

MATT NICHOL

**Globalization, Sports Law and Labour Mobility:
The Case of Professional Baseball in the United States and Japan**

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Before the Covid-19 pandemic ruined everything, the biggest news in Major League Baseball (“MLB”) leading up to the 2020 season was the trade of one of the world’s best players, Mookie BETTS, from the Boston Red Sox to the Los Angeles Dodgers. The trade negotiations were marked by uncertainty, reversals by team executives, and rumours, prompting Tony CLARK, the Executive Director of the MLB players’ union, to state that “The unethical leaking of medical information as well as the perversion of the salary arbitration process serve as continued reminders that too often Players are treated as commodities by those running the game.”¹ The confronting assertion that baseball labour is commodified (when the humanity of even our heroes is denied, what hope have the rest of us?) has not been weakened by the MLB’s efforts to restart the season during the pandemic, making Matt NICHOL’s scholarly examination of “labour regulation and labour mobility in professional baseball’s two elite leagues” (p. 1) both timely and important.

Combining theoretical and black letter approaches, NICHOL’s book discusses the two premier professional baseball leagues in the world (MLB in the United States and Canada and Nippon Professional Baseball (“NPB”) in Japan) – their internal and external rules and regulations, their collective and individual labour agreements with players, and their institutional actors (league structures, player unions, agents, etc.) – by way of a critical analysis of labour mobility, not just in professional baseball, but in global labour markets more generally. While the focus of the book may appear narrow, Japan and the United States represent not only the two huge baseball-loving economies, but also quite different, and representative, approaches to labour, immigration, and globalisation. That the sport is so symbolically and culturally important in both countries throws the analysis into greater relief. If baseball can represent the global labour market, Japan and America’s professional leagues provide enlightening illustrations of more protectionist and more open approaches, respectively, to the globalised labour market (p. 4).

1 <https://www.mlbplayers.com/post/statement-of-mlbpa-executive-director-tony-clark-2-7-2020>.

Thus, while the book is of self-evident interest to “lawyers, academics, and advanced students interested in labour law, sports law, and Asian and European law” (as described on the back cover), it also should not be underestimated as an insightful and scholarly work accessible and interesting to thoughtful fans of baseball and world sport generally. The author is one of Australia’s few (its only?) legal experts on global baseball and his account of how restrictive labour markets operate and impact on labour is a unique scholarly contribution to the English-language study of Japanese law.

NICHOL’s book consists of eleven chapters, but that includes a brief introduction and conclusion (so nine substantive chapters, some of which provide historical or theoretical background and some of which do more of the analytical heavy lifting – in particular chapter 8 (“the scope of labour mobility in professional baseball”), discussed below). The introduction proposes a framework for the global regulation of labour in professional baseball that will decommodify it by providing mobility and access (p. 3), and while the book makes specific recommendations to that end (in short, calling for a global governing body *à la* soccer’s FIFA), it succeeds more as an explanation for why such a solution is called for than it does as a thorough working of the solution itself. This is surely by design, as NICHOL acknowledges the limitations of the book’s scope as he attempts to balance establishing the theoretical underpinnings of his analytical approach (clear indicators of the PhD that spawned this book) with the more straightforward doctrinal analysis itself.

In establishing the above, the introductory chapter identifies the book’s two main analyses: that both MLB’s openness and embrace of globalisation and NPB’s resistance and protectionism manifest in highly restrictive systems of labour regulation; and that addressing world baseball’s “regulatory patchwork”, with its large component of self-regulation and no strong independent global regulator, is a key to improving such labour conditions (for the sake of the game, ultimately). Succeeding chapters detail baseball’s “regulatory gap filled by a number of actors who perform specialized elements of what would otherwise be the functions of a global regulator”, resulting in an “ad hoc web of formal and informal rules and practices” that work to restrict labour mobility (p. 26).

