CURT FLOOD AND BASEBALL'S RESERVE CLAUSE: AN EXAMINATION OF SYMBOLIC MARTYRDOM

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Ten million never heard of Keats, or Shelley, Burns or Poe: But they know 'the air was shattered by the force of Casey's blow'; They never heard of Shakespeare, nor of Dickens, like as not, But they know the somber drama from old Mudville's haunted lot. --Grantland Rice

Sport plays a number of roles in society; the strongest of those roles is as a transmitter of cultural values.

> First, sport is an effective transmitter of values. Through sport, the predominant values of society -- fair play, rule obedience, equality -- are taught to participant and fan alike. Sport also can promote a feeling of community attachment and good will among citizens, as well as provide the impetus for surges of patriotism and national pride in general.[1]

Until recent years, in American society, the sport with the most cultural importance was baseball. The American dream is almost mythically woven into baseball and the two have, in a sense, grown up together. Just as Americans fought over civil rights; owners of baseball teams fought over integration until Jackie Robinson became the first black major leaguer in 1947.[2] And just as the labor unions fought for worker's rights, in 1972 the Major League Player's Association went on strike, for the first time in the history of baseball, over the reserve clause.[3] As philosopher Jacque Barzun explained, "whoever wants to know the heart and mind of America had better learn baseball."[4] Indeed, baseball is often used to communicate the values of this society.[5] For instance, the local baseball team operated as "a public trust" concerned for:

> ...the community's welfare. The ideology of baseball fit in well with fundamental American beliefs, values, and

> traditions. It helped reinforce the world view of the native white Americans. . . The sport was widely perceived as possessing many of the finest American qualities which had originated on the frontier or the rural countryside. Baseball was seen as an extension of the frontier into the cities where it supposedly indoctrinated urban folk into the traditional American value system.[6]

One of the values that baseball communicates best is the value of sacrifice. A baseball player is often asked to sacrifice his turn at bat to advance a runner into scoring position or to drive in a run. By hitting into an out, sacrificing himself for the good of the team, the player has accomplished the ultimate good. That good is sacrificing the self for the many. That value is evident throughout American society. Even though we may cling to the notion that we are "rugged individualists," the individual is often expected to act in a manner that facilitates the community. Soldiers, police officers, fire fighters, and even teachers are asked to sacrifice their own gains and well being for the good of society.

It took just such a sacrifice for baseball to overcome one of its most negative aspects: The reserve clause. Due to this clause, baseball is the only professional sport that does not come under the collective bargaining and federal antitrust laws.[7] Individuals had challenged the reserve clause before, but never had the players organized in an effort to gain the right of collective bargaining. The exigency that led to this cooperative effort, many believe, was Curt Flood's legal assault on the reserve clause in 1970. This case is singled out as the turning point despite the fact that the verdict went against Curt Flood's bid for free agency. Flood's case served as, in Marvin Miller's words, a "consciousness raising lever for the players."[8] With this case being the turning point in the player's battle against the reserve clause, the need for analysis of the case is evident.

The purpose of this work is to highlight the aspect of Curt Flood's attack on baseball's reserve system that made it effective; that aspect being Flood serving as martyr for the cause of free agency. In order to conduct this analysis, the reserve clause itself must be described, the history of attacks on it explored, and Flood's court case (*Flood v. Kuhn*) examined. A number of conclusions can then be drawn.

The reserve clause is almost as old as organized baseball itself. The National League was founded in 1876, and a primitive version of the reserve clause was implemented in 1880.[9] The development of the reserve clause

was purely a financial matter:

> changes and escalating player salaries changed to one of total team control over the terms and conditions of employment. Meeting secretly on September 30, 1879, these [National League] officials enacted the first 'reserve rule.' This rule, to take effect for the 1880 season, provided that each club could protect five players from interleague raiding. The understanding among all of the owners was that their five players would be protected from raiding if and only if they agreed not to tamper with the reserved players from other squads. . . . Almost overnight, a system of rampant team . changes and escalating player salaries changed to one of total team control over the terms and conditions of employment.[10]

The reserve clause is, in fact, a term describing a number of clauses that were included in the uniform player's contract. Prior to the strike of 1972, these clauses were routinely included in all player contracts:

> 5.(a) The Player agrees that, while under contract and prior to expiration of the club's rights to renew this contract, he will not play baseball for any other Club, except that the Player may participate in post-season games under the conditions prescribed in Major League Rules. . . . .
> 6.(a) The Player agrees that this contract may be assigned by the Club (and reassigned by any assignee Club) to any other Club in accordance with Major League rules and the Professional Baseball Rules. . . .
> 10.(b) The Club's right to renew this contract as provided in subparagraph (a) of this paragraph 10, and the promise of the Player not to play otherwise than with the Club have been taken into consideration. . . .

