

# Amateurism and College Athletics

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Robert Scott Lemons

rlemons@stanford.edu

Professor John F. Cogan, Senior Fellow, Hoover Institute

## Abstract

This paper explores the concept of amateurism as it relates to college sports. The history of amateurism in sports will be reviewed with consideration of how that history has been revised to support the modern-day, \$16 billion college-sports enterprise. The National College Athletic Association's (NCAA) history will be summarized, and its role as the head of a cartel of colleges engaged in a sports-entertainment business will be discussed. After the economics of this cartel is examined, it will be argued that NCAA member schools enjoy monopolistic and monopsonistic powers that give them impressive market power. The NCAA's amateurism rules serve to protect the integrity of the cartel and allow colleges to extract rents from student-athletes, especially Division I football and men's basketball players. Too often with this current system, athletic scholarships fail to translate into a college education. Additionally, the injury risks inherent to college sports seem undermanaged and undercompensated. The paper will conclude with possible alternatives to amateurism in college sports.

Key words: amateur athlete, college sports, revenue-generating sports, NCAA, cartel economics, monopsonistic cartel, athletic scholarship, college-sports-related injuries

## Introduction

On Jan. 21, 2013, America witnessed its 57<sup>th</sup> inaugural ceremony, as Barack Obama officially began his second term in office. Approximately 20.9 million viewers tuned in to watch the president take the Oath of Office and deliver his inaugural address (Hinckley 2013). Given America's wide array of political challenges, one would expect this momentous event to be highly anticipated and widely viewed. However, about three and a half months later, a television event garnered approximately 13.5 percent more views, or 2.8 million more viewers, than the president's inauguration (Rutherford 2013). It wasn't a news report about a meteor that exploded over Russia. It wasn't the announcement of Jorge Mario Bergoglio as the new pope of the Catholic Church. In fact, it wasn't a major political event, natural disaster, or religious celebration. On April 8, 2013 Louisville defeated Michigan in the championship game of the 75<sup>th</sup> annual National Collegiate Athletic Association (NCAA) men's basketball tournament. Using the size of the viewing audience as a proxy for the preferences and interests of American citizens, the above suggests that this country prefers a game of college basketball to the words of their leader. How can this not be loaded with implications!

As the above anecdote indicates, college athletics fascinate Americans, and these sports fans pay handsomely to satisfy this fascination. From the 2011-2012 season, the NCAA brought in \$871.6 million from Turner/CBS Sports, almost entirely from the men's basketball tournament known as March Madness (NCAA 2013c; Bergman 2011). The major college football conferences plus Notre Dame University have a \$700 million contract with ABC for the Bowl Championship series (Parent 2004). When it's all totaled up, college sports brings in around \$16

billion annually (Barrett 2014). Shockingly, this financially massive industry profits in the most economically efficient way imaginable: free labor. Economist Andrew Zimbalist describes, “Big-time intercollegiate athletics is a unique industry. No other industry in the United States manages not to pay its principle producers a wage or salary” (Eitzen 2000, p. 3). So what allows collegiate athletics to maintain this unique, efficient, and seemingly unfair system? The NCAA.

The NCAA mandates that collegiate athletes must compete without salary to maintain their amateur status. Any compromise to this amateur status disqualifies the athlete from all future collegiate competition. According to the NCAA, “No student shall represent a college or university in any intercollegiate game or contest . . . who has at any time received, either directly or indirectly, money, or any other consideration” (NCAA 2013a, p. 1). Article 2.9 of their Constitution states that

Student-athletes shall be amateurs in an intercollegiate sport and their participation should be motivated primarily by education and not by the physical, mental, and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises (NCAA 2011, p. 3).

Simply put, amateurism is the assertion that college athletes should participate in sports as a hobby rather than for compensation. This begs the question, why is amateurism so important to preserve? This paper will explore how amateurism affects college athletes.

First, let’s examine how college sports reached its current popular and profitable status.

## **History of Amateurism, Student-Athlete, and Intercollegiate Sports**

The romantic notion of amateur athletes dates back to the Ancient Olympics. These competitions began by at least 776 BC but may have origins in Olympia as far back as 1370 BC (Zissimou 2002). Ancient Olympic athletes competed, sometimes to the death, for no prize money, only personal fame, Polis pride, and an Olive Wreath. The Roman Emperor Theodosius, a Christian, abolished the Ancient Olympics in 393 AD, because these competitions honored pagan gods (Zissimou 2002). Ancient Olympia disappeared under an overgrown swamp and became lost to history until rediscovered by an Englishman, Richard Chandler, in 1766 (Zissimou 2002). Excavation began in 1829 and continues to present day. This archeological discovery and its subsequent excavation exhilarated a French aristocrat, Baron Pierre de Coubertin, who spearheaded the development of the Modern Olympics, that began in Athens in 1896. Is it coincidence that the Ancient Olympia excavation and the founding of American intercollegiate athletics began almost concurrently?

Ancient cultures believed that a healthy body, through exercise and sport, contributed to a better life. This concept is often expounded by the ancient Latin quote: *Mens sana in corpora sano* – a sound mind in a sound body (Branch 2011). Perhaps, no culture has held physical exercise in such high regard as ancient Greece (Dalleck 2001). They idealized physical perfection and worshipped athletic victory. The ancient Greek educational system included gymnastics, that took place in the palaestras for the young and in the gymnasium for those older than 14 (Dalleck 2001). Legend has it that Plato encouraged athletic endeavor as part of a

complete education. In fact, Plato is not the philosopher's given name; it was Aristocles, after his grandfather (Hayes 2012). Aristocles' wrestling coach renamed him "Plato" from "platon," Greek for broad, describing Aristocles' broad shouldered frame (Hayes 2012). In *The Republic*, Plato married athletics and academics claiming the goal "is to bring the two elements into tune with one another by adjusting the tension of each to the right pitch" (Hayes 2012, p. 1). Further, arguably, Plato founded the first center for higher education – The Academia, an Athenian gymnasium (Zissimou, 2002). Hence, sports and scholarship seem to have been connected since the origin of organized academia. It seems that Plato would support the concept of student-athlete. Thomas Jefferson concurred, "Not less than two hours a day should be devoted to exercise, and the weather shall be little regarded. If the body is feeble, the mind will not be strong" (Dalleck 2001, p. 3). Thus, some notion of the student-athlete has rich historical roots.

In this country, collegiate athletics originated from schools established in colonial America, upper-class institutions designed to train church and state leaders in the aristocratic traditions of the Old World (Flowers 2009). Colleges of the time designed the academic curriculum around the Christian social order (Flowers 2009). For most of the 1800's, the public education system failed to include physical education (Dalleck 2001). Monotonous drills, harsh discipline, and verbatim recitation dominated the experience. Sports developed as a means of escape from this austere and pedantic academic culture (Flowers 2009).

In early colleges, students were organized by class, with each entering freshman class following the identical curriculum to the previous class (Flowers 2009). As a result, students identified with their classmates, and a culture of class loyalty/rivalry ensued. Students played

sports that were common abroad, and often times added their own flair. They developed “football” (a cross between rugby and soccer), bandy (a form of field hockey), and a primitive form of baseball (Flowers 2009).

Enthusiasm for the games spread quickly throughout the Northeast, and interclass competitions became riveting and often violent. School administrators had little interest in or control over these intra-collegiate competitions, and few linked athletic participation to the academic mission of higher education (Flowers 2009). In fact some schools found these sports ill-aligned with their academic missions. For instance, in 1787, Princeton forbade bandy for being “low and unbecoming gentlemen and scholars” (Flowers 2009). Seemingly, the appreciation for athletics within the educational system, celebrated in ancient Greece, became lost to history, just as Ancient Olympia became lost to overgrown foliage. In the 1820’s, during a period of religious revival in America, often termed the Second Great Awakening, some clergy recognized the potential benefits of physical and mental training, championing the phrase “Muscular Christianity” (Flowers 2009, p. 3).

The fever incited by class rivalry in colleges was about to defervesce. By the mid 1800’s, universities modified their curriculums, adding electives and professional studies. This provided students more freedom to individualize their class schedule, as well as take classes with students outside their class year. Consequently, the unity of the classes and the enthusiasm for class rivalry dissipated (Flowers 2009).

Although intra-collegiate athletics became less compelling, absent the class rivalries, the potential for college sports had proved obvious. The rivalry between the freshmen and

sophomore class had fizzled, but the rivalry between Harvard and Yale had not yet been exploited. However, intercollegiate competitions faced roadblocks, literally and figuratively. In the 1800s, colleges were generally set up in isolation, with limited transportation options. Further, systems of communication between colleges had challenges. The developing U.S. railroad system offered some relief to these obstacles.

Aspiring to the Oxford-Cambridge competitions, Harvard and Yale formed competitive boating clubs by 1844 (Flowers 2009; Igel 2011). By 1852, America's oldest colleges competed in the country's first intercollegiate contest – a boat race on Lake Winnepesaukee (Flowers 2009). James Elkins, a railroad superintendent, covered all expenses and provided transportation. The event drew 1,000 spectators (Flowers 2009). From its inception, cheating and scandal plagued intercollegiate competitions. Allegations emerged that Harvard used an unenrolled coxswain (Igel 2011).

Intercollegiate athletics grew steadily, despite challenging times in the United States. In the midst of the Civil War, Yale students raised funds to build a new boathouse and hire the first professional coach (Flowers 2009). In 1859, Amherst and Williams inaugurated college baseball (Flowers 2009). By the 1880's, Harvard baseball players had effectively become professional athletes, with generous alumni funding their tuition as law students (Sack 1991). On Nov. 6, 1869, Rutgers played Princeton in the first intercollegiate football game (Branch 2011). Again, both schools failed to resist the temptation of cheating, and it later emerged that three freshmen participated while failing algebra (Igel 2011). Students organized these initial competitions with

alumni funding. School administrators offered little to no institutional support, so alumni came to control these developing athletic programs (Flowers 2009).

The limited number of colleges in the mid 1800's slowed the expansion of intercollegiate competitions. This changed with the Merrill Land Grant College Act (1862), that increased the number of colleges and intercollegiate competitions. With a growing number of options for potential college students, universities began competing in earnest for student enrollment (Flowers 2009). Colleges quickly recognized that athletic success proved effective for attracting students. Allen Sack, business professor at the University of New Haven, explained, "As large public institutions spread into sparsely populated states, the competition for students grew fierce" (Gregory 2013, p. 38). As early as 1870, some colleges offered scholarships to promising undergraduate athletes (Flowers 2009). This competition for students ushered in new forms of scandalous cheating. By the 1880's, college coaches began using "non-degree programs" and "charity funds" to conceal and compensate athletes (Flowers 2009, p. 10). To be competitive, colleges felt pressure to lower academic standards, pay college athletes, and subject athletes to a regime that would interfere with normal academic obligations (Flowers 2009). The Harvard-Yale football game of 1894 generated \$119,000 or almost \$3 million in today's dollars (Gregory 2013). In 1895, while describing college football, journalist Caspar W. Whitney, claimed "tramp athletes offered their services to the highest bidder . . . men are bought and sold like cattle to play this autumn on 'strictly amateur' elevens" (Flowers 2009, p. 11).

In 1871, Massachusetts Agricultural College in Amherst defeated Harvard and Brown in crew, providing a template for smaller schools gaining recognition by defeating established



schools (Flowers 2009). School administrators saw the power of athletic success in creating prestige and bolstering reputation. When Columbia College beat Harvard and Yale in a regatta in 1874, Columbia's President, Frederick Barnard, trumpeted, "I am convinced that in one day . . . you have done more to make Columbia College known than all your predecessors have done since the foundation of the college" (Flowers 2009, p. 6).

With the possibility of national prestige, school administrators became more interested and involved in the organization of athletics. In 1892, the University of Chicago hired Amos Alonzo Stagg as a football coach, and their president, William Rainey Harper explained that Stagg would "develop a team which we can send around the country and knock out all the colleges" (Flowers 2009, p. 8). Even established schools, like Harvard failed to resist the strategy of marketing through athletics. Harvard's President Charles Eliot explained in 1907, "Yale was founded fifty years after Harvard to counteract its radical tendencies, and had kept a half a century behind ever since until, at last, it has taken to beating Harvard in athletics" (Flowers 2009, p. 7).

Just as Ancient Olympians represented their polis, amateur athletes represent the heritage, customs, and traditions of their schools and their institution's home state (Parent 2004). Many hold strongly to the view that college athletes should compete for honor, not money, just as the Ancient Olympians did. The allure of amateurism certainly caught hold in America during this time period. The Father of American Football, Walter Camp, who played at Yale (1876-1882) and coached at Yale (1888-1892) and Stanford (1892, 1894-1895), claimed, "A Gentleman never competes for money directly or indirectly" (Flowers 2013, p. 11).

Cultural trends in the United States further influenced college athletics. College boards, once compromised of clergy, increasingly became made up of capitalist barons (Flowers 2009). Intercollegiate athletics grew as industrial America grew. The capitalist rush for wealth, power, recognition, and influence engulfed intercollegiate athletics (Flowers 2009). By the turn of the century, institutional control came to replace student and alumni control. Intercollegiate marketing saw increases in spending across the board. In 1904, Harvard constructed the nation's first permanent football stadium at a cost of \$300,000 (Flowers 2009).

As investments in college sports escalated, an underground economy emerged. In 1902, Yale College Dean, Henry Wright, wrote to Yale's famous football coach, Walter Camp, regarding a struggling football player,

Dear Mr. Camp, Has anything been done for Daly? I understand that some Brad could be found from whom he might borrow \$100 occasionally, giving his note, to be paid after graduation. He is pretty hard up and is getting rather restless. I do not see how he can come back after this term unless he is able to raise something somewhere (Sack 1991, p. 1).

This underground economy was not restricted to a few of the established schools. In 1905, Allegheny College chancellor boasted, "We go after men for the sake of baseball and football, offering all sorts of inducements . . . Scholarships are offered to promising players. Professionalism is winked at" (Flowers 2009, p. 11).

Despite recognized problems and creative cheating, intercollegiate athletics fostered alumni loyalty (Flowers 2009). In 1915, former President William Howard Taft wrote "the feeling of solidarity and loyalty in the student body that intercollegiate contests develop is a good thing; it outlasts every contest and it continues in the heart and soul of every graduate as long as

he lives” (Flowers 2009, p. 9). In essence, sentiments of school loyalty made intercollegiate athletics more than just games. It provided a tangible connection of alumni to their school through the players and their competitions.

Pierre Fredey, Baron de Coubertin staunchly advocated for amateurism and claimed that athletic competition in and of itself contributed to the strength of a society’s moral fabric (Zissimou 2002; Voepel 2011). According to this reasoning, the athlete’s compensation came by way of his stronger moral fabric. Beyond the magnificent tales of Ancient Olympic heroes, Baron de Coubertin was further influenced by European sports. In this time period, gymnastics dominated European athletics with huge popularity throughout Germany, Denmark, Sweden, and Great Britain (Dalleck 2001). None of these European gymnasts expected compensation. In British universities, sport was the exclusive practice of the sons of aristocrats who required no compensation (Sack 1991).

Following World War II, the GI Bill, formally known as The Servicemen’s Readjustment Act of 1944, launched college enrollment to historic levels, with a corresponding explosion of college sports fans (Igel 2011). Prior to WWII, college and homeownership seemed like unobtainable goals for average Americans; however, by 1947, veterans accounted for 49 percent of college admissions (USDVA 2013). At the conclusion of the original GI Bill, 7.8 million of 16 million WWII veterans experienced higher education (USDVA 2013). College sports represent the most important marketing tool for universities; as college presidents and conference commissioners often refer to their football and men’s basketball programs as the “front porch” of their campuses (Gregory 2013, p. 40).

Since the GI Bill, a college education has been a key component to the American Dream, and college enrollment has continued to escalate (Figure 1). Participation in college sports has also grown dramatically and continues to do so (Figure 2). Currently, there are more student-athletes than there were total college students when the NCAA was founded. As will be discussed, this massive expansion of college enrollment and participation in college sports have been accompanied by an impressive expansion in revenue related to college sports, with current estimated annual profits in the billions.

To gauge the current popularity of college sports, consider the associated advertising and gambling revenue. Advertisers spent over \$1 billion for ads during March Madness this year (Symington 2013). Thirty-second commercials went for \$1.3 million each (Symington 2013). For 2013's basketball tournament, General Motors spent \$80.3 million, AT&T spent \$54.2 million, Anheuser-Busch InBev spent \$31.9 million, and Coca-Cola spent \$31.7 million (Symington 2013). March Madness stimulates more Vegas gambling than the Super Bowl (Zirin 2013). It is estimated that \$100 billion is wagered on student-athletes playing basketball in the annual NCAA tournament (Zirin 2013). Undeniably, intercollegiate athletics has evolved into a massively lucrative business unrelated to the core educational mission of higher education (Flowers 2009).

Figure 1

College Enrollment in U.S.

Mean per decade (U.S. Census, 2012)

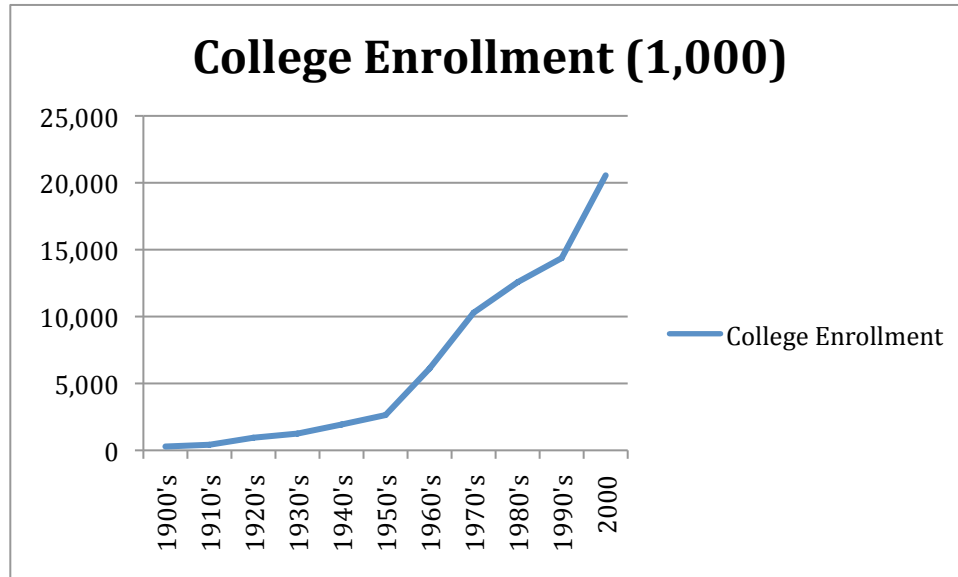
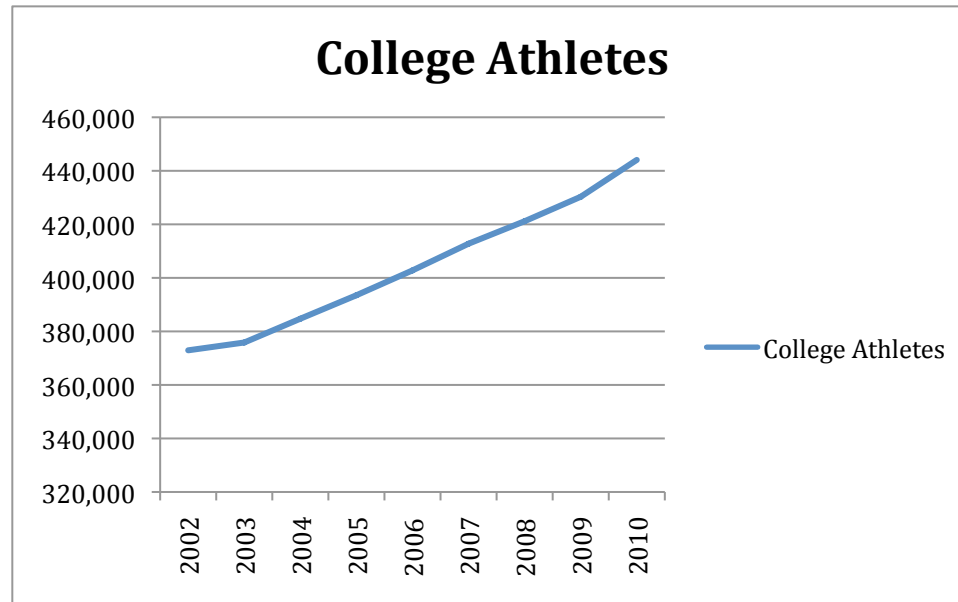


Figure 2

Participation in College Sports (NCAA, 2013)



Seemingly, the concepts of scholar-athlete and amateurism have ancient, lofty origins. Still, it may strike some as odd that the United States is the only country in the world that highlights sports at institutions of higher learning (Branch 2011).

## Historical Revisionism

Acceptance of collegiate amateurism on a historical basis requires substantial revisions. Like the modern Olympics, prior to 1986, college sports claimed that amateurism embraced the classical antiquity of the ancient Olympics (Hruby 2012). That historical perspective proves incomplete and inaccurate.

Ancient historians Herodotus and Lucian both described the amazement of the barbarians that Greek competitors expected no compensation in Ancient Olympia; however, those barbarians failed to appreciate the culture of sports in Ancient Greece (Golden 1998). To begin with, these athletes were compensated. Although there were four sacred or *stephanitai* games – the Olympic Games, the Pythion Games, the Nemean Games, and the Isthmian Games – where winners were only awarded a wreath of olive branches, laurel branches, celery and pine branches respectively, these competitions occurred just once each year (Zissimou 2002). For the rest of the year, athletes competed in many *thematikoi* games, with awards of money or other objects of material worth (Zissimou 2002). Further, when Olympic champions returned to their polis, they were richly rewarded. For example, in Athens, Olympic victors could eat in the Prytaneion for the rest of their lives (Zissimou 2002). Dr. Niel Faulkner, author of *A Visitor's Guide to the Ancient Olympics*, described that ancient Olympic

champions invariably became very rich men. They may have left Olympia with only an olive crown, but they could expect ample reward for their efforts at home, and they could earn generous prizes thereafter by appearing at any of some hundreds of local sports festivals (Hruby 2012, p. 2).

Further, even though these ancient athletes were compensated, they rarely needed the money. Most of these Olympic athletes came from families of wealth and social prominence (Golden 1998). Potential ancient Olympic competitors were required to arrive in Olympia one month before the competitions and remain there until the games began so that the Olympic judges, Hellanodikes, could evaluate each potential competitor (Zissimou 2002). Most Greek men could not afford to abandon their trade for this time commitment. When it came to the equestrian events, especially the chariot races that employed four horses per chariot, only the super-rich could hope to compete.

Perhaps a more realistic historical version of amateurism was summarized by Olympic historian Bill Mallon, who penned,

Amateurism really started when the people who were rowing boats on the Thames for a living started beating all of the rich British aristocrats. That wasn't right. So they started a concept of amateurism that didn't exist in ancient Greece, extending it more and more to the notion of being a gentleman, someone who didn't work for a living and only did sport as a hobby (Hruby 2012, p. 2).

With this historical perspective, amateurism represented an elitism contrived to exclude the lower classes from competing in sport with their social superiors (Sack 1991).

This revised history served well higher education's leadership (Flowers 2009). The 19<sup>th</sup> and 20<sup>th</sup>-century concept of amateurism became an invented tradition designed to allow universities to retain their legitimacy as institutions of higher education (Flowers 2009). As sport historian, Ronald Smith, explained, "If a college has truly amateur sport, it will lose prestige as it loses contests; if a college acknowledges outright professional sport, the college will lose respectability as a middle-class or upper-class institution" (Flowers 2009, p. 12). In essence, the



NCAA became a tool for ensuring that athletic programs would not tarnish the collegiate ideals of higher education (Flowers 2009). Currently, the NCAA could not embrace real amateurism or scholarship even if it wanted to, because major programs would leave, television revenue would decline, and the NCAA would be irrelevant (Weinberg 2011).

