Baseball Enterprises, Inc.*, BLOOMBERG BUSINESSWEEK (July 12, 2014), <http://www.bloomberg.com/research/common/symbollookup/symbollookup.asp?lookuptype=private®ion=all> (in search box, type "Major League Baseball Enterprises" and press "go," then under search results, select "Major League Baseball Enterprises, Inc."); see also MLB.com (July 12, 2014), <http://mlb.mlb.com/home>.

13. See MLB.com, *MLB Official Info*, MLB, http://mlb.mlb.com/mlb/official_info/about_mlb/ (last visited Mar. 28, 2014).

14. Latin American ballplayers:

[N]ow comprise more than a quarter of all major leaguers, about half of all minor leaguers, and . . . dominate the ranks of the game's best players. Latinos won half the Silver Slugger Awards—given to the best offensive players at each position in the National and American

Coinciding with this shift in demographics is a new challenge, as Major League teams increasingly look beyond North America to recruit future superstars. MLB must balance international recruitment with rising concerns regarding the potential exploitation of foreign players and their governments. Unfortunately (but perhaps predictably), MLB has focused almost exclusively on the end result—the quality and marketability of talent on the Major League playing field—to the detriment of those players whose names will never be seen on an official box score, and to the places where they learned to play the game.

As Caribbean nations develop and become more politically and economically independent, MLB's international recruitment methods face increasing levels of scrutiny and criticism.¹⁵ The teams comprising the world's premier baseball empire¹⁶ have discovered a wealth of talent in Latin American and Caribbean nations, where baseball is often revered and feverishly popular.¹⁷ In their collective bid to win games and bring

Leagues—[in the 2010 season] and represent a staggering 40 percent of the players nominated for the 2011 All-Star game.

Ruck, *Baseball's Recruitment Abuses*, *supra* note 9.

15. See, e.g., *id.*; Neil Genzlinger, 'Ballplayer: Pelotero,' *Baseball Scouting in the Dominican Republic*, N.Y. TIMES, July 12, 2012, <http://www.nytimes.com/2012/07/13/movies/ballplayer-pelotero-baseball-scouting-in-the-dominican-republic.html>; Jeffrey S. Storms, *El Montículo ("The Mound"): The Disparate Treatment of Latin American Baseball Players in Major League Baseball*, 2 U. ST. THOMAS J.L. & PUB. POL'Y 81 (2008); ARTURO J. MARCANO GUEVARA & DAVID P. FIDLER, *STEALING LIVES: THE GLOBALIZATION OF BASEBALL AND THE TRAGIC STORY OF ALEXIS QUIROZ* (2002).

16. "While numerous countries have baseball, basketball, and hockey, the champions of North American leagues are widely regarded as the best teams. In addition, MLB, the National Basketball Association (NBA), and the National Hockey League (NHL) are the most visible and leading organizers and promoters of these sports." Mark S. Rosentraub, *Governing Sports in the Global Era: A Political Economy of Major League Baseball and Its Stakeholders*, 8 IND. J. GLOBAL LEGAL STUD. 121, 122 (2000).

17. In Cuba, for example, baseball has long stood as a symbol for independence and national identity. Louis A. Perez, Jr., *Between Baseball and Bullfighting: The Quest for Nationality in Cuba, 1868–1898*, J. OF AM. HIST. 493 (1994). The game was popularized there as Cuba sought independence from Spain, which outlawed the game in an attempt to quell the influence of U.S.-American culture on the country. *Id.* at 494. The attempt was unsuccessful: today, baseball is still a major sport in Cuba. *Id.* at 493. Two other Western Hemisphere countries where baseball is thriving are the Dominican Republic and Venezuela. The Dominican Republic has been playing baseball since the 1870s, when Cubans exiled during the Ten Years' War brought the game to Hispaniola. See RUCK, *THE TROPIC OF BASEBALL*, *supra* note 9, at 4. Today, Dominican baseball is a complex, multilayered symbol of independence and national power in a country that still has strong colonial ties to the United States (ironically, baseball's birthplace). See KLEIN, *SUGARBALL*, *supra* note 7, at 1–4, 34–37, 104–36. The Dominican Republic's relationship with baseball, and with the United States, is complicated and fascinating, and deserving of much more attention than can be dedicated here. For a look at Dominican Baseball, see generally *id.* A brief excerpt from Klein provides some background on the influx of Dominican players into MLB:

[T]he number of Dominicans playing [in the Major Leagues] in North America began as a trickle in the late 1950s and early 1960s, then grew to forty-nine between 1955 and 1980 and

fans through the gates, these MLB teams aggressively recruit Latin American and Caribbean players, hoping to find the superstars of tomorrow. Unfortunately this process provides little reward for the players' countries or themselves, short of the lucrative contracts that less than one percent of these players can hope to secure in the United States.¹⁸ The goal of the MLB's international recruitment should extend beyond the mere financial and competitive advantages it provides by developing ways to recruit Latin American and Caribbean players without disadvantaging the players, as well as their countries, in the long run.¹⁹

Latin American and Caribbean countries should be financially compensated for the loss of native baseball players to MLB teams. Players recruited from Latin America and the Caribbean should be afforded the same rights and privileges as U.S., Puerto Rican, and Canadian players, and MLB should not be permitted to recruit them without some acceptable level of restraint or oversight.²⁰ This Note offers one possible solution to

to hundreds in the 1980s. Two factors were responsible for this rapid growth: the forging of "working relationships" between North American and Dominican teams, and a change in the scheduling of the Dominican baseball season from summer to winter. . . . The scheduling change made Dominican baseball a complement to major league baseball rather than a competitor with it.

Id. at 35. This scheduling change has made baseball a year-round cultural presence in the country. Dominicans playing on MLB teams are followed by the press during the MLB season; attention turns to the Dominican Leagues during the winter. Baseball came to Venezuela sometime around the 1890s. See Jason Turbow, *World Series Gives Venezuela Much to Root For*, N.Y. TIMES, Oct. 25, 2012, http://www.nytimes.com/2012/10/26/sports/baseball/world-series-gives-venezuela-much-to-root-for.html?_r=0. The first professional leagues formed there between 1910 and 1920. *Id.*

18. While there are many Latin American baseball players in the Major Leagues (as of Opening Day 2013, there were 89 Dominicans, 63 Venezuelans, 15 Cubans, 14 Mexicans, 13 Puerto Ricans, 4 Columbians, and 4 Panamanians on Major League Rosters representing 24.2% of players (see *Opening Day: Over 28 Percent of MLB Players Are Foreign-Born*, FOX NEWS LATINO (Apr. 3, 2013), <http://latino.foxnews.com/latino/sports/2013/04/03/over-28-percent-players-were-foreign-born-in-mlb-opening-day/>), they represent a very small percentage of the actual number of young ballplayers hoping to crack a Major League roster. See, e.g., Angel Vargas, *The Globalization of Baseball: A Latin American Perspective*, 8 IND. J. GLOBAL LEGAL STUD. 21, 24 ("The well-known baseball writer Milton Jamail accurately observed that '[t]here's not a kid in the Caribbean who reaches his 14th birthday without being seen by the major-league teams'").

19. Nonetheless, MLB does have certain obligations towards its recruits and the international community as a whole. See Arturo J. Marcano & David P. Fidler, *Ballplayer: Pelotero—Major League Baseball, Human Rights, and the Globalization of Baseball*, AM. SOC'Y OF INT'L LAW (Aug. 22, 2012), <http://www.asil.org/insights/volume/16/issue/26/ballplayer-pelotero%E2%80%94major-league-baseball-human-rights-and-globalization> ("MLB has human rights responsibilities, including demonstrating awareness of human rights issues connected with the location of its operations (e.g., developing countries), understanding how its business activities might raise human rights concerns (e.g., targeting children as sources of labor), and taking responsibility to prevent and protect against human rights problems connected with such activities").

20. The primary reason that this is a problem is that MLB recruitment practices are by nature exploitative, of both Latin American countries and their nationals, including paying Latin American players much lower signing bonuses than comparably talented draft-eligible players receive. See, e.g.,

MLB's recruitment problems while taking into account both the interests of the recruited players, as well as the effect MLB's talent recruitment efforts have on Latin American and Caribbean countries.

The solution this Note proposes is a Coase Theorem²¹—based compensation system, in which MLB teams cooperate with Latin American and Caribbean countries to support the fair and responsible development of baseball players. Under this system, MLB teams will financially compensate these countries for the right to negotiate contracts with players and bring them into the Major League system.²² This system

Ruck, *Baseball's Recruitment Abuses*, *supra* note 9 (“MLB has long benefited from the supply of talented players coming from the Caribbean, profiting immensely by signing players for tiny bonuses and discarding all but the few who make it professionally”); *see also* Vargas, *supra* note 18, at 27:

Over-signing players is part of MLB team strategy to get Latino talent as cheaply as possible. Dick Balderson, formerly of the Colorado Rockies, referred [sic] to this strategy as the ‘boatload mentality.’ ‘The boatload mentality means that instead of signing 4 American guys at \$25,000 each, you sign 20 Dominicans for \$5,000 each.’ Balderson’s statement communicates that he and other MLB executives see Latino children and young men as commodities—a boatload of cheap Dominicans, as if these human beings were pieces of exported fruit.

Id. This is also a concern in Venezuela, where baseball scouts tend “to recruit underage players and to crush their baseball dreams through exploitation and false promises. In the worst cases, the officials say, scouts promise boys lucrative major league contracts, then take them out of local play to hide them from other scouts.” *Id.* at 25.

21. “The proposition is: That in a world of perfect competition, perfect information, and zero transaction costs, the allocation of resources in the economy will be efficient and will be unaffected by legal rules regarding the initial impact of costs resulting from externalities.”

Donald H. Regan, *The Problem of Social Cost Revisited*, 15 J.L. & ECON. 427 (1972). One of Coase’s famous examples of this proposition is the problem of a cattle rancher whose cattle destroy crops on a neighboring farmer’s land. R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 2 (1960).

If it is inevitable that some cattle will stray, an increase in the supply of meat can only be obtained at the expense of a decrease in the supply of crops. The nature of the choice is clear: meat or crops. What answer should be given is, of course, not clear unless we know the value of what is obtained as well as the value of what is sacrificed to obtain it.

Id. The damage to the crops (i.e., the effect of the cattle ranching) is an externality under the Coase Theorem. In economics, an externality is defined as the cost or benefit that affects a party who did not choose to incur that cost or benefit (here, the effect on the neighboring farmer, who did not choose for the rancher to raise cattle that would harm his crops). In a system where the cattle rancher must pay for the damage to the crops, *See id.* at 2–6 (“III. The Pricing System with Liability for Damage”), the rancher will consider the increased cost of repairing the damage if he considers increasing his number of cattle he owns. *Id.* at 3. The compensation amount will be the market value of the damaged crop. *Id.* For example, if each additional steer causes one additional ton of loss to the crop farmer, the cattle rancher “will not increase the size of the herd unless the value of the additional meat produced (assuming that the cattle-raiser slaughters the cattle), is greater than the additional costs that this will entail, including the value of the additional crops destroyed.” *Id.* Two parties in an arrangement (cattle-related or otherwise) would agree to bargain for this type of arrangement so long as the worst-case alternative would be more costly. That is, the cattle rancher would compensate the farmer so long as he still earned a greater profit than he would if a court granted an injunction in the farmer’s favor.