The basic premise of the reserve clause was then extended in the Major League rules under "tampering":

> To preserve discipline and competition, and to prevent the enticement of players, coaches, managers, and umpires, there shall be no negotiations or dealings respecting employment, either present or prospective, between any player, coach, or manager and any club other then the Club with which he is under contract or acceptance

of terms, or by which he is reserved. . . .

Thus, under the reserve clause or system, a player was "owned" by the club he signed with and could not negotiate with any other club. This restricted player mobility and the free marketing of a player's skills. Or as Jay Topkis, a member of Flood's team of attorneys, puts it:

> I thought that the reserve clause was just another classic matter of exploitation -- the fat-cat owners preferred not to compete for the services of players, and they built a cozy system which precluded competition.[11]

Despite the fact that the federal government passed the Sherman Act[12] in 1890 and the Clayton Act[13] in 1914 as means of combating monopolies and restraint of trade[14] baseball managed to remain exempt from such legislation. This exemption was created as a result of the Supreme Court's ruling in the 1922 case *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*.[15] The *Federal Baseball Club* decision held that the actions of the National League did not fall under the jurisdiction of such anti-trust legislation as the Sherman and Clayton acts.[16] Justice Holmes, speaking for the court, explained the exemption from the Sherman and Clayton acts, saying exhibitions of baseball were "purely state affairs"[17] and that baseball ". . . would not be called trade or commerce in the commonly accepted use of those words."[18] This decision served as the case law precedent for the preservation of the anti-trust restriction of trade that resulted from the reserve clause.[19]

In 1949, Danny Gardella sued baseball (*Gardella v. Chandler*) when he was blacklisted through the reserve clause. Gardella had been excluded from playing in the Major Leagues after he was caught playing in the Mexican Leagues. Gardella sought damages and sought to have the reserve clause declared an unreasonable restraint of trade.[20] The presiding judge, Learned Hand, decided that the advent of broadcasting had moved baseball closer to the level of interstate commerce as covered by antitrust laws; but he ruled that the district court, not the court of appeals, hadjurisdiction over that type of determination (*Gardella v. Chandler*).[21] This decision was reaffirmed later in 1949 in the similar instances involved in *Martin v. National League Baseball Club*.[22] Thus *Federal Baseball* was twice upheld by default when "out of court settlements and the reinstatement of the three players" (Danny Gardella, Fred Martin, and Max Lanier) averted further litigation at the District Court level.[23]

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In 1951, Congress decided to examine baseball's exemption from anti-trust legislation, and four bills were introduced toward that end: H.R. 4229, 4230, and 4231, and S. 1526, 82nd Congress, First Session (1951). However,"the Congressional study came to the conclusion that it was too early to enact general legislation for baseball."[24] Congress returned the matter to the courts.

The *Federal Baseball* ruling was further strengthened in 1953 when the Supreme Court ruled in *Toolson v. New York Yankees, Inc.*[25] that, "Congress had no intention of including the business of baseball within the scope of federal anti-trust laws."[26] In his dissenting opinion, Justice Burton writes

> Conceding the major asset which Baseball is to our nation, the high place it enjoys in the hearts of our people and the possible justification of special treatment for organized sports which are engaged in interstate trade or commerce, the authorization of such treatment is a matter within the discretion of Congress.[27]

Thus, the Supreme Court had elevated professional baseball above all other businesses, allowing it to operate in a monopolistic manner and practice restraint of trade.

