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Governing Sports in the Global Era: A Political Economy of Major League Baseball and Its Stakeholders

MARK S. ROSENTRAUB

INTRODUCTION

The globalization of professional sports, such as Major League Baseball (MLB), raises anew the issue of how international associations, nation-states, and national sports leagues should or could share responsibilities for the management of a sport. Underpinning this issue is how sports governance systems represent the interests of club owners, players, fans, other affected businesses, and the public interest of different societies. Developing governance systems that include the varied interests of these diverse stakeholders has become more complex now that the leagues in separate nations are themselves developing linkages with international organizations created to govern specific sports. Even baseball leagues in North America and Europe are developing international marketing programs that create transnational relationships.

At the same time, international sports organizations exist for virtually every sport, and the governance of the world of sports has become exceedingly complex in the global era. For example, the Fédération Internationale de Football Association (FIFA) is the international governing body for world soccer. FIFA is responsible for regulating the elite domestic soccer leagues in England, Italy, Spain, and Germany, each of which markets team products internationally and in countries where they do not have teams. Unlike the baseball and hockey leagues in North America, the English Premiership and the first-division national leagues of Italy, Spain, and Germany do not have teams in other countries. Each of these elite soccer

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1. For more information on FIFA, see http://www.fifa.com (last modified Nov. 14, 2000).
2. This may change if two of Scotland's soccer teams join the English Premiership League in the not-too-distant future.

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leagues, however, televises games in many different countries in Europe, the Middle East, and North America. The marketing of teams and games in other nations may affect the viability of domestic leagues. The presence of leagues in other nations raises the competition level for fans, players, and media.

The situation is even more complex and intriguing for North American professional sports leagues. 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. Yet, MLB, NBA, and NHL are sports associations that bridge only two countries in North America. In an organizational chart of world sports, these associations would rank below international baseball, basketball, and hockey associations. FIFA organizes international competitions to crown the best national team (World Cup) and the best overall team (Club Championships), but which organization—MLB or the international baseball association—should have control over a true world championship? To establish such a championship, whose schedules should conform to the others, whose rules should be followed, and which league or organization should have final control over resources or other organizational elements?

These questions are but a subset of the larger question that I answer in this Article. As sports leagues continue to seek global markets for players and fans, what is the best form of governance to protect the interests of all stakeholders in the operation and organization of the sports? Global sports are now regulated by a “crazy quilt” map of governance associations: the International Olympic Committee, numerous world sports associations, transnational and national sport leagues, and various State actors each trying to control or affect some aspects of sports. Does this fragmented and overlapping system of governance represent the interests of all stakeholders? How could or should the governance of sports be organized to represent the interests of club owners, players, fans, and national, regional and local

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3. The National Football League (NFL) does operate a European League, but the game of American football is not played in other countries to the same extent or at the same level as basketball, hockey, or baseball. In that sense, basketball, hockey, and baseball are truly international games with independent leagues in other nations. American football has a limited following in other countries, but no indigenous leagues outside of the NFL and its European subsidiary exist.
In Part I of this Article, I discuss the appropriateness of a global governance system for world sports and baseball by analyzing the role of sports in societies. In Part II, I identify sports stakeholders and their interests. In Part III, I present and discuss a theoretical approach for governing a global sport. In Part IV, I examine different models of governance and the strengths and weaknesses of these models in connection with MLB. In the Conclusion, I offer some final thoughts about the future of global governance for baseball and other global sports.

I. GOVERNING SPORTS: WHY IS THIS AN ISSUE?

The question of how sports should be governed might appear misplaced or irrelevant to some. After all, sports are entertainment and a diversion from the more tedious elements of life. Does this form of entertainment deserve special consideration? Should we analyze the level of control different groups have over the management, business, and economics of sports? Are these questions that are best left to markets, fans, and sports organizers to answer? Sports are, however, much more than a diversion. Sports warrant a higher level of discussion because of the important role they play in many societies.

Sports are but a very small fraction of the global economy or even the economy of any major city, but they have been and remain fundamental components of life in many societies. Large-scale sporting events in the Western world began as celebrations, such as the Olympics in ancient Greece. The Romans established professional sports through training academies for gladiators, the sale and trading of combatants to and between different families, and awarding substantial benefits—including freedom from slavery—to the most successful gladiators.4 Sporting events were part of the festivals of some of North and Central American peoples long before the arrival of the Europeans. In addition, Islamic and Asian societies also have a history of sports as celebrations that are integral to their cultures.5 Within certain societies, sports have been used as entertainment to occupy the attention of the

5. See generally, JAMES A. MICHENER, SPORTS IN AMERICA (1976).
working class. Nevertheless, there is ample evidence that sports are far more than a diversion to keep the masses entertained and docile.