With endless indoctrination and re-indoctrination, this revised history of amateurism remains pervasive. According to NCAA President Mark Emmert, “We can never get to a place where athletes are paid” (Garcia 2010, p. 1). Harvey Perlman, Chancellor at University of Nebraska, beats a similar drum, “I don’t think student-athletes should be paid for what they do. That is a wage, and it is inconsistent with the mission of higher education” (Wharton 2013, p. 3). Even former college athletes cling to the romantic idea that student-athletes compete solely for the love of the game and the honor of their school. Joakim Noah, a former basketball star at the University of Florida and current Chicago Bull repeated the mantra: “What everybody loves about college sports is that they see that the kids are giving it everything they got, and they’re doing it for their schools and the pride of their schools. That’s a beautiful thing. That’s what people love” (Bergman 2011, p. 12).

With a sense of irony, the same universities that created intra-collegiate, then intercollegiate, athletic competitions, now represent one of the last bastions of college athletic amateurism: the Ivy League, Oxford, and Cambridge (Weinberg 2011). These schools do not distribute any athletic scholarship funds, and their student-athletes must meet rigorous academic standards. Since 1829, Oxford and Cambridge have competed in boat rowing competitions, showcased each spring on the River Thames in London and called The Boat Race. Both schools

consistently and fiercely police each other to assure that all contestants are legitimate students who intend to complete their studies.

## **The History of the NCAA**

Like many institutions throughout human history, for instance, the United States Department of Homeland Security, the National Collegiate Athletic Association was born out of tragedy. In 1905, intercollegiate football resulted in 18 deaths and more than 100 major injuries (Smith 2000; Igel 2011). These football tragedies came to the attention of President Theodore Roosevelt, who had multiple agendas in play regarding college sports. Many of Roosevelt's Rough Riders, officially known as the First United States Volunteer Cavalry, were former college football players. Thus, Roosevelt felt a strong duty to preserve collegiate football. Further, as Roosevelt decided to involve himself in revising intercollegiate rules, many assumed that he had designs on giving his alma mater, Harvard University, some form of advantage. Roosevelt directed New York University Chancellor, Henry MacCracken, to convene a meeting involving 13 schools, including Harvard, Princeton, and Yale, to modify, unify, and update intercollegiate football rules (Igel 2011). This collection of college administrators founded the Intercollegiate Athletic Association (IAA). In 1920, the IAA became the NCAA (Smith 2000).

Almost from its inception, the NCAA recommended that its member colleges only schedule competitions against opponents who abide by NCAA rules. As will be pointed out later, many believe that the NCAA had the makings of a cartel from the time of its inauguration. A few

years later (1921), the NCAA held its first intercollegiate championship, the National Collegiate Track and Field Championship.

Within a decade, accusations arose that the NCAA promoted commercialism and operated with conflicts of interest. A 1929 Carnegie Foundation report acknowledged the increasing popularity of collegiate sports but also outlined a number of abuses including over-commercialization, cheating, academic fraud, concerns for student-athlete welfare, and gambling (Igel 2011). That Carnegie Foundation study included, “The athlete is the most available publicity material the college has. A great scientific discovery will make good press material for a few days, but nothing to compare to that of the performance of a first-class athlete” (Gregory 2013, p. 38). The report continued, stating that a college “wants students, it wants popularity, and above all it wants money and always more money” (Gregory 2013, p. 38). Howard Savage of the Carnegie Foundation described, “Can it [the college] concentrate its attention on securing teams that win, without impairing the sincerity and vigor of its intellectual purpose . . . alumni devices for recruiting winning teams constitutes the most disgraceful phase of recent intercollegiate athletics” (Johnson 2012, p. 2).

In the face of unremitting criticism, in 1948, the NCAA created the “Sanity Code.” This code prohibited all concealed and indirect benefits for college athletes (Smith 2000; Branch 2011). Its intention was to stem the rise in immoral recruiting practices (Igel 2011). It limited financial aid for athletes to tuition and fees (Johnson 2012). Along with the Sanity Code, the NCAA established the Constitutional Compliance Committee, charged with enforcing the rules of the NCAA. Unfortunately, the Constitutional Compliance Committee had only one option to

penalize colleges that violated NCAA rules – expulsion from NCAA membership. With only this drastic penalty at its disposal, the Constitutional Compliance Committee proved ineffective (Branch 2011). By 1951, the NCAA replaced the Constitutional Compliance Committee with the Committee on Infractions. This new committee had a variety of penalties, in addition to expulsion, for rules violations (Smith 2000). Although the NCAA had no actual legal authority to penalize any university, Walter Byers, Director of the NCAA, found a way to convince colleges that they should accept NCAA penalties without legal challenge for the betterment of all intercollegiate athletics (Branch 2011). This allowed the NCAA to penalize the University of Kentucky's basketball program after a point-shaving scandal in 1951 (Branch 2011). In the same time frame, the NCAA abolished the Sanity Code (Johnson 2012; Sack 1991).

This 1951 cheating scandal proved to be unexplainably fortuitous for the NCAA. At that time, the NCAA basketball tournament served as a consolation prize for those not invited to the National Invitational Tournament – the NIT. This tournament, established by New York sportswriter, Edward S. “Ned” Irish in 1930, began one year before the NCAA tournament and ruled postseason college basketball for 20 years, showcasing the games in Madison Square Garden (Barra 2012b). By 1946, NIT games drew an average of over 18,000 fans per game (Barra 2012b). When New York District Attorney Frank Hogan accused six colleges and more than 30 players of cheating by fixing the outcomes of games, Irish accused Hogan of grandstanding to bolster his re-election bid (Barra 2012b). This political battle devastated the credibility of the NIT. By guaranteeing a cleaner form of basketball, along with bullying and cajoling colleges, Walter Byers successfully displaced the NIT as the grand finale to the

basketball season. Ultimately, the NCAA purchased the NIT in 2005 for \$56.5 million (Barra 2012b).

With questionable legal authority and limited financial resources, the NCAA found itself poorly equipped to investigate and penalize institutions or players for rules violations. At a minimum, the NCAA needed money to be effective. To that end, the NCAA outlawed televised competitions in 1951 except for a few events licensed by the NCAA (Branch 2011). This monopoly allowed the NCAA to negotiate lucrative television contracts (Smith 2000; Branch 2011). In 1953, the NCAA negotiated a television deal worth \$1.15 million. By 1962, television revenue increased to \$5.1 million (Smith 2000; Branch 2011). Television money gave the NCAA the resources necessary to enforce its rules.

The explosion of television revenue for college sports, particularly football and basketball, created new challenges for the NCAA (Branch 2011; Schneider 2001). The premier football and basketball programs felt disinclined to share the revenue they generated with non-premier programs. In an attempt to keep the premier programs happy, in 1973, the NCAA membership split into three divisions (Igel 2011). Division I schools included all of the premier programs and offered numerous, well-funded athletic programs. Currently, there are 349 Division I schools. Division II schools had more modest funding for athletics and aspired to less competitive goals. Division III colleges did not offer athletic scholarships. Because of further dissatisfaction among the premier programs, Division I universities were further stratified into three subdivisions in the 1990's (Igel 2011). The 125 highest level football programs, called the Football Bowl Subdivision (FBS), hail from the following 10 leagues: PAC 12, Southeastern

Conference (SEC), Atlantic Coast Conference (ACC), Big 12, Big Ten, Mountain West Conference, American Athletic Conference (AAC), Sun Belt, Mid-American Conference, and Conference USA.

Television revenue began to completely dominate the NCAA and its member institutions. As University of Iowa President, Hunter R. Rawlings III decried, “TV determines the time and sites of our games, controls our athletic departments’ budgets, and dictates conference memberships and realignments” (Murphy 1994, pp. 167-168). Television revenue further escalated following government deregulation of the cable industry in the 1980’s; the ever-growing number of sports networks competed and clamored for more sports content (Zola 2013a). William Friday, former President of North Carolina University lamented, “We do every little thing for them. We furnish the theater, the actors, the lights, the music, and the audience for a drama measured neatly in time slots. They bring the camera and turn it on” (Branch 2011, p. 82).

NCAA and athletic departments are considered part of the educational mission of universities; therefore, they are not subject to taxation on their revenues from TV, sponsorships, licensing, ticket sales, etc. (Eitzen 2000).

Not all intercollegiate sports programs are profitable. In fact, most are not. Almost all of the money in intercollegiate sports comes from men’s basketball and football programs. NCAA President Mark Emmert described, “So the NCAA runs 88 national championships, but it is men’s basketball that allows the golf championship to go on or the volleyball championship to go on, because those, of course, don’t generate that same kind of revenue” (Bergman 2011, p. 4).

On the NCAA website, Emmert explained, “As a president, I say to my women’s golf fans, ‘The most important thing you can do is buy football tickets.’ If you love rowing, buy football tickets. If you love cross country, buy football tickets. We couldn’t do any of those other sports if we weren’t successful in football” (NCAA 2013c, p. 2).

Under the current system, black male college athletes subsidize non-black male college athletes. As previously noted, football and men’s basketball provide the revenue for virtually all of the remaining college sports programs. In Division I sports, 48 percent of the football players are black and 54 percent of men’s basketball players are black. In contrast, for non-revenue sports, black athletes make up only 8.5 percent. It is hard to dispute that the athletes who generate most of the revenue for the schools are disproportionately black and that some of that revenue finances non-revenue college sports that are disproportionately non-black (Taha 2011).

The NCAA first approved the concept of the athletic scholarship in 1957 (King 2012). It offered athletes tuition, room and board, and about \$15 to spend on personal expenses (King 2012). Importantly, these scholarships lasted for all four years of college. At any time, an athlete could opt out of sports and continue their academic pursuits by way of their athletic scholarship. In the late 1960’s, many coaches claimed that some college athletes acted in bad faith by accepting athletic scholarships with no intention of playing sports (King 2012). This led to a clause in the athletic scholarship known as the “fraudulent misrepresentation rule” that allowed coaches the power to cancel an athlete’s scholarship if they thought the student had “acted in bad faith” (King 2012, p. 3). In the late 1970s, the NCAA altered the athletic scholarship, limiting

them to one-year-renewable scholarships (King 2012). That move dramatically shifted the balance of power away from the student-athlete and toward the coach (King 2012).

In a variety of ways, the NCAA has limited the collegiate athletes' rights by way of the label "student-athlete." This became painfully obvious in the 1950s when Ray Dennison died from a traumatic brain injury from college football. Ray's widow filed for worker's compensation death benefits (Branch 2011). The case reached the Colorado Supreme Court where it ruled that colleges are "not in the football business" (Branch 2011, p. 88). Since the college was not in the business of football, the college did not need to cover Mr. Dennison's death through workers compensation. College football players, like all college athletes, are student-athletes, not employees. These distinctions may suffice in the courtroom, but on the field, coaches seem identical to employers. Water Byers, former NCAA president, takes credit for coining the deliberately ambiguous term – student-athlete. When injured, the player is a student. When underperforming in the classroom, the player is an athlete. If a college athlete does suffer a fatal injury, the NCAA compensates the family with a \$10,000 award (Bianchi 2006).

In 2007, the NCAA took over responsibility for certifying athletic amateurism, a task previously delegated to individual schools (NCAA 2013a). The NCAA certifies 1,430,000 student-athletes (NCAA 2013a).

Over the last 25 years, university presidents have largely taken over the administration of the NCAA (Igel 2011). It certainly seems entertaining, as well as ironic, that these university



presidents, who had little-to-no interest in college athletics early on, now have such a vested interest in the NCAA and the continued success of intercollegiate athletics.

Over the years, the NCAA has withstood multiple legal challenges. Many of these legal challenges have significantly affected NCAA business. In the early 1980s, 60 major college football schools formed the Collegiate Football Association (CFA) and negotiated directly with the National Broadcasting Company (NBC). In the Supreme Court case entitled *NCAA v. Board of Regents of the University of Oklahoma and University of Georgia* (1984), the high court ruled that the NCAA violated the Sherman Antitrust Act. This ruling devastated the NCAA because it lost control of college football television revenue. The NCAA had never controlled the college-football-bowl-system revenue because the bowl system pre-dated the NCAA. The original bowl game, the Rose Bowl, began in 1902 and featured Michigan destroying Stanford 49-0. In recent times, the BCS title game rotated among four longstanding bowl games: Rose Bowl, Fiesta Bowl, Orange Bowl, and Sugar Bowl. Soon, this post-season college championship series will change to a College Football Playoff series, with qualifying teams selected by a committee that includes Condoleeza Rice as part of the 12-18 member panel (Russo 2013). With the NCAA cut out from football television revenue, it became almost completely dependent on revenue from its year-end basketball tournament (Igel 2011).

In that same ruling, the Supreme Court blessed the concept of collegiate amateurism. The high court stated that the NCAA serves as

the guardian of an important American tradition . . . amateurism in intercollegiate athletics” (Zola 2013, p. 1). The high court went on to state, “In order to preserve the character and quality of the ‘product,’ athletes must not be paid, must be required to attend class, and the like (Monks 2013, p. 6).

In another Supreme Court case, *NCAA v. Tarkanian* (1988), the court ruled that the NCAA was a private association, not a “state actor,” and therefore, not obligated to provide “due process” to those investigated by the NCAA (Zola 2013b, p. 1).

In the 1980’s, the NCAA attempted to limit compensation to entry-level basketball coaches. The assistant coaches’ salaries were not to exceed \$16,000 per year. These coaches sued the NCAA in a case labeled *Law v. NCAA* (1989). The U.S. Court of Appeals for the Tenth Circuit ruled that the NCAA salary limit was simply unjustifiable and violated the Sherman Antitrust Act (Parent 2004).

At present, the NCAA is a voluntary and unincorporated association with 1,300 colleges and universities and approximately 450 employees (Igel 2011; Bergman 2011). The NCAA serves to regulate and promote playing rules, standards of amateurism, academic eligibility, and relationships between student-athletes, coaches, and institutions. Each year, the NCAA, in conjunction with its Division I and Division II schools, distribute more than \$2 billion dollars in athletic scholarship money (Mancari 2013).

## **Economic Analysis Of Amateurism in College Sports**

This section will demonstrate how the NCAA has organized its member colleges into a cartel that allowed it to gain a special type of monopolistic power and significant market power.

## **Market Power**

To understand the economics of college sports requires an analysis of the market power of the NCAA and its member schools. In essence, market power is the capacity to increase the market price over the marginal costs. In other words, firms with significant market power become “price makers” because they set the price, in contrast to firms in a competitive market that act as “price takers” because they must take the price arrived at by the competitive market. As a proxy for market power, consider that the NCAA charges \$11 million to broadcast one game of its March Madness tournament, where its only legitimate rival, the National Association of Intercollegiate Athletics (NAIA), only charges \$500 to broadcast its national basketball tournament (NAIA 2013). In general, market power leads to socially undesirable results as price increases and quantity decreases. In economic terms, this would be called inefficiency or deadweight loss, resultant from excessive market power. To counter these socially undesirable results, the U.S. and many other countries employ antitrust policies to promote competition and limit market power.

Does the NCAA and its member schools enjoy significant market power in the industry of college sports? One commonly used assessment of market power evaluates the concentration in the industry and is known as the Herfindahl-Hirschman index (HHI)(Taylor 2002). When companies propose mergers, the Justice Department and the Federal Trade Commission evaluate the potential merger’s effect on the competitive structure of an industry. As part of the Clayton Antitrust Act of 1914, these federal agencies are charged to prevent the creation of monopolies. To assess for potential monopoly development, they employ the HHI, that is used so frequently it

has been nicknamed the “Herf” (Taylor 2002). The HHI equals the sum of the squares of the market shares of all the firms in the industry and ranges from 0 to 10,000. The higher the HHI, the more concentration in the industry. If one company holds 100 percent of the market shares, then the  $HHI = (100)^2 = 10,000$ . A highly concentrated industry is likely to be anti-competitive and enjoy significant market power, meaning it could raise prices well above marginal costs, reduce the quantity produced, and cause economic inefficiency.

To evaluate the HHI in college sports, let’s consider the number of student-athletes to represent the market shares of the industry. College sports, excluding junior colleges, is controlled by three distinct organizations: 1) NCAA, 2) National Association of Intercollegiate Athletics (NAIA), 3) United States Collegiate Athletic Association (USCAA). The NCAA claims 444,000 student-athletes (NCAA, 2013). The NAIA has 60,000 collegiate athletes (NAIA, 2013). The USCAA probably has around 14,000 athletes. Thus, the NCAA controls 85 percent of the shares, with the NAIA and the USCAA controlling 12 percent and 3 percent, respectively. Therefore, the HHI of the college sports industry would be as follows:

$$HHI = (85)^2 + (12)^2 + (3)^2 = 7,378$$

When the Justice Department and Federal Trade Commission consider mergers in industry, any merger that results in an HHI above 1,800 is typically challenged as creating too much concentration with the threat of too much market power (Taylor 2002). It seems clear that the NCAA has a high enough concentration of student-athletes to generate significant market power.

### **Monopoly and Monopsony Power**

The NCAA member schools enjoy market power by controlling a large portion of the market. Because they don't control the entire market, these schools cannot be described as a monopoly, but since they control 85 percent of the market, the NCAA schools can be described as having monopoly power. Monopoly power typically exemplifies market failure. Monopolists face a downward-sloping market demand curve, meaning as the monopolist raises the price, the quantity demanded declines. From a different perspective, a monopolist sets the price by controlling the quantity supplied. As the NCAA sells the product of college sports entertainment to various buyers, especially television networks, it acts as a monopolist, from the Greek "single seller." In his memoir entitled *Unsportsmanlike Conduct*, Walter Byers, the famed first full-time executive director of the NCAA proclaimed, "Amateurism is not a moral issue; it is an economic camouflage for monopoly practice" (Huma 2012, p. 8).

Beyond its function as a monopolist, the NCAA also behaves as a monopsonist (Greek for "one" and "purchasing food"). In contrast to a monopoly, where there is only one seller, monopsony describes a situation where there is a single buyer of a particular good or service in a given market. As the NCAA member schools acquire student-athletes through the recruitment and scholarship process, they are effectively a single buyer of student-athletes, representing a monopsonistic process. By reducing its demand for the good, a monopsony can reduce the price in the market. In fact, monopsony modeling has been previously applied to professional sports leagues (Taylor 2010). As will be discussed later, professional sports leagues countered the monopsony by establishing player unions and creating a bilateral monopoly (Taylor 2010). Any

attempt to monopolize or monopsonize is illegal in the U.S., according to Section 2 of the Sherman Antitrust Act of 1890.

One method of estimating the degree of monopsony control over an industry is to compare the marginal revenue product of an athlete to his/her compensation, and this approach will be analyzed later. An alternative method for establishing the degree of monopsony control in college sports is to examine the percentage of total-sports revenue returned to the players by way of their scholarships (Monks 2013). University of Richmond economist James Monks (2013) utilized this second method and compared the percent of revenue returned to players in the NCAA with that returned to major American sports leagues. Simply put, Monks used the ratio of student athletic scholarships to total intercollegiate athletic revenue as the metric of the degree of monopsony control in intercollegiate athletics (Monks 2013). For the MLB, NHL, NFL, and NBA, Monks reported that 54-58 percent of total league revenue is returned to the players by way of salaries. For the NCAA (2004-2011), Monks described that only 21-23 percent of the athletic revenue was returned to the players by way of athletic scholarships. In the highest profile programs of the NCAA – The Football Bowl Subdivision, Monks calculated that only 15 percent of athletic revenue was returned to the players. Monks concluded that the NCAA enjoys significant monopsony control over college sports (Monks 2013).

### **NCAA as a Cartel**

How do the NCAA member schools gain monopoly and monopsony power? The NCAA serves as a catalyst to foster collusion. Put another way, the NCAA operates as a collusive monopsony when “purchasing” student-athletes and a collusive monopoly when selling college sports. In fact, the NCAA promotes explicit collusion because its members openly cooperate to make mutually beneficial pricing and production decisions. Here, “explicit” collusion is meant in the economic sense (i.e., open cooperation of firms/schools to make mutually beneficial pricing or production decisions), not as a means to inflame the concept. In many ways, the NCAA functions just like OPEC (Organization of Petroleum Exporting Countries), as both collude, price-fix, and manipulate production (Nocera 2011). In the U.S., explicit collusion is illegal but not unknown to colleges. A little over a decade ago, the Justice Department charged all eight Ivy League schools with collusion on financial aid packages (DePalma 1991). In essence, these prestigious schools did not want to compete for elite students by way of financial aid incentives; thus, they colluded and fixed the compensation of the financial aid. According to Attorney General Dick Thornburgh,

Students and their families are entitled to the full benefits of price competition when they choose a college. This collegiate cartel has denied them the right to compare prices and discounts among schools, just as they would in shopping for any other service. The most unfortunate aspect of this conduct is that it had a disproportionate impact on the students who needed the financial aid the most (DePalma 1991, p. 1).

Section I of the Sherman Antitrust Act makes price fixing illegal.

Explicit collusion, defined as open cooperation of firms to make mutually beneficial pricing or production decisions, occurs at least annually, over several days every January,

amongst the firms (colleges) that operate college sports at the annual NCAA convention. The 2014 NCAA Convention took place in San Diego (Jan. 16-18); the 2015 convention will be in Washington, D.C. and the 2016 convention is scheduled in San Antonio, Texas (NCAA 2014c). Any group that colludes to coordinate pricing and/or production decisions can be accurately described as a cartel (Miller 2013). To be clear, the NCAA is actually the organizational structure of a cartel made up of universities. The collection of universities constitutes the cartel. Thus, the NCAA members function as a cartel to gain monopsony power and market power.

Recall that the NCAA was founded to promote safety, not maximize profits, yet it seems that the former facilitated the latter. Adam Smith long ago warned,

People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law no change either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary (Smith 1776, p. 145).

The NCAA serves to facilitate the assembling of college administrators in the same trade – amateur sports; moreover, many have come to believe this assemblage is necessary.

United States Court of Appeals Judge and cartel authority, Richard Posner, identified several predisposing market characteristics that can lead to cartel formation (Posner 1992). One of these characteristics, market concentration, was previously explored. College sports is a high concentrated market with the NCAA holding the overwhelming number of market shares. Posner also described product homogeneity as a factor that predisposes an industry to form a cartel. Sports, in general, at all levels of play, remain remarkably homogenous. From pee-wee leagues,



to high school teams, to college competitions, to professional sports, there is homogeneity of the uniforms, equipment, rules, and seasons of play. The history as to why specific sports in this country are played only during specific months remains somewhat murky. Baseball, arguably America's oldest organized sporting event, probably began in the summer of 1846, and the game is best played under the favorable weather conditions of summer. Thus, it's not surprising that the baseball season takes place from April to October. American football began in November 1869, with a game between Princeton and Rutgers, and remains a fall sport with a season beginning in September and ending in February. Basketball, a game designed for winter and played indoors, began in 1891 and remains a winter sport with competitions typically scheduled from October to May. The homogeneity of these seasons serves as a barrier to entry in the college-sports industry. Suppose that the NAIA decided that its basketball tournament could not compete with March Madness. The NAIA could not realistically move their tournament to the summer, in the middle of baseball season, because American sports culture would probably reject a summer basketball tournament. Recall the plight of the United States Football League (USFL) that dared play football during baseball season (1983-1985). After struggling for three seasons, the USFL decided to schedule its fourth season during the traditional football season, going head-to-head with the NFL. This resulted in an anti-trust lawsuit against the NFL, a Pyrrhic victory where the NFL only had to pay the USFL one dollar, leading to bankruptcy for the USFL (Neff 1986). The USFL did not fail because of lack of talent, as it signed Herschel Walker, Doug Flutie, Reggie White, Jim Kelly, and Steve Young. The USFL failed because it tried to enter the market off-season and could not compete with baseball. Thus, new college

sports industries cannot enter the market off-season, forming a barrier to entry. Of course, this represents just one of many barriers to enter the college-sports industry. The business of college sports requires, well, a college, and founding a college would be hugely expensive. In other words, the massive start-up costs create the most imposing barrier to entry in this industry. Posner warned that barriers to entry of new firms predispose the industry to cartel formation. It seems that Posner would agree that the market characteristics of college sports predisposes it to cartel formation.

