



1-1-2001

Book Review [Leveling the Playing Field: How the Law Can Make Sports Better for Fans]

Santa Clara Law Review

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Santa Clara Law Review, Book Review, *Book Review [Leveling the Playing Field: How the Law Can Make Sports Better for Fans]*, 41 SANTA CLARA L. REV. 921 (2001).
Available at: <http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/7>

This Book Review is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

BOOK REVIEW

Leveling the Playing Field: How the Law Can Make Sports Better for Fans. By Paul C. Weiler. Cambridge, Massachusetts: Harvard University Press, 2000. Pp. 345. Hardcover. \$29.95.

*Reviewed by Jeffrey H. Kahn**

I. INTRODUCTION

The past few months have been eventful ones for followers of virtually any sport. Baseball player Alex Rodriguez signed a ten-year deal with the Texas Rangers for 252 million dollars, which is two million dollars more than the owner paid for the entire team three years earlier. The Baltimore Ravens, a football team that moved from Cleveland to replace a team that moved to Indianapolis, won the Super Bowl. The most valuable player of that game, Ray Lewis, was charged with murder a few months before the season began. These sporting events raised or at least intersected with legal and moral issues. One author has attempted to address the legal and moral aspects of the sporting world and how they affect the quality of competition on the field.¹

In his book, *Leveling the Playing Field: How the Law Can Make Sports Better for Fans*, Paul C. Weiler, the Henry J. Friendly Professor of Law at Harvard University, has addressed a diverse range of subjects including drugs, gambling, player salaries, and competitive sports leagues. While Weiler's knowledge of the subject matter is extensive and his proposals are provocative, his proposed solutions and

* J.D., University of Michigan School of Law; B.A., Duke University. The author is an Assistant Professor of Law, Santa Clara University School of Law. The author would like to thank Jessica Kahn and Andrea Bryant for their helpful comments and suggestions on this piece.

1. See PAUL C. WEILER, *LEVELING THE PLAYING FIELD: HOW THE LAW CAN MAKE SPORTS BETTER FOR FANS* (2000).

commentary are not always on the mark.

The book is divided into three major sections. Part I discusses "The Integrity of Sports" and focuses on the behavior of the players (and how leagues and owners should react to their behavior). The major topics of this part include drug use, gambling, and athletes as role models. Part II is an in-depth discussion of the disputes between players and owners—particularly the battle by the players to obtain free agency. Part III discusses league-wide institutional issues arising over such matters as movement of franchises and taxpayer-funded stadiums. In each part, Weiler sets forth his suggestions as to how to improve the sport, in particular focusing on how such changes could improve the product for the fans, who are the ultimate consumers and the one group that has little ability to have its view considered by the three other major groups—the players, the owners, and the league.²

II. "THE INTEGRITY OF SPORTS"

Weiler begins the book by briefly discussing two very different issues, the resolution of which, in Weiler's opinion, requires longer and more careful deliberation than has been previously expended. First, the author discusses player misconduct "on the field." That is, how should a league react when one of its players engages in misconduct that takes place during a team practice or a game? Examples cited by the author include basketball player Latrell Sprewell choking his coach, P.J. Carlesimo, during a practice session,³ baseball player Roberto Alomar spitting in the face of umpire John Hirschbeck,⁴ and boxer Mike Tyson biting the ear of his

2. While it is clear that there are times where the "league" represents the interest of the owners, e.g., when it comes to developing a salary cap, there are also times where the interest of the league must be considered separate from the owners.

3. After the incident, Warriors team owner, Chris Cohen, terminated Sprewell's entire contract. Commissioner David Stern then suspended Sprewell for a full 82 games. Arbitrator John Feerick ruled that the Warriors did not have just cause to terminate Sprewell's contract and lowered the NBA suspension to 68 games.

