

The irrepressible conflict  
between Labor and Capital  
ALBERT C. SPALDING

## I: The Legal Process at the Birth of Baseball

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JOHN MONTGOMERY  
"MONTE" WARD

The only player in major-league history to win 100 games as a pitcher and collect 2,000 hits as a batter. Monte Ward, a Columbia-trained lawyer organized the first players union and created the ill-fated Players league that challenged the National League in 1890. (*Photo courtesy of National Baseball Hall of Fame Library, Cooperstown, N.Y.*)

**The history of organized baseball** and the legal process is a story about people and institutions. This game, which means so much to America, is now a very big business, but that was not always the case. At its creation the enterprise was disorganized, almost chaotic. And from the outset, the legal process played an important role in transforming a pastime, a summertime amusement, into a commercial venture, run not by the talented young men who played the game but by the entrepreneurs who supplied the capital.

We can better understand the genesis of organized baseball by focusing on John Montgomery Ward, an important player from the first decades of professional baseball who will serve as the leadoff batter on our All-star Baseball Law Team. Ward's failed effort to wrest control of the baseball enterprise from the magnates fixed the structure of the business for over a century. Ward's legacy—the first unionization of the players and the first and only attempt by players to operate a league of their own—makes him a notable contributor to the early history of the organized game.

Ward's promise as a baseball player was recognized early; Henry Chadwick, the first chronicler of the game, wrote about Ward in the late 1870s, when the pitcher was still a teenager. Monte Ward began his career on the mound and, like many hurlers on the small squads of that day, played outfield when not pitching. He started in seventy games each of his first two full seasons with the Providence Grays of the National League. Ward is credited with developing one of the first successful curveballs, and on June 17, 1880, he pitched one of the earliest perfect games in baseball history. In 1884, Ward gave up the mound after completing a 158-102 record and began playing in-field full time.

But Monte Ward was more than just a great ballplayer. A graduate of Columbia Law School, he had attended night classes while playing for the New York Giants. He spoke five languages, wrote columns for national magazines, and in 1888 published *How to Become a Player*, a baseball book for youngsters. For his exploits on the diamond—he is the only player in major league history to win one hundred games as a pitcher and collect two thousand hits as a batter—Ward was voted into the Hall of Fame in 1964. Off the field, as the founder of the first players union and the Players League of 1890, he needed all his skills as a lawyer and a propagandist.

### **The Origins of Organized Baseball and the Formation of the National League**

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In 1876, two years before Ward began his professional career, William Ambrose Hulbert formed the National League of Professional Base Ball Clubs. A successful Chicago coal merchant and president of that city's treasured White Stockings nine, Hulbert realized that to attract fans, the sport needed a stable confederation of teams bound by common rules and schedules. The existing league, the National Association, was a loose collection of teams that accepted any entrant that could pay a ten-dollar fee. Gambling and fixing of contests were rampant.

By 1875, Hulbert had assembled in Chicago the best players he could lure from other clubs, including Boston's Albert Spalding as the White Stockings' new pitcher, captain, and manager and Philadelphia's first baseman Adrian "Cap" Anson, perhaps the best ballplayer in the nation at the time. Then, on February 2, 1876, Hulbert invited the owners of the seven strongest clubs in the National Association to a meeting in the Grand Central Hotel in New York City. Legend has it that once they all had arrived, Hulbert locked the door and hid the key. Before they left the room, these "magnates," as they called themselves, formed the National League. It was composed initially of clubs representing Boston; Chicago; Cincinnati; Hartford, Connecticut; Louisville, Kentucky; New York; Philadelphia; and St. Louis, each of which paid one hundred dollars as annual dues.

Hulbert and his fellow owners reshaped the business side of a sport that had already captured America's imagination. The game, despite its pastoral

appearance—broad, green fields and dirt pathways—germinated in the industrial cities of the eastern seaboard, in particular in New York City. Sport is a primal human endeavor, with ancient origins; survival always has required teamwork, and in their games, humans have always prepared for the exigencies of life. During the 1840s, the game of “ball” served that function for young men who had come to Gotham to seek their fortune in business and who used the game as an outlet for their athleticism.

