FOR THE LOVE OF THE GAME

WHY MAJOR LEAGUE BASEBALL PLAYERS SHOULD DEMAND A SALARY CAP AND REVENUE SHARING IN THE 2011 CBA

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INTRODUCTION

> Americans must realize what makes NFL football so great: socialism.
>
> -- Bill Maher

Many avid baseball fans will agree that Major League Baseball ("MLB") is in trouble. After the 1994-1995 work stoppage, average attendance per game declined from 31,612 to 25,021.[1] Through the first two weeks of the 2011 baseball season, six teams had set all-time lows for single-game attendance at their home ballparks.[2] As of mid-June in 2011, attendance at MLB ballparks was down significantly, by 475,476 fans, from the same point in the prior season.[3] This year, 111 million people watched Super Bowl XLV, making it not only the most-watched Super Bowl in history, but also the most-watched program of any kind in American television history.[4] In 2008, only 13,635,000 tuned in to watch the World Series, in spite of the Tampa Bay Rays' Cinderella-style finish.[5] Tampa Bay had not experienced a winning season until that year, having finished in last place in the previous season, and the Philadelphia Phillies had only won one World Series ring in the team's 125-year history.[6] The 2010 World Series ratings tied an all-time low, with the average rating

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[1] Andrew Zimbalist, *May the Best Team Win*: BASEBALL, ECONOMICS, AND PUBLIC POLICY 93 (2003).

[2] Gabe Lacques, *Cold April for Baseball: Six Stadiums See Worst Crowds Ever*, USA Today (Apr. 14, 2011, 4:26 PM), http://content.usatoday.com/communities/dailypitch/post/2011/04/baseball-attendance-april-six-teams-record-low/1.

[3] *Change in Baseball Attendance 2010 to 2011*, Baseball-Reference, http://www.baseball-reference.com/leagues/current_attendance.shtml.

[4] Mark Sweeney, *Super Bowl 2011 Draws Highest Ever Attendance for US TV Show*, The Guardian (Feb. 8, 2011, 7:55AM) *http://www.guardian.co.uk/media/2011/feb/08/super-bowl-highest-ever-audience.* It was the second year in a row that the Super Bowl broke viewing records.

[5] Baseball Almanac, *World Series Television Ratings*, http://www.baseball-almanac.com/ws/wstv.shtml (last visited Nov. 28, 2011). Compiled by Nielsen Media Research.

[6] *2008 World Series,* Baseball Almanac, http://www.baseball-almanac.com/ws/yr2008ws.shtml.

declining 28 percent from the 2009 Series.[7] For the first time, a regular-season National Football League ("NFL") game drew more viewers than a game of the World Series on the same day.[8]

It may no longer be accurate to refer to baseball as "America's pastime," considering the number of fans it has lost. Bill Maher may be a comedian, but he understands that people stop going to Pittsburgh Pirates games in May because "if you're not in the game, you become indifferent to the fate of the game."[9] If teams stand no chance of winning, they have a hard time motivating themselves. Green Bay, Wisconsin has a population of about 100,000,[10] but their football team has as realistic a chance of making it to the Super Bowl as any other team. Over 500,000 fans crowd into Lambeau Field each year during Green Bay's eight home games to cheer on the "Pack,"[11] while the Pittsburgh Pirates only draw in an average of 1.5 million over an 82 game season.[12]

One glaring reason for this discrepancy in interest is that football employs an equal opportunity model, while in baseball every team must fight for its own survival. In three of the four major professional sports – The National Football League, National Basketball Association ("NBA") and National Hockey League ("NHL") – franchises share revenue with players on a percentage-based model.[13] Major League Baseball employs a different approach, with each team largely keeping its own revenue, with the "wealthy" franchises sharing only a small

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[7] Baseball Almanac, *supra* note 5. In 1978, over 44 million people watched the World Series. The last time even 30 million viewers tuned in was 1992. Over the past decade, World Series ratings have been deplorable.

[8] CBS News, *World Series Loses to NFL Game in TV Ratings* (Nov. 1, 2010 12:57 PM), http://www.cbsnews.com/stories/2010/11/01/sportsline/main7011381.shtml.

[9] Bill Maher, *New Rule: Americans Must Realize What Makes NFL Football So Great: Socialism*, Huffington Post (Jan. 28, 2011, 5:45 PM), http://www.huffingtonpost.com/bill-maher/new-rule-football-sociali_b_815673.html.

[10] City Data, *Green Bay, Wisconsin*, http://www.city-data.com/city/Green-Bay-Wisconsin.html.

[11] *NFL Attendance 2010*, ESPN, http://espn.go.com/nfl/attendance/_/year/2010.

[12] *Pittsburgh Pirates Attendance Data*, Baseball Almanac, http://www.baseball-almanac.com/teams/pitatte.shtml.

[13] Graydon Ebert & Eric Macramalla, *A Primer on Revenue Sharing in the NHL, MLB, NFL, & NBA,* Offside Sports Law Blog (Sept. 29, 2010, 1:06 PM), http://offsidesportsblog.blogspot.com/2010/09/part-2-in-series-of-comparing-cbas-show.html.

percentage with the "poor" franchises.[14] This system has many flaws, the most concerning being that the "poor" teams pocket the money rather than utilizing it to acquire players.[15] Indeed, the players' union has complained that clubs have failed to use their money appropriately.[16]

In addition, baseball does not utilize a salary cap.[17] Major League Baseball implements a luxury tax in which the league "taxes" teams whose total payroll exceeds a certain threshold.[18] Unfortunately, the luxury tax has had little effect on leveling the playing field for the thirty MLB teams.[19] If a team (such as Boston, New York, or another team with a high payroll) can afford to pay one player an amount that equals some teams' entire payroll, the small luxury tax is but a drop in the proverbial bucket.

For the foregoing reasons, fewer people are singing "Take Me Out to the Ballgame" lately. This article presents two solutions—a hard salary cap and increased revenue sharing—to baseball's competitive imbalance problem. This article seeks to demonstrate that not only the game of baseball but also players, owners, and organizations would benefit from these proposed structural changes.

