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Fair Play: An Ethical Evaluation of the NCAA's Treatment of Student Athletes

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Fair Play: An Ethical Evaluation of the NCAA's Treatment of Student Athletes

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Abstract

The National Collegiate Athletic Association (NCAA) is the nonprofit governing body of college athletics. They oversee three distinct divisions of competition containing over 430,000 student athletes and over 1,000 member institutions.¹ Their primary task is to ensure all student-athletes and the universities they attend adhere to the extensive rules and regulations outlined in the Association's manual, namely, to abide by principles of amateurism, defined by the Association as agents that do not receive any payment above travel expenses or a grant-in-aid scholarship for competing in sports endeavors.

The problem is the NCAA is currently financially and academically exploiting college athletes. The Association possesses an inordinate amount of control over young men and women, and they exercise this power to exploit their unrecognized labor force and generate billions of dollars in revenues, while restricting the amount of compensation the athletes receive to a number well below what the free market will bear. College athletes are not receiving any of the money they produce, and most will not benefit in any real way from the educational product they are provided. The system must be reformed.

The first step will be to eliminate financially defined amateurism along with the NCAA's expansive rulebook. Second, student athletes should be allowed to set their own course load. This includes not taking any classes if they choose, thus ending the charade that athletes are recruited to campus as students first, even when it is clear many have no interest in academics.

¹ "About the NCAA," National Collegiate Athletic Association, 2013, <http://www.ncaa.org/>.

Third, courses should be tailored to pique the interest of athletes, namely offering majors in sports. Finally, university athletic departments need to be scaled down to truly comply with Title IX requirements and stop wasting exorbitant sums of money. The hypocrisy and deception must end.

Introduction

Johnny Manziel, better known as Johnny Football, is the electric 2012 Heisman Trophy winning quarterback for Texas A&M University. Manziel was also presented the Davey O'Brien National Quarterback Award, the Manning Award, and was named the Sporting News College Football Player of the Year, along with many other accolades for his performance during the 2012 football season. In his first season of competition, Manziel passed for 3,419 yards, rushed for 1,181 yards, and accounted for 43 touchdowns.² These numbers and honors are stellar considering Manziel was a red-shirt freshman during the 2012-2013 college football season.³ Becoming the first freshman to win the coveted Heisman Trophy is certainly something to revel in, and Manziel has spent the offseason doing just that.

Since he claimed his Heisman Trophy, Manziel has been spotted drinking in public, gambling, clubbing, driving his teammates around in his Mercedes Benz, and sitting courtside at a Dallas Mavericks game. Manziel has not violated any National Collegiate Athletic Association (hereafter NCAA or the Association) rules by engaging in the aforementioned activities, but a college freshman driving a Mercedes Benz and sitting courtside at an NBA game is certainly going to pique the interest of both the media and NCAA enforcement officials. His lifestyle is tailor made for the spotlight, and his actions will surely be scrutinized for the foreseeable future.

² Justin Onslow, "Johnny Manziel: Next Step for First Freshman Heisman Winner to Solidify Legacy," Bleacher Report, January 4, 2013, <http://bleacherreport.com/articles/1468868-johnny-manziel-next-step-for-first-freshman-heisman-winner-to-solidify-legacy>.

³ A "red-shirt" player is one that has sat out a year of competition for some reason (playing time concerns, injury, etc.). This player continues to attend classes and practices, but is ineligible for competition during the red-shirted season. A player that has been red-shirted gains a "fifth year" of eligibility, although they may only compete in games for four seasons.

Manziel's fame has had some unfortunate consequences for his academic life however. He is taking his spring courses online due to the frenzy his mere presence creates on campus. He attempted to take regular courses, but the first day he showed up, he claims the situation "kind of turned into more of a big deal than I thought."⁴ One could imagine he was not simply ignored by his fellow classmates. He will return to the traditional classroom in the fall, hopefully to a more subdued atmosphere. Manziel is having an impact both on and off the field, and he is proving to be a headache for the NCAA.

In a recent study commissioned by Texas A&M, analysts claim that Manziel generated \$37 million in media exposure during the past season.⁵ During his freshman campaign, the moniker Johnny Football became associated with the young man, who was clever enough to trademark his new nickname.⁶ Under NCAA regulations, Manziel is not entitled to one cent of that \$37 million dollars, but he may have a big payday coming his way soon. Manziel and his legal team have recently filed a lawsuit that could net him damages for the unauthorized use of his image, specifically the Johnny Football nickname. The NCAA has ruled any damages Manziel wins in court are his to keep, and claim they have closed the loophole in their rule book in case any future players see this as their window to be paid for their work as college athletes.⁷

The loophole in question refers to the ability of any player to hire an attorney, have their

⁴ Jeremy Fowler, "Johnny Manziel won't be Johnny Online for Long," CBS Sports, March 1, 2013, <http://www.cbssports.com/collegefootball/blog/jeremy-fowler/21791629/johnny-manziel-wont-be-johnny-online-for-long>.

⁵ Matt Murschel, "Study: Johnny Manziel Generated \$37 Million in Exposure for Texas A&M," the Orlando Sentinel, January 18, 2013, <http://www.orlandosentinel.com/sports/blogs/college-gridiron-365/os-fbc-study-johnny-manziel-generated-37-million-in-exposure-for-texas-am-20130118,0,5117146.post>.

⁶ Cody Coil, "Johnny Football: A Nickname Coined in Aggieland, a Legend Crafted in the Hill Country," September 23, 2012, <http://www.kbtx.com/home/headlines/Johnny-Football-Nickname-started-in-Aggieland-but-his-legend-began-in-the-Hill-Country-170922091.html>. The exact day and time the nickname was conferred is unknown, but the Aggies are insistent it is wholly a College Station creation.

⁷ Andy Staples, "NCAA Rules Clarification Closes Johnny Football Loophole," Sports Illustrated, February 26, 2013, <http://sportsillustrated.cnn.com/college-football/news/20130226/johnny-manziel-ncaa-loophole>.

image trademarked and have a supporter of the athletic department, commonly known as a booster, reproduce this trademarked image in some way. The player can then sue the booster, settle out of court for whatever amount the booster wanted to give the athlete, and college athletes can be paid without violating NCAA regulations.⁸ The NCAA claims however that any type of orchestrated payment between an athlete and a booster would fall under the purview of its enforcement staff and would in fact be a violation.⁹ However, the NCAA is in more trouble here than they think.

If all current elite athletes were to trademark their images, what would stop a booster, operating on his own, from intentionally violating the trademark and offering whatever cash he wished to give to the player in an out of court settlement? Elite athletes can use this as a way to be paid during their college years without violating NCAA regulations, all they need is to register a trademark and wait for it to be violated.¹⁰ The case of Johnny Manziel is indeed remarkable, and given the NCAA's position on his recent lawsuit, he may have broken down the longest running scam in sports history; the denial of payment to elite college athletes.

Johnny Manziel presents an interesting look into the life of a star college athlete. The power the NCAA holds over those who participate in college athletics is enormous, evidenced by every public action taken by an athlete such as Johnny Manziel being magnified and examined for possible rule violations. As he sat courtside for the Dallas Mavericks game, the commentators questioned how a college freshman could acquire such desirable seats, insinuating he did not purchase the tickets for himself. The NCAA uses an expansive 439 page rule book to legislate

⁸ Clay Travis, "Johnny Manziel Opens Massive Loophole In Paying Players Rule," Out Kick The Coverage, February 25, 2013, <http://outkickthecoverage.com/johnny-manziel-opens-massive-loophole-in-paying-players-rule.php>.

⁹ Staples, "NCAA Rules Clarification Closes Johnny Football Loophole," <http://sportsillustrated.cnn.com/college-football/news/20130226/johnny-manziel-ncaa-loophole>.

¹⁰ Travis, "Johnny Manziel Opens Massive Loophole," <http://outkickthecoverage.com/johnny-manziel-opens-massive-loophole-in-paying-players-rule.php>.

the minutest details of the relationship between the athlete and the member institution they attended, as well as dealings with outside third parties and is revised and issued annually.

Athletes, especially elite athletes, simply cannot function as regular students, despite NCAA claims to the contrary.