The young men of New York formed clubs, most notably the famous Knickerbockers, to pursue their athletic pastime after work and on days off. It is said that the first game the Knickerbockers played against an opponent was held on June 19, 1846, across the Hudson River in Hoboken, New Jersey, on the aptly named cricket pitch the Elysian Fields. Although fifty years later baseball’s rulers would concoct an alternative orthodoxy featuring Abner Doubleday, later a Civil War general, who chased the cows off Eliha Phinney’s pasture in Cooperstown to lay out baseball’s first diamond, it is more likely that the Knickerbockers Club played the first game that approximates what we know today as the national pastime. But the Knickerbockers’ account, too, might only be apocryphal.

Whatever its specific origins, baseball quickly became a favorite American pastime.

## **Baseball Rules and the Legal Process**

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The New York Knickerbockers regularized the rules of the game of ball, which had been played in America in one form or another for over a century. All sports must have internal understandings or arrangements that control the playing of the game. There is a need for formal rules when moral force alone cannot govern human interaction or when the spirit of sport proves insufficient to organize a structured game. Without rules, there would be chaos on the ball field; imagine, for instance, a game where one side demanded five outs per inning and the other placed fifteen players in the field.

If a game is to spread beyond a neighborhood, and if challenge matches are to be scheduled, someone must transcribe a set of rules. Written rules achieve fairness by providing a measure of predictability for the participants and spectators alike. Alexander Joy Cartwright, a bank teller, volunteer fire-

man, and one of the founders of the Knickerbockers, is credited with transcribing the Knickerbockers' rules. Other clubs across the country gradually adopted the design of what became known as "the New York game."

Cartwright's skeleton rules have remained remarkably stable for 150 years. The "laws" of baseball, the internal rules governing the play of the game, have evolved since Cartwright's time, but an observer of the Knickerbockers' game in Hoboken would not have found it so very different from what now transpires across the Hudson River in Yankee Stadium. Bases were set ninety feet apart, absolutely the correct dimension; a yard shorter or longer would have changed the nature of the game, making put outs either too easy or too difficult. Players scored runs, called "aces" by Cartwright, by touching all the bases and home base. The pitcher delivered the ball from his box (a term, like many, adopted from cricket), and the batter struck at it with a bat. Nine players were out on the field—although all the infielders, except the shortstop, stood directly on their bases—and nine innings (another cricket term) made up the game, though games ended when a team scored twenty-one runs. A neutral umpire enforced the rules controlling the interaction of the players on the field, although in the mid-nineteenth century the umpire, dressed formally in a top hat, was seated on a chair in foul ground between third and home. He could consult with spectators if he needed help in making a call.

The rules of baseball in some ways mirror the fundamental rules developed by society—the "law." An amalgam of custom, usage, and formal pronouncements, the law facilitates human interaction within an interdependent society, much as the baseball rules allow the game to proceed. Law professors Henry Hart and Albert Sacks explain:

People need understandings about the kinds of conduct which must be avoided if cooperation is to be maintained. Even more importantly, they need understandings about the kind of affirmative conduct which is required if each member of the community is to make his due contribution to the common interest.

In addition, the law needs institutionalized means for enforcing those understandings and for changing them if they prove inadequate, a role carried out by the courts and legislatures. These institutions promote private decision making, the primary determinant of daily events in society. The law and

its concomitant institutions establish the conditions that make possible community life and the advancement of the human condition.

We make most decisions in society by exercising purely private discretion and individual choice—for example, when to get up in the morning or what type of job to undertake. The use of our private liberty fills our days. A very few of those decisions, what Hart and Sacks called “the trouble cases,” affect others in a way that requires some form of settlement of disparate interests by private means—for instance, we might decide where we should eat lunch by a show of hands. A still smaller group of conflicts are not so easily addressed. They require formal settlement either in public institutions, such as the courts, or in private institutions, such as the arbitration process.

On the baseball field, the designated umpires (until recently still dressed formally in “basic black”) enforce the rules of play—the internal laws of the game. They call balls and strikes, outs and interference, and declare the in-field fly rule in effect. Those rules are fixed only for a period of time, typically a season, although most have remained unchanged for a century. The participants may change the rules collectively if they prove inadequate or if alteration could enhance the quality of play.

In the business of baseball, a variety of internal and external institutions—the commissioner’s office, the courts, arbitrators, labor-management negotiations, administrative agencies, and potentially even legislatures—declare, enforce, and alter applicable rules. These may be either private rules (those created by the self-governing enterprise) or public rules (those applied externally by the instruments of society, courts and legislative bodies).