This article, in Part I, explains that Major League Baseball has a competitive balance problem. Part II offers some conventional wisdom about salary caps and revenue sharing in professional sports. Finally, Part III chronicles the history of collective bargaining in Major League Baseball, and argues that it is most beneficial for players to demand a hard salary cap and

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[14] *Id.*

[15] *Id.*

[16] Todd Wright, *MLB Forcing Marlins to Spend Cash on Players*, NBC Miami (Jan. 12, 2010, 8:30 PM), http://www.nbcmiami.com/news/local/Marlins-Forced-to-Spend-Cash-81265972.html.

[17] Philip Derstine, *Is MLB Not Having a Salary Cap Fair?*, Bleacher Report, (Jan. 28, 2009), http://bleacherreport.com/articles/116711-no-salary-cap-in-baseballfair.

[18] Maury Brown, *Correcting the Falsehood that MLB's Luxury Tax is Part of Revenue Sharing,* The Biz of Baseball (Apr. 11, 2010 10:54 AM), http://www.bizofbaseball.com (author profiles; then Maury Brown articles from staff).

[19] Brandon Mitchell, *From the MLB to the NBA: Major League Salary Problems*, Bleacher Report (Apr. 3, 2008), http://bleacherreport.com/articles/16076-from-the-mlb-to-the-nba-major-league-salary-problems.

increased revenue sharing in the 2011 collective bargaining agreement ("CBA").

I. MAJOR LEAGUE BASEBALL'S COMPETITIVE BALANCE PROBLEM

> If people don't want to come out to the ballpark, how are you going to stop them?
>
> -- Yogi Berra

A Lack of Competitive Balance Means a Lack of Interest in the Sport

As mentioned above, this year's Super Bowl broke records with an astonishing 111 million viewers, making it the most-watched television broadcast of all time.[20] In fact, the last four Super Bowls rank in the top five most-watched events in United States television history.[21]

By contrast, ratings for last year's World Series between the Texas Rangers and the San Francisco Giants tied an all-time low at 8.4, clearly demonstrating baseball's corresponding decline in popularity.[22] The five lowest-rated World Series of all time have occurred since 2005, with the 2010 All-Star Game ratings hitting a record low as well.[23]

Interest in baseball still persists, though, in the markets that have high payroll (and consequently more successful) teams. The best example of this may be the New York Yankees, whose payroll far exceeds any other franchise.[24] Despite charging comparatively high ticket prices, the Yankees sold a league-high three million tickets prior to the start of the 2011 season.[25] Consistently having

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[20] David Bauder, *Super Bowl Sets Records with 111M Viewers in US*, Yahoo Sports (Feb. 7, 2011), http://sports.yahoo.com/nfl/news?slug=txsuperbowl.

[21] *Id.*

[22] *World Series ratings tie all-time low*, ESPN (Nov. 2, 2010, 7:30 PM), http://sports.espn.go.com/mlb/playoffs/2010/news/story?id=5757137.

[23] Kurt Badenhausen, *Baseball Opening Day Business Preview and Predictions*, Forbes (Mar. 30, 2011, 2:15 PM), http://blogs.forbes.com/kurtbadenhausen/2011/03/30/baseball-opening-day-business-preview-and-predictions/.

[24] USA Today Salaries Databases, *2011 MLB Salaries by Team*, USA Today (2011), http://content.usatoday.com/sportsdata/baseball/mlb/salaries/team.

[25] *Id.*

the highest payroll in baseball has clearly paid dividends on the field for the Yankees, who have won twenty-seven World Series—one-fourth of all MLB championships.[26]

In 2011, the New York Yankees' total payroll was $202 million; Philadelphia has the closest payroll with approximately $173 million. At the bottom of the list are the Kansas City Royals with about $36 million, and teams such as Pittsburgh, and San Diego with $41-45 million in total payroll.[27] It is no surprise, then, that Kansas City ranks 29 out of 30 in average attendance,[28] with Pittsburgh close behind.[29]

These statistics have demonstrated that, not surprisingly, there is a strong correlation between high payrolls and success on the playing field, which in turn correlates with fan interest.[30] While a few successful teams do enjoy success (and fan interest) because of high payrolls, the league as a whole suffers, along with the sport itself.[31] Len Coleman, the former president of the National League, remarked: "The days of kids being born with a glove next to their ear in the crib and boys playing catch in the backyard by age three, those are over."[32] From 2000 to 2009, the number of kids aged 7 to 17 playing baseball fell 24%, and enrollment in youth football has soared 21% over the same time span, while ice hockey jumped 38%.[33] This lack of interest, in turn, diminishes the talent pool in a way that, according to scouts, could significantly affect the future quality of Major League Baseball.[34]

Economist Brad Humphreys explains,

> Competitive balance is thought to be an important determinant of demand for sporting events. Competitive

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[26] *World Series History*, Baseball Almanac http://www.baseball-almanac.com/ws/wsmenu.shtml.

[27] USA Today Salaries Databases, *supra* note 24.

[28] Cleveland ranks last, averaging only about 1,000 fewer attendees than Kansas City.

[29] *MLB Attendance Report*, ESPN, http://espn.go.com/mlb/attendance.

[30] *See* SCOTT ROSNER & KENNETH L. SHROPSHIRE, THE BUSINESS OF SPORTS (2004).

[31] Matthew Futterman, *Has Baseball's Moment Passed?* The Wall St. Journal (Mar. 11, 2011), http://online.wsj.com/article/SB10001424052748703712504576232753156582750.html.

[32] *Id*.

[33] *Id*. (citing the National Sporting Goods Association).

[34] *Id*.