22. This Note adopts Coase’s first solution to the problem of social cost: where the party creating the externality (here, the cattle rancher whose cattle harms the farmland) must compensate the party

will in effect allow MLB teams to purchase a country's interest in its player's talent, so that a team can sign and develop the player as a major league prospect.²³ Implementing and enforcing this compensation system will require the involvement of the governments of all participating countries or an international organization designed to oversee the process. It will encourage positive political relationships between the United States and Latin American and Caribbean countries by incentivizing governments to work with MLB teams in the development of young players. Because the supply and demand for talented baseball players is virtually unlimited, countries that are regularly financially compensated for the recruitment of their ballplayers will have a strong incentive to maintain positive relations with the United States.²⁴ Part I of this Note will

who suffers the damage (the farmer). *Id.* at 2–6. Coase also proposes a second solution, wherein the party who experiences the externality must bear the costs. *Id.* at 6–8. In this scenario, the party facing injury pays the injuring party to refrain from all or a portion of its activity, thus reducing the damage and the costs the injured party must bear. This note proposes a solution to baseball's recruitment abuses by adopting the first scenario, for several reasons. First, the colonial history between the United States and many Latin American and Caribbean countries is significant, and a system that requires the colony to compensate MLB teams, which represent the colonial power (the United States), would only reinforce such a relationship. Second, the economic power of MLB teams is significant, and increasing that power through compensation by impoverished countries would be ethically questionable. Third, because MLB teams have access to significant revenue and will likely be willing to pay a superstar talent millions of dollars should he reach the major leagues, the sheer cost that these countries would have to bear to compensate teams at a sufficient level to reduce recruitment activities would be unworkable.

23. An explanation of MLB players' contractual rights may be necessary for the reader unfamiliar with the sport. In the late 1800s, baseball owners developed an agreement intended to promote the stability of an owner's roster and to prevent excessive offseason costs. Martin B. Schmidt, *Institutional Change and Factor Movement in Major League Baseball: An Examination of the Coase Theorem's Invariance Principle*, 37 REV. INDUS. ORG. 187, 202 (2011). An owner would circulate a list of five "reserved" players that he planned to keep on the team during the following season. *Id.* The other owners would not attempt to sign any of these players. *Id.* This agreement was later extended to include all players on a team's roster. *Id.* at 203. In a player's contract, it was worded so as to give owners the unilateral option to renew a player's contract—meaning that players, once signed, no longer had to right to choose which team they would play for (unless the owner decided not to renew his contract). *Id.* Although this system was clearly collusive on its face, the Supreme Court upheld the so-called reserve system in *Federal Baseball Club v. National League*, 259 U.S. 200 (1922). *Id.* This system was maintained until the adoption of the 1976 collective bargaining agreement. *Id.* That agreement created the modern-day free agency system. Under today's rules, a player is subject to the reserve system until he accumulates six years of major league service. After those six years, a player's rights are re-assigned to the player himself. He is then free to negotiate a new contract with any one of the 30 major league teams. *Id.* For a more detailed discussion of the history of players' rights in major league baseball, see William B. Gould, IV, *Baseball and Globalization: The Game Played and Heard and Watched 'Round the World (with Apologies to Soccer and Bobby Thomson)*, 8 IND. J. GLOBAL LEGAL STUD. 85 (2000).

24. A rental system may relieve open or underlying tension between the United States and Latin American countries in at least two ways. First, by empowering the role Latin American countries play in MLB's recruitment process, and second, by recognizing the financial stake Latin American countries have in the value of player talent. For example, in the Dominican Republic, a more regulated

discuss how MLB teams currently recruit talent in Latin America and the Caribbean. It will also introduce the recruitment systems in other countries for comparison purposes.

Part II will discuss current issues surrounding MLB teams' recruitment in Latin America and the Caribbean. This includes discussion of the possibility of an international draft, difficulties with expanding the jurisdiction of the Major League Baseball Players Association ("MLBPA") internationally, and the lack of a regulatory body to govern how MLB teams recruit in Latin America and the Caribbean. It will also discuss Japan's system for regulating MLB teams' recruitment of Japanese players for comparative purposes.

Part III will propose a Coase Theorem-based approach to international player recruitment. This approach suggests the implementation of a compensation system, wherein countries are paid by MLB teams for the right to recruit talent as a remedy for the social cost of baseball. It will also propose a "public-private" partnership to regulate this system. Under a public-private system, MLB teams will negotiate directly with both Latin American and Caribbean countries and the players themselves in a process that will allow MLB teams to purchase the right to recruit the players they hope to bring to the United States. Part IV will discuss some of the problems, benefits, and complications that may result from a player-rental system. For example: general resistance to a change in the recruitment model, concerns with incentivizing countries to embrace the new system, concerns with enforcement of the system, MLB's possible responses to the concept of player value, and the system's possible effect on international political relations.

and mutually beneficial international recruitment system may help alleviate tension over the fact that young players are often illegally recruited before the minimum signing age of seventeen. *See, e.g.,* Vanessa Marie Zimmer, *Dragging Their Devotion: The Role of International Law in Major League Baseball's Dominican Affairs*, 4 NW. U.J. INT'L HUM. RTS. 418, 422 (2005) ("While deception regarding one's age is recognized as a survival tactic for impoverished Dominican players anxious to make a living, it is also a clear violation of United States immigration law and persistent violations by Dominican citizens could cause strife between the two nations"). Moreover, the overall social importance of baseball in Latin American countries may empower it to serve as common ground for discussions between countries that are in political tension or conflict. For example, a negotiation between the United States and Cuba regarding baseball player recruitment (currently restricted by the embargo) could be a relatively low-key starting point for more high-stakes political negotiations. In 2013, a bill was introduced in Congress endorsing the exemption of Cuban ballplayers from the embargo. H.R. 215: Baseball Diplomacy Act, 113th Cong. (2013). A non-profit organization that advocates this theory is Baseball Without Borders, an exchange organization for youth that, "fosters international relations through baseball." *See Baseball Without Borders*, BASEBALL WITHOUT BORDERS, <http://www.baseballwithoutborders.org/> (last accessed Mar. 9, 2014).

I. AN INTRODUCTION TO PLAYER RECRUITMENT IN LATIN AMERICA AND THE CARIBBEAN

International²⁵ recruitment of baseball players is not subject to any of the restrictions or requirements governing recruitment of players in the United States, Canada, and Puerto Rico (which all operate under the same system).²⁶ In the United States, Canada, and Puerto Rico, baseball players join MLB teams through a draft system.²⁷ After players are drafted, they join the MLBPA²⁸ and are protected as members of the union.²⁹ The MLBPA has jurisdiction only over those players who are subject to the draft.³⁰ MLB teams are barred from signing high school players in draft-eligible countries, and the effective minimum signing age for those players is eighteen years old.³¹

25. Hereinafter, “international” will refer only to countries that are not in the draft system and do not have their own model to address MLB recruitment; thus, Puerto Rico, Canada, Japan, and Mexico are excluded for the purposes of this discussion.

26. The Rule 4 Draft (the first-year player draft, which takes place in June) is one of two MLB drafts. The other draft, the Rule 5 Draft, takes place during MLB’s annual Winter Meetings, and is a draft for non-first-year players. *See* Major League Rules 36–47, available at <http://www.bizofbaseball.com/docs/MajorLeagueRules-2008.pdf> (last accessed Aug. 19, 2014). It is the only one designed for amateur players, and is available only to players who are residents of the United States, Puerto Rico, or Canada, and who have never signed a Major or Minor League contract. *Id.* A person is considered a resident of the United States if he has enrolled in high school or college in the United States. *Id.*; *see also First Year Player Draft Official Rules*, MLB, <http://mlb.mlb.com/mlb/draftday/rules.jsp> (last visited Mar. 9, 2014). The Rule 5 draft, for professional ballplayers, is also only available to players in the United States, Canada, and Puerto Rico (Roberto Clemente, a famous Puerto Rican baseball player and member of MLB’s Hall of Fame, is perhaps the most famous Rule 5 draft selectee). *See About the Rule 5 Draft*, MLB, http://mlb.mlb.com/mlb/minorleagues/rule_5.jsp?mc=faq (last accessed Mar. 9, 2014).

27. *See* Major League Rules 36–47, *supra* note 26.

28. The Major League Baseball Players Association (MLBPA) is the union representing professional baseball players in the United States. William B. Gould IV, *Globalization in Collective Bargaining, Baseball, and Matsuzaka: Labor and Antitrust Law on the Diamond*, 28 COMP. LAB. L. & POL’Y J. 283, 286 (2007). The MLBPA, “was formed in 1954 in response to widespread player dissatisfaction with the operation of [MLB’s] pension fund. . . . At this point, comprehensive bargaining agreements were first negotiated between the players and the owners.” *Id.*

29. When a player decides to enter the baseball draft after graduating high school, he can request to have his name placed on the Draft List. Zimmer, *supra* note 24, at 418. Once he is on the Draft List, the player then becomes “protected by the provisions of the current MLB Collective Bargaining Agreement.” *Id.* The agreement guarantees the player a minimum salary if he should be drafted by a team. *Id.* It also binds the drafted player to the franchise he signs with for six years. *Id.*

30. For more information on MLB regulation in the United States, *see MLB-MLBPA Collective Bargaining Agreement*, MLPBA, available at http://mlb.mlb.com/pa/pdf/cba_english.pdf (last accessed Mar. 9, 2014).

31. *Id.*

The system for recruiting players in Latin America and the Caribbean is very different.³² In fact, there is no formal system. International players are not subject to the draft, and are not protected by the MLBPA.³³ Currently, the only rule in place to protect the interests of international amateur players is one that forbids teams from signing any player before he reaches age seventeen.³⁴ Nonetheless, this rule is not aggressively enforced and teams have developed various strategies to evade the age limitation.³⁵ MLB teams also have considerably fewer financial restrictions when recruiting abroad.³⁶

An element of Latin American and Caribbean recruitment is the prevalence of *buscones*.³⁷ *Buscones* are Latin American baseball scouts who recruit ballplayers.³⁸ *Buscones* either recruit players for MLB teams³⁹

32. For a better understanding of player development and recruitment in the Dominican Republic, see Josh Noel, *A Hothouse for Baseball*, CHI. TRIB., Jan. 14, 2013, available at http://articles.chicagotribune.com/2013-01-14/travel/sc-trav-0113-dominican-baseball-20130114_1_dominican-republic-san-pedro-baseball-factory.

33. “These mechanisms are guarantees of rights players and draftees have earned through negotiations with the League and are considered vital in maintaining evenhandedness to both teams and athletes during the process of signing American, Canadian and Puerto Rican players to fill Major League rosters.” Zimmer, *supra* note 24, at 420.

34.

The rule provides that a player who is not subject to the draft and who is not under contract with a MLB team can be signed by any team if (1) he is seventeen years old at the time of signing, or (2) he is sixteen years old at the time of signing and he will turn seventeen prior to the later of (i) the conclusion of the baseball season in which he signed and (ii) September 1 of the year he signs. MLB teams act, however, as if this rule allows them to sign players immediately when they turn sixteen, but this is not what the rule provides. Thus, many signings that MLB teams trumpet to the world as legal are in fact violations of the MLB rule.