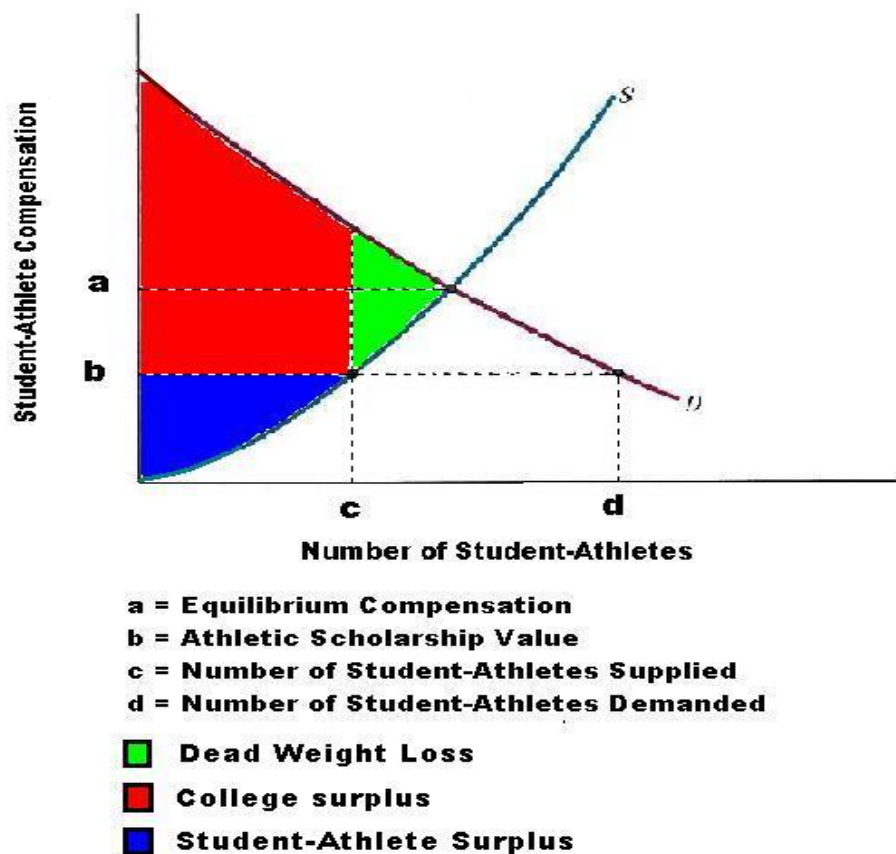
Typically, cartels make agreements concerning prices, outputs, market areas, the use/construction of productive capacity, and advertising expenditures (Koch 1973). The enterprise of college sports differs significantly from other cartel-driven industries; therefore, the cartel of NCAA member colleges functions differently than typical cartels. The NCAA functions as the head of a cartel in the following ways: 1) It fixes the compensation of student-athletes; 2) It controls the supply of student-athletes; 3) It distributes profits in a fashion that satisfies its members; 4) It enforces rules on athletes and member colleges; 5) It protects cartel rents (Miller 2013).

### **NCAA Fixes the Compensation of Student-Athletes**

Amateurism mandates that athletic scholarships represent the sole remuneration to college athletes (Zola 2013). Colleges cannot award financial aid to a student-athlete that exceeds the “cost of attendance” (the amount calculated by campus financial aid office, using federal regulations, that includes transportation, and other expenses in addition to tuition and fees, room and board, and books) or the full “grant-in-aid” limit (defined by the NCAA as tuition and fees, room and board, and required textbooks), whichever is lower (Murray 2003). These athletes are strictly prohibited from receiving compensation for non-athletic services that might be understood to reflect on their athletic ability. In essence, this represents a two-fold restriction on player remuneration: 1) It caps the total amount of compensation; 2) It restricts the form of remuneration, because scholarships can only purchase academic units.

College athletes differ from other scholarship students who can use their talents to earn extra money while in school. For example, music students can play concerts and get paid, and science students can work in laboratories for a salary (Wharton 2013). An English literature scholarship student can write a best selling novel, and an engineering student can patent a product (Murphy 1994). Natalie Portman filmed *Star Wars Episode 2: Attack of the Clones* while at Harvard (Hruby 2012). No similar options are made available to student-athletes.

The NCAA effectively creates a price ceiling (compensation ceiling) for student-athletes by the limitations of their scholarships and by limitations on other compensation that student-athletes could receive. Price ceilings typically result in economic inefficiency.



As the above supply-and-demand graph demonstrates, imposing a price ceiling creates economic inefficiency, including a significant dead weight loss. Notice the disparity between the college (Consumer) surplus and student-athlete (Producer) surplus, arguing for a significant advantage for the colleges from the price ceiling. Also, notice the downward pressure on student-

athlete supply and student-athlete demand caused by the price ceiling. A monopsony lowers the usage of inputs, meaning fewer college students have the opportunity to participate in college sports. Thus, the NCAA's monopsony creates opportunity costs for college students. As a further consequence of the lowered inputs, not all of the talented and qualified athletes can participate in Division I college sports. Thus, too many talented/qualified athletes chase too few opportunities. The limitations in college sports opportunities sets the stage for student-athletes enduring unpleasant and unproductive conditions, such as excessive practice times, dangerous training technique, psychological abuse, etc. If the inputs were not artificially lowered by the price ceiling, it would be unlikely that student-athletes would tolerate such conditions. While maintaining the traditions of amateurism, the NCAA lost sight of perhaps the most important pillar of American society – the free market (Parent 2004).

In addition to being economically inefficient, this price ceiling for student-athlete compensation proves simply inadequate. Based on the average value of a scholarship and a 1,000-hour-per-year athletic workload, economist Richard Sheehan, estimated the hourly wage of a college football player at \$7.09 and \$6.82 for a college basketball player (Johnson 2012; Eitzen 2000). These wages fall below the federal minimum wage of \$7.25 per hour as defined by the Fair Labor Standards Act (2009). It has been estimated that 85 percent of student-athletes at high-profile football and men's basketball programs live below the federal poverty line (Nance 2011). Duke basketball players have been valued at \$1,025,656 yet live only \$732 above the poverty line with scholarship shortfalls of \$1,995 (Nance 2011). In fact, the NCAA explicitly allows college athletes to accept food stamps and welfare benefits (Nance 2011). In an NCAA-

sponsored study, football and basketball players had less money after expenses, than non-athletic students (Murphy 1994). William Gerberding, President of University of Washington, summed it up, “I have become increasingly uncomfortable about having a largely white establishment maintaining an elaborate system of rules that deprives student-athletes, many of whom are non-white, of adequate financial support in the name of the ideals of amateurism” (Johnson 2012, p. 12). Daylon McCutcheon, former USC football player and now a member of the Cleveland Browns, described, “At the same time I was struggling to put food in my own refrigerator, on the USC campus they’re selling my jersey, making money off it. I couldn’t afford to eat, but at the same time, they’re coming to watch me” (Parent 2004, p. 2). As another example, consider the Sacramento Kings’ new guard, Ben McLemore. While at the University of Kansas, Adidas used McLemore as an unpaid model for its sports gear and cut the school a seven-figure check (Dauster 2013). Meanwhile, the McLemore family, 10 people residing in a 600-square foot house, had to alternate using their funds for food or electricity (Dauster 2013). Following an MVP performance in the 2014 NCAA championship game, University of Connecticut’s guard Shabazz Napier revealed that he sometimes goes to bed “starving” because he can’t afford food (Ganim 2014b, p. 1).

Others point out that student-athletes have options to keep themselves well above the poverty line (Parent 2004). Student-athletes, like all college students, could qualify for Federal Pell Grants, that do not require repayment. These athletes could also qualify for the NCAA Special Assistance Fund, also with no repayment obligation. The NCAA also established the Student-Athlete Opportunity Fund that is distributed by each athletic conference. Further, NCAA

Proposal No. 2002-21 allows college athletes unlimited earning potential during the summer months, provided they are compensated “at a rate commensurate with the going rate for similar jobs” (Parent 2004, p. 7).

Notwithstanding those options for further financial assistance, it has become clear that athletic scholarships do not actually cover the costs of attending school. The Collegiate Athletic Coalition estimated that the athletic scholarship represents a \$2,000 shortfall in covering school necessities (Johnson 2012). Tom Osborne, former Nebraska head football coach and U.S. Congressman (R-NE) calculated a \$3,000 shortfall (Johnson 2012). Former NCAA President, Myles Brand, agreed, “Ideally, the value of an athletically related scholarship would be increased to cover the full cost of attendance, calculated at between \$2,000 to \$3,000 more per year than is currently provided, I favor this approach of providing the full cost of attendance” (Johnson 2012, p. 7). As *Time Magazine* columnist Sean Gregory (2013, p. 39) put it, “athletes are often short a few thousand bucks for ancillary expenses on top of tuition, room and board, books and fees: money for gas, shampoo, and, yes, maybe a few beers.” Put another way, the athletic scholarship does not cover the “cost of attendance,” defined as “an amount calculated by an institutional financial aid office, using federal regulations, that includes the total cost of tuition and fees, room and board, books and supplies, transportation, and other expenses related to attendance at the institution” (NCAA 2014b, p. 1).

In 2006, Jason White, a former Stanford football player, and others sued the NCAA alleging that the limits placed on athletic scholarships represented a form of anti-competitive price collusion in violation of anti-trust law (Huma 2012). That case settled out of court for \$10

million with the NCAA agreeing to compensate former athletes who were denied the full cost of attendance (Huma 2012). Because the NCAA was not compelled to reveal publicly how much it paid out to former athletes, the benefit from this settlement remains unclear (Huma 2012).

The NCAA members explicitly collude to maintain the price ceiling (compensation ceiling) of athletic scholarships. In October, 2011, Division I Board of Directors approved an option to allow athletic conferences to add an additional \$2,000 in spending money to full athletic scholarship (Taha 2011). However, in January, 2012, the NCAA delayed implementation of the additional remuneration and sent the concept back to committee for revision (Johnson 2012). Recently, NCAA President Mark Emmert claimed that the concept was “still very much alive. I think clearly we need to be constantly looking at whether or not we’re providing student-athletes with a fair relationship. The scholarship model that’s in place right now has been the same for 40 years” (Wolken 2013, p. 11c). The scholarship value has not appreciated in 40 years, yet the value of college sports has appreciated astronomically in that time period. In this same time frame, there was momentum to convert the one-year renewable scholarship into a four-year fixed scholarship. Neither of these efforts came to fruition as the NCAA cartel colluded in early 2012 to squash both, as enough universities signed an override petition (Nocera 2011). In fairness, the NCAA does not preclude schools from offering longer scholarships (NCAA 2014). In fact, Ohio State and others have opted to use multi-year scholarships (Huma 2012). Why don’t more colleges offer multi-year athletic scholarships as a recruiting tool? As there is no economic or logical answer to that question, it brings to mind a suspicion for some implicit collusion



designed to maintain the coaches'/universities' control over student-athletes by way of the one-year renewable scholarships.

Beyond setting a price ceiling on scholarship compensation, the NCAA further fixes the compensation of student-athletes by fixing student-athletes' commercial rights at zero. The NCAA accomplishes this by completely controlling the exposure of student-athletes in perpetuity. In essence, the NCAA controls if and when these college athletes will be exposed and retains all profits related to this exposure. The NCAA forbids its members from competing with non-member schools or in non-NCAA sanctioned events. For basketball, the NCAA controls the entirety of television rights. The NCAA also controls rebroadcasts of classic games, collegiate trademark sports merchandise, replica jerseys, competition photos, (until recently) video games, etc. At the time of this writing, this issue is the subject of a potentially paradigm-shifting lawsuit: *O'Bannon, Edward, Jr. vs. National College Athletic Association and Collegiate Licensing Company* (July 21, 2009).

When asked how best for athletes to change the system for their benefit, Tulsa Law School Professor, Ray Yasser, advised the athletes to unite and "file an antitrust suit . . . against the NCAA and their universities, with the claim being that the NCAA and their universities are colluding to create a monopoly over the athlete's ability to share in the profits generated from college athletics" (Johnson 2012, p. 12). Ed O'Bannon and his co-plaintiffs have seized Mr. Yasser's advice and sued the NCAA for restraining trade in the name of maintaining amateurism in college athletics.

In 1995, Ed O'Bannon led the UCLA Bruins to the NCAA Championship. In a stellar performance, he scored 30 points and had 17 rebounds. Mr. O'Bannon was named the Most Outstanding Player of the tournament (Elias 2013). Following that performance, O'Bannon claims that he saw a kid playing a video that had his likeness, and thought that it was wrong (Wharton 2013). That video game was licensed by the NCAA and sold by Electronics Arts (EA) Sports (Wharton 2013). O'Bannon initiated a lawsuit against the NCAA and EA Sports.

The NCAA recently announced that it will not renew its licensing agreement with EA for a college football video game (Berkowitz 2013a). In an NCAA statement, the NCAA described, "Given the current business climate and costs of litigation, we determined participating in this game is not in the best interests of the NCAA" (Berkowitz 2013a, p. 1c). Warren Zola, a sports law instructor at Boston College, explained that the NCAA's continued collaboration with EA would increase the number of potential plaintiffs in pending class action lawsuits (Berkowitz 2013a, p. 1c). The NCAA further stated, "Member colleges and universities license their own trademarks and other intellectual property for the video game. They will have to independently decide whether to continue those business arrangements in the future" (Berkowitz 2013a, p. 1c). These NCAA statements apparently took Stanford Deputy Athletic Director, Patrick Dunkley, by surprise, because he indicated that potential legal embroilments related to doing business with EA Sports were "not on our radar" (Berkowitz 2013c, p. 1c). To put this in perspective, the NCAA video game revenue is estimated to be less than \$10 million per year (Wharton 2013), a relatively small value compared to TV revenue. To be clear, video games do not feature players'

names or faces; however, internal NCAA emails suggest that EA used attributes and jersey numbers of famous players to popularize their games (Wharton 2013).

As this paper is being written, EA Sports settled all lawsuits brought by current and former college athletes involving the unauthorized use of the players' images/likenesses in video games (Russo 2013). This settlement included cases brought by Ed O'Bannon, Ryan Hart (Rutgers quarterback), Sam Keller (Nebraska and Arizona State quarterback), and Shawne Alston (West Virginia running back) (Russo 2013). The settlement has been submitted to the U.S. District in Northern California and the terms have remained confidential (Russo 2013).

The O'Bannon lawsuit could force the NCAA to pay student-athletes for the first time in the NCAA's 107-year history (Elias 2013). O'Bannon and others claim that the NCAA has unfairly and illegally fixed the value of student-athletes' commercial rights at zero (Elias 2013). Thus far, the presiding judge has denied all NCAA attempts to toss the case out (Elias 2013). Even as this paper is being written, Northern California judge, Claudia Wilken is currently deciding if the O'Bannon case can transform into a class action suit, potentially involving thousands of current and former college athletes (Wharton 2013). It would consolidate O'Bannon's case with other cases, including plaintiffs Oscar Robertson and Bill Russell. Oscar Robertson opined, "I think in this day and age, as opposed to yesteryear, the concept of what they consider amateur basketball is gone forever" (Gregory 2013, p. 40). If the judge approves this class action lawsuit, the NCAA would potentially be exposed to a settlement in the billions (Elias 2013). Michael McCann, law professor at the University of New Hampshire, indicated,

“It’s a very big deal . . . an instrumental lawsuit in terms of reshaping college sports” (Wharton 2013, p. 1).

In the introduction to their class action complaint against the NCAA, O’Bannon’s lawyers claim the following:

Plaintiff and putative Class Representative Edward C. O’Bannon, Jr. (“Ed O’Bannon”) brings this action both individually and on behalf of damages and injunctive relief classes (collectively, the “Classes”) consisting of former student-athletes who competed for National Collegiate Athletic Association (“NCAA”) member colleges or universities on those schools’ (1) “Division I” men’s basketball athletic teams; and (2) “Football Bowl Subdivision” (formerly known until 2006 as “Division 1-A”) men’s football athletic teams whose images have been licensed or sold by Defendants, their co-conspirators, or their licensees during the four years preceding the filing of this Complaint (the “Class Period”), or may be in the future. For purposes of the injunctive relief class only, Plaintiff also brings this action on behalf of current student-athletes competing on the teams described above, as well as former student-athletes, as both groups’ future compensation rights are impacted by the anticompetitive practices described herein . . . Defendants NCAA, the Collegiate Licensing Company (the NCAA’s licensing arm), and their co-conspirators, including the NCAA’s member schools and conferences, have committed *per se* violations of the federal antitrust laws by engaging in a price-fixing conspiracy and a group boycott/refusal to deal that has unlawfully foreclosed class members from receiving compensation in connection with the commercial exploitation of their images following their cessation of intercollegiate athletic competition. Plaintiff also sets forth a claim for unjust enrichment and requests that the Court require Defendants to provide an accounting of ill-gotten gains and the monies unlawfully withheld from class members. Plaintiff further requests that the Court establish a constructive trust for the benefit of class members and for the purpose of holding in trust the licensing revenues that Defendants and their co-conspirators have unlawfully diverted from class members (O’Bannon 2009, p. 2).

The O’Bannon class action complaint also points out,

The NCAA accomplishes this unreasonable restraint of trade in part by requiring all student-athletes to sign a form each year – currently known as “Form 08-3a” – that purports to require each of them to relinquish all rights in perpetuity to the commercial use of their images, including after they graduate and are no longer subject to NCAA regulations. Form 08-3a is purposefully misleading, incomplete

and ambiguous on its face, and student-athletes, including minors, must sign it under duress and without informed consent . . . The NCAA further requires student-athletes to sign at least one other similarly illegal consent form pursuant to Article 12.5.1.1 of its Bylaws (the “Institutional, Charitable, Educational, or Nonprofit Promotions Release Statement”), that allows schools and conferences to commercially exploit former student-athletes by effecting another purported perpetual release of rights. More specifically, Form 08-3a purports to cause student-athletes to release in perpetuity their rights to obtain compensation in connection with use by the NCAA, or the NCAA’s designated ‘third parties,’ of a student-athlete’s ‘name or picture to generally promote NCAA championships or other NCAA events, activities or programs.’ Similar language is contained in the ‘Institutional, Charitable, Educational, or Nonprofit Promotions Release Statement.’ The NCAA, without advising student-athletes, has taken that purposefully ambiguous language as a license to develop an array of multi-media revenue streams for itself without providing any compensation whatsoever to the former athletes whose images are sold over and over again via NCAA-owned, controlled, and licensed entities. Form 08-3a and the ‘Institutional, Charitable, Educational, or Nonprofit Release Statement’ are contracts of adhesion, imposed via anticompetitive conduct and agreement, and are plainly unenforceable (O’Bannon 2009, pp. 4-5).

Recall that Article 2.9 of the NCAA Manual includes, “student-athletes should be protected from exploitation by professional and commercial enterprises” (NCAA 2011, p. 1). How can form 08-3a and Article 12.5.1.1 be consistent with Article 2.9? As Rodney Gilmore, former Stanford football player, lawyer, and ESPN analyst put it, “players sacrifice their licensing rights, and the schools and NCAA bundle these rights and sell them for billions” (Gilmore 2013).

Seemingly with more hubris than judgment, NCAA legal representative Donald Remy recently declared, “We’re prepared to take this all the way to the Supreme Court if we have to. We are not prepared to compromise on the case” (Berkowitz 2013b, p. 1c).

The O’Bannon case may be the first of many. At the time of this writing, former football and basketball players from UC Berkeley, Clemson, University of Texas, El Paso, and Rutgers

have filed a federal lawsuit in Newark, N.J. against the NCAA and its five dominant conferences (Pac-12, Southeastern, Atlantic Coast, Big Ten, and Big 12), claiming they are an unlawful cartel that illegally restricts the earning power of college athletes (NCAA 2014c).

While college players must sign away their promotional rights, college coaches cash in on theirs. According to the U.S. Patent and Trademark Office, Ohio State football coach, Urban Meyer, is in the process of trade marking the phrase “Urban Meyer Knows” (Berkowitz 2013d, p. 1c). Sports law expert and former dean of the Indiana University Law School, Gary Roberts, asked, “Now, is it right morally and legally that coaches can so fully exploit the value that rests in their skills and publicity rights when athletes cannot?” (Berkowitz 2013d, p. 7c).

The NCAA member schools even regulate how these student-athletes are exposed. NCAA rules ban players from displaying personal messages on their bodies yet mandates where corporate logos will be displayed (Branch 2011). Auburn quarterback Cam Newton compliantly wore approximately 15 company logos: one on his jersey, four on his helmet visor, one on each wristband, one on his pants, six on his shoes, and one on his headband (Branch 2011). Typically, each school makes an independent deal with a sports apparel company, and the athletes of that university are required to wear that company’s apparel exclusively.

Shoe companies (Nike, Reebok, Adidas) make college athletes unpaid models by making lucrative deals with universities, estimated at approximately \$1,000,000 annually to high-tier programs (Eitzen 2000). In 1977, Sonny Vaccaro, who would become the marketing executive for Nike, invented college basketball shoe marketing: “We ought to give the shoes away, and we ought to pay the college coaches. Put the shoes on the kids and the T-shirts on the kids, and the

public will buy” (Bergman 2011, p. 3). When Vaccaro was questioned by Bryce Jordon, president emeritus of Penn State University, as to why colleges should be an advertising medium for the shoe industry, Vaccaro responded, “They shouldn’t sir. You sold your souls, and you’re going to continue selling them. You can be very moral and righteous in asking me that question, sir, but there’s not one of you in this room that’s going to turn down any of our money” (Branch 2011, p. 81). Typically, this revenue goes to coaches. Mike Krzyzewski has a 15-year shoe endorsement deal worth \$1,000,000 bonus with \$375,000 annually (Eitzen 2000). In summary, the athletes get the shoes and gear, and the coaches get the money.

### **NCAA Controls the Supply of Student-Athletes**

A monopolist faces a downward-sloping market demand curve; as the monopolist raises the price, the quantity sold declines. In a similar way, a monopsonist faces a downward-sloping supply curve; thus, as the price increases, the supply decreases. Just like the monopolist, the monopsonist will control the price and the profit by controlling the supply. The U.S. District Court for the Western District of Oklahoma found that the NCAA has almost absolute control over the supply of college football (Yasser 2011). If the NCAA allowed a progressively larger supply of athletes and events, the price of the events would decline. Therefore, the NCAA must control the quantity of athletes and competitions. The NCAA accomplishes this in two ways: 1) It controls the number of student-athletes; 2) It controls the number of premier programs. Notice

that the NCAA acts as a monopsonist in its role of controlling the number of student-athletes and a monopolist in its role of controlling the number of premier programs.

The NCAA limits the number of student-athletes by limiting the number of scholarships per sport per college. In Division I basketball, each school is allowed just 12 scholarships. FBS schools can award 85 football players with athletic scholarships.

The supply of student-athletes is also controlled by the five-year eligibility rule. NCAA Bylaw 14.2.1 states the following: “A student-athlete shall complete his or her seasons of participation within five years from the beginning of the semester or quarter in which the student-athlete first registered for a minimum full-time program of studies in a collegiate institution . . .” (NCAA 2014b, p. 3). This rule mandates that college athletes only have five years of athletic eligibility to complete their four-year college athletic career. Simply put, they have just five years to play four seasons. This intense time crunch serves to further control the number of college athletes.

Of course, the NCAA would be economically harmed by a shortage of athletes, especially premier athletes. To that end, the NCAA enjoys a quid pro quo relationship with the NBA and NFL. Keep in mind that neither the NBA nor the NFL have flourishing minor leagues like those in baseball and hockey (Parent 2004).