Curt Flood was not the only individual to challenge baseball's anti-trust exemption in 1970. The other case, moving through the dockets in New York, reached appellate decision while Flood's decision was still pending. In *Salerno v. The American League*[28] two former umpires charged the American League with monopolistic practices and restraint of trade.[29] The court dismissed this action on the grounds that it had no jurisdiction in the matter. The matters of jurisdiction and precedent in this case, according to Marvin Miller, hinge in part on the "establishment" nature of the courts:

> The earlier [than *Flood*] rulings were not 'stronger,' the courts, including the Supreme Court, are Establishment institutions. As such, property rights (the ownership of players) have a higher priority [in the eyes of the courts] than human rights![30]

Before 1970, all attacks against the reserve clause had shared one of two common themes: the plaintiff in question (the player or potentially a team, as in the case of *Federal Baseball Club*; or former umpires as in the case of *Salerno*) was blacklisted and sued Major League Baseball, claiming that, in the front office.[35]

due to the reserve clause, Baseball had violated the Sherman Anti-trust Act and Clayton Act; or the player in question sued on the grounds that *Toolson* was outdated by advances in the electronic media. *Toolson* had affirmed *Federal Baseball* in holding that baseball was not subject to anti-trust legislation. This argument was predicated by the notion that a game was not interstate commerce.[31] Radio, and later television, challenged the idea that an exhibition of baseball is an affair of the state in which it takes place because the images and accounts of the game are broadcast across state lines. The Flood case took these approaches, but added a more personalized element, Curt Flood as victim and martyr.

Despite the fact that the Salerno case took place in a similar time frame, it was Curt Flood's battle against the reserve clause that gained nationwide attention. Perhaps this attention was due to the fact that Flood, who played for the St. Louis Cardinals, was merely thirty-one years old and considered the best center fielder in the game at that time.[32] In his twelve years with the Cardinals, Flood batted .285, won seven gold gloves, was chosen as an All-Star three times, and set a record for 223 consecutive errorless games.[33] It is also important to note that Flood believed his primary role in the organization was to contribute to the success of the Cardinals as a team.

> You must help one another on the Cardinals, because it is the team's winning that matters -- not what the batting average is. There is something about being a Cardinal. The sense of the team's history is one thing and the number of great players is another. Right now (1968) there is a feeling of unity all the way through the organization. You get the feeling when you are playing that everyone in the organization senses your problems and tries to help you.[34]

Despite his successful performances and despite his sense of unity, Flood was reminded that, after all, he was just another player. After having been a part of the St. Louis community for twelve years and having participated inthree World Series with the Cardinals, Flood was informed, via a phone call from the assistant to the Cardinal's General Manager, that he had been traded to the Philadelphia Phillies. Flood found this degrading:

> It was a bad scene. Feverishly, I harped on my 12 years of service, my place among the all time stars of the Cardinals. If I had been a foot-shuffling porter, they might have at least given me a pocket watch. But all I got was a call from a middle echelon coffee drinker

The trade left Flood with three options: to go to Philadelphia, to retire, or to take legal action. Flood chose to take action:

> I had been thinking about the reserve clause for weeks. Sooner or later, someone would challenge baseball's right to treat human beings like used cars.[36]

After having made his decision, Flood contacted Marvin Miller the executive director of the player's association and was given the support of that organization.

On Christmas Eve of 1969, Flood sent a letter to Kuhn, saying in part:

> After twelve years in the major leagues, I do not feel that I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the several States.[37]

Flood continued by asking Kuhn to allow him to negotiate independently with the other clubs in the major leagues.

Kuhn, bound by the uniform player contract and the reserve clause, denied Flood's request. Then Flood and his attorneys (headed by former U.S. Supreme Court Justice Arthur Goldberg) filed suit in New York district court. The case focused on a number of charges:

> In general, the complaint charged violations of the federal antitrust laws and civil rights statues, violation of state statutes and the common law, and the imposition of a form of peonage and involuntary servitude contrary to the Thirteenth Amendment. . . . Petitioner sought declaratory and injunctive relief and treble damages.[38]

The case echoed its predecessors in a number of areas. It attacked the reserve clause as an unreasonable restraint of trade. (All quotations in this section, unless otherwise noted, are the words of Jay Topkis, a member of Flood's defense panel.).