Vargas, *supra* note 18, at 26; see also Major League Rule 3(a)(1)(B).

35. Baseball academies are essentially training camps where MLB teams hoard and develop talented ballplayers without the risk of losing any potential Major League-caliber player to another team. Vargas, *supra* note 18, at 27.” at 27. “Over-signing players is part of MLB team strategy to get Latino talent as cheaply as possible.” *Id.* At a young age, players are recruited into these academies, either by teams or by private individuals. For more on baseball academies, see *id.* at 28–32.

36. “[T]here is no floor on what a team may offer, and signing bonuses for Dominican and Latin players are small in comparison to those draftees receive.” Zimmer, *supra* note 24, at 423.

37. Tyler M. Simpson, *Balking at Responsibility: Baseball’s Performance-Enhancing Drug Problem in Latin America*, 14 L. & BUS. REV. AM. 369, 382 (2008).

Many Latino players who are signed by MLB teams attend so-called “baseball academies” in the Dominican Republic and Venezuela. Most MLB teams have these facilities in these two countries. In Venezuela, twenty-eight of the thirty MLB teams operate academies [as of 2003]. The numbers are similar in the Dominican Republic. The scale of MLB involvement in baseball academies means that for years, hundreds of Latino children and young men have passed through these training facilities.

See also Vargas, *supra* note 18, at 24.

38. *Id.*

39. *Buscones* usually work with MLB scouts, who each represent a particular MLB team in recruitment-heavy countries. “If the MLB scout signs the player, the *buscon* almost always receives a portion of the player’s signing bonus for his role in initiating the relationship between the two parties.

or operate their own baseball academies, where they develop talent under little to no regulation.⁴⁰ These *buscones* often “lure boys as young as [thirteen] to their own training facilities—with the promise of developing their baseball talent—until they are old enough to be peddled to major league teams as free agents.”⁴¹ Some of the boys are completely separated from their families while enrolled in the academies.⁴²

These academies operate like farm systems: young men spend their time training intensively for a chance to play in the United States, often forgoing education in exchange for appetizing signing bonuses.⁴³ Many young men are coerced into taking performance-enhancing drugs or lying about their age, and, in some cases, they live in substandard conditions.⁴⁴ These players are young, vulnerable, and often come from struggling families that are not well-equipped to advocate for their child’s best interests, leaving the young men at the mercy of the *buscones* who run these “baseball academies.”⁴⁵ Unfortunately, success for these young men

That amount is negotiated between the player and the *buscon*, and MLB denies being involved in that process.” Diana L. Spagnuolo, *Swinging for the Fence: a Call for Institutional Reform as Dominican Boys Risk Their Futures for a Chance in Major League Baseball*, 24 U. PA. J. INT’L ECON. L. 263, 274–75 (2003).

40. *Id.*; see also Ruck, *Baseball’s Recruitment Abuses*, *supra* note 9.

The *buscón* will facilitate player development, create a market for their talents and drive up bonuses. Few *buscones*, though, see to it that their young charges remain in school; many are more like hustlers than surrogate fathers. They might steal from a boy, enmesh him in career-damaging fraud (several boys have been suspended or had contracts revoked after being caught lying about their age) and even administer performance-enhancing drugs (PEDs) in the guise of B-12 shots to add pop to a player’s bat or speed to his fastball.

Id.

41. *Id.*

42.

Former Dominican Commissioner of Baseball Papi Bisano recounts stories of worried parents reporting the disappearance of their sons. “She’d heard that her son had been taken away by a baseball scout. . . . The scouts who ran them kept the kids hidden: That is the real truth. These camps were hideouts because the scouts didn’t want their kids seen by other Scouts.

Spagnuolo, *supra* note 39, at 269.

43. Ruck, *Baseball’s Recruitment Abuses*, *supra* note 9.

44. *Id.* One author notes:

The greatest legal concern about how Latino children are contacted is that the actions of scouts, buscones, and agents are unregulated in the two biggest markets: Venezuela and the Dominican Republic. In Venezuela, for example, we do not have laws that adequately regulate the qualifications or activities of scouts and agents.

Vargas, *supra* note 18, at 25.

45. *Id.* See also Adam Wasch, *Children Left Behind: The Effect of Major League Baseball on Education in the Dominican Republic*, 11 TEX. REV. ENT. & SPORTS L. 99 (2009). “An estimated ninety-seven percent of these boys” never make it to the United States to play baseball. *Id.*

is rare, and those who eventually leave the academies rarely return to school and struggle to find work.⁴⁶

More recently, professional agents from the United States have also thrown their hats into the recruitment ring by competing with *buscones* and MLB teams for the chance to be the first to sign a talented ballplayer.⁴⁷ These agents present similar issues as the *buscones*, since some of them also exploit young players.⁴⁸

II. HOW BALLPLAYERS COME TO THE UNITED STATES

Major League Baseball teams bring baseball players to the United States to participate in the Minor Leagues by petitioning on behalf of the player for one of three types of immigrant visas (the O visa, P visa, or H-2B visa) under the Immigration and Nationality Act of the United States.⁴⁹ None of these visas are numerically limited, meaning that MLB is not

46. Diana Spagnuolo, in her comment *Swinging for the Fence: A Call for Institutional Reform as Dominican Boys Risk Their Futures for a Chance in Major League Baseball*, quotes the former Vice President of MLB's Latin American Operations Lou Melendez:

"We are aware of the problem with kids leaving school in the Dominican Republic to go learn and hopefully become baseball players. We are also aware of the fact that once they get released from the academy that they don't go back to school." Most of the children under the web cast by MLB are placed back into an impoverished society without an education, which leaves little hope for procuring a respectable job.

Wasch, *supra* note 45, at 104-05.

47. Vargas, *supra* note 18, at 24.

48.

The rise of agents in the process of initial contacts has good and bad aspects. On the positive side, a qualified, professional agent can act in the best interests of a child and balance the power and influence possessed by MLB teams. . . . On the negative side, some agents are just as eager as MLB teams to exploit naive, poor children and their families to get a piece of any signing bonus that may come along. Agents are copying the *buscon* system by setting up their own network of people to find prospects to contact.

Id. at 25.

49. "O" and "P" visa petitions must be filed by the employer (the baseball team) on behalf of the player. The process operates as follows:

Applying for the "O" visa requires that this large contingent of foreign baseball players follow two main steps. First, a baseball team must contract with the foreign player and file a petition with one of the four regional Immigration and Naturalization Service ("INS") Centers that possess jurisdiction in the area where the foreign baseball player will compete. The player's petition for the O category visa must include the baseball team's schedule with the specific dates and locations of each game. If the player is traded to another team, the player's new team must file a separate petition. Second, approval of these "O" visa petitions requires consultation with a peer group in the player's field. Baseball player peer groups can consist of other players, managers, or baseball officials as long as these individuals possess sufficient baseball expertise and can attest to the exceptional ability of the foreign player.

Matthew N. Greller, *Give Me Your Tired, Your Poor, Your Fastball Pitchers Yearning for Strike Three: How Baseball Diplomacy Can Revitalize Major League Baseball and United States-Cuba Relations*, 14 AM. U. INT'L L. REV. 1647, 1657-58 (1998).

required to limit the number of international players it brings to the United States.⁵⁰ The O visa classification is the most restrictive of the three categories and it consists of three visa sub-categories.⁵¹ The P Visa covers a broader range of individuals and its eligibility requirements are not as strict as those for the O visa.⁵² The H-2B visa covers temporary works

50. While in theory each team can bring an unlimited number of players to the United States using the O and P visas, the United States Citizenship and Immigration Services (the administrative body that adjudicates such petitions, operating under the authority of the Department of Homeland Security), *see* Green Card Through a Job, USCIS.gov, <http://www.uscis.gov/green-card/green-card-through-job>, is ultimately responsible for approving or denying the petitions based on an individual review of the petition in question. *See* 8 C.F.R. §§ 100.1, 204.5.

51. Immigration and Nationality Act § 101(a)(15)(O) states:

[A]n alien who:

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events, (II) is an integral part of such actual performance, (III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing long-standing working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and (IV) has a foreign residence which the alien has no intention of abandoning; or (iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien[.]

Immigration and Nationality Act § 101(a)(15)(O); *see also O-1 Visa: Individuals with Extraordinary Ability or Achievement*, UNITED STATES CUSTOMS AND IMMIGRATION SERVICES (Mar. 16, 2011), <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b9930b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=b9930b89284a3210VgnVCM100000b92ca60aRCRD>.

52. INA § 101(a)(15)(P) states:

an alien having a foreign residence which the alien has no intention of abandoning who:

(i) (a) is described in section 214(c)(4)(A) (relating to athletes), or (b) is described in section 214(c)(4)(B) (relating to entertainment groups);

(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and (II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers; (iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or (iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

only, and has less restrictive eligibility requirements than both the O and P categories.⁵³ If an MLB team's visa petition is approved for a player, that player then has permission to apply for a visa to seek admission to the United States.⁵⁴

While for many recruits outside the United States, Canada, and Puerto Rico, the determination of whether a player is eligible to enter the United States ends once a visa petition is granted, some countries have more strict systems regulating internal recruitment.⁵⁵ Japanese baseball players, for example, face an additional hurdle if they wish to sign with an MLB team. Japan's system is designed to aggressively protect Japanese ballplayers from MLB teams looking across the Pacific for superstar talent.⁵⁶ If an

INA § 101(a)(15)(P); *see also P-IA Internationally Recognized Athlete*, UNITED STATES CUSTOMS AND IMMIGRATION SERVICES (MAY 4, 2010), <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=19860b89284a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=19860b89284a3210VgnVCM100000b92ca60aRCRD>. Generally speaking, the P visa is less difficult for foreign players to obtain than the O visa, and authorizes ballplayers to remain in the United States for longer periods of time. Greller, *supra* note 49, at 1660.

53. INA § 101(a)(15)(H)(ii)(b):

[an alien] having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country. . . .

INA § 101(a)(15)(H)(ii)(b). The H-2B visa, unlike the O and P visas, is numerically limited; only a set number determined by Congress may be issued globally each year. *See Cap Count for H-2B Nonimmigrants*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (Mar. 24, 2014), <http://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-h-2b-nonimmigrants>. Baseball players playing under a minor league contract are eligible for H-2B visas because they generally come to the United States on a short-term basis each year (thus meeting the H-2B's "seasonal basis" requirement). *See H-2B Temporary Non-Agricultural Workers*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (Jan. 17, 2014), <http://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/h-2b-temporary-non-agricultural-workers#Qualify>. H-2B visas do not require a showing of the player's ability and are therefore easier to obtain than the O or P visas. *See id.* H-2B visas are seasonal in nature; for minor league players, this means they are usually valid only during the minor league season. *See id.*

54. *See U.S. Visas*, U.S. DEPARTMENT OF STATE—BUREAU OF CONSULAR AFFAIRS, <http://travel.state.gov/content/visas/english/immigrate/immigrant-process/approved.html>.

55. Other Asian countries, as well as Mexico, also have systems in place to regulate MLB recruitment of players. The level of professional development of baseball leagues in these countries, as well as the popularity of their franchise teams, makes a difference in the ability of MLB teams to recruit these players: transactional costs are generally higher for MLB teams because the countries have regulated systems that require MLB to recruit only established professional players. *See infra* note 56. As such, MLB teams must compensate the teams for the loss of the player and his value to the team, and must pay the player a contract price that reflects his experience and skill level.