4. Alomar's transgression took place on the final weekend of baseball's regular season, and Alomar was suspended five games by the American League President, Gene Budig. On account of an appeal by the Major League Baseball Players Association, Alomar was allowed to play in the baseball playoffs and did not have to serve any of his suspension until the beginning of the following season.

opponent Evander Holyfield.⁵ Second, the author discusses the application of civil rights issues to sports. As to that issue, he focuses on the legal battle of golfer Casey Martin to use a cart in PGA tour events.⁶

For player misconduct on the field, Weiler makes the obvious point that the severity of punishments should differ depending upon the seriousness of the player's actions. The worst punishment should be for players that engage in misconduct in public view and against someone not on their own team (e.g., a fan, an official, or an opposing player).⁷ Punishment is required and justified in order to uphold the moral aspects of the game. Weiler maintains, however, that actions, like those by Sprewell, which take place out of the public view, should not be subject to as strict a sanction or to the discretion of the same institutions. Instead of a league sanction in such cases, the punishment should be determined exclusively by the player's team. Weiler contends that a "private" transgression should not be the basis for the league to suspend the player from playing on all teams and so should invoke a lesser sanction.⁸

To the contrary, as Weiler himself notes later when discussing the use of recreational drugs by players, the league has an interest in maintaining the morality of the game in that many fans do not want to watch players whom they perceive to be criminals or morally-challenged. A team may be willing to put up with unwholesome behavior if the player will help them to a championship, but the reputation of the league itself will suffer. Thus, contrary to Weiler's view, the suspension of Sprewell by the league seems justified in order to protect the sport's status and reputation.

With regard to Martin's ordeal, the author believes that

5. The Nevada Boxing Commission imposed a one-year ban on Tyson.

6. Martin was born with Klippel-Trenauney-Weber syndrome, a rare disorder that causes Martin severe pain in his legs. The condition makes it both dangerous and difficult for him to walk. In 1997, Martin challenged the PGA's no cart rule under the Americans with Disabilities Act (ADA).

7. See WEILER, *supra* note 1, at 15. However, the league must attempt to respond to each incident with the appropriate amount of suspension. For example, Orlando Brown of the Cleveland Browns attacked a referee when the referee's flag hit the player's eye. While the league cannot have players attacking referees, it is clear that this incident is less heinous than a player attacking a referee because he disliked the call and such facts should have mitigated the suspension required.

8. See *id.* at 16.

Martin should be allowed to use a cart in order to participate on the PGA tour.⁹ Weiler agrees that a league should not be required to change the fundamental nature of a sport in order to accommodate a disability, but he argues that walking is not a fundamental part of golf.¹⁰ Further, he believes that the use of the cart by a healthy golfer would actually be a disadvantage to that player. He argues that walking between shots sharpens golfers both physically and mentally.¹¹ It would appear that even if Weiler believed that the use of the cart was advantageous to a healthy golfer (and he admits that it might be so when competition occurs on an extremely hot day and a hilly course) he would consider the advantage to be too minor to offset the desirability of accommodating Martin's disability.

Weiler concludes that in order to "preserve the moral appeal of the game," a league must weigh carefully all the relevant factors concerning each decision it makes, whether it concerns suspensions (in the case of Sprewell, Alomar, and Tyson) or outright exclusions (in the case of Martin).¹² The author believes that too often leagues react to the emotion of the moment and a desire to act instantly rather than taking time to consider the issues dispassionately after the heat of the initial emotive response has passed.

Next on Weiler's list is the issue of sports gambling. Although most of his discussion focuses on gambling by players, the author also discusses gambling by society in general. His proposed regulatory solution would affect all gamblers—athletes and non-athletes. Virtually all leagues consider gambling to be "the ultimate sin," and offending players have been dealt with harshly. Weiler discusses two of the more famous examples concerning gambling and athletes. First, he lays out the facts regarding baseball player Pete Rose in some detail.¹³ Second, Weiler discusses the infamous

9. *See id.* at 30.

10. *See id.* at 28-29.

11. *See id.* at 29.

