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Legal Decisions That Shaped Modern Baseball by Patrick K.
Thornton (review)

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NINE: A Journal of Baseball History and Culture, Volume 21, Number 2,
Spring 2013, pp. 147-149 (Review)

Published by University of Nebraska Press

DOI: <https://doi.org/10.1353/nin.2013.0010>



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At the same time, Nathanson's title also calls to mind Harold Seymour's *Baseball: The People's Game* (1990), which we now know was mostly written by his widow, Dorothy Seymour Mills. The books are remarkably different. *Baseball: The People's Game* chronicles how the game was played by boys on sandlots and in schoolyards; by adults in colleges and prisons; by ballplayers on semiprofessional, industrial, and town teams; by men, women, whites, African Americans, and Native Americans. In her review of *A People's History of Baseball*, Mills, no doubt thinking about the relationship between Nathanson's title and the book's content, writes, "When most writers speak of 'baseball,' they really mean the major leagues. They don't even consider the minor leagues, the independent leagues, and the thousands of amateur players. To them, Major League Baseball is the only baseball that counts. Mr. Nathanson, too, falls victim to this narrow use of terminology" (Dorothy Seymour Mills, review of *A People's History of Baseball*, *New York Journal of Books*, February 23, 2012, <http://www.nyjournalofbooks.com/review/people's-history-baseball>). She has a point. Then again, Nathanson's project is different (and more complicated) than his title suggests.

And finally, Nathanson is right that MLB is "conservative by nature," extremely proprietary, and willing to fight to protect its interests, which are principally financial (212). The same is true of most multi-billion-dollar industries. But since baseball is more than a game—because it is a valued cultural institution and a text shared by millions of citizens and fans, passed down from one generation to the next—Nathanson's desire for us to understand its complex, messy history (rather than just its sanitized mythology) is salutary, worthy of praise. A thoughtful, substantive exploration of some aspects of MLB's unsavory past and present, *A People's History of Baseball* is a welcome alternative to the far more numerous baseball romances published every spring.



Patrick K. Thornton. *Legal Decisions That Shaped Modern Baseball*. Jefferson NC: McFarland, 2012. 240 pp. Paper, \$39.95.

Richard C. Crepeau

Over the past two decades there has been a growing interest in the intersection of sport and the law. Websites and journals devoted to the subject have appeared across the academic landscape, emanating from law schools, history

departments, and sport studies programs. At the same time it seems as if there has been an increase in litigation involving sports at many different levels.

Litigation has been a significant element in baseball for well over a century. Patrick Thornton, a professor of sports management at Rice University, completed this survey of baseball and the law just prior to his death in January 2012. Thornton put together a set of essays on a number of law cases that he felt had particular importance in baseball history.

His choices were guided by a desire to represent a variety of areas of the law and a desire to include cases that would be of interest to fans. He begins with the legal struggle over the Barry Bonds home run ball, which he says has become a staple for law students studying property law. In terms of time, the first case he reviews is the 1890 suit in which John Montgomery Ward challenged the reserve clause. *Philadelphia Base-Ball Club, Limited, v. Lajoie* is given a thorough analysis with all its implications for issues of contracts and the reserve clause.

Thornton devotes several chapters to other cases involving the reserve clause, including *Flood v. Kuhn* and the Andy Messersmith/Dave McNally arbitration ruling, along with the subsequent legal appeals of that decision. The latter is one of the strongest chapters in the book. Several cases deal with the powers of the commissioner of baseball, including the John Rocker suspension, the Pete Rose case, and the banning of Steve Howe from baseball. The Bernice Gera and Pam Postema discrimination cases also receive a full airing.

Other cases of lesser importance but perhaps of some interest are the trial of the Black Sox and the suits brought by fans who suffered from an injury or the death of a loved one at the ballpark. Of more contemporary interest are the suits over the use of players' images and baseball statistics by fantasy baseball gamers.

In each of the chapters Thornton summarizes the circumstances leading to the lawsuits or arbitration cases, examines testimony and rationale for the suits, and reviews the content and reasoning of the legal decisions. In some of the chapters he comments on subsequent legal developments.

In my view, baseball historians will find much of the background material on the cases and those involved to be superficial or relying too heavily on conventional wisdom. Several times Thornton asserts that baseball has a long history of being vigilant in its opposition to gambling, when in fact the historical record is spotty and contradictory. Within the confines of the Black Sox case alone, there is repeated evidence that baseball authorities were not vigilant in opposing gambling across the board, but were willing to use it as a club against some players but not others. The names of Hal Chase, John McGraw, and Rogers Hornsby come to mind here.

When reviewing books of this nature, it is always quite easy to quibble over what is chosen for inclusion and what is excluded from the book. Certainly there is a case to be made for the inclusion of the cases Thornton examines.

What is quite remarkable, however, is that neither *Federal Baseball Club of Baltimore v. National League* nor *Toolson v. New York Yankees* is treated in separate chapters. The Federal Baseball case is central to the understanding of the antitrust exemption and would seem to be a case that would be featured in a book titled *Legal Decisions That Shaped Modern Baseball*. The Toolson case might be of less importance, but it did move the antitrust issue forward. Both cases were cited in the Flood decision, and of course, *Federal Baseball* was the controlling case for the decision. Thornton does discuss these cases in the context of the Flood case, but a full treatment prior to dealing with the Flood case would seem to have been advisable. It is also somewhat surprising that Danny Gardella's legal battle with baseball is not mentioned in connection with the antitrust issue.

There are times in these chapters that the significance of the cases chosen is not clear. Greater attention to that issue would be helpful. Cases involving stadium injuries, the fight over Barry Bonds's home run ball, and the batting championship of 1910 are interesting and entertaining reading, but their significance seems to be slight.

In the end this is a book that should and will find an audience. The larger baseball public will find many of the cases quite interesting, as indeed they are. Many of the examinations of the judicial decisions are informative, enlightening, and explained clearly. Thornton compensates for the unevenness of the book with some strong chapters and sections, and ultimately *Legal Decisions That Shaped Modern Baseball* does advance our understanding of this important part of baseball history.



Mathew J. Bartkowiak and Yuya Kiuchi. *Packaging Baseball: How Marketing Embellishes the Cultural Experience*. Jefferson NC: McFarland, 2012. 216 pp. Paper, \$39.95.

Roberta Newman

As its title suggests, *Packaging Baseball: How Marketing Embellishes the Cultural Experience* ostensibly deals with marketing the major-league product outside the lines, from bobblehead giveaways to wide-scale globalization, in