Prior to 1971, the NBA required players to wait four years after graduating from high school (Medcalf 2012). In the 1971 case, *Spencer Haywood vs. NBA*, the U.S. Supreme Court ruled against the league four-year rule (Medcalf 2012). From 1971-1995, prep-to-pro stars included Moses Malone, Darryl Dawkins, Bill Willoughby (Medcalf 2012). In 1995, Kevin



Garnett further inspired preps to enter the NBA directly out of high school. Jermaine O'Neal and Kobe Bryant followed Garnett's lead in the 1996 draft. In 2003, LeBron James skipped college and joined the Cleveland Cavaliers. As a delayed reaction, in 2007, the NBA created a rule requiring players to be 19 years old or have completed one year of college to be eligible for the NBA draft (Barra 2012a). This rule benefitted the NCAA, because pro-ready basketball players fresh out of high school had few options (like overseas competition) for their first year following high school graduation. Thus, the NBA rule improved the supply of basketball players available for colleges.

In 1925, Red Grange left college early, joining the Chicago Bears with a \$50,000 salary (Bianchi 2006). Grange's departure had a negative impact on Illinois University and the NCAA. The NFL responded by establishing a professional eligibility rule that prohibited players exiting college early. This rule also prohibited high school football players from entering the NFL draft for four years (Bianchi 2006). In 1990, the age requirement changed: A football player cannot enter the NFL draft until "three NFL regular seasons have begun and ended following either his graduation from high school or graduation of the class with which he entered high school, whichever is earlier" (NFL 2013, p. 2). Maurice Clarett challenged this rule and sued the NFL. Clarett declared for the NFL draft after only one year in college. The lower court ruled in Clarett's favor, citing an unfair labor practice that interfered with, restrained, or coerced employees in the exercise of their rights guaranteed. The Court of Appeals reversed the lower court's ruling. Clarett was forced to sit out for two years, then he got cut from the Denver Broncos (Bianchi 2006). The NCAA and NFL manipulate the football market by preventing

talented young players from entering the NFL (Bianchi 2006). Just like with the NBA, the NFL helps the NCAA control the supply of college football players.

Because of the inherent dangers of professional football, the NFL offers several arguments for an age requirement: 1) protects young athletes from physical injury, 2) allows young athletes to mature emotionally, 3) gives young athletes an opportunity for a college education (Bianchi 2006). The State of California licenses professional boxers and mixed martial arts fighters at age 18 (CA 2010). Is football more dangerous than boxing or cage fighting?

Other sports and industries do not have such strict age requirements. MLB requires baseball players to be 16 years old to try out for farm teams (Bianchi 2006). NHL and PGA have waiver options for athletes younger than 16 (Bianchi 2006). FIFA and U.S. National Soccer have no specific age requirements (Bianchi 2006). Government regulations allow minors to be employed with written parental consent under the age of 16 (Bianchi 2006).

College competition makes the elite players household names prior to the NBA/NFL draft. In other words, college basketball serves as a free marketing device for the NBA, and the NFL uses collegiate football as a free farm system to develop future prospects (Bianchi 2006; Barra 2012a). Recall the 1978 NCAA finals between Michigan State and Indiana State. Magic Johnson and Larry Bird entered the NBA as celebrities and transformed the NBA (Barra 2012a). In exchange, NBA and NFL rules assure the NCAA a continuous supply of premier basketball and football players who have just finished high school. Only the NBA and NFL have age requirements for entrance (Bianchi 2006). In a sense, NBA and NFL rules serve as an outside

enforcement securing the cartel's success by limiting the options for young, gifted athletes. Is it a coincidence that only the top collegiate spectator sports have professional age requirements?

These age restrictions lead to opportunity costs but allow for risk assessment. Since these premier players emerging from high schools are made unavailable to the NBA/NFL, these professional leagues suffer an opportunity cost equal to the potential revenue associated with these young players. However, the NBA/NFL minimizes their risk in investing in these youngsters by observing their performances in college sports. These high school graduates also suffer opportunity costs equal to the salary that a professional league would pay them, but their risk increases, in contrast to the decreasing risk of the NBA/NFL. These players risk injury while playing uncompensated in college, and this risk could preclude them from ever playing professionally.

The NBA may be positioning itself to renege on this *quid pro quo* with the NCAA. The NBA now has a functioning developmental league, known as the NBA D-League. It began as the National Basketball Developmental League (NBDL) in 2001 and facilitated the demise of the NBA's prior *de-facto* developmental league, the Continental Basketball Association (CBA) that dissolved in 2009. Unlike the NBA, the D-League has a minimum age requirement of 18. In other words, 18-year-old hoop stars now have an option outside the NCAA that doesn't involve leaving the country. Dallas Mavericks owner, Mark Cuban, believes that the D-League is a better option than college for basketball development, "A major college has to pretend that they're treating them like a student-athlete. It's a big lie and we all know it's a big lie. [The D-League] can do all kinds of things that the NCAA doesn't allow schools to do that would really put the

individual first” (Dixon 2014, p. 1). Kobe Bryant seems to agree with Cuban, “It seems that the system really isn’t teaching players anything, if you go to college” (Feldman 2014, p. 2). If Cuban proves correct, the NCAA would lose some of its control over the supply of student-athletes.

Another way the NCAA restricts the supply of student-athletes involves the one-year scholarship rule. Athletic scholarships carry only a one-year guarantee. The college is only bound to the athlete for one year, but that is not the case for the athlete who is bound to the college for four years. The NCAA mandates that once a high school student signs a letter of intent to accept a scholarship at a college, the student becomes bound to that institution in a four-year commitment (Eitzen 2000). For Division I basketball, 22 percent of the scholarships were not renewed in the 2008-2009 season (Branch 2011). Dave Meggyessy, former Syracuse All-American linebacker described, “It’s a more cynical system now than when I played, starting with those one-year renewables. That’s a heavy hammer. You get hurt, tough shit, you’re out. And there’s no worker’s comp for injuries” (Zirin 2013, p. 2). Beyond being heavy-handed, these one-year renewable scholarships result in the NCAA and its cartel members strictly controlling the supply of athletes and punishing underperformers or otherwise bad investments. Each year, the NCAA can re-establish its supply of athletes by way of the one-year-renewable athletic scholarships. Moreover, one-year scholarships undermine the academic mission of universities. The college curriculum is designed as a four-year program, not a one-year program. These renewable scholarships promote the success of college athletic departments but not the success of student-athletes. In 2010, Taylor Agnew, a former Rice University football player, who lost

his scholarship during a coaching change, filed a class action lawsuit against the NCAA, claiming that the one-year limit on athletic scholarships represented a price fixing scheme (King 2012). Agnew's attorney, Steve Berman, described the one-year-renewable scholarships as "anti-competitive" and "harmful to student-athletes" (King 2012, p. 3).

In addition to controlling the supply of college football players, the NCAA also controls the supply of premium football programs. In this regard, as the NCAA controls the supply of premier student-athletes made available to the media, it acts as a monopolist. This maintains the profitability of these programs. Successful cartels seldom involve large numbers of member firms and often fail when member firms have greatly dissimilar interests and costs (Koch 1973). With this in mind, reconsider the NCAA's decision to split its member schools into three divisions in 1973 and further divide Division I schools thereafter. This represents the NCAA restructuring itself to flourish as a cartel. The NCAA has 1,093 member schools, yet only 349 are designated Division-I and only 125 are Football Bowl Subdivision (FBS) schools (Thwaites 2012; NCAA 2014c). Thus, only 11 percent of NCAA members comprise the premium football programs. The FBS seems like a cartel within a cartel. The NCAA's ability to control the supply of premium college football programs has made the FBS schools flourish financially. This season, under terms of a 12-year rights deal with ESPN, the 10 FBS-level conferences will reap \$470 million annually (Schroeder 2012). In addition, the Big Ten and Pac-12, as well as the SEC and Big 12, will split \$160 million from contracts with the Rose and Sugar Bowls, respectively (Schroeder 2012). These NCAA divisions can be considered a form of price discrimination, a strategy where a seller charges different prices for the same product (college sports). These FBS

schools have rich histories in college football and lifelong fans. Therefore, the seller (the NCAA) can group these loyal fans together and charge an inflated price for FBS football.

### **NCAA Distributes Profits in a Fashion That Satisfies Its Members**

Like with any cartel, the NCAA members expect that NCAA revenue will be distributed to the membership, with the most successful members receiving the most revenue.

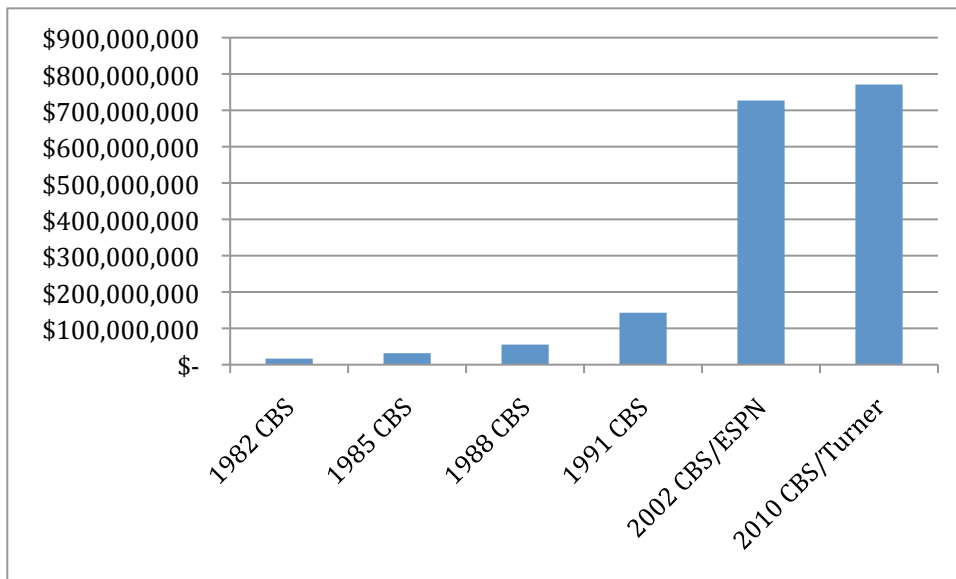
In the 2012-2013 school year, the NCAA revenue totaled \$484,046,000: 81 percent of revenue from television and marketing rights fees, 11 percent from championship revenue (ticket and merchandise sales), 4 percent from investments, 2 percent from the National Invitational Tournament, LLC Eligibility Center, and LLC College Football Arbitrator Officials, 1 percent from sales and services, and 1 percent from contributions (NCAA 2013c). In reality, the bulk of this revenue comes from the men's basketball tournament. March Madness captures almost 140 million viewers, and, according to NCAA President Mark Emmert, "Ninety percent of the revenue that flows into the NCAA comes from the media rights and ticket sales for the NCAA men's basketball tournament" (Bergman 2011, p. 1). The NCAA had a television and marketing rights agreement with Turner Broadcasting and CBS Sports for the 2011-2012 season worth \$871.6 million (NCAA 2013c). For the 2012-2013 school year, the NCAA projects revenue of approximately \$797 million (NCAA 2013c). Of this revenue, the NCAA distributes 95 percent to Division I programs and utilizes 4 percent for central services (building operation and salaries)

(NCAA 2013c). The most successful teams and conferences receive a greater share of this revenue distribution (Taha 2011).

Over the last 30 years, the college sports revenue has gone up tremendously as Figure 3 demonstrates (NCAA 2013c).

Figure 3

College Sports Television Revenue



The NCAA and its members have found multiple other revenue sources: DVD and On-Demand sales and rentals, video-clips sales to corporate advertisers and others, photos, action figures, trading cards, posters, video games, rebroadcasts of classic games, jerseys, T-shirts and other apparel (O'Bannon 2009). The Office of Postsecondary Education of the Department of Education defines revenues attributable to intercollegiate athletics as

appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, state or other government support, student activity fees, ticket and luxury box sales . . . (Monks 2013, p. 7).

The Collegiate Licensing Company (CLC), a for-profit licensing representative of the NCAA, claims a \$4.0 billion annual market for collegiate licensed merchandise (O'Bannon 2009). CLC identifies itself as a division of International Management Group (IMG).

In the early 1980's, the total retail market for products identified with college athletics was estimated to be under \$100 million per year. The typical outlets for such sales were college book stores or other campus locations. In the mid-1990's, the market was estimated to have grown to \$2.5 billion per year, with the predominant sales locations being retail and chain stores. The growth of the market has been explosive (now estimated at \$4.0 billion) and advances in technology and product delivery outlets, namely, the Internet, cable television delivery systems, and video game technology advances, have accelerated the growth (O'Bannon 2009).

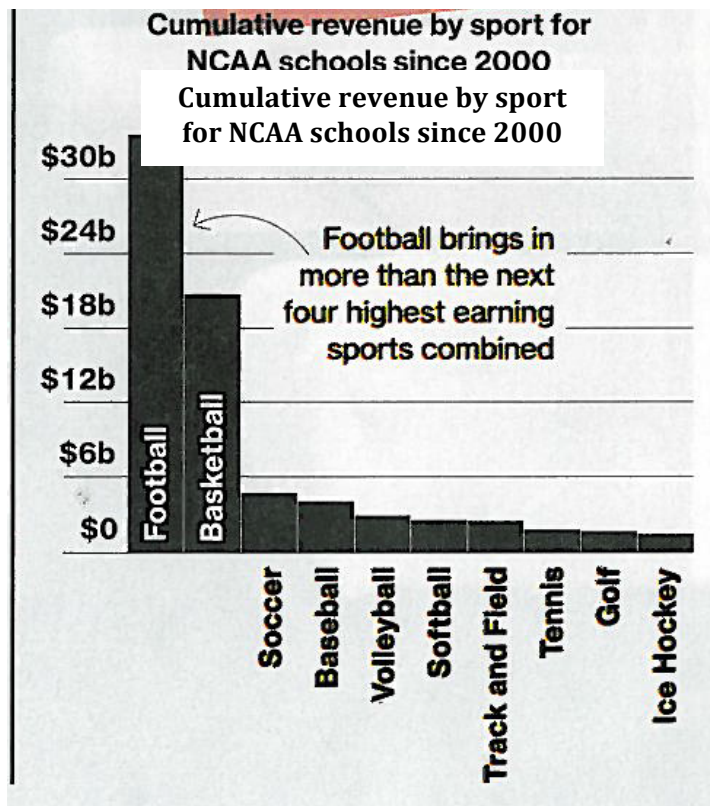
About 15 years ago, when college-apparel sales exploded into a substantial source of revenue for major athletic programs, one of the touchiest issues involved replica jerseys. They featured a star player's number and school colors but not his name, even though every fan knew who the jerseys represented. Replica jerseys remain big business. The NCAA forbids colleges from selling player's jerseys with a player's name on the back, yet hypocritically danced around this rule, as demonstrated by Jay Bilas, former student-athlete, attorney, and emerging NCAA critic. Employing Twitter, Bilas pointed out that if a consumer types *Manziel* into the search box on ShopNCAASports.com, a Texas A&M jersey with a number 2 on the back appears on the



screen, selling for \$64.95 (Gregory 2013). This exposed NCAA hypocrisy went viral on the internet, forcing the NCAA to temporarily shut down its website and claim that the NCAA would no longer sell individual college merchandise (Gregory 2013).

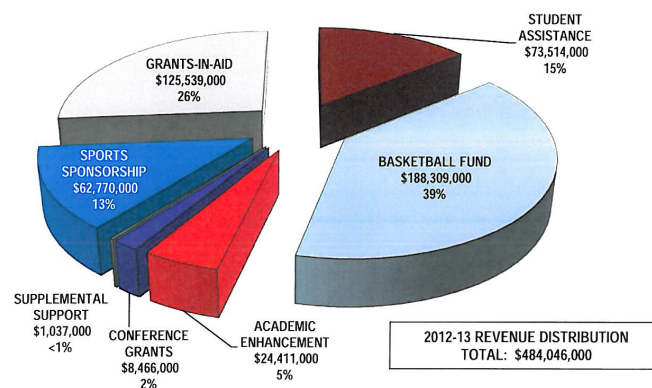
The NCAA green-lighted the replica jerseys because the association considers a jersey number a step removed from a player's identity. "I see nothing wrong with selling jerseys with just numbers on them . . . but I would draw the line at selling the names," claimed former NCAA President Myles Brand (O'Bannon 2009, p. 50).

As the graph below depicts, total NCAA revenue for football and men's basketball since 2000 approaches \$50 billion.



(Barrett, 2014)

After the NCAA covers its overhead, all the remaining revenue is distributed to the member schools. The NCAA claims that 96 percent of all revenue collected returns to member colleges. As the pie chart below demonstrates, the NCAA's largest distribution (39 percent of total revenue distributed) goes into the "basketball fund" (NCAA 2014a). This fund "provides moneys to be distributed to Division-I Men's Basketball Championships over a six-year rolling period. Independent institutions receive a full unit share based on its tournament participation over the same rolling six-year period . . . In 2012-2013, each basketball unit will be approximately \$245,500" (NCAA 2014a, p. 1). What does that mean? As an example, consider the tournament revenue generated by the University of Connecticut Huskies who played in five tournament games in 2011 and seven tournament games over the previous five years. This gave Connecticut 13 "game units." In 2011, each game unit was worth \$239,664 (Smith 2012). Therefore, from 2006 to 2011, University of Connecticut generated \$3,115,632 ( $\$239,664 \times 13$ ) for its Big East Conference (Smith 2012).



(NCAA, 2014)

From the above pie chart, a couple of points become clear. First, it pays to be successful in college basketball, especially if the team qualifies for the NCAA tournament. Second, the revenue-distribution process seems complicated. Third, the member schools must be satisfied with the terms of the distribution process because no schools appear to want to leave the NCAA cartel and no universities have filed public grievances against the NCAA's distribution process. A person who spoke about the college football playoff revenue distribution protocol on condition of anonymity remarked, "There was a lot of number crunching, as you can imagine. But at the end of the day, they did it with smiles on their faces" (Schroeder 2012, p. 1). The smiling faces of satisfied cartel members. On the same topic, John Peters, who represented the Mid-American Conference, declared, "We think it's fair" (Schroeder 2012, p. 2).

### **NCAA Enforces Rules on Athletes and Member Colleges**

Nobel laureate George Stigler described two challenges that successful cartels must overcome: 1) The cartel must be able to reach a consensus on its terms; 2) The cartel must be able to police its collusive agents and punish those who have strayed from the agreed terms (Stigler 1964). In the above section, the point was made that the NCAA member schools seem to have reached a consensus on arguably their most potentially contentious term – revenue distribution. Thus, the NCAA cartel seems to have overcome the first of Stigler's challenges.

Stigler claims that cheating represents the major threat to cartel instability. To understand how the NCAA overcomes Stigler's second challenge, it is important to understand how NCAA schools may stray from the cartel's rules. In a typical cartel, a firm may try to cheat the cartel by

lowering the price to improve sales or lowering quality to decrease production costs. The NCAA members typically try to cheat the cartel in a different fashion: Universities cheat to win football or men's basketball games. Winning conference titles, being invited to football bowl games, having success in the March Madness tournament, and being crowned national champion brings tremendous revenue, prestige, and media exposure. If a team plays in just one game of the March Madness tournament, then that team's conference earns \$1.9 million. Should that team make the Final Four, then that team's conference earns \$9.5 million (Smith 2012). Recall that cheating in college sports probably began with the first intercollegiate competition. Therefore, the NCAA must police its collusive agents for trying to gain an unfair advantage over other cartel members.

Obviously, if a college enjoys recruiting advantages over others, it will enjoy more success and the benefits that accompany success. Therefore, the NCAA strictly enforces the recruitment process for potential student-athletes. The NCAA rules specifically state when, where, and how recruitment can proceed. For instance, the NCAA limits the number of phone calls, text messages, and emails to recruits. The NCAA also limits the number of in-person recruiting efforts. If the NCAA did not to at least appear to make the recruiting process somewhat fair, some schools would protest and potentially exit the NCAA cartel.

Likewise, if a particular school made transferring into it sufficiently attractive, then that school could gain a significant advantage by pilfering talented athletes away from their schools. To secure the cartel, the NCAA had to make the transfer process cumbersome, if not punitive. In general, if a Division I athlete transfers from one four-year college to another, the transferring athlete must sit out an entire season. Specifically, NCAA Bylaw 14.5.5.1 states the following:

A transfer student from a four-year institution shall not be eligible for intercollegiate competition at a member institution until the student has fulfilled a residence requirement of one full academic year at the certifying institution. Further, a transfer student-athlete admitted after the 12<sup>th</sup> class day may not utilize that semester or quarter for the purpose of establishing residency (NCAA 2011, p. 6).

Sometimes, often unpredictably, the NCAA grants waivers to this so-called 4-4 transfer rule (Braziller 2013). According to Jay Bilas, former Duke basketball player and long-time ESPN analyst, “This is a money issue. These players are assets, and they don’t want their assets they’ve invested in moving around” (Braziller 2013, p. 2).

Cartel behavior remains economically attractive as long as the expected cost of violating the agreement (rules violations) remains greater than the expected benefits from remaining in the cartel (additional revenue) (DeSchriver 1996). With the establishment of the Committee on Infractions in 1951, the NCAA had a means of policing and punishing noncompliant members. Recall that this committee has no legal authority to either police or punish any university, yet the NCAA member schools voluntarily abide by NCAA rules, even when the punishment seemed excessive. In 1987, the NCAA imposed the so-called “death penalty” on Southern Methodist University because of a pay-to-play scandal involving star football players and well-heeled donors (Stahl 2012). After multiple prior offenses, the NCAA canceled SMU’s 1987 and 1988 football seasons, banned SMU from live television and bowl games through 1989, as well as a variety of other restrictions. The NCAA clearly has the necessary power to enforce its rules. Even more noteworthy, SMU made no attempt to exit the NCAA following this harsh punishment.

Attorney Ian Ayres has argued that cartels can be identified by the pattern by which they punish alleged cartel members (Ayres 1987). With that in mind, let's examine how the NCAA punishes its members. In other words, let's evaluate the rationale of the major infractions cited by the NCAA.

**NCAA Major Infraction Cases \***

**(March 5, 1990 – July 21, 2012)**

<u>Safety</u>	<u>Academic</u>	<u>Recruiting</u>	<u>Amateurism</u>
0	11	21	24

\*The following institutions were cited for one or more of the above infractions (NCAA, 2013b):

University of Central Florida, Kean University, Boise State University, University of Southern California, Southeast Missouri State University, Alabama State University, Long Beach State University, The Ohio State University, Gardner-Webb University, Humboldt State University, University of Minnesota, Twin Cities, Purdue University, University of Louisville, Texas Tech University, Michigan State University, New Mexico State University, Alabama A&M University, Alabama State University, West Virginia University, Coastal Carolina University, Clemson University, Oklahoma State University, Howard University, Marshall University, University of Maryland College Park

As the above table demonstrates, the NCAA penalizes member schools most often for violations involving amateurism. Amateurism violations included outside compensation, inappropriate employment, improper accommodations, impermissible inducements and entertainment, travel expenses, etc. Academic violations involved fraudulent grades/credits, improper academic assistance/proctoring/tutoring, inappropriate use of correspondence courses,

failures of honesty standards, plagiarism, etc. In 2009, the NCAA retroactively vacated 12 victories by the Florida State Seminoles as punishment for football players submitting ghostwritten term papers, and the NCAA stripped the University of Memphis of its entire 2007-08 basketball season, that included their appearance in the finals of March Madness, because their star player, Derrick Rose, allegedly had someone else take his entrance exam (Barrett 2014). Typical recruiting infractions included improper communications with recruits, impermissible travel, meals or accommodations, extra benefits, involvement of boosters, unauthorized tryouts, impermissible complimentary tickets, illegal off-campus recruitment, etc. Even though the NCAA owes its creation to safety concerns, it fails to police safety issues. Safety issues may include length/intensity of practice, equipment maintenance, water breaks, avoidance of hyperthermia, return-to-play guidelines after injury, etc.