> Certainly in no American business would any such restraint be countenanced for five seconds[39]. . . . I think it is clear beyond the slight-

> est question that the system of restraint here established by organized baseball is totally at odds with our American free enterprise system and the requirements of the federal antitrust laws.[40]

The case attacked the idea that baseball deserved an exemption:

> The problem is that whenever a monopolist or a price-fixer or any other violator of the antitrust laws is threatened, he says "My particular violation of the law is so reasonable and makes so much sense that it must be permitted and the only alternative is chaos.[41]

And the case attacked the manner in which baseball had managed to keep that exemption:

> They don't want to be regulated, they told the Supreme Court, by the states, by the federal government, because they are really just local exhibitions, and then they try to tell your Honor that they don't want to be regulated by state law because they have to be regulated uniformly, and I suppose, well, there is just no limit to how many times you can play that game if the courts and the legislatures will let them get away with it.[42]

All of these various attacks on the reserve system had been tried and had failed to get either action from the courts or organized action from the players. These attacks failed once again, in the legal arena, as *Flood v. Kuhn* reached the Supreme Court. The court ruled five to three to uphold *Federal Baseball* claiming that this was a decision that Congress would have to make.[43] But in the *Flood* case, a second aspect was working: one that, a year later, wouldlead the players to take collective action for the first time against Major League Baseball and the reserve clause. That motivating aspect was that Flood had become a public victim of the system. His victimization inspired others to take notice of the way the system he was fighting was affecting them as well, and they began to take action. Some, especially the owners of baseball clubs, felt that Flood was being used as a pawn to break the system.[44] But others, including Marvin Miller, saw Flood's action for what it was, a sacrifice:

> People underestimate Curt Flood. He is his own man, and he is probably the only professional ball player who won't benefit from

a change in the rules.[45]

If a sacrifice of this kind were taking place in an area of political unrest, or if Flood had died for a cause, he would be called a martyr. Since his actions led only to the death of his career as a professional ball player, Flood's martyrdom is only symbolic. Yet, this symbolic martyrdom made the case a powerful motivator of change.

The martyrdom is symbolic in that it was created through the use of metaphor. As I.A. Richards explains:

> Metaphor, in the most general sense, is the use of one reference to a group of things between which a given relation holds, for the purpose of facilitating the discrimination of an analogous relation in another group.[46]

Metaphor is an abstraction aimed at facilitating more powerful communication where a part of a context is enough to elicit the whole. The most basic example of this, according to Richards, would be a chicken who, after eating a striped caterpillar and finding that it is bitter, refuses to touch any other striped caterpillars.

> This simple case is typical of all interpretation, the peculiarity of interpretation being that when a context has affected us in the past the recurrence of merely a part of the context will cause us to react in the way in which we reacted before. A sign is always a stimulus similar to some part of an original stimulus and sufficient to call up the engram(i.e., 'to call up an excitation similar to that caused by the original stimulus') formed by that stimulus.[47]

Thus, for Richards, all communication is metaphor in that the symbols of communication serve as a stimulus designed to call up the meaning of the referent (object, idea, emotion, event) that is represented, through abstraction, by the symbol(s).

> In the simplest formulation, when we use a metaphor we have two thoughts of different things active together and supported by a single word, or phrase, whose meaning is resultant of their interaction.[48]

Metaphor can be manipulated by carefully pairing symbols to create specific meanings. For instance, the combination of "blind" and "trust" creates a meaning that is a combination of the two yet, in its own right, has a unique meaning.

The process of applying metaphoric meaning to Flood's attempts to challenge the status quo began when he first attacked the reserve clause, opening himself up for attack and sacrificing his reputation. One of the reasons for this is found in the nature of baseball, or any team sport, in that the "organization" is always greater than any of the individual players. By challenging the "organization" of baseball, Flood stigmatized himself: "those who perceive themselves to be individuals rather than members of a team risk condemnation, even rejection."[49] To reject the trade was to challenge the establishment and risk reprisal.

In the construction of the case, Flood's attorneys attempted to prove that Flood was victimized by the system. The case for victimization begins with the fact that Flood signed as a teenager and had no knowledge, as is the case with many if not most teens, of legal issues such as the reserve clause. This point is established in the initial direct examination of Flood by Arthur Goldberg:

> Q And how old were you when you first signed your professional baseball contract, the first that you signed?
>
> A I was eighteen.
>
> Q Did you read it?
>
> A Well, not really. I knew very little about contracts and the provisions of them.
>
> Q Did you consult with a lawyer before signing your first baseball contract?
>
> A No Sir.
>
> Q Did you consult with anyone?
>
> A No Sir.
>
> Q Now, at that time, when you signed your first professional contract entering professional baseball, were you familiar with what has become in popular terms to be called the reserve rules of organized baseball?
>
> A No sir . . . .[50]

Thus, the point was made that Flood was victimized by the system and his dream to play baseball. This line of questioning established his ignorance

of the rules that were to lead him to challenge the institution of baseball. This testimony established the innocence required for martyrdom.