## **Professionalization and Business**

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Baseball started in the nineteenth century as a pure diversion for the participants. It was not yet a commercial amusement with paying spectators, let alone the billion-dollar enterprise we have today. As it developed, baseball fed America’s need for a secular religion; it was an organized and ritualized event, marked by indispensable concentration and intensity. Participants and spectators thought the game built character. As philosopher Michael Novak writes, “Sports are mysteries of youth and, perfect action and decay, fortune and misfortune, strategy and contingency. Sports are rituals con-

cerning human survival on this planet, liturgical enactments of animal perfection and the struggles of the human spirit to prevail.”

Civil War soldiers from both North and South, who knew something about “the struggles of the human spirit to prevail,” played the New York City game to deal with their boredom during the long months of waiting for the few hours of terror that comprised the war. Returning veterans brought the game home with them to villages and towns across the United States. Thus baseball truly became America’s Game.

Harry Wright, a great player and entrepreneur, realized that this pleasant diversion also was a potential business opportunity. The commercial spectacle of a baseball game could be the source of profit. He sensed that spectators would pay to see fine athletes perform at the highest levels of excellence on the diamond. He also knew that there was a limited pool of extraordinarily talented players who were not readily substitutable or replaceable.

In 1869, Wright collected premier ballplayers from around the country and paid them to play for the first all-professional team, the Cincinnati Red Stockings. Although other clubs had paid individual players—for example, an outstanding pitcher or a sure-hitting fielder—Wright’s all-professional team, by paying all the players and by charging spectators to see the games, changed the game forever. Amateurs continued to play, as they do today; but the Red Stockings proved that if you played well enough, spectators would pay to watch you. The Red Stockings traveled the nation in 1869, playing all comers. The club ended the year undefeated.

What Wright could not accomplish with a single professional team was the organization of a stable league that kept out the gamblers and appealed to prevailing Victorian norms. Although professional teams multiplied, finally forming the National Association of Professional Base Ball Players in 1871, financial insecurity and “revolving” athletes, who moved from team to team, undermined the association. Most teams did not even complete their year’s schedule of games. Betting was rampant and run by criminal elements who bought and sold games for a few dollars paid to key players. The business of baseball was ready for another revolutionary idea: the creation of “organized baseball.”

In 1876, William Hulbert’s National League brought stability to the baseball business. It allocated exclusive territories to the participating franchises.

This franchise monopoly within a national sports cartel allowed team to charge fans—"cranks," as they were sometimes called at the time—substantial prices to attend games. A ticket for a National League game cost about half a day's wages for a workingman, much more than today's ticket prices. The prices limited potential spectators to the "better classes," who could afford to attend the games, which were all held during the day.

Hulbert knew that player salaries were the largest expense of the franchises, and that revolving players undermined fan interest. As a result, in 1879, National League owners imposed restraints on player movement from team to team. Each team could "reserve," or hold off the market, five players. Each club agreed not to negotiate with players reserved by the other clubs. The foreseeable and intended result was that a player, who did not have the option of playing elsewhere, could not demand a higher salary. "All the delegates," the *Civincinnuti Enquirer* newspaper reported, "believe this rule will solve the problem of how to reduce wages." By 1883, both the National League and the rival American Association allowed eleven players to be reserved by each club. At the time, this was virtually an entire club's roster. The strict reserve system would control the movement and bargaining power of major-league players for almost a century.

Hulbert's National League innovations became the model for all professional sports leagues. For the first time, league rules effectively controlled player resources. Clubs enjoyed territorial exclusivity, without economic rivals. Any club wanting to join the league had to obtain the approval of all league clubs. No club could be located in a city with fewer than seventy-five thousand residents, in order to secure the potential base of spectators for the contests. Any club could expel a player from the league for violating team rules. The league prohibited teams from negotiating with a player under contract to another team during the season. Sanctions for violating a club or circuit rule included blackballing, which effectively ended a player's career at the major-league level.

Typical of employers at the time, Hubert's magnates showed little concern for their players. Players were viewed as a rough-and-tumble group of men with great athletic prowess but little education and no business experience. The employers' cooperation effectively held down their players' salaries. Yet, despite their successful bottom-line approach, club owners bemoaned their



financial fate from the earliest days of the sport. In fact, Albert Spalding, who by the 1880s had become a sporting goods tycoon and replaced Hulbert as the league's strongman, told the *Cincinnati Enquirer* in 1882, "Professional baseball is on the wane. Salaries must come down or the interest of the public must be increased in some way. If one or the other does not happen, bankruptcy stares every team in the face." It is a refrain that is as fresh as this morning's sports page.