In the following pages, I plan to offer an ethical audit of the NCAA by thoroughly examining the unique relationship between the student athlete, the NCAA and the institutions for which the athletes compete. By examining the NCAA bylaws regarding academic standards and eligibility requirements, I will highlight the ethical shortcomings and hypocrisy of the NCAA and its member institutions in regards to their treatment of prospective, past and current collegiate student athletes. This analysis will show the compensation currently provided to student athletes, a prospective four year degree, is not at all reasonable or fair given the current climate of collegiate sports.

The most pressing problem with the current system of college athletics is the exploitation of student athletes by the NCAA and its member institutions. The current design of the system makes the exploitation of athletes in revenue producing sports impossible to avoid. Due to the immense popularity of these sports, providing access to them has become a lucrative business. In business, the goal is to maximize profits while limiting costs. The system needs the labor of these athletes to generate revenues, and because college sports are a business enterprise, the lower the compensation provided to the athletes, the greater the revenues university's and the NCAA enjoy. The actions and policies undertaken and implemented by the Association and its member institutions are designed to maximize gains while limiting costs. This thesis will show how the current arrangement has the unfortunate consequence of exploiting the talents of young athletes for financial gain.

This project begins with an introduction to the Association and a brief discussion of the origins of the NCAA. Following this, a case is made in chapter three that shows how the NCAA currently functions as a cartel designed to keep labor costs associated with athletes minimal, while maximizing gains for themselves and their member schools. A cartel here is understood as a group of independent producers who join together to control the production, price and sale of a commodity to establish a monopoly.¹¹ This collusive agreement amongst schools can be offered as a potential explanation for the level of exploitation that currently exists in college sports.

Chapter four discusses how the association began to grow quickly after its creation, spreading its influence and power as college sports, particularly football, became more popular amongst the general public. The blue print for how programs jump into big time college sports is also revealed.

Chapter five provides a continued discussion of the Associations growth from 1948 through 1980, while also showing how the NCAA cartel fully matures by developing an effective enforcement mechanism for its rules, binding member institutions to the Associations rules and providing them unchecked power in enforcement matters. This chapter also presents the introduction of exploitive policies instituted by the NCAA including the full athletic scholarship, the national letter-of-intent which is the contract athlete's sign when they commit to play for an institution, and rules concerning academic eligibility.

Chapter six concludes the historical look at the Association, showing how the Supreme Court broke the NCAA's television cartel, sparking frequent conference realignments which had the effect of altering the landscape of intercollegiate sports.

Chapter seven uses the information provided in previous chapters to illustrate how

¹¹ Andrew S. Zimbalist, *Unpaid Professionals: Commercialism and Conflict in Big-Time College Sports* (Princeton: Princeton University Press, 1999), 149.

college athletes in revenue producing sports are being both financially and academically exploited.¹² A presentation of graduation rates and the quality of the education received by the few that graduate highlights the fact that far too many athletes do not get any meaningful benefit from their time as student athletes. To show the level of financial exploitation, Karl Marx's theory of exploitation is used to further elucidate that athletic scholarships are actually one-sided deals designed to benefit colleges and universities at the expense of athletes. Also, a discussion of a Rawlsian conception of fairness is introduced. The current system is examined through Rawls's original position, coupled with the veil of ignorance, to prove the current system could not be agreed to as fair by rational actors when they do not know their place in the arrangement. From this discussion, a case is made that even though some athletes may benefit from the current arrangement, they are still being exploited.

Chapter eight outlines how college sports currently function as a business enterprise designed to turn a profit which explains how the system fosters exploitive practices. This chapter also explains how the conflicting roles of college student and college athlete more often than not set student athletes in revenue producing sports up for failure.

Chapter nine argues that the NCAA and its member institutions, through the creation and enforcement of rules limits the autonomy of athletes in the revenue producing sports beyond levels experienced by any other college athlete or student. These rules appear to be arbitrary, lacking any type of transparency, and are not explained in an in-depth way to coaches or players, contributing to the exploitation of athletes.

Chapter ten discusses another example of the exploitation of college athletes, the NCAA's version of amateurism, which hurts the welfare of these athletes by arbitrarily denying

¹² Revenue producing college sports are men's Division I football and basketball. Men's Division I baseball and ice hockey also generate revenue surpluses in certain regions of the country, but not to the same extent.

them fair compensation. Amateurism, according to the NCAA is defined only in monetary terms and serves as a shield for the Association and its member institutions, protecting them from being required to provide appropriate financial recompense to college athletes.

Chapter eleven continues the discussion of the severe restrictions on athlete autonomy and the total control the NCAA and its member institutions can exert over all aspects of athletes lives. This chapter is dedicated to the NCAA transfer rules that apply only to revenue producing sports.

Chapter twelve provides a discussion of an impending legal battle between the Association and former as well as current student athletes. The players are asking for a fair compensation package, including a share of television revenues and merchandise sales that depict the images of athletes; compensation they are currently denied under the existing arrangement of intercollegiate sports.

Chapter thirteen lays out the current financial landscape of college sports, showing that it is in fact a six and a half billion dollar industry that provides excellent financial remuneration for all actors except the athletes who make generating this revenue possible.

Chapter fourteen offers an ethical audit of the Associations practices through a deontological ethical framework, focusing on the moral theory of Immanuel Kant and the principles of fairness, autonomy, and voluntary informed consent. Concerning voluntary informed consent, recruiters often use bait-and-switch tactics to entice potential recruits. This is a form of deception that sells the potential recruit on a certain appealing image of life as a student athlete, when the reality is in fact much less desirable. This chapter also explains that for athletes who wish to reach the professional ranks in football or basketball, there are no true viable alternatives outside of participation in intercollegiate sports.

Chapter fifteen offers steps for reform to remove the exploitation from the intercollegiate sports system. Steps for reform include replacing the NCAA's extensive rule book in favor of a small set of general principles, eliminating the NCAA's financially defined vision of amateurism and its inconsistent transfer rules, scaling down athletic departments to make them truly compliant with Title IX legislation, allowing athletes to set their own academic schedules and course loads, and providing the opportunity for athletes to major in sports. This would allow athletes to truly engage in college level work and offer them a beneficial educational experience they can use after they leave their respective institutions.

Chapter 1: The National Collegiate Athletic Association

The NCAA serves as the governing body for intercollegiate athletics. Since 1999, they have been headquartered in Indianapolis, Indiana and are a nonprofit organization that oversees three distinct divisions of collegiate athletic competition for over 1,000 member schools that includes roughly 430,000 student-athletes.¹³ The three divisions under the control of the NCAA are cleverly named Divisions I, II, and III. Division I is the largest, and currently is home to one-hundred and twenty-four college football programs, and three-hundred and forty-seven college basketball programs.¹⁴ These numbers change almost every year, as new teams are constantly attempting to make the jump to the big-time.

The reason there are almost one-third fewer football teams is the cost associated with running an FBS college football program is much higher than running a Division I basketball program. Teams carry fewer scholarship players, they need fewer coaches to direct these players, and they have fewer costs associated with travel and training.¹⁵ There is a much higher likelihood of financial success in college basketball for a smaller university than would be for football. Also, when the end of season basketball tournaments begin, theoretically a team that has lost every game during the regular season can win its conference tournament and receive an automatic bid to the NCAA National Championship tournament. If your team gets hot at the

¹³ "About the NCAA," National Collegiate Athletic Association, <http://www.ncaa.org/>. Prior to 1999, the association was headquartered in Kansas City, Missouri.

¹⁴ Division I football teams (previously Division-IA) are now referred to as the Football Bowl Subdivision (hereafter FBS), while the lower Division II and III university football programs (previously Division-IAA) are referred to as Football Championship Subdivision (hereafter FCS).

