

1. Introduction

From the late 1800s until the mid 1900s professional baseball was almost the exclusive domain of the Major and Minor Leagues in the United States. During this period baseball became a uniquely American institution and as the ‘national pastime’ Major League Baseball (MLB) produced iconic figures such as Babe Ruth, Connie Mack, Joe DiMaggio, Jackie Robinson and Hank Aaron. In the decades after World War II not only did MLB break the colour barrier and absorb players from the leagues composed of African American players, it expanded from the East Coast to the West Coast of the United States and professional baseball began to globalize. Nippon Professional Baseball (NPB) in Japan solidified its status as a professional baseball league and in Latin America and Asia new professional leagues were established. The increase in player salaries and team revenues in MLB since the mid 1970s has resulted in a significant rise in the movement of professional and amateur players to MLB clubs from around the globe. Current star MLB players represent a globalized workforce and include players such as Clayton Kershaw (United States), Joey Votto (Canada), Albert Pujols (Dominican Republic), Yasiel Puig (Cuba), Adrian Gonzalez (Mexico), Yadier Molina (Puerto Rico), Miguel Cabrera (Venezuela), Hyun-jin Ryu (South Korea) and Ohtani Shohei (Japan).¹ America’s national pastime has spread around the globe, in turn creating new challenges for professional leagues in the regulation of labour.

This book will examine labour regulation and labour mobility in professional baseball’s two elite leagues: MLB and NPB. It will focus on player labour and not other workers such as coaches, analysts and ‘front office’ staff. Labour mobility is essentially the ability to change job and can be regulated by internal and external rules and practices. Of the two leagues, MLB is the largest and has 30 clubs. In addition, these clubs recruit lower level players who are assigned to one of a club’s network of Minor League teams, most of which are owned independently. Minor League Baseball (MiLB) now consists of over 7,000 players competing in over 240 teams in 19 Minor Leagues. MLB is the highest level of professional baseball, followed by NPB, which has 12 clubs. Most NPB clubs maintain one minor league team, with only four teams

¹ In this book Japanese names are written in the Japanese tradition of last name followed by the first name.

having a third formal minor league team that plays games against teams from universities, the industrial leagues and the independent leagues.

Rules governing labour mobility can be found in each league's system of labour regulation. This regulation is composed of both internal and external regulation. Internal regulation consists of formal and informal rules and practices created by an industry and its member enterprises, while external regulation are the rules and practices from sources outside the industry that regulate its enterprises and workers: for example, contract law, competition or antitrust law and labour law. These forms of regulation interact to produce a 'regulatory space'. In the case of professional baseball, the regulation of the labour of playing baseball focuses on internal regulation, which is composed of formal and informal labour rules, labour controls, contracting practices and normative conduct. The key labour controls found in these rules are the 'reserve' system, 'free agency' and the right of a team to 'assign' a player's contract to another team (through a trade or moving a player to a minor league team). The reserve system allows a team to contract with a player for a designated number of years of service, and upon completion of this service a player becomes a free agent and can contract with any team. Internal labour regulations can be found in various agreements: agreements between leagues, agreements between leagues and clubs, agreements between leagues and players, and agreements between clubs and players. These agreements take the form of a league's constitution, its by-laws and regulations, collective bargaining agreements and uniform player contracts. Operating within these rules are internal regulatory actors such as the league, team owners, players and players' unions. To varying degrees these rules engage and interact with external regulation. External regulatory actors in professional baseball include the government, statutory authorities, courts and anti-doping agencies. Importantly, statutory authorities and courts in the United States and Japan have held professional baseball players in MLB and NPB to be employees. Therefore, professional baseball players in both countries are subject to the protections of labour law, which is particularly important in the context of the ability of players to unionize, collectively bargain and take industrial action.

Several questions arise at this early point in this book. Why look at professional baseball? Why study labour mobility? Why examine MLB and NPB? And why look at labour regulation in the United States and Japan? The regulation of labour mobility in professional baseball will be examined due to the restrictive nature of its labour controls and practices, in turn providing insight into how restrictive labour markets operate and the impact on labour. Labour mobility is a key element of labour relations and the movement of workers allows skills and knowledge to be transferred within an industry and economy. The rights that underpin labour mobility, for example, the right to choose your employer and quit your job, are fundamental rights in a liberal economy,

yet these rights are severely curtailed in baseball. The leagues examined in this book were selected because MLB is the premier and largest league in professional baseball, followed by NPB. Another reason these two leagues were selected is that their systems of regulating labour engage differently with external regulation within their individual jurisdictions. The internal regulation of labour in MLB and NPB interact differently with contract law, competition law and labour law in the United States and Japan, and the willingness of regulatory actors inside each league to use the law to challenge internal regulation also differs. Thus, while similar internal and external regulatory systems govern the labour in each league, there is significant variation in the operation and outcomes of labour regulation in each system, particularly in the case of labour mobility.