> balance reflects uncertainty about the outcomes of professional sporting events. The conventional wisdom holds that to induce fans to purchase tickets to a game or tune in to a broadcast, there must be some uncertainty regarding the outcome. Neale (1964) called this the League Standing Effect. If a league lacks competitive balance, fan interest in the weaker teams will fall and, eventually, fan interest in the stronger teams will also decline. Thus, greater competitive balance should lead to greater demand, other things held equal. Quirk and Fort (1997) attribute the demise of the All American Football Conference, which started play in 1946 and merged with the National Football Conference in late 1949, to a lack of competitive balance.[35]

Thus, although a team such as the New York Yankees may still be able to sell three million tickets prior to the start of the season, even interest in the Yankees will eventually decline. [36] Other leagues, such as the NFL, NHL, and NBA, have implemented a salary cap and revenue sharing in order to ensure that teams can compete on equal ground.[37] Major League Baseball has not taken the same approach; meanwhile, fan interest is on the decline.[38]

What a Lack of Parity Means for Players

A lack of competitive balance can jeopardize a sport such that fans begin to lose interest. Payroll disparities not only cost fans "the chance to see competitive teams matched up on the field but also puts the home city in grave danger of losing its team to another location through franchise free agency."[39] MLB commissioner Bud Selig has remarked, "it makes no sense for

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[35] Brad Humphreys, *Alternative Measures of Competitive Balance in Sports Leagues*, 3 J. SPORTS ECON. 133 (2002).

[36] *Id*.

[37] Ebert, *supra* note 13.

[38] The Harris Poll, *While Gap Narrows, Professional Football Retains Lead over Baseball as Favorite Sport*, 1 (Jan. 20, 2011), http://www.harrisinteractive.com/vault/HI-Harris-Poll-Favorite-Sport-Football-2011-01-20.pdf. (31% of Americans say football is their favorite sport, while only 17% chose baseball, which had the greatest decline in interest).

[39] PAUL C. WEILER, LEVELING THE PLAYING FIELD 304 (2000).

Major League Baseball to be in markets that generate insufficient local revenues to justify the investment in the franchise."[40]

In the past, Major League Baseball has eliminated certain teams who failed to generate sufficient revenue.[41] Though the NFL eliminated 38 franchises before 1952, no team has folded since.[42]

Scott Rosner, author of *The Business of Sports* and two publications concerning contraction in professional sports, cites four possible reasons for contraction in Major League Baseball: increased revenues, enhancing and reestablishing monopoly power, improving competitive balance, and collective bargaining leverage.[43] Whatever the reason for eliminating a team may be, the result will be harmful to players. For example, contraction may affect players' salaries.[44] Furthermore, the contraction of two teams would eliminate fifty players,[45] not to mention the minor league players, executives, and more who would also be jobless. Contraction forces players to relocate their families to other teams who are willing to assume their contracts, be demoted to the minor leagues, or end up jobless.[46]

Currently, there are rumors of certain big-market MLB teams hoping to eliminate the Oakland A's and Tampa Bay Rays – and not merely from the pennant race.[47] New York Yankees co-chairman Hank Steinbrenner said, "At some point, if you don't want to worry about teams in minor markets, don't put teams in

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[40] Bill Saporito, *Baseball: Yer Out!*, Time Magazine (Nov. 19, 2001), http://www.time.com/time/magazine/article/0,9171,1001231,00.html.. Commissioner Selig further explained that the two teams to be contracted historically failed to generate sufficient revenue.

[41] Scott R. Rosner, *Squeeze Play: Analyzing Contraction in Professional Sports*, 10 VILL. SPORTS & ENT. L.J. 29-33 (2003).

[42] *Id.* at 33.

[43] *Id.* at 37-41.

[44] *See* Roger G. Noll, *The Economics of Baseball Contraction,* STAN. INST. FOR ECON. POL'Y RES. 7-8 (2002). (noting proposal of contraction tied to players' salaries).

[45] *Id.*

[46] Rosner, *supra* note 41, at 44.

[47] Ken Rosenthal, *Contraction's Not the Answer for MLB,* Fox Sports (2011), http://msn.foxsports.com/mlb/story/oakland-as-tampa-bay-rays-need-to-relocate-or-face-contraction-022211.

minor markets or leave teams in minor markets."[48]As baseball analyst Ken Rosenthal points out,

The Rays ... have nowhere to go – no new ballpark, no new market where they clearly would be better off. Making matters more difficult: Bob Dupuy, the former baseball executive who excelled at resolving ballpark and ownership issues, resigned last September. The whole thing is a shame.[49]

Tampa stars Evan Longoria and David Price understand what is at stake. Last year, the players publicly appealed to fans for support.[50] Rosenthal also knows that the game depends on each franchise being competitive: "Healthy franchises are in the best interests of all parties, generating greater revenues, leaving fewer teams to subsidize, raising player salaries."[51] It is in the players' best interest to realize this as well.

II. SALARY CAPS AND REVENUE SHARING

Major League Baseball has not adopted the same approach to ensuring parity as other leagues, such as the NFL, NHL, and NBA. As explained below, the salary cap and revenue sharing are two effective methods to maintain competitive balance among teams.

Salary Caps as the Answer

In a salary cap system, there is a minimum and maximum collective salary for each team.[52] In all salary cap systems, there must be a way to determine the salary floor (the minimum

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[48] *Id.* Steinbrenner was either referring to the contraction or relocation of small-market teams. Many large-market executives are asking why they should bear the burden of keeping struggling clubs afloat.

[49] *Id.*

[50] David Brown, *Tampa Bay Ray Stars Call Low Attendance at Home "Embarrassing,"* Big League Stew, Yahoo Sports Blog (2010), http://sports.yahoo.com/mlb/blog/big_league_stew/post/Tampa-Bay-Rays-stars-call-low-attendance-at-home?urn=mlb-272868.

[51] Rosenthal, *supra* note 47.

[52] Graydon Ebert, *Part 3 in Series Comparing CBAs: How Does the Salary Cap Work,* Offside: A Sports Law Blog (2010), http://offsidesportsblog.blogspot.com/2010/10/part-3-in-series-comparing-cbas-how.html.

amount that must be spent on players) and the cap (the maximum amount that may be spent).[53]

In 2009, the final capped year under the CBA that recently expired, the NFL had a maximum cap of $123 million per team, with a salary floor of about $107 million.[54] Under the NFL "hard cap," first introduced in 1994, no team could spend a dollar over the cap – the commissioner would not approve the contract.[55] Based on projections of shared revenue for the season, the salary cap for 2010 constituted 57 percent of the projected shared revenue amount.[56] The salary cap can never be less than in the previous season, but the salary cap, when added to player benefits, can never be more than 61.68 percent of shared revenue.[57]

The NBA, which was the first to introduce a salary cap for the 1984-1985 season,[58] takes a different approach, operating a "soft cap," where teams can spend in excess of the salary cap in certain situations.[59] Teams that spend over the cap (which teams such as the Los Angeles Lakers and Dallas Mavericks frequently do) are subject to a luxury tax. In 2009, the NBA set its salary cap at 51 percent of projected shared revenue.[60] The cap for the 2010-2011 season was set at $58 million.[61]

Although the NHL calculates its salary cap in a different manner, the number is still tied to revenue and the league still employs a "hard cap."[62] The NHL uses a slightly more complicated

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[53] *Id.*

[54] NFL, *Key Questions and Answers about the CBA* (2010), http://www.nfl.com/news/story?confirm=true&id=09000d5d815da1d2&template=with-video-with-comments.