¹⁵ Roger G. Noll, "The Economics of Intercollegiate Sports," in *Rethinking College Athletics*, edited by Judith Andre and David N. James, (Philadelphia: Temple University Press, 1991), 204.

right time, all you must do is survive and advance, knowing the deeper into the tournament you get, the deeper your pockets will be.¹⁶

The structure of the NCAA is broken down into six sections under the supervision of current President Mark Emmert. There are the administrative services, the championship and alliances office, the communications department, the NCAA eligibility center, the enforcement staff, and the membership and student-athlete affairs office; all overseen by the office of the president, which also contains legal affairs, government relations and human resources.¹⁷

The employees of the NCAA are also governed by an extensive rule-book known as the NCAA Office Policies and Procedures.¹⁸ The booklet was a creation of former Association President Walter Byers, and in the 1980's contained over one-hundred pages with detailed explanations for how each man and woman should dress, a protocol for the correct hanging and opening of window drapes, and it was required that the booklet be turned in upon an employee's resignation or termination.¹⁹

The NCAA is a relatively small organization that holds a great deal of power in intercollegiate athletics. The effects of the Association's actions are felt by millions of individuals, and they have the ability to drastically alter the life experience of both student athletes and athletic coaches. Their enforcement powers are absolute, and the following pages strive to show how this immense power is causing undue to harm to college athletes.

¹⁶ The term "survive and advance" has become the most over used cliché associated with NCAA tournaments. Its obviousness is rather insufferable. Also, there are financial enticements associated with how deep a team advances in the championship tournament.

¹⁷ "National Office," National Collegiate Athletic Association, <http://www.ncaa.org/>.

¹⁸ Don Yeager, *Undue Process: The NCAA's Injustice for All* (Champaign: Sagamore Publishing, 1991), 17-18.

¹⁹ *Ibid.*

Chapter 2: Origins of the Association

An understanding of the origins and history of the Association is necessary to understand the current climate of college sports. The NCAA has origins in tragedy. Founded in 1906, the organization was brought about in part to restore amateurism rules that had been abandoned, but their main undertaking was to curb the overwhelmingly violent nature of college football.²⁰

College football in America dates back to the 1869; the first game was played between Rutgers University and Princeton University.²¹ Rutgers emerged victorious in that contest, and the game resembled more of a rugby match than the football we know today.²² The game was really quite brutal. Shortly after the turn of the century, the game had reached a tipping point. Lacking effective rules accepted by all competitors, violence and death were common place in early college football.²³

The 1905 college football season was especially vicious, with nineteen player deaths and one-hundred and thirty-seven more being seriously injured.²⁴ Columbia University, among others, had decided to disband their football team until a standardized, agreed upon set of rules was established to limit the brutality.²⁵ The New York Times Tribune, reporting on the 1905

²⁰ Allen L. Sack and Ellen J. Staurowsky, *College Athletes for Hire: The Evolution and Legacy of the NCAA's Amateur Myth* (Santa Barbara: Praeger, 1998), 32-33.

²¹ "Rutgers- The Birthplace of Intercollegiate Football," Rutgers University, accessed January 28, 2013, <http://www.scarletknights.com/football/history/first-game.asp>.

²² Ibid.

²³ Arthur A. Fleisher III, Brian L. Goff, and Robert D. Tollison, *The National Collegiate Athletic Association* (Chicago: Chicago University Press, 1992), 18.

²⁴ "The San Francisco Call," *Chronicling America*, November 27, 1905, <http://chroniclingamerica.loc.gov/lccn/sn85066387/1905-11-27/ed-1/seq-1/>.

²⁵ "New-York Tribune," *Chronicling America*, November 29, 1905, <http://chroniclingamerica.loc.gov/lccn/sn83030214/1905-11-29/ed-1/seq-1/>.

season reported “this year’s record of deaths is nearly double that of the yearly average for the last five years, the total for that period being forty-five.”²⁶ Among those who perished during the 1905 season, eleven were high school students, ten of which were seventeen or younger, along with, as described by the Tribune, “three hardened, seasoned, presumably physically fit college men.”²⁷ The other casualties were described simply as amateurs.

The accounts of these early games are shocking. Congressman Charles B. Landis, after watching his first intercollegiate football game, remarked, “I desire to register my opinion, however, that dog fighting, cock fighting, and bull fighting are Sabbath school games in comparison with modern football.”²⁸ Congressman Landis was not the only politician who had taken notice of the growing number of casualties associated with the sport. Amidst public cries to abolish the game in 1905, President Theodore Roosevelt called for the game of football to be reformed.²⁹

On March 31, 1906, the Intercollegiate Athletic Association of the United States (hereafter IAAUS) was formed as a solution to the ills of college football.³⁰ In 1910, this group would change its name to the National Collegiate Athletic Association, better known as the NCAA.

This chapter provides the rationale for the creation of the NCAA. The violence associated with early college football in this country was horrific. The NCAA was created out of necessity

²⁶ “New-York Tribune,” *Chronicling America*, <http://chroniclingamerica.loc.gov/lccn/sn83030214/1905-11-29/ed-1/seq-1/>.

²⁷ “The San Francisco Call,” *Chronicling America*, <http://chroniclingamerica.loc.gov/lccn/sn85066387/1905-11-27/ed-1/seq-1/>. Of those who perished, four died of internal injuries, six from concussions, three from spinal cord injuries, and two from blood poisoning. The deceased athletes are referred to as “gridiron warriors.”

²⁸ “The Salt Lake Herald,” *Chronicling America*, October 15, 1905, <http://chroniclingamerica.loc.gov/lccn/sn85058130/1905-10-15/ed-1/seq-4/>.

²⁹ Sack and Staurowsky, *College Athletes for Hire*, 32. Roosevelt was a fan of the game, and his son was playing football as a college freshman in 1905 (consult note 25 for more information).

³⁰ “History,” National Collegiate Athletic Association, <http://www.ncaa.org/>.

to save a game that was on the brink of collapse, a game that has risen in popularity with each passing year since 1869. The creation of the Association was indeed a public good. The NCAA was able to unify playing rules for college football teams and helped to preserve an American pastime while also protecting those who competed so passionately.

Chapter 3: The Formation of the Cartel

The NCAA, from its beginnings in 1906 has evolved into a cartel. Andrew Zimbalist writes, “most economists look at the NCAA’s rules and see a cartel, endeavoring to maintain a player reserve system and contain its costs.”³¹ A cartel here can be understood as independent producers, or colleges and universities, who formerly operated without any oversight coming together to create a monopoly, or to possess all control over the market supply of a good, namely college sports.³² In their work, “The National Collegiate Athletic Association,” Arthur Fleisher, Brian Goff, and Robert Tollison present a five step prima facie argument showing the NCAA as a cartel. Looking only at the behavior of the NCAA, a compelling case can be made.

First, schools openly collude with one another to achieve ends beyond their stated goal of standardizing rules of the game.³³ An example of this can be seen in conference affiliations. Conferences will usually organize the television rights deals for all member institutions.³⁴ This shows clear collusion amongst competing producers to maximize profits for all. By joining together, the media rights deal they can secure as a group will produce greater amounts of revenue for all members than any they would be able to achieve by negotiating television rights deals independently.

³¹ Zimbalist, *Unpaid Professionals*, 18.

³² *Ibid.*, 149.

³³ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 7-8.

³⁴ Glenn M. Wong, *Essentials of Sports Law*, 4th ed., (Santa Barbara: Praeger, 2010), 728. e-book.

Second, athlete compensation has remained relatively the same (full grant-in-aid scholarships) while coach salaries, revenues, and monies spent on athletic expenditures has exploded.³⁵ In support of this claim, there is clear evidence that the producers of college athletics have colluded to keep athlete compensation costs well below the value of what these athletes generate for their institutions.³⁶ Third, the NCAA does not restrict school brand names or other capital assets such as stadiums, training facilities, food offered on campus to athletes, living quarters or dormitories, and uniforms.³⁷ These are a few of the ways colleges can offer a little more to athletes over and above what is allowed by a full grant-in-aid scholarship.³⁸

These unregulated tools are in fact what separate universities from one another. Uniform combinations have recently become the most innovative way to attract young recruits to schools. The University of Oregon, as of April 2012, had five-hundred and twelve different uniform combinations, and a state of the art locker room that resembles a futuristic mansion.³⁹ Nike founder Phil Knight, a University of Oregon alumni, makes sure to keep his old school outfitted with the best money can buy. Recruits are aware of the perks Nike supplies, and because of this they have become increasingly more interested in the football program. Historically, the university has struggled to bring in elite athletes, but over the last decade Oregon is perennially a nationally top five ranked football program. Something like uniforms may seem trivial, but it brings attention to a program, which can result in landing top-ranked recruits.