56. Japan and other Asian countries, as well as Mexico, also have healthy baseball markets (including successful professional leagues). *See Korean Baseball Association*, INTERNATIONAL BASEBALL FEDERATION, <http://www.ibaf.org/en/nation/5702a4db-3cf1-4429-990b-fa7e106c2648> (last accessed Mar. 28, 2014); *see also SITIO OFICIAL DE LA LIGA MEXICANA DE BEISBOL* (The Official Site of The Mexican League), <http://www.milb.com/index.jsp?sid=1125> (last accessed Aug. 12, 2014); *see also* Nippon Professional Baseball, NIPPON PROFESSIONAL BASEBALL ORGANIZATION,

MLB team wishes to recruit a Japanese player, it must notify MLB's Office of the Commissioner of Baseball of its interest in that player.⁵⁷ The Office of the Commissioner then reaches out to Nippon Professional Baseball (the highest level of professional baseball in Japan) to determine whether the specified player is available for recruitment, meaning he has not signed with a Nippon Professional Baseball team, or, if he has signed, he has played for that team for a period of ten years (granting him free-agent status).⁵⁸ If a player is *not* available, then his team's approval is needed before he can sign with an MLB franchise.⁵⁹ Once approval is granted, the Office of the Commissioner notifies the MLB teams of the Japanese player's availability.⁶⁰ All MLB teams then have a limited period of time to bid for the right to negotiate a contract with the player.⁶¹

In the absence of similar governmental oversight regarding MLB's recruitment in Latin American and Caribbean countries, MLB lacks an incentive to address its recruitment process.⁶² Furthermore, the current

<http://www.npb.or.jp/> (last accessed Mar. 28, 2014) (in Japanese); *Japan and Nippon Pro Baseball*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/japan/> (last accessed Mar. 9, 2014); *The Official Site of the Australian Baseball League*, ABL, <http://web.theabl.com.au/index.jsp?sid=1595> (last visited Mar. 9, 2014).

57. Gould, *Baseball and Globalization*, *supra* note 23 at 113.

58. *Id.* "Free agency status," in the baseball world, means that a player has the right to negotiate and sign a contract with any team he pleases, and no other ball club has any right to limit or otherwise interfere with his freedom of agency. In Coase Theorem terms, property rights are re-assigned from his MLB team to the player once he achieves free agency status. *See* Schmidt, *Institutional Change and Factor Movement in Major League Baseball*, *supra* note 23, at 189.

59. *Id.*

60. *Id.*

61. Following this, the winning bidder then has a period of thirty days to negotiate with the player; if negotiation is unsuccessful, the arrangement lapses and the entire process ends. Gould, *Baseball and Globalization*, *supra* note 23, at 114. A similar process applies to Japanese teams interested in recruiting MLB baseball players. *Id.* at 113. For a more detailed discussion of the Japanese recruitment system, *see* Matt Nichol, *Valuing Professional Japanese Baseball Players and the Role of Statistics, Economics, Culture, and Corporate Governance*, 33 J. JAPAN. L. 119 (2012); Gould, *Globalization in Collective Bargaining, Baseball, and Matsuzaka*, *supra* note 28, at 290–92.

62. Recruitment in Latin America and the Caribbean is heavier and differently regulated than in countries in other parts of the world, or where strong national baseball leagues have emerged. There are a variety of reasons for this. First, these countries are geographically close to the United States, unlike Japan, South Korea, Australia, and other similarly situated countries. Ke Chen, Charles Gunter, & Chunhua Zhang, *How Global is U.S. Major League Baseball? A Historical and Geographic Perspective*, 77 GEOJOURNAL 429, 437 (2012). Mexico being an exception, as it has developed a strong national league and protects its players from MLB recruitment. *See* KLEIN, SUGARBALL, *supra* note 7, at 234–35. Second, these countries have a history of playing baseball that is nearly as long as that of the United States, and is in many ways tied to U.S. baseball "due to the military, economic, and cultural influence from the U.S." *Id.* Third, the earning potential for young ballplayers who reach the Major Leagues, combined with the dismal economic opportunities they face in their own countries, strongly incentivizes the drive to sign contracts with MLB teams (even though those contracts are often for comparatively small amounts of money next to the contracts offered to drafted players in North America). *Id.*; *see also* ADRIAN BURGOS, JR., PLAYING AMERICA'S GAME: BASEBALL,

abusive practices in the region, while controversial, are profitable for MLB.⁶³ Some have proposed the adoption of an international draft as a means to increase regulation.⁶⁴ Similar international drafts are the norm in other major North American sports, for example, the National Hockey League's Entry Draft.⁶⁵ While the idea of an international draft, "is supposedly gaining momentum . . . such a 'reform is likely to encounter resistance from the [MLBPA], which opposes restrictions on movement of players."⁶⁶ While MLB is interested in a draft for the purposes of regulating team spending, negotiations thus far have been unsuccessful, and MLB shows little interest in implementing a draft that prioritizes the welfare of international amateur players.⁶⁷

It is also questionable whether individual MLB teams would support an international draft, as it is less expensive recruiting unregulated talent overseas than to draft U.S., Canadian, and Puerto Rican players, and it is less time consuming than working through a system like the Japanese model.⁶⁸ Moreover, for logistical purposes, an international draft would require either the expansion of the MLBPA's jurisdiction or the creation of

LATINOS, AND THE COLOR LINE 237 (2007) (Noting that in 2001, the Cleveland Indians paid a total of \$700,000 to forty Latin American prospects, while paying out nearly \$1.7 million to the team's top draft pick in North America's amateur draft).

63. This phenomenon is sometimes referred to as the "boatload mentality"—MLB teams can sign significantly more players for less money in Latin American and the Caribbean than they would in the United States. Thus, the teams frequently sign many more players than they will ever have positions for in their franchise. Burgos Jr., *PLAYING AMERICA'S GAME* at 237.

64. See Jesse Sanchez, *Baseball Decides Against Holding International Draft*, MLB (May 31, 2013), http://mlb.mlb.com/news/article.jsp?ymd=20130531&content_id=49189442&vkey=news_mlb&c_id=mlb.

65. The NHL's entry draft covers (1) North American players aged eighteen to twenty years old, and (2) European players of all ages entering the league for the first time. See *Hockey Operations Guidelines*, NHL, www.nhl.com/ice/page.htm?id=26377 (last accessed Mar. 9, 2014).

66. Jason S. Weiss, *The Changing Face of Baseball: In an Age of Globalization, Is Baseball Still as American as Apple Pie and Chevrolet?*, 8 U. MIAMI INT'L & COMP. L. REV. 123, 181 (2000), quoting Steve Martinez, *Dealing with Defects; Now That Cubans Have Found Their Way Back to the Majors, the Majors Must Find a Better Way to Place Them*, SPORTING NEWS, Jan. 22, 1996; see also Zimmer, *supra* note 24, at 438 ("[T]here has been no action toward an international draft beyond [a] statement of intent . . . it would require codification in a new Collective Bargaining Agreement, the terms of which are labored over, sometimes with the threat of a player strike by the Players Union").

67. See Mike Rosenbaum, *Why MLB Needs to Create an International Draft, and What it Would Mean*, BLEACHER REPORT (Nov. 16, 2013), <http://www.bleacherreport.com/articles/1852789-why-mlb-needs-to-create-an-international-draft-and-what-it-would-mean>.

68. The cost-effectiveness of recruiting talent in unregulated countries is well-known. One sportswriter explains: "International signings cost a fraction of what teams pay for free agents and, in most cases, what teams spend for bonuses in the Rule 4 draft as currently constructed. They even cost less than the baseball operations budgets of most teams. Meaning executives, coaches, scouts and coordinators' salaries." Craig Calcaterra, *An international draft could be here sooner than you think. And it's still a terrible idea*, HARDBALLTALK.COM (Mar. 18, 2013), <http://hardballtalk.nbcsports.com/2013/03/18/an-international-draft-could-be-here-sooner-than-you-think-and-its-still-a-terrible-idea/>.

a similar union for international ballplayers so that drafted players would be subject to the same restrictions and protections as Rule 4 draft-eligible players.⁶⁹ Finally, an international draft would require the consent of both sovereign nations and their players, who have their own collective and individual motivations in either supporting or resisting the creation of a draft.⁷⁰ Some governments benefit financially from MLB's unregulated recruitment,⁷¹ which may outweigh concerns over the welfare of native ballplayers. Disparities in negotiating power may also affect a country's willingness to sign onto a draft system.⁷² Furthermore, because countries

69. Players under MLBPA's jurisdiction may resist the expansion of that jurisdiction internationally, as expansion could affect those players' ability to compete at the major league level. The market would see an influx of talented players representing those countries the MLBPA previously did not cover. MLB would likely also resist such an expansion, since an expansion of union jurisdiction would mean fewer sources of cheap talent with weak negotiating power. Further, foreign countries may resist changes to the existing structure of MLBPA.

70. The Dominican Republic has voiced its concern with an international draft:

Felipe Payano, the [Dominican Republic's] sports minister, has already written a letter to Bud Selig, MLB's commissioner, expressing his opposition to a draft. He says his office is investigating whether it might violate the DR's free-trade agreement with America. Another option would be to sue MLB for collusion under Dominican antitrust law.

Baseball in Latin America: Draft Dodgers No More, ECONOMIST, Feb. 4, 2012, available at <http://www.economist.com/node/21546064?frsc=dg%7Ca>. Also, some argue that an international draft might be discouraged by international players. See Jeff Wilson, *MLB Insider: Many glad to see plans for international draft put on shelf*, Star-Telegram, June 8, 2013, <https://web.archive.org/web/20131421090500/http://www.star-telegram.com/2013/06/08/4921958/mlb-insider-many-glad-to-see-plans.html> (accessed by searching for <http://www.star-telegram.com/2013/06/08/4921958/mlb-insider-many-glad-to-see-plans.html?rh=1> in the Internet Archive Index). For context, it is helpful to look to the changes Puerto Rican recruitment has undergone since 1990, when the state became subject to the Rule 4 Draft:

[T]he number of Puerto Ricans in the majors has dropped steeply. Many of the game's greatest players are from Puerto Rico . . . but fewer than 30 were on major league rosters to start the season. One is Geovany Soto, an 11th-round pick in 2001. He said that players in the U.S. territory are scouted, but the baseball infrastructure there is lacking relative to the United States. As such, players don't play or practice as often and have considerably poorer facilities, and scouts aren't as likely to commit to a Puerto Rican prospect the way they would an American—with 2012 No. 1 overall pick Carlos Correa a recent exception. No one doubts that baseball there is on the decline, and some point to the draft as a main culprit.

Id.; see also Storms, *supra* note 15, at 99:

In fact, Puerto Rico recently expressed a desire to be excluded from the . . . draft, as its players are failing to be drafted at all because it is more economically attractive to sign talent from non-draft countries . . . Thus, given the reported problems with the Puerto Rican model, any proposal to expand the draft will likely have opponents on both the supply and demand side.

71. For example, the Dominican Republic. See Klein, *supra* note 8; Ruck, *THE TROPIC OF BASEBALL*, *supra* note 9, at 34–41.