Do these examples of sports in different societies establish sports as an institution deserving of global governance, or can the regulation of sports be left to individuals and markets? We first must agree that sports are a defining element of society and not merely a pleasurable diversion. If sports are not a critical element of society, then there may be little reason to suggest that other constituencies should be involved in any governance plan or that the interests of individuals should in any way be curtailed to satisfy the interests of other constituencies. If sports are a critical element of society, then to create such a governance system requires a balance between private control and the right to pursue economic self-interest.

The influence of sports affects religious and civic celebrations, social organizations, politics, and language. Specifically, religion and sports have been tied together through ancient festivals and the benedictions or prayers that are part of some athletic events in the modern era. The Hippodrome that was built adjacent to the Aya Sofya (Hagia Sofia) and the Blue Mosque in Istanbul is another example of sports and religion intermixing. Civic holiday celebrations in the United States, of course, involve sporting events. Special athletic events mark Independence Day (baseball), Memorial Day (auto racing), Labor Day (tennis), New Year's Day (football), and the celebration of the life of important leaders (Martin Luther King, George Washington, and Abraham Lincoln). Major sporting events such as the Super Bowl, the Indianapolis 500, and others frequently unify patriotic themes (e.g., the singing of the national anthem, the use of military aircraft) with the staging of the event.

Sports have also been used to underscore the supremacy of different political systems. The last few decades have seen different Olympic Games used to make various political statements, and emerging nations continue to seek athletic events as tools of modernization. The bid by the Chinese to host

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8. Chichén Itzá, located in Mexico's Yucatan Peninsula, was built to host an annual event that involved games and sacrifices to a deity.
the 2000 Olympics affirmed this point, as does the quest by South Africa to be the site of the first World Cup championship to be held in Africa. Nazi Germany, East Germany, the Soviet Union, and the United States each used their hosting of the Olympic games to illustrate the benefits of each respective country.

Sports are also used to organize social life. In the United States, weekend high school, college, and professional football games, as well as European soccer matches, define the social calendars of millions of families. In fact, sports are so integral to social life that decades ago when the NFL did not televise sold-out homes games, the U.S. Congress first threatened, then passed, legislation to ensure that sold-out games would be telecast in local team markets. Although the provisions of that legislation have expired, the NFL continues to follow the law's guidelines rather than risk further congressional review.

Although sports can be shown to be a critical part of society, does this justify collective control over professional sports? After all, there is governance of myriad domestic sporting activities in every society and numerous levels of competition, including youth, collegiate, amateur, and professional. Are global sports sufficiently different to warrant global governance? The answer to this question can be found in the dominance of professional athletics as the apex of the sports stakeholder pyramid in all societies. While there is great interest in amateur and collegiate sports (especially in the United States), the most popular events are those involving professional teams. The most watched world sporting events, the World Cup and the Super Bowl, involve professional athletes and teams. The prominence of professional sports elevates these teams to a special position and raises questions about the most appropriate governance structures.

If one accepts that sports are important and even a critical or defining element for a society, the questions raised are: how does a society organize its system of sports, and how do nations participate or interact with international elements of different athletic systems? Recent events underscore the

importance of these questions. For example, the role of bribery and corruption in the awarding of the privilege to host Olympic games by the International Olympic Committee (IOC) has led to embarrassment and the convening of hearings and investigations by national and subnational governments in the United States and Australia. These hearings highlighted the extraordinary economic and political power of the IOC, which is but one organization that controls the destinies of global sports in the modern era.

The most striking example of the transnational power of a sports organization is MLB. The economic and cultural impact of MLB on Latin American countries, such as the Dominican Republic and Venezuela, is extensive. While there are Dominican Republic and Venezuelan professional baseball leagues, MLB dominates baseball life in these countries. 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.

Professional hockey is another example of the power of the nongovernmental organizations (NGOs) that control sports. The Canadian national pastime has become a victim of international economics. The governing body of hockey, the NHL, and member teams have issued demands for subsidies from the Canadian government to support Canadian teams. Canada has been threatened with the loss of some teams to larger markets in the United States if these demands are not met. At the same time, the NHL has not agreed to a revenue sharing program to protect the interests of smaller market teams, including several of the Canadian teams.

