

THE DEMISE OF THE AFRICAN AMERICAN BASEBALL PLAYER

by
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Recently alarms were raised in the sports world over the revelation that baseball player agent Scott Boras and other American investors were providing large loans to young baseball players in the Dominican Republic. Although this practice does not violate any restrictions imposed by Major League Baseball or the MLB Players Association, many commentators have termed this funding practice of dubious ethical merit and at bottom exploitative. Yet it is difficult to distinguish exploitation from empowerment. Refusing to lend money to young Dominican players reduces the money invested in athletes. The rules of baseball and the requirements of amateurism preclude similar loans to American-born baseball players. Young ballplayers unlucky enough to be born in the United States cannot borrow their training expenses against their future earning potential. The same limitations apply in similar forms to athletes in other sports, yet baseball presents some unique problems. Success at the professional level in baseball involves a great deal of skill, attention to detail, and supervised training over a long period of time. Players from impoverished financial backgrounds, including predominately the African American baseball player, have been priced out of the game.

American athletes in sports that, like baseball, require a significant commitment of money over time have not been able to fund their apprenticeships through self-generated lending markets. One notable example of self-generated funding is in the sport of golf. To fund their career goals, American golfers raise money through a combination of debt and equity financing. They sell "shares" of their future earnings in exchange for or as collateral for investments and loans. Unlike young golfers, U.S.-born baseball players cannot avail themselves of risk-capital to fund their increasingly expensive development. If U.S.-born baseball players could borrow against their "sports capital" as do players from outside the country, then baseball's increasing dearth of African American players would likely be ameliorated.

The restrictions that Major League Baseball and the NCAA impose on U.S.-born players effectively diminish the supply of minority players. For those baseball players who would turn professional, Major League Baseball precludes American players from becoming professionals until they are age-eligible and are drafted or signed after the draft. As a result, American-born ballplayers must delay their professional careers, and may only negotiate with one team when they begin it. These rules lower the compensation for novice professionals. An American-born baseball player will typically earn a very small fraction of the million-dollar signing

bonus frequently paid to Dominican players, and will have to wait two to five additional years for that bonus. Thus the rules of baseball combine to raise the cost of entering the occupation. The result is that U.S.-born minorities are disappearing from the major leagues. The fact that Dominican players are receiving direct funding from American interests will only further promote the Dominican player and further disadvantage the American one.

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I. INTRODUCTION

It is a common perception that professional athletes declare bankruptcy or otherwise find financial trouble at an alarming rate.¹ Of course, it is difficult to understand how a person who commands so much salary over a comparatively brief period can ever go broke.² Yet the common

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¹ Professional athletes who have lost a substantial net worth earned during their playing days include former National Football League (NFL) defensive end Lawrence Taylor (lost an estimated \$50 million during a period in which he was arrested several times for drug possession); former National Basketball Association (NBA) player Antoine Walker (reportedly lost over \$110 million in real estate investments); and former Major League Baseball (MLB) pitcher Curt Schilling (lost \$50 million on a failed video game venture). Tony Manfred, *21 Ways Professional Athletes Go Broke*, BUS. INSIDER (Mar. 8, 2013), <http://www.businessinsider.in/sports/21-Ways-Professional-Athletes-Go-Broke/slideshow/21277118.cms>.

² Between 2003 and 2011, an MLB player's average salary increased from \$2,372,189 to \$3,095,183, while an NBA player's average salary rose from \$4,500,000 to \$5,150,000. Steve Aschburner, *NBA's 'Average Salary' - \$5.15 M - a Trendy, Touchy Subject*, NBA.COM (Aug. 19, 2011), http://www.nba.com/2011/news/features/steve_aschburner/08/19/average-salary/index.html; *Average Salary Hits Record \$3.2M*, ESPN (Dec. 7, 2012), http://espn.go.com/mlb/story/_/id/8724285/mlb-average-salary-38-percent-32-million; *Salaries by the Numbers*, USA TODAY (Mar. 18, 2003), <http://usatoday30.usatoday.com/sports/basketball/nba/2002-2003-nba-salaries-numbers.htm>. Income for the highest-paid athletes have also increased significantly: Mike Tyson was the top earning athlete in 1990 at \$28.6 million; for the period between June 2012 and June 2013 that distinction goes to Tiger Woods, who earned \$78.1 million (Tyson's \$28.6 million would put him 25th on that list). Kurt Badenhausen, *The World's Highest-Paid Athletes 2013: Behind the Numbers*, FORBES (June 5, 2013), <http://www.forbes.com/sites/kurtbadenhausen/2013/06/05/the-worlds-highest-paid-athletes-2013-behind-the-numbers/>.

perception should be tested. No published evidence establishes that professional athletes do in fact declare bankruptcy at a higher rate than other similarly situated persons.³ Anecdotal evidence suggests they do not. Entertainers, lottery winners, musicians and other rags-to-riches persons also are reputed to go bankrupt in situations where such a fate appears inexplicable.⁴ Thus the common premise that professional athletes are unusually susceptible to financial trouble remains contestable. Apparently many people who receive outsized salaries over a compressed period can squander their assets in short order, whether they are professional athletes or not.

Nonetheless, focusing on the financial and bankruptcy problems as they apply to professional athletes, I wish to explore the other side of the equation. When professional athletes spend more than they earn, one cause of the difficulty, apart from bad spending habits, may be insufficient salaries. Athletes may not earn enough money to sustain a lifestyle that their celebrity and personal needs appear to require.⁵ A career in professional sports requires a long period of training, apprenticeship, and achievement, starting in youth sports.⁶ It also, as a practical matter,

³ *But see* Pablo S. Torre, *How (and Why) Athletes Go Broke*, SPORTS ILLUSTRATED, Mar. 23, 2009, at 90, 92.

⁴ Celebrities who have reportedly faced financial problems include actor Chris Tucker (a 2011 foreclosure on his Florida home and an \$11.5 million dollar IRS lien), singer Toni Braxton (filed for bankruptcy in 1998 and 2010), and singer MC Hammer (filed for Chapter 11 bankruptcy in 2006). Keertana Sastry, *From Bank to Broke: 20 Celebs Who TANKED Their Fortunes*, BUS. INSIDER (May 11, 2012), <http://www.businessinsider.com/from-bank-to-broke-here-are-20-celebs-who-went-bankrupt-2012-5?op=1>. In 1990, Rhoda Toth won a \$13 million Florida jackpot; 18 years later she was indicted for tax invasion and had filed for bankruptcy twice. Thomas Kaplan, *Lotto Winner Goes to Prison for Tax Evasion*, TAMPA BAY TIMES (Aug. 8, 2008), <http://www.tampabay.com/news/courts/criminal/lotto-winner-goes-to-prison-for-tax-evasion/764173>.

⁵ Take for example the NFL, where—although the average salary in 2011 was \$1.9 million—the median salary was \$770,000; and where the average player can expect his career to last less than four years. *The Average NFL Player*, BLOOMBERG BUSINESSWEEK (Jan. 27, 2011), http://www.businessweek.com/magazine/content/11_06/b4214058615722.htm. When income taxes and agent fees are combined with what players spend on health and training costs to stay on the field, it suddenly becomes apparent why even professional athletes can find themselves in the midst of financial difficulty. *See, e.g.*, Tony Nitti, *NFL Linebacker James Harrison Spends More on Massage Than You Did on Your House. But Can He Deduct It?*, FORBES (May 16, 2013), <http://www.forbes.com/sites/anthonyнити/2013/05/16/nfl-linebacker-james-harrison-spends-more-on-massage-than-you-did-on-your-house-but-can-he-deduct-it/>.

⁶ In 2013, only 7 of the top 50 money winners on the PGA tour were 26 or younger, *PGA Tour Statistics 2013*, ESPN.COM, http://espn.go.com/golf/statistics/_/year/2013, while the average age on MLB rosters ranged from 26 to 30.1 years old. *Major League Rosters*, ESPN.COM (Oct. 8, 2013), <https://web.archive.org/web/20131008124129/http://espn.go.com/mlb/stats/rosters> (accessed by searching for “espn.go.com/mlb/stats/rosters” in the Internet Archive index). Thus, the average professional golfer or baseball player will not make a significant impact (and correspondingly earn a significant salary) in his sport until nearly a decade after he graduates from high school.

requires the prospective athlete to ignore or bypass alternative career training, owing to the huge demands of competitive sports and the intense competition for professional roster positions and higher salaries.⁷ Yet the years of professional compensation are typically short, as professional careers on average last fewer than five years in most team sports, especially contact ones.⁸ In these few years the athlete must earn enough to cover any outstanding indebtedness from his or her training years, along with supporting his current expenditures and those into the foreseeable future, given that he has not been able to train himself for an alternate career.⁹ The financial stresses on all but the highest-paid professional stars are obvious and substantial. That a noticeable percentage of these athletes experiences financial trouble does not surprise.

The under-compensation of professional athletes has other adverse consequences besides bankruptcy. Some sports are particularly expensive to master and exploit financially at the professional level. Professional golf, for example, is notable along several dimensions, including its prohibitive training costs and its paucity of African American players.¹⁰ These two features of the game are not unrelated: golf essentially requires novice players to undertake significant training expenditures, and such costs render participation by the comparatively poor problematic.¹¹ Sports with

⁷ The following are the odds of a high school athlete playing his sport at the professional level: basketball .03%; football .08%; baseball .50%. *Probability of Competing Beyond High School*, NAT'L COLLEGIATE ATHLETIC ASS'N (Sept., 2013), <http://www.ncaa.org/about/resources/research/probability-competing-beyond-high-school>.

⁸ The average NFL career lasts 3.5 years, *The Average NFL Player*, *supra* note 5, while professional baseball players who are fortunate enough make it to the major leagues have an average career of only 5.6 years, William D. Witnauer et. al., *Major League Baseball Career Length in the 20th Century*, 26 POPULATION RES. & POL'Y REV. 371, 380 (2007).

⁹ In 2009, a survey found that only 26 players in all of MLB (including managers) had a college degree. Jason Turbow, *The Count: Who Has the Brainiest Team in Baseball?*, WALL ST. J., Jun. 16, 2009, at D16. Taking into account that there are 30 teams with 25 active players and one manager per roster, this amounts to about 3.3%. *MLB Official Info.*, MLB.COM, http://mlb.com/mlb/official_info/about_mlb/rules_regulations.jsp.

¹⁰ In 2010, it was estimated that of the nearly 1,200 golfers on the six main professional tours, only eight were African American. Brian Gomez, *Special Report: 'Tiger Effect' Hasn't Changed Look of Golf*, COLO. SPRINGS GAZETTE (June 19, 2010), <http://gazette.com/special-report-tiger-effect-hasnt-changed-look-of-golf/article/100520>. In 2011, Joseph Bramlett, who spent his collegiate career at Stanford, became the first African American player to earn PGA tour playing privileges since Tiger Woods turned professional in 1996. *Timeline of African-American Achievements in Golf*, PGA.COM, <http://www.pga.com/timeline-african-american-achievements-in-golf>. Tiger Woods was the only African American golfer on the PGA Tour in 2013, and was the 2013 PGA Tour Player of the Year. Ray McNulty, *Tiger Woods Notices Lack of Black Golfers*, CHICAGO SUN-TIMES.COM (May 13, 2013) <http://www.suntimes.com/sports/golf/20084448-419/tiger-woods-notices-lack-of-black-golfers.html>; *Tiger Woods Is Player of the Year Again*, ESPN (Sept. 27, 2013), http://espn.go.com/golf/story/_/id/9730379/tiger-woods-voted-pga-tour-player-year.

¹¹ Golf participation in the United States correlates with household income. In 2011, individuals who lived in households with an income over \$125,000 were four times as

cheaper training costs, or where costs are borne in part by public agencies, such as football or basketball, attract large numbers of minority participants.¹²

Major League Baseball provides the litmus test. Late last year alarms were raised in the sports world over the revelation that baseball player agent Scott Boras was providing very large loans to young baseball players in the Dominican Republic.¹³ It turns out other groups of American investors, allied with player agents, are also making a business out of investing in young Dominican players.¹⁴ Although this practice does not violate any restrictions imposed by Major League Baseball¹⁵ or the MLB Players Association, commentators have termed this funding practice of dubious ethical merit and at bottom exploitative.¹⁶ Yet it is difficult to distinguish

likely to play at least one round of golf as those who lived in households with an income less than \$30,000, and over 58% of all golfers who played at least one round of golf lived in a household with an income over \$75,000. *NGF Releases 2011 Golf Participation Report*, NATIONAL GOLF FOUNDATION (June 2011), http://www.clubnewsmaker.net/ngfdashboard/www.clubnewsmaker.net/ngfdashboard/e_article002115274beb7.html?x=bjjcTmb,bk3Ng3L2,w.