³⁵ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 8.

³⁶ *Ibid.*

³⁷ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 8-9.

³⁸ Extravagant dorms and facilities are ways to lure players in; they are not forms of payment, however. These things are financed with athletic department surpluses and booster donations. The NCAA does have rules regarding how numbers, logos, and patches can fit onto uniforms, but have no rules regulating the actual content or color of the uniform. See Bylaw 12.5.4 in the *National Collegiate Athletic Association 2011-2012 NCAA Division I Manual*, <http://www.ncaapublications.com/productdownloads/D112.pdf>.

³⁹ Ben Maller, "Oregon Ducks' Amazing Locker Room," *The Post Game*, April 13, 2012, <http://www.thepostgame.com/blog/dish/201204/oregon-ducks-give-nike-ceo-sunglass-tribute>. A video tour is available at the website, it is quite impressive.

Stadium renovations have been another must have for big-time college sports teams since the mid-1990's, with a favorite addition being luxury boxes.⁴⁰ Stadium renovations will increase both revenues and attendance. Currently, six college universities have stadiums that seat over one-hundred thousand spectators, and five more can seat over ninety-thousand. Professional stadiums pale in comparison to their college counterparts. Fleischer, Goff, and Tollison contend, "if a quest for education, amateurism, and standardized rules were at the heart of NCAA behavior, these inputs would be regulated along with labor inputs."⁴¹ The authors are pointing the fact that unregulated recruiting tools like uniforms and stadiums are designed to draw exposure, or an audience. Colossal stadiums and flashy new uniforms are intended to bring in revenue. Collegiate sports are in the business of making money, and these are methods to increase the amount of money schools can bring in.

Fourth, athletes are worth substantially more to the university than what they receive to compete. In Division I football and basketball specifically, the value of the athletes, or their marginal revenue products (MRP's), far exceed the value of the education they are provided.⁴² Stated more clearly, universities are disproportionately benefitting from the labor of college athletes. George Sage writes, "Collegiate athletes generate 10 to 20 times as much income as their scholarship is worth to a school; a few generate as much as 100 times what they receive."⁴³ According to Roger Noll, a starting player on a winning team, in a good conference is paid roughly three to ten percent of their actual economic value to the university.⁴⁴ Noll's numbers are from 1991, and given that athlete compensation has stayed relatively the same, while

⁴⁰ Zimbalist, *Unpaid Professionals*, 133-36.

⁴¹ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 8-9.

⁴² *Ibid.*, 9.

⁴³ George H. Sage, "The Intercollegiate Sport Cartel and its Consequences for Athletes." in *The Governance of Intercollegiate Athletics*, edited by James H. Frey (New York: Leisure Press, 1982), 137.

⁴⁴ Noll, "The Economics of Intercollegiate Sports," 206.

revenues continue to increase, universities are bringing in increasingly more money annually than they spend on their athletes, greatly increasing these ratios.

Fifth, the fact that universities are willing to offer illicit payments to athletes in excess of what a full grant-in-aid scholarship allows indicates cartel rewards, or excess money left after production costs, attempting to find their way to a relevant expense, or input.⁴⁵ Illicit payments have a long history in college football. A recent example involves Mississippi State University offering \$80,000 among other enticements to Cam Newton's father in exchange for his commitment to the university. This is a large sum of money to the average person, however, it is a meager sum for Cam Newton's athletic ability; just ask the Carolina Panthers. Newton's rookie deal is for four years and is worth twenty-two million dollars.⁴⁶ Eighty-thousand dollars for one year could have been the steal of the century.

Fleischer, Goff, and Tollison argue that the NCAA's behavior in setting prices for college sports, controlling outputs, not controlling relevant inputs (like stadiums, living quarters and uniforms) and visible undercompensating of athletes below their market value, when taken as a whole, indicate cartel behavior.⁴⁷ So, on face value, the NCAA is a cartel, but why is this significant? The cartel in this instance is designed to benefit the member institutions of the NCAA, and it is currently doing so by exploiting the talents of Division I football and basketball players.⁴⁸ The way in which cartel members are benefitting is causing their unacknowledged workers to suffer. This case will be made explicit beginning in chapter seven. This arrangement

⁴⁵ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 9. As an example, the author's point out that producers and loyal customers from Burger King do not attempt to entice and lure skillful McDonald's employees away.

⁴⁶ Associated Press, "Cam Newton Signs with Panthers," ESPN NFL, July 30, 2011, http://espn.go.com/nfl/story/_/id/6816915/top-pick-cam-newton-carolina-panthers-agree-four-year-22-million-deal-source-says.

⁴⁷ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 9.

⁴⁸ Zimbalist, *Unpaid Professionals*, 23.

did not happen overnight; it took years for the NCAA to mature into the mighty powerhouse that exists today.

As previously discussed, the violent nature of early college football brought the NCAA into being. It was the lack of uniform playing rules of early college football that in part led to violence in the game, an externality problem.⁴⁹ School's recognized the problem, but faced a prisoner's dilemma; it would be in all parties best interests to cooperate, however, without some type of agreement among all universities, accompanied with a punishment mechanism, any school that decided to play by a standard set of rules would be at a disadvantage while others schools continued to cheat.⁵⁰

Universities did not originally cooperate with one another to form a cartel. Initially, cooperation amongst firms was to solve their common externality problem.⁵¹ According to the Association's website, in its infancy, the NCAA was primarily concerned with discussing problems facing college sports and developing unified rules for the games played on college campuses.⁵² However, after resolving the issue of excessive violence of college football, the NCAA sought to expand its umbrella of influence. By 1920, eight more sports fell under the jurisdiction of the association.⁵³ During this time, college sports began to see an increase in their popularity, and commercial interests soon emerged.

The aim of this chapter is to present a case for viewing the NCAA as a cartel. One may reject the usage of the term cartel and still accept the thesis of this work; the NCAA currently exploits college athletes in revenue producing sports. Viewing the NCAA as a cartel can offer a

⁴⁹ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 18.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, 21.

⁵² "History," National Collegiate Athletic Association, <http://www.ncaa.org/>.

⁵³ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 42.

window into why the Association behaves as it does. Proving this point definitively would go beyond the bounds of this project, requiring more space than what is available here. The reader can draw their own conclusions about the NCAA as a cartel based on the arguments provided in the following pages.

Chapter 4: Commercialization and Professionalization

In 1912, college football experienced its first radio broadcast.⁵⁴ The first commercial broadcast came in 1920, followed by the first network covered game courtesy of NBC.⁵⁵ The Association began with fewer than one-hundred members; by 1945 membership was up to two-hundred and ten universities.⁵⁶ In 1939, television entered the game, airing college baseball in the summer and football in the fall.⁵⁷ With the invention of new media outlets providing easier access to games, popularity in college sports, especially football, grew exponentially.

Commercialization had struck the NCAA, who at the time controlled all broadcasting rights to college sports. Since cartel profits depend on the supply and demand of markets, as the demand rises, the profits increase, and other producers inevitably want to join the club.⁵⁸ As the popularity of college sports began to grow, universities that were not governed by the NCAA saw themselves missing out on profits from broadcasting rights they could get if they were members of the Association. Thus, there was a large increase in schools that wanted to join the NCAA.

While this was going on, the NCAA also was attempting to regulate the activities of its current member institutions. Athletic grant-in-aids were not permitted during this era of the NCAA; no institution was allowed to provide any type of payment to an athlete in exchange for their athletic ability. The athlete had to qualify for financial assistance, a need-based model. The

⁵⁴ Zimbalist, *Unpaid Professionals*, 91.

⁵⁵ *Ibid.*

⁵⁶ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 42-43.

⁵⁷ Zimbalist, *Unpaid Professionals*, 92.

⁵⁸ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 24.

NCAA had rules on prohibiting subsidization of athletes and rules concerning eligibility, yet they lacked any real enforcement mechanism; a necessary condition for cartel success.⁵⁹ With no enforcement procedures in place, NCAA rules were simply window dressing. A 1929 Carnegie Foundation study found some type of athlete subsidization occurring at eighty-one of one-hundred twelve schools studied, a clear violation of NCAA rules.⁶⁰ The writing was on the wall; without an enforcement mechanism, schools would violate the Associations rules whenever it benefitted them.