It could be argued that the NCAA exclusively polices for infractions that may compromise the cartel. Any college that cheats in academic eligibility, recruiting, or amateurism gives itself a competitive advantage over other cartel members. Academic cheating allows colleges to minimize the academic rigors inherent to college life. In essence, it allows football and basketball players to be athletes, not student-athletes. Academic cheating also allows academically ineligible players to gain college entrance. Academic cheating gives the school an athletic advantage by making more athletes available for collegiate competition. Recruiting violations, as described above, can give colleges distinct competitive advantages. In a similar way, violations involving amateurism allow schools to compensate athletes and facilitate the recruiting and retention of athletes. The forms of cheating policed by the NCAA all have to do

with preventing one cartel member from gaining an athletic advantage over another. Again, there is basically only one reason why colleges will cheat the cartel: colleges want to win. Thus, there is only one reason for the NCAA to police its collusive agents: prevention of one cartel member gaining a competitive advantage over another. Consider the fate of California State University Sacramento (CSUS) head football coach Marshall Sperbeck. He recently lost his job amidst allegations of violating NCAA rules (Davidson 2014). An anonymous letter was sent to *The Sacramento Bee*, CSUS, and the NCAA alleging that Sperbeck exceeded the phone call limit to recruits and visited a recruit during a time period deemed inappropriate by the NCAA (Davidson 2014). These seem like trivial offenses unworthy of termination. Sperbeck did not damage a student-athlete or his program. His only offense was trying to gain a recruiting advantage over other cartel members. Perhaps, amateurism in college sports has less to do with lofty ancient Olympic ideals and more to do with protecting cartel integrity. Just as Stigler would have predicted, the cartel run by the NCAA must punish those who have strayed from the agreed terms. The pattern of punishment argues that the NCAA indeed acts as a cartel, as proposed by Ayres (Ayres 1987).

In its task of maintaining the cartel, the NCAA enjoys a built-in advantage: the nature of competitive sports. All of these college athletes need competitors – other athletes and other teams. Therefore, the essence of college sports requires coordination between colleges to organize competitions. This inherent requirement serves as a disincentive for colleges to break the cartel.



The NCAA rules regarding amateurism create a culture of inevitable cheating (Ohanian 2013). As of 1989, 31 percent of retired collegiate football players admitted to receiving money under the table (Johnson 2012). Seventy-eight percent of NFL players think college athletes deserve more than the NCAA allows (Sack 1991). Forty-eight percent of retired football players knew of others who had accepted illegal payments (Johnson 2012). From 1952-1985, the NCAA put 150 schools on probation for offering recruits improper benefits (Sack 1991). The media is consistently filled with reports of college athletes receiving low interest loans, travel money, profits from ticket sales, jobs for parents/relatives, use of expensive cars, access to salaried university employees, sexual favors, post-game “money handshakes” (Sack 1992; Hruby 2012). In 2010, Reggie Bush, Heisman Trophy winner of 2005 (until forfeiture) from USC, and his family were charged with receiving free airfare, limousine rides, a car, and rent-free housing in San Diego from sports agents vying for Reggie’s NFL business (Branch 2011).

Highly recruited athletes have been found most likely to receive illegal payments (Sack 1991). Even when the income of athletes’ families is held constant, black athletes were more likely than whites to have accepted illegal payments (Sack 1991). Black athletes were much less likely than whites to consider illegal payments morally wrong (Sack 1991). Half of the athletes surveyed saw nothing wrong with violating the NCAA amateur code (Sack 1991).

What explains this apparent social deviance? Some have answered by employing the person-blame vs. system-blame approach (Sack 1991). The person-blame component of this model attributes deviant behavior to personal defects, character flaws, or maladjustment. The system-blame component addresses consequences inherent to a flawed system. The person-

blame approach is often employed by those who benefit from the existing social arrangements and see deviant acts as threatening. Ramogi Huma, former UCLA football player and founder of the National College Players Association, explains that NCAA rules “demonize players that have simply broken oppressive rules that work against their best interests” (Hruby 2012, p. 2). In contrast, the NCAA explains cheating by a person-blame approach. Illegal payments are simply too pervasive to be explained by a few “rotten apples”; thus, the system-blame approach needs greater emphasis.

As would be predicted, the NCAA responds to this culture of cheating by creating a culture of inevitable punishment. The NCAA has a variety of punitive measures including loss of scholarship, athletic ineligibility, reduction in scholarships for the school, limited TV appearances, exclusion from post-season competition, forfeiture of championships and awards, etc. In the 1990’s, the NCAA penalized 58 of 114 Division I-A schools for rules violations (Parent 2004).

This culture of inevitable punishment has set the stage for a maze of picayune rules and a frantic pursuit of petty violations (Branch 2011). The NCAA Regulatory Manual has drastically increased over the years. Currently, the Division I Manual includes almost 500 pages of rules and regulations (Parent 2004). In recent years, the NCAA has penalized athletes for selling their own jerseys, trading autographs/memorabilia for tattoos, and various other seemingly minor offenses (Branch 2011).

The widespread use of under-the-table payments to athletes can be viewed as evidence that the NCAA member schools collect cartel rents from the athletes and that the under-the-table

payments simply serve to pay back some of those rents (Kahn 2006). According to economist Robert Brown, “Economic theory predicts that incentives exist to violate NCAA rules as long as there are rents to be captured by offering athletes effective wages above the NCAA limits” (Brown 1993, p. 5).

In summary, the NCAA enforces rules that benefit the cartel, not the student-athlete. These rules help assure that the universities will remain in the cartel and have some reasonable chance at success.

Earlier in this discussion, it was brought out that the NCAA has no legal authority to regulate college sports. So why do universities capitulate to NCAA regulations? As already alluded to, the colleges benefit in multiple ways by the authority vested in the NCAA. Two benefits seem obvious: 1) The NCAA organizes and maintains the cartel of college sports; 2) The NCAA obscures the school’s academic mission with its athletic enterprises.

### **NCAA Protects Cartel Rents**

Another indicator that the NCAA functions as the head of a cartel is the actions taken by the NCAA to protect cartel rents. The NCAA has swallowed up any potential rivals. In 1971, the Association of Intercollegiate Athletics for Women (AIAW) was founded (Kahn 2006). Within a decade, the NCAA began scheduling women’s championships and included the women’s basketball championship tournament in its television package (Kahn 2006). In cartel fashion, the NCAA would schedule the women’s championships at the same time as AIAW’s finals (Kahn 2006). In 1982, the NCAA came to regulate women’s college sports, eliminating AIAW. Further,

recall how the NCAA decimated the NIT in 1951. Then, in 1960, the NCAA mandated that its member schools give the NCAA tournament priority over the NIT (Kahn 2006). In response, a group of schools closely associated with the NIT (Forham, Manhattan, St. Johns, Wagner, and New York University) filed an antitrust suit, that ultimately awarded those schools \$16 million (Kahn 2006). That lawsuit also resulted in the NCAA acquiring the NIT in 2005. The NAIA may be the NCAA's next victim. Ever since the NCAA formed Division-II and Division-III levels of play in the mid-1970s, the NAIA's membership has steadily declined, with exiting members joining the NCAA (The NAIA to NCAA 2013, p. 2). According to Deputy Commissioner of the American Midwest Conference of the NAIA, Mark Womack, across the east coast, the NAIA "has died out big time" (The NAIA to NCAA 2013). Many feel that it's just a matter of time before the NCAA acquires what remains of NAIA membership, making the NCAA a complete monopsonist.

## **Marginal Revenue Product (MRP) Of College Athletes**

As previously discussed, football and men's basketball programs generate the majority of the revenue from college sports. If economic exploitation of student-athletes occurs, then it most likely occurs in these revenue generating sports. Therefore, only football and men's basketball will be put to econometric analysis. The economists who analyzed college sports assumed that the "premium players" drive the majority of the revenue (Brown 1994; Taha 2011). Premium

players have been defined as those who ultimately get drafted to the NFL and NBA (Brown 2004).

In 1993, Robert Brown estimated the marginal revenue product (MRP) of a “top college football player” or a premium player for the 1988-1989 season (Brown 1993). Brown estimated these players’ MRP by using regression analysis to estimate team revenues as a function of the number of its players drafted. As will be explained, because of endogeneity in the acquisition of recruits, Brown could not apply linear regression, because the number of draftees would likely be correlated in with the error term. Brown modeled a college football’s team’s revenue as follows (Brown 1994):

$$R_i = R_i(S_i, S_j, A_j)$$

$R_i$ : Revenue for team I.

$S_i$ : Team I’s total skill level

$S_j$ : Total team skill level of conference opponents

$A_j$ : Team I’s market characteristics

In Brown’s model, the dependent variable was the number of football players drafted.

The independent variables included:

- Market Potential: Ability to attract fans, a function of population and alternative forms of entertainment within a team’s market area.
- Opponent-Market: Average market potential of conference opponents.
- Player Pool: Percentage of college football players produced in a state relative to the number of college teams in that state.

- Opponent-Pool: Player pool averaged for all conference opponents.
- Team Rank: Average weekly Top-20 point ranking.
- Opponent Rank: Average weekly Top-20 point rankings of conference opponents

Brown approximates the MRP of a premium college football player by regressing team revenues on the number of players drafted into the NFL from that team, controlling for both opponents' skill level and market characteristics. To avoid the limitations of linear regression described above, Brown used a 2 stages least squares (2SLS) to account for the endogeneity in the acquisition of the recruits. The skill levels of the recruits is likely related to the recruiting efforts of the coaching staff, and these efforts are a function of market and recruiting characteristics, creating endogeneity. Basically, 2SLS is a regression technique that utilizes instrument variables that are uncorrelated with the error terms to compute estimates of the problematic predictor, and then uses these values to create a linear regression model of a specific dependent variable. Brown's 2SLS is as follows: 1) Draft equation estimates are calculated using the number of players drafted from each college team as the dependent variable, 2) Team revenue is then regressed as a function of the number of predicted drafted players, controlling for market characteristics and opponents skill level. The independent variable "Player Pool" is used as the instrument variable. The instrument variable has two requirements: 1) Must be correlated with the endogenous explanatory variables (i.e., players drafted in this case), 2) Cannot be correlated with the error term. Player pool is used as an effective instrument variable, because it meets these qualifications. One way to think about the role of the instrument variable in is to include it as a second variable in the final linear regression, only with a leading coefficient of

zero. Although it is tied to the error term, it has no effect on the dependent variable. Therefore, its weight, or coefficient, must be zero. The error term is basically anything that could influence the dependent variable, other than the independent variables. In summary, Brown makes a predicted number of draft picks in the first stage and then regresses revenue on this prediction in the second stage, thus finding the marginal revenue product of a premium college football player.

Brown concluded that a premium college player generates over \$500,000 in annual revenues for his team. Given the limited payments allowable to the college football players, Brown concluded that colleges capture an economic rent from premium players (Brown 1993).

In 1994, Brown performed a similar analysis for college basketball and reported an MRP for a premium basketball player during the 1988-1989 college year at between \$871,310 and \$1,283,000 (Brown 1994). Corrected to current day values, these MRP's would be approximately \$941,548 and \$1,883,096 for football and basketball respectively.

This data was collected fairly soon after the 1984 Supreme Court case (NCAA v. Board of Regents of the University of Oklahoma and University of Georgia) discussed previously. The Supreme Court ruled that the NCAA violated antitrust legislation and effectively deregulated the TV market, stimulating intense competition amongst broadcast companies and lucrative contracts for leagues and schools. This ruling probably served as a catalyst in the creation of super-conferences and the Bowl Coalition arrangement (Brown 2004). In summary, this court decision put upward pressure on athletic revenues and presumably players' MRP. Further, these initial estimates were based on less than one half of NCAA Division I-A schools and did not

include private institutions, as they are not required to release revenue information by the Freedom of Information Act (Brown 2004).

Because of these limitations, Brown and Todd Jewell updated their estimates in 2004 (Brown 2004). This updated data came from the 1995-96 school year, as reported by the *Kansas City Star*, that enjoyed a more exhaustive collection of college athletic revenue data, including almost all Division I-A programs, both public and private (Brown 2004). These investigators attempted to hold constant other factors that influence revenues. For instance, each team's final Associated Press ranking in 1994 was evaluated to assess the impact of the previous season's performance on ticket sales, especially season ticket sales.

Essentially, Brown and Jewell validated their prior estimates. Based on a greater sampling size, they found MRP for a premium football and basketball player to be approximately \$406,914 and \$1,194,469, respectively, for the 1995-96 season. This would represent MRPs of \$606,583 (football) and \$1,777,650 (basketball) in our current economy. These adjusted values only account for inflation, not any increase or decrease in popularity.

These results demonstrate that premium players' marginal revenue products exceed their effective compensation (athletic scholarship and a small amount of outside earnings), so that colleges capture economic rents from premium players (Brown 2004). These rents amount to transfers to coaches and administrators in the form of higher salaries, athletic facilities, and financial support for non-revenue sports programs (Brown 2004). According to Andrew Zimbalist, sports economist at Smith College, "The coach ends up getting paid the money that



would otherwise go to the player. And so you have these coaches all over the map who are getting \$2 million, \$3 million, \$4 million, \$5 million” (Bergman 2011, p. 9).

Brown and Jewell’s estimates for college football and men’s basketball MRPs have been extensively referenced by others who have analyzed the economics of college sports. It is important to recognize that Brown and Jewell assumed that most, if not all, of additional revenue to a college sports program comes from the contribution of premium players.

Dave Berri, a sports economist at Southern Utah University, has also estimated the Marginal Revenue Product of basketball players. Berri developed a model for estimating an individual player’s contribution to winning basketball games. Berri named this model the Wins Produced formula (Berri 2008). Basically, Berri utilized a series of linear regressions employing box score values. His dependent variable was Winning Percentage, and his independent variables were Offensive Efficiency and Defensive Efficiency.

$$\text{Offensive Efficiency} = \frac{\text{Points Scored}}{\text{Possessions Employed (PE)}}$$

$$\text{Defensive Efficiency} = \frac{\text{Points Surrendered}}{\text{Possessions Acquired (PA)}}$$

$$\text{PE} = \text{FGA} + 0.45 \text{FTA} + \text{TO} - \text{REBO}$$

$$\text{PA} = \text{DFGM} + 0.45\text{DFTM} + \text{REBD} + \text{DTO} + \text{REBTM}$$

FGA = Field Goal Attempts

FTA = Free Throw Attempts

TO = Turnovers

REBO = Offensive Rebounds

DFGM = Opponent's Field Goals Made

DFTM = Opponent's Free Throws Made

REBD = Defensive Rebounds

DTO = Opponent's Turnovers

REBTM = Team Rebounds (that change possession)

Recently, Berri applied his model to the Indiana Hoosiers and calculated the MRP for each team member (Berri 2013). For instance, Hoosier star Victor Oladipo had a Wins Produced value of 7.37, meaning Oladipo had been responsible for over seven victories (Berri 2013). Berri then assumed that each victory for a premier college basketball program had a value of around \$100,000 (Berri 2013). Thus, Berri calculated Oladipo's MRP to be \$737,129 ( $7.37 \times \$100,000$ ). According to Berri's calculations, the MRPs for the Hoosiers in the 2012-2013 season ranged from \$737,129 to -\$2,879 (Berri 2013). Because athletic scholarships at Indiana are valued around \$30,000, Berri demonstrated that nine players had MRPs in excess of their scholarship value, and seven players had MRPs below their scholarship value (Berri, 2013). Berri concluded that "at least nine of these players were exploited" (Berri 2013, p. 2).

Others have employed a different strategy to address this issue based on the minimum percentage of revenue guaranteed to NFL/NBA players (Huma 2012). These percentages were arrived at through a collective bargaining process and with the aid of the NFL's Player's Union and the NBA's Player's Union (Huma 2012). In this model, the assumption is that NCAA players should get a share of the overall college sports revenue commensurate with what

NFL/NBA players receive from their leagues. The NFL reached an agreement with their players to share at least 46.5 percent of the revenue generated by the NFL (Huma 2012). The NBA reached a similar agreement, sharing 50 percent of its revenue with their players (Huma 2012). According to this model, if NCAA football and men’s basketball players received revenue-sharing agreements similar to the NFL/NBA, the average FBS football and basketball player would receive approximately \$137,357 and \$289,031 for the 2011-12 school year, respectively (Huma 2012). These values do not include commercial endorsement opportunities. Considering just the top-10 football/basketball programs, the student-athletes would receive considerably more, as demonstrated on the following graphs (Huma 2012).

School		Fair Market Value Football Player (2011-12)
1	Texas	\$567,922
2	Michigan	\$466,145
3	Alabama	\$448,554
4	Auburn	\$422,167
5	Georgia	\$410,236
6	Florida	\$405,466
7	Notre Dame	\$377,398
8	LSU	\$376,400
9	Penn St	\$362,210
10	Arkansas	\$351,178
	Average:	\$418,768

School		Fair Market Value Basketball Player (2011-12)
1	Louisville	\$1,632,103
2	Syracuse	\$995,722
3	Duke	\$987,144
4	UNC	\$923,510
5	Kentucky	\$830,718
6	Arizona	\$782,301
7	Michigan St	\$739,543
8	Ohio State	\$725,862
9	Texas	\$710,710
10	Indiana	\$690,016
	Average:	901,763

Many would argue that these MRP values seem excessive. However, keep in mind that these values were calculated *ex post*, meaning that these MRP's came to calculation after college, when no uncertainty exists. Since uncertainty of performance or injury is not included in these MRP values, it is not surprising that they appear inflated. Nonetheless, it should be noted that some high-level programs provide signals to outside investors that any athlete that commits to those schools is elite, given their rich tradition of producing NFL and NBA players. The economic signaling provided by elite programs argues for some excessive MRP's being *ex-ante* valuations.

## **Exploitation Of College Athletes**

In 2011, Wake Forest Law Professor Ahmed Taha posed the question: Are college athletes economically exploited by amateurism? (Taha 2011). It is obvious that the term exploitation can be interpreted as inflammatory. Its use here does not have that intention. Instead, the term was used by Professor Taha, and it is repeated here simply to follow Taha's argument. Taha defined economic exploitation as when the value to a school by an athlete's participation in sports at that school significantly exceeds the value to the athlete competing for that school. Let's represent this as "value-to-school" vs. "value-to-athlete."

As described above, an important contribution to "value-to-school" comes from players' MRP. Taha used the estimates provided by Brown and Jewell. Taha also used the same assumptions of Brown and Jewell that the majority of this value comes from the so-called

premium football and men's basketball players. Taha made no effort to further analyze Brown and Jewell's MRP valuations.

Taha points out that "value-to-school" has several other components. One of the more significant components involves media publicity. In 2006, George Mason University surprisingly reached the Final Four of the NCAA Basketball Tournament. Robert Baker, Director of the Center for Sport Management at George Mason, estimated that this success garnered \$677,000,000 in free media publicity (Taha 2011). Media publicity predictably increases freshmen applications. Following the 2006 basketball success, 22 percent more applicants applied for freshmen admission to George Mason University (Taha 2011). Athletic success also fosters increased alumni support. Again, using the George Mason example, following that 2006 basketball season, the active alumni increased their financial support by 25 percent, where overall alumni fundraising increased by 52 percent (Taha 2011).

Admitting athletes to universities on athletic scholarships also poses costs to the academic institutions. If a college is at its enrollment capacity, the student-athlete displaces another student. In this case, the college suffers an opportunity cost equal to the amount that the displaced student would have paid (Taha 2011). Alternatively, if the college has excess capacity, there is little, if any, cost of admitting a student-athlete. "The cost of a scholarship to a school, to simplify it, is an extra chair in a classroom," according to attorney John King (Weiner 2011, p. 2).

Student-athletes also lead to indirect costs to colleges and universities. These indirect costs include team equipment/uniforms, facility construction and maintenance, team travel, and

game expenses. Salaries and benefits paid to coaches and administrators represent significant and recurring indirect costs. As per NCAA bylaw 11.01.2, a coach or head coach is permitted to receive a benefit that is “in excess of full grant-in-aid based on nonresident status” (NCAA 2014b, p. 6). In 2010, it was estimated that the median salaries of football and men’s basketball coaches were \$1,383,962 and \$962,000 respectively (Taha 2011). More recently, major college coaches salaries have increased 70 percent since 2006 to \$1.64 million, with March Madness tournament coaches enjoying a 20 percent increase since 2010 to \$2.25 million (Gregory 2013). According to 2009 IRS income tax reports, Mike Krzyzewski received \$2,222,543 in bonuses and incentives (Johnson 2012). In 2010, Krzyzewski made \$7.2 million (Brady 2013). Comparing public vs. private coaches’ salaries is challenging because public schools must disclose their employment contracts, where private schools do not. Federal tax returns include all forms of compensation, including endorsements. Rick Pitino’s (University of Louisville) contract guarantees him \$5 million per year, and John Calipari’s (University of Kentucky) contractually makes \$5.6 million annually (Brady 2013). In addition, Pitino makes \$602,500 from Adidas and has bonus opportunities: \$50,000 for winning the Big East tournament, \$50,000 for advancing to the NCAA Sweet 16, \$50,000 for reaching the Elite Eight, \$95,000 for a Final Four appearance, and \$150,000 if the Cardinals win the national championship (Brady 2013). This year, Calipari was by far the highest paid coach not in the NCAA tournament (Brady 2013). The average coach’s salary in the 2013 NCAA tournament field was \$1.47 million (Brady 2013). Many feel that ceilings should be put on coaches’ salaries (Zirin 2013). *USA Today* reported,

Coaches’ pay has even outpaced the pay of corporate executives, who have drawn the ire of Congress and the public because of their staggering compensation

packages. Between 2007 and 2011, CEO pay – including salary, stock, options, bonuses and other pay – rose 23% according to Equilar, an executive compensation data firm. In that same period, coaches' pay increased 44% (Brady 2012, p. 3).

Athletic directors at universities are also well compensated. In the PAC-12 Conference, athletic director salaries range from \$553,000 to \$715,211 (The salaries for Stanford's Bernard Muir and USC's Pat Haden are not available by public records request.) (Wilner 2013).

With direct compensation to student-athletes forbidden, colleges utilize indirect compensation, including famous coaches and grand stadiums, to attract top athletes. From an economic perspective, this indirect compensation could be considered inefficient, compared to direct compensation to student-athletes (Taha 2011). Are these famous and expensive coaches worth the money? Southern Utah University economist, Dave Berri studied this question as it applies to NBA coaches (Berri 2005). Berri concluded that most professional basketball coaches did not significantly impact the performance of individual players. As Adam Smith may have put it, these overpaid coaches amount to no more than "principal clerks" (Berri 2005).

Despite these costs, many top-tier football (58 percent) and men's basketball (56 percent) programs generate a net profit for their school (Taha 2011). Keep in mind that the revenue generated by football and men's basketball is used to pay for almost all of the athletic programs, stadiums, fields, pools, coaches, administrators, etc. and perhaps even non-athletic university expenses. Therefore, the concept of net profit must be carefully considered.

This "value-to-school" must be contrasted with the "value-to-student." Athletic scholarships represent direct value to the student. At public colleges, these athletic scholarships

are estimated to be worth \$17,300 on average (Taha 2011). At private institutions, their values average about \$38,200 (Taha 2011).

Students also gain indirect value from their athletic scholarships. For students who would have attended college even without an athletic scholarship, there is no added value, except if the athlete gained acceptance to a higher tiered college because of his athletic talents (Taha 2011). For students who would not have attended college without an athletic scholarship, the indirect scholarship value represents the difference between the present value of his lifetime earnings as a college graduate and the present value of his lifetime earnings if he had not graduated from college (Taha 2011). This value should be considered in the range of hundreds of thousands of dollars (Taha 2011). Unfortunately, as will be expanded, few premium players, especially in football and basketball, graduate from college. Thus, this potentially, huge, indirect “value-to-student” should not be considered in this analysis. For student-athletes who do not graduate, there is a modest, at best, increase in lifetime earnings capacity (Taha 2011). This brings up the overwhelmingly important issue of graduation rates for student-athletes. In 2003, Division I FBS football programs had a graduation rate of 69.2 percent, where Division I-A basketball programs graduated 66.4 percent of their student-athletes (Taha 2011). At the Big 12 school Oklahoma the football graduation rate is calculated at 38 percent by the federal calculation and 47 percent by the NCAA calculation [For transfer-out players and those who leave school for the pros, the federal calculation assesses them as nongraduates, where the NCAA does not] (Gregory 2013).