¹² The following represents the 2009–10 participation percentage of African American athletes in National Collegiate Athletic Association (“NCAA”) sports (taking into account all three divisions): men’s basketball 45.6%; women’s basketball 32.8%; football 34.5%. Compare these numbers with the 4.1% African American participation rate in baseball. *African-Americans Gain First Majority in Division I Football*, NAT’L COLLEGIATE ATHLETIC ASS’N (Dec. 8, 2010), <https://web.archive.org/web/20131001144016/http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/December/African+Americans+gain+first+majority+in+Division+I+football> (accessed by searching old URL on the Internet Archive Index).

¹³ Agent Scott Boras admitted that between 2007 and 2009 he loaned an estimated \$70,000 to Dominican prospect Edward Salcedo. Boras contends that because Salcedo was already a client when he made the loans, he did not violate Major League Baseball Players’ Association regulations that prohibit an agent from providing money to a player to induce the player to use the agent’s services. *Report: Scott Boras’ Firm Made Loans*, ESPN (Nov. 23, 2010), <http://sports.espn.go.com/mlb/news/story?id=5841634>.

¹⁴ Those investing in the future of young Dominican baseball players range from hedge fund managers and real estate lawyers, to former players and a former United States ambassador to the Dominican Republic. These investors fund academies where players as young as 13 train year-round, and in return, the investors are promised as much as 50% of a player’s future signing bonus. By comparison, agents in the United States typically receive around 5%. Michael S. Schmidt, *New Exotic Investment: Latin Baseball Futures*, N.Y. TIMES, Nov. 18, 2010, at A1.

¹⁵ In response to this perceived impropriety, MLB has recently instituted compensation limits that teams may direct at foreign-born players. The limits are based on winning percentage: teams that finished with the lowest winning percentage from the previous season will have the highest caps. However, reports of large international signing bonuses will still surface, because the new rules exempt the signing of certain international players who already play in professional leagues (such as those in Japan and Cuba). Jonathan Mayo, *Game of Signing International Talent to Change*, MLB.COM (Dec. 2, 2011), http://mlb.com/news/article.jsp?ymd=20111201&content_id=26069652&c_id=mlb.

¹⁶ See Schmidt, *supra* note 14, at A13. It is argued that the loans made from an agent to a player can give an agent too much leverage, giving the agent the ability to

exploitation from empowerment. Refusing to lend money to young Dominican players reduces the money invested in athletes. Sports are not free. When wealthy Americans issue “micro-loans” to fund the hopes and dreams of young, impoverished Dominicans, they make possible potentially lucrative professional baseball careers.

The rules of baseball and the requirements of amateurism preclude similar loans to American-born baseball players.¹⁷ Young ballplayers born in the United States cannot borrow their training expenses against their future earning potential.¹⁸ The same limitations apply in similar forms to athletes in other sports, yet baseball presents some unique problems that distinguish it from the other major American sports, namely football and basketball. All three sports require unusual athleticism, of course, but success at the professional level in baseball also involves a great deal of skill, attention to detail, and supervised training over a long period of time.¹⁹ In the United States, serious young baseball players play year-round. They attend baseball camps and academies, play on private travel teams, and enter themselves in expensive “showcase” events to expose their skills to scouts at the next level, be it selected regional all-star teams at the youth level, special off-season high-school age travel squads, college programs, and of course the pro level.²⁰ A significant financial ex-

control the player and make the player feel as though he cannot leave the agent. These fears may be more than speculative. After agent Scott Boras made loans to Dominican prospect Edward Salcedo, Edward temporarily left Boras to sign with a new agent. Edward’s brother Thommy Salcedo claims that Edward then left that agent and resigned with Boras as a result of a Boras employee’s demands to repay the loans. Michael S. Schmidt, *Agent’s Loans to Poor Players Pose Concerns*, N.Y. TIMES, Nov. 23, 2010, at A1, A3.

¹⁷ For an athlete to remain eligible to play collegiate sports, he must comply with NCAA Bylaw 12 (“Amateurism”). Under 12.1.2(a), an athlete loses his intercollegiate eligibility for a sport if he uses his athletic skill for pay in that sport; and, under 12.1.2.1.6, pay includes a benefit given because of an athlete’s pay-back potential as a professional athlete. NAT’L COLLEGIATE ATHLETIC ASS’N, 2011–12 NCAA DIVISION I MANUAL § 12.1.2 (2011).

¹⁸ See *id.* at § 12.1.2.1.6. In 2008, minor league pitcher Randy Newsome attempted to set up a company in which he and other players could sell shares to investors of their *potential* future earnings. The business plan was put on hold after it drew concern from both MLB and the Securities and Exchange Commission. Alan Schwarz, *Buying Low: Minor Leaguer Takes Stock of Himself*, N.Y. TIMES (Feb. 1, 2008), http://www.nytimes.com/2008/02/01/sports/baseball/01minors.html?_r=0.

¹⁹ Even the most talented baseball prospects typically take several years to make it to the major leagues after they are drafted—if they make it at all. Historically, of players drafted in the first two rounds, roughly 15% will make it in the first three years, about half will have made it in five years, and about 30% will never play in the major leagues. Taking into account all players drafted, less than 20% will ever play at the highest level. Cork Gaines, *Most Baseball Draft Picks Will Still Be in the Minors Four Years from Now*, BUS. INSIDER (June 7, 2013), <http://www.businessinsider.com/chart-how-long-it-takes-a-draft-pick-to-reach-major-league-baseball-2013-6>.

²⁰ See Jim Seip, *From Sandlot to Moneyball: Youth Baseball Goes Big League*, YORK DAILY RECORD (July 24, 2013), http://www.ydr.com/sports/ci_23696096/from-sandlot-moneyball-youth-baseball-goes-big-league.

penditure is needed for a young baseball player to advance to the next level, whatever that level may be. The player from an impoverished financial background, including predominately the African American baseball player, has been priced out of the game.²¹ Baseball is no longer the inexpensive, easy-access sport that basketball is and football remains, thanks to school-based programs. Baseball requires a long apprenticeship and a large commitment of money over time.

American athletes in sports that, like baseball, require a significant commitment of money over time have been able to fund their apprenticeships through self-generated lending markets. One notable example of self-generated funding is in the sport of golf. Golf is a notoriously expensive sport, with protracted, specialized apprenticeship and extensive travel requirements characteristically required for a young American player's development.²² Fledgling golfers need money for course access, practice expenses, specialized instruction, travel costs, and tournament fees. Competitive young players enter state-wide and national junior tournaments, compete on elite junior golf tours, and later on college teams, all as a prelude to a try at a career on one of the many professional golf tours. At the amateur level, well-off parents, or those who acquire jobs within the golf industry, provide access to courses and pay for instruction. As the amateur golfer turns professional, parental pockets are typically insufficient. The professional level requires a very substantial investment: even on the minor tours, players need money for large travel expenses, high tournament fees, equipment, and continued instruction.²³ For an aspirant to the highest level, the PGA or LPGA Tour, the requisite

²¹ The University of Florida's Institute for Diversity and Ethics in Sport ("TIDES") tracks diversity in major sports. Richard Lapchick, Christina Cloud, Aaron Gearlds, Travia Record, Elizabeth Schultz, Jake Spiak, and Matthew Vinson, *The 2011 Racial and Gender Report Card: Major League Baseball* 3–4 UNIV. OF CENTRAL FLORIDA, INST. FOR DIVERSITY & ETHICS IN SPORT (April 21, 2011). It found that African American players in Major League Baseball had declined to 8.5% at the start of the 2011 season, the lowest figure since 2007 and the third-lowest in decades. See also David C. Ogden, *African-Americans and Pick-Up Ball: The Loss of Diversity and Recreational Diversion in Midwestern Youth Baseball*, NINE: A JOURNAL OF BASEBALL HISTORY & CULTURE, Spring 2001; Eddie Comeaux and C. Keith Harrison, *Labels of African American Ballers: A Historical and Contemporary Investigation of African American Male Youth's Depletion from America's Favorite Pastime, 1885-2000*, THE JOURNAL OF AMERICAN CULTURE, March 2004, at 67; Joanna M. Shepherd and George B. Shepherd, *U.S. Labor Market Regulation and the Export of Employment: Major League Baseball Replaces U.S. Players with Foreigners*, Emory Law & Economics Research Paper No. 7 (2002); Harry Edwards, *The End of the "Golden Age" of Black Sports Participation?*, 38 S. TEX. L. REV. 1007 (1997).

²² See *supra* note 11 and accompanying text for discussion of how golf participation correlates with income levels.

²³ Before most players play on the Nationwide or PGA tour, they will play on one or several of the "mini tours." Golfers have to pay \$1,500 to join each "mini tour," and then pay an entry fee for each tournament, usually around \$1,200. Michael Noer, *On the Edge: Money, Life and Loneliness on the Fringe of the PGA Tour*, FORBES (Feb. 8, 2012), <http://www.forbes.com/sites/michaelnoer/2012/02/08/ben-martin-pga-tour/>.

stakes are multiplied.²⁴ To fund their career goals, American golfers raise money through a combination of debt and equity financing.²⁵ They sell “shares” of their future earnings in exchange for or as collateral for investments and loans.

Unlike young golfers, U.S.-born baseball players cannot avail themselves of risk-capital to fund their increasingly expensive development.²⁶ Players who do not grow up in middle-class homes are not permitted to issue debt or equity to sustain their progress to the professional ranks. If U.S.-born baseball players could borrow against their “sports capital” as do players from outside the country, then baseball’s increasing dearth of African American players would likely be ameliorated. The restrictions that Major League Baseball and the NCAA impose on U.S.-born players effectively diminish the supply of minority players. The extant rules of amateurism prohibit athletes from borrowing against their future income from sports.²⁷ For those baseball players who would turn professional, Major League Baseball precludes American players from becoming professionals until they are age-eligible and are drafted or signed after the draft.²⁸ As a result, American-born ballplayers must delay their professional careers, and may only negotiate with one team when they begin it.²⁹ These rules lower the compensation for novice professionals. An American-born baseball player will typically earn a very small fraction of the million-dollar signing bonus frequently paid to Dominican players,³⁰

²⁴ It is estimated that it costs at least \$110,000 to compete for a year on the PGA tour. And unlike other professional sports, the PGA Tour does not have a guaranteed payday. Players earn no money unless they make the “cut,” which occurs after a tournament’s second day. For players that do not make the cut and go home empty handed, a PGA Tour event is a losing proposition: they still must pay travel expenses and the \$1,200 weekly fee to their caddy. *Id.*

²⁵ Peter Finch, *Money Clip: ‘The Worst Investment’?*, GOLF DIGEST (Mar. 2012), <http://www.golfdigest.com/magazine/2012-03/peter-finch-finance> (estimating that there are “thousands” of contracts a year between aspiring investors and golf pros, in which investors agree to finance a player’s career in exchange for shares of the player’s potential earnings).

²⁶ See *supra* text accompanying note 17.

²⁷ See *id.*

²⁸ To be eligible for the MLB draft, an American-born baseball player’s class must have graduated from high school; however, if a player decides to attend a four-year college, he is not eligible until after his junior season or he turns 21 years old. Once a player is drafted, a team has until August 15 of that year to sign him. If the player does not sign, he may re-enter the draft the following year. *First-Year Player Draft, Official Rules*, MLB.COM, <http://mlb.com/mlb/draftday/rules.jsp>.

²⁹ An American-born player can only become a free agent if he goes unselected in the draft, and only then can he negotiate and sign with any club. If a player cannot reach an agreement with the team that drafted him, he must wait and re-enter the draft the following year. *Id.*

³⁰ *More Baseball Players Likely Choosing College Game over Pros with Signing Bonuses Dwindling*, FOX NEWS (Apr. 11, 2013), <http://www.foxnews.com/sports/2013/04/11/more-baseball-players-likely-choosing-college-game-over-pros-with-signing/> (reporting that MLB’s new collective bargaining agreement, which caps the total amount of money teams can spend on draft picks in the first 10 rounds, is resulting in lower signing bonuses for

and will have to wait two to five additional years for that bonus.³¹ Thus the rules of baseball combine to raise the cost of entering the occupation. With no outside funding permitted to amateurs, young baseball players must rely on their families or their own wherewithal to undertake the considerable expense of training, or simply give up the game to pursue other endeavors. The result is that U.S. minorities are disappearing from the major leagues.³² The fact that Dominican players are receiving direct funding from American interests will only further promote the Dominican player and further disadvantage the American one.