12. *See id.*

13. Pete Rose, baseball's career leader for base hits, was investigated by the league on allegations that he was not only betting on baseball games but also betting on his own team. As he was also being pursued by the Internal Revenue Service for failure to report income (from signing baseball cards), Rose agreed to accept a ruling from the baseball Commissioner that he was "permanently ineligible" to work in baseball. Although, at the time of the agreement, it appeared that Rose would have the right to reinstatement, Rose is still banned

Black Sox scandal.¹⁴ While the consequences in each case were the same, all the participants were banned for life from baseball, Weiler believes the two cases should have produced different outcomes.

The greatest sin is when a player fixes the game, whether for gambling or any other reason, i.e., the Black Sox scandal participants deserved the ultimate punishment. The reason being that when fixing occurs, the integrity of the sport as a whole is damaged. Fans are attracted to a sport and spend money in order to see an "honest effort by both sides to do their best to win a match whose outcome is supposed to be unknown beforehand."¹⁵ Weiler believes that fixing games is much less likely to occur today in most professional sports since the compensation levels are so high. In the Black Sox scandal, the players' belief that they were underpaid made them receptive to bribes that the gamblers offered. Given the amount of money that professional athletes make today, there will be fewer occasions when financial pressures or dissatisfaction will induce a player to accept a bribe to fix a game.¹⁶ Hence, the greatest concern for fixing games is at the college level where the athletes make no money. Most recent gambling and point-shaving scandals have involved college level sports.¹⁷ One important factor does cut against Weiler's contention that professional sports are somewhat insulated from the temptation of shaving points. The amount of money involved in gambling has become so huge that very large bribes can be offered to tempt even well-paid athletes.

Weiler does not believe that the Pete Rose gambling case deserves the same punishment, if any at all. Weiler compares betting on one's own team to win to the performance clauses in a player's contract.¹⁸ Weiler notes the argument that the

from working in baseball and thus is also not eligible for the Baseball Hall of Fame.

14. Several players of the Chicago White Sox, who believed they were underpaid, accepted \$100,000 from gamblers to throw the World Series. While the players were acquitted by a jury, baseball's first Commissioner banned all of them from the sport. While there is no assertion that the players were gambling themselves, the issue arose on account of bribes from gamblers.

15. WEILER, *supra* note 1, at 52.

16. *See id.* at 51.

17. In 1997, two Arizona State University basketball players pleaded guilty to point-shaving and in 1996, 13 Boston College football players were suspended for betting on games (at least two of the players bet against their own team).

18. *See WEILER, supra* note 1, at 53.

league may be concerned that players who gamble may become indebted to bookies and thus more likely to engage in fixing games in order to pay off the debt.¹⁹ Note that this possibility is another illustration of the fallacy of Weiler's assertion that well-paid athletes are largely immune from the temptation of offers to fix games.

Weiler proposes a solution to this and to the general societal problem of gambling. He proposes that in order to gamble, people should be required to first obtain a license. This license would also serve as a "gambling credit card," which would be the only lawfully permissible source of gambling funds. Once a person's annual amount of credit is exhausted, the person would have to wait until the following year to gamble more.²⁰ While this is a novel and creative suggestion, it is questionable whether it would solve the problem since those who truly are addicted to gambling would merely find ways to engage in illegal gambling, as many do now.

Another problem with Weiler's proposal is that he once again overlooks moral considerations and the integrity aspect of the sport. While gambling by fans on sporting events enhances the pleasure of watching the games, fans might become skeptical and lose interest in the sport if they believe that the players were involved with gamblers. The association itself suggests the possibility that the player's efforts might be influenced by gambling considerations, and that the gamblers have access to inside information about the status and plans of the teams. Like Caesar's wife, the league has an interest in ensuring that its players are above suspicion. Also, it is not beneficial to the integrity of the game if the players become overly concerned with the point spread, i.e., it is not conducive to sportsmanship and fan interest to have the best player on a team insist on remaining in the game in order to ensure that his bet will be won because his team wins by thirty points instead of a mere ten.²¹

19. *See id.*

20. *See id.* at 49. The gambling limit would be set by reference to the person's income and assets as documented by the Internal Revenue Service, an interesting expansion to the power of the IRS and the importance of filing a tax return. Giving greater power to the IRS appears to conflict with the recent effort to reduce the power of that agency.