The players' response to the owners' cartel also sounds familiar. On October 22, 1885, led by their star, John Montgomery Ward, nine members of the New York Giants created the first baseball players union, the National Brotherhood of Professional Baseball Players. Ward then formed Brotherhood chapters in every National League city.

Ward also published a series of articles that vigorously attacked baseball's reserve clause. The restraints on the players imposed by agreement among the owners, he said, were "a conspiracy, pure and simple, on the part of the clubs by which they are making money rightfully belonging to the players." The contest between players and owners for the greatest share of baseball's profits had begun.

## **The Nineteenth-Century Union Movement**

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The early unionization of baseball players is not surprising. The organization and expansion of professional baseball mirrored the explosive growth of American industry. Large-scale industrial enterprise was replacing the small shop, where workers had enjoyed personal relationships with their employer. In this environment, the union movement gained adherents nationwide. Its growth was spurred by class consciousness, the increasing urbanization of the population, and concerns that the flood of immigrants would lower rates paid to skilled workers unless the workers controlled the price of labor through exclusive guilds. Unions gave laborers the means to protect their wages and working conditions in an environment where employers focused only on maximizing profit.

The first workers to form protective trade organizations were artisans who sought to restrain the ability of employers to lower the cost of skilled services by routinizing jobs and hiring less-skilled workers, many of whom were im-

migrants who would work for lower wages. Craft unions created standard lists of prices for the piecework of their members. This economic strategy worked only when all (or most) of the employees agreed to work only at the set standards. Unions became the enforcement mechanism for price-setting agreements.

The American trade union movement before the Civil War was limited to the skilled trades, where workers shared apprenticeship training and a common skilled craft. The trades people worked in localized cottage industries, rather than in mass-production enterprises. To avoid the union's monopoly in supplying labor, owners would move to avoid the standards. To protect their standards, unions then had to organize employees regionally and, eventually, nationally. By the 1860s there were three hundred thousand union members in skilled trade unions, organized along craft lines.

The growth in American industry after the Civil War resulted in a new unionization strategy that crossed craft lines. Unionists founded the Knights of Labor as a secret organization of workers in 1869, the year the Cincinnati Red Stockings fielded the first all-professional baseball team. In 1886, after its spectacular victory against railroad magnate Jay Gould, the now-public Knights of Labor increased its membership to about seven hundred thousand nationwide. This was the same year in which Monte Ward formed the National Brotherhood.

Baseball players came from the same social strata as the early unionized workers—they were the "skilled tradesmen" on the field of play. Many came from the Irish and German working classes, and at least a fifth worked in saloons in the off-season. A staggering 80 percent of baseball players became saloon keepers after leaving the professional game.

It is not surprising that Monte Ward could encourage his fellow players to join the collective effort. The players knew that a typical professional career lasted only a few years. By the 1880s, a club's roster was only fourteen players. While players were paid well compared to other workingmen, their vocation could end at a moment's notice. As a truly elite group of athletes, baseball players sought to increase their pay while they were still able to play the game.

The club owners responded to the threat posed by Ward's union by tightening their control over the players' terms and conditions of employment.

Under the Brush Classification Plan, named after Indianapolis club president John T. Brush and put into effect during the off-season of 1888, owners ranked players in five categories, each with a set salary ranging from \$1,500 to \$2,500 annually. The players chafed under the plan, being, as Ward said, “graded like so many cattle” for the slaughter. The owners then broadened the reserve system to cover all players, eliminating player-generated movement from team to team. Clubs required players to sign a standard contract, renewable at a team’s option and assignable to any other club.

The structure of the business of baseball was now fully in place: a comprehensive reserve system for players, a program of fines and blacklists to enforce league rules, exclusive territorial allocations, and standard rates of pay. Ward’s unionization effort had resulted only in a tighter owner cartel.

## **The Players League**

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In 1889, Ward’s Brotherhood issued a public “Manifesto” attacking the National League:

There was a time when the League stood for integrity and fair dealing. Today it stands for dollars and cents. . . . Players have been bought, sold and exchanged as though they were sheep, instead of American citizens. “Reservation” . . . became for them another name for property right in the player.