Sports that have a global reach are controlled largely by NGOs that span

14. For more on the difficulties facing Canadian sports teams in the global era, see Samuel R. Hill, Baseball in Canada, 8 IND. J. GLOBAL LEGAL STUD. 37 (2000).
subnational and national boundaries. The power of these organizations to affect tax systems, economic development, the lives of thousands of amateur and professional athletes, and billions of fans is just beginning to be understood. As the political strength and economic strength of these organizations expand, societies are learning that teams such as the New York Yankees, the St. Louis Rams, the Montreal Canadiens, Manchester United, AC Milan, and Real Madrid are not as important as the organizations that govern them. MLB, the IOC, FIFA, the NFL, the NHL, and the NBA are the new multinational enterprises of the twenty-first century. These organizations are reshaping individual societies; how these organizations affect and handle the interests of various constituencies is a critical public policy matter.

II. THE STAKEHOLDERS IN GLOBAL SPORTS

A. Direct and Indirect Stakeholders

Stakeholders in global sports can be divided into two groups: direct and indirect. Direct stakeholders are immediately involved with the operation of a global sports system. Five sets of direct stakeholders exist: team owners, players, fans who attend games, fans who enjoy the broadcast of the games, and those stakeholders that wish to use sports to achieve political or social objectives. The interests of each of these stakeholder are complex and can vary considerably within and between groups of stakeholders.

Indirect stakeholders are not necessarily immediately involved with the operation of a global sports system, though they still benefit from it. For example, the media are indirect stakeholders because they earn immense profits from sports through the broadcast of or writing about games, events, strategies, and sports personalities. Local economic actors, such as real estate developers, lawyers, investors, financiers, unions, and politicians, are also indirect stakeholders. These groups benefit from the construction of team playing facilities and the subsequent changes in real estate values, the costs of arranging financing programs and packages, the temporary increase in the number of construction jobs, and the opportunities to celebrate the opening of new facilities. These groups will each seek or support a particular form of a

15. See King, supra note 6.
governance system that they can influence to achieve their goals and increase their benefits. These groups also adopt strategies to influence and benefit from the existing governance structures.

B. The Fans

To identify these stakeholders and their interests, it is best to start at the base of a sports stakeholder pyramid (see Figure 1). At the base of this pyramid are the fans because spectators change sports from recreation to an event from which revenue can be generated. In the absence of fans, players engage in sports for personal development, the pleasure of competition or recreation, or for exercise. Instead of earning income, the players actually

![Figure 1: Sports Stakeholder Pyramid](image)

accept costs to play the game. These costs include field or court fees and equipment expenses. Once people desire to watch games, fees can be collected to offset the cost of production. If interest in watching games is sufficient, players might get paid to play. As interest in watching games increases, then players could be paid a sufficient salary to avoid other forms of work. The ability to earn a full-time salary from a sport provides players with additional time to enhance their skills and abilities and provides even greater value to the fans.

What are the interests of the fans? Their interests are to have access to the greatest number of competitive games involving the best players. The uncertainty of the outcome of the competition generates excitement. Uncertainty is maximized when teams or athletes of relatively equal levels of talent compete against each other. Fans, however, want to pay the lowest possible price to attend games. A “fair price” ensures that athletes will have the time to refine their skills rather than engage in other forms of labor. A fair price would also be driven through the establishment of teams and leagues (the supply side of sports) that equal the demand.

C. The Players

The players form the second tier of the sports stakeholder pyramid (see Figure 1). Players generally seek to balance their interests in earning the highest possible salary with the opportunity to secure a championship. In other words, players seek to maximize their salaries, but they will sometimes forego some income for the sake of playing for a championship team. The ultimate joy of competition is winning. This result could occur, for example, if a team needed one additional player with specific talent to win a championship, and to afford this player, others on the team had to settle for lower salaries.

D. The Team Owners

At the third tier in the sports stakeholder pyramid are club owners (see Figure 1). Why are these individuals needed at all if the players could organize their own teams? First, capital may be needed to build the athletic
facilities and provide equipment. Players, preoccupied with refining their skills, have insufficient capital, time, and managerial talent to cope with the business logistics of professional sports. Team owners manage the business affairs of a team, which allows players to concentrate on winning games. Second, a player may not be concerned with a team’s preservation after he can no longer perform. Owners, on the other hand, have a long-term economic interest in a team’s viability and work to ensure its continuity.