72. One author has argued that, for the creation of an international draft, “the prerequisite will be a negotiated international labor market, like that contained in the U.S.-Japanese agreement, where foreign country organizations will not perceive themselves to be threatened by American baseball imperialism.” Gould, *supra* note 23, at 120.

are not directly involved in the recruitment, signing, or transportation of baseball players, they may not be in an ideal position to identify problems or develop and implement solutions to those problems. Moreover, the United States itself does not regulate MLB's international recruitment strategies outside of practices beyond the umbrella of immigration law.⁷³

Another issue is that the MLB teams are not strongly incentivized to self-regulate their recruitment based on moral or human rights arguments, due to the significant financial upside that can result from unregulated recruitment.⁷⁴ In fact, the competition between its teams contributes to this problem, as any team which might decide to self-regulate its own international recruitment would be at a competitive disadvantage to those teams that recruit internationally without restraint.⁷⁵ This would only exacerbate competitive imbalances between teams, something that would likely impact MLB's ability to compete with other professional sports and keep fans engaged in its annual pennant and wild card races.

An alternative option for Caribbean and Latin American countries might be the adoption of a system similar to that of Japan; however, it is unlikely that a recruitment system similar to the Japanese model would be effective in Latin America. First, the political relationships between the U.S. and Japan and the U.S. and Latin America are worlds apart. Japan is a developed country that has minimal geographic or historical ties to Latin America and the Caribbean. With the increase of baseball's popularity in Japan, the country has affirmatively chosen to protect its own baseball leagues from the reach of MLB.⁷⁶ Many Caribbean and Latin American countries have a more complicated history with the United States

73. An MLB team need only successfully petition for an MLB player. If a petition is approved, the player can then seek admission to the United States. Once a player is admitted, he may enter for the duration of time granted by the U.S. government. See *U.S. Visas*, *supra* notes 49–54.

74. Support for this view comes from an analysis of the Coase Theorem in the MLB context. In terms of contractual agreements with players, the Coase Theorem assumes that a team's goal is the maximization of profit. See Schmidt, *Institutional Change and Factor Movement in Major League Baseball*, *supra* note 23, at 201 (2011). Alternatively, the player's goal is maximizing income. *Id.* Interestingly, some argue that the current recruitment system is in some sense beneficial on the level of the individual player because it offers the player an opportunity to sign for amounts of money that, in the absence of MLB recruitment, would in all likelihood never be available to him. See KLEIN, SUGARBALL, *supra* note 7, at 59. However, the benefits to the individual at the time he is under contract with an MLB team does not outweigh or otherwise diminish the effects the recruitment process has on a country on institutional and cultural levels. *Id.* at 57–61.

75. Something similar happened when Latin American and Caribbean recruitment began in Major League Baseball. When MLB teams realized that talented young Latin American and Caribbean ballplayers could be had for significantly less financial outlay than North American players, they began to compete with one another in earnest to find and sign talent in the region. See KLEIN, SUGARBALL, *supra* note 7, at 42, 53–55.

76. See Gould, *supra* note 23, at 113–14.

stemming from as far back as the years of United States' founding fathers.⁷⁷ As the United States grew in economic power and political influence, its leaders saw Caribbean and Latin countries as nations in need of guidance and control.⁷⁸ As a result, professional baseball clubs in the United States maintained close ties to their Caribbean and Latin American counterparts, in many ways mirroring the colonial relationship between the U.S. and parts of the Western Hemisphere.⁷⁹ Reflecting these closer geographic, social, and political ties, Latin American baseball leagues and players have been involved with United States professional baseball since the early 1900s,⁸⁰ whereas Japanese players have grown up in an economically stable country free from the historical colonial influence of the United States.⁸¹

Second, international countries attempting to mirror the Japanese model would face the challenge of creating their own regulatory systems for player recruitment. As a result, MLB teams would need to familiarize themselves with these systems individually as they are adopted and comply with each country's specific rules and regulations, something that would be time-consuming and costly. Moreover, Latin American and Caribbean countries would need to independently decide to organize and adopt such systems. Recruitment systems as restrictive as the Japanese model might be counterintuitive in many Caribbean and Latin American countries where leagues are much less financially stable than the Nippon

77. See Ruck, *THE TROPIC OF BASEBALL*, *supra* note 9, at 22–23 (“‘History,’ Thomas Jefferson wrote ‘furnishes no example of a priest-ridden people maintaining a free civil government’”). The United States’ intervention in Western Hemisphere affairs continued well past its own declaration of independence from colonial power. *Id.* The Spanish-American War (1898), a result of the United States’ intervention in Cuba’s war for independence from Spain, is one such example. *Id.* As a result of its victory against Spain, the United States was awarded control over Cuba and Puerto Rico, Spain’s sole remaining territories in the Caribbean basin. *Id.* Although liberated from Spanish influence, Cuba and Puerto Rico were essentially trading one occupation for another—the result of two global super powers exchanging the final colonial assets of the once-extensive Spanish new world empire. *Id.*

78. *Id.*

79. “The academy is the baseball counterpart of the colonial outpost, the physical embodiment overseas of the parent franchise. It operates more or less like the subsidiary of any other foreign company: it finds raw materials (talented athletes), refines them (trains the athletes), and ships abroad finished products (baseball players).” See KLEIN, *SUGARBALL*, *supra* note 7, at 42.

80. *Id.* at 35; see also Adrian Burgos, *Playing Ball in a Black and White “Field of Dreams”*: *Afro-Caribbean Ballplayers in the Negro Leagues, 1910–1950*, 82 *J. OF NEGRO HIST.* 67, 75 (1997) (“In the Dominican Republic, the United States’ military occupation (1915–1924) led to new political connotations being bestowed onto baseball . . . Numerous games were played between the Marines and the Dominicans; yet those who lived through the occupation still debate the meaning attached to these games”).

81. CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACTBOOK: JAPAN* (*Introduction and Economy* subheadings), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>.

Professional League, cannot compete with MLB salaries, and depend in part on the national popularity of their players who reach the Major Leagues.⁸² Considering these factors alongside the relative complexity of the Japanese system, individual and independently-created recruitment systems are not a desirable or workable solution for Latin America and the Caribbean.

Ultimately, baseball's cultural role in many Latin American and Caribbean countries creates independent challenges to the implementation of a new system. For example, in countries like the Dominican Republic, baseball is as much a patriotic enterprise as a source of entertainment.⁸³ Many young men who lack substantial educational opportunities at home view it as an ideal career path because of the potential (however slim) for great financial success in the United States.⁸⁴ As a result of the large contracts that the most talented Latin American ballplayers are awarded by MLB teams, playing ball in the United States has attained a romanticized status-for lucky young players, fame, fortune, and the promise of a better life can be won through hard work and dedication on the baseball diamond.⁸⁵ While a perpetuation of the current system means that the supply of hopeful ballplayers will likely never disappear, it also means that young players will continue to sacrifice their futures at home in the hopes of being one of the few who make it in the big leagues.

82. See RUCK, *THE TROPICS OF BASEBALL*, *supra* note 9, at xviii–xx.

83. See KLEIN, *SUGARBALL*, *supra* note 7, at 1–2.

In the Dominican Republic, baseball has become much more than a game, even more than a national pastime; it is a crucial arena of intercultural relations, in which significance attaches to everything about the game, its symbols, and its players. In the Dominican Republic baseball has a place all out of proportion to the normal one of sport in society. . . . [C]utting [sugar] cane continues to be the most easily obtained employment in the country. It is also the future many men fear for themselves if baseball should fail them, all of which further elevates the status of baseball in the Dominican Republic.

84. See, e.g., Zimmer, *supra* note 24, at 425:

Dominican dependence on Major League Baseball for economic revenue has assured the League a favorable position with the Dominican Government. The economic crutch Major League Baseball supplies cannot be understated: a study conducted by Major League Baseball in June of 2003 showed that it injects \$76 million annually into the Dominican economy through payments to players, scouting trips and donations. \$14.7 million of the sum is paid directly to the Dominican Republic by thirty baseball academies that are run by Major League teams in conjunction with baseball's Dominican office. The same study shows the League has created 1,200 jobs in the Caribbean nation.

85. *Id.*

III. A COASE THEOREM-BASED ANALYSIS

This Note looks to the Coase Theorem⁸⁶ for a solution to the social cost of Major League Baseball recruitment in Latin America and the Caribbean.⁸⁷ It first proposes that a ballplayer's country should have a voice in how its players are recruited and developed by MLB teams.⁸⁸ It theorizes that regardless of whether solely the player himself, or both the player and his country of origin possess property rights (i.e., his right to contract with an MLB team) in a player's baseball talent, MLB teams will ultimately be able to secure the rights to negotiate a contract with the player because recruiting players in the Latin American and Caribbean market will remain beneficial for MLB teams under a cost-benefit

86. One author summarizes how the Coase Theorem applies to Major League Baseball:

Coase stated that with zero transaction costs and neutral wealth effects, the allocation of resources is independent of the initial assignment of property rights. In the case of baseball contracts, we have observed that the allocation of risk bearing is dependent on the initial assignment of the right to players' services. Since the transaction costs associated with the allocation of risk bearing between players and club owners are presumably low, this observed relationship suggests the following: the value which players place on insuring their stream of income, relative to the value which clubs place on the option to renew the players' contracts annually, is dependent on the assignment of the right to the players' services.

Kenneth Lehn, Property Rights, Risk Sharing, and Player Disability in Major League Baseball, 25 J.L. & ECON. 343, 353 (1982).

87. For further reading on the application of the Coase Theorem to Major League Baseball, see Timothy R. Hylan, *The Coase Theorem, Free Agency, and Major League Baseball: A Panel Study of Pitcher Mobility from 1961 to 1992*, 62 S. ECON. J. 1029 (1996); see also Donald Cymrot et al., *'Who's on first': an empirical test of the Coase Theorem in baseball*, 33 APPLIED ECONOMICS 593 (2001); David G. Surdam, *The Coase Theorem and Player Movement in Major League Baseball*, 7 J. OF SPORTS ECON. 201, 202 (2006).