As the popularity of college football reached new heights, paying athletes financial costs, a clear violation of NCAA rules, was on the rise as well. The college football arms race had begun. Schools in the Southeastern, Southern, and Southwest conferences were subsidizing athlete's costs, while schools in the Big Ten and Ivey League were complaining about the unfair advantage in recruiting their rivals had, decrying athletic scholarships as violations to the NCAA's principles on amateurism.⁶¹

By 1945, wholly opposing athletic scholarships, the Ivey League institutions had seen enough of big-time college sports.⁶² They decided to deemphasize sports, and adhere to the principles of amateurism they felt properly applied to college sports.⁶³ One year later, the University of Chicago also gave up on big-time athletics, deciding sport had a minimal place in higher education. They left the Big Ten June 30, 1946.⁶⁴ The conference had a different take on Chicago's exit, claiming the university had lost the ability to field competitive sports teams.⁶⁵

⁵⁹ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 31,46.

⁶⁰ Sack and Staurowsky, *College Athletes for Hire*, 36.

⁶¹ *Ibid.*, 43.

⁶² *Ibid.*, 42.

⁶³ *Ibid.*

⁶⁴ Walter Byers with Charles H. Hammer, *Unsportsmanlike Conduct: Exploiting College Athletes*, (Ann Arbor: University of Michigan Press, 1995), 40-41.

⁶⁵ *Ibid.*, 41. The conference reasoning was appropriate. In 1939, Michigan beat Chicago 85-0 (Byers, 40).

These two moves were indeed surprising.

Chicago and the Ivey League schools were the birthplace of big-time college sports. Chicago was one of the first universities to capitalize on the popularity of intercollegiate sport, hiring highly paid coach Amos Stagg around the turn of the century and instructing him to develop a winning football team that would crush its opposition in a manner that would excite the general public to spend money by attending games.⁶⁶ Chicago offered large monetary enticements, including tuition and room and board to prospective athletes, and their success on the field saw enrolment at the university jump from 1,815 to 5,550 between 1896 and 1909.⁶⁷ Many would call the move to a pure need-based model of athletics noble or truly embracing the principle of amateurism, but it is entirely possible they simply could not compete with the new powerhouses of the game they invented.

In 1949, Michigan State University would take Chicago's place in the Big Ten, setting the present-day model for how to jump to the big-time. Michigan State has grown into a highly successful athletic powerhouse and has seen a large increase in its enrollment since joining the Big Ten, while the University of Chicago has kept its renowned reputation for being one of the finest institutions of higher learning in the country.⁶⁸ Michigan State is one of only a handful of schools that is annually in the top 25 rankings in both football and basketball, and their jump to the big-time in 1949 provided a road map for schools like Florida State University (a former all girls college), UNLV, and the University of Houston.⁶⁹

This chapter outlines two main points about college sports in the early years after the creation of the NCAA. First, the invention and availability of new media outlets contributed to

⁶⁶ Sack and Staurowsky, *College Athletes for Hire*, 21.

⁶⁷ *Ibid.*, 21-22.

⁶⁸ Byers and Hammer, *Unsportsmanlike Conduct*, 45.

⁶⁹ *Ibid.*, 46.

both the growth of intercollegiate sports as well as the growth of the Association's membership. Second, the prohibition on athletic based financial aid created a dichotomy between the NCAA's members which led to a power shift in the collegiate football landscape. Teams from the Ivey League schools that had ruled the collegiate football landscape early now found themselves either unwilling or unable to compete with newcomers who were seeking the new financial heights offered by college football. This trend of jumping to the big-time, or Division I athletic competition has been followed by hundreds of universities and continues to this day.

Chapter 5: Expansion, Growth, and the Maturation of the Cartel

With the college athletic landscape reshaping rapidly, the NCAA cartel was evolving as well, fully maturing from 1948 to 1952.⁷⁰ College sports were under no real control during this time frame. The NCAA was the governing body in charge, but there were no teeth to back up its rules. To remedy this, the Sanity Code was introduced in 1946 with rules covering financial aid, eligibility, and contained a punishment mechanism for rules violations.⁷¹ The code was adopted in 1948, allowing for aid to be given for athletic ability so long as the player in question qualified for financial need, and was not offered financial aid by a coach or recruiter.⁷²

The code did not last long however, it died just two-years later. The only punishment option was to expel the violating institution from the NCAA.⁷³ In 1950, as the Association was prepared to suspend seven institutions for noncompliance when news broke that the Southwest, Southern, and Southeastern conferences would break from the NCAA if the seven schools were in fact dismissed.⁷⁴ The appropriate number of votes was not achieved, no institution left or was forced out of the Association, and the code faded away.⁷⁵

The NCAA did not give up however, and finally established an enforcement mechanism that lasted in 1952. The Membership Committee was established, which later became known as the Subcommittee on Infractions, and was equipped with new penalties that fell short of outright

⁷⁰ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 36.

⁷¹ *Ibid.*, 47.

⁷² Sack and Staurowsky, *College Athletes for Hire*, 44.

⁷³ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 48.

⁷⁴ Sack and Staurowsky, *College Athletes for Hire*, 46

⁷⁵ *Ibid.*

expulsion from the Association.⁷⁶

The first penalty handed down by the NCAA involved a point shaving incident at the University of Kentucky in 1955.⁷⁷ Several men's basketball players were involved, and the university was hit with a one-year ban from competition.⁷⁸ This was a landmark case for the Association, because it was the first time they were able to show their member institutions they could actually enforce the rules they expected all universities to abide by.⁷⁹ The NCAA as a cartel had officially come into existence. The penalty levied in this case is now the most severe penalty the NCAA possesses, aptly known as the Death Penalty.⁸⁰

By the 1950's, the NCAA had become nationally relevant and it proved that it was able to enforce its lengthy rulebook in the name of amateurism. In 1952, the Association saw its commercial interests realized in a big way as well, when then president of the NCAA Walter Byers sold the television rights to broadcast college football in a package that featured one game per week for twelve weeks to NBC for \$1.144 million.⁸¹ Roughly thirty-years later, Byers would sign his last television agreement, allowing multiple networks broadcasting rights for the sum of \$281.196 million.⁸² College football is indeed big business.

The 1950's were a busy decade for the Association. The enforcement staff was showing off its muscle, the television dollars were rolling in, and they were able to coin a new term that

⁷⁶ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 50. In 1973, this committee was split into the Committee on Infractions, which handles violations hearings, and The Enforcement Staff, who are tasked with handling investigations (Wong, *Essentials of Sports Law*, 185).

⁷⁷ Byers and Hammer, *Unsportsmanlike Conduct*, 56-59

⁷⁸ *Ibid.*, 59.

⁷⁹ *Ibid.*

⁸⁰ The death penalty can be given to any member institution who commits more than one serious infraction in a five-year span. Its most notable application was the SMU football program in 1986, where after a lengthy run of rampant violations by the "Pony Express," (the program nickname is the Mustangs) the NCAA suspended their entire football program for one year, devastating a team that had reached national prominence.

⁸¹ Byers and Hammer, *Unsportsmanlike Conduct*, 79.

⁸² See note 81 above.

deceives the American public to this day; the student-athlete. Ernest Nemeth was a football player at the University of Denver who sued the university for workers compensation benefits to cover his football injuries.⁸³ The Colorado Supreme Court, to the shock of the NCAA, ruled Nemeth was an employee of the university, making them responsible for covering his football injuries via worker's compensation.⁸⁴ Walter Byers, then president of the NCAA, admits his feelings about the idea of college athletes being considered employees, "I was shocked that outsiders could believe that young men on grants-in-aid playing college sports should be classified as workers."⁸⁵

The NCAA took quick action to ensure this would not become a wide spread problem for their member schools. Byer's explains the NCAA's response to the Nemeth ruling, "We crafted the term student-athlete, and soon it was embedded in all NCAA rules and interpretations as a mandated substitute for such words as players and athletes. We told college publicists to speak of 'college teams,' not football or basketball 'clubs,' a word common to the pros."⁸⁶ This move was obviously a success for the NCAA. The term was embraced by both the media and the public. The simplicity is almost brilliant. How can anyone deny athletes are not students first, it clearly says they are in the name. Murray Sperber points out that this is merely a semantic trick to hide the fact that athletes are in fact employees brought to campus solely to generate revenue for universities.⁸⁷

⁸³ Robert A. McCormick and Amy Christian McCormick, "The Myth of the Student-Athlete: The College Athlete as Employee," *Washington Law Review*, 2006, 83, <http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/262/81/washrev71.pdf>.