Chapter 2 (“Overview of professional baseball in the United States and Japan”) is a sort of extended introduction that does what it says and provides factual background for the analysis in chapter 8, to which much reference is made, including a detailed “cast of characters”. The chapter includes four large and helpful organisational charts and introduces the labour control mechanisms used in professional baseball (such as the reserve system and collective bargaining agreements). The chapter abounds in delightful details (for example, the list of pitches employed by professional pitchers (p. 9), and

the description of the interleague labour kerfuffles involving Japanese players Masanori MURAKAMI (1967) and Hideo NOMO (1995) (p. 23)).

One might quibble that an introduction to professional baseball labour mobility does not discuss Curt FLOOD until chapter 9 (but at that point does so thoughtfully), or that the author's discussion of performance enhancing drugs, in focusing on the steroid "explosion" in the 90s, missed the opportunity for fun historical discussions from Pud GALVIN's alleged turn-of-the-century usage of a monkey testicle-based elixir, to the amphetamine-soaked 1950s and 1960s,² to the 1970s and Doc ELLIS throwing a no-hitter on LSD. Such minor oversights aside, the chapter establishes how the two professional leagues govern themselves internally (for MLB, the main mechanism is the collective bargaining agreement between the owners and the players' union (p. 13)) and their interleague relationship (through a series of short-term bilateral agreements with respect to player mobility).

In an understatement typical of academic writing, NICHOL observes that unlike other leagues, MLB is not independently run but rather is a joint venture of wealthy team owners who "typically act in their own self-interest in setting league policies" (p. 12). This is relevant to the book's essential concern of the commodification of labour and presents NICHOL with a choice regarding his theoretical focus. While NICHOL acknowledges critical theoretical approaches to his subject throughout his analysis (in discussing the globalisation of baseball, NICHOL acknowledges for example the work of N. Jeremi DURU on race (p. 25), and even Karl MARX warrants an index entry!), in the end he focuses more on structural and legal explanations and grounds his analysis in regulatory theory.

Specifically, NICHOL, particularly in chapters 2 and 4, introduces this reviewer to the idea of "autopoiesis",³ which, in the case of baseball labour, refers to "regulation within an internal system of rules and practices that evolves over time in response to the activities of actors inside the [baseball] industry" (p. 52). This more academic theoretical discussion sits somewhat uneasily with the more straightforwardly descriptive doctrinal discussion contained in the book. NICHOL explains that "Autopoietic theory is useful in examining labour systems in MLB and NPB as it helps to understand the internal regulation of labour, its evolution and how this system interacts with other autopoietic systems, including external regulation" (p. 52), but this

2 See, e.g., J. BROSINAN, *The Long Season: The Classic Inside Account of a Baseball Year, 1959* (1960).

3 The concept has its basis in the study of biology and in that field refers to a "system which produces and reproduces its own elements by the interaction of those elements" (p. 51). Due to its unfamiliarity, a simple illustrative example would have been useful to this reader.

central theoretical organising principle takes a while to become concrete and reveal its descriptive power. Somewhat confusingly, manufacturers, retailers, and the hospitality industry are described as not autopoietic (p. 52), but baseball labour is compared to a production line (p. 7) when meanwhile it might most productively be thought of as entertainment. While autopoiesis provides a thought-provoking description of various regulatory phenomena seen in global baseball, it is not entirely clear how the main takeaways from the book would have been different without a view through the lens of autopoietic theory. This is less of a criticism than it appears; with regard to the regulatory factors impacting baseball labour mobility, the book ‘shows’ the “highly reflexive nature of labour regulation in the two leagues” (p. 53) so well that its efforts to ‘tell’ (through explicit theoretical discussions) sometimes get in the way of an already thorough and thoughtful analysis.

Chapter 3 is an interesting philosophical foray into the nature of labour as a commodity, wherein Adam SMITH, John LOCKE, and Karl MARX are all (briefly) discussed. The chapter defines the commodification of labour as treating a labourer such that they don’t have control over their labour or the freedom to choose for whom they work and identifies this as a human rights issue. NICHOL notes that labour commodification to the extent seen in sport is not common in most other industries. The brief chapter does not explicitly link with the bulk of the book’s analysis, but it usefully sets the background for the remainder of the discussion and identifies what is at stake.