A player either had to submit to the owners’ system or had to leave the vocation in which he had spent years attaining proficiency. Ward’s unionization effort had failed to change the baseball status quo. Frustrated by his lack of success in improving employment conditions for the players, Ward struck out in a radically different direction.

As the baseball clubs toured league cities during the 1889 season, Brotherhood activists met with potential financial backers, presenting a plan to create a rival circuit of baseball teams. On November 4, 1889, using ties forged through the Brotherhood organization, Ward announced the formation of an independent baseball league: the Players League. This rival enterprise would end the hated practices of the established league; it was to operate without a reserve clause, a classification system, or a blacklist.

Baseball players jumped to the new league like kids into a country pond,

ignoring the promise they had made in their National League contracts not to play for any other baseball club. To give the new clubs stability, players signed three-year Players League contracts at the same salaries they had received from their National League clubs in either 1888 or 1889, whichever was higher.

The Players League's business structure was unique in the history of professional sports. Players knew they needed financial support for the venture. Encouraged by streetcar entrepreneur Albert L. Johnson of Cleveland, who wanted a baseball park on his transit line to attract ridership, businessmen flocked to the venture. The new league's financial backers, or "contributors," planned to share the profits of the league with the players. Many players purchased stock in their own clubs.

Governance of the new business venture was also distinctive. Each club had its own eight-man board, split evenly between player and contributor representatives. A senate of sixteen men, two from each of the eight clubs, half chosen by the players, half by the backers, governed the new venture. The senate selected from its membership a president and a vice president and appointed an outside secretary-treasurer.

Organized baseball's initial response to the insurrection was to turn to the courts. Monte Ward's 1889 player contract with the National League Giants contained a clause that gave the club the right to reserve him for the 1890 season. After Ward renounced his contract to participate in the Players League, the Giants filed suit in the New York Supreme Court. The club sought an injunction to restrain Ward from "playing the game of baseball . . . for any person or corporation except the plaintiff." Ward argued the term *reserve* meant only that he had promised not to play for another National League club, but Justice Morgan Joseph O'Brien disagreed. The court found, however, that the reserve clause neglected to specify the terms of his renewed 1890 contract. What was Ward's 1890 salary? What did Ward agree to do for that salary? With such central questions left unanswered in the employment contract, the court decided the reserve clause was "too indefinite" to enforce.

The Giants had asked the state court to issue an injunction against Ward. Courts recognize that the injunction—a court order to do something or not to do something, on penalty of contempt—is a powerful weapon, and that

they should issue this extraordinary remedy only in limited circumstances. Courts examine the “equities” of a case to determine whether “equitable relief”—in this case, an injunction—is warranted. The New York court stated in Ward’s case: “The want of fairness and of mutuality, which are fatal to [the contract’s] enforcement in equity, are apparent.” The court then characterized the Giants’ construction of the contract as a “spectacle.” Under the club’s reading of the standard player agreement, the player could be bound to a club for years, but the club had an obligation to the player lasting only ten days. This lack of mutuality doomed the Giants’ legal claim.

Ward’s case was an early test of the enforceability of the National League’s player restraint system, although it was not the first example of baseball’s entanglement with the judicial system. In 1882, the Cincinnati club of the newly formed American Association had sued infielder Samuel Washington Wise for not honoring his contract. He had jumped to the Boston club of the National League before playing a single game for the Red Stockings. The Massachusetts state court refused to grant Cincinnati’s request for an injunction, and Wise remained with Boston.

The outcome in Ward’s case, and in others like it, signaled that the formal judicial system might not assist management in enforcing the terms of one-sided player contracts. This was a troubling development for the magnates. The long-term success of any collective business enterprise, such as the National League, depends on the enforceability of the terms of private agreements entered into between club owners and between teams and their players. William Hulbert’s agreement establishing his National League assigned the clubs exclusive control over their player resources. It did not, and could not, control nonsignatories to that agreement, such as clubs in a rival league or, in this case, players who would form their own league.

The players’ legal triumphs—they won almost every lawsuit brought by the National League clubs to enforce the terms of the reserve system—jeopardized the established league’s business. The National League owners did not want to accept the existence of a rival league using their former players, but the courts would not cooperate. In response, the magnates turned to tactics outside the formal legal process to reestablish their primacy. Unable to prevail in courts ordinarily available for contract enforcement, they would invoke “private sanctions,” such as coercion and bribery.