⁸⁴ See note 83 above.

⁸⁵ Byers and Hammer, *Unsportsmanlike Conduct*, 69.

⁸⁶ See note 85 above.

⁸⁷ Murray Sperber, *College Sports Inc. The Athletic Department vs. The University* (Henry Holt and Company: New York, 1990), 205. "College Sports Inc." is Sperber's term to describe the business mindset of those who run college athletics, and who pay themselves handsomely for their work, who yet then shirk any business related financial responsibility rightly belonging to that endeavor. See page 16 for his discussion of the term.

In 1956, the NCAA officially relented, and allowed its member institutions to pay all educational related expenses for intercollegiate athletes, regardless of their financial aid needs or academic standing.⁸⁸ Ironically, this decision is said to be made in the name of amateurism. Allen Sack and Ellen Staurowsky suggest that “the concept of amateurism had become a convenient label that the NCAA could arbitrarily define to suit their needs.”⁸⁹ The reasoning for this claim is rather obvious; any organization that had previously viewed any type of payment as a violation of its most sacred principle, and then suddenly decides it can allow some payments, but not others, can and should rightly be labeled as hypocrites. The arbitrariness of what constitutes an acceptable benefit and what is a violation depends wholly on a small enforcement staff in Indianapolis. Those who question the motives of the NCAA have remarked that the organization, which was originally founded to prevent football injuries, has evolved into an institution which seeks to restrict the amount of compensation athletes can receive for their services.⁹⁰

Student-athletes, who of course are students first, were now being remunerated to attend institutes of higher learning because they excel athletically; whether or not they are academically prepared for college level course work is neither here nor there. Proponents of awarding full grant-in aid scholarships claimed this would help to clean up intercollegiate sports; leveling the playing field and ending illicit payments and other forms of cheating associated with enticing athletes to attend specific institutions.⁹¹ It was quite the opposite that turned out to be true however, as evidenced by anyone familiar with the Southwest conference from the 1960’s to the

⁸⁸ Byers and Hammer, *Unsportsmanlike Conduct*, 72. Byers' explains here that the following year, “those expenses were defined as tuition, fees, room and board, books, and \$15 dollars a month for nine months to cover laundry expenses.”

⁸⁹ Sack and Staurowsky, *College Athletes for Hire*, 47.

⁹⁰ Bill Cross, “The NCAA as Publicity Enemy Number One,” *University of Kansas Law Review* 58, no. 5 (2011): 1221.

⁹¹ Byers and Hammer, *Unsportsmanlike Conduct*, 73.

1980's could attest.⁹² Walter Byers describes the actual result, "the NCAA, in effect, had put in place a nationwide money-laundering scheme."⁹³ Byers was referring to how the arrangement of illicit payments had been altered. The subsidization of athletes prior to 1956 primarily occurred by boosters or alumni paying the players expenses directly, or giving the family money, now, they can give all their money directly to the institution, who in turn can give it to the players.⁹⁴ The money now can legally flow into the institution, but it is prohibited to give it directly to the athletes.

Allen Sack and Ellen Staurowsky identify the two main problems stemming from the new professional element of the NCAA. First, being recruited primarily as athletes, there is a high possibility that some of these individuals will lack the motivation or requisite skills required to succeed in a college classroom.⁹⁵ The other problem is the inordinate level of control coaches now possess over the athletes in their program.⁹⁶ By allowing contracted grants-in-aid, the only way the athlete can continue their education is by remaining on their athletics team.⁹⁷ If the athlete decides he needs time off from his sport to focus on school, he can have his scholarship revoked, thus ending his educational pursuit. There were two attempts to revert back to some resemblance of the amateur ideal thought to exist in the NCAA prior to 1956; only offering need based grant-in-aids, however, these measures were defeated by NCAA member schools in 1976, and again in 1981.⁹⁸ Professionalism had permeated throughout college sports, and it is now

⁹² Byers' discusses the egregious violations, which even involve the future governor of Texas, occurring in the conference at that time in (Byers and Hammer, *Unsportsmanlike Conduct*, 17-36). For those interested, the ESPN films documentary series "30 for 30" chronicled brilliantly the events of SMU during the early 1980's, which culminated in the death of a football powerhouse, ("Pony Excess" Directed by Thaddeus D. Matula).

⁹³ Byers and Hammer, *Unsportsmanlike Conduct*, 73.

⁹⁴ *Ibid.*

⁹⁵ Sack and Staurowsky, *College Athletes for Hire*, 95.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*, 132.

⁹⁸ Byers and Hammer, *Unsportsmanlike Conduct*, 231-34.

enmeshed in every aspect of the university athletic program.

Many, such as George Sage, see the NCAA scholarship as nothing more than a “conspiracy to hold down athletes’ wages.”⁹⁹ Prior to 1967, scholarships could not be pulled from players who were injured or who decided they no longer wished to participate in athletics; they functioned more as gifts to athletes, meaning usually they were a four year guarantee.¹⁰⁰ In 1967, schools, citing players accepting aid and quitting their teams made a push for one-year renewable grants. This failed initially, but in 1973, the Association put a ban on four-year guaranteed grants-in-aid.¹⁰¹ Schools were now not simply given the option between one year renewable grants or a four year guaranteed arrangement, they were prohibited from providing the latter. This prohibition makes perfect sense for the cartel; if one school can provide a better more secure offer in the form of a four-year guaranteed grant-in-aid scholarship, they will have an advantage over other schools offering only a one-year guaranteed grant-in-aid scholarship in the competition among athletes.

This was a big step for the NCAA member institutions, and one many wish was still in place. The four-year grant-in aid ban gave a coach supreme control over his athletes. They could now run-off, dismiss or fire athletes for any reason they deemed fit; injuries, attitudes, lack of commitment to the program, recruiting mistakes, or players who were recruited by other coaches that do not fit the new coaches system.¹⁰² An athlete’s athletic skills may be their only chance at earning a college degree, but a coaching change can mean new athletes with different skill sets

⁹⁹ Sage, “The Intercollegiate Sport Cartel,” 135.

¹⁰⁰ Sack and Staurowsky, *College Athletes for Hire*, 79-80.

¹⁰¹ *Ibid.*, 84. 1967 did see two new pieces of legislation passed that would allow for grants to be terminated if a player “misrepresented themselves” in the signed agreement that awards aid, or if they got into trouble. Misrepresentations were loosely understood and could cover a wide range of actions, essentially anything a coach could come up with. See (Sack and Staurowsky, 83).

¹⁰² Sack and Staurowsky, *College Athletes for Hire*, 84.

are required to execute the incoming system, making those currently on the roster expendable.¹⁰³ By strictly controlling the movements of their unacknowledged workers, colleges function less like amateur endeavors and more like athletic indentured servitude.¹⁰⁴

In 2012, the ban on four-year scholarships was lifted. Member schools voted 205-125 to keep the ban in place (62.1%) but fell short of the 62.5% supermajority required to keep it.¹⁰⁵ Few schools provide the four-year guarantees, the University of Florida, Auburn University, and a majority of universities in the Big Ten conference all offer four-year grants, but powerhouses like the University of Alabama, Louisiana State University, and the University of Texas all voted to keep the ban in place.¹⁰⁶

The 1960's also saw revived talk of athletes as employees. Once again, the NCAA skirted disaster by using semantics to complete an end-run around common sense.¹⁰⁷ In 1963, a California court ruled a deceased player, Edward Gary Van Horn, was an employee of his institution based on his athletics grant-in-aid.¹⁰⁸ The court claimed that because Van Horn's scholarship was at least partly awarded due to his athletic ability, he was contractually employed by the university.¹⁰⁹

At this time, some schools were currently providing only one-year renewable grants, they were often reassuring athletes that their scholarship would remain so long as they continued to play.¹¹⁰ Fearing this language could be interpreted as an employment contract, Walter Byers and

¹⁰³ Josh Levin, "The Most Evil Thing About College Sports," Slate, May 17, 2012, http://www.slate.com/articles/sports/sports_nut/2012/05/ncaa_scholarship_rules_it_s_morally_indefensible_that_athletic_scholarships_can_be_yanked_after_one_year_for_any_reason_.html.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ For those unfamiliar, the term "end run" is a common offensive football play.