II. BASEBALL'S DISPARATE RULES

Major League Baseball teams have long enjoyed a comparatively unhindered market for Latin American players. Until a recent cap was imposed on total investments,³³ teams were free to bid on any Latin American player on or after the player's 16th birthday.³⁴ Buscones³⁵ operated essentially as unregulated agents, earning finder's fees for promoting Lat-

American-born high school players, who are therefore increasingly opting to forgo signing a professional contract to attend college).

³¹ Because of MLB eligibility rules, international players can sign as young as 16, while their American-born counterparts must wait until after their high school class graduates, or if they attend college, until after their junior season. See *supra* note 28 and accompanying text; Jesse Sanchez, *The Market Is Open: Teams Seek International Gems*, MLB.COM (July 2, 2013), http://mlb.com/news/article.jsp?c_id=mlb&content_id=52353064&vkey=news_mlb&ynd=20130701.

³² Gary Washburn, *World Series Shows MLB's Dearth of Black Players*, THE BOSTON GLOBE, Oct. 24, 2013, <http://www.bostonglobe.com/sports/2013/10/24/world-series-shows-mlb-dearth-black-players/wG1TfowbBdUk0xkohKUIJ/story.html>.

³³ T.J. Quinn, *Concern Over MLB Rule in Latin America*, ESPN.COM (Mar. 1, 2012), http://espn.go.com/espn/otl/story/_/page/MLB-rule-change/major-league-baseball-rule-change-free-agent-pay-causes-concern-dominican-republic-venezuela ("Major League Baseball's new labor agreement, which went into effect this season, changed the rules for how clubs can sign international amateur free agents, capping the amount teams can spend at about \$3 million annually. Spend more than that, and teams will face a heavy tax.").

³⁴ 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, 89 (2008) (noting that the lack of rules for Latin American players allows them to play in the MLB when they are 16 years of age).

³⁵ Buscones are similar to agents, but they focus more on individual player development. Spanish for "finder," buscones find prospective professional baseball players in Latin America, train those prospects, and, like a stockbroker, predominately earn a profit by taking a portion of the prospects' future earnings in the Major Leagues. Jorge Aranguré Jr. & Luke Cyphers, *It's Not All Sun and Games*, ESPN MAG. (Mar. 12, 2009), available at <https://web.archive.org/web/20090315032047/http://sports.espn.go.com/espnmag/story?id=3974952> (accessed by entering URL on Internet Archive Index). See also Storms, *supra* note 34, at 91 (noting that buscones "comb the [latin] country for baseball talent") (quoting Angel Vargas, *The Globalization of Baseball: A Latin American Perspective*, 8 IND. J. GLOBAL LEGAL STUD. 21, 24 (2000)).

in American players to certain teams.³⁶ Relatively early in their careers, and despite living in relative poverty, the young Latin American players could earn enough in salary and signing bonus to support their full-time apprenticeship into professional baseball.³⁷ Some of these bonuses could be many millions of dollars.³⁸ Even where the player failed to advance to the major leagues, the availability of huge signing bonuses created a large inducement for many youths to play the sport and maximize their talent.³⁹ Moreover, foreign players, excluding Canada and U.S. territories, do not qualify for the MLB draft; they are coined international free agents, allowing them to negotiate with any team that is interested in that particular international player.⁴⁰

For the U.S.-born player, however, the opportunities to capitalize on skill in baseball are restricted. No player is eligible for professional compensation until he has completed high school or, if he attends college, until he has completed at least three academic years.⁴¹ Moreover, the market for players is not the open market, as it is for Latin American players, but rather each player may sign a contract only with the team that holds his rights as a result of the draft.⁴² Baseball's player draft ex-

³⁶ Kyle Finck & Christian Red, *Street Games. News Takes You Inside World of City's 'Buscones', or Street Agents Who Try to Shape Young Talent Often For a Price*, N.Y. DAILY NEWS, Aug. 1, 2010, available at 2010 WLNR 15333061 (noting that buscones will find talent, pay for lodging and food for years, then capitalize on a prospect's signing a deal with a major league team).

³⁷ Storms, *supra*, note 34 at 96; T.J. Quinn & Mark Fainaru-Wada, *MLB Scouts Scandal: A Little off the Dominican Signing Bonus Top*, ESPN.COM (Sept. 26, 2008), <http://sports.espn.go.com/espn/otl/news/story?id=3609833> (reporting that the average signing bonus from the MLB to Dominican players was \$108,130 in 2008).

³⁸ See, e.g., Enrique Rojas, *Inoa Agrees to \$4.25M Signing Bonus, Minor League Deal with A's*, ESPN.COM (July 2, 2008), <http://sports.espn.go.com/mlb/news/story?id=3470209> (reporting that Michael Inoa, a sixteen-year-old Dominican, agreed to a record-breaking \$4.25 million signing bonus with the Oakland Athletics).

³⁹ Storms, *supra* note 34, at 90 (“[T]he Major Leagues are also an impossible dream for a Latin American child, but the grim reality is that he is unlikely to become anything else that will allow him make a decent . . . living.’ . . . ‘[T]he appetite of powerful MLB teams for [Latin American] talent combined with the vulnerability of children and their parents in these countries is a recipe for exploitation.’ In fact, entire families may become dependent upon this dream”) (footnotes omitted) (quoting Roberto González Echevarría, *American Dream, Dominican Nightmare*, N.Y. TIMES, Aug. 12, 2003, at A17; Angel Vargas, *The Globalization of Baseball: A Latin American Perspective*, 8 IND. J. GLOBAL LEGAL STUD. 21, 24 (2000)).

⁴⁰ Matthew Piehl, *Double Play: How Major League Baseball Can Fix the Amateur Draft and International Player Acquisition with One Swing*, 8 WILLAMETTE SPORTS L.J. 13, 14–15 (2010).

⁴¹ *First-Year Player Draft*, *supra* note 28.

⁴² *Id.* (“A Club generally retains the rights to sign a selected player until 11:59 PM (EDT) August 15, or until the player enters, or returns to, a four-year college on a full-time basis. A player who is drafted and does not sign with the Club that selected him may be drafted again at a future year’s Draft, so long as the player is eligible for that year’s Draft. A Club may not select a player again in a subsequent year, unless the player has consented to the re-selection.”).

tends for 40 rounds,⁴³ as a result very few non-drafted players ever earn a professional contract, and even fewer reach the major leagues.⁴⁴ With no rival to bid against, teams routinely sign U.S.-born drafted players to contracts of just a few-hundred thousand dollars.⁴⁵ Compared to the immediate award of million-dollar contracts in professional football⁴⁶ and basketball,⁴⁷ baseball provides a comparatively small incentive for impoverished American youths to undertake the unusually long apprenticeship the sport requires.

For U.S.-born players who need to play in college to improve their skills to a pre-professional level, NCAA eligibility restrictions prevent them from capitalizing on their income potential prior to or while enrolled in college.⁴⁸ NCAA student-athletes are not permitted to accept “extra benefit[s]”⁴⁹ from a university or any outside source if the benefits result from the sport which the athlete is playing in college.⁵⁰ As a result, student-athletes cannot borrow against or otherwise monetize their future earnings.

Baseball is becoming a sport for the rich. Despite tremendous success in other competitive team sports, African American athletes are absent from professional baseball to a degree not seen since the integration

⁴³ *First-Year Player Draft, Draft FAQ*, MLB.COM, <http://mlb.com/mlb/draftday/faq.jsp>.

⁴⁴ See Jeff Euston, *Contractual Matters: The Undrafted*, BASEBALL PROSPECTUS (June 10, 2010), <http://www.baseballprospectus.com/article.php?articleid=11144>.

⁴⁵ *Average Salary Hits \$3.2M*, *supra* note 2 (noting the minimum salary of a MLB player was \$480,000); *Minimum Salary*, BASEBALL-REFERENCE.COM (June 18, 2013), http://www.baseball-reference.com/bullpen/minimum_salary (stating that most rookie players in the MLB earn the minimum salary).

⁴⁶ *2013 NFL Draft First-Round Picks' Signing Status*, NFL (July 10, 2013), <http://www.nfl.com/draft/story/0ap1000000168476/article/2013-nfl-draft-first-round-picks-signing-status> (reporting that the first 13 picks in the NFL draft signed for over \$10 million).

⁴⁷ Alicia Jessop, *The Structure of NBA Rookie Contracts*, FORBES (June 28, 2012), www.forbes.com/sites/aliciajessop/2012/06/28/the-structure-of-nba-rookie-contracts/ (noting that the nearly all the first-round draft picks in the 2013–2014 NBA draft signed for over \$1 million).

⁴⁸ *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 123 (1984) (“[T]he NCAA has promulgated and enforced rules limiting . . . the compensation of student-athletes . . . it also has prohibited athletes who formerly have been compensated for playing from participating in intercollegiate competition.”).

⁴⁹ NAT'L COLLEGIATE ATHLETIC ASS'N, 2009–10 NCAA DIVISION I MANUAL §§ 16.01.1, 16.02.3 (2009) (“A student-athlete shall not receive any extra benefit.”).

⁵⁰ *Id.* at 16.02.3 (“An extra benefit is any special arrangement by an institutional employee or a representative of the institution’s athletics interests to provide a student-athlete or the student-athlete’s relative or friend a benefit not expressly authorized by NCAA legislation. Receipt of a benefit by student-athletes or their relatives or friends is not a violation of NCAA legislation if it is demonstrated that the same benefit is generally available to the institution’s students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.”).

of the sport.⁵¹ The cost of private travel teams,⁵² all-star showcases, and specialized training are all borne by the player.⁵³ Youth baseball is fully integrated, probably due to the historic commitment of Little League Baseball to make its opportunities affordable to all.⁵⁴ However, after a young baseball player leaves the non-profit little leagues and transitions to travel teams to gain more exposure, baseball's segregated reality commences.⁵⁵ Despite the long history of African American success in the sport,⁵⁶ the restrictions on compensation imposed by collegiate and professional baseball have priced the sport beyond the means of many African American families.

These compensation restrictions also contribute to the incidence of bankruptcy or similar financial problems. The fact that teams are willing to pay talented Latin American teenagers very large bonuses to begin their professional apprenticeship⁵⁷ suggests that, in a less restricted mar-

⁵¹ Compare Mark Armour & Dan Levitt, *Baseball Demographics, 1947–2012*, Soc'Y FOR AM. BASEBALL RESEARCH, <http://sabr.org/bioproj/topic/baseball-demographics-1947-2012> (noting that despite an all-time high of African American representation in the MLB in the 1970s, current representation of 7.2% mirrors the representation merely a decade after integration), with Tyler Kepner, *Looking into the Decline in African-American Players*, N.Y. TIMES, Apr. 11, 2013, at B15 (noting that African American participation in the MLB reached an all-time high in 1986, and current participation is 8.5%, and that the disparity may be in how African American players were calculated in the 1970s).

⁵² Ann Killion, *Baseball Struggles to Reach Black America*, S.F. GATE (Mar. 17, 2013), <http://www.sfgate.com/sports/article/Baseball-struggles-to-reach-black-America-4360778.php> (recognizing that “the high cost of travel ball programs,” which are “the primary platforms where young players can be noticed”).

⁵³ Tim Keown, *What the MLB Committee Will Find*, ESPN.COM (Apr. 19, 2013), http://espn.go.com/mlb/story/_/id/9186117/why-african-americans-play-pro-baseball (“The kids who can afford to play on the best travel teams get the most exposure—a word that is the coin of the realm in youth baseball—and the most direct access to the inside world of showcases and high-profile tournaments. They are the ones with the personal hitting or pitching coaches. They are the ones who enter high school, usually a wealthy suburban high school, with the buzz that makes coaches take notice. They’re the ones who are seen by scouts at the \$500-a-day Perfect Game showcases attended by more scouts than have seen an Oakland public high school baseball game in the past 10 years combined.”); Keli Goff, *Have Black Americans Left Baseball?*, THE ROOT (Apr. 18, 2013), <http://www.theroot.com/views/have-black-americans-left-baseball?page=0,0> (claiming that baseball travel teams can cost \$3,000–5,000 per year).

⁵⁴ Goff, *supra* note 53 (stating that Little League is a lower-cost option for young, African American baseball players because, unlike travel teams, in Little League, “all kids have an opportunity to play”).

⁵⁵ *Id.*

⁵⁶ *Black Famous Baseball Firsts*, BASEBALL ALMANAC, <http://www.baseball-almanac.com/firsts/first8.shtml> (listing the various administrative and player positions that African Americans have held in the MLB).