The Players League matched its success in the courts with sparkling performances on the field. About 80 percent of the National League's players moved to the new league. Defectors included future Hall of Famers Dan Brouthers, the nineteenth century's greatest slugger, with sixteen .300 seasons and a .417 average in 1887; James "Pud" Galvin, baseball's first three-hundred-game winner; Hugh Duffy, who later hit .300 for ten straight years, with a .438 average in 1894; and Ed Delahanty, the first player ever to hit four home runs in a game. Interestingly, two men who would become influential club owners in the twentieth century—catcher Connie Mack and first baseman Charles Conuskey—also jumped to the Players League.

The backers of the New York City franchise quickly erected wooden stands for Brotherhood Park in New York, on a site adjacent to the Polo Grounds, and challenged the Giants head-to-head for the public's attention. On Opening Day in 1890, twenty thousand patrons attended the Players League game in Brotherhood Park, while a thousand spectators watched the Giants.

The Players League followed the strategy that would come to be used by rival leagues in all professional sports. It attracted known stars from an established league in order to gain visibility and legitimacy with sports fans. Some members of the public may have perceived these players as traitors, seeking only economic gain at the expense of loyalty to their teams. But for other fans, the rival league produced more entertainment at lower prices. For an athlete with a short career span, economic reality mandated taking advantage of these rare opportunities. Even players who stayed with the established league benefited from the rivalry, finding employers willing to pay more to retain their services in a dwindling pool of available players.

The National League fought back under the leadership of the league's Chicago strongman Albert Spalding, who established a league "war fund." The magnates pounded the Players League financially, first by scheduling games in direct competition with Players League contests and then by distributing free National League game passes throughout town. Each side falsified attendance figures and pursued the propaganda war in the press. Spalding announced, "I am for war without quarter. I was opposed to it at first, but now I want to fight until one of us drops dead."

The idealistic Ward, his cohorts, and his "contributors" were not prepared for the rough style of Spalding's business play of the 1890s. Both sides suf-

ferred a financial calamity, but the more-experienced National League owners prevailed. Through the use of propaganda, threats, personal intimidation, and financial offers, the National League magnates induced the Players League's relatively naive and inexperienced financial backers to desert the rebel cause. Ward announced that the venture collapsed because of "stupidity, avarice, and treachery."

The Players League folded after one year of play, and the National League accepted most of the players back with major salary reductions. Spalding won this critical skirmish in what he termed "the irrepressible conflict between Labor and Capital." He welcomed the players back to the fold, confident that his league would once again reign victorious: "When the spring comes and the grass is green upon the last resting place of anarchy, the National [League] will rise again in all its weight and restore . . . to all its purity [our] national pastime—the great game of base ball."

Monte Ward returned to the National League, played for the Brooklyn club for two years, and then completed his baseball career with the New York Giants. He later practiced law full time, representing baseball players in contract disputes with their clubs.

## **Legal Process at the Birth of Baseball**

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The early decades of organized baseball demonstrate some of the various ways in which society organizes and regulates its business activities. The formal principles of societal control—the law—allow people to resolve problems that arise when they live in an interdependent society. Nevertheless, the law is only one of many methods to facilitate business interaction, and it is a method with great limitations. Formal public institutions, such as legislatures and the courts, create and apply the law, but they leave broad discretion to private decision making. Individuals arrange the most important parts of their life by "private ordering." Despite widespread complaints about governmental intrusion into our lives, the American system, based solidly on a private economy and individual initiative, operates free of public interference.

Within the arena of private arrangement, conflicting interests are inevitable. Ward and his fellow ballplayers confronted what they recognized as a privately constructed cartel of owners that imposed unfavorable terms and

conditions on their employment. In response, the players used the power of private decision making to create a voluntary organization of their own, a brotherhood of professional ballplayers. Individually, or even collectively in a union, however, the players did not have the economic power to temper the owners' unilateral control. It was necessary to pursue other alternatives.

Ward first attempted to bolster the players' economic power through an appeal to public opinion. Propaganda, an instrument of "coercion," may be effective in some instances, but the Brotherhood Manifesto had no impact. Then, as now, the public cared little for the pleas of highly paid athletes— young men who "played for pay, rather than performing any "real work." The public cared only about their summertime amusement. Ward responded by offering them a circuit of star-studded teams run by the players themselves— something that enhanced the potential entertainment value of the sport. Ward's self-help approach imposed an even greater cost on owners than withholding player services through a strike: not only did the players not play for their National League clubs, but they also established an economic rival that threatened the continued economic viability of the league.