Athletic scholarships also produce experience value. This may include increased self-discipline, teamwork, drive, leadership, travel experience, etc. These experiences may favorably



influence future earning capacity (Taha 2011). Additionally, these student-athletes enjoy the competitive atmosphere built into the college experience with proven rivals (Johnson 2012).

The “value-to-student” must also include training value. This includes better coaching than the athlete may have otherwise had, as well as better facilities for the student-athletes. This training value has been estimated at \$70,000 per year per basketball player at top-tier programs (Taha 2011). Some would argue that the training value disproportionately benefits premium players (Taha 2011). Do coaches and training facilities represent benefits or requirements? It’s noteworthy that the costs of classroom buildings, school architecture, libraries, school landscape, professor salaries, etc. are not typically included in the value of an academic scholarship. In other words, colleges provide “organizational value” for both athletics and academics. Taha factors in this “organizational value” in his analysis on athletic scholarships, yet this “organizational value” is typically excluded from analysis of academic scholarships.

In addition to the above, the “value-to-student” must include value from media exposure, better equipment, and medical expertise. These student-athletes have media personnel, equipment managers, trainers, team doctors, and health insurance made available to them.

These athletic scholarships do not come without costs to the students. Student-athletes typically have a lower grade point average and class rank than other college students. Football and men’s basketball players have a history of academic underperformance compared with non-revenue athletes and the student body (Taha 2011). As would be expected, these revenue-sports athletes probably face greater time pressures and other distractions than the rest of the student body. These time constraints include mandatory practices, weight training, team meetings, travel,

tournaments, etc. (Murphy 1994). Although the NCAA mandates that student-athletes only spend 20 hours per week on sports, the NCAA's own survey demonstrated that student-athletes in big-time sports put in almost 45 hours per week (Palaima 2011). From personal experience, homework can be a daunting challenge after six hours or more on a basketball court simply from fatigue, if not exhaustion.

In general, participation in college sports, in many ways, diminishes the overall college experience for student-athletes. Typically, they have fewer social opportunities, meaning they have less time to make friends, develop relationships, etc. Further, student-athletes typically miss out on the wide array of other college extracurricular activities. Many coaches forbid or, at least, discourage players from joining fraternities and sororities.

Some claim that the NCAA and its member schools exploit their student-athletes in two ways: 1) failure to adequately compensate the athletes for their services, 2) failure to reasonably educate the athletes (Murphy 1994). Only 47 percent of Division I men's basketball and 57 percent of football players graduate within a six-year window of time, according to 2012 federal graduation rate data (Huma 2012). Dr. Nathan Tublitz, co-chair of the Coalition on

Intercollegiate Athletics opined

. . . schools aren't doing these kids any favors by admitting them when it's unlikely that they will succeed academically. We bring 17-year-old kids, some of them from the inner city and we wine and dine them. They have female chaperones. We put them up in fancy hotels. They come here and see an incredibly fancy locker room with individual TV screens, air conditioning and video games. They go in and see the new football stadium and the new \$200 million basketball arena. They see a medical training facility that is stunningly beautiful with waterfalls, treadmill pools, and the state-of-the-art medical and dental equipment. They come here and are treated like royalty. Until they break a leg or get put on second string and they get set aside. Many don't earn a degree.

They don't have the training or the skills to be independent after they leave the university. They're lost (Johnson 2012, p. 8).

Dexter Manley, a former NFL player, testified before a Senate Committee that he left Oklahoma State University illiterate after four years of matriculation (Johnson 2012). The NCAA's academic failures include diluted academic experiences, corruption of doctored transcripts, phantom courses, surrogate test takers, papers written by tutors, etc. (Johnson 2012). A University of Minnesota athletic department tutor wrote more than 400 papers for basketball players in a five-year period (Eitzen 2000). In 1998, 38 Division I basketball teams failed to graduate a single black player. In contrast, from 1992-1999, Stanford graduated 100 percent of its men's basketball players (Eitzen 2000). Jim Walden, former Iowa State University football coach, estimated that "not more than 20 percent of the football players go to college for an education" (Eitzen 2000, p. 7). Others seem to be just cynically pathetic, like Hele Almand, defense lawyer for the University of Georgia in 1986 said, "We may not make a university student out of him, but if we can teach him to read and write, maybe he can work at the post office rather than as a garbage man when he gets through his athletic career" (Branch 2011, p. 100).

It's not that the NCAA has failed to recognize the problem. Article 2.14 of the NCAA Manual states: "The time required of student-athletes for participation in intercollegiate athletics shall be regulated to minimize interference with their opportunities for acquiring a quality education in a manner consistent with that afforded the general student body" (NCAA 2011, p. 65). Article 2.5 mandates,

Intercollegiate athletic programs shall be maintained as a vital component of the educational program, and student-athletes shall be an integral part of the student body. The admission, academic standing and academic progress of student-athletes shall be consistent with the policies and standards adapted by the institution for the student body in general (NCAA 2011, p. 2).

In 1965, NCAA required incoming freshmen to have a 1.6 high school GPA. By 1973, NCAA retracted its 1.6 GPA rule and allowed colleges to set their own standards. Because of declining graduation rates, NCAA developed Proposition 48 in 1983, that required incoming freshmen to have a high school diploma, a 2.0 GPA in 11 core high school classes, and a 700 SAT (15 ACT) (Murphy 1994). Proposition 16 replaced Proposition 48 in 1996 and changed the high school standards: 2.0 GPA in 13 core classes, sliding scale GPA to standardized tests, and 810 SAT. Further revisions in 2003 included 14 core classes and no SAT minimum. How can these miserably low eligibility standards be consistent with Article 2.5?

In 1989, brothers John S. Knight and James L. Knight, whose family founded the Knight-Ridder Newspaper and Broadcasting chain, created the Knight Commission and spearheaded an effort to reform college sports. This influential commission, not formally associated with the NCAA, has issued a number of reports since 1991. “It is the goal of the Knight Commission on Intercollegiate Athletics to ensure that intercollegiate athletics programs operate within the educational mission of their colleges and universities” (Knight 2012, p. 3). In 2010, the Knight Commission highlighted that between 2005 and 2010, athletics spending grew much faster than academics spending in the Football Bowl Subdivision (FBS) programs, 51 percent to 23 percent respectively (Knight 2012). Back in 2001, the Knight Commission recommended that football teams must have a graduation rate of at least 50 percent to qualify for post-season bowl games

(Parent 2004). In December of 2003, Knight Commission Chairman, William C. Friday, pointedly stated, “It is unacceptable to the Knight Commission – and, we trust, to other university presidents as well – that nearly 2/3 of the teams participating in the Bowl games failed to graduate at least 50 percent of their players” (Parent 2004, p. 13). The Knight Commission has remained critical of intercollegiate athletics and the NCAA:

When the accretions of centuries of tradition and the bells and whistles of the modern universities have been stripped away, what remains is a university’s essential mission as an institution for teaching, learning, and a generation of new knowledge. This is the mission that big-time college sports often mock and, in some cases, deliberately undermine (Parent 2004, p. 14).

In the current system of amateurism in college sports, the coaches are incentivized to win, not educate (Brady 2013). Arne Duncan, former Harvard basketball player and U.S. Secretary of Education and Tom McMillen, former NBA player and former congressman, found “academic incentives averaged \$52,000 per coach, while athletic incentives averaged \$600,000 per coach – a lopsided ratio of 11 to 1” (Brady 2013, p. 3). In fact, the NCAA has no requirements for student-athletes to graduate. Under current NCAA rules, it would be acceptable for a college to win a national championship with no potential college graduates (Parent 2004). As summarized by columnist George Will, “College football and basketball are, for many players, vocations, not avocations, and academics are unsubstantiated rumors” (Eitzen 2000, p. 8).

At UC Berkeley, this academic failure of student-athletes has been brought into focus. Recently, John Cummins, former head of intercollegiate athletics at Cal, and Kirsten Hextrum, doctoral student in the Graduate School of Education, presented their research on Cal’s student-athletes and concluded that

UC Berkeley, the world's top-ranked public university, is admitting student-athletes with shockingly low grades and scores if they show promise as revenue-generating football or basketball players . . . While the highly competitive university routinely turns away applicants who earn straight A's in high school, it has also been admitting student-athletes on full scholarship even if their average high school grade was a B-minus. Its policy, in fact, permits a C average (Killion 2013, p. 1).

Cummins and Hextrum estimated that of the 300 slots reserved for athletes, 100 of these go to under-qualified applicants (Killion 2013). In other words, one out of three student-athletes does not belong at Cal from an academic perspective. This failure at admission predictably leads to failure at graduation. According to the NCAA, Cal's football and men's basketball teams rank dead last in graduation rates (Killion 2013). From 2003 to 2006, Cal graduated 38 percent of its basketball players and 44 percent of its football players (Killion 2013). Cummins and Hextrum warned that if their research is ignored, then UC Berkeley essentially admits that "the reality of big-time sports of football and men's basketball [is] primarily a business enterprise" (Killion 2013, p. A11).

UC Berkeley is by no means alone when it comes to academic failures in college athletes. Recently, at the University of North Carolina (UNC), a massive academic fraud was exposed. From the 1990's through 2011, UNC's Department of African Studies, African-American Studies, and Diaspora Studies offered more than 200 lecture courses that never met along with hundreds of independent study classes of dubious value (Barrett 2014). The investigation at UNC also identified over 500 grades changed without authorization (Barrett 2014). Just like at Cal, the involved students were disproportionately football and basketball players (Barrett 2014). Mary Willingham, the former assistant director of UNC's Center for Student Success and Academic

Counseling, claims that approximately 150 to 200 UNC varsity athletes underperform academically, most of these being football and basketball players (Barrett, 2014). UNC officials acknowledge that historically, the university enrolls 160 athletes per year based on their “special talents,” typically football and basketball talents (Barrett 2014, p. 52).

Undoubtedly, these special admissions concessions for promising athletes contribute to their ultimate academic failure. A CNN investigation of 21 public universities revealed that “most schools have between 7% and 18% of revenue sport athletes who are reading at an elementary level” (Ganim 2014a, p. 3). University of Oklahoma professor Gerald Guiney, one of the few others who has collected data on this topic, found that approximately 10 percent of revenue-sport-athletes read below a fourth-grade level (Ganim 2014a). Gurney further explains,

College presidents have put in jeopardy the academic credibility of their universities just so we can have this entertainment industry . . . The NCAA continually wants to ignore this fact, but they are admitting students who cannot read. College textbooks are written at the ninth-grade level, so we are putting these elite athletes into classes where they can’t understand the textbooks. Imagine yourself sitting in a class where nothing makes sense (Ganim 2014a, p. 5).

According to Richard M. Southall, director of the College Sports Research Institute and a professor at the University of South Carolina, “It is in many ways immoral for the university to even admit [these ill-prepared] students” (Ganim 2014a, p. 4). Tony Hill, senior vice president for student affairs at Iowa State claims that the school administrators who admit these functionally illiterate students “should be arrested” (Ganim 2014a, p. 5). Big Ten Conference Commissioner, Jim Delany declared that the NCAA sets these athletes up for failure or success “only by sleight of hand and/or perversion of the whole notion of true education” (Palaima 2011,

p. 3). Stanford University has not been immune to allegations of academic favoritism for athletes. In 2011, the Stanford Daily reported that Stanford athletes had access to a list of “easy” courses (Harris 2011).

With widespread academic failure and fraud involving college athletes, for those who actually graduate, what does that diploma represent? If that parchment represents little or no real education, what happens to the NCAA position that an athletic scholarship is sufficient compensation? As Billy Hawkins, an associate professor and athlete mentor at the University of Georgia, puts it, “To get a degree is one thing, to be functional with that degree is totally different” (Ganim 2014a, p. 5). The study that needs to happen is a comparison of overall professional success between college graduates with football/basketball scholarships and all others.

An economic analysis of this topic must consider a variety of implicit costs. Typically, these are opportunity costs that are intangible and not easily accounted. Nevertheless, these implicit costs can be career, if not life, changing. For example, college sports can compromise these students’ health.

Many student-athletes suffer injuries from college sports, and many of these injuries linger on after their college career ends. The NCAA requires universities to provide healthcare insurance during college participation but did not make clear standards for that coverage (O’Bannon 2009). Each university can choose its own level of health insurance. Once the athlete leaves the college, the college has no responsibilities towards the athlete’s ongoing healthcare.



The NCAA carries a catastrophic insurance policy, but that policy requires a \$90,000 deductible (O'Bannon 2009).

To appreciate the potential medical consequences of participating in contact sports, it's important to keep in mind the concussion crisis unfolding in the NFL. In 1994, NFL Commissioner Paul Tagliabue dismissed the issue as a "pack journalism issue," claiming the NFL only experienced "one concussion every three or four games" (Fainaru-Wada 2013, p. 64). This type of statement would later be cited as evidence that the "NFL waged a war against the science of brain injury" (Fainaru-Wada 2013, p. 63). Neuropathologist, Dr. Ann McKee, and her team at the Sports Legacy Institute, an affiliate of the Boston University School of Medicine, have uncovered a disease unique to boxers and football players. McKee described, "I have never seen this disease in the general population, only in these athletes. It's a crisis, and anyone who doesn't recognize the severity of the problem is in tremendous denial" (Fainaru-Wada 2013, p. 68). McKee has now studied the brains from 34 former NFL players: "Almost all the NFL brains had looked normal from the outside. This wasn't a disease caused by a single blow or even a few. The brain was deteriorating from the inside . . . as a result of repetitive pounding" (Fainaru-Wada 2013, p. 69). This unique brain pathology involves "neurofibrillary tangles of tau protein" with an absence of beta-amyloid, meaning the dementia in these former athletes was distinct from Alzheimer's disease and other forms of dementia (Fainaru-Wada 2013, p. 69). It has been termed chronic traumatic encephalopathy (CTE) and according to McKee, "I don't think everybody has it, but I think it's going to be a shockingly high percentage" (Fainaru-Wada 2013, p. 69). Don't think for a moment that college sports do not also have a concussion crisis. In fact,

here at Stanford University, two female athletes had to retire this year because of complications from multiple concussions. Are these unpaid athletes risking chronic brain damage for their schools?

On the heels of the NFL settlement that paid more than \$75,000,000 to settle lawsuits involving thousands of former professional players who claimed that their football exposure led to dementia and other concussion-related health problems, a similar lawsuit, involving three college players, has just been filed in federal court in Chattanooga, Tennessee (AP 2013a). Chris Walker and Ben Martin, both former defensive ends for the Volunteers, and Dan Ahern, an offensive lineman for North Carolina State, filed a class-action lawsuit, claiming that the NCAA “failed to educate them about the risks of concussions and did not do enough to prevent, diagnose and treat brain injuries” (AP 2013a, p. C6). The lawsuit, filed by Michael Hausfeld, lead attorney in the Ed O’Bannon case, seeks an NCAA-funded medical-monitoring program for former football players (AP 2013a, p. C6). Hausfeld claims “The NCAA has not taken the necessary steps to protect these former players even though medical tools to assist them have been available for some time. It’s not too late now for the NCAA to offer important education and needed medical testing to these former players” (AP 2013a, p. C6). Walker and Martin claim to have suffered repetitive traumatic brain injuries in scrimmages, practices, and games during their years at Tennessee (2007-2011) and now have severe headaches (AP 2013). Ahern claims an inability to concentrate, poor memory, tinnitus, and sleep disturbance related to Wolfpack football (1972-1976) (AP 2013a). Another case against the NCAA, filed in 2011, by Adrian Arrington, a former Eastern Illinois football player, makes similar claims (Axon 2013). The

Arrington case also includes plaintiffs Derek Owens, a former Central Arkansas football player, Angel Palacios, a former Ouachita Baptist University soccer player, and Kyle Solomon, a former Maine hockey player (Axon 2013).

The fall out regarding cerebral concussion injury resultant from football seems far from over. Just recently, Chicago Bears legend and NFL Hall of Famer, Gale Sayers, filed a lawsuit, claiming the league “negligently handled his multiple traumatic brain injuries with consequent chronic headaches and short-term memory dysfunction after his retirement (AP 2013a, p. C1). In fact, since September, 2013, nine more suits have been filed by college players who suffered concussion injuries against the NCAA (AP 2014b; Axon 2013). Marc Edelman, associate professor of law at the Zicklin School of Business at City University of New York explained, “It’s shockingly similar to what we saw in the NFL class-action litigation” (Axon 2013, p. 2c). Almost every complaint filed after Chris Walker’s include passages copied verbatim regarding the NCAA’s culpability (Axon 2013). At Stanford, 17 percent of my basketball teammates have suffered at least one cerebral concussion.

Additionally, NCAA (2014c) Bylaw 14.2.1, sometimes referred to as the “five-year clock,” may also compromise the health of student-athletes. This rule, that forces student-athletes to complete their four years of college eligibility within five years, causes unnecessary time pressure for these students to heal their injuries. This time pressure often precludes the “tincture of time” in the management of sports-related injuries. Athletes seek the most expedient cures of their injuries, often consenting to surgical procedures to facilitate the process. In my experience with Stanford basketball (2010 – present), I’ve had 23 teammates who underwent a

total of 10 surgical procedures. This represents a 43 percent operative rate for Stanford basketball players. When considering those teammates who played the most (the typical starters), 73 percent required surgery. Perhaps if these students had more time for eligibility and more time to heal, then fewer would undertake the risks inherent with surgical procedures. In shocking contrast to these surgical rates for the Stanford men's basketball program, the NCAA reported only 0.9 surgeries per 1,000 men's basketball players from 2004 – 2007 (NCAA Appendix B 2013). Obviously, this overwhelming discrepancy between surgical rates for Stanford men's basketball and the other NCAA men's basketball teams mandates further exploration.

Again, consider why colleges submit to NCAA regulations. Four responses now seem reasonable: 1) The NCAA organizes the cartel of college sports; 2) The NCAA obscures the school's academic mission with its athletic enterprises; 3) The NCAA employs a sophisticated and manipulative strategy that results in naïve, young athletes surrendering their financial rights in perpetuity for the benefits of universities; 4) The NCAA protects its member colleges from the medical consequences inherent to sports competition. Recall how the NCAA was birthed from medical tragedies related to college football. Recall how Fort Lewis A&M College paid nothing when Ray Dennison died from a traumatic brain injury suffered in a football game. Recall how the NCAA rarely, if ever, punishes a school for a safety violation. For its members, the NCAA serves as an excellent co-conspirator in many ways.

As another cost to be considered, some student-athletes have been subjected to mental cruelty (Johnson 2012). Recently, Rutgers head basketball coach, Mike Rice, was caught on video kicking his players, hurling basketballs at them, and taunting them with homophobic slurs

(Eder 2013). According to a former Notre Dame University football player, Chet Lacheta, Coach Lou Holtz grabbed his face mask, shook it, and then spit on Lacheta (Eitzen 2000). Notorious basketball coach Bob Knight was caught on videotape choking a player (Eitzen 2000). It is certainly notable that most college players will not speak about mental cruelty or even about NCAA business out of fear of reprisal (Bergman 2011). Student-athletes would not endure psychological or other abuses from their coaches if it were not for NCAA Bylaw 14.5.5.1 and other restrictions involving transferring away from an abusive program. If transferring was not so cumbersome, victimized student-athletes could simply leave.

Unfortunately, much of this analysis, especially indirect “value-to-student” and student costs, cannot be adequately quantified. A *USA Today* analysis concluded that when elite coaching, academic counseling, strength and conditioning consulting, media relations assistance, medical insurance and treatment, free game tickets, and future earnings power are all considered, a men’s basketball scholarship is valued at \$120,000 (Weiner 2011).

Believe it or not, some college athletes receive no direct value (i.e., athletic scholarships), yet suffer the costs associated with being a student-athlete. These players are known as “walk-ons.” (Karp 2010). Sometimes, these walk-ons demonstrate the limitations of the recruiting process and out-perform their scholarship teammates. In the 2010-11 basketball season, the top 25 college teams had a total of 72 walk-ons who played 2,415 minutes of game action (Karp 2010). In many cases, these walk-ons make significant contributions to their team, like when Louisville walk-on Tim Henderson hit back-to-back three-point shots, helping his team beat Wichita State in this year’s Final Four stage. Thus, many of these players contribute without

direct compensation. Some of these walk-ons prove to be premium players, like Jeff Hornacek (walk-on at Iowa State) who played for the Phoenix Suns, Philadelphia 76ers, and Utah Jazz, or even a member of the Olympic Dream Team and Hall of Fame inductee, like Scottie Pippin (walk-on at Central Arkansas).

In addition to the above costs incurred by student-athletes, these amateurs also transfer their promotional rights in perpetuity, as exposed in the O'Bannon case.

With this semi-quantitative analysis, Taha concluded that the "value-to-school" exceeds the "value-to-student" for premium players in football and basketball. Therefore, these players can be considered economically exploited by their universities (Taha 2011). Consider the example of Patrick Ewing, who starred in basketball at Georgetown University for four years in the early 1980's. Thanks to Ewing, Georgetown University enjoyed \$112,000,000 in additional revenue. Effectively, Ewing tripled attendance numbers, increased television revenues, and brought Georgetown success in the NCAA basketball tournament. In exchange, Georgetown University compensated Ewing approximately \$48,000 (Eitzen 2000). To put this subject in perspective, according to Taha, the majority of football and men's basketball players are not economically exploited (Taha 2011). According to a 2011 report, approximately 1 percent of NCAA men's basketball players and approximately 2 percent of football players become drafted by the NBA or NFL (Branch 2011), suggesting that 98 percent of football players and 99 percent of basketball players do not suffer economic exploitation. It is important to note that Taha did not consider the health risks inherent to college sports in his analysis, nor did he consider the transfer of promotional rights in perpetuity.

In summary, Taha concluded, “most student-athletes very likely generate less revenue than costs for their colleges” (Taha 2011, p. 93). Thus, most student-athletes are not exploited by their colleges. Although some college football and basketball players probably suffer exploitation, the number of potentially exploited athletes remains quite small. Using Taha’s conclusions, it could be estimated that colleges exploit approximately 42 male college basketball players annually. [351 Division I Basketball Programs x 12 Scholarships/Program x 1% = 42 players]

### **Flawed Analysis**

Taha’s analysis and conclusions, although intriguing, require further consideration. When Taha explored “How much revenue do athletes generate for their colleges?” he cites the George Mason University basketball glory of 2006. It is somewhat interesting that Taha did not mention Jai Lewis, Tony Skinn, Lamar Butler, Will Thomas, Folarin Campbell, Gabe Norwood, Sammy Hernandez, Tim Burns, Jordan Carter, Chris Fleming, Malkan Konate, or Charles Makings. These were the players for George Mason University who brought the glory and the financial windfall to the university. Perhaps, Taha failed to bring up these players’ names because they lack name recognition to all but the most avid college basketball fans.

In that tournament, George Mason’s five starting players all averaged double figures in points scored. This led to tremendous tournament success but no NBA contracts. Probably their most celebrated player, Jai Lewis, decided to try out for the NFL following his graduation in

2006. Lewis did not make it to the NFL but did manage to play basketball throughout the world including Japan, South Korea, Israel, and the Philippines. Most recently, Jai Lewis played for the Manizales in Columbia. It appears that he only played in two games last season (Latin Basket 2013). Tony Skinn will play for Nigeria in the upcoming Olympics. Nigeria qualified for Olympic competition as the second lowest ranked team, ahead of only Tunisia (Breen 2012). Lamar Butler apparently ended his basketball career in Turkey in the 2009-2010 season (Euro Basket 2013). Will Thomas continues to play in Italy and has previously played in Turkey, Georgia, and Belgium (Euro Basket 2013). Folarin Campbell still plays in Italy and previously played in Latvia and Germany (Euro Basket 2013). It would be fair to say that these players would not be considered premium players as defined by Brown and Jewell and adopted by Taha. Therefore, Taha would have to conclude that these players suffered no economic exploitation, while it rained revenue at George Mason University.