⁵⁷ See, e.g., Rojas, *supra* note 38 (reporting the Oakland Athletics agreed to offer a sixteen-year-old Dominican player \$4.25 signing bonus in 2008); Adam McCalvy, *Brewers Open Bank to Sign International Prospects*, MLB (July 2, 2013), http://mlb.com/news/article.jsp?ymd=20130702&content_id=52451388¬ebook_id=52452296&vkey=notebook_mil&c_id=mil (reporting that the Brewers “set a franchise record” by agreeing to signing bonuses valued at \$800,000 each for two sixteen-year old Latin American players).

ket, American youths could expect similar bonuses, and thus could begin to command very substantial salaries at an early age. Baseball's rules on amateurism,⁵⁸ age restrictions,⁵⁹ and draft rights⁶⁰ effectively reduce or eliminate years' worth of professional salary. Moreover, because teams retain the rights to their players for their first six years after signing a professional contract,⁶¹ many players earn a below-market salary for a large part of their professional career.

III. PROFESSIONAL GOLF MODEL

Some youth sports receive large third-party support. Basketball and football are the beneficiaries of school-based teams, subsidized by public funding and publicly supplied playing grounds.⁶² Even private programs in these sports, such as AAU basketball, are typically underwritten by pri-

⁵⁸ Matthew Stross, *The NCAA's "No-Agent" Rule: Blurring Amateurism*, 2 MISS. SPORTS L. REV. 167, 172–73 (2013) (noting that the NCAA requires all student-athletes to be amateurs, and a student-athlete will lose amateur status if that player ever agrees "to be represented by an agent for the purpose of marketing his or her athletics ability," or "a member of the athlete's family or a friend receives any benefits from someone considered an agent") (quoting NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 17, §§ 12.01.3, 12.3.1.2).

⁵⁹ *First-Year Player Draft*, *supra* note 28 (noting that the MLB prohibits a U.S.-born player from entering the draft unless that player has (1) graduated high school, or (2) if in college, played through their junior or senior year or reached 21 years of age, or (3) if in junior college regardless of how many years played).

⁶⁰ *Id.* ("A Club generally retains the rights to sign a selected player until 11:59 PM (EDT) August 15, or until the player enters, or returns to, a four-year college on a full-time basis. A player who is drafted and does not sign with the Club that selected him may be drafted again at a future year's Draft, so long as the player is eligible for that year's Draft. A Club may not select a player again in a subsequent year, unless the player has consented to the re-selection.").

⁶¹ *Silverman v. Major League Baseball Player Relations Comm., Inc.*, 880 F. Supp. 246, 250–51 (S.D.N.Y. 1995) (stating that a MLB player must complete six seasons before he can become a free agent and negotiate his compensation with a team).

⁶² David Welch Suggs, Jr., *Myth: College Sports Are a Cash Cow*, THE PRESIDENCY, Spring 2012, at 18, 19 (noting that major college basketball programs, including Duke and the University of Kansas rely upon public funding to operate); DONNA M. DESROCHERS, DELTA COST PROJECT, ACADEMIC SPENDING VERSUS ATHLETIC SPENDING: WHO WINS? 2 (2013), available at http://www.deltacostproject.org/sites/default/files/products/DeltaCostAIR_AthleticAcademic_Spending_IssueBrief.pdf (noting that universities competing to participate in a football bowl spent \$92,000 per athlete in 2010); Brian Bennett, *Arms Race Proves Recession-Proof*, ESPN (June 14, 2012), http://espn.go.com/college-football/story/_/id/8047787/college-football-facilities-arms-race-proves-recession-proof (highlighting that, in 2012, over 20 football teams from the Football Bowl Subdivision alone were involved in construction projects for millions of dollars); Richard Vedder, *How Poor Students Subsidize Unworthy College Sports*, BLOOMBERG (June 17, 2013), <http://www.bloomberg.com/news/2013-06-17/how-poor-students-subsidize-unworthy-college-sports.html> (noting that for the academic year 2010–11, college students subsidized sports on average \$500 per enrollee).

vate donations and fundraising.⁶³ At the collegiate level, these sports are overwhelmingly varsity sports, where the cost of equipment, fields, travel, and even the costs of attendance in the school are underwritten by the university.⁶⁴ When baseball in years past enjoyed similar funding and support,⁶⁵ it also boasted of a large number of African American players,⁶⁶ both in the mixed professional league and in blacks-only Negro leagues.⁶⁷ In those days, baseball fields could be found throughout even the most urban landscapes.⁶⁸ School-based programs made the sport open and inviting to all, and all played and watched, earning baseball its moniker as the “pastime” of Americans.⁶⁹

⁶³ George Dohrmann, *Basketball's Million Dollar Babies*, BLOOMBERG BUSINESSWEEK (Oct. 21, 2010), http://www.businessweek.com/magazine/content/10_44/b4201113294148.htm (noting that many big-time AAU programs are funded by large private corporations); *Starting an AAU Club*, AAU SPORTS, <http://image.aausports.org/dnn/gymnastics/pdf/Starting-a-Club.pdf> (instructing prospective AAU clubs on how to structure their team to accept donations).

⁶⁴ Steve Berkowitz et al., *Most NCAA Division I Athletic Departments Take Subsidies*, USA TODAY (July 1, 2013), <http://www.usatoday.com/story/sports/college/2013/05/07/ncaa-finances-subsidies/2142443/> (“In 2011–12, athletics programs at 23 of 228 Division I public schools generated enough money from media rights contracts, ticket sales, donations and other sources (not including subsidies from institutional or government support or student fees) to cover their expenses.”).

⁶⁵ Mike Axisa, *MLB Creating Committee to Study Decline in African-American Players*, CBS SPORTS (Apr. 10, 2013), <http://www.cbssports.com/mlb/eye-on-baseball/22045063/mlb-creating-committee-to-study-decline-in-african-american-players> (noting that part of the reason for the decline in African American baseball players can be attributed to the lack of baseball scholarships colleges offer in comparison to football and basketball).

⁶⁶ See Joanna Shepherd Bailey & George B. Shepherd, *Baseball's Accidental Racism: The Draft, African-American Players, and the Law*, 44 CONN. L. REV. 197, 213 (2011) (“Beginning in the 1970s, [MLB] teams increasingly moved their scouts from the United States to Latin America,” leaving U.S.-born players to fund their own way to developing the skills necessary to compete in the MLB.).

⁶⁷ See Kepner, *supra* note 50, at B15 (noting that the lack of college scholarships and rise in travel teams have contributed to a decline in African American participation due to the inadequate financial means compared to wealthier Americans); Keown, *supra* note 53 (“Over the past 15 to 20 years, the proliferation of pay-for-play teams in youth baseball—and the parallel proliferation of parents willing to pay for them and coaches willing to cash their checks—has had more of an impact on African American participation than anything another sport has to offer.”).

⁶⁸ Tom Verducci, *Blackout: The African-American Baseball Player Is Vanishing. Does He Have a Future?*, SPORTS ILLUSTRATED, July 7, 2003, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1029117/1/index.htm> (noting that baseball fields in inner cities were more active and prevalent when African American participation was higher).

⁶⁹ JULES TYGIEL, PAST TIME: BASEBALL AS HISTORY 6 (2000) (noting that baseball was coined “the national pastime” in 1856 by the New York Mercury as baseball reigned prior to the Civil War); *African-American Baseball*, PBS: HISTORY DETECTIVES, <http://www.pbs.org/opb/historydetectives/feature/african-american-baseball/> (“Shortly after the Civil War ended, the first public baseball game between all-black teams was played. The Brooklyn Uniques played the Philadelphia Excelsiors, but lost on their home turf, 37-24. Over the next 20 years, more than 200 black teams would be formed around the country.”).

In contrast to basketball and football, and to baseball in years past, golf requires a substantial private financial investment in apprenticeship. Golf courses are expensive to build and maintain,⁷⁰ and those courses proximate to major urban areas command very high greens fees that reflect the value of the scarce urban land and the supply of golfers seeking access.⁷¹ Inherent also in the sport appears to be a long gestational period, as even naturally talented players need years of detailed coaching, practice, and many rounds of competitive play before they are good enough to compete as professionals, with the hope of earning a salary. Families without significant wealth, or without a private golf club membership⁷² or access to such a course through a family member's employment, will struggle to find enough discretionary capital to sustain a talented player on his or her way to professional play. Even players who become good enough to compete professionally need to raise a large amount of capital to sponsor their professional career, which requires tournament entry fees,⁷³ caddie expenses, and travel expenses.⁷⁴ One es-

⁷⁰ James Francis Moore, *Building and Maintaining the Truly Affordable Golf Course*, USGA.ORG, http://www.usga.org/course_care/articles/construction/general/Building-And-Maintaining-The-Truly-Affordable-Golf-Course/ (“[A]verage golf course construction costs typically rang[e] from \$1.6 to \$4.5 million, and the total cost of putting a new course on line frequently exceed[s] \$10 million [In] 1998, 18-hole average maintenance budget for private courses [was] \$635,930, it [was] \$576,423 for resort courses, and it [was] \$383,819 for municipal courses.”).

⁷¹ See *id.*; O'Connor Sinclair, Nat'l Golf Facility Strategy N.Z. Golf 60 (2013), available at <http://www.srknowledge.org.nz/wp-content/uploads/2013/09/205-National-Golf-Facility-Strategy-Report-260713-Final.pdf>.

⁷² Steve Sailer, *Analysis: Decline of the Black Golf Pro*, UPI (Apr. 12, 2003), http://www.upi.com/Top_News/2003/04/12/Analysis-Decline-of-the-black-golf-pro/UPI-46841050194345/ (“[T]oday's PGA Tour stars generally grew up in families who belonged to private country clubs Very few black families, though, are members of country clubs. . . . Further, there is no private golf club in the United States with a primarily black membership”).

⁷³ M.L. Rose, *How Much Does a Professional Golfer Pay to Play in a Tournament?*, GOLFSMITH, <http://golftips.golfsmith.com/much-professional-golfer-pay-play-tournament-20685.html> (“A PGA Tour player who's exempt from qualifying doesn't have to pay entry fees for tour events. He does pay a \$100 initiation fee, then \$100 in annual dues. The only expense he must pay to play in a tournament is a mandatory \$50 locker room fee. Most professionals competing in a pre-tournament qualifying event pay entry fees of \$400 apiece, except for Champions and Nationwide Tour players (\$100 each) and non-exempt PGA Tour members (no entry fee). If a player who is not a member of the PGA qualifies for a PGA Tour event, he must pay what the tour terms 'limited dues' of \$50, but he pays no other entry fee.”).

⁷⁴ Bev Norwood, *Backing a Tour Pro*, BLOOMBERG BUSINESSWEEK, Spring/Summer 2005, at 108, 113, available at <http://www.businessweek.com/stories/2005-05-29/backing-a-tour-pro> (“While you can figure it costs a minimum of \$150,000 a year to play the PGA Tour, \$100,000 for the Champions Tour, \$75,000 for the LPGA Tour (where players often stay in private homes), and \$55,000 for the Nationwide Tour, on the Hooters Tour, it's considerably less. A season consists of about 22 events primarily in the Southeast, with entry fees of \$850 per week. Figure the total expense—travel, meals, motels, caddies—for a 22-week season at \$35,000.”); see Will Tidey, *Where Are America's Black Golfers?*, CNN.COM (Dec. 22, 2010), <http://edition.cnn.com/2010/SPORT/golf/12/13/>

imate is that the annual cost of competing for a single season on the PGA tour, the most competitive professional golf association, is \$110,000, and that competing on the primary minor-level tour, the Web.com Tour, costs about \$75,000.⁷⁵ This substantial investment is completely speculative, since professional golf proceeds according to a “tournament”-style of compensation, whereby players earn no guaranteed salary and are paid according to the results of competitions.⁷⁶

In golf, once novice players deem themselves prepared to compete professionally, they face the problem of raising adequate capital to fund their professional venture. Few other sports today require such a significant venture investment. In team sports, players are paid by salary and the speculative costs of the enterprise are borne by team owners and other sponsors.⁷⁷ In golf, players essentially earn money by winning bets: the players pool their funds in the form of tournament entry fees and then play for the sum.⁷⁸ Although at the highest levels of play prize money is largely donated by tournament owners and sponsors,⁷⁹ most professional golf is played at the unseen lower, regional tours, which lack the luxury of sponsors or the infusion of advertising money.⁸⁰ The capital investment of the players, net the costs of renting the course and running the tournament, comprises the sum total of the players’ compensation, distributed according to the outcome of the contest.

woods.bramlett.golf.pga/index.html (noting that even if an African American golfer makes it to the PGA, the cost to play in it makes it difficult for African Americans to compete and find sponsorships to fill the gap).

⁷⁵ Noer, *supra* note 23 (noting that it costs \$110,000 to compete for a year on the PGA Tour and \$75,000 on the Nationwide, which is also known as Web.com Tour).