21. A benign example of this occurred on February 15, 2001. The Dallas Mavericks were beating the Cleveland Cavaliers soundly. However, on account

On a practical level, it is extremely unlikely that Weiler's system will be implemented since it would attract strong political opposition.

The next topic addressed by Weiler is the use of drugs by athletes. Weiler argues that a distinction should be made between performance-enhancing drugs (such as steroids) and recreational drugs (such as marijuana and cocaine). His justification for making that distinction is that performance-enhancing drugs can alter the nature of the competition and may not merely harm the user but also harm other athletes who feel pressure to take such drugs in order to compete with those who do.²² Thus, leagues must effectively enforce rules against such drugs, not only for the protection of athletes but also so fans can be confident that the competition is "fair" in that everyone is playing by the same rules.²³ Weiler concludes that the best method for ensuring a drug free environment is systematic testing of all athletes for performance enhancing drugs.²⁴ If that ideal solution cannot be adopted, Weiler contends that the second-best option is to repeal the ban on such drugs entirely and fully inform the athletes of the risks involved with such drugs.²⁵

Weiler's second-best option, the complete repeal of the ban on performance-enhancing drugs, is questionable. Studies have found that most athletes would use such substances even if told about the risk involved because they will overly discount future harm to themselves when comparing it to the current benefits flowing from enhanced performance. Also not mentioned by Weiler is the fact that many fans enjoy watching athletes because they view them as naturally talented, i.e., athletes have a gift that many do not have. If athletes could use performance-enhancing drugs, it

of a promotion, if Dallas scored 100 points, the fans would receive coupons for 99-cent Chalupas. Instead of running the clock out, Dallas scored with 3.3 seconds left in the game (and ended up winning 102-81). This led to a fight between the two teams. As the Cavalier coach stated, "If it happens in the course of the game, and you get 100 points, that's great. But when it comes down to 10 seconds and you call a timeout, draw up a play to get a Chalupa. I would never do that." Associated Press, *Cuban Sorry For Chalupa Fiasco* (Feb. 21, 2001) <<http://www.kval.com/now/story/0%2C1597%2C273720-237%2C00.shtml>>.

22. See WEILER, *supra* note 1, at 79.

23. See *id.* at 78

24. See *id.*

25. See *id.*

would detract from their status as "gifted" players. Because of concerns for the health and safety of the athletes and for maintaining the fans' idealized image of them, it appears that this approach is not even close to a second-best option.

Weiler distinguishes the concerns regarding the use of performance-enhancing drugs from the issues arising from the use by athletes of recreational drugs. Recreational drugs may actually impair the performance of the user and certainly do not enhance it. The use of such drugs will not harm other competitors because they will not be subject to a competitive pressure to use them.²⁶ Such use by players also does not affect the integrity of the game in that fans will have no reason for concern that some players may have obtained an unfair advantage by using illegal substances. Weiler concludes that leagues should not impose bans on players who use recreational drugs. Instead, he believes that free market pressures will be sufficient to deal with that problem. Teams sign players with the intention that the player will perform at the highest level possible. If a player uses recreational drugs, his performance will be affected and the team should have it in the player's contract that the player can be released if drugs adversely affect his play.²⁷

The author does note one objection to this approach. Whether they embrace it or not,²⁸ athletes are role models, and there is a moral aspect to the sports industry. The leagues have an interest in ensuring that fans do not become disgusted by a player's behavior, whether on or off the court, and that impressionable young fans are not led into emulating the improper behavior of their heroes. If that problem is left to the contractual power of each team to control its players' behavior, a team might be willing to take an unsavory player who will help that team win a championship. While one team would receive the benefit of that player's performance, the reputation and moral status of the entire league will suffer.²⁹ In these cases, the author agrees that the central league authority must take necessary action.³⁰ As noted above, while Weiler does not make the

26. See *id.* at 80. The author also suggests legalizing marijuana.

27. See *id.* at 82.

28. In a Nike commercial, Charles Barkley told the world that he is not a role model.

29. See WEILER, *supra* note 1, at 96.

30. Although not mentioned in his discussion of the incident, this same type

connection, this same reasoning applies to player misconduct during practices and player gambling.