[55] Ebert, *supra* note 52.

[56] *Id.*

[57] *Id.* The new deal reached by the players and the NFL in the fall of 2011 alters this arrangement.

[58] *See* Helmut Dietl et al., *The Combined Effect of Salary Restrictions and Revenue Sharing in Sports Leagues* (forthcoming in *Economic Inquiry*), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1393407.

[59] Ebert, *supra* note 52. One of the primary exceptions is the "Larry Bird" rule, which allows teams to resign their free agents for amounts in excess of the salary cap.

[60] *Id.*

[61] CBS Sports, *Salary Cap for Next Season set at $58* million (2010), http://www.cbssports.com/nba/story/13612167/salary-cap-for-next-season-set-at-58-million/rss.

[62] Ebert, *supra* note 52.

formula, using a "growth factor" to account for the league's revenues growing every year. The NHL allows teams to spend ten percent over the salary cap from the first of July until the beginning of training camp, allowing for flexibility.[63]

While in many industries, salary caps might be in violation of antitrust laws, they are typically exempt from such laws when they are the result of collective bargaining agreements.[64] An effective salary cap promotes competitive balance by preventing wealthy teams from acquiring all of the most talented (and expensive) players. Thus, each club theoretically has the same economic power to sign those talented players.[65] The salary cap also serves to limit the cost of operating a team, which benefits owners.[66]

The salary cap has proven to be effective, particularly in football.[67] One writer remarked, "there isn't an NFL club now that won't try and sell its fans on the belief that when training camp opens it, too, can finish on top."[68] MLB teams have a harder time selling that idea to fans because teams with higher payrolls in baseball tend to make the playoffs and often win World Series championships.[69] And "if there's anything people hate more than a losing team, it's a team that wins all the time."[70]

Revenue Sharing as the Answer

"Economists are nearly unanimous in stating that the closer to equality the level of on-field competition, the greater the overall revenues for the league."[71] The Eastern District of Pennsylvania recently noted the consistency of the findings of these economists,

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63 *Id.*

64 Dietl, *supra* note 58.

65 *See id.*

66 *Id.*

67 *See* Figure 1 (illustrating parity in the 2010 season).

68 Rick Maloney, *Competitive Balance Keeps Football on Top,* Business First (2002), http://www.bizjournals.com/buffalo/stories/2002/02/11/newscolumn2.html.

69 Baseball Almanac, *supra* note 26.

70 David Jacobson, *MLB's Revenue-Sharing Formula,* CBS Interactive Business Network (2008), http://www.bnet.com/article/mlbs-revenue-sharing-formula/210897.

71 *See* Noll, *supra* note 44, at 122-23.

observing, "[v]irtually all commentators on this subject agree that 'competitive balance' is a desirable goal for a sports league."[72]

If their analysis is accurate, league attendance will be substantially higher if many teams alternate in winning rather than a few dominating.[73] In other words, parity breeds popularity among fans. "Major League Baseball has a strong collective action problem. In the absence of an explicit revenue sharing agreement, each owner's personal incentives lead him or her to improve his or her own team regardless of the effect on competition."[74]

The "Partnership" Model

In the NFL, NBA, and NHL, the league divides its revenue between teams and players using a "partnership" or "percentage-based" model.[75] Players in these leagues receive a percentage of the league's total revenues, including ticket, concessions, merchandise, and broadcast revenue.[76] This creates an atmosphere of partnership between the league and the players because the players have a monetary interest in the game's growth.[77]

If player contract compensation exceeds the percentage of shared revenue, the leagues still ensure that players receive the stipulated amount owed under their contracts.[78] For example, in the NBA, the league pays the union the difference, and the union distributes the money; in the NFL, the league pays the deficit directly to the players.[79] The NHL uses an escrow system, in which players pay a percentage of their salaries from each paycheck into an escrow fund. The league bases its salary cap on

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[72] Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462, 486 (E.D. Pa. 1972). *See also* Mid-South Grizzlies v. N.F.L., 550 F.Supp. 558,568 (E.D. Pa. 1982) ("a franchise's popularity is inextricably bound up with the quality of its competition on the playing field and the resulting excitement and sense of team loyalty").

[73] *Id.*

[74] Jeffrey A. Rosenthal, *The Football Answer to the Baseball Problem: Can Revenue Sharing Work?* Seton Hall J. Sports L. 419, 428. The argument is that the league suffers from competitive imbalance when an individual team profits.

[75] Ebert, *supra* note 13.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.*

projected revenue for the season, and if the league earns that amount, the players receive with the deposited money.[80]

Major League Baseball's Current Model

Major League Baseball has not implemented the same type of revenue sharing system.[81] Baseball teams earn the majority of their revenue locally.[82] In 1999, a "blue ribbon" panel commissioned by MLB found that "large and growing revenue disparities exist and are causing problems of chronic competitive imbalance. Year after year, too many clubs know in spring training that they have no realistic prospect of reaching postseason play."[83] The panel reported that by 1999, the top seven teams averaged more than double the revenues of the bottom fourteen teams, and that in the late 1990s, none of the fourteen teams in the bottom half of payroll spending won *even one* of the 158 postseason games played. Every World Series champion in the five years studied was in the top seven in payroll spending.[84]

Big-market teams increase their revenue even more with local cable television contracts, such as the Yankees' 1989 contract that paid the team an average of $42 million per year.[85] In 1933, broadcasting rights accounted for only 0.3 percent of total revenues, rising to 6.7 percent in 1943, and by 1995, broadcasting rights accounted for 44% of league revenues, totaling $775 million in 1993—more than gate receipts.[86] Not only have broadcasting fees risen sharply, but the disparities in local broadcasting

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[80] *Id.*

[81] Jacobson, *supra* note 70.