⁷⁶ Andrew Peters, *Determinants of Performance on the PGA Tour*, 17 ISSUES IN POL. ECON., Aug. 2008, <http://org.elon.edu/ipe/f2%20andrew%20peters%20final.pdf> (“Professional golf is an area that is particularly attractive to study because it models a perfectly competitive economy where payoffs are directly related to individual productivity. . . . [O]ne’s earnings on the PGA Tour are based on individual performance”) (citation omitted).

⁷⁷ Danny Goldin, *What Do Pro Athletes Earn?*, CAREERBUILDER.COM (July 21, 2010), <http://www.careerbuilder.com/Article/CB-1656-The-Workplace-What-Do-Pro-Athletes-Earn> (noting that professional basketball, football, baseball, hockey, and soccer establish minimum salaries for their players).

⁷⁸ Noer, *supra* note 23 (“Usually [young golfers] start on one of the ‘mini tours,’ privately owned affairs that pay prize money out of entry fees rather than sponsor cash.”).

⁷⁹ Monte Burke, *The PGA Tour’s Biggest Purses*, Sports Money, FORBES (June 15, 2011), <http://www.forbes.com/sites/monteburke/2011/06/15/the-pga-tours-biggest-purses/> (“The PGA Tour has a unique business model. The purse money comes from two sources. Around 60% of the total comes from the Tour’s television rights deal. . . . The tournament sponsor is responsible for the remaining 40% of purse money.”).

⁸⁰ See, e.g., Noer, *supra* note 23 (“Prize money on the Nationwide is only about 10% of the [PGA] tour’s. Last year’s top moneymaker on the PGA Tour, Luke Donald, made \$6.7 million on the golf course; the top player on the Nationwide Tour made \$414,000. Most Nationwide events are not televised, and endorsement deals are one-third as big, if not smaller. If playing on the PGA Tour is like having your product stocked at Wal-Mart, competing on the Nationwide is like selling through a regional supermarket chain.”).

Many fledging professional golfers raise the required venture capital through what are essentially private equity investments.⁸¹ They ask friends and relatives,⁸² and sometimes even use the internet,⁸³ to provide them the needed capital to launch a professional career in exchange for a percentage of winnings over time, if any. Theoretically, other pre-professionals could follow the same path: lawyers or doctors could offer investors a percentage of future earnings in exchange for the costs of tuition. Indeed, this investor could be the school itself or even the state.⁸⁴ Other individual sports, notably boxing, have followed a similar line, with managers and promoters “owning” a piece of a fighter in exchange for undertaking the costs of training and of staging a prize fight.⁸⁵

Although team sports have typically proceeded along a different model, with professional franchises covering all the costs of development, staging and compensating players with a salary, nothing mandates this distinction. Players in team sports could “own” the team, covering the costs of the league and bearing the risk of failure, in exchange for the potential gains from being the residual claimant. Players can coach, and coaches may own, so why can players not be owners?⁸⁶ Yet most leagues

⁸¹ Norwood, *supra* note 74 at 110 (When a recent college graduate decided to pursue a professional golf career, rather than borrow money at a bank, the golfer decided to sell “\$2,000 shares, 23 of them, to raise \$46,000 They were all friends of the family. My dad put the contract together and did the financials on it. The day we signed the papers we were fully funded”) (quoting PGA Tour professional Joe Ogilvie).

⁸² Noer, *supra* note 23 (A young, up and coming golfer asked “100 friends of the family to contribute \$300 toward [his] living expenses. This money was not going to be spent on golf nor was it construed as an investment. It was just a \$30,000 gift to pay . . . rent and keep him fed while he chased the dream. Then [the golfer’s father] drew up a list of 17 well-off friends he was going to ask to invest \$3,000 annually for three years”).

⁸³ Thomas Campbell, *Professional Golfer Raising Capital for 2013 Season—Investment Opportunity*, LINKED: GOLFERS (Nov. 13, 2012), <http://www.linkedin.com/groups/Professional-Golfer-Raising-Capital-2013-1988391.S.185271816>.

⁸⁴ Richard Pérez-Peña, *Oregon Looks at Way to Attend College Now and Repay State Later*, N.Y. TIMES, July 4, 2013, at A14 (“[T]he Oregon Legislature approved a plan that could allow students to attend state colleges without paying tuition or taking out traditional loans. Instead, they would commit a small percentage of their future incomes to repaying the state; those who earn very little would pay very little.”).

⁸⁵ Jim Thomas, *How Fighters Can Protect Themselves Outside the Ring: Part One*, SECONDSOUT.COM, <http://www.secondsout.com/ringside/the-business-of-boxing/how-fighters-can-protect-themselves-outside-the-ring-part-one> (“Typically, a manager’s compensation is, and should be, a percentage of the fighter’s compensation so that the manager’s financial interests are completely aligned with the fighter’s financial interests.”); see Rafael Tenorio, *The Economics of Professional Boxing Contracts*, 1 J. SPORTS ECON. 363, 381 n.8 (2000) (noting that promoters will charge a promotion fee in proportion to the expected proceeds net of promotion costs, and consequently, assume the risk arising from any uncertain ex-post fight revenues).

⁸⁶ Indeed, in one recent example, new coach Jason Kidd of the Brooklyn Nets was awarded a small ownership share of the franchise as part of his compensation package. *Source: Jay Z Selling Minority Shares*, ESPN.COM (Sept. 5, 2013), http://espn.go.com/new-york/nba/story/_/id/9633845/jason-kidd-buy-stake-brooklyn-nets-jay-z; see also Craig

prohibit players from owning a team, even the one on which they play.⁸⁷ Baseball players in particular once did own the teams, barnstorming their way through the country, playing rival or local teams in “hippodroming” games that were staged for the sake of gamblers, much like a horse race.⁸⁸ Indeed, the scandal of the “Black Sox” throwing of the 1919 World Series, that led to the creation of the office of the commissioner of baseball and to the eradication of gambling as a key funding vehicle for the staging of games,⁸⁹ came against a backdrop in which players’ wagering on games and involvement with gamblers was common and ubiquitous.⁹⁰

In many respects the development of the modern baseball player is more like that of a golfer than a basketball player. Like golf, baseball apprenticeship requires large financial investments at the front end, both as a youth and as a fledgling professional. Unlike golf, the production of a baseball player is a joint good.⁹¹ Golf can be practiced and played alone, but most meaningful baseball skills require at least two players to practice; full games require many more. Thus, once a certain number of children are priced out of the game, then the conditions for the production of highly skilled players evanesce. Unsurprisingly and increasingly, professional baseball has come to resemble professional golf in the background and ethnicity of its players.

Calcaterra, *Fay Vincent Has a (Severely Flawed) Idea About How to Compensate Players*, NBC SPORTS (Nov. 29, 2010), <http://hardballtalk.nbcsports.com/2010/11/29/fay-vincent-has-a-severely-flawed-idea-about-how-to-compensate-players/> (noting that former baseball commissioner Fay Vincent proposed that MLB players should be able to buy stake in their team).

⁸⁷ See, e.g., *id.* This prohibition is hard to justify. If players owned the team, they ostensibly would have the team’s interests in mind, playing the best players and hiring the best available coaches. They would even “trade” themselves if it bettered their investment. In short, they would likely behave no differently than any other team owner.

⁸⁸ DANIEL E. GINSBURG, *THE FIX IS IN: A HISTORY OF BASEBALL GAMBLING AND GAME FIXING SCANDALS* 19, 27 (1995); see also *MAKING AMERICA: THE SOCIETY & CULTURE OF THE UNITED STATES* 227 (Luther S. Luedtke ed., 1992).

⁸⁹ James R. Devine, *Baseball’s Labor Wars in Historical Context: The 1919 Chicago White Sox as a Case-Study in Owner-Player Relations*, 5 *MARQ. SPORTS L. REV.* 1, 3, 5, 52 (1994).

⁹⁰ It is often met with astonishment when contemporary observers learn that many newspaper reporters and other observers close to the White Sox team had foreknowledge of the fix and yet failed to report it. Many games in that era were tainted by the fix of the gamblers; nonetheless, people enjoyed the competition and it sold newspapers. That the outcome was, to a certain extent, a foregone conclusion did not seem to diminish interest, no more than the fact that the results of most modern elections are very predictable diminishes our interest in watching the ballot returns. The beauty and suspense of the action captures attention all by itself.

⁹¹ Indeed, other than a batting cage, it is difficult to imagine a young baseball player achieving professional status without the aid of multiple partners. From catching to throwing to batting, baseball requires multiple parties to help develop a young player.

IV. THE DOMINICAN MODEL

With respect to one group of players, Major League Baseball has made an exception to its restrictions on supporting fledgling baseball players. In the Dominican Republic (D.R.), and in other Latin American countries,⁹² U.S.-based professional franchises have historically been unencumbered by the limitations on investments in young players. Players as young as age sixteen have been known to be awarded multi-million dollar signing bonuses;⁹³ teams have carefully cultivated relationships with area player agents and other “buscones,”⁹⁴ paying for their assistance in identifying and signing the best talent; some teams have gone so far as to establish entire training camps and facilities in the hopes of finding the next great Latin American star.⁹⁵ In short, at least in the D.R., base-

⁹² See Arturo J. Marcano & David P. Fidler, *The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent*, 6 IND. J. GLOBAL LEGAL STUD. 511, 527 (The article describes the history of the relationship between Major League Baseball and Venezuela, Mexico, Puerto Rico, and the Dominican Republic. These Latin American countries have provided successful winter leagues for decades. Even “[b]efore Jackie Robinson broke the color bar in the MLB,” African American players were playing professionally in Latin America. These leagues have “become important to [the] MLB as a source of Latino baseball players” and continue to develop players and coaches.)

⁹³ E.g., Ben Badler, *Gustavo Cabrera Suffers Gruesome Wrist Injury in Off-Field Incident*, BASEBALL AM. (Nov. 4, 2013), <http://www.baseballamerica.com/minors/gustavo-cabrera-suffers-gruesome-wrist-injury-in-off-field-incident/> (signing of sixteen-year-old Dominican Gustavo Cabrera for \$1.3 million); Mark Gonzales, *Sox Sign 16-Year-Old Dominican Outfielder to \$1.6 Million Bonus*, CHI. TRIB. (July 2, 2013), http://articles.chicagotribune.com/2013-07-02/sports/chi-chicago-white-sox-micker-zapata-signing-20130702_1-sox-player-white-sox-chicago-white (signing of sixteen-year-old Dominican Micker Zapata for \$1.6 million); Zack Links, *Blue Jays Sign Franklin Barreto*, MLB TRADE RUMORS (July 6, 2012), <http://www.mlptraderumors.com/2012/07/blue-jays-sign-franklin-barreto.html> (signing of sixteen-year-old Venezuelan Franklin Barreto for \$1.45 million).

⁹⁴ Vargas, *supra* note 39, at 24 (“Scouts often rely on people known as *buscones* to help them comb the country for baseball talent. Often the initial contacts are innocent The idea is to foster the parents’ and the child’s loyalty to the team that the scout or *buscón* represents.”); see also Jorge L. Ortiz, *Do ‘Buscones’ Provide More Pros Than Cons?*, USA TODAY (Mar. 27, 2009), http://usatoday30.usatoday.com/sports/baseball/2009-03-27-buscones-side_N.htm. Players often categorize the scouts as father figures, who are credited with developing the player and helping players sign contracts and have relationships that can span a decade. As a twenty-year-old who signed with the Nationals said, “[my *buscone*] gave me everything I needed: food, clothes, training, [and] vitamins.” *Id.*

⁹⁵ Charlie Drysdale, *Baseball Academies in the Dominican Republic: From Sweatshops to Big Business*, MINOR LEAGUE BALL (Apr. 9, 2013), <http://www.minorleagueball.com/2013/4/9/4203922/baseball-academies-in-the-dominican-republic-from-sweatshops-to-big>. “While all 30 teams maintain training facilities in the D.R. . . . [m]ore and more teams are looking for a competitive edge in Latin America as they race to open state-of-the-art academies.” The Padres, Astros, Pirates, Mets, Rockies, Red Sox, Cubs, Mariners, and Indians are teams with recent multi-million dollar academies in the D.R. For example, the new Cubs facility can “house around 80 players and includes: a clubhouse

ball remains a sport for the poor, providing hope and an exit from the poverty of the island.⁹⁶ It should not surprise that the professional leagues feature what can only be described as a disproportionate number of players from this tiny half-island, ranging from superstars to journeymen.⁹⁷ It is the subsidized Latin American player, and not the unsubsidized African American, against whom the self-financed white American player competes for roster spots and positions.