While Weiler accepts this rationale for a league's response to some behavior, he notes that many leagues are hypocritical if this is their true justification. Weiler compares the treatment of players banned for use of recreational drugs with the treatment of players who have engaged in domestic abuse and notes the general leniency toward players who engage in the latter conduct as compared to the harsher treatment by the leagues against players caught with recreational drugs.³¹ The author believes that society is sending a terrible message when it treats athletic offenders leniently. Instead, they should be punished as severely as non-athletes in order to send the right message to non-athletic potential abusers.³²

III. "OWNERS VERSUS PLAYERS"

The next section of the book focuses on the financial battles between the players and the owners. While this section becomes bogged down with a detailed discussion on how antitrust law was used by the players, the author compares the development of the four major professional sports leagues (hockey, baseball, football, and basketball), shows how they differ, and attempts to show how those differences can be attributed to the outcome of the owner-player conflicts in each sport.

The author asserts that players' unions made a huge difference with respect to the gains that players made in the area of salary, and he begins this section by reviewing the creation of players' unions in each sport.³³ Weiler next focuses on the issue of free agency, that is, the ability of a player to move from one team to another and thus, create a competitive market for the player's services.

After a detailed antitrust review, Weiler moves to the subject of whether free agency has detrimentally affected the sports product for fans. The author argues that free agency

of reasoning applies to the Sprewell incident and thus, could be the justification for having the league suspend Sprewell from playing on any other team.

31. See WEILER, *supra* note 1, at 94. The author commends the National Football League for adopting a policy in 1998 that took a true moral approach to players' criminal misbehaviors whether or not they are drug related.

32. See *id.*

33. See *id.* at 133.

has actually created a better product.³⁴ For example, he notes that teams can no longer hoard talent, and so the market puts the best players in playing positions where the fans can see them.

The author sets forth and refutes several of the arguments that have been made to contend that free agency has been detrimental to sports. First, there is the loyalty argument; player allegiance is important to fans, and fans have an interest in having players stay with their original teams. He dismisses this argument because if this were true, then there should also be restrictions on movement by players determined by the owners, i.e., trades between teams.³⁵ Also, the owners' willingness to move franchises to more profitable locations suggest that fan loyalty is less important to the owners than profit margins. A major weakness in Weiler's refutation is that it merely shows that owners are willing to sacrifice fan loyalty to obtain their own ends. It does not show that free agency does not cause additional damage to fan loyalty. It may be fair to permit the players to sacrifice fan loyalty for their financial goals since owners do so, but that does not respond to the contention that all such actions are detrimental to the game.

Weiler also tackles the issue of whether free agency has allowed the sport to become too expensive for fans. That is, free agency has increased the salaries of players in all sports and thus, the direct cost to the fan to attend a game and the indirect cost of watching the game on television has skyrocketed.³⁶ Weiler contends that it is consumer demand, not the salaries of the players, that has increased the price of sports. Instead, the players are merely beneficiaries of that increased demand.³⁷

Finally, Weiler discusses what perhaps is the most important issue, competitive balance. Sporting leagues are unusual in that although all teams compete against each other, they are also tied to each other in that if one team becomes too dominant, fans will lose interest in the sport as a

34. See *id.* at 181.

35. See *id.* at 177.

36. The cost of obtaining the rights to televise sporting events has increased dramatically and thus, the cost to advertise on such programs has increased which leads to an increase in the price of the product being advertised. Thus, the increased cost is ultimately borne by the consumer.

37. See WEILER, *supra* note 1, at 172-73.

whole, i.e., teams are interested in the collective good not just their own individual team's success. Fans in less prosperous markets become unhappy when they conclude that the current system favors wealthy owners of large market teams, i.e., a wealthy team can and does buy a championship. Weiler concedes that this is an issue. He notes that the National Football League, which has a hard salary cap and revenue sharing, creates small-market champions; whereas Major League Baseball, a league with no cap and extremely limited revenue sharing, provides a clear advantage to wealthier large-market teams. If the same few teams dominate a sport year after year, fan interest will decline.