Taha's analysis and conclusions might hold up better if the "Cinderella" run of George Mason University in 2006 was an isolated exception. Although few lower seeded teams have enjoyed the success of George Mason, the NCAA tournament typically has a number of huge upsets. In fact, all four number-one seeded teams have only made the Final Four one time in the history of the NCAA (Taylor 2013). Since 1985, a number one seed has only won the tournament about half the time (Taylor 2013). It can certainly be argued that upsets make for great television and fuel the enthusiasm for March Madness. Many will recall the thrill of the Lehigh Mountain Hawks (No. 15 seed) knocking off the No. 2 seed Duke Blue Devils in 2012. Considering just the past year's tournament, schools such as Florida Gulf Coast University and



Virginia Commonwealth University enjoyed fantastic Cinderella runs. Again, few, if any, players from either of these schools fit Brown and Jewell's description of a premium player. Similar to George Mason, the Florida Gulf Coast University and Virginia Commonwealth University generated huge media publicity for their respective schools and millions of dollars of revenue for the NCAA and television networks. In fact, Florida Gulf Coast, the first No. 15 seed to make the second week of the tournament by defeating much higher regarded Georgetown and San Diego State, effectively changed the name of its campus and its city, Fort Myers, to "Dunk City." Contrary to Taha's conclusions, it seems that these non-premium players found themselves on the wrong side of economic exploitation. Almost every year, at least one team in the tournament shocks the nation: Butler (2010/2011), Cornell (2010), Northern Iowa (2010), Bucknell (2012), Princeton (1996), etc. In fact, following Butler University's NCAA tournament success, undergraduate applications rose 43 percent (Gregory 2013). None of the players on these Cinderella teams fit Taha's analysis, and all have been, arguably, exploited.

The economic analysis of this subject needs a broader perspective than presented by Taha, Brown, and Jewell. This nation is not only fascinated with premium players; success also fascinates us, especially unexpected success. Ultimately, the drama of college sports cannot unfold without significant contributions from every single teammate. If any are exploited, then they all are to some degree. By Brown's definition, premium players receive lucrative compensation when they ultimately turn professional. Their payment is only delayed by amateurism. What about their teammates, the role players, the hustle players, the defenders, the

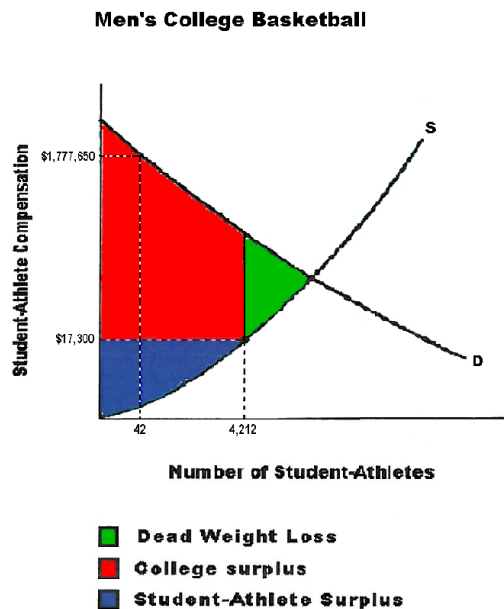
ones who facilitate success for the premium players? Where is their compensation? It's not delayed, it's absent. Who is more exploited, premium players or their teammates?

This concept, that success requires more than just premium players, has support from coaches and economists. Red Auerbach, the legendary coach of the Boston Celtics in their heyday popularized the concept of the role player. "That's a player who willingly undertakes the thankless job that has to be done in order to make the whole package fly" (Berri 2007, p. 207). Coach Auerbach understood the value of the nonpremium players. Duke Professor of Economics, Peter Arcidiacono, would seemingly concur with the Celtics coach. Arcidiacono studied productivity spillovers in NBA team production (Arcidiacono 2013). Players contribute to team production through their own productivity and through their effect on the productivity of other team members; therefore, Arcidiacono and his colleagues developed a model where players are heterogeneous both in their own productivity and in their ability to facilitate the productivity of their teammates (Arcidiacono 2013). They studied NBA play-by-play data covering all games of the 2006-2009 regular seasons, that yielded 905,378 possessions (offensive and defensive) and 656 unique players. Their model demonstrated that productivity spillover plays an important role in team success. In other words, nonpremium players probably contribute to premium players through productivity spillover.

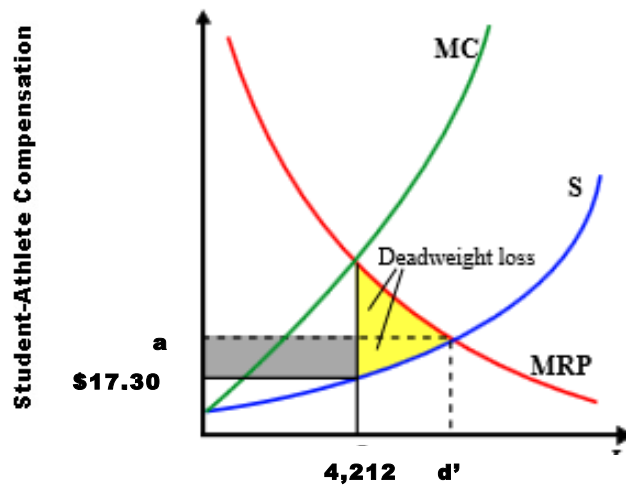
## Empirical Analysis

For illustrative purposes, let's add some empirical data to the supply and demand curve for men's college basketball. Unfortunately, there is insufficient data to calculate dead weight loss, consumer/college surplus, and producer/student-athlete surplus. Let's use Brown and Jewell's estimate of a premium basketball player's MRP and Taha's estimate for the value of an athletic scholarship at a public university. Further, let's assume, as Taha did, that only 1 percent of college basketball players reach the NBA; thus, of the 4,212 college players, only 42 will sign an NBA contract.

### Men's College Basketball



Let's now combine the effects of a price ceiling with a monopsony model. In the graph below, S represents the supply of student-athletes, MC is marginal cost of student-athletes, and MRP is the marginal revenue product curve. Again, notice the dead weight loss, as well as the economic welfare transferred from student-athletes to their colleges.



**Number of Student-**

**a' = Market Equilibrium Compensation**

**Athletic Scholarship Value = \$17,300**

**Number of Student-Athletes Currently Supplied = 4,212**

**d' = Number of Student-Athletes Potentially Supplied**

 **= Economic Welfare Transferred From Student-Athletes to their School**

These models argue strongly that amateurism in college sports produces gross economic inefficiency, that harms student-athletes.

Judge Richard A. Posner, United States Court of Appeals for the Seventh Circuit in Chicago and a leading antitrust scholar, agrees that the NCAA behaves monopsonistically. Posner describes, “Although cartels, including monopsonistic ones, are generally deemed to be illegal per se under American antitrust law, the NCAA’s monopsonistic behavior has thus far not been successfully challenged” (Posner 2011, p. 1). Posner posits that colleges and the NCAA have avoided legal sanctions for their monopsonistic behavior for two reasons: 1) Collegiate athletes are students and their educational mission would be corrupted by compensation; 2) Colleges and the NCAA are nonprofit institutions. Ironically, if colleges paid athletes, the schools would be engaged in a business unrelated to their academic mission and no longer immune from taxation. Posner predicts that if this monopsonistic practice ended, then college teams would be larger (consistent with the above models) and of higher athletic quality.

## **Economic Summary**

The economics of amateurism have been analyzed in a variety of ways and with a consistent conclusion: The NCAA’s amateurism rules allow colleges to extract economic rents from student-athletes, especially Division I football and men’s basketball players.

Aside from formal economic concepts, given the massive revenues of college sports and the undercompensated athletes, many have reached similar conclusions. Sports columnist Tony Kornheiser summarizes,

College basketball players watch the coach roaming the sidelines in his \$1,500 custom-made suit. They read about his \$500,000 salary and \$250,000 per [year] from some sneaker deal. They watch the schools sell jerseys with the players' numbers on them . . . They see the athletic director getting rich and the college president getting rich and NCAA officials getting rich and the coach's dog getting rich. And you wonder why they might ask, Hey, where's my share? What am I, a pack mule? (Parent 2004, p. 8).

Former Stanford football player and current ESPN football analyst, Rodney Gilmore, agrees that the financial disparity between the labor (players) and the administrators (athletic departments, coaches, NCAA, etc.) is so great that the current system "just doesn't make sense anymore" (Gilmore 2013). Stanford economist, Roger Null bluntly claims, "The rising dollar value of the exploitation of athletes is obscene, is out of control" (Gregory 2013, p. 38). *Times* columnist Sean Gregory (2013, p. 41) described the need for change as "an ethical imperative." Thomas Palaima, University of Texas at Austin's representative to the Coalition on Intercollegiate Athletics, summarized, "The greed at student athletes' expense that we are witnessing now has been with us for at least 80 years" (Palaima 2011, p. 3).

## Plantation Metaphor

Others have seen through the façade of amateurism. Taylor Branch bluntly senses the malodorous nature of amateurism as an “unmistakable whiff of the plantation” (Branch 2011, p. 83). Stanley Eitzen developed the plantation metaphor with the plantations being football and men’s basketball factories, the coaches as overseers, and the players as workers who produce riches for their masters while receiving a meager return on the plantation’s profits (Eitzen, 2000). *New York Times* sportswriter, William Rhoden also referred to the metaphor,

Major intercollegiate sports function like a plantation. The athletes perform in an economic atmosphere where everyone except them makes money off their labor . . . In the revenue-producing sports of football and basketball, athletes are the gold, the oil, the natural resource that makes the NCAA engine run and its cash register ring (Rhoden 2006, pp. 1-2).

Even Walter Byers, NCAA Executive Director from 1951 to 1987, the man most responsible for the modern NCAA declared, “The coaches own the athletes’ feet, the colleges own the athletes’ bodies, and the supervisors retain the largest rewards. That reflects a neo-plantation mentality on the campuses” (Zirin 2013, p. 4).

Extensive indoctrination perpetuates this institutional hypocrisy that allows the NCAA and its members to use amateurism to protect their profits rather than protect their athletes (Flowers 2009; Murphy 1994). Ernest Boyer, former president of the Carnegie Foundation for the Advancement of Teaching challenges the hypocrisy. “I believe that the college sports system is one of the most corrupting and destructive influences on higher education. It is obscene, and there is no way to put an educational gloss on this enterprise” (Eitzen 2000, p. 9). Michael Lewis, author of *The Blind Side*, stated that. “college sports are professional in every aspect but

one. They don't pay the labor" (Bergman 2011, p. 6). Drexel University professor, Ellen Staurowski added, "The mythology of the 'student-athlete' as promoted by the NCAA is revealed to cover up a system of inequities in compensation and treatment for the athletes who make the most sacrifices and contribute the most to the enterprise" (Nance 2011, p. 2).

Many would argue that the NCAA acts as a shield protecting the universities from having to answer to the absurdity of amateurism. With the plantation metaphor, the NCAA acts as the master. Yet, the NCAA simply serves as a proxy for the real masters – the universities. If the NCAA continues to face lawsuits over amateurism, it will come to light that no legal definition of amateur exists (Branch 2011). Any attempt to create or enforce a law on amateurism would expose its repulsive and unconstitutional nature (Branch 2011).

However, the U.S. Supreme Court has hinted that it may side with the NCAA's amateurism regulations, citing the Supreme Court's opinion in *Broadcast Music v. Columbia Broadcasting Sys* (Parent 2004): The product itself, college sports, requires NCAA guidance and regulation. In the case, *NCAA v. Regents*, the Supreme Court stated:

The NCAA seeks to market a particular brand of football – college football. The identification of this 'product' with an academic tradition differentiates college football from and makes it more popular than professional sports to which it might otherwise be comparable, such as, for example, minor league baseball. In order to preserve the character and quality of the 'product,' athletes must not be paid, must be required to attend class, and the like. And the integrity of the 'product' cannot be preserved except by mutual agreement; if an institution adopted such restrictions unilaterally, its effectiveness as a competitor on the playing field might soon be destroyed. Thus, the NCAA plays a vital role in enabling college football to preserve its character, and as a result enables a product to be marketed which might otherwise be unavailable. In performing this role, its actions widen consumer choices – not only the choices available to sports fans but also those available to athletes – and hence can be viewed as precompetitive (Parent 2004, p. 11).



To be clear, this disturbing metaphor was applicable long before black athletes dominated the college revenue sports. It transcends racism. Keep in mind that prior to 1966, college basketball was dominated by white athletes. However, the NCAA tournament finals of 1966 pitted the basketball powerhouse Kentucky Wildcats (all white players) against Texas Western (now known as University of Texas at El Paso) with five black starters. Texas Western won (72-65) and forever changed college basketball. Nevertheless, prior to 1966, college athletes suffered the same challenges as modern day student-athletes, but the money involved in college sports has dramatically escalated since 1966.

Returning to the question of why universities voluntarily obey NCAA dictums. It now appears that there are five reasonable answers: 1) The NCAA organizes the cartel of college sports; 2) The NCAA obscures the school's academic mission with its athletic enterprises; 3) The NCAA employs a sophisticated and manipulative strategy that results in naïve, young athletes surrendering their financial rights in perpetuity for the benefits of universities; 4) The NCAA protects its member colleges from the medical consequences inherent to sports competition; 5) The NCAA shields the universities from the absurdity of amateurism as dramatized by the plantation metaphor.

## **Conclusions about the status quo**

- 1) College sports, now and since their inception, conflict with the mission of higher education.
- 2) Nevertheless, college sports will remain part of the educational system because of their overwhelming popularity.
- 3) The NCAA member colleges represent a monopsonistic cartel with impressive market power. NCAA rules, including amateurism rules, serve to protect the integrity of the cartel, not the student-athlete.
- 4) The NCAA's amateurism rules allow colleges to extract economic rents from student-athletes, especially Division I football and men's basketball players. Instead of being distributed to student-athletes, these rents are redirected to coaches, administrators, conference commissioners, bowl executives, nonrevenue college teams, and other university projects.
- 5) For team sports, the colleges extract economic rents from every team member.
- 6) With massive revenues and undercompensated athletes, there is a perception that the NCAA and its member universities exploit student-athletes.
- 7) Too often, an athletic scholarship fails to translate into a college education. Too often, the term "student-athlete" represents a hypocrisy, not a reality.
- 8) The injury risks inherent to college sports seem under-managed and under-compensated.
- 9) The notion of amateurism has no legal basis.
- 10) The NCAA's concept of amateurism faces formidable legal challenges.

## **Exploring the concept of paying college athletes**

This century-old, hugely-profitable, monopsonistic cartel will not change without a fight. It is unlikely that college coaches and athletic administrators will accept a salary cut to further compensate student-athletes. Beyond the usual arguments that students shouldn't be paid and student-athletes already receive compensation with athletic scholarships, the NCAA and its members will mount multiple counter arguments. Many colleges have already claimed that there is insufficient revenue to pay athletes. Big Ten Conference Commissioner, Jim Delany, declared that changes to the current system might force his league to "downsize the scope, breath, and activity of their athletic programs" (Wharton 2013, p. 1). Regarding the argument that football and men's basketball revenues are absolutely essential to fund nonrevenue college sports, NCAA Division II is proof to the contrary. Their smaller scale notwithstanding, Division II athletic programs, across all sports, thrive despite little revenue from Division II football and basketball (Huma 2012). Others will claim that title IX implications will prohibit payments to just male athletes in revenue-generating sports and will make the concept untenable. Of course, hiding behind those arguments, the NCAA schools could lose their current nonprofit status if athletes were paid (Schneider 2001).

According to Gabe Feldman, director of Tulane University Sports Law Program, "There's an incentive for schools to redesign themselves rather than have the Congress or the courts do it for them" (Gregory 2013, p. 41). Let's return for a moment to the O'Bannon case. That case will either be thrown out or come to a conclusion. There's no sign, thus far, that it will be thrown out. Therefore, let's consider its possible conclusions. Would the court side with the

NCAA and allow it to continue to take the entire \$16 billion industry for itself, giving nothing more to the athletes? That's hard to imagine. It seems that the athletes will be awarded something, and that should make the NCAA very nervous.

A little over half of college students (54 percent) support paying student-athletes (Schneider 2001). Most student proponents believe that payments would decrease cheating (76 percent) and that the payments should come from athletic departments (56 percent) (Schneider 2001). Of the proponents, 64 percent cited the large amounts of revenue generated by college sports as the rationale for their support (Schneider 2001). At the 2011 Heisman Trophy media session, former Stanford quarterback and No. 1 NFL draft pick, Andrew Luck voiced his support. "Obviously, it would be nice as an athlete . . . You're not going to turn down money if it's legally given to you. I'm sure that would be nice" (Mancari 2013, p. 2).

Other former student-athletes have a more nuanced view. At the same 2011 Heisman Trophy media session, Robert Griffin III, a former Baylor quarterback and number two NFL draft pick behind Luck described,

It would just be tough . . . Football generates a ton of money for most schools but also helps cover the bases for the rest of the sports. So it's tough to pay everybody the same amount of money. A football player might get three or four times more than a tennis player. So that's the only difficult part about it (Mancari 2013, p. 2).

College sports fans do not share the students' perception. In a March 2012 Marist College Poll, 68 percent of fans thought that student-athletes should only receive athletic scholarships (Mancari 2013).

Opponents of the status quo have an unlikely ally, Sonny Vaccaro, who sponsored the youth summer basketball camp, Roundball Classic, in Chicago for 43 years featuring the

country's best teenage players. This highly controversial figure has been blamed for exploiting youth, ruining basketball fundamentals, etc. (Pessah 2011). Known as the Godfather of Grassroots Basketball, Vaccaro, the first to pay AAU coaches for the summer tournament circuit, signed Michael Jordan to Nike and invented payments to college coaches from Nike, Reebok, and Adidas (Pessah 2011). Ironically, this basketball insider has become a powerful advocate for ending amateurism rules. "Those kids gave me a wonderful life, so I'm going to . . . speak out for them" (Pessah 2011, p. 4).

## **Alternatives to the status quo**

### **Free Market**

Imagine that after high school, all athletes could receive remuneration from any source. For instance, they could seek payments from colleges, boosters, sponsors, etc. and be eligible to receive prize money and endorsements. Imagine how this could empower alumni donors, shoe companies, and other corporate advertisers, and especially the student-athletes. Sports economist Dave Berri supports this free market approach:

Simply allow each team to compensate its players in whatever fashion necessary to get the athlete to come to campus . . . for the players who bring in most of the fans and produce much of the revenue, colleges should be allowed to compensate these student-workers with higher wages (Berri 2013, pp. 3-4).

In addition to the numerous expected revenue sources, including alumni, shoe companies, corporations, etc., new potential benefactors could be anticipated. For example, consider the NFL and NBA (Zirin 2013). These professional leagues have the most to gain from student-

athletes and should have some responsibility toward these college students. These leagues could also help in other ways. For instance, the NFL and NBA could impose a salary cap on rookies which could incentivize college athletes to stay in school (Murphy 1994). The cap could adjust upward as college athletes complete further college work; a junior entering the professional leagues would have a higher salary cap than a freshman. The recent revelation about University of Connecticut senior guard Shabazz Napier going hungry as a student-athlete got the attention of NBA Commissioner Adam Silver, who proposed that the NBA could potentially consider subsidizing NCAA players (Auer 2014).

As an externality to consider, a major change in the business model of college sports could have a significant effect on the business model of professional sports, especially the NBA and NFL. If the professional leagues could subsidize college players, wouldn't that lead to *de-facto* drafting athletes right out of high school? These pro leagues could recruit high school stars, then subsidize their *de-facto* try-outs in college sports. In effect, the NBA/NFL could draft the rights to high school stars and eliminate the opportunity costs of losing out on an elite player in a later draft.

It would be reasonable to expect that the overall market would grow in a free-market system. With more possibilities for involvement in this market, more individuals and companies probably would get involved. For instance, college town communities may step forward and contribute. According to Oxford Economics, Texas A&M home football games generate \$86 million in business for the surrounding community – Brazos County (Gregory 2013). This could lead to some interesting consequences. If geographic regions become significant contributors to

the college sports industry, then it stands to reason that the wealthiest communities may have a competitive advantage over the other college towns. In economic terms, this creates a type of specialization issue with big city markets outcompeting smaller city markets. Considering the Pac-12 as an example, would the free-market model lead to an advantage for UCLA and USC and a disadvantage for Oregon State and Washington State?

A free market in the college sports industry would lead to a number of other economic consequences. As previously discussed, the NCAA acts as a cartel with both monopoly and monopsony powers. When it sells college sports, it acts as a monopoly; when it acquires student-athletes, it acts as a monopsony. A free-market would result in the NCAA losing monopsony power, because other entities would now influence the acquisition of student-athletes. The free-market would not compromise the NCAA's monopoly power.

The transition from amateurism to free market would affect most of the stakeholders. While the student-athletes, boosters, shoe companies, and other corporations with advertising interests would benefit from this transition, coaches, athletic directors, college administrators, conference commissioners, bowl executives, NCAA executives, nonrevenue college teams, and universities would not. These latter stakeholders have enjoyed inflated compensation because student-athletes could not be directly compensated. As discussed earlier, amateurism rules force student-athletes to be compensated indirectly, like through famous coaches and elaborate athletic facilities. The free market would allow student-athletes direct compensation that would, in part, come from the money funding the previous indirect compensation. Therefore, all of those who benefited from indirect compensation to student-athletes would financially lose in this transition.

It seems obvious that the student-athletes would benefit most from a free market; however, some consequences can be anticipated. The premier football and men's basketball players will enjoy the greatest benefits from a free market. How will the other student-athletes respond? Envy if not rancor amongst teammates and classmates may manifest. The free market would reduce some of the current pressure for the colleges to increase the compensation of athletic scholarships. This would disproportionately harm non-premier players. As the universities would suffer some economic loss with the student-athletes receiving direct compensation, schools would be disinclined to increase the number of athletic scholarships.

Many see potential problems with a free-market model. Colleges would probably engage in bidding wars for high school athletes (Parent 2004). If schools directly paid athletes, then athletes would choose schools mostly, if not completely, based on the payment level (Murphy, 1994). The wealthiest athletic departments would outbid their competitors and field the best teams. Sean Gregory argues that this free-market proposal will not disrupt the competitive balance in college sports, because "it doesn't really exist . . . right now since the best players are already going to the top schools" (Gregory 2013, p. 42). Others argue that the free market would fuel recruiting transgressions (Parent 2004). However, attorney and former Stanford football player, Rodney Gilmore, points out that the free market will efficiently extinguish abuses (Gilmore 2013). For example, once a school or a booster donates \$30,000 for a promising athlete and the athlete fails to perform up to expectations, the benefactor will unlikely finance another athlete. Gilmore further suggests that as a requirement of athletic eligibility, the student-athlete must disclose all information in regard to benefits and payments (Gilmore 2013).



To negotiate some of the potential problems with a free-market approach, some have considered various market restrictions. For instance, in his so-called “Modest Proposal,” Sean Gregory considered capping school payout at \$1.5 million and requiring players to remain academically eligible to qualify for compensation (Gregory 2013, p. 41).

### **Bilateral Monopoly**

Professional sports leagues countered the monopsony of the team owners by establishing a players’ union and creating a bilateral monopoly (Taylor 2010). This same approach could be considered for college players.