William Hulbert's and Albert Spalding's National League, with its strict internal rules and methods of self-enforcement, was typical of private industry arrangements of the time. Organized baseball fit the dictionary definition of a cartel: a combination of individual, private enterprises supplying the public with the same product—in this case, the commercial entertainment of professional baseball. Through private ordering, the owners set limits on their own competitive activities, allocating customers by means of exclusive territories and controlling the wages of players. A limited number of "firms" (the baseball franchises) controlled the supply of a product that had broad market appeal. Any such combination required strong leadership. Hulbert and Spalding provided that direction for the enterprise, enforcing the cartel's rules against its members and outsiders alike.

The public perceives baseball clubs as competitors; after all, the clubs challenge each other on the field of play every day. This impression runs counter to business reality, however. Modern sports teams compete economically only when legal and political powers force them to do so. Without economic cooperation within a league, individual clubs could not survive, and the public then would be deprived of the entertainment they provide. With full co-



operation, however, clubs can gain exclusive control over their territories, eliminate competition for player resources, and achieve the highest return on investment. Club cooperation keeps the game going year after year.

At the genesis of organized baseball, neither the owners nor the players resorted to the formal legal system to design their relationships or designate their “rights.” Rather, they privately ordered their economic alliances. The owners certainly would have felt comfortable in court; as entrepreneurs, they sued and were sued on a regular basis in contract, tort, and property disputes. In contrast, the players shared with the working class a distrust of the formal judicial system, seeing courts as controlled by moneyed interests. It is noteworthy, then, that when the players jumped their contracts to form the Players League and the owners resorted to litigation, the courts would not enforce the owners’ one-sided agreements. The owners ultimately prevailed, however, not through the exercise of legal rights in formal legal institutions but rather through the exercise of extralegal economic power and coercion.

In this early baseball litigation, the courts applied well-developed legal standards that had been established for enforcement of contracts. Although, as individuals, some judges may have favored the owners’ interests, existing legal precedent pulled them in the opposite direction. The pull of precedent, however, does not always ensure that judicial attitudes remain stable. We will see in the next chapter how, only a decade later, the judicial approach toward enforcing player contracts changed in the important case involving Napoleon Lajoie and, in turn, further strengthened the baseball cartel.

The Players League venture failed because the effort lacked a source of reliable capital to create and maintain a major business enterprise. Because the players needed to build stadiums and meet payrolls, they turned to financial backers who were motivated primarily by profit and not by ideological zeal or a passion for the game.

Albert Spalding proved to be a better economic field general than John Montgomery Ward. Under his leadership, the National League was willing to use any method to win the economic battle. The Players League’s failure became certain when its established rival moved beyond the courts to achieve its objectives. Forces other than law—greater bargaining power, custom, the interplay of private abilities, even illegal activity—often prove to be more powerful than law in attaining economic victory. The National League used

all of these means of coercion, and it triumphed. For the next seventy years, the major battles in baseball would be fought in two forums: on the field, between teams of talented athletes, and in the corporate offices, between the "teams" of entrepreneurs interested in the profits to be won from the game. An organization of players would not play an important role again until the 1960s.

Montgomery Ward's off-field activities more than a century ago foreshadowed the role of the modern players union in revolutionizing the business of professional baseball. His Players League adventure ended dreams that the business of baseball could operate as a democratic, employee-owned enterprise without business proprietors. Albert Spalding wrote:

As one who has been connected with both ends of the baseball problem—with reasonable success I may fairly claim—it has been my fixed belief that, like every other form of business enterprise, Base Ball depends for resnks upon two interdependent divisions, the one to have absolute control and direction of the system, and the other to engage—always under the executive branch—in the actual work of production. The theory is as true in the production of the game of Base Ball as in the making of baseballs or bats.

By the last decade of the nineteenth century, the basic structures of the baseball enterprise were firmly set. Franchise owners ran the enterprise, each with territorial exclusivity. Players were employees, bound by standard contracts. They were held to their teams by a tight reserve system, backed by threats of blackballing against "revolvers" who jumped their contracts. Baseball was assured stability, and the fans embraced the American Game.