Team owners, like players, are profit maximizers who, nevertheless, may be willing to sacrifice some profit to win a championship. For the most part, however, owners want to minimize costs, pay players as little as they can, and charge fans the highest ticket fees possible. Owners are also interested in maximizing revenues from all sources of income, including the sale of souvenirs, advertising, and concessions. Owners are also interested in sovereignty over a particular market area. In other words, owners do not want other teams from the same sport in their area competing for fans. The formation of leagues helps achieve this end.

Some owners purchase sports franchises to indulge their competitiveness and win championships. These owners may or may not be prepared to lose money to reach their goal. Profits are secondary to championships. In addition, these owners typically have other sources of income or business interests that generate their wealth, which permits them to concentrate on championships, even if maximum profits cannot be earned. These individuals may not require the same level of control over every aspect of the game and may be willing to accept conjoint forms of control of their sport. A third type of owner purchases a sports team out of commitment to a particular community. Like the philanthropist that donates money for a symphony, art museum, or ballet, a team owner can endow a team so that it remains a vital part of a community. These three groups of owners will have different needs to control elements of the sports business. Profit maximizers will seek the greatest possible control, whereas philanthropists will be most comfortable with conjoint systems. This typology of owners illustrates that within any group there may be diverging interests.
E. Sports Leagues

Leagues form the fourth tier in the sports stakeholder pyramid (see Figure 1). These associations of owners are formed for three basic reasons. First, leagues exist to regularize competition along agreed rules. Second, leagues exist to ensure that teams will have other teams to play. Sports are unlike any other business in that, to be successful, a team or athlete requires the existence of other teams and athletes. While most other businesses can survive as the only one in their industry, a team requires another team to play games, and for a league to be truly successful there must be several teams to ensure variety. Sports leagues provide this framework.

Third, the existence of a league also permits the establishment of market areas where each owner can be assured that no other team will be permitted to play. In this way, leagues establish monopoly areas. To protect this monopoly position, all team owners agree that their teams will only play games against teams in their league. This arrangement deters independent investors from establishing teams because they would have to find other teams to play. What are the stakeholder interests of leagues? The interests of leagues are to ensure that each team maximizes profitability, and that there is an adequate supply of playing talent and fans. Extending league influence into other markets is also a priority because this can enhance profits. League expansion can involve marketing efforts in other countries. If there are several leagues, however, each will want to enter the market of another, and an international organization may be needed to regulate the action among leagues and across boundaries.

F. International Sports Organizations

International sports organizations comprise the apex of the sports stakeholder pyramid (see Figure 1). Within this tier there are divisions. For example, FIFA is a powerful governing body exercising leadership and some level of political power and control over the member nation leagues. The international basketball, baseball, and hockey associations, however, have less power and prestige relative to the North American sports leagues. Although the NBA has agreed to participate in a basketball world championship, no
such "world cup" exists for hockey or baseball.

At the other end of the spectrum is the most powerful international sports organization, the IOC. As the IOC has added more and more sports and sought to include the best professional and amateur athletes in the world, conflict exists between it and other international organizations and national leagues. For example, while baseball is part of the Olympics, MLB has yet to sanction the inclusion of major league players (the Major League Baseball Players Association (MLBPA) would have to agree). Instead, MLB has begun its own globalization of baseball by staging exhibition and regular season games in different countries, including Japan, Mexico, Venezuela, and the Dominican Republic. FIFA and the IOC have a tenuous relationship because soccer is an Olympic sport, but IOC age restrictions limit participation in the men's division. It is also not clear if all players eligible for the Olympics would want to miss a portion of their season to play in the games.

III. GOVERNING SPORTS: A THEORETICAL APPROACH

How can or should a governance system be developed to vindicate the diverse interests of all the stakeholders in a given sport? Developing a set of options for systems to oversee the political economy of a global sport from a theoretical perspective involves two steps. First, without reference to the interests of any group in the sports stakeholder pyramid, alternative structures can be established. This step identifies the broad range of available options. Second, the implications of different governance structures must be analyzed under the rubric of various stakeholder interests if we are to understand the confluences and conflicts among those interests. Options should be discussed in terms of the operational models that have been used to analyze stakeholder concerns. Many different governance structures are already in use, and some of these may offer important insights into what should guide the future of a sport in the global economy.