[82] *Id.*

[83] *Id.*

[84] Richard C. Levin et al., *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics* (2000), http://www.mlb.com/mlb/downloads/blue_ribbon.pdf.

[85] LISA PIKE MASTERALEXIS & MARY A. HUMS, PRINCIPLES AND PRACTICE OF SPORTS MANAGEMENT 404 (3d ed. 2009).

[86] *See* Horowitz, Sports Broadcasting in Government and the Sports Business 357 (1974); Michael Ozanian, The $11 Billion Pastime, Financial World, May 10, 1994 at 50.

revenues between the top and bottom teams increased from $13 million in 1964 to $52.6 million in 1990.[87]

To correct this problem, the blue ribbon panel suggested significant increases in revenue sharing.[88] Under the current CBA, all teams pay a mere 31% of their local revenues to the league, splitting the total amount among all thirty teams.[89]

One additional shortcoming of this limited revenue-sharing model is the tendency of low-revenue teams not to use the revenue-sharing money to increase payrolls.[90] Last year, in an unprecedented move, MLB threatened the Florida Marlins with legal action in order to force the team to use its receipts to increase its payroll.[91] The team had spent the least money in three of the previous four years despite having received the most money from wealthier teams.[92] This may be related to the Marlins preparing to open a new ballpark next year, but nonetheless, low attendance has continued with the decision to have a lower payroll.[93]

Baseball has also implemented a "luxury tax" on the amount that teams spend above a set payroll amount, which rises each year.[94] Unfortunately, this attempt at curtailing payroll spending has been fairly unsuccessful. The league sets the thresholds at such a high amount that the luxury tax only regularly affects the New York Yankees and Boston Red Sox.[95] In 2008, the Yankees

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[87] *See* Andrew Zimbalist, Baseball and Billions 150 (1994) (observing that the ratio of the top to bottom clubs in local media revenues increased from 5.3:1 in 1964 to 18.5:1 in 1990).

[88] Levin, *supra* note 84.

[89] MLB Press Release, *MLB, MLBPA Reach Five-Year Labor Accord* (2006), http://www.mlb.com/news/press_releases/press_release.jsp?ymd=20061024&content_id=1722380&vkey=pr_mlb&fext=.jsp&c_id=mlb.

[90] Jacobson, *supra* note 70.

[91] *Id.*

[92] ESPN, *Marlins Pay Heed, Will Increase Payroll* (2010), http://sports.espn.go.com/mlb/news/story?id=4819982.

[93] ESPN, *MLB Attendance* (2011), http://espn.go.com/mlb/attendance (the team currently ranks 27 out of 30 in attendance, averaging just 17,912 per game in 2011).

[94] Jacobson, *supra* note 70.

[95] Maury Brown, *Yankees, Red Sox Pay Luxury Tax in 2010,* Biz of Baseball (2010), http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=4972:yankees-red-sox-pay-luxury-tax-in-2010&catid=30:mlb-news&Itemid=42.

paid the equivalent of the Florida Marlins' entire payroll in luxury taxes.[96]

Economists point out that baseball's attempts at achieving competitive balance have not been successful: the Yankees' payroll spending rose from 1.86 times the MLB average in 2002 to 2.85 times the average in 2005.[97] The team's top-paid player in 2008, Alex Rodriguez, could have used his season's salary to pay the Marlins' players that year and still walked away with six million dollars.[98] Teams with below-average payroll have won their divisions less than ten percent of the time over the past twenty years.[99]

III. It Is in the Players' Best Interest to Use the Collective Bargaining Process to Achieve Competitive Balance

This is an unusual year in sports, because the collective bargaining agreements in basketball, football, and baseball have or will all expire during the year.[100] Soon, MLB and the Major League Baseball Players' Association ("MLBPA") will begin the collective bargaining process in an attempt to sign a new agreement before the current Collective Bargaining Agreement ("CBA") expires. In fact, formal bargaining sessions have already commenced.[101] As explained below, this article concludes that it would be in the players' best interest to demand a hard salary cap and true revenue sharing, specifically with regard to local media revenue, in the 2011 Collective Bargaining Agreement.

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[96] Jacobson, *supra* note 70.

[97] *Id.* (citing David Berri et al., *The Wages of Wins* (2006)).

[98] *Id.*

[99] *Id.*

[100] William B. Gould IV, *Labor Issues in Professional Sports: The Upcoming Negotiations in the NFL, NBA, and MLB* 1 (2011), available at http://blogs.law.stanford.edu/newsfeed/files/2011/01/Gould_Labor_Issues_in_Pro_Sports.pdf. The NFL had a lockout that lasted over four months before reaching a ten-year agreement in August. MLB announced the details of a new CBA on November 22, almost a month before the old deal expired. The NBA had a lockout that began in July and lasted until a tentative deal was reached on November 26. Games are scheduled to commence on Christmas day.

[101] *Baseball Union, Owners Start Bargaining,* Associated Press (2011),http://sportsillustrated.cnn.com/2011/baseball/mlb/wires/02/26/2010.ap.bbo.union.weiner.1st.ld.writethru.0449/index.html .