Chapter 4 continues the theoretical place-setting with a big picture survey of various theories of labour regulation and a focus on regulatory concepts most relevant to professional baseball; specifically, the autopoietic combination of state regulation, self-regulation, and ‘outside’ (non-state) regulation (more fully discussed in chapters 5 and 6). This excellent overview, again reminding the reader of the work’s academic chops, is in the service of the basic point that baseball’s labour regulation is decentred and fragmented (unlike soccer).

In discussing the role of institutional actors in baseball’s labour regulation, NICHOL might have made more of the links to the union movement more generally, but he does provide some useful insights especially into Japan’s labour movement: NICHOL observes that the Japan Professional Baseball Players Association is a “rare example of an industry union” (p. 57) in a country where, like the United States, unionism has been declining (less than 20% of Japanese workers are unionised).

With that, the book commences its in-depth description and analysis of baseball’s labour regulation and this is where NICHOL’s account really shines. Chapter 5 makes the transition between the theoretical background provided in previous chapters and describes baseball’s internal regulatory mechanisms, linking it to the previous discussions of theory; NICHOL observes that

player influence over labour matters “can be assessed according to the time period in an autopoietic system and the time when players unionize” (p. 67). The chapter is chock full of historical detail, and touches upon baseball’s union movement and the importance of Marvin MILLER in the United States and the 2004 Japanese players strike, provides a compelling account of free agency and arbitration, and discusses the plight of minor league players. The latter story is where the rubber often hits the road in terms of labour mobility (or the lack thereof), and NICHOL’s account is stark: since the beginning of free agency in MLB, salaries for major league players have risen 2400% while those for minor leaguers have increased only 76%.

Two developments presciently mentioned in the chapter will, one suspects, yield chapters in future editions of NICHOL’s book: the result of ongoing litigation in the United States regarding the labour conditions of minor league players, and the nascent ‘reverse flow’ of American (and other non-Japanese) prospects to Japan (rather than borderline journeymen players and fading stars at the tail end of their career) – illustrated by top prospect Carter STEWART’s skipping of the MLB draft and signing with the NPB’s SoftBank Hawks.

Chapter 6 discusses external regulation of professional baseball and draws upon a rich literature on Japanese regulation and litigation. Because of Japanese law’s relatively hands-off approach to baseball, the chapter is more of an American story (in particular, Congressional oversight and the National Labor Relations Board), but NICHOL again dots his scholarly discussion with specific anecdotes that not only illustrate his analysis but also delight baseball fans; for example, Hideki IRABU and Alfonso SORIANO’s battles with the NPB’s labour system, the rise of transpacific superagents Scott BORAS and Don NOMURA, and a brief discussion of the National Collegiate Athletics Association (a model Japan is unwisely considering adopting).

Chapter 7 returns to a big picture overview of the law and the principal of labour mobility. As such, and to the extent it supports the discussion of internal and external regulatory actors in the preceding chapters, it might have been better to include earlier along with the other ‘introductory’ chapters (with the more descriptive bits about baseball accommodated in the succeeding chapters, which seem to be the crux of NICHOL’s analysis). The chapter provides an overview of unionism in the United States within a nice, succinct cribbed history of American labour law more generally. The discussion of Curt FLOOD (p. 117) was particularly welcome, as was the mention of the Clayton Act (the “labour of a human is not a commodity”) (p. 112). The reliance on mainly English-language sources prevents a similar treatment of Japanese labour law, but nonetheless NICHOL provides insights there too (notably comparing baseball players to *sararīman*).