A. A Typology of Governance Structures

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. These three governance structures form the horizontal axis of Figure 2, which constitutes a typology of sports governance components (see Figure 2). The three basic forms can be combined into numerous partnerships or sets of conjoint relationships with components retaining or sharing certain powers. As a result, in formulating a strategy for governing a sport, one can divide responsibilities among each of these components or assign the same powers to more than one component to maintain “checks and balances” over critical issues. In looking at the basic elements detailed in Figure 2, it should be remembered that the horizontal axis is limited to discrete governance forms for convenience of presentation, but the three elements identified could be mixed together into overlapping or shared jurisdictions.

1. Private-Market Governance

In the least complex form of organization, the governance of a sport could be completely vested in private individuals. This would permit owners and athletes to pursue their interests and allow fans and society to value sports through market transactions. This free market approach to sports would empower owners, players, and fans to pursue their respective self-interests. Leagues could be formed to permit championship schedules to be played among teams, with individual owners making all decisions regarding the number and location of franchises. Club owners would also be free to develop international marketing relationships.

In this model, there is no group decision-making; each owner decides how to develop players, how much to pay players, how to market their team, and how to manage all other elements related to success and profitability. New investors could enter markets that have existing teams, but other owners could decide not to play games against these teams. Players could also make all their own decisions regarding where they would play, and fans could decide whether to attend. Under this private-sector governance model, the only role for the public sector is to regulate the integrity of markets and monopolistic
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behavior. In essence, the public sector role would be to ensure that all elements of a free market exist.

2. Group Governance

Group control implies voluntary organizations that govern the business and economics of a sport. A group of owners, for example, could agree to establish a league with a commissioner and assign this individual certain powers. To protect their interests, the owners could also agree on a code of behavior or operating principles. For example, the owners could agree to establish territorial boundaries for each team, and these markets could be designated as the exclusive domains of teams. Any owner who moved a team into a market without the permission of all owners, or the owner most affected by the move, would be excluded from playing in the league. The players could also collectively bargain with the owners for better pay and benefits. Similarly, if a league involved itself with international markets or issues, the players might also have interests that should be represented.

Fans would be relegated to a market position, passing judgment on the actions of the governance group by choosing to attend games. Public sector activities would again be limited to enforcing market regulations. If the decision of one group violates antitrust and anticartel rules, a conflict could emerge. Assuming that the necessary conditions for group activity are met, however, the leagues could decide to limit the number of franchises available under this model. Such an action could influence the behavior of subnational governments that seek teams for local markets. As a group, the players would try to maximize their salary and retirement packages. Their interests could align with owners’ groups on limiting the number of franchises. An artificial scarcity of teams would elevate salaries for players and team revenue. If players were assured a percentage of revenue through contracts or free agency, then a reduction in the number of teams could be in their best interest. The four sports leagues in North America are examples of this form of organization.
3. Public-Federalist Governance

The third form of governance could involve three variations. First, the State could exercise complete control over the marketing and managing of a sport. Second, public-private partnerships could exist in which the public sector supplied the franchises and the location of teams, leaving all other responsibilities to private or group governance. Finally, under a true federalist model, some responsibilities would lie at the national level and others at a subnational level. Within this model, international concerns could involve the participation of state, regional, and local governments in multiple countries.

B. Sports Governance Decisions

The vertical axis of Figure 2 lists a sample of sports governance decisions that must be made for a sport to be played (see Figure 2). A list of actual decisions would be, of course, much longer. Although the grid lines in Figure 2 are clearly delineated, in practice decision-making can overlap between one or more governing groups that share responsibilities for certain elements. For example, franchises could be supplied by a group of owners organized into a league together with a players' union or the public sector. Responsibility for players' rules could be shared between owners and the players' union, or between the owners and that part of the public sector that regulates labor.

Each combination of decisions changes the ability of different governance groups to represent their stakeholders' interests exclusively. For example, a highly organized group of owners could minimize the sports governance role of players and the public sector. This "Fordist" approach to sports governance concentrates resources and power in the hands of franchise owners. A post-Fordist approach, however, would either maximize incomes and profits by leveling power-sharing between the owners of franchises and players, or provide a greater sharing of profits with the players while the owners would continue to retain control of the game's organization and operation. Under either of these scenarios, the public sector does not make key decisions, and fans are limited to "voting with their pocketbooks" when deciding whether to attend or watch games.
IV. GOVERNING THE GLOBALIZATION OF BASEBALL

In this section, I review the current governance structure of professional baseball. In addition, I analyze other global professional sports governance models that can be compared and contrasted to the options identified in Figure 2. Finally, I analyze the global economic future of professional baseball and the governance issues that will arise.