The notion of the innocent being victimized was strengthened as a result of the civil rights issues that were prominent in 1969. Flood was black, and, as such the slavery metaphor proved powerful in painting Flood as a martyr. This portrayal was legally important. As New York Constitutional lawyer Frederick Johnson explained, the slavery metaphor strengthened the case because of the "rightful sympathy the courts have given civil rights issues in recent years. . .his timing appears to be excellent."[51] Defense attorney Topkis used the metaphor in arguing on Flood's behalf:

> As long as Curt Flood has pressed down upon him the restraint of baseball, he must feel himself a slave because, in fact, he is a slave. To use his skills, he must submit to slavery. This is a private system of slavery, of course, but does that make it any the more desirable or lawful? It is not sanctioned by state or federal law, perfectly true, but slavery it is nonetheless, and total slavery.[52]

Flood also drew on the metaphor. First, during testimony, he invoked slavery saying, "Well, I didn't think that after twelve years I should be traded and treated like a piece of property."[53] Later, Flood would utilize more slavery metaphors while describing why he decided to file suit. An example of this comes from his autobiography:

> Frederick Douglas was a Maryland slave who taught himself how to read. "If there is no struggle," he said, "there is no progress. Those who profess to favor freedom, and yet deprecate agitation, are men who want crops without plowing up the ground. . . .Power concedes nothing without a demand. It never did and never will." To see the Curt Flood case in that light is to see its entire meaning.[54]

The media was also quick to pick up on the metaphor. *Ebony,* a magazine aimed at blacks, deemed Flood (in a rather mixed version of the metaphor) the "Abe Lincoln of Baseball."[55] This line of argument is strengthened when tied to the history of baseball, for as that *Ebony* article pointed out, "organized baseball kept black players out of the game for 75 years just because they were black."[56] Even the academic press joined the trend. *The Black Scholar* claimed that Flood's suit was a parallel of the Dred Scott

Decision, which held that blacks were not citizens of the U.S. because they "formed no part of the people."[57] *The Yale Law Journal,*[58] *The Gonzaga Law Review,*[59] and other prestigious law journals compared the reserve clause to peonage and slavery using *Flood v. Kuhn* as the centerpiece of articles in 1971.

The use of the slave metaphor is also important in the creation of the symbolic martyr. By combining the negative meaning inherent, but also created through metaphor, in the symbol "slavery" with the reserve clause creates the implication that athletes are victimized by a system of athletic peonage. That victimization is multiplied, metaphorically, when the athlete is black. The belief of black victimization is prevalent in sport which in turn strengthens the metaphor. Black athletes are often seen only as corporate pawns for advancing the careers of whites in high profile positions, such as quarterback, manager, and coach.[60] That is the same victimization that led the National League to devise the reserve clause. Thus, the slavery metaphor emphasized the fact that Flood, a black man, was victimized to help the rich whites make more money. In an era when civil rights issues were still being hotly debated, the power of the slavery metaphor made Flood's transition from victim to martyr easier, and it made the message stronger.

That Flood had been victimized was established. Moreover, Flood's attorneys, the media, and Flood himself showed America how all Major League Baseball Players were being victimized by the reserve clause. Yet Flood became the martyr, the symbolic figurehead of this movement for reform in baseball. But to be a martyr, one must make a great sacrifice for a greater good. Flood's sacrifice was his career as a professional baseball player as well as his status as the greatest center fielder of his day and, possibly, immortalization in the Hall of Fame.

Flood's sacrifice was quantified as an integral component of the case by Flood's counsel. Identified as "Irreparable Harm to the Plaintiff," the sacrifice was entered into the record as a key argument:

> Irreparable harm means irremediable injury that is certain and great. If plaintiff is denied this preliminary relief he will indeed suffer serious consequences. He alleges that he will not play for thePhiladelphia Club because it would uproot his long-established social and communal ties in St. Louis, remove him from the scene of three portrait studios he is operating in St. Louis, and most importantly destroy his personal dignity because he would feel that he had allowed himself to be "sold as chattel."