Weiler is not in favor of a complete free market system. He concurs that some restrictions on salaries and player movement are needed. The author argues that any restriction on salaries or movement by players should be aimed exclusively at maintaining a competitive balance in the league (thus, improving the product for fans). Such restrictions should not be invoked to improve the financial situation of the owners.³⁸ The author proposes a novel solution to achieve that goal. First, Weiler concedes that based on the collective goods issue, some type of revenue sharing is appropriate.³⁹ As to salary restrictions, Weiler would replace a hard or soft salary cap⁴⁰ system with a "payroll standard." The author dismisses the salary cap system for two reasons. First, it does not take into account the different costs of living in each area.⁴¹ A player earning \$100,000 in Houston, Texas (a state with no state income tax and a lower cost of living) has greater purchasing power than a player who receives the same salary in New York City. Second, Weiler contends that such a system hurts the competitive balance in that teams are penalized when an expensive player with a long-term contract does not perform up to the expected standards. The competitive balance of the league is hindered by forcing teams to wait for such player's

38. *See id.* at 197.

39. *See id.* at 191.

40. A hard salary cap is one where teams cannot spend over a flat amount that is the same for all teams. The National Football League has such a cap in place. A soft salary cap is one where limits are placed on the salaries of "new" players. However, a team is under no such limit when resigning its existing players. The National Basketball Association has such a system in place.

41. *See WEILER, supra* note 1, at 194.

contracts to expire before the team can employ higher priced talent that might improve the quality of the team and thus contribute to creating a more competitive league.⁴²

Weiler's "payroll standard" proposal establishes a graduated payroll tax on owners based on a departure from a median figure that is agreed upon by the players and owners.⁴³ The median figure could be an agreed upon percentage of the league's revenues and thus, it would be flexible enough to deal with the rise and fall of the league's success. Not only would over-spending teams have to pay a salary tax, but under-spending teams would also have to pay a tax for being below the required amount. Weiler contends that revenue sharing alone is not enough to help the competitive balance because there is no guarantee that small-market or low-spending teams would use that revenue to acquire more talent and thus create a more balanced competition.⁴⁴ A tax on teams that spent either too much or too little on players would create greater parity because everyone would be encouraged to spend nearly the same amount; thus, producing a more balanced playing field. Players should find this acceptable since they would receive a guaranteed portion of the league-wide revenues.

This proposal appears to have merit. It better addresses the concerns both of teams such as the Yankees who try to buy championships every year and teams such as the Montreal Expos who, although performing poorly on the field, actually make a profit because of revenue sharing and a low salary schedule. However, it is not perfect. First, it is difficult to see how this system deals with the cost of living issue that Weiler raises when dismissing the hard cap. At least with a hard cap, some type of cost of living index could easily be installed to deal with the problem, but it is not clear how that remedy could be employed in Weiler's system. Weiler does not explain what is to be done with the revenues collected by the graduated tax. Perhaps they would be shared throughout the league; but if they are given to underpaying teams, it is unclear how the system would solve the competitive balance problem. Giving any of the tax to teams that overpaid or underpaid would mitigate the sanction that

42. *See id.* at 195.

43. *See id.* at 196.

44. *See id.*

the tax is designed to serve, and so perhaps none of the tax would be distributed to those teams.

Weiler fails to comment on one important aspect regarding the labor battles between the players and the owners. One weapon used by both sides has been the strike or lockout. It is clear that league popularity suffers when a strike or lockout occurs. A probable reason for this is that such behavior reminds the public that sports is a business, not a pastime. While it is perhaps irrational, many fans view professional sports as a game in which the players participate for the sheer joy of the sport—a game that the fan would love to play for any amount of money. Any time the brutal business aspect of sports is thrust upon the fans, some degree of interest is lost.