This infusion of money into Latin America does more than induce young athletes to specialize in baseball; it also represents a substantial accretion to wealth for the player. The best Latin American players can sign

with dormitory-style living for players, a living quarters for on-site staff, training room, weight rooms, cafeteria, entertainment room, computer room and a classroom.” *Id.*

⁹⁶ See Danielle Sessa, *Baseball’s All-Star Secret: Camps Offer Kids Low Pay, No School*, BLOOMBERG (Mar. 5, 2007), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a1DgIDh8YXoY&refer=canad> (discussing the tension between prospects like Luis De La Cruz, who make the effort to play in the U.S. and recognize that “[it] is the only way [he] can help [his] family from being poor” with the reality that only five percent of players will ever spend time in the MLB, leaving many without a career and without an education); see also 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, 272 (2003) (“The academies take a holistic approach to a player’s physical and emotional development. The academies teach more than baseball: They prepare the boys for a new culture and language, so they can compete with their American counterparts.”); Drysdale, *supra* note 95 (highlighting the modern trend of investing in the player’s education).

⁹⁷ 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/> (listing the D.R. as the foreign country with the most players in the MLB with 89 players, or 36% of all international players in the MLB); see also *Major League Baseball Players Born in Dominican Republic*, BASEBALL ALMANAC, <http://www.baseball-almanac.com/players/birthplace.php?loc=Dominican%20Republic> (last visited Mar. 19, 2014) (listing the 592 MLB players born in the Dominican Republic). The Baseball Almanac identifies over 200 current major leaguers of descent from the Dominican Republic. Over the last 20 years, the number of Latino players overall has increased over 200%, comprising approximately 28% of MLB rosters in 2010. Maria Burns Ortiz, *Opening Day: Latinos and Baseball—By the Numbers*, FOX NEWS LATINO (March 31, 2011), <http://latino.foxnews.mobi/quickPage.html?page=30420&content=50157044&pageNum=1>. On Opening Day in 2010, 86 players were from the Dominican Republic. More MLB players come from the Dominican Republic than any other Latin American country. *Id.* Baseball was introduced to the Dominican Republic via Cuba around 1890. Carrie A. Meyer and Seth Kuhn, *Effects of Major League Baseball on Economic Development in the Dominican Republic* 1–2 (2007). In 1956, Osvaldo “Ozzie” Virgil became the first Dominican Republic born player to play in the majors. Starting in the 1970s with the Toronto Blue Jays and Los Angeles Dodgers, major league franchises began building scouting and training camps in the Dominican. Currently, the D.R. produces more than four times the number of major league baseball players than does the United States, on a per capita basis. See Ortiz, *supra*. By 2007, foreign-born players comprised 46.2% of minor league rosters, and about 26% of the major leagues, with over half from the Dominican Republic. Michael Moore, *Changing Face of Minor Leagues: Foreign-born Players Fill Rosters, Including Bulls’ and Mudcats*, THE NEWS & OBSERVER (July 13, 2007).

at age sixteen, giving these players approximately six years of additional professional earnings over their college-bound American counterparts.⁹⁸ Although American players may sign at the close of their high school career at age eighteen or nineteen,⁹⁹ the player must forego playing collegiate baseball and the scholarship that potentially accompanies it to pursue the professional career. Moreover, the great potential perceived in the Latin American player at the younger age may result from nothing more than an early growth spurt and maturation, an advantage that tends to evaporate as males approach age twenty, by which most males have reached their adult height,¹⁰⁰ facilitating assessments of player ability. Along with additional years of salary, Latin American players also enjoy a free market, able to negotiate with any team.¹⁰¹ American players may enter professional baseball only after submitting themselves to the professional draft, limiting their negotiating partner to one team.¹⁰²

Apparently aware that it spends far more to acquire Latin American players than American ones, Major League Baseball recently instituted an international draft coupled with a cap on the total bonuses teams may al-

⁹⁸ Compare *First-Year Player Draft*, *supra* note 28 (In the official rules of the first-year player draft an eligible player is “a resident of the United States or Canada . . . [or] players who enroll in a high school or college in the United States, regardless of where they are from originally.” Further, these eligible players only become free agents after every team passes on drafting them.), with Jesse Sanchez, *Initiatives for Latin American Prospects Come Together*, MLB.COM (July 26, 2013), http://mlb.com/news/article.jsp?ymd=20130726&content_id=54826480&c_id=mlb (“More than 200 [international] teenage prospects have signed since the start of the international signing period on July 2 [2013].”).

⁹⁹ See *First-Year Player Draft*, *supra* note 28 (“A Club generally retains the rights to sign a selected player . . . until the player enters, or returns to, a four-year college on a full-time basis.”); see, e.g., Mike Axisa, *Largest Contracts in Draft History*, MLB TRADE RUMORS (Apr. 29, 2010), <http://www.mlbtraderumors.com/2010/04/largest-contracts-in-draft-history.html> (listing the largest contracts in draft history, including Todd Van Poppel’s \$1.2 million in 1990, where his agent leveraged his university scholarship to negotiate a substantially larger professional contract).

¹⁰⁰ CTR. FOR DISEASE CONTROL & PREVENTION, DEP’T OF HEALTH & HUMAN SERVS., 2000 CDC GROWTH CHARTS FOR THE UNITED STATES, 2 to 20: *Boys Stature-for-age and Weight-for-age percentiles* (May 30, 2000).

¹⁰¹ See Jesse Sanchez, *Talent Ready as International Signing Period Nears*, MLB.COM (June 29, 2012), http://mlb.com/news/article.jsp?ymd=20120629&content_id=34145226&c_id=mlb (“Players stateside have the First-Year Player Draft, held sometime during first two weeks of June each year. For the top sixteen-year-olds on the international market . . . there is only one date that matters: July 2, the first day of the international signing period.”); see, e.g., Mark Sheldon, *Cuban Star Chapman Joins Reds*, REDS.COM (Jan. 11, 2010), http://cincinnati.reds.mlb.com/news/article.jsp?ymd=20100110&content_id=7896508&c_id=cin (reporting on the Cuban Aroldis Chapman’s \$30 million contract with the Cincinnati Reds after the Athletics, Red Sox, Nationals, Blue Jays, Marlins, and Angels were all “in the hunt” for a deal).

¹⁰² See generally Kiley McDaniel, *July 2nd Primer: The Basics*, SCOUT.COM (Mar. 25, 2013), <http://sbb.scout.com/2/1277773.html> (giving a basic overview of the American draft versus the international model).

locate to international players.¹⁰³ Subjecting young Latin American players to American-style limitations on salary will reduce the cost of players.¹⁰⁴ Over time, it will also reduce the supply. Latin American athletes will not be induced to devote themselves wholeheartedly to baseball and relocate to a foreign country when the typical signing bonus is closer to the typical five-thousand dollar bonus routinely given American players.¹⁰⁵ Much like it has the African American athlete, baseball over time will reduce the supply of Latin American players. American players from middle class or wealthy families will have the professional baseball field to themselves.

V. THE MORAL OBLIGATION OF BASEBALL

At first blush, the decision by MLB to impose limitations on the salaries of Latin American players akin to the limitations on U.S. players is defensible. No employer has an obligation to pay above-market salaries for labor. The collateral consequences of baseball's compensation policies, however, are grave. The restrictions on entry and free agency remove or delay a player's ability to earn large professional salaries, effectively pricing many African Americans out of the game. Dominicans and other Latin American players have enjoyed the benefits of a comparative free market, attracting large salaries at an early age, making devotion to a

¹⁰³ See Sanchez, *supra* note 101 (explaining how each MLB team is allotted a pool of money to sign international players each year starting on a specific date). *But see* Jesse Sanchez, *Baseball Decides Against Holding International Draft*, MLB.COM (May 31, 2013), http://http://mlb.com/news/article.jsp?ymd=20130531&content_id=49189442&vkey=news_mlb&c_id=mlb (announcing that an international draft may be pushed back beyond 2016).

¹⁰⁴ See McDaniel, *supra* note 102 ("There are typically 10–15 million dollar bonuses per year [in the D.R.] with a top bonus around \$3 million most years. This could change some now as last year MLB instituted bonus spending limits for each team for the first time and this year each team gets a different bonus limit based on their 2012 MLB record.").

¹⁰⁵ See *Draft Dodgers No More: Can the Dominican Republic Avoid Puerto Rico's Fate?*, ECONOMIST, Feb. 4–10, 2012, at 40, available at <http://www.economist.com/node/21546064> (explaining the fall of baseball in Puerto Rico after the country was included in the MLB draft, and that the Dominican "buscones" now oppose the D.R.'s inclusion in the draft, because it would "put [all of baseball's success in the D.R.] in peril, by reducing bonuses and possibly the number of contracts"). In 1990, before Puerto Rico was included in the draft, the percentage of players in the MLB from Puerto Rico and the D.R. were comparable, both hovering around four percent. However, after draft inclusion, Puerto Rico's sixteen and seventeen year olds no longer had a place to train. The local schools did not have baseball programs and the kids could no longer sign with a club until they finished high school. With the D.R. not being included in the draft, these same kids could develop their skills with a club. This resulted in the percentage of MLB players born in the D.R. skyrocketing to ten percent in 2010, while the percentage of players born in Puerto Rico bottomed out to around two percent. Jobs, signing bonuses, development, and incentives for young player development may evaporate in the D.R. if the country is forced to follow in Puerto Rico's footsteps. *Id.*

career in baseball appealing to athletic youths, and making the conditions for the flourishing of the game of baseball widely available. The disparity has been apparent. At the same time African Americans are disappearing from the game, Latinos have flourished, populating major and minor league rosters and winning All-Star status and league-wide awards.¹⁰⁶ The result of baseball's restrictions on U.S. players, coupled with its huge investments in Latin American baseball players, has predictably if unintentionally changed the demographic of the game. Now that MLB has decided to extend its restrictions to international players,¹⁰⁷ Latinos over time will dissipate in numbers too. It is difficult to imagine today's game, so heavily populated by Latin American and other international players, changing so radically. But once upon a time, African Americans played the game in such great numbers that they populated their own, thriving professional league.¹⁰⁸

If Major League Baseball is truly concerned about the demise of the African American baseball player, then it needs to create the economic conditions that will conduce his return to the sport. The current popularity among African Americans of basketball and football was not always the case;¹⁰⁹ baseball once stood alone among the team sports in its ability to attract minority athletes.¹¹⁰ Basketball has surpassed baseball among Afri-

¹⁰⁶ See Jason Beck, *Miggy Secures First Triple Crown Since 1967*, MLB.COM (Oct. 4, 2012), http://mlb.com/news/article.jsp?ymd=20121002&content_id=39371632&c_id=mlb (recognizing Cabrera, a Venezuelan, as the first MLB Triple Crown winner since 1967, leading the American League in batting average, runs batted in, and home runs); *Top 10 Latin American Players*, ESPN.COM (Sept. 26, 2013), http://espn.go.com/mlb/story/_/page/latinrank09262013/latin-american-power-rankings (listing the top ten current Latin American players, the 2012 American League MVP Miguel Cabrera topping the list); see generally Carl Ermisch, *Albert Pujols vs Miguel Cabrera*, FRANKLY BASEBALL (June 23, 2013, 8:43 PM), <http://franklybaseball.blogspot.com/2013/06/albert-pujols-vs-miguel-cabrera.html> (comparing the hitting of Venezuelan Cabrera and Dominican Republic native Pujols, not only as examples of the general success of Latin American ball players, but as future hall-of-famers, in discussing whether Cabrera or Pujols is the "greatest hitter to this point in his career that we've seen in our lifetime").

¹⁰⁷ See Sanchez, *supra* note 30.

¹⁰⁸ *Negro League Teams Index*, NEGROLEAGUEBASEBALL.COM, http://www.negroleaguebaseball.com/teams/teams_index.html (providing profiles for each of the twenty-four Negro League Teams); see also *Negro League Baseball: Timeline of Events in Professional Black Baseball*, NEGROLEAGUEBASEBALL.COM, <http://negroleaguebaseball.com/timeline.html> ("[M]ore than 150 former Negro League players . . . integrated into organized baseball."); see generally LESLIE A. HEAPHY, *THE NEGRO LEAGUES: 1869-1960* (2003) (laying out the history of the Negro baseball leagues in America); see also Armour & Levitt, *supra* note 51.

¹⁰⁹ Michael E. Lomax, *The African American Experience in Professional Football*, 33 J. SOC. HISTORY 163, 163 (1999) ("From 1960 to 1997, the number of blacks on National Football League (NFL) rosters increased from 12 percent to 67 percent.").