A college players’ union offers many potential advantages. For instance, the union could establish a trust fund that could distribute monies to athletes after they leave college (Wharton 2013; Nancy 2011). This could separate the student from the business enterprise and potentially preserve some of the college experience. Rumors have surfaced that Kenneth Feinberg (September 11<sup>th</sup> Compensation Fund and BP Deepwater Horizon Disaster Victim Compensation Fund) might manage a “Student-Athlete Trust Fund” which student-athletes could access after their college careers (Zola 2013-2).

Such a union might also facilitate revenue sharing. If college football operated under the NFL revenue-sharing model, each of the 85 scholarship football players at Texas A&M would be compensated around \$225,000 per year (Gregory 2013). The student-athletes could also share tournament and bowl game awards (Murphy 1994).

A student-athlete union could allow college players a voting stake in NCAA business decisions. Olympians have been granted a 20 percent voting stake on every Olympic sports governing body (Branch 2011). If this were the case, it would be expected that athletic scholarships would be promptly increased to actually cover the costs of attending school and that these scholarships would be awarded for four years. A union could also potentially address the health and safety concerns inherent in many college sports. A student-athlete union may be the only reasonable remedy to address the potentially devastating health issues that threaten college athletes. However, it can be argued that the NFL players' union did too little, too late regarding the TBI threats to professional football players.

This hypothetical union could also serve to enforce contracts between student-athletes and universities. For instance, a potential college basketball player could sign a one, two, three, or four-year contract with a university. This would allow flexibility for the athletes to negotiate their college experience to best fit their career goals. Successful fulfillment of his contractual obligation to the university would entitle him to an agreed upon share of the trust fund. A player's union could also negotiate incentives for academic accomplishment. Graduates could be fully vested and entitled to their entire share of the trust fund. Non-graduates could be partially vested, determined by the number of academic units completed toward graduation, and receive a partial payout commensurate with their vesting.

As this paper is being finalized, Northwestern University football players are attempting to form the first-of-its-kind union, the College Athletes Players Association (CAPA) (AP-Board Considers 2014). John Adam, the players' attorney, argued before the National Labor Relations

Board (NLRB) in Chicago that players qualify as employees and can, therefore, unionize (AP-Board Considers 2014). On March 26, 2014, a regional director of the NLRB, Peter Sung Ohr, issued a 24-page decision that the Northwestern football players “fall squarely” within the broad definition of employee (Tarm 2014, p. B3). By legal definition, an employee, among other things, receives compensation for a service rendered and is under direct control of managers. Ohr found that these players were compensated by scholarships and managed by coaches, making them employees (Tarm 2014). Ohr continued,

The record makes clear that the employer’s scholarship players are identified and recruited in the first instance because of their football prowess and not because of their academic achievement in high school . . . no examples were provided of scholarship players being permitted to miss entire practices and/or games to attend their studies (Tarm 2014).

This stunning decision, which will potentially revolutionize college sports, will be appealed by Northwestern University to the labor department in Washington, D.C. (Tarm 2014). CAPA’s designated president, former UCLA linebacker Ramogi Huma, exulted, “It’s like preparing so long for a big game and then when you win – it is pure joy” (Tarm 2014, p. B3). In an opposing view, U.S. Senator Lamar Alexander (R-Tenn), who is also a former president of the University of Tennessee and former U.S. Secretary of Education under George H.W. Bush, declared, “This is an absurd decision that will destroy intercollegiate athletics as we know it” (Tarm 2014, p. B3). CAPA’s specific goals include the following: 1) Guaranteed coverage of sports-related medical expenses for current and former athletes, 2) Reduction of TBI risk, 3) Exploration of allowing players to pursue commercial sponsorships (Tarm 2014). CAPA’s goals, at this point, do not clarify potential payments, beyond scholarships, paid to college athletes by universities.

It's important to bear in mind that the NLRB has no authority over public universities. Collective bargaining at public schools is governed by state law. Thus, Ohr's decision only affects private colleges.

If this ruling withstands the inevitable appeals, then it will revolutionize college sports, at least at private universities. Let's consider how this could play out at Stanford University that currently has ~13,000 employees (Stanford-Institutional 2014). Stanford offers all of these employees benefit packages, including vacation time, holidays, sick leave, medical/dental/vision insurance, and retirement. California state law mandates that if any employee is offered benefits, then all employees must be offered benefits (Governor's Office 2014). Stanford is also required to cover these employees for on-the-job injuries with workers compensation insurance (State of CA 2014). Currently, Stanford has 300 scholarship athletes (Stanford-Campus Life 2014). If Ohr's decision stands and Stanford athletes elect to unionize, then Stanford will owe these athletes the same benefits that it offers the other Stanford employees.

If that were the case, then Stanford would be unlikely to enhance the current athletic scholarships. That means that the compensation of the scholarship would be unlikely to increase to cover the actual costs of attending Stanford, because Stanford would be forced to provide employee benefits to athletes. It would also be unlikely that Stanford would support a four-year scholarship because of the same economic pressures forced by the athletes unionizing.

A players' union may also result in a variety of other consequences. For instance, the players' union may act as a monopolist and attempt to limit the supply of athletes as a means of reducing potential competition. Further, the players' union could threaten a strike on the eve of

the football bowl season or March Madness to leverage its demands. Would the union empower the student-athletes to the point of apathy or otherwise reduce their performance and diminish the overall quality of the college sports enterprise? This union could also set the stage for a free-rider problem. For instance, the water polo players may disproportionately benefit from the actions of the football team.

### **Title IX Implications**

In 1972, Title IX of Education Amendments became law and stated: “No person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal funds” (U.S. Dept. of Justice 1972).

Therefore, colleges will not be allowed to compensate male basketball players and football players without equally compensating female athletes and, probably by extension, all college athletes. Thus, the above described free-market model and the bilateral monopoly model will fail if either permits universities to directly compensate athletes beyond their scholarships, as there would be insufficient funds to reasonably compensate the more than 380,000 NCAA athletes. Further, compensating all college athletes equally will probably fail to satisfy the revenue-generating athletes. As *USA Today's* Christine Brennan described:

If we're going to start paying the football players, we have to pay the field hockey players, and we have to pay the men and women swimmers, and we have to pay the lacrosse players, softball players, baseball players . . . There is no doubt in my mind that the moment we start to just pay football players and men's basketball

players, you would have 12 lawsuits the first day and you'd have 12 the next day. And every school would be sued (Chiari 2014, p. 2).

Politicians will be unwilling to modify Title IX for obvious reasons. In brief, Title IX will make it extremely difficult for colleges to further compensate revenue-generating athletes.

### **Tax Consequences**

As alluded to earlier, colleges may be at risk for losing their tax-exempt status should they declare that they're involved in a sports industry by compensating some athletes. Why are universities and colleges exempt from federal and state income taxation? According to the Association of American Universities (AAU):

The vast majority of private and public universities and colleges are tax-exempt entities as defined by Internal Revenue Code (IRC) Section 501(c)(3) because of their educational purposes – purposes that the Federal government has long recognized as fundamental to fostering the productive and civic capacities of citizens – and/or the fact that they are State governmental entities. In turn, States generally grant tax-exempt status to organizations, including universities and colleges, which qualify as tax-exempt entities under Federal law. Income from activities that are substantially related to the purpose of an institution's tax exemption, charitable contributions received, and investment income are not subject to federal income tax. The Federal tax code classifies tax-exempt colleges and universities and their foundations as public charities. Consequently, they are not subject to tax on investment income, payout requirements, or other rules that apply to private foundations. Private universities, as well as some public universities and foundations that support public universities, qualify as tax-exempt charitable organizations because they meet the requirements of IRC Section 501(c)(3), which includes [c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, or educational purposes . . . Public universities can and often do obtain tax-exempt 501(c)(3) status because they qualify as quasi-governmental entities that: are separately-organized entities; pass the organizational test by being an educational organization; do not possess regulatory power; and are not an integral part of the state government. Many

public universities qualify as governmental entities that are not subject to federal income tax based on the principles of inter-governmental immunity. These principles are codified in IRC Section 115 which states that a governmental organization's gross income does not include 'income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof' . . . The educational purposes of universities and colleges – teaching, research, and public service – have been recognized in federal law as critical to the well-being of our democratic society. Higher education institutions are in turn exempted from income tax so they can make the most of their revenues. This tax exemption enables these institutions to maximize the benefits that they provide society, including: an educated citizenry which is essential to our democracy; a highly-educated, skilled, and productive workforce which is critical to our nation's competitiveness; and new innovations and technologies that improve our quality of life, strengthen our security, and fuel economic growth. Because of their tax exemption, universities and colleges are able to use more resources than would otherwise be available to fund: academic programs, student financial aid, research, public extension activities, and their overall operations (AAU 2013, pp. 1-2).

Notice that the rationale for their tax exemption fails to mention anything about a sports-entertainment industry. The AAU does describe that the IRS requires each school to annually submit a variety of information, including the school's "mission" (AAU 2013, p. 2). Should that mission be anything other than academic, it seems that the college would be at risk for losing its tax exempt status.

Moreover, if universities paid athletes, then those payments would be taxable. Currently, athletic scholarship compensation is tax exempt.

Because of this and the Title IX implications, college sports need a different model than those presented above.

## Olympic Model

Not that long ago, the Olympics demanded that athletes be amateurs. As one of the most glaring examples of the problems with Olympic amateurism, recall the fate of one of our greatest Olympians, Jim Thorpe, who earned gold medals in the decathlon and pentathlon at the 1912 Games. Thorpe had those medals stripped and his achievements nullified, because he had accepted a small amount of cash for playing semi-pro baseball during his college summers (Greene 2012). Thirty years later, after his death, the medals were reinstated (Greene 2012).

This country consistently felt victimized by Olympic amateurism. It became clear that some Eastern Bloc athletes were *de facto* professionals, enjoying full-time government support to train and compete (Greene 2012). This feeling of victimization by abuses of the amateurism rules set the stage for changes in the Olympics. In 1978, President Jimmy Carter signed the bipartisan Amateur Sports Act that ended Olympic amateurism (Branch 2011). By 1986, the International Olympic Committee had expunged the word amateur from its charter (Branch 2011). The IOC simply lifted restrictions on Olympic competitors' commercial opportunities.

In essence, the current Olympic model represents a restricted market-model and has enjoyed tremendous success. The Olympics do not pay athletes; the International Olympic Committee (IOC) simply allows athletes to get paid (Hruby 2012). Olympians can receive compensation from anyone, except the IOC, including corporations, personal donations, sponsorships, prize money, and even their home country. The United States pays its gold medalists \$27,000 (Hildebrandt 2014). National compensation for winning Olympic gold varies widely over the globe: Kazakhstan (\$270,000), Latvia (\$213,000), Russia (\$125,000), Canada



(\$20,000), Great Britain (\$0) (Hildebrandt 2014). Despite much initial anguish about Olympic athletes being paid, the current IOC model represents a successful precedent for the professionalization of an amateur sports system (Branch 2011). Most agree that the elimination of amateurism in the Olympics has been well received (Greene 2012).

Unfortunately, there remains discontent in Olympic Village. This results from the so-called “Rule 40” of the United States Olympic Committee Athlete Endorsement Guidelines (Belaska 2014). This rule states: “Except as permitted by the IOC Executive Board, no competitor, coach, trainer, or official who participates in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes during the Olympic Games” (USOC 2014, p. 3). For the London 2012 Olympic Games, athletes could not advertise in any way from July 18, 2012 to Aug. 15, 2012 (USOC 2014). During the Games, athletes are forbidden from mentioning their personal sponsors in any fashion. The IOC does not want to share this massively profitable time period with the athletes. All Olympic-related advertising revenue during the Games goes to the IOC. Perhaps, it should not be surprising that the IOC invokes amateurism for its position: “The rationale for rule 40 goes back to the amateur roots of the Olympic movement . . . to protect against ambush marketing; prevent unauthorized commercialization of the Games; and to protect the integrity of the athletes’ performance at the Games, the IOC places certain limits on how a participant’s image can be exploited during the Rule 40 Period” (USOC 2014, p. 3). Let’s leave this unresolved Olympic controversy here and return to college sports.

With the Olympic model translated into college sports, the universities would not pay their athletes; they would just let them pursue their commercial opportunities, such as endorsements, autograph signings, prize money, etc. (Nance 2011). College athletes could be compensated by any source other than their schools (Staples 2013). Walter Byers, former NCAA executive director, seems to be supportive. “The athlete may access the marketplace just as other students exploit their own special talents, whether they are musicians playing on weekends, journalism students working piecemeal for newspapers, or announcers for the college radio” (Eitzen 2000, p. 9).

This Olympic model avoids the problems described above regarding Title IX implications and tax consequences. Like the bilateral monopoly model, this model separates the student-college relationship from the athlete-industry relationship, thus preserving some degree of college experience. The student-athletes may still need assistance in addressing health and safety issues.

### **Student-Athletes’ Bill of Rights**

Stanley Eitzen (2000) proposed a bill of rights that included the following: a) Right to transfer schools without penalty, b) Right to a four-year scholarship guarantee, c) If an athlete competes for a college for three or more years, then he should receive an open-ended scholarship until graduation, d) Right of athletes to be treated like other students – freedom of speech,

privacy rights, fair redress of grievances, protection from physical/mental abuse, e) Right to consult with agents, f) Right to endorsement revenue

On May 29, 2003, California State Senate passed Student Athletes' Bill of Rights by a vote of 26 to 10 (co-authored by Senator Kevin Murray, Democrat from LA and Senate Minority Leader John Burton): This bill would exempt all California universities from NCAA regulations and could expand the scholarship beyond room, tuition, and board. This bill came out of the Senate Select Committee on the Entertainment Industry Informational hearing of April 2003. Senator Murray claimed, "the bill addresses the inequitable treatment of California's student-athletes and removes some of the most archaic restrictions placed on colleges by the NCAA" (Murray 2003, p. 1). In summary, this bill prohibits California institutions of higher education from participating in any organizations that regulate student-athlete scholarships, which would include the National Collegiate Athletic Association (NCAA) and National Association of Intercollegiate Athletics (NAIA). Specifically, this bill: 1) Prohibits California institutions of higher education from agreeing to, or being subject to, the rules and policies of any organization that dictates the terms, value and conditions of student athlete scholarships relating to: a) The terms or duration of scholarships below the actual cost of attendance at that institution; b) The amount earned from employment not associated with their sport; c) Health insurance; d) The ability to obtain licensed representation in making career choices; and e) The ability to transfer to another institution of higher education if a coach leaves the school, 2) Prohibits colleges and universities from imposing, or submitting to imposition of, penalties or sanctions for violating the rules or code of conduct of an intercollegiate athletics association, including but not limited

to the cancellation or forfeiting of an athletic event, on a student athlete when the violation was not committed by that student-athlete.

Ultimately, the bill failed because of massive opposition. Although it garnered support from the Collegiate Athletes Coalition, it was staunchly opposed by the American Association of University Women, Association of Independent California Colleges and Universities (AICCU), Big West Conference, California Commission on the Status of Women, California Community Colleges Commission on Athletics, California National Organization for Women, California State University, Bakersfield, Chapman University, Community College League of California Commission on Athletics, Loyola Marymount University, Menlo College, Pacific 10 Conference, Pepperdine University, Saint Mary's College of California, University of California, UC Davis Intercollegiate Athletics, University of Redlands, University of San Francisco, University of Southern California, West Coast Conference, Whittier College, and several individuals.

Without the spotlight provided by the NCAA, especially its various championships, women's college sports in California would probably suffer, even greater than men's sports. Thus, the opposition from women's groups is understandable. However, the opposition from colleges and leagues speaks to the benefits these schools gain from their involvement with the NCAA/NAIA.

## **The Future of the NCAA**

If college football pulls out of the Bowl Championship Series, in favor of a playoff system unconnected to the NCAA, college basketball could follow suit. This restructuring is precisely the vision of Kentucky basketball coach, John Calipari, who sees the NCAA being usurped by four super-conferences: 1) Western-Pac 12, Big 12; 2) Northern-Big Ten, Big East; 3) Eastern-Atlantic Coast Conference; 4) Southern-SEC, Big 12 (Craddock 2012). For football, Calipari envisioned that each super-conference would crown a champion that would advance to a four-team playoff for the national championship. All other teams could play in the traditional bowl games. In basketball, all the teams in the super-conference would qualify for the year-end tournament. March Madness brings the NCAA close to \$1 billion a year, 95 percent of its revenue (Branch 2011). Without March Madness, the NCAA would be reduced to an unfinanced regulatory body, as it was prior to 1951.

If Calipari's prophecy holds, what will become of amateurism in college sports? If the predicted super-conference preserves amateurism rules, what's to keep those excluded from the super-conference from abandoning amateurism, making themselves more attractive to prep stars? Calipari has failed to realize how these powerful leagues have benefited from the NCAA imposing amateurism across-the-board. Just recently, the NCAA endorsed a dramatic proposal in line with Calipari's prediction. This proposal would allow the largest and most powerful member schools autonomy in making decisions about athletic scholarship compensation, health concerns, and other key areas (AP-Players to vote 2014). This would seem to indicate that amateurism may mean something different in the premier conferences. These major conferences would be better

served by remaining in the NCAA and letting the NCAA address the issues with amateurism for all colleges.

When it comes to athletes being fairly compensated, the words of French sportswriter, Gaston Meyer come to mind. “Do not forbid what you can’t prevent” (Hruby 2012). The amateur rules will change. The problems with them, real and perceived, have simply grown too obvious to ignore. There is too much money involved to leave the changes to outside forces, such as judges, juries, and legislators. There are reasonable alternatives. The NCAA should learn from the Olympics. Sean Gregory concluded his *Time Magazine* article on this topic: “The U.S. has enjoyed a long, deep love affair with college sports. It’s about time we finally paid for it” (Gregory 2013, p. 42).

If I could advise the NCAA, I would recommend the Olympic Model plus a bill of rights, such as proposed by Eitzen (2000). However, the bill of rights must include adequate health care and compensation for injuries with no statute of limitations. Additionally, I would support a players’ association – not a union. The primary goal of this association would be to give student-athletes a voice in health and safety issues. This players’ association would also have the potential for developing a trust fund and negotiating collegiate contracts. The NCAA would be in the best position to coordinate this players’ association.

If the above proposal gained acceptance, how would the various stakeholders be affected?

## **Cost Benefit Analysis**

### **Student-Athletes**

Since the intention of the proposal is to replace amateurism with something better for student-athletes, let's first assess the potential outcome for this group. Obviously some student-athletes would enjoy tremendous gains. The athletes primarily responsible for a team's success, particularly in men's basketball and football, could anticipate financial support from boosters, local businesses, and perhaps even professional leagues. The premier players in many sports could earn prize money for competitions away from school. The marketable student-athletes may gain generous endorsements. The amount of their endorsements will be driven by market forces. The more compelling they are to watch, the more lucrative the sponsorships. Those incentives may entice these premium players to stay in school longer and perhaps even complete their college education.

The financial value to nonpremium athletes would probably be significantly less. It would be unlikely that they would have much financial gain beyond their athletic scholarship, unless the players' association intervened. The economic potential for a college players' association is, of course, yet to be determined but could be considerable. Earlier, it was argued that non-premium players contribute to athletic success. A players' association could mount such an argument and negotiate a revenue-sharing arrangement benefiting all student-athletes.

All student-athletes would benefit from the bill of rights. This would improve their overall college experience, minimize abusive practices, and maximize their educational opportunities. Further, the concept of an athletic scholarship could have renewed meaning. An

athletic scholarship should represent an opportunity for young athletes to pursue a meaningful college experience. Too often, this experience goes unrealized, because too many college athletes do not receive the college education promised by their scholarship.

The players' association would be in the position to negotiate improved health and safety standards for student-athletes. All college athletes would benefit from this process, as athletic injuries represent a significant cost with the potential for lifetime consequences.

### **Colleges**

Schools will continue the lucrative enterprise of college sports. Nothing in this proposal threatens their immensely profitable television contracts. However, this proposal allows universities to improve their image. The perception that colleges profit from unpaid (mostly black) athletes will diminish. Since this proposal enhances educational opportunities for student-athletes, the universities can more honestly align college sports with their academic mission. College administrators also preserve their image as educators by not paying athletes. This proposal avoids the complications of other alternatives. Specifically, colleges would not be threatened with tax consequences related to their sports enterprises or with Title IX implications.

The schools may lose some money. Amateurism forced student-athletes to be compensated indirectly. Some of this indirect compensation went toward impressive college stadiums, athletic facilities, and other university projects. With direct compensation allowed, some of the money previously going toward universities and their administrators would now go



to student-athletes. It is anticipated that this loss to colleges would be small. Only the premium players (1-2 percent of football and men's basketball players) would receive the funds previously going to the schools. If the overall market for financing college sports expands, as expected, this loss to universities could be negligible.

The proposed bill of rights mandates that student-athletes be treated like other students; implied in that right, colleges should expect student-athletes to act like other students and earnestly pursue their college education. Making college a meaningful academic experience for all student-athletes will require a joint effort from both the schools and the athletes. When student-athletes consistently experience a valid college education, then colleges will fulfill their academic mission and student-athletes will enjoy greater potential.

The term "student-athlete" needs to be redefined. It should not represent a joke, a myth, or a hypocrisy. It should represent a college student who genuinely pursues both academic and athletic excellence. Stanford University could set a national example by making this their only brand of student-athlete. To that end, at Stanford, I would propose a mandatory athlete-mentoring-athlete program, where upper-class athletes assist freshmen and sophomores with academic support. At graduation, all student-athletes should be viewed as academically competent, not academically suspect.

### **Coaches**

College coaches in the revenue sports may oppose this proposal. They may have the most to lose, because they had the most to gain from the indirect compensation to student-athletes imposed by amateurism rules. Since the college players could not be directly compensated, another strategy of indirect compensation was to pay for a famous coach. The money previously paid to the coaches may be redirected to the players.

Since the premium players will likely be the beneficiaries of the money previously going to the coaches and since there are only a few premium players on each team, the economic consequences to the coaches may not be devastating. The coaches will probably lose a significant portion of the shoe companies' money, because the shoe companies may find it more effective to pay the student-athletes directly. Again, if the entire market increases, then coaches may be only minimally affected.

### **Sponsors**

Potentially, sponsors could be huge winners with this proposal. Each and every well-recognized student-athlete represents an effective advertising opportunity. These student-athlete advertisers have the potential of delivering a personal message that sponsors may find effective. This proposal allows sponsors direct access to the athletes watched nationwide by college sports fans and does not interfere with longstanding sponsorships of the NCAA, specific colleges, bowl games, March Madness, etc.

### **Boosters**

Boosters should endorse this proposal. They can donate to their alma mater's student-athletes without breaking any rules. The under-the-table money simply goes over-the-table. Of course, boosters bear the risk of a bust investment which may prevent over-zealous contributions.

### **NCAA**

The NCAA should endorse this proposal, because it allows them to continue as the head of a successful cartel. However, just like with the free-market model (and for the same reasons), this proposal would diminish the NCAA monopsony power but not its monopoly power. Importantly, this proposal would help the NCAA improve its image. Just like with the universities, the NCAA will be perceived as less exploitative under this proposal

Currently, the NCAA is viewed as the primary monitor of health and safety issues involving college sports. This is an ominous and unenviable responsibility. The NCAA should welcome the opportunity to diffuse that responsibility by sharing it with those at risk for health/safety concerns, the student-athletes themselves.

If the NCAA assumed the role of mediator between a player's association and the colleges, the NCAA could enjoy enhanced relevance. As discussed, athletic injuries may represent massive challenges going forward with the potential for numerous lawsuits. The

NCAA was invented to protect athletes from injury and should return to that mission with vigilance.

## **Conclusion**

This paper was intended to change the narrative on amateurism in college sports. The prevailing narrative of wealthy universities and the NCAA exploiting college kids has not been productive. Let's redirect the discourse and explore how changing some of the rules could produce a more legitimate college experience and a safer athletic experience. If allowing some college athletes to be compensated motivates them to stay enrolled in college, isn't that consistent with the school's educational mission?

For many student-athletes, an athletic scholarship represents a component of their American Dream. Amateurism can interfere with that dream, unnecessarily.

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