A. Major League Baseball and the North American Leagues: Unfettered Group Control

Today, professional baseball in North America is governed by a conjoint relationship between private groups, but power is not equally shared. Rather, there are domains (supply and location of franchises) reserved to the owners and shared authority with the players' union over employment (e.g., contracts, pay levels, free agency, revenue sharing, and arbitration). There is no organized representation of fans, and the public sector exercises little control over baseball. Subnational governments have only been able to pursue goals through litigation and negotiation from rather weak positions that are related to market size. 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.

Governments are beginning to consider how they can represent the public interest in the baseball governance system, but time-consuming political processes, together with resource imbalances between MLB and those with opposing interests, have not resulted in the evolution of conjoint authority. The Congress has never fully readdressed the Supreme Court's decision that MLB is exempt from U.S. antitrust laws. This ruling has negated the ability
of state and local governments to challenge MLB monopoly control over baseball.

Other major North American sports teams have governance structures similar to the MLB governance structures. By negotiating with players' unions, each league has formed a "group consensus" governance model. Although owners are more powerful, sufficient authority and benefits have been conferred to players to avoid labor strife. Of all of the North American sports teams, MLB has the worst record of labor disputes and may be on the brink of another confrontation. The NFL has achieved a remarkable state of relations with players, and the NBA has seemed to have satisfied basketball players with the recent agreements over salary and employment conditions. The four major team sports are examples of a "Group Control" governance model, with owners having a decisive control. Sufficient compromises with players on compensation and employment, however, have established high salaries for athletes and prevented work stoppages.

In these governance systems, fans have no real control over any specific management or economic decisions. Fans can demonstrate general dissatisfaction by not purchasing tickets or watching games. But given the long-term importance of sports to people's lives, this form of collective organization or response is rare, and when it does occur, it is too diffuse to register a specific complaint or to attract a large segment of supporters. The rare exception has been when some teams have moved from one area to another and organized fan protests supplemented by public action that has led to remedial action (e.g., Seattle and the Pilots/Mariners, Cleveland and the Browns/Ravens). 18

18. When teams move, there are varying levels of protest from fans and community leaders. In no fewer than two instances, the protests resulted in new teams being awarded to the cities as part of a negotiated end to any proposed lawsuits. Most recently, the public protests in Cleveland, when the Browns moved to Baltimore, led the NFL to award a new franchise to Cleveland within 30 working days of the announcement that the Browns were going to leave Cleveland. Cleveland's mayor led the protest, and together with the support of fans and other elected officials, the various legal challenges to the move were settled with the award of a franchise for a new Cleveland Browns team. The city of Seattle and King County also challenged the move of the Pilots to Milwaukee (Brewers). Their legal action against MLB, coupled with fan protests, led to the creation of the Seattle Mariners.
Public sector involvement has largely been limited to facilitating the goals of the groups controlling sports, not in devising systems to pursue the public’s interests. At the national level, laws permitting antimarket behavior have been molded to fit the needs of different leagues (e.g., the 1961 Sports Broadcast Act, approving mergers, failing to object to mergers, and needed tax provisions). In this regard, the national government has facilitated group control, limited competition, and protected the wealth and power of this governance system while seeking very limited authority to participate in the governance of sports or the economics of the four leagues. State and local governments, fearing a captive environment in which many communities compete for an artificially controlled supply of teams, contribute to the group-control process by providing their own set of incentives. Over the past decades, state, provincial, and local governments have provided or secured tax subsidies, profit guarantees, reduced rate loans, and land without seeking at any level to govern the sports benefitted by such public action.

B. Alternative Models: The State and the Nonprofit Sector

There are, of course, other models used to govern different sports in the United States and elsewhere. For example, the model of U.S. collegiate sports involves joint 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. States are free

19. Congress has passed two important pieces of legislation that the NFL requested in order to improve its business environment. First, Congress pass the 1961 Sports Broadcast Act, which helped create the current large-scale media contracts for all the of the sports leagues. Second, Congress passed the Sports Merger Act in 1966 that enabled the NFL to merge with the AFL. That legislation also guided the judicial approval of the merger of the NBA with the ABA. These mergers, as well as the 1961 Sports Broadcast Act, increased the market control of the leagues. See Mark S. Rosentraub, Are Public Policies Needed to Level the Playing Field Between Cities and Teams?, 21 J. URB. AFF. 377, 391-92 (1999).