IV. "OWNERS VERSUS OWNERS—AND FANS"

The final section of the book covers three major issues—franchise movements, taxpayer-funded stadiums, and league expansions. Weiler first discusses the issue of franchise movements. He begins by covering the legal battle by Al Davis, the owner of the Oakland Raiders, to move his team to the Los Angeles area. Initially, the other National Football League owners voted not to allow Davis to move his team. Davis sued the National Football League, and a jury held for Davis awarding the Raiders 11.5 million dollars. Since this was an antitrust case, that amount was trebled.⁴⁵ While cities, such as Oakland and Cleveland, bemoan the loss of their teams, Weiler believes that judicial scrutiny over franchise movements is misguided. Such oversight would likely focus too much emphasis on the cost to the losing city while ignoring the benefits to the new city. Weiler agrees then that the league should be the ultimate authority on whether it makes sense for a team to relocate.⁴⁶ Note that leagues also have a legitimate interest in limiting the movement of franchises because such departures remind the fans that sports are truly a business; and, as noted above with regard to strikes and lockouts, that causes a loss of fan interest.

The next issue covered is the ability of a team to obtain a

45. The Ninth Circuit upheld the jury's decision. Later, Davis moved the team back to the Oakland area.

46. See WEILER, *supra* note 1, at 262.

taxpayer-funded stadium by either moving or threatening to move the franchise. While politicians sometimes argue that sports teams create revenue for the city, Weiler notes that all economists agree that sports franchises do not create net revenue for the community.⁴⁷ Weiler concludes that Congress should step in to prevent cities from competing with each other by using taxpayer funds to obtain or keep teams in their area. Weiler argues that Congress should pass a law which prohibits the use of tax funds to build a stadium.⁴⁸ Weiler is consistent in that he believes that local governments should not be permitted to use taxpayer money to obtain or retain any business entity, sports or otherwise.⁴⁹

This appears to be paternalistic. Why should Congress restrict the decisions of local communities as to how they spend their tax dollars? Weiler argues that such local intervention confers no net benefit to the nation's economy because a gain for one community is a loss for another.⁵⁰ That is an extraordinary view to be taken by someone who otherwise strongly advocates the benefits of competition. In any event, if economists are correct that sports teams do not provide a net revenue gain to a community, then it is a question of whether a community wishes to expend its resources for entertainment, and Congress has no legitimate role to play in deterring a community from making that choice.

Weiler also discusses the issue of franchise expansion. Weiler is a proponent of expansion (especially in lieu of franchise movement) since it gives more fans the ability to watch a local team.⁵¹ However, Weiler fails to address one issue with regard to expansion. While it is likely that many other communities could support a franchise, it is not clear that there is a sufficient pool of talent to support expansion. Spreading available talent by distributing it among too many teams weakens the quality of the game and thereby reduces fan interest. Fans want only the truly elite to perform in the league. This same objection applies to Weiler's final solution, discussed below.

47. *See id.* at 267.

48. *See id.* at 275. The one exception to this rule would be a tax imposed on those who use the stadium - i.e., a tax on stadium parking, concessions, etc.

49. *See id.* at 277.

50. *See id.*

51. *See id.* at 321.

In the end, Weiler advances his final solution, which reflects his antitrust background, to create a better sports product. The best condition for producing an optimum product is competition from others. Weiler notes that the leagues in each of the major sports have had de facto monopoly positions.⁵² He suggests breaking up each league into smaller leagues that would compete with each other. He believes that this would not only provide the solution to franchise movements (since cities would have increased bargaining power with more competition) but would also be a solution to many of the other problems discussed in the book.⁵³

This final proposal is at odds with the history of professional sports. If history is any indicator for the future, monopolies appear to be inevitable in professional sports. Several times, other leagues have been formed to compete and either have failed or have been absorbed by the established league. The reason for this appears to be that fan interest focuses on the best; and once a league establishes itself as that, the other leagues suffer and eventually die, thereby reestablishing the monopoly status.

52. See WEILER, *supra* note 1, at 327. As it was not in existence at the time, it is not clear if Weiler would consider the XFL a legitimate competitor to the National Football League.

53. See *id.* at 333.