88. This proposal is intended to reflect the systems that exist in countries like Japan and Mexico. In those countries, players do not have the option to enter the MLB until they have attained a certain level of professional sophistication: meaning that these players have already been drafted and have played a certain number of years for teams in their countries. BURGOS JR., PLAYING AMERICA'S GAME at 238. Because these players have already been signed to contracts with professional teams, those teams have some control over an MLB team's ability to sign the player, and are financially compensated by the MLB team. *Id.* Moreover, because these leagues are financially successful and have a strong fan base, the government has typically established some legal recruitment regime that prohibits MLB teams from recruiting players without approval (such approval, when granted, usually extends only to a particular player who has already expressed an interest in playing in the United States). As a benefit in these situations, recruited players themselves have some degree of bargaining power due to (1) their elevated skill level, (2) experience in contract negotiation, and (3) likely representation by a professional agent. This note attempts to replicate this type of systems in countries where a strong national league is *not* the norm (and thus, players are usually recruited at an amateur level), by replacing the league/individual team's role with the government, whose participation is required by an independent body governing the compensation system. That is, when MLB teams recruit Latin American and Caribbean players, they must also include the government of the country in negotiations, and financially compensate the country for the recruitment of those players. This will effectively compensate the country for the negative impacts that will result from the player's departure to the United States.

analysis.⁸⁹ The proposed Coase Theorem-based recruitment model begins with the assumption that a country has an interest in the economic value of its citizen baseball player's talent. This allows the country to serve as a stand-in for a local professional baseball team that might sign and develop the player if he is not recruited by MLB. An MLB team that signs that baseball player is thus required to compensate his country for the loss of its interest in the economic value of the player's abilities; in essence, buying out the country's interest. This is analogous to MLB purchasing negotiation rights to an international player from the club he has signed with.⁹⁰ After a pre-determined period of time, an MLB team will have

89. When compared to signing players in North America or more regulated markets (such as Japan or Mexico). Lehn, *supra* note 86, at 353. Consider, for example, the case of famous ballplayer Alex Rodriguez, a U.S. citizen. Rodriguez was selected by the Seattle Mariners in the 1993 amateur draft. His signing bonus was \$1.3 million. See *PLAYING AMERICA'S GAME*, *supra* note 62, at 233. Had he been an undrafted free agent from the Dominican Republic, Rodriguez may have drawn only five or ten thousand dollars. *Id.* Klein goes on to note that protecting Latino players has not been a priority, largely because MLB teams seek these players because they can be signed so inexpensively. *Id.* As such, increasing the transactional costs to MLB teams for these players relative to numbers comparable to North American draftees would defeat the purposes behind their recruitment.

The transactional costs are also significantly lower in Latin American and Caribbean countries than for countries with systems in place to protect their players from recruitment. For example, Yu Darvish, a talented Japanese pitcher, was made available to MLB teams before the 2012 season. Bob Elliott, *Jays lose Davish bidding war to Rangers*, *TORONTO SUN* (Dec. 19, 2011) <http://www.torontosun.com/2011/12/19/will-cost-of-darvish-be-too-high>. As required by the Japanese system, interested MLB teams submitted bids for the right to negotiate with Darvish. The Texas Rangers were the lucky winners at \$51.7 million. *Id.* The Rangers then were able to negotiate a contract with Darvish for \$60 million over six years. *Id.* Thus, in total, the Rangers spent upwards of \$110 million for a pitcher whose ability to transition to North American baseball (which requires different skills and abilities than Japanese ball) was yet to be known. The transactional costs to MLB for a player like Darvish are astronomically higher than for Latin American and Caribbean free agents. In fact, an MLB team could likely sign several dozen players for less than the total cost of negotiating with and signing Darvish, significantly narrowing the risk, statistically speaking, that the financial investment will be a failure.

90. One possible concern with granting countries property rights in the talent of their ballplayers is whether countries should be compensated for this type of loss at all. This note argues that they should be, as a method to prevent MLB teams from unregulated recruitment in Latin America and the Caribbean. In this way, players end up with more bargaining power when negotiating with MLB teams, because a rights-bearing third party with more legal and economic power than the player will take an interest in whether he is signed and whether the process is legally proper. In the region the recruitment of baseball players has risen to the level of a social, economic, and ethical problem. See, e.g., Rosentraub, *supra* note 16, at 126.

The economic and cultural impact of MLB on Latin American countries, such as the Dominican Republic and Venezuela, is extensive. . . . Underprivileged Latin American boys and their families often see MLB as the way to escape poverty. As a result, the reach of MLB into these countries extends to children and affects childhood education and the operation of youth baseball leagues. MLB dominance also is evident in how MLB regulates aspects of the Latin American professional league operations.

Id. MLB teams are able to take advantage of the poverty of these children and their lack of contractual sophistication to recruit them in ways that are not only harmful to the children, but are also socially and culturally damaging within the countries themselves. See generally KLEIN, *SUGARBALL*, *supra*

effectively compensated the country for its interest in the player talent. At that point, compensation for the player will end, and full property rights in the talent will transfer to the ballplayer. As such, when a player has met existing service requirements in the Major Leagues to achieve free agency status, he alone will have the right to determine where, when, and if he signs another contract in the Major Leagues.⁹¹

In a compensation system, each country will be directly financially compensated for MLB recruitment of native-born talent.⁹² Recruitment will be defined as the point when an MLB team seeks to sign a player and bring him within the umbrella of the organization. This payment will be *in addition* to the money the player himself will receive for agreeing to sign a contract with the team. A player will be paid what any other similarly talented player would earn, and the country will be paid a monetary value that is determined at the time that the player contracts with the MLB team. Because players will be signed for a salary that reflects their abilities as a ballplayer, the country will be compensated in an amount that is proportional to the value of the player's contract. This payment will serve as compensation for the social costs of MLB recruitment in the country.⁹³ It is proposed that receiving compensation for the recruitment of these baseball players will offset the damages caused by MLB recruitment (i.e., Coase's "social costs")⁹⁴ by providing financial resources that can be used

note 7, at 34–103. These countries have experienced such negative consequences from MLB's profit-driven recruitment that some action must be taken to offset the damage.

91. The overall goal here is to keep the country involved in the player's development in the Major Leagues. The purpose for this is to keep an economically and politically sophisticated party involved in the player's contractual relationship until such a time that he is able to fully and independently exercise his own rights under existing MLB contractual customs and U.S. contract and antitrust law. This note assumes that that point occurs when the player becomes a free agent.

92. After a country is compensated for a player's decision to sign with an MLB team, the payment can be used for a variety of purposes. The payments can be general funds collected by the country for varied use, or they can be set aside for specific purposes, designated either by legal agreements between countries or in negotiations with the individual player. For example, payment may be directed to education in countries where access to quality education is a concern for baseball recruits; alternatively, all or part of the payment could be set aside to finance the recruited player's future education expenses should he fail to succeed in the Major Leagues. While this solution is certainly unusual and would take some effort to organize and effectuate, it is not out of the realm of possibility. It would also provide a safety net for a player who, unfamiliar with the likelihood of success in the major leagues, and uncertain of what his future would look like if his baseball career ends prematurely, might otherwise take significant risks in signing with an MLB team.

93. The athletic equivalent of the "brain drain" phenomenon, so to speak. This comes directly from Coase's first solution, in which he proposes that the entity that creates the social costs should compensate the entity that bears those costs, in essence paying damages for its activity. *See Coase, The Problem of Social Cost, supra* note 21, at 2–6. This type of system may also help to repress the staggering quantity of young ballplayers entering baseball academies by increasing the total cost to MLB teams of each player's recruitment.

94. *Id.*

for educational programs, job training, or other social benefits.⁹⁵ Involving the country itself in the negotiation process will also increase the likelihood that it will retain some degree of control over the operation of baseball within its borders. This will help to disentangle local baseball operations from the neocolonial aspects of MLB recruitment in the region by shifting control over local baseball operations from MLB teams back towards the countries themselves.⁹⁶ Moreover, receiving funds to aid future generations of hopeful young ballplayers would be a step towards remedying many of the negative social and economic effects of unregulated recruitment.

Logistical issues a compensation system must address are: (1) how and when the value of the player's talent is assessed; (2) when and how the compensation is paid; (3) when and how compensation payments can be terminated for each individual player; and (4) how such a system should be regulated.⁹⁷ These issues will be addressed in turn.

The first issue is creating a system for determining the value of each player's talent, and thus the contractual payment that an MLB team will make to the country, as well as the salary the team will pay to the player. It is important to either determine these amounts through the same

95. At least one researcher suggests that MLB should be required to provide education and other life skills training to ballplayers in Latin American and Caribbean academies. See Storms, *supra* note 15, at 95, 101. However, it may not be feasible or logical to set up, regulate, and finance these social services, especially considering the vast number of players in Latin American countries that find themselves in baseball academies. A player talent rental system would create a mandatory, enforceable, and straightforward transactional financial benefit that could then be used by the government of the player's country to finance social benefits and in some ways ideally remedy the detriment caused by MLB's recruitment. While implementation and regulation would still be a challenge, MLB would not be involved in the system beyond making payments, which would make it easier for MLB to comply. It could also lessen concerns over how involved MLB should be in designing solutions to the problems its actions exacerbate.

96. Because currently, MLB operations in these countries serve as lingering reminders of U.S. colonialism in the region. See KLEIN, SUGARBALL, *supra* note 7, at 48. Klein also elaborates on this relationship in terms of Dominican baseball, explaining that MLB teams have in many ways "hinder[ed] the Dominican game." *Id.* at 49.

97. In evaluating the possible solutions to these types of issues, it should be considered that: [P]roperty rules and the moral rules that support them must be simple and general, at least as to the core of property. If the rules for determining access to and use of resources [here, baseball players' talent] required the gathering of detailed information—for example, information about the attributes of rival claimants that might otherwise have moral relevance—this would not produce the stability of expectation needed for widespread coordination. Thomas W. Merrill, *The Morality of Property*, 48 WM. & MARY L. REV. 1849, 1857 (2007). That is to say that a system wherein countries are financially compensated for their players should be relatively uncomplicated and should have universal rules that pertain to all participants. For example, only MLB, the player, and his country of origin are permitted to negotiate over rental of the player's talent. If the system becomes too complicated, not only do transaction costs skyrocket, but the process can easily become unwieldy and prohibitively time consuming.

proceeding, or determine the amount of money the player will earn first. This will ensure that the country, which will have greater bargaining power than the player, is involved until the contract negotiation process ends. To enforce the compensation process consistently, the system should be as uniform and fair as possible. In this regard, it should be consistent throughout all participating countries. The system will also need to determine the salary of the individual players consistently. A goal of the system should be subjecting all players to the same legal standards and protections so that all players are treated equitably.

The process by which the player's salary and the country's compensation are determined should be through an arbitration process similar to that used for players in the major leagues.⁹⁸ However, unlike in the major leagues, the system should not be "final-offer." A final-offer system functions well in the United States, where players are already under contract with MLB and thus subject to the protections of the MLBPA. A MLBPA player also would retain an agent who is familiar with the process and can represent the player's rights. This gives the player significant bargaining power when arbitrating his salary with a team. Before they are signed and immigrate to the United States, Latin American and Caribbean players are not subject to MLBPA jurisdiction.

98. MLB uses a form of arbitration called "Final-Offer Arbitration." Josh Chetwynd, *Play Ball? An Analysis of Final-Offer Arbitration, Its Use in Major League Baseball and Its Potential Applicability to European Football Wage and Transfer Disputes*, 20 MARQ. SPORTS L. REV. 109, 110 (2009).

It functions as follows: In [the MLB arbitration system], players with over 2 years of major league system could file for salary arbitration, if they were not under long-term contract. If the sides could not come to a contract agreement within a period of time, the club would submit a salary figure for the coming season that they felt the player was worth, while the player would do like wise [sic]. If the sides could not reach agreement with the figures submitted, the parties could go before arbitors [sic] from the National Labor Relations Board and present their case. The arbitors [sic] would then rule on one figure or the other. There would be no middle ground. The system remains much the same, with a panel of three arbitrators ruling on salary cases.