The History of Collective Bargaining in Baseball

The MLBPA is the official bargaining representative for all MLB players.[102] The official site of the MLBPA reads,

> In 1968, the Major League Baseball Players Association negotiated the first-ever Collective Bargaining Agreement (CBA) in professional sports. It has evolved and strengthened over the years with each generation of players, sometimes at great personal sacrifice, ensuring the continuity of rights for the next.[103]

This first-ever CBA gave the players the right to have an independent arbitrator from outside MLB to decide their grievances with the owners.[104] It was not always easy for players and teams to engage in the collective bargaining process.[105]

The National Labor Relations Act ("NLRA") controls union-management relations in professional sports.[106] The NLRA, for many years, did not offer protection to baseball, as the courts did not find that baseball affected interstate commerce.[107] In 1969, though, the National Labor Relations Board ("NLRB") held in *American League of Professional Baseball Clubs*[108] that baseball did affects interstate commerce, and as a result, was subject to the jurisdiction of the NLRB.[109] As a result, the players enjoy the right to collective bargaining, self-organization and choice of representation.[110]

The downside to the collective bargaining process is the likelihood of work stoppage where negotiation fails, with the parties usually resorting to strikes or lockouts.[111] Since 1972, each time a labor contract has expired, with the exception of the two

102 MLB Players, *Frequently Asked Questions,* http://mlb.mlb.com/pa/info/faq.jsp.
103 MLB Players, *MLBPA Info*, http://mlb.mlb.com/pa/info/cba.jsp.
104 MLB Players, *supra* note 102.
105 WALTER T. CHAMPION, JR., SPORTS LAW IN A NUTSHELL 39 (3d ed. 2005).
106 *Id. See also* 29 U.S.C.A. §§ 151-166.
107 *See* Federal Baseball Club v. National League, 259 U.S. 200 (1922).
108 *Id.* at 39-40. *See also* 180 N.L.R.B. 190 (1969).
109 *Id.* at 40.
110 *Id.*
111 *See* 29 U.S.C.A. §§ 151-166 (West 2011).

most recent CBAs, there has been a work stoppage, caused either by a players' strike or an owners' lockout.[112]

In 1972, the MLBPA demanded an increase in pensions, and after a thirteen-day work stoppage, reached an accord with team owners that raised pension contribution by about $500,000.[113] Players also gained the right to salary arbitration.[114]

The 1981 players' strike cancelled 712 games as team owners lost the right to require direct compensation for the loss of free agents.[115] In 1985, the owners agreed to contribute even more ($33 million) for the following three years to the pension fund and $39 million in 1989. The players' minimum salary was also increased by $20,000 that year.[116] In 1990, there was yet another increase in pension fund contribution—$55 million annually—and the minimum player salary, which rose to $100,000.[117]

Then, in 1994, in a strike which lasted 232 days, the league cancelled the postseason because of an ongoing labor dispute. A judge ordered the players to play the 1995 and 1996 seasons under the previous labor agreement. The parties signed a new agreement in 1997, which contained the first luxury tax.[118]

Over the course of these disputes, the MLBPA's most valuable acquisitions were (1) grievance arbitration in 1970, (2) salary arbitration in 1971, and (3) free agency in 1975, which ironically resulted from an arbitrator's ruling.[119]

The threat of contraction in 2002 also arose as part of a labor dispute. The owners announced in 2001 that it would contract two teams before the 2002 season. Owners claimed that they did not need the MLBPA's approval to contract two teams because the labor contract had not yet expired, and the union filed a grievance

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[112] *Labor Pains*, SportsIllustrated.com, http://sportsillustrated.cnn.com/baseball/news/2002/05/25/work_stopppages. (documenting each of baseball's eight work stoppages with type, length, games missed, and key issues)

[113] *Baseball Strike is Settled; Season to Open Tomorrow,* N.Y. Times, Apr. 14, 1972, at 1, col. 6.

[114] *Labor Pains*, *supra* note 112.

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] David Grabiner, *Frequently Asked Questions About Baseball Labor Negotiations,* Remarque, http://remarque.org/~grabiner/laborfaq.html#A1.

challenging whether baseball could unilaterally decide to contract without bargaining with the MLBPA over the decision. Under the NLRA, employers must bargain with their employees' union before making changes to terms and conditions of employment—so called "mandatory subjects of bargaining."[120] Both parties asked for an arbitrator to rule on the question of contractor, but the arbitrator never issued a decision. Sensing that the owners and union had tried to negotiate a compromise but failed, the commissioner eventually retracted the decision to contract.[121]. On August 30, 2002, MLB and the MLBPA reached a deal on a new Basic Agreement, avoiding a work stoppage for the first time since 1970.[122] Also, baseball announced that it would not contract until at least 2007.[123]

The most recent agreement, signed in 2006 and set to expire in December of this year, closely resembles the 2002-2006 agreement with regards to free agency, the amateur draft, and the drug policy.[124] This CBA was quite unusual because the parties negotiated it privately.[125] The owners had the right to contract two teams in 2007 without the union filing a grievance, but there was no talk of contraction in 2006, and the parties agreed that contraction would not occur throughout the 2011 season.[126]

Players Would Benefit from a Hard Salary Cap and Revenue Sharing

The collective bargaining process provides the perfect opportunity for players to demand that MLB institute a hard salary cap and reform revenue sharing. The players' union has fought the idea of a salary cap due to fears that it would result in a decrease in their salaries.[127] Former MLB great Andy Van Slyke

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120 Josh Alloy, *Addition by Contraction, in* LEGAL ISSUES IN PROFESSIONAL BASEBALL 65, 84 (Lewis Kurlantzick, ed., 2005).

121 Michael O'Keefe, *Contraction Delayed Until '03; 30 Clubs Will Play This Year,* NYDailyNews (Feb. 6, 2002), http://articles.nydailynews.com/2002-02-06/sports/18193758_1_contraction-union-chief-donald-fehr-major-league-baseball.

122 Alloy, *supra* note 120, at 97.

123 *Id.*

124 Grabiner, *supra* note 119.

125 *Id.*

126 *Id.*

127 Gould, *supra* note 100.

once said that there "will be peace in the Middle East before there is a salary cap in baseball."[128] It may be counterintuitive, or even repulsive for players to consider a salary cap at first, but baseball players share less in league revenue than players in the other leagues.[129] The Yankees' gross revenue is three times that of the Marlins, even after the Yankees pay, and the Marlins receive, revenue sharing.[130] A hard salary floor and cap, such as the one the NFL has used, would ensure that all teams spend roughly the same amount on payroll.[131]

In 1994, baseball owners proposed a salary cap, but it sought to promote competitive balance, but rather to reduce player salaries.[132] That proposal would have reduced the amount paid to players by about $60 million annually. This article does not suggest that players accept a salary cap of this type, but rather a cap that promotes greater competitive balance while also rewarding the players.