> If he does not play baseball for Philadelphia, then by virtue of the operation of the reserve system he will be barred from professional baseball. Plaintiff's outstanding baseball talents will decline over the years; he is presently thirty-one years of age and at the prime of his career. Loss of any one of his remaining baseball years is irreparable, especially so since plaintiff avers that his skills may deteriorate more rapidly with disuse.[61]

Few ball players play past this age, especially outfielders in the days before the designated hitter rule had been accepted into the American League. Despite questions about his age, Flood had already played twice the mean average (6.3 years) for a major league career at that time and had reached the pinnacle of his profession:

> Curt Flood is now finally regarded as the best center fielder in the game. Flood is 30, but the man he is compared to most often, Willie Mays, is still playing well at the age of 37 and talking blithely about the future.[62]

A few more years at the top of his profession would have left Flood poised for the ultimate reward for a professional baseball player, the Hall of Fame.

Flood also was risking one of the highest salaries in the game at that time, over $90,000 a year.[63] Flood also had been advised that the legal system was no short cut. He knew that challenging baseball in court probably meant the end of his career. This is evident despite the fact that the circuit judge told Flood it would not affect his case. Nevertheless, in an effort to not prejudice the case, Flood turned down a $100,000 per season salary offer from the Phillies for 1969.[64] Nor could Flood expect to come back as a manager, because of his race. As Ted Smits, then a sports editor for the Associated Press, explained

> Every ballplayer, deep in his heart, expects one day to become a manager, and he would not upset the applecart. Because he is black, Flood harbors no such illusion.[65]

Flood's sacrifice was complete and real. Curt Flood knew that his "upsetting the applecart" by challenging the reserve rule in court, combined with a one year layoff and no hope of becoming a manager, meant that he was sacrificing his career for the higher principle of disposing of the reserve rule. In an attempt to pay off mounting bills, Flood accepted a reserve

contract with the Washington Senators in 1971, but after only seven games he "retired," saying, "I tried. A year and a half is too much [time off]."[66] As a Senator, Flood was never able to regain his playing form as a hitter or a fielder.

By knowingly sacrificing his career, Flood set himself apart from the other individuals and organizations that had challenged the reserve clause. All of them chose to sue after Major League Baseball had used the reserve clause to exclude them from playing. By waiting until after they were blacklisted, the plaintiffs were victimized but were not sacrificing their careers. That decision had already been made for them. By refusing to play for Philadelphia, Flood knew his other two options were to retire or challenge the system. That challenge cost him his career and his salary. All of the players prior to Flood either went where they were sent or retired when traded. Flood knowingly sacrificed his career for the greater good of future ball players. The sacrifice was completed by the fact that the Supreme Court of the United States refused to outlaw the reserve clause in Flood's case. Therefore, Flood had sacrificed for naught. This act makes his symbolic martyrdom complete.

This martyrdom was one of the factors that led to the Major League Players banding together to strike at the beginning of the 1972 season, canceling the first 13 days and 86 games of the regular season, threatening to strike the 1973 season, and striking again in 1976 over the reserve clause.[67] As the players continued to work together, they would strike three more times in the 1980s and follow that with the crippling labor stoppages of the 1990s. The players began to wear away at the owners and accomplish what the courts and Congress failed to do in nearly 80 years. As *Time* reported, the players were aware of the role that Flood had played in this battle:

> Flood's colleagues praised him for taking on the baseball establishment. "If there is a change, we can all thank Flood," said Oakland Athletics outfielder Reggie Jackson, "He suffered for it. Everybody wants change, but nobody wants to pay the dues.[68]

After having examined the reserve clause, the legal battle over its exemption from antitrust legislation, *Flood v. Kuhn*, and the development of Curt Flood as symbolic martyr, a number of critical conclusions appear. First, although unsuccessful in the courtroom, if Flood's goal was, indeed, to sacrifice all to gain attention for some greater principle, then he did so through his symbolic martyrdom. In the twenty plus years since the decision, the

clause has nearly disappeared from baseball, and most sports historians point to this case as the turning point.[69] Some hold that this case also served as a harbinger of the recent declines in the popularity of the sport as a result of player strikes and other public relations nightmares.

Second, martyrdom, symbolic or otherwise, is a powerful means of organizing a reform movement, and it is also often essential to have a martyr before those at the grass roots level will initiate organized action. For major league baseball players, Curt Flood was that martyr.