If the chapters of this book are a batting lineup, chapter 8 is batting cleanup. It tells the central story of the book and best synthesises the theoretical and descriptive elements of the analysis (leaning heavily on the autopoiesis metaphor in “constructing a concept of labour mobility in professional baseball” (p. 131)). In doing so through the lens of MLB and NPB, NICHOL makes a unique contribution to the literature on labour mobility as well as to baseball scholarship generally. NICHOL is particularly effective at showing the uniqueness of baseball as a business. The chapter is also fertile ground for further research: for example, the aforementioned treatment of minor league labour (about which NICHOL offers some important and poignant speculation (p. 141), youth development and the ‘pay to play’ phenomenon, the impact of the amateur draft, and the complicating factors of race and nationality (Latin American players, for example, are explicitly outside the scope of the book, but perhaps present one of the most compelling baseball labour issues).

The chapter also provides an excellent account of Japanese free agency and NPB labour mobility. Surely there is a book based solely on the paragraph on p. 149 that mentions the Yomiuri Giants’ role in the advent of Japanese free agency, Hideo NOMO’s momentous move from NPB to MLB, and the 2000 “posting agreement” between the two leagues – herein lies the story of baseball’s ascension to a proper world sport. It would benefit from NICHOL’s keen eye for the important details and deep understanding of world baseball. The chapter also teases the possibility of a more Marxist analysis when NICHOL observes that “[F]ree agency in NPB does not generate the same financial gains as in MLB, which is based on the ideals of American capitalism” (p. 153). Finally, the chapter ends on a brief discussion of *ongaeshi* in Japanese sport and its general decline in Japan. This is an important discussion, based on NICHOL’s own groundbreaking work (along with Doshisha University’s Professor Keiji KAWAI) on labour mobility in Japanese baseball.

With that climax, chapter 9 begins the denouement and NICHOL provides a synthesis of his foregoing analysis that yields some conclusions and recommendations. Having convincingly argued the special cultural status of baseball (especially in the countries under study), NICHOL convincingly argues that the special status of the national pastime does not warrant the commodification of labour: “The highly restrictive labour controls in professional baseball exceed what is needed to protect the interests of leagues and clubs” (p. 170). He provides a number of suggestions for “de-commodifying” baseball labour, including deadlines for releasing players, shortening and aligning posting and free agency service requirements, and allowing more player control over trades. Combined, the suggested changes would dramatically shift power over baseball labour more toward players, and dramatically so in the case of Japanese players.

In chapter 10, NICHOL crystallises his thorough and wide-ranging analysis into some concrete, if not fully fleshed out, reform proposals. With MLB setting baseball's global governance agenda by default, NICHOL surveys other international sports for guidance on addressing baseball's biggest governance needs: a system to "facilitate movement and mobility of players" as well as "enhance the access of clubs to player labour" (p. 177) and a mechanism for providing independent global dispute resolution. NICHOL determines that soccer's global agreements (under the auspices of FIFA) provide the most appropriate model. More a discussion of options than a comprehensive proposal, NICHOL suggests making the World Baseball Softball Confederation (heretofore focused on grassroots baseball and international events) the global regulator of a system that would, *inter alia*, enhance the labour mobility of all professional baseballers (not just the biggest MLB stars).

In this book NICHOL offers a fascinating and insightful account of labour mobility in professional baseball. It is well researched in both English and Japanese and while it succeeds in its stated mission as a book for lawyers and academics, it is also under-marketed as a book for legally sophisticated fans of baseball. He was wise to choose America and Japan for his case study, but the necessary limitations on the scope of a study of such a fertile topic means that there are also further avenues for inquiry, many of which are mentioned above. Additionally, baseball's relationship with competition law deserves more attention, as does the rest of global baseball (particularly East Asia and Latin America and the Caribbean) and participants other than players (such as umpires). This is not to fault NICHOL, who acknowledges and justifies these limitations, but to praise the breadth and depth of his work. In the end, the book is widely appealing because it provides a tangible (albeit big picture) and well-reasoned blueprint for baseball's development into a truly global sport with the requisite global labour mobility. Baseball's post-Covid-19 restart and the attendant labour issues demonstrate that NICHOL's analysis will remain relevant, and that he should have much more to say, as baseball and globalisation continue to adapt.

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