20. See id. at 378.


to create as many sports programs as they wish through the establishment of colleges and the dedication of the necessary resources to Division I, II, or III programs. Similarly, a state can have numerous private colleges and universities, and each of these can become Division I, II, or III sports competitors in the NCAA. Under the collegiate sports governance system, one group—the NCAA—controls vital elements of the governance system. At various levels of competition, this cartel establishes requirements to protect the economic interests of the most profitable college programs. Yet, the public sector has immense and important conjoint powers; if it wishes to spend sufficient revenues, it can assist the efforts of a university to join the NCAA elite levels. Such public efforts are, however, subject to NCAA oversight and sanctions for activities that violate NCAA rules. This model with its modest sharing of controls has not retarded the economic clout of the industry, notwithstanding the reports of the fiscal losses of individual programs.²³ It is clear, however, that the ability of the public sector to create NCAA Division I teams is far more extensive than public sector authority to create professional sports teams.

C. Alternative Models: Public Sector, Individual Control, and NGOs in Soccer

Although FIFA wields enormous power and control over the $300 billion industry of world soccer,²⁴ individual nation-states can and do control the supply and location of franchises. For example, in Italy investors can create new franchises to attract the best players. Although the new team will be assigned to the lowest level or league, if it dominates its league, it will ascend to the next highest division. In this way, a new team could move into the premier league after a few winning seasons. The movement between leagues is a result of relegation, because the two least successful teams in the highest league are relegated to the lower league, and the two most successful from the lower league ascend to the higher rank. Most important for the interests of

fans and society, the supply and location of franchises are not controlled by
the leagues or football clubs. In some nations, investors can pursue their
investment objectives and join the existing league structure. This has not
inhibited the financial success of international soccer. The most valued
franchise in team sports is now Manchester United, and gross revenues for
international soccer exceed that of every North American-based team sport.25

In North America, while the existing leagues control the supply and
location of teams, investors can create new leagues. While many of these
ventures have failed, some were successful and eventually merged with the
dominant league. For example, the American League merged with the
National League to form MLB in 1903, the American Football League merged
with the NFL in 1966, four teams from the American Basketball Association
merged with the NBA in 1976, and four teams from the World Hockey
Association joined the NHL in 1979. As a result, some believe that the
monopoly or cartel control of sports by the dominant leagues is not a problem.
The increasing size of the leagues, however, and the domination of the central
sources of revenue now calls into question the possibility of forming new
leagues. Indeed, recent competitive leagues, such as the United States
Football League, have failed and other investors have decided not to create
new leagues.26

D. Restoring Baseball Governance

Several issues are potential items for deliberations regarding the
governance of baseball in the global economy (see Figure 2). For example,
in terms of the supply and location of franchises in the United States and
Canada, control over the creation of teams has been vested in MLB. This
outcome has led to an shortage of teams in the largest markets. In addition,
several communities that want teams have been denied an MLB franchise.27

47. ("BSkyB's original bid for Manchester United in August 1998 valued Man U at $810 million at the
current exchange rate of $1.42 for every pound. (It's now almost $1.2 billion on the stock market.)")
26. In 2000, Turner Broadcasting/Time Warner abandoned an effort to create a new football league,
and in 1995 discussions to create a new baseball league with teams owned by investors, players, and their
host communities did not lead to the development of a new league.
27. See G. S. Thomas, Norfolk Primed for the Pros, STREET & SMITH'S SPORTS BUS. J., Jan. 11-17,
1999, at 1.
To this end, the interests of fans and the public sector may not have been adequately represented by the existing governance structure. Conjoint authority between a league and the public sector to regulate the number of teams may better vindicate the interests of several stakeholders.

Related to the topic of team shortages is the extent to which MLB revenues should be shared to ensure competitiveness. If there is no agreement to share revenues between teams or to expand the number of teams in larger market areas, then those teams able to restrict access to the largest and most profitable regions will, over time, have a greater ability to attract and retain the best players. There have been repeated calls for more revenue sharing, but to date no changes have been implemented. Such an outcome could conflict with the goals for communities or the public sector, creating another set of conflicts. Conjoint governance systems empowering the public sector to implement competitive market conditions or to ensure market balance would be desirable.