¹¹⁰ See Hasan Kwame Jeffries, *Fields of Play: The Mediums Through Which Black Athletes Engaged in Sports in Jim Crow Georgia*, 86 J. NEGRO HIST. 264, 264-65 (2001) ("Georgia was an epicenter of black sports during the Jim Crow era . . . [which] mirrored the experiences of the South's black athletes as a whole. . . . Baseball was the leading sport at Georgia's black colleges at the start of the twentieth century."); *African-Americans Gain*

can Americans in part because it is the perfect urban sport: low-cost, low-maintenance playing fields, indoor games for northern cities, and inexpensive equipment.¹¹¹ Football is more expensive, but is heavily subsidized throughout the public and private school systems.¹¹² Basketball offers young players the potential of large, early awards, as players as young as age nineteen are eligible for the draft,¹¹³ and those few good enough to be drafted typically earn very high starting salaries.¹¹⁴ Football's awards do not come as early, but like basketball it offers a chance at full-ride college grants-in-aid to the skilled player, along with the social status of the modern college football star at a major university.¹¹⁵

First Majority in Division I Football, *supra* note 12 (giving the percentages on black athletes within college sports). Specifically, from 1999 to 2010 the percentage of black athletes in Division I basketball rose from 55% to 60.9%, in Division I football rose from 39.5% to 45.8%, but in Division I baseball dropped from 6.6% to 5.6%.

¹¹¹ See *Sports Activist Addresses Rise of Dominican MLB Players and Decline of African-American Major Leaguers*, N.Y. DAILY NEWS (Mar. 22, 2010), <http://www.nydailynews.com/blogs/iteam/2010/03/sports-activist-addresses-rise.html> (“[B]aseball is not marketed well to the African American community. Go into any black community and you will see an abundance of basketball courts; rarely do you see baseball diamonds, and the ones that do exist are generally poorly maintained.”); see also Blake Sebring, *Decrease in African-Americans Affecting Baseball: Local Leaders Noticing Decline in Numbers at All Levels*, NEWS-SENTINEL (May 22, 2013), <http://www.news-sentinel.com/apps/pbcs.dll/article?AID=/20130522/SPORTS/130529953/1013> (“Basketball is cheaper than baseball where you need the equipment and the field. There’s a lot that goes into it.”) (quoting Metro Youth Sports president Jim Winters).

¹¹² D. STANLEY EITZEN, *FAIR AND FOUL: BEYOND THE MYTHS AND PARADOXES OF SPORT* 182 (4th ed. 2009) (“Only about one-third of Division I-A football programs make a profit; one-third of them run an annual deficit that averages more than \$1 million. The truth is that at most schools students pay for football through mandatory student fees and university subsidies.”).

¹¹³ NAT’L BASKETBALL PLAYERS ASS’N., *NBA COLLECTIVE BARGAINING AGREEMENT* 217 (Dec. 8, 2011) (“A player shall be eligible for selection in the first NBA Draft . . . [if] [t]he player (A) is or will be at least nineteen (19) years of age during the calendar year in which the Draft is held, and (B) with respect to a player who is not an international player (defined below), at least one (1) NBA Season has elapsed since the player’s graduation from high school . . .”).

¹¹⁴ Jessop, *supra* note 47 (describing the current structure of NBA rookie contracts, which typically last two years with an option for a third year). The first round of the NBA draft has a pay scale that allows players to make anywhere from 80–120% of the listed salary, where the number 1 pick in the 2014–15 draft is listed as \$4,672,700 and the last pick of the first round, number 30, is listed as \$927,400. *Id.*

¹¹⁵ See Louis Hakim, *The Student-Athlete vs. The Athlete Student: Has the Time Arrived for an Extended-Term Scholarship Contract?*, 2 VA. J. SPORTS & L. 145, 160–61 n.80 (2000) (explaining how the NCAA manual sets the annual limit of “counters,” or scholarships, per sport: “In men’s basketball, there is an annual limit of 13 on the total number of counters at each Division I institution. In men’s football, there is an annual limit of 25 on the number of initial counters and an annual limit of 85 on the total number of counters at each Division I-A institution.”) (citation omitted); see, e.g., Andy Staples, *Johnny on the Spot*, SPORTS ILLUSTRATED, Aug. 5, 2013, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1208195/1/index.htm> (discussing Johnny Manziel’s rise in popularity after winning the 2013 Heisman Trophy and the impact of his increasing celebrity social status, including autographs, hanging with TV stars at

Baseball today offers little in comparison.¹¹⁶ College programs have been cut;¹¹⁷ even varsity teams typically offer only partial scholarships.¹¹⁸ To re-introduce the sport to America's minority youth, baseball needs to build its own fields, supply equipment and coaching, and subsidize the games by contributions to the school systems. It needs to lobby regional and city governments to build playing fields next to basketball courts, and needs to build inexpensive indoor ballparks in northern climates.¹¹⁹

the Super Bowl, meeting rappers and Lebron James, and throwing out the first pitch at a Texas Rangers baseball game).

¹¹⁶ See generally, J.C. Bradbury, *What Caused the Decline of African-Americans in Baseball?*, SABERNOMICS.COM (Apr. 30, 2008), <http://www.sabernomics.com/sabernomics/index.php/2008/04/what-caused-the-decline-of-african-americans-in-baseball/> (providing several theories on the decline of African American baseball players, such as population size, competition with football and basketball, economics, community and family support, and school incentives).

¹¹⁷ *College Baseball Programs Become Casualties in Hard Times*, N.Y. TIMES (May 16, 2009), http://www.nytimes.com/2009/05/17/sports/baseball/17cold.html?_r=0 (telling the story of how colleges have cut baseball programs, as experienced through the eyes of Northern Iowa). Especially in the North, where baseball is not a priority and faces "larger financial obstacles," the economy continues to force more and more schools to cut baseball programs. Schools victimized by this trend are Wisconsin, Iowa State, Providence, and Boston University as programs in the North continue dropping baseball. *Id.*

¹¹⁸ Bob Nightengale, *Number of African-American Baseball Players Dips Again*, USA TODAY (Apr. 16, 2012), <http://usatoday30.usatoday.com/sports/baseball/story/2012-04-15/baseball-jackie-robinson/54302108/1> (describing a decline in African American baseball players). Where in 2012, only 8.05% of the MLB player population was African American. In contrast, in 1995 this number was 19%, in 1975 this number was 27%, and in 1959 when the Red Sox became the last team to integrate their roster, this number was at 17.25%. Scouts and general managers contend that attracting African American players is tough where universities only "offer 11.7 scholarships in baseball, vs. 85 in football." As the Oakland Athletics scouting director Billy Owens puts it, "The lack of full scholarships in NCAA baseball sways kids to other sports . . . Plus there are more options athletically and recreationally. Back in the '40s and '50s, baseball was unequivocally the No. 1 sport in America. Now it's extremely popular but not a monopoly." *Id.*; see also Ryan Wood, *Crunching the Numbers: Baseball Scholarships*, ACTIVE.COM, <http://www.active.com/baseball/articles/crunching-the-numbers-baseball-scholarships> (noting that the 11.7 scholarships per Division I baseball program typically "can be split up and given to up to 30 players").

¹¹⁹ On the rosters for teams in the College World Series, there were "just 11 African-American players out of 275" total players. This disparity arises from the lack of travel teams in the inner cities and tight budgets that prevent wider African American participation. L.E.A.D., a "revolutionary inner-city baseball organization," combats these hurdles. "Since being formed in 2008, 87% of the participants in the program have gone on to earn college scholarships to play baseball while pursuing higher education." Kristi Dosh, *Are African Americans Underrepresented in College Baseball?*, BUS. COLL. SPORTS (June 24, 2011), <http://businessofcollegesports.com/2011/06/24/are-african-americans-underrepresented-in-college-baseball/>. L.E.A.D. provides year-round academic & mentoring support, year-round baseball training and competition, and year-round community service and enrichment activities. *Our Model: Core Strategies*, L.E.A.D.: LAUNCH, EXPOSE, ADVISE, DIRECT, <http://lead2legacy.org/programs/legacy-league>. See also Zachary D. Rymer, *Did the 2013 Draft Prove the Health of African-American Interest in Baseball?*, BLEACHER REPORT (June 17, 2013), <http://bleacherreport.com/articles/1675755-did-the-2013-draft-prove-the-health-of-african-american-interest->

It needs to partner with major universities to support the return of baseball as a varsity sport and its elevation to a full-scholarship team.¹²⁰ African American youths do love baseball as much as any other children; at the one level where baseball is heavily subsidized, at the Little League and youth level, minority children participate heavily in the sport.¹²¹ When players turn twelve, aging out of Little League, the subsidy ends; despite the many African American children who play Little League, few stay in the game through their teenage years.¹²² Even fewer still play once they reach the age of draft eligibility.¹²³ Unless the game is heavily subsidized

in-baseball (noting the success of the “Reviving Baseball in Inner Cities” (RBI) program which invests in baseball programs and facilities in America’s inner-cities, such as Compton. The results have been remarkable, where thirty-three alumni from the program were drafted in the last three years.).

¹²⁰ See Kepner, *supra* note 51, at B15 (discussing the problem with college baseball scholarships). Current MLB players say that inner city kids play basketball and football “because they give out full scholarships and parents don’t have to worry about anything,” when in contrast, baseball scholarships are typically only quarter scholarships. Players say that this needs to change: “In the inner city, you need to get a [full] scholarship because most families can’t afford to send a kid to school, especially when you’ve got more than one. You need to get a scholarship, and baseball doesn’t provide that luxury.” *Id.* (quoting MLB veteran LaTroy Hawkins); see also John Sickels, *Selig Creates Committee to Study African-American Participation in Baseball*, MINORLEAGUEBALL.COM (Apr. 10, 2013), <http://www.minorleagueball.com/2013/4/10/4208986/selig-creates-committee-african-american-participation-baseball> (“The NCAA’s strict limit on scholarship money for baseball programs makes it more difficult for non-wealthy players of all backgrounds to develop their skills in college, which disproportionately impacts African Americans due to the continuing tangle of race and economic class in this country.”); see generally Keown, *supra* note 53 (addressing the issues preventing African American participation in baseball).

¹²¹ See Phil Taylor, *In Oakland and Cities Across the Country, Baseball a Forgotten Game*, SPORTS ILLUSTRATED (Apr. 17, 2013), <http://sportsillustrated.cnn.com/mlb/news/2013/04/17/baseball-diversity/> (A generation of inner-city kids are bypassing baseball for football and basketball. However, this is not because “the game itself . . . has driven them away,” but perhaps is due to the MLB’s inability to market the game to young players. When kids are given the opportunity to play through programs such as RBI, they participate, with over 210,000 kids currently in the program, which is a number that is expected to double over the next four years.).

¹²² See, e.g., Luther Campbell, *Bud Selig Purged African-Americans from Professional Baseball*, MIAMI NEW TIMES BLOGS, LUKE’S GOSPEL (Oct. 1, 2013, 9:00 AM), http://blogs.miaminewtimes.com/riptide/2013/10/bud_selig_purged_african_ameri.php (Louisville quarterback Teddy Bridgewater and Florida State running back Devonta Freeman both started playing little league for the oldest little league charter in Miami-Dade County. However, both players abandoned baseball and pursued football exclusively because of the NFL resources in place, such as the Miami Dolphin’s youth camps, and the support of high school teams. Even when comparing the local fields, the football field has a new irrigation system while the city fails to even water the baseball diamond.).

¹²³ See Rymer, *supra* note 119 (The 2013 MLB draft saw six African American players drafted in the first round. The highest player to go, Dominic Smith, went 11th to the New York Mets. This was the most African American players to go in the first round of the MLB draft since 1992. Overall, about 20% of the top players drafted in the first round were African American, which builds on the historically strong draft class of African Americans in 2012.).

and made available to urban youths, baseball will see a further erosion of its meager pool of African American stars. Baseball is a fun game, one liked by children all over the world, and one that has in the past and could again appeal to minority youths in the United States.

VI. BANKRUPTCY AND THE AMERICAN ATHLETE

Many Americans go bankrupt.¹²⁴ One cause of bankruptcy, obviously, is insufficient funds. Restrictions on the free movement of their labor, such as with age limitations,¹²⁵ morals clauses,¹²⁶ draft and other restrictions of free agency,¹²⁷ and salary caps,¹²⁸ depress the salaries of professional athletes. Thus restrictions marginally increase the likelihood of bankruptcy. The professional leagues contribute to their own problems. Short of a wholesale change in the structure of professional baseball, the sport could adopt a simpler change in its business practices that would likely diminish the incidence of bankruptcy by professional athletes while coincidentally increasing the prevalence of African American players.

A. *Structured Salaries*

One cause of bankruptcy is inherent in the way in which professional athletes are compensated. Many businesses fail; many individuals who experience sudden accessions to wealth go bankrupt.¹²⁹ Obviously they all

¹²⁴ *Bankruptcy Filings Decline in Calendar Year 2012*, U.S. COURTS: THIRD BRANCH NEWS (Feb. 4, 2013), <http://news.uscourts.gov/bankruptcy-filings-decline-calendar-year-2012> (listing government statistics that show 1,221,091 Americans filed for bankruptcy in the year 2012).