Players should propose a cap in which the amount of salary affected by the cap is less than the amount affected by the floor. One commentator, for example, proposed that, based on 2010 revenues and salaries, a cap of $147 million and a floor of $62 million would affect no more than one-third of MLB teams.[133] In fact, such a proposal would only affect the Yankees and the Red Sox.[134] If the gap between $62 million and $147 million is too great, that is where a more equal revenue sharing system would function well.[135]

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[128] *Thinking Cap*, Itsaboutthemoney.net, http://itsaboutthemoney.net/archives/2010/05/10/thinking-cap-part-3-the-union/

[129] Kristi Dosh, *Why MLB Does Not Need a Salary Cap*, It's a Swing and a Miss (May 3, 2010) http://www.itsaswingandamiss.com/2010/05/03/why-mlb-does-not-need-a-salary-cap/.

[130] *Thinking Cap*, Itsaboutthemoney.net, http://itsaboutthemoney.net/archives/2010/05/03/thinking-cap-part-1-introduction/.

[131] *Id.*

[132] *Id.*

[133] *Thinking* Cap, Itsaboutthemoney.net, http://itsaboutthemoney.net/archives/2010/05/04/thinking-cap-part-2-the-numbers/comment-page-1/#comment-1450.

[134] *Id.*

[135] *Id.*

Most teams are unable to afford paying "Yankee prices"[136] in order to sign talent, and the Yankees only can have twenty-five players on their active roster. Many baseball analysts have pointed out that over the last decade, baseball players' salaries have actually been declining.[137] NFL, NBA, and NHL players receive a greater percentage of the revenues earned by their leagues than baseball players do, and this is in part because the salary caps in those leagues force owners to pay a higher percentage of revenues as salaries.[138] "In other sports, salary caps have been designed to win the (grudging) support of the players, with the result that these caps boost player salaries."[139] Baseball analyst Maury Brown even recommends that baseball owners *abandon* their support of salary caps due to their salary-enhancing effects:[140] "[e]ven from the point of view of the players, establishing payroll standards might well increase rather than decrease the total amount spent by the league on salaries."[141]

In fact, both players and owners have profited under the NFL's most recent collective bargaining agreement, which was an extension of the original CBA signed in 1993.[142] The 1993 agreement instituted the salary cap and more than 15 years of labor peace in the NFL.[143] Since 1999, the average franchise value has risen by 171 percent, with 19 of the 32 franchises valued over $1 billion, according to *Forbes's* annual valuations.[144] In 2010, the average value of a MLB franchise was $491 million—half that of

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136 Will Leitch, *Why Ryan Howard is More Expensive than Mark Teixeira*, New York Magazine (April 27, 2010, 12:00 PM), http://nymag.com/daily/sports/2010/04/why_ryan_howard_is_more_expens.html.

137 *See* Andrew Zimbalist, *Reflections on Salary Shares and Salary Caps,* Journal of Sports Economics (Apr. 1, 2010).

138 *Id.*

139 *Thinking Cap, supra* note 128.

140 *Id.*

141 Weiler, *supra* note 39, at 191.

142 David Madland, *The NFL's Win-Win Labor Agreement,* American Progress Action (Sept. 9, 2010), http://www.americanprogressaction.org/issues/2010/09/nfl_labor_agreement.html. *See also* Figure 2 (graph illustrating the rise in median salary and average value of NFL franchises).

143 *Id.*

144 *Id. See also* Figure 3 (graph illustrating the average value of professional sports franchises from 2001 to 2010).

the average NFL team.[145] The Pittsburgh Pirates, the least valuable baseball franchise, was worth $289 million in 2010. By contrast, the least valuable NFL franchise, the Jacksonville Jaguars, was worth $725 million.[146] Owners are not reaping the benefits to the exclusion of the players, though. Median NFL player salaries rose 9.4 percent between 2006 and 2009 (team values rose 16.2 percent over the same period).[147] And from 2000 to 2010, the median NFL player salary increased by 79 percent, even during a time of economic recession.[148]

The NFL has demonstrated that the collective bargaining process can create benefits for both players and owners. Because MLB and the players have not utilized the bargaining process in the manner that the NFL has, and have not instituted a salary cap and a strong revenue sharing system, the league has not prospered as greatly as the NFL.[149] "Through collective bargaining agreements and strong league institutions, the NFL boasts a system that creates wealth for all of its owners and players. The institutional models of Major League Baseball . . . do not produce anything rivaling the broad-based prosperity the NFL creates."[150]

Teams have unsuccessfully attempted to take matters into their own hands to remedy the problem. Take the 2009 Baltimore Orioles, for example. In September of that year, the team offered tickets at the stellar price of only one dollar, yet attendance barely improved.[151] Not surprisingly, the team's win-loss record in 2009 was 64-98.[152]

Conversely, as of August 2011, the World Series champion San Francisco Giants increased attendance by nearly 5,000 per game, while the American League champion Texas Rangers had

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[145] *Id.*

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.* The institutional model of Major League Baseball is the strong union, strong top-team, weak-league model.

[151] Neil de Mausse, *Plenty of Good Seats Still Available,: The Collapse of the Sports Ticket Bubble,* Slate (Aug. 4, 2011, 10:06 AM), http://www.slate.com/id/2300802/pagenum/all/#p2.

[152] *2009 Baltimore Orioles: Batting, Pitching, & Fielding Statistics,* BaseballReference.com, http://www.baseball-reference.com/teams/BAL/2009.shtml.

its attendance rise by more than 8,000 fans per game. Eighteen of the remaining 28 teams have seen their attendance decline.[153] Note that while some baseball teams are unable to practically give away tickets, an event like the Super Bowl incites thousands of fans to pay $200 for tickets to watch the game on screens *outside* the stadium. And when those tickets sell out, fans are willing to purchase them for double their original price on websites such as StubHub.[154] All in all, while it is a great time to find bargains when looking for tickets to a baseball game, this fortune will only endure for as long as the franchise does.