Id. Maury Brown, *Breaking Down How Salary Arbitration Functions in MLB*, THE BIZ OF BASEBALL, http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=2916:breaking-down-how-salary-arbitration-functions-in-mlb&catid=26:editorials&Itemid=39. This system, wherein one figure is chosen over the other without any middle ground, is said to encourage negotiation and settlement in baseball because each side faces a complete loss if the arbitrator decides against it. Thomas Gorman, *The Arbitration Process*, BASEBALL PROSPECTUS, <http://www.baseballprospectus.com/article.php?articleid=3732>. It is said to limit the negotiation "chilling effect" of traditional arbitration, wherein each side submits a bid and the arbitrator tends to choose a figure in the middle ground. See Chetwynd, *Play Ball?*, at 111. In the Final-Offer system, even if the parties do not settle the end result will still be fair. *Id.* This is the case because the offer they submit to the arbitrator tends to be a conservative one in light of the risk of complete loss should the other side's number be the winning bid. *Id.*

They also may not be able to afford legal assistance. Allowing the arbitrator increased discretion in selecting the amount of money the player will earn will help to ensure that the player's contract is fair. This type of arbitration system could take one of two forms: (1) a subjective, adjudicative arbitration system, wherein arbiters are permitted to make wholly subjective determinations of the player's salary and country's compensation, or (2) a more rigid, objective system that requires an arbiter to select both figures based on pre-calculated figures that take into account the average salaries of players in similar situations and at similar levels of playing ability.

In an arbitration model, a player's playing ability would be determined by independent arbiters analyzing evidence of the player's performance, much like how the arbitration system works for players drafted by MLB who have not attained free agency status.⁹⁹ Under this framework, countries and teams would submit their estimate of the player's talent value to an independent arbitral body, which would evaluate various factors and assess the compensation rate owed to the country either at one of the figures or somewhere between the two.¹⁰⁰ A similar process would determine the salary paid to the player, wherein all three parties (country, MLB team, and player) have the opportunity to submit suggested salaries. Countries would likely be incentivized to submit higher salary requests for players, since a higher salary suggests a greater skill level, which would also indicate the country should be compensated at a higher level to offset the loss of the player. Mirroring MLB's arbitration system, talent value would be anchored by mirroring minor-league salaries (i.e., the average salary range for a given minor league prospect would be roughly equivalent to the average salary range for a similar non-draft-eligible player).¹⁰¹

99. A drafted player with three or more years of service (but less than six) may file for arbitration with his team. *Frequently Asked Questions*, MAJOR LEAGUE BASEBALL PLAYERS' ASSOCIATION, <http://mlb.mlb.com/pa/info/faq.jsp#arbitration> (last visited Mar. 27, 2014). There is an exception to this rule for so-called "Super Two" players, who have served for two years plus an additional eighty-six days, and who rank in the top twenty-two percent of similarly-situated players. *Id.*

100. In the MLB arbitration process:

[T]he club and player submit their "last best offer" for a salary ahead of time to the Labor Relations Department and the Players Association respectively. On "exchange day," representatives from both sides meet in New York and exchange figures one by one. . . . Each side gets one hour to present its case. There is a short recess and then each side gets 30 minutes to rebut the other side's case and 30 minutes to present their summation.

Thomas Gorman, *The BP Wayback Machine: The Arbitration Process*, BASEBALL PROSPECTIVE (Jan. 18, 2012), <http://www.baseballprospectus.com/article.php?articleid=15864>.

101. Salaries for minor league players generally have a maximum dollar amount, augmented by bonuses paid to players who earn them. Zachary D. Rymer, *MLB Must Finally Answer for Exploitation*

Alternatively, talent value could be based simply on a pre-determined scale that takes into account a player's statistical performance in assessing the value of his talent level. This would require the creation of a chart showing values ranging from the lowest compensation teams are expected to pay to the highest. Talent value could be assessed either by assigning tiered values to players within a given range of ability (as a vastly oversimplified example, a compensation amount of \$100,000 USD might be assessed for all players batting between .260 and .275), or value could be determined on a sliding scale, taking into account statistical performance of the player based on recent games, the compensation assessed for players of comparable performance, and other relevant factors (such as how quickly the player has improved over time, his age, physical health, and so on) to arrive at a compensation figure.

Second, a compensation system must determine how such compensation should be paid. Payment of this compensation could occur either a single time, or on a recurring basis. Recurring payments would be most desirable, because that would encourage the country to maintain involvement with the signed player. This is desirable because until a player becomes a free agent, he has limited rights and may still be at risk if the bargaining power of his country is removed from the equation.¹⁰² Recurring payments could take the form of monthly payments while the player is under contract with the MLB team, quarterly payments, or annual payments made while the player under contract with the MLB team. Some flexibility may be desirable, so that negotiating parties can create a payment schedule that operates to the mutual benefit of the parties involved. To further encourage all parties to remain involved in the rights

in the Minor Leagues, BLEACHER REPORT (Feb. 12, 2014), <http://bleacherreport.com/articles/1957838-mlb-must-finally-answer-for-exploitation-in-the-minor-leagues> (“[T]he wage for low-level minor leaguers is \$1,100 a month. MLB.com says that’s the maximum, not the minimum. And while the pay does escalate as players climb the ranks. . . . It’s only to a degree. *At Triple-A, the highest minor league level*, the typical monthly wage is \$2,150 a month” [emphasis added]); see also Charlie Wilmoth, *Minor League Players Still Paid Next to Nothing*, SBNATION (Jan. 14, 2013), <http://www.bucsdugout.com/2013/1/14/3874488/minor-league-baseball-players-still-paid-next-to-nothing> (“While the Major League minimum salary in 2012 was \$480,000, *the figure for first-year players, regardless of their organization*, runs about \$1,110 a month during the season” [emphasis added]).

102. Paying the compensation to a player's country will encourage countries to become more involved in the contractual arrangements of young players. Further, should difficulties arise between a signed player and an MLB team before the player is able to avail himself of the protection of the MLBPA, the country would be incentivized to stay involved in the process because it would still have a financial stake in the player's relationship with the MLB team. In this regard, it may also encourage countries to create internal legal regimes in order to protect their interest in the value of each player's talent; for example, creating laws allowing the country to legally represent baseball players who are in negotiations with MLB teams.

and welfare of the signed player, it may be desirable to allow the compensation amount to be renegotiated annually at the request of any party.

Another important consideration is how long the compensation amount should be a factor in the player's career. Teams should be required to pay compensation for each baseball player recruited in Latin America and the Caribbean *unless* or *until* the player reaches the Major Leagues and has played there for sufficient time to earn free agency status under major league rules. Once the player has achieved this Major League skill level, any property rights in the player's talent that the country possesses will transfer from the country to the player himself, and he becomes a free agent who can negotiate a contract with an MLB team.¹⁰³ This means that a country's property rights would cease at the same time his MLB team no longer has the right to restrict his ability to sign with another team, thus removing all obstacles to the player's free agency at the same point in time. That is, a Latin American or Caribbean player would earn negotiation rights in much the same way as Rule 4 draft-eligible players do (an across-the-board six-year period of time during which the player cannot lawfully sign with another team or retire without penalty),¹⁰⁴ but his rights would also vest through a system that applies only to Latin American and Caribbean players.

This system would certainly result in higher transactional costs for MLB. These costs reflect compensation for the social costs MLB imposes on the countries where it recruits young ballplayers. Although MLB teams will see an increase in their bottom-line, these costs are unlikely to become so prohibitive that MLB stops recruiting in these countries—especially in light of the expense of drafting and signing North American players or navigating the Japanese system—as the pressure to find the next “superstar” will continue to motivate teams to recruit outside the North American market.¹⁰⁵ Alternatively, if an MLB team is unwilling to pay a fair and equitable contract price to a Latin talent and compensate the player's government for the negative effects of recruitment, that MLB

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104. Frequently Asked Questions, *supra* note 75.

105. See Zimmer, *supra* note 24.

team will simply be unable to sign the player, and he will have the opportunity to sign with another major league team (whether in North America or elsewhere) or play locally. MLB teams will be discouraged from stockpiling young men because the “boatload mentality” will no longer be financially viable. Also, if the player believes that his talents are best utilized in the United States, the door would not be closed permanently. He would always have the opportunity to follow traditional immigration methods to enter the United States, and if necessary establish residency and enter MLB through the draft system.¹⁰⁶

Implementation of this type of system would not be without challenges. One issue is the form of governance that would be used to implement this new system.¹⁰⁷ The use of public and private partnerships is arguably the best way to govern the system.¹⁰⁸ In a public-private partnership system,

106. Players would need to seek admission to the United States through traditional immigration methods. The issuance of O, P, or H2-B visas would be limited to players who are recruited under the compensation system, so as to reduce the likelihood that MLB teams will seek to circumvent it. This would mean that a player who is not recruited under the system could only enter the United States using either a family-based visa petition or an employment-based visa petition offered by some other employer. See *Family-Based Immigrant Visas*, UNITED STATES DEPARTMENT OF STATE: BUREAU OF CONSULAR AFFAIRS, <http://travel.state.gov/content/visas/english/immigrate/types/family/family-preference.html>; see also *Employment-based Immigrant Visas*, UNITED STATES DEPARTMENT OF STATE, <http://travel.state.gov/content/visas/english/immigrate/types/employment.html>. While limiting the ballplayer’s opportunities in this way may seem harsh, it is no more restrictive than for any other intended immigrant to the United States. Moreover, allowing Latin American and Caribbean players to seek an O, P, or H2-B visa through an MLB team that recruited him outside the compensation system would not help to reduce recruitment abuses, because it would essentially render the system powerless.

107. “There are three basic forms of governance structure that can exist to oversee sports: a private-market system, a group-control system, and a public-federalist system.” Rosentraub, *supra* note 16, at 132. Governance can consist of any one of these systems independently or some combination of two or more. *Id.* A private-market system exists where private individuals operate the market. *Id.* All decision-making is done on an individual level. *Id.* This is essentially how MLB recruitment in the Caribbean operates today—MLB teams recruit players in their individual capacity or through agents and government involvement is minimal beyond the immigration stage. *Id.* Group governance involves owners of organizations giving control to an oversight entity—this is how MLB as a collective operates: all thirty franchises operate under the MLB umbrella. *Id.* In the Public-Federalist model, both the individual and governments may work together. *Id.* The “public-private” variation exists where the government controls some aspects of the system while private interests control others. *Id.* at 132–36.

108. To implement and encourage these partnerships, some sort of international regulatory body is recommended. The simplest option would be to employ the International Baseball Federation (IBAF) to oversee and implement the process. The Official Site of the International Baseball Federation, <http://www.ibaf.org/en/>. The IBAF is a multi-national organization that currently operates the World Baseball Classic, various youth Baseball World Cups, and the Women’s Baseball World Cup. *Id.* Using the IBAF to implement an international dispute resolution system would not be a completely novel idea in the sports world. Another, more well-known international sports organization already offers a dispute resolution system for teams and players: the Federation Internationale de Football Association (FIFA). See Dispute Resolution System, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/footballgovernance/disputeresolutionsystem/index.html>. Nor would it be unusual for the organization to become involved in improving the international impact of the game. FIFA lists among

governments (public entities) and MLB teams (private entities) will work together to implement, regulate, and enforce the player-rental system.¹⁰⁹ In this type of situation, the public sector will govern some aspects of player movement and recruitment internationally (such as creating procedural systems MLB can utilize to pay rent for talent), while other responsibilities can fall on MLB (for example, monitoring each team's compliance with visa limitations and rental agreements made with foreign governments), or even the individual players (negotiating talent value or the terms of the payment of rental value to the government and/or the player himself).¹¹⁰

its objectives "to improve the lives of young people and their surrounding communities, to reduce the negative impact of our activities and to make the most we can of the positives." Mission and Statues, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/mission.html>.