Baseball also provides an important example of a global labour market. The globalization of labour in professional baseball has seen professional teams expand their labour supply beyond national boundaries. Fuelling this trend is the desire to maintain and strengthen the level of competition in professional leagues and to access cheap labour. In this context, the book considers the ways in which globalization has affected the regulation of player mobility and the extent to which the labour of baseball has been commodified. To explore these issues, a comparative approach is adopted to examine the regulation of labour in the two leagues and countries. Drawing upon theoretical perspectives concerning the nature and purpose of regulatory systems, the book shows that to varying extents each league treats labour as a commodity but adopts different strategies to deal with globalization. The book proposes a framework for the global regulation of labour in professional baseball that will facilitate both greater labour mobility and access to labour and de-commodify labour.

This book uses a number of key themes and concepts and its theoretical foundation draws from the literature relating to the nature and functions of labour law, as well as more general theories of regulation. The academic use of labour law in professional sport is a relatively new phenomenon and this book aims to provide new perspectives on labour regulation in baseball through labour law and general regulatory theory. Labour mobility and the principle that labour is not a commodity are themes that will be explored in comparing how MLB and NPB regulate labour. Another important theme of this book is globalization and its effect on labour and regulation in the two leagues. In comparing labour regulation in MLB and NPB and in the United States and Japan, a final theme is comparative law.

A key finding of this book is that MLB and NPB have systems of labour regulation that highly restrict labour mobility. Importantly, restrictive labour controls such as the draft, trading players, the reserve system and free agency are practices that are not only uncommon in other industries but would otherwise be illegal if they were not legitimized through labour law and collective

bargaining. Autopoiesis is an important concept in this book and involves a regulatory system that reproduces by reference to itself and through interaction with other autopoietic systems. The autopoietic systems of labour regulation in both leagues have similar labour controls and rules that shape labour mobility but the level of actual mobility experienced by players varies between the leagues. Labour rules and controls within a league related to mobility are now subject to legal rules governing collective bargaining and can be exposed to external regulation by actors such as courts when players or team owners challenge the legality of such practices. Therefore within each autopoietic system of labour regulation labour mobility is influenced by the activities of both internal and external regulatory actors. In addition, the level of labour mobility within each league is affected by other factors that include normative practice, culture, history and economics. Another important finding is that self-regulation and not state imposed regulation is the dominant form of regulation within the autopoietic labour systems of MLB and NPB. Also, globalization has had a dramatic impact on labour mobility in professional baseball as it has expanded the number of employment opportunities for players and enhanced the ability of players to move around the globe in search of work. While MLB clubs have embraced globalization, NPB has resisted it and protects jobs for Japanese players by limiting the number of foreign players permitted on a team's 'active' roster.

The purpose of Chapter 2 is to introduce the reader to professional baseball and the regulatory systems in MLB and NPB. The globalization of baseball and its labour will also be discussed. Chapter 3 provides an analytical framework for the examination of labour regulation and labour mobility by setting out the principle that labour is not a commodity and the concept that labour can be commodified. Chapter 4 aims to identify regulatory theories and approaches to labour regulation that will assist in the understanding of labour regulation in professional baseball. This chapter also provides an overview of the systems of labour regulation in the United States and Japan. Chapter 5 will look at the key internal regulators in professional baseball to determine how labour is regulated and by whom. These regulators are the owners of clubs in each league, the league, the players, player unions and arbitrators. Chapter 6 then looks at the key external regulatory actors that govern baseball in each of the three leagues: courts, the government, statutory authorities, player agents and the National Collegiate Athletic Association. Chapter 7 focuses on the regulation of labour by analysing the law and the principle of labour mobility in the United States and Japan. It constructs a general concept of labour mobility, then describes and analyses the effect of relevant rules in contract law, labour law and competition law on labour mobility in professional baseball in each of the two jurisdictions. By constructing a legal concept of the regulation of labour mobility in professional baseball, Chapter 7 will allow labour mobility

to be explored in Chapter 8 in the more specific context of the internal labour rules of professional baseball. Chapter 9 applies the principle that labour is not a commodity from Chapter 3 to professional baseball. This chapter examines the extent to which labour is commodified by looking at how labour controls in professional baseball tend to treat labour as a commodity, not as the autonomous worker envisioned by philosophers such as John Locke. Chapter 10 explores how the globalization of professional baseball has affected labour mobility and its regulation and proposes a system of labour regulation to facilitate the movement of players, a system that will also enhance the access of clubs to player labour. Chapter 11 concludes by reviewing the key findings of the book.