Baseball journalist Neil deMause observes,

> Unlike musicians, sports teams compete on the field for both wins and players. When the Eagles (not the Philadelphia ones) cancel tour dates, they don't have to worry about another band snapping up Joe Walsh as a free agent. In the sports realm—not counting the NFL, whose outrageously huge TV contracts, split evenly among its 32 teams, has effectively made it into a television show with a sideline in ticket sales—a more pronounced revenue split can be catastrophic for low-revenue teams, since somewhere in the neighborhood of 30 to 40 percent of revenue comes from ticket sales.[155]

Some argue that revenue sharing causes teams to have "incentive problems," because large markets guarantee many teams profits.[156] Gerald Scully[157] estimates that the Yankees would still post profits, even assuming a .500 record.[158] Revenue sharing, however, could actually increase incentives to win. If teams would agree to share fixed local television revenues (which are determined by population), but allow home teams to retain most of their gate receipts, teams would have a strong incentive to

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[153] *de Mausse, supra* note 151.

[154] *Id.*

[155] *Id.*

[156] Rosenthal, *supra* note 74, at 433.

[157] Gerald Scully conducted a study, which correlated salary with winning percentage. *See* Scully, The Business of Major League Baseball (1989).

[158] In 1991, however, small-market teams were able to bring in more fans than even the New York Mets and Yankees because of their team performance.

perform.[159] "If all clubs receive the same amount of TV revenue, fan attendance at home games will in part determine which teams have the highest net profit."[160]

Fans become discouraged when franchises struggle to field a winning team only to have star players leave because the team lacks the ability to pay them. Players rarely spend their entire careers with one team anymore.[161] Chipper Jones of the Atlanta Braves observed, "[s]ome guys don't want to stay in the same place, they want to go to the highest bidder, they want to go to a new place for the most money."[162] On May 7, 2010, Jones played his 2,191st game, moving him to second place on the all-time list of games played for one manager.[163]

A look at team rosters reveals that many teams are without a veteran over 30 who has spent his entire career with the same team, much less with the same manager. Small-market teams cannot afford to resign their star players. Revenue sharing would increase the number of franchise players like Jones, because players would be encouraged to stay with the team if they could receive nearly equal wages in every city. "Lower player turnover and the ability of teams to sustain quality teams should increase fan attendance. Players will be seen less as mercenaries and more as local heroes."[164]

Therefore, it is in the best interests of baseball to distribute income equally among the teams to improve the standard of living for most baseball players and to increase the value of MLB

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159 Rosenthal, *supra* note 74, at 431. Both Rosenthal and Gerald Scully propose awarding a substantial prize to winning teams to overcome the disincentive of equal revenue sharing that some claim exists.

160 Henderson and Bruggink, Will Running Baseball as a Business Ruin the Game?, 28 Challenge 53, 56-57 (March-April 1985).

161 Tim Kurkjian, *Once a Brave, Always a Brave*, ESPN (June 5, 2010), http://sports.espn.go.com/mlb/draft2010/columns/story?columnist=kurkjian_tim&id=5249761. Chipper Jones of the Atlanta Braves was drafted as the number one overall pick in 1990, and he has never left the team. Until 2010, when Bobby Cox retired as manager of the Braves, Jones had played his entire career for one manager, something that might never happen again in baseball history. It was not without sacrifice that Jones accomplished this feat, however. The star has restructured his contract with the Braves in the past in order to sign good players that the team required.

162 *Id.*

163 *Id.*

164 Rosenthal, *supra* note 74, at 432.

franchises.[165] The best way to implement a revenue sharing plan would be to do so along with a salary cap and floor.[166] This would stabilize the finances of all teams, rather than depress player's salaries. Though players may be philosophically opposed to a salary cap, they could use the collective bargaining process to make other demands from the owners in turn for accepting the salary cap. "Remember that the Players Association was also a long-time opponent of testing players for performance-enhancing drugs. But once it became clear that baseball needed drug testing, the union . . . went along."[167] Under revenue sharing, revenues would rise because more fans would become interested in the competition, thus increasing attendance in small-market cities in particular. "Making the game a better one means that we fans will spend even more money to watch and enjoy it – thus increasing the total size of the pie to be divided up among players and owners."[168]

CONCLUSION

> Baseball is poised for a catastrophe. And it might not be far off.
>
> -- Former MLB Commissioner Fay Vincent

America's pastime is on its way to becoming the forgotten pastime. Fans enjoy competition, not predictability, in sports. When, as last year, a regular season NFL game's viewership far exceeds that of game four of the Fall Classic, baseball clearly has a problem. This article offers two proposals— a salary cap and revenue sharing—that other leagues use to maintain a competitive balance.

The implementation of revenue sharing will allow the league to more easily institute a salary cap, because they will receive comparable profits. The result is that teams will have a roughly equal chance of acquiring talent and winning games. Players, too,

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165 *Thinking Cap, supra* note 128. *See also* Madland, *supra* note 142.

166 Players who are concerned about the effects of a salary cap will feel protected by the salary floor.

167 *Thinking Cap, supra* note 128.

168 Weiler, *supra* note 39, at 219.

will be happier, as they will have more freedom to move from team to team while receiving higher salaries as they do so. Players will also have the potential to spend an entire career with a team if they choose. This is the reason players should break from their tradition of rejecting a salary cap, and instead demand one in the 2011 CBA.[169]

All in all, this article has sought to achieve several purposes. First, the article emphasized the competitive balance problem in Major League Baseball. Second, this article examined two methods, revenue sharing and salary caps, that other leagues use to achieve parity among teams. Finally, the article observed the history of collective bargaining in baseball, and explained that the collective bargaining process is the most effective means for players to save the game of baseball and improve their own standards of living.

[169] The details of the new five-year agreement reached by the players and MLB were released on Tuesday, November 22, 2011. *See* MLB Press Release (2011) http://www.mlb.com/news/article.jsp?ymd=20111122&content_id=26025138&vkey=pr_mlb&c_id=mlb. The CBA mandates that players attend the All-Star Game, adds replay, and expands playoffs, but failed to adequately address the competitive balance problem. MLB will give teams Signing Bonus Pools, and will penalize teams by taxing them or denying them draft picks for spending over their assigned pool. Since the draft is where a lot of small-market teams find their talent, this will have a negative impact on those teams and MLB as a whole. Teams in the largest fifteen markets will not receive revenue-sharing welfare, and the luxury tax thresholds will not change over the next two years. The agreement changes baseball in many ways, but probably not for the better.