¹⁰⁸ Sack and Staurowsky, *College Athletes for Hire*, 80-81.

¹⁰⁹ McCormick and McCormick, *The Myth of the Student-Athlete*, 85.

¹¹⁰ Byers and Hammer, *Unsportsmanlike Conduct*, 75.

Co. drafted a document sent to all member institutions explaining how to properly word grants-in-aid so as to make them appear less like a contract; “This award is made in accordance with the provisions of the constitution of the [NCAA] pertaining to the principles of amateurism, sound academic standards, and financial aid to student athletes... Your acceptance of this award means that you agree with these principles and are bound by them.”¹¹¹

Growth of college football increased in a big way during this decade, helped in large part to the death of one-way football.¹¹² With players no longer playing on both sides of the ball, it opened the door for specialized players and coaches at every position; squads grew from reasonable numbers to one-hundred-forty players and fifteen to seventeen coaches.¹¹³ It was not uncommon for football programs to sign in excess of fifty players each season, only keeping the best twenty or thirty.¹¹⁴ This growth made college sports teams much larger, and much more expensive.

Continuing their string of input controls, the NCAA invented the national letter-of-intent, which serves as a contract between the player and an institution, effectively ending their recruitment.¹¹⁵ After a player signs a national letter-of-intent, other schools are prohibited from contacting them. While this is one function, they also serve to bind athletes to universities for four years, yet the school, in most cases only is only bound to the athlete for one year. If a letter-of-intent is signed, the athlete must attend that institution, or be granted a release from their scholarship. Schools are not required to release athletes simply because they request it. The

¹¹¹ Byers and Hammer, *Unsportsmanlike Conduct*, 75

¹¹² One-way football implements the same group of players on both offense and defense, there is no specialization of positions; cornerbacks doubled as wide-receivers, tight ends doubled as linebackers, etc.

¹¹³ Byers and Hammer, *Unsportsmanlike Conduct*, 99.

¹¹⁴ See note 113 above.

¹¹⁵ *Ibid.*, 197.

school has full discretion.¹¹⁶ Attempts by athletes to be released from their scholarship are often denied, or come with stipulations forbidding the player from attending certain institutions.¹¹⁷

The amount of control a university can exercise over its athletes is absurd. Regarding football, players must be twenty-one years of age or three years removed from high school to be eligible for the National Football League (hereafter NFL) draft.¹¹⁸ The reasoning is supposedly that a player cannot physically compete in the NFL until they have reached this age, but this is clearly not true of all players. Athletes have tried to challenge this arbitrary number in court, to no avail. In 2004, two high profile athletes, Maurice Clarett from Ohio State University and Mike Williams from the University of Southern California, attempted to petition the league for a place in the NFL draft. Clarett had a stellar 2002 freshman season, but was ruled ineligible for accepting money from a person he was not legally dependent on, an NCAA violation, and lying to the NCAA about it.¹¹⁹ Clarett took his case before the United States Supreme Court, where it was denied. Williams, hoping for Clarett to be successful, declared for the draft without meeting the age requirement, hoping he would be allowed in. At the time he was a potential first round pick.¹²⁰ Concerning the NFL's eligibility rules, Peter French remarks, "the three-year rule is an utterly arbitrary rule designed by the NFL, in collusion with the universities, to protect its free minor league, intercollegiate football."¹²¹

¹¹⁶ If a school is under penalty, athletes whose eligibility will run out before the school can compete in bowl games are allowed to transfer to a new institution and the school cannot block the move.

¹¹⁷ As an example, see Robert Marv's transfer restrictions imposed by the University of Miami here: <http://sports.espn.go.com/ncf/news/story?id=3806816>. Also, Jarrod Uthoff's restrictions imposed by the University of Wisconsin here: <http://sports.yahoo.com/blogs/ncaab-the-dagger/wisconsin-severely-restricts-forward-jarrod-uthoff-transfer-options-180208129.html>.

¹¹⁸ There are very few exceptions to this rule.

¹¹⁹ Jay LaPrete, "Supreme Court Turns Down Clarett's Attempt to Enter NFL Draft," USA Today, April 22, 2004, http://usatoday30.usatoday.com/sports/football/nfl/2004-04-22-clarett-decision_x.htm.

¹²⁰ Ibid.

¹²¹ Peter French, *Ethics and College Sports: Ethics, Sports, and the University* (Lanham: Roman & Littlefield, 2004), 49.

Along with rules governing player movement, the NCAA also places rules on academics. Amid public concerns that the colleges had completely abandoned any academic mission, the NCAA pulled off a brilliant public relations move enacting minimal admissions standards for college athletes.¹²² The move was perceived as restoring academic standards to a system that had grown out of control chasing television dollars, but in reality it served as a very low academic bar to allow athletes into college. In 1986, Prop 48 was enacted, requiring a combined 700 SAT score or a 15 ACT score, along with a 2.0 GPA in eleven core classes.¹²³ Prop 48 has undergone many changes over the years, but its content is unimportant. What is relevant here is the NCAA governs all aspects of an athlete's life, and uses strategic ploys and semantics to give the public the impression that they actually care about the well-being of college athletes. The current system is not concerned at all with the well-being of student athletes, athletically or academically. It is designed to get what can be had out of an athlete athletically to boost revenues, while encouraging them to do only what they have to in order to stay eligible in the classroom. As soon as either of these cannot be attained, the athlete is pushed aside in favor of another who will take his place.

This section explains how the Association became nationally relevant by creating an enforcement mechanism to ensure adherence to the rules of intercollegiate sports. The first NCAA penalty handed down to the University of Kentucky was a message received loud and clear by other member schools; breaking rules would result in a penalty. The growth of college sports is evidenced as well, with then president of the NCAA Walter Byers securing a lucrative million dollar contract for the right to broadcast college football.

This time period also saw two major roadblocks to intercollegiate sports in the way of

¹²² Sack and Staurowsky, *College Athletes for Hire*, 98.

¹²³ *Ibid.* Core classes are English, math, and physical/social science.

workers compensation claims levied against the NCAA. After the Nemeth case the Association crafted the term student athlete to crystallize their stance that athletes are in fact students first. In 1956, the Association began to allow athletes to be recruited solely as potential college players, regardless of their financial need situation. This signed agreement between the player and the university serves as a contract binding the athlete to the school. These contracts had the unforeseen side-effect of making college athletes clear employees of universities, according to the courts. After the Van Horn case, the NCAA made sure to instruct all its member schools on precisely how to word athletic grant-in-aid scholarships as to avoid making them seem like employment contracts.

The move to allow grant-in-aid scholarships based solely on athletic ability created two serious moral problems. First, it ensures that a great number of athletes who are recruited will have little or no interest in academic pursuits. Athletes know they are being recruited to the university to provide commercial entertainment, and serious scholastic endeavors often hinder this goal. Second, it gave an inordinate amount of power to coaches in regard to the free movements of athletes, further advancing already imbalanced power differentials. Beginning in chapter seven, these two points will be utilized to explicitly show that college athletes are being exploited in the current system of intercollegiate sports.