Finally, if baseball mirrors society, then American society had not in the 1970s escaped from the racism and class stratification that has gripped our nation since the 1700s. While baseball, as played on the field, represents the American ideal; baseball, as played in the locker rooms and board rooms, represents the American reality. Or as Jay Topkis puts it: "As to the notion that baseball as an American institution is above the antitrust [or any] laws, I just don't buy it. George Steinbrenner cannot possibly be above anything."[70]

Notes

[1] Arthur T. Johnson and James H. Frey, "Introduction," in *Government and Sport: The Public Policy Issues*, ed. By Arthur T. Johnson and James H. Frey (Totawa, NJ, 1985), 1.

[2] Tom Weir, "Baseball's Greatest Moments," *Street and Smith's Baseball, 50 Years*, 6 (March 1990), 15.

[3] Tracy Ringolsby, "The Seventies," *Street and Smith's Baseball, 50 Years*, 6 (March 1990), 43.

[4] As cited In Nick Trujillo and Leah R. Ekdom, "Sportswriting and American Cultural Value: The 1984 Chicago Cubs," *Critical Studies in Mass Communication*, 2 (1985), 263.

[5] Johnson, 4.

[6] Steven A. Reiss, "Professional Baseball and American Culture in the Progressive Era," *North American Society for Sport History: Proceeding and Newsletter*, (1975), 40.

[7] Phillip L. Martin, "The Labor Controversy in Professional Baseball: The *Flood Case*," *The Labor Law Journal*, 23, (September, 1972), 567.

[8] Letter to the Author, 18 April 1990.

[9] *Flood v. Kuhn*, 70 Civ. 202 at 673 (Hereafter cited as 70 civ. 202).

[10] James B. Dworkin, "Balancing the Rights of Professional Athletes and Team Owners: The Proper Role of Government," in *Government and Sport: The Public Policy Issues*, ed. By Arthur T. Johnson and James H. Frey, (Totowa, NJ, 1985) 23.

[11] Letter to author, 6 May 1990.

[12] Section I, the section in question of the Sherman Act, states, "Every . . . Combination . . . or conspiracy in restraint of trade or commerce among the several States . . . is declared to be illegal . . . (15 U.S.C. @ 1 [1964]).

[13] The Clayton Act basically allows labor unions to exist and perform their "legitimate" duties without being considered illegal restraints of trade under the Sherman Act (15 U.S.C. @ 17 [1964].)

[14] Richard B. Blackwell, "Baseball's Antitrust Exemption and the Reserve System: Reappraisal of an Anachronism," *William and Mary Law Review*, 12 (Summer, 1971), 859.

[15] 259 U.S. 200+.

[16] Alice Prescott, "Applicability of the Antitrust Laws to Baseball," *Memphis State Law Review*, 2 (Spring, 1972), 301.

[17] 259 U.S. 208.

[18] 259 U.S. 209

[19] This was not the first attempt to break M.L.B.'s monopolistic practices, only the first to reach the U.S. Supreme Court. See also *American League Baseball Club v. Chase* 86 Misc. 441, 149 N.Y.S. 6 (Sup. Ct. 1914).

[20] John J. McQuaide, "Curt Flood at Bat Against Baseball's Reserve Clause," *San Diego Law Review*, 8 (1971), 96.

[21] 172 F2d 402, 407-408 (2d Cir. 1949).

[22] McQuaide, 97.

[23] Ibid., 97.

[24] Ibid., 97.

[25] 346 U.S. 356+.

[26] 346 U.S. at 357.

[27] 346 U.S. at 364

[28] 429 F2d 1003.

[29] Barton J. Menitove, "Baseball's Antitrust Exemption: The Limits of *Stare Decisis*," *Boston College Industrial and Commercial Law Review*, 12 (March 1971), 737.

[30] Letter to the author, 18 April 1990.

[31] See 259 U.S. 200+.

[32] William Leggett, "Not a Flood but a Deluge," *Sports Illustrated* (19 August, 1968), 20.

[33] 70 Civ. 202 at 37, 39.

[34] Leggett, 21.

[35] Curt Flood and Richard Carter, "My Rebellion," *Sports Illustrated* (1 February 1971), 25.

[36] Flood, 26.

[37] Ibid., 26.

[38] 316 F. Supp. 265-6.

[39] 70 Civ. 202 at 623.
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[41] 70 Civ. 202 at 629.
[42] 70 Civ. 202 at 631-2.
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[68] "Loss . . . ," 67.
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