The significance of adopting an independent regulatory body for baseball should be noted here. A player might feel pressured to accept a lower contract rate in the event that his country and the MLB team seeking to recruit him collude to harm the player's interests. Alternatively, a player's country might exploit him if it is incentivized to do so. Ideally, the public's concern over locally successful baseball teams and equitable treatment of individuals by the government would help discourage countries from engaging in harmful or unethical activities. However, because the temptation to make decisions that are not in the player's best interest will always exist, oversight by a third party regulatory body would be ideal.

109. As a comparison to this idea, consider the NCAA, a public-private partnership. For the most part, the NCAA is a successful organization that is accepted by consumers:

[T]he model of U.S. collegiate sports involves conjoint control between the public sector and a private group. Specifically, the National Collegiate Athletic Association (NCAA) controls numerous crucial elements of the multibillion dollar college sports industry. Yet, in so far as public institutions are concerned, the government controls the supply of franchises and the distribution of these franchises.

Rosentraub, *supra* note 16, at 132. Adopting this system in countries that have poor political relationships with the United States (for example, Cuba) may prove difficult. However, it is likely that increased communication between the United States and these countries on a topic that is relatively uncontroversial will help to maintain valuable lines of communication despite political tension. Because sports entertainment is nearly universally popular worldwide, it serves as an area of commonality between countries that might have few other reasons to cooperate. By way of example, consider the Olympics, an international sporting event that in 2014 involved eighty-eight countries worldwide. At times, Olympic events have been staged successfully even when political tensions are high. Nonetheless, the United States is likely to oppose a system requiring MLB teams to financially compensate governments that it does not formally acknowledge or support. There may also be concerns regarding how a country intends to use compensation paid by MLB teams. Some of these concerns might be remedied by adopting a system that is highly specific in terms of how compensation operates. This might require the United States to independently negotiate the specifics of the system in each country individually (negotiation the use of compensation funds for different purposes in Cuba than in the Dominican Republic, for example). These are but a few concerns surrounding the political ramifications of a compensation system. Nonetheless, the topic is far too complex to be thoroughly addressed in this Note.

110. *Id.* at 136. Nonetheless, it is still necessary to fix the antitrust issues that exist within Major League Baseball's operations in the United States. "Any effort to establish an international amateur draft system will trigger antitrust litigation pursuant to the Curt Flood Act." Gould, *supra* note 23, at 116.

IV. POTENTIAL PROBLEMS, BENEFITS, AND COMPLICATIONS OF A COASE THEOREM-BASED PLAYER-RENTAL SYSTEM

First, this system does not directly resolve the exploitation problem that young baseball players fall victim to in some Latin American and Caribbean countries. However, it does attempt to require MLB teams to not only pay the players their contractual rate, but to also make payments to countries in compensation for the talent the teams recruit in the region, a concept that does not exist in other professional sports.¹¹¹ As MLB teams incur greater costs for collecting young players in academies, their interest in indiscriminately signing those players should go down. In turn, this should disincentivize *buscones* from similarly hoarding talent because profit will be less related to quantity and more to the quality of players that a *buscon* offers to a team.

Resistance to a change in the power structure currently governing international player recruitment would be of concern in a rental system, particularly on the part of MLB. MLB's power and influence in the baseball world is much greater than that of the countries it recruits talent from. Because there is an existing relationship wherein MLB teams operate as the franchisor and other countries and their leagues operate as franchisees, Major League teams can exact significant power over these leagues.¹¹² It may be hard to incentivize change to this type of regime where MLB is at a distinct advantage in recruiting talent.

Enforcement is another issue. One potential problem with enforcement is that it may prove costly, both for MLB and for the countries that participate in such a system. However, while initial costs will likely be greater at the time the system is put in place, the long-term benefits of such a program should offset the initial difficulty of putting into place and enforcing player talent rental. Additionally, when countries are being paid for their talent, it will incentivize them to enforce the new regime, so long as it is not overly complicated and they benefit from the new system as least as much as they did when players were independently subject to

111. Nonetheless, this proposal is modeled off of procedures that currently exist in countries like Japan and Mexico for the protection of native talent from MLB teams' recruitment. See *supra* notes 53 and 84.

112. Rosentraub, *supra* note 16, at 137.

MLB also exercises unfettered international power. Teams conduct business in many nations, seeking out and developing talent in ways that maximize the interests of MLB. The MLBPA has no authority to deal with the working conditions for major or minor league prospects in foreign countries, even when the teams and MLB are involved in these nations. MLBPA jurisdiction is limited to players signed to MLB contracts and on the roster of a MLB team.

recruitment by MLB without compensation to the country of origin. However, it is important to note that the willingness of countries to cooperate in a player-rental system cannot be fully realized at this point.

On that note, international cooperation will be essential to implement this type of system. Within a multi-country system, each country can cooperate in enforcing the rules against those countries that might resist the change.¹¹³ Nonetheless, it will be necessary to create a legal regime to oversee a player-rental system. Two options are: (1) the creation of a multilateral treaty, through which each country would enforce the system nationally, or; (2) the development of an international organization that would independently oversee operations in all participating countries.¹¹⁴ Much as MLB is regulated through federal and state laws in the United States, creating an international body or legal framework to control the international operation of MLB internationally should help to ensure that all parties comply with the new system.¹¹⁵

Another potential issue is how MLB and its teams respond to the new concept of compensation for a player's talent value, as well as the increased transactional costs of international player recruitment. MLB and many of its teams are likely to resist change, or any type of restriction on how recruitment is accomplished. They may seek out enforcement

113. Some Latin American countries may have concerns with signing on to an internationally cooperative agreement for a variety of political and non-political reasons. *See, e.g., supra* notes 55–58. Alternatively, MLB may resist the new rules and regulations and attempt to find a way to circumvent them. For example, although teams are currently prohibited from signing players under the age of seventeen (*See Zimmer, supra* note 24), there are many well-known accounts of teams signing players under seventeen. *See, e.g., Vargas, supra* note 18, at 26.

114. At least one author has taken an international human rights approach to solving baseball's problems in the Dominican Republic:

American baseball standards for contract signings, training programs and the retention of sports agents have not reached the point of *jus cogens* and must be codified by the Dominican Republic if they are to have effect and import there. Thus, the burden falls to the Dominican Republic to act on behalf of its own people, as well as to international mechanisms to pressure the Dominican Republic to act.

Zimmer, supra note 24, at 439. Of course, considering the limited and controversial role of *jus cogens* in international law, it is unlikely that sports recruitment would be elevated to that level. Rafael Nieto-Navia, *International Peremptory Norms (Jus Cogens) and International Humanitarian Law*, ICC NOW 1, <http://www.iccnw.org/documents/WritingColombiaEng.pdf> (last accessed Mar. 28, 2014). Nonetheless, it is unclear whether international governmental or non-governmental organizations are interested in interfering with international sports recruitment or whether any advisements or decisions would be taken seriously by Major League Baseball and the governments it affects.

115. However, any regulatory organization should function independently of MLB, as the corporation already has strong influence over player recruitment and would be unlikely to act against its own interests. Ideally, a regulatory system would be operated jointly by multiple countries (perhaps through the Organization of American States), rather than being controlled by a single country or organization that might not have the ability or neutrality to make decisions that are beneficial to all parties involved.

loopholes or recruit in countries outside the jurisdiction of the player-rental system. Moreover, if property rights in a player's talent transfer after a certain point and teams stop paying compensation, teams may be incentivized to find ways to sidestep the payment of rent to foreign countries. For example, teams may try to rush players to the major league level before they have fully developed, trade less valuable players indiscriminately to attempt to keep costs low, or artificially affect player rental "value" through subversive methods (such as reducing playing time, or moving a player throughout various levels of the minor leagues to inflate or decrease his stats). There may also be difficulty in developing a system for evaluating a fair compensation value that all parties agree appropriately compensates for the social costs of MLB recruitment. The effects of player recruitment are extensive, not heavily studied, and by nature are not easily measureable.¹¹⁶ For a compensation system to be functional, it must make sense, and steps must be taken to determine the monetary value of the negative effects of MLB recruitment in these countries.

Despite these potential challenges, a player-rental system will provide a variety of benefits. For example, it may offer the potential for improved international relations.¹¹⁷ An economic-based legal relationship could eliminate some challenges in United States foreign relations—for example, with Venezuela, which may not be amenable to its players leaving the country so long as there are minimal benefits to the political regime.¹¹⁸ This may also help improve U.S. relations with Cuba¹¹⁹ if the embargo is lifted in the future.¹²⁰

116. How does one determine, for example, how signing a player who turns out to be a major league star encourages a negative colonial relationship between that country and the United States, if at all? Or to what degree is that compensable, or should it be compensable at all?

117. One country of particular importance is Venezuela. Venezuela is a source of a significant portion of baseball talent but politically it has an unstable relationship with the United States. See *U.S. Relations With Venezuela*, U.S. DEPARTMENT OF STATE (Dec. 2, 2013), <http://www.state.gov/r/pa/ei/bgn/35766.htm>; see also *Opening Day: Over 28 Percent of MLB Players Are Foreign-Born*, *supra* note 18. Time will tell whether political relations with Venezuela will have any impact on the number of Venezuelan ballplayers in the Major Leagues.

118. Venezuela, which has recently developed strained relations with the United States, is one country that has openly criticized MLB's international recruitment policies:

June 2000, the Associated Press reported that "[s]ports officials in Caracas, Venezuela, denounce an increasing tendency [of MLB teams] to recruit underage players and to crush their baseball dreams through exploitation and false promises. In the worst cases, the officials say, scouts promise boys lucrative major league contracts, then take them out of local play to hide them from other scouts.

Vargas, *supra* note 18, at 25.

119. Cuba is not compensated for its players who must defect from the nation if they wish to compete in the United States. See Rachel D. Solomon, *Cuban Baseball Players, the Unlucky Ones*:

Finally, and most importantly, a player-rental system will benefit international baseball players. They will have more negotiating rights, their interests will be protected, and they will still be able to play professionally in the United States. In general, many concerns surrounding the exploitative nature of international recruitment will be redirected towards improving and enforcing the player-rental system. Players not immigrating to the United States will benefit from more successful leagues that have more talent on their rosters, and better conditions generally for the countries they reside in. The result will be a more ethical and socially responsible global game for future generations of players and fans.

Emily B. Ottenson *

United States-Cuban Professional Baseball Relations Should Be an Integral Part of the United States-Cuba Relationship, 10 J. INT'L BUS. & L. 153 (2011).

120. For a discussion on how baseball relations can help to improve political relationships between the United States and Cuba, *see id.* It should also be noted that Congress has in the past proposed legislation that would allow Cuban baseball players to circumvent the embargo, suggesting that a focus on relatively low-risk, non-political subjects such as sports can contribute to the improvement of contentious foreign relations by highlighting a goal that both countries share in common. Baseball Diplomacy Act, H.R. 262, 106th Cong. § 2 (1999).

* J.D. (2014), Washington University School of Law; B.A. (2008), University of Minnesota Twin Cities. Emily is currently an Assistant Attorney General in the Litigation Division of the Missouri Attorney General's Office, located in Jefferson City, Missouri.