Chapter 6: Antitrust Violations and Conference Realignment

In 1984, the Association was dealt a crushing blow by the Supreme Court, who, in a 7-2 decision, ruled the NCAA functioned as a cartel. The Court held the Association limited the market on the number of available college football games that could be televised, which inhibited consumer welfare, a violation of the Sherman Antitrust act.¹²⁴ The NCAA was also charged with price-fixing; they had a set price for the rights fees of all games, regardless of the number of carriers or the quality of the product.¹²⁵ The Court ended the NCAA's television monopoly, taking away their ability to sell the rights to college football, and leaving the Association with a \$2.2 million legal bill.¹²⁶

College football was an extremely valuable commodity by the 1980's. The member schools finally had enough of the NCAA dictated television schedule, and decided to break out on their own. The NCAA had lost its most visible output control, but many still remain. The Association is still in charge of the end of season basketball tournament, or March Madness, and they sign the network deals and collect all money from this deal to redistribute among its member schools. In 2010, the Association signed a ten-year, \$10.8 billion deal with Turner broadcasting and CBS Sports for the rights to televise March Madness.¹²⁷ Shortly after the Court busted the football monopoly, the NCAA secured its first \$1 billion rights deal with CBS, not a

¹²⁴ Zimbalist, *Unpaid Professionals*, 98. The case was brought against the NCAA by the University of Oklahoma and the University of Georgia.

¹²⁵ *Ibid.*, 99.

¹²⁶ *Ibid.*, 101.

¹²⁷ "Revenue," National Collegiate Athletic Association, <http://www.ncaa.org/>.

bad parting gift.¹²⁸ Fleischer, Goff, and Tollison argue that the NCAA, has “controlled both the input and the output markets of college sports” and despite the setback in 1984, “continues to act as a classic cartel by coordinating the pricing of the input services of players and paying them less than the competitive market value for their services.”¹²⁹

After the Supreme Court ended the NCAA’s monopoly on college football, teams received lower rights fees even though more games were being televised, a phenomenon that can be explained by monopoly theory. Monopoly theory shows that the NCAA was artificially lowering the output of college football games below what could be considered competitive levels, while charging a price above competitive levels.¹³⁰ Networks were being required to pay more for a less than competitive slate of games, and were not allowed to choose which games received airtime. With the monopoly broken, the number of games that could be televised increased substantially, and the revenue per game was lowered due to supply and demand of the market.¹³¹ Today, television deals are typically negotiated by conferences on behalf of their members.¹³² Given that some conferences have better teams, thus more marketable brand names, and some teams have excellent marketability and no conference affiliation, conference realignment and expansion have exploded since 1990.

In 1991, there was an influx of formerly independent schools into the Big East conference.¹³³ In 1992, former independent Florida State University joined the Atlantic Coast conference (ACC), while the University of South Carolina and the University of Arkansas both relocated to the Southeastern conference (SEC). In 1993, Penn State University joined the Big

¹²⁸ “Revenue,” National Collegiate Athletic Association, <http://www.ncaa.org/>.

¹²⁹ Fleisher III, Goff, and Tollison, *The National Collegiate Athletic Association*, 65.

¹³⁰ Zimbalist, *Unpaid Professionals*, 101.

¹³¹ *Ibid.*

¹³² Wong, *Essentials of Sports Law*, 728.

¹³³ Andrew McKillop, "College Football: Conference Realignment," SportsDelve.com, June 28, 2011, <http://sportsdelve.wordpress.com/2011/06/28/college-football-2011-preview-conference-realignment>.

Ten conference.¹³⁴ These types of moves became the norm, and the college landscape is constantly being reshaped each year. Most conferences are being re-drawn to chase football dollars, as the Big East was in the early 1990's. Recently, the Big East conference was on the verge of adding Boise State University and San Diego State University among others, but the seven Catholic institutions that make up the original Big East members had enough.¹³⁵ These seven schools were unhappy with the constant pursuit of football dollars, which had now resulted in conference members who resided on the other side of the country, and decided to leave the Big East to form their own conference. These moves highlight the big business college sports have become.

The initial purpose of a conference was to foster regional rivalries, and to bring NCAA governance to the local level.¹³⁶ This early aspect has certainly been lost. Conferences now function as homes for programs chasing large dollars, and the constantly changing landscape of college football has devastated some great rivalries. One such casualty occurred in the 2011 season, when the University of Nebraska left the Big 12 conference for greener pastures in the Big Ten, severing ties with their long-time rivals the University of Colorado, who had also fled the Big 12 that year to join the Pac-12 (formerly Pac-10) conference.¹³⁷

Not all teams rely on their conference to negotiate their television deals. The University of Texas, collaborating with ESPN, created The Longhorn Network, devoted entirely to the University of Texas intercollegiate sports teams. It is a 20-year deal, with Texas receiving \$10.98

¹³⁴ McKillop, "College Football: Conference Realignment," <http://sportsdelve.wordpress.com/2011/06/28/college-football-2011-preview-conference-realignment>.

¹³⁵ The seven original members are DePaul, Georgetown, Marquette, Providence, Seton Hall, St. Johns, and Villanova; none of whom play big-time college football.

¹³⁶ Wong, *Essentials of Sports Law*, 167.

¹³⁷ The Colorado-Nebraska Rivalry featured some excellent football games. In 2001, the Buffaloes defeated the Cornhuskers 62-36. Nebraska entered the game ranked #2 nationally, and was handily beaten as Colorado rushed for 380 yards and ended Nebraska's bid for a national title in late November.

million dollars a year, and a three percent annual increase.¹³⁸ When ESPN recuperates its initial \$295 million dollar investment, Texas will receive 70% of the profit.¹³⁹ These cases all highlight the bottom-line for college sports, make money. Boise State University (located in Idaho) and San Diego State University (located in California) were both willing to be members of a conference centered on the East coast, a sure logistics nightmare.

College sports have grown into a multi-billion dollar business, and there is more than enough money to go around; unless of course, you happen to be one of the thousands of student-athletes who make generating the money possible, then you may only be paid what is deemed permissible by the NCAA.

In this chapter, we saw that anti-trust violations cost the NCAA broadcasting rights to college football; however they still retained the rights to the end of season men's college basketball tournament, which provides a multi-billion dollar revenue stream. The ruling by the courts that the NCAA was a cartel provided new opportunities for athletic conferences; giving them the ability to secure television rights deals for their members. More successful and thus more profitable conferences saw their memberships increase and the college sports landscape is often reshuffled on an annual basis. Teams now change conferences to seek out more lucrative revenue shares, and this creates numerous problems for both classic conference rivalries and for the athletes that have to deal with less than ideal travel conditions. With schools traveling greater distances to meet scheduling requirements, athletes are taken away from the classroom for longer, more extended periods of time.

¹³⁸ Ty Duffy, "Longhorn Network Contract Between Texas and ESPN Revealed, Big 12 Future Not Bright," Big Lead Sports, August 8, 2011, <http://www.thebiglead.com/index.php/2011/08/08/longhorn-network-contract-between-texas-and-espn-revealed-big-12-future-not-bright/>.

¹³⁹ Ibid. The contract also allows Texas to order the termination of any ESPN employee who "does not reflect the quality and reputation desired by UT." Apparently objective journalism is not a high priority for the self-proclaimed worldwide leader in sports (Duffy 2011).

Chapter 7: The Problem of Academic and Financial Exploitation

The problem with college sports, especially in men's Division I football and basketball, is that athletes are currently being financially and academically exploited due to amateur rules and restrictions created by universities and enforced by the NCAA.¹⁴⁰ The case is not very difficult to make when one is presented with the facts. Division I football and basketball players can spend anywhere from thirty to sixty hours a week devoted to their sport, generate millions of dollars for their school, and many will not benefit in any real way from the educational product they receive, assuming they graduate.¹⁴¹ The reasoning here is that even if the athlete does manage to graduate, they are commonly pushed into majors that are not very academically demanding or rewarding.

The graduation rates for student athletes are lower than the graduation rate of all students at most institutions. There are exceptions. Stanford University graduates 96% of all students, and 97% of its student athletes.¹⁴² Graduation rates are calculated in two ways, the federal graduation rate (FGR) and the graduation success rate (GSR). Per the NCAA website, the GSR's were created at the request of university presidents to reflect the academic standing of transfer students more accurately.¹⁴³ The GSR's could be understood another way however. Some view this as a cleverly worded public relations statement to mask the true intent of the GSR's;

¹⁴⁰ Allen L. Sack, "Cui Bono? Contradictions in College Sports and Athletes Rights" in *The Governance of Intercollegiate Athletics*, edited by James H. Frey (New York: Leisure Press, 1982), 85. The term "Cui Bono?" asks who benefits.

¹⁴¹ Zimbalist, *Unpaid Professionals*, 37.