¹²⁵ *First-Year Player Draft*, *supra* note 28 (Major League Baseball rules prohibit players from being drafted until they have graduated high school.).

¹²⁶ Brian R. Socolow, *What Every Player Should Know About Morals Clauses*, MOVES MAG., Aug., 2008, at 186, available at <http://www.loeb.com/articles-articles-20080903-whateveryplayershouldknowaboutmoralsclauses>. “Morals clauses” are clauses that professional teams and sponsors place in contracts with athletes, allowing an organization to terminate a contract or punish a player who engages in criminal or other unacceptable behavior. Athletes who have been punished subject to a morals clause include Michael Vick, Kobe Bryant, and Adam “Pac Man” Jones.

¹²⁷ An MLB player does not become a free agent until he has six or more years of Major League experience. *MLBPA Info: Frequently Asked Questions*, MLBPLAYERS.COM, <http://mlb.com/pa/info/faq.jsp#agency>.

¹²⁸ Jonathan Maldonado, *Is It Time for MLB to Consider a Salary Cap?*, BUS. INSIDER (April 18, 2011), <http://www.businessinsider.com/is-it-time-for-a-complete-mlb-labor-overhaul-2011-4> (“Major League Baseball is the only major sports league in the United States without a salary cap.”).

¹²⁹ Sheri Masters, *Sudden Wealth Syndrome: Beneficial or Problematic?*, WELLS FARGO CONVERSATIONS (Nov. 11, 2012), https://conversations.wfnmagazines.com/transfer_wealth/family_wealth/article/sudden_wealth_syndrome_beneficial_or_problematic/ (discussing how those who suddenly ascend to wealth may encounter “sudden wealth syndrome”). The statistics associated with sudden wealth syndrome are sparse. However, one study showed that the rate of lottery winners filing for bankruptcy within five years of winning is double that of the general population. Another study

fail at the most basic level because they have a flawed business model: they all spend more than they earn. What celebrities, athletes, entertainers, and even lawyers and other professionals who experience quick and very large salary increments share is an unusual perspective on the value of a dollar: to a person in possession of a large amount of money, the incremental value of each dollar is not appreciated. In other words, these people do not experience the law of diminishing marginal value with respect to their wealth. They do not shop. They overpay for everything. The idea of negotiating a price for a household item or seeking discounts on consumer goods seems wasteful when one has millions of dollars in the bank. The gradual overpayment for goods and services takes its toll. Young millionaires do not fight to preserve their capital in the way a middle-class consumer does. The drain on their savings hastens their financial distress.

The most plausible solution to the problem of quick wealth is to change the schedule according to which professional athletes are paid. Instead of a short stream of lump-sum payments, athletes could be compensated along of the lines of a structured settlement, with periodic payments spread over a term of many years.¹³⁰ Structured settlements help successful litigation plaintiffs, who like athletes might gain a quick accession to substantial wealth, maintain financial solvency.¹³¹ Of course, even structured settlements can be discounted and sold; at some point irresponsible financial decisions cannot be precluded. Yet a structured settlement would help the athlete properly understand the marginal value of money, putting the athlete on a finite yearly budget to encourage more careful consideration of the price of goods and services.

Structuring salaries would not address the problem of the disappearing African American baseball professional. It would, however, help in all sports to diminish the spending profligacy of many athletes.

B. *Human Capital Lending*

A policy solution that would likely ameliorate the problem of the disappearing African American baseball player is to allow athletes to borrow on their human capital prior to the beginning of their professional careers. In basketball, the best players can earn substantial returns on

showed that 78% of former NFL players are bankrupt or experienced great financial difficulty within two years of retirement. *Id.*

¹³⁰ Larry Swedroe, *Some Structured Settlements May Offer Significant Advantages*, CBS NEWS (Nov. 8, 2011), http://www.cbsnews.com/8301-505123_162-20128479/some-structured-settlements-may-offer-significant-advantages/ (discussing the basics of structured settlements and how they are often used to settle wrongful death and accident lawsuits and are given to plaintiffs in lieu of a lump sum of money).

¹³¹ *Cf.*, Laura J. Koenig, Note, *Lies, Damned Lies, and Statistics? Structured Settlements, Factoring, and the Federal Government*, 82 IND. L.J. 809, 823 (2007) (discussing dubious benefit of structured settlements for some plaintiffs, as they provide long-term financial security to tort victims and their families who are purportedly not used to handling large sums of money).

their investment as young as their late teen years.¹³² In baseball, their financial rewards are much smaller and come significantly later, if they come at all.¹³³ However, in Latin America, even players who are not the recipients of large signing bonuses from professional clubs can borrow against their future earnings.¹³⁴ Indeed, a market for this borrowing against human capital already exists. American sports agents and others investors frequently lend money to talented young Latin American players.¹³⁵ This practice allows the athletes to borrow against their future earnings in order to pay for their training and apprenticeship expenses. The ability to borrow against future earnings allows the athletes who have baseball talent to continue on their path to professional status. Baseball typically requires a relatively long period of apprenticeship before a player is ready to appear on a major league field.¹³⁶ Comparatively low-income players have less wherewithal to undertake that long process, especially as it essentially begins while the player is in his teenage years. Were U.S.-born players able to take advantage of the same “micro-loans” as their indigent counterparts in the Dominican Republic and other Latin American countries, they would more likely be able to remain in the sport. Like the beginning golfer or the poker professional wishing to en-

¹³² Gordon Monson, *NFL and NBA Minimum Age Rules Discriminate, and Should be Changed*, SALT LAKE TRIB. (Feb. 23, 2013), <http://www.sltrib.com/sltrib/sports/55887465-77/college-players-nfl-nba.html.csp> (discussing NBA draft eligibility requirements: “The NBA requires draftees to be at least 19 years old and a year removed from their high school class graduation, as of 2005.”).

¹³³ Lily Rothman, *Emancipation of the Minors*, SLATE (Apr. 3, 2012), http://www.slate.com/articles/sports/sports_nut/2012/04/minor_league_union_thousands_of_pro_baseball_players_make_just_1_100_per_month_where_is_their_c_sar_ch_vez_.html (explaining that minor league baseball players earn up to \$1,100/month, while the minimum salary for Major League players will be at least half a million dollars by 2014).

¹³⁴ Sean Gregory, *Struck out by Béisbol: In the Dominican Republic, Teens Become Prey to Big-League Dreams*, TIME MAG., Jul. 26, 2010, at 46 (In the Dominican Republic agency system “buscones” recruit young, talented baseball players from an early age. The buscones house, feed, and train these young athletes, hoping to land a large payday when these kids get a Major League deal. This can be rewarding, as buscones typically pocket 25–50% of a young recruit’s signing bonus.).

¹³⁵ Schmidt, *supra* note 14, at A1 (U.S. investors are investing in young Latin American baseball prospects, some as young as 13 years old: “Recognizing that major league teams are offering multimillion-dollar contracts to some teenage prospects, the investors are either financing upstart Dominican trainers, known as buscones, or building their own academies. In exchange, the investors are guaranteed significant returns—sometimes as much as 50 percent of their players’ bonuses—when they sign with major league teams. Agents in the United States typically receive 5 percent.”).

¹³⁶ Compare Gaines, *supra* note 19 (reporting that it takes most baseball players 4–6 years playing minor league baseball before they reach the majors), with Lisa Stewart, *MLB Draft Versus NFL Draft: 5 Differences*, YAHOO.COM, (June 4, 2012) <http://sports.yahoo.com/news/mlb-draft-versus-nfl-draft-5-differences-190900157—nfl.html> (reporting that in the NFL, most draft picks play (or even start) in the first year after being drafted).

ter a tournament, the talented baseball player could sell shares of his future earnings in exchange for backing by investors.¹³⁷

The primary impediment to baseball players borrowing against their future earnings is not the availability of interested investors. Instead, it is the rules that preclude amateurs from earning money from their sport. Players who borrowed to finance their career training would forfeit their ability to pursue a professional career through competition and exposure from playing scholastic and collegiate baseball. Most young people pursuing professional careers, such as in law or medicine, may borrow against future income;¹³⁸ indeed, prohibiting people from borrowing educational expenses would severely diminish the ability of lower- and middle-class people to achieve professional employments. The rules of baseball prohibit poor people from financing their job training. Professional baseball precludes players from being drafted, and thus earning professional salaries, before a certain age and years of education.¹³⁹ Scholastic and collegiate baseball preclude these same players from accepting compensation in any form, including a loan or investment, and apart from college expenses, from anyone.¹⁴⁰ As a result, baseball is increasingly a sport for those who can afford it.

¹³⁷ Alexandra Berzon, *Full House: \$1 Million Hold 'Em Ante*, WALL ST. J. (June 30, 2012), online.wsj.com/news/articles/SB10001424052702304830704577496963159635408 (discussing the poker "backing" system). Many times, poker players back other players who are playing at the same table with them. Backers provide a professional poker player with enough money for a tournament buy-in, which could be as high as \$1 million. This affords the professional poker player an opportunity to play in a high-stakes poker game and have the opportunity to win millions in prize money. However, this player must reimburse backers with a certain percentage of all winnings. *Id.*

¹³⁸ *Compare Equal Justice Works, Law School Student Debt Is Just Tip of the Iceberg*, U.S. NEWS (Feb. 1, 2012), <http://www.usnews.com/education/blogs/student-loan-ranger/2012/02/01/law-school-student-debt-is-just-tip-of-the-iceberg> (Most law students (88.6%) borrow to finance their legal education. "According to American Bar Association figures for the 2009–2010 academic year, the amount borrowed for law school averaged \$68,827 for public law school graduates and \$106,249 for private law school graduates.") with *Medical Student Education: Debts, Costs, and Loan Repayment Fact Card*, ASS'N OF AM. MED. COLLS. (Oct. 2013), <https://www.aamc.org/download/152968/data> (According to the Association of American Medical Colleges (AAMC), 86% of recent medical school graduates have education debt.).

¹³⁹ *First-Year Player Draft*, *supra* note 28, (discussing Major League Baseball Draft rules and how they strictly mandate who is eligible for the draft and when). The earliest a player can be drafted is right out of high school, as long as that player graduated and has not attended a college or junior college. Once a player attends college, that player is not eligible to be drafted until he has reached his junior year or is at least 21 years old. Junior college baseball players are eligible to be drafted no matter how many years of school they have completed. *Id.*

¹⁴⁰ *Overview of NCAA Bylaws Governing Athlete Agents*, NAT'L COLLEGIATE ATHLETIC ASS'N (July 2010) <https://web.archive.org/web/20131225211256/http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/July+latest+news/Overview+of+NCAA+bylaws+governing+athlete+agents> (accessed by searching former URL Internet Archive Index). NCAA rules that forbid student-athletes from being represented by an agent, and prohibit student-athletes and their families from accepting

VII. CONCLUSION

Unintentionally, baseball's eligibility rules and salary practices have had a devastating effect on the ability of African Americans to become professional baseball players. Its salary practices, like that of other professional sports, have encouraged athletes to go bankrupt by skewing the ability of professionals to appreciate the marginal utility of their salaries. The sport of baseball, at both the professional and collegiate levels, needs to rethink its eligibility and compensation practices in light of the unintended consequences of its extant rules. As in other major sports, the African American athlete once was a ubiquitous and important part of every team's roster and every league's all-star teams. Today, it is obvious that the African American baseball player is disappearing,¹⁴¹ just as it is apparent that current salary practices do nothing to discourage financial ruin. The solution to both systemic problems lies in a systemic modification to the manner in which baseball compensates its players.

benefits from sports agents. Student-athletes who break these rules will be rendered ineligible and unable to participate in collegiate sports. *Compare with* NAT'L JUNIOR COLL. ATHLETIC ASS'N, ELIGIBILITY RULES 2012-2013 § 11.A.8 (2012), http://www.njcaa.org/njcaaforms/120605_2_Eligibility%20Pamphlet%202012-13.pdf (discussing the National Junior College Athletic Association rules that prohibit student-athletes from using their athletic skill for payment in any form, from accepting a promise of payment following completion of collegiate participation, and from signing contracts committing to play any form of a professional sport).

¹⁴¹ Kepner, *supra* note 51 (discussing statistics from Opening Day in 2013 compared to similar statistics from the 1980s: "Black players from the United States made up 8.5 percent of the 25-man rosters on opening day. The highest percentage of African Americans playing in the majors, according to new research by Mark Armour from the Society of American Baseball Research, was 19 percent in 1986.").