Player development is another topic that spans international boundaries and the interests of society, existing teams, and current and future players. For example, should MLB teams be permitted to operate baseball camps for potential players in Latin American countries and then be permitted to sign these players before they graduate high school? When does participation in such baseball camps become “work” that has to be regulated by government authorities? What responsibilities, if any, exist for society or the public sector to oversee the development and signing of very young players? Again, several stakeholders have interests here, including existing players who may fear the inclusion of younger athletes from foreign countries on teams to reduce an owner’s labor costs. Moreover, these issues raised by MLB foreign activities demonstrate that several different constituencies are affected, and suggest a conjoint model of decision-making might be better able to represent different stakeholders than the current system, which emphasizes control by a single group.

MLB as an economic institution will continue to look for opportunities to expand global baseball markets and MLB presence in other countries. The future of baseball will include the involvement of more foreign-born players, and this dynamic will create incentives for MLB teams to find more talent in developing or under-developed nations. Within the next twenty years, it is foreseeable that additional MLB franchises will be developed in other countries, including Asia and Latin America, and that these teams will play against the North American champions in a baseball "World Cup." Greater international competition between teams in the professional leagues of different nations may also evolve, and the role of baseball as an Olympic sport involving the best professional players from baseball-playing nations could also emerge. The expanding success of professional sports for women suggests that MLB should consider a structure similar to the one the NBA used to develop its Women's National Basketball Association.

How can or should the various constituencies affected by this globalization and economic expansion of baseball be represented in the economic and business affairs of the sport? Within the next two years MLB and the MLBPA will again confront one another on governance issues and the compensation of athletes. Revenue sharing among large and small market teams will also be part of this negotiation. At the first level, then, governance issues within the sport will again be confined to the two dominant groups—owners and players.

Lost within this calculus are the interests of other constituencies, including fans, and other nations and societies. If these interests are to be represented by the structure that emerges to govern the internationalized economy of MLB, then it is appropriate for governments to insist that some forms of conjoint control be explored. It would indeed be easiest to think about a pure economic or market-based approach to the governance of baseball. This would mean free entry into MLB for new investors and the creation of more teams in the largest markets and markets that MLB has refused to enter. The political reality of the North American experience is that leagues formed by groups of owners are able to effectuate outcomes that restrain free market systems; as such, there is little basis to suspect that MLB
will adopt or be forced to adopt a market-based approach in the current political environment. The league and the players are too powerful and Congress too unwilling for a market structure for MLB to develop such an approach. In addition, some nations in which MLB influence and markets will expand are more comfortable with a larger role for society and government compared to a public sector approach to ensuring competitive markets.

The mere recommendation that conjoint governance systems should represent the interests of all stakeholders does not mean these systems will evolve without careful planning and attention to the concerns that are central to all constituencies. One might be left to conclude that lasting change will occur only through legal challenges to elements of the MLB governance structure. If evidence is presented that MLB recruitment or signing of foreign athletes violates elements of labor law in the United States and elsewhere, the adjudicated outcomes must include conjoint governance systems. If it is accepted that the existing baseball governance structure harms consumers by MLB control of the supply of franchises, then the settlement should include greater formal roles for the public sector in the governance of baseball.

With this information, it is now time to ask how sports NGOs should govern sports in developing international markets and what the appropriate roles for all constituents is. Countries must require that the governance structures of global NGOs, such as MLB, include governments and other constituencies. Alternatively, countries must require that these NGOs represent the public's interests. North American sports leagues, including MLB, have a weak record of achieving such objectives. Indeed, actions by the leagues have led to higher taxes and fewer franchises, resulting in higher prices and costs for fans. Economic trends such as these are magnified in a global economy; the difficult and complex task ahead for baseball in developing a global governance structure should not be underestimated. Nevertheless, whatever strategy is adopted, it must represent the interests of all stakeholders.

29. For arguments that MLB practices in Venezuela violate Venezuelan labor and other laws, see Vargas, supra note 13, at 28–32. For arguments that MLB practices in Latin America violate international human rights and labor laws, see Marciano & Fidler, supra note 13, at 551.
30. See Rosentraub, supra note 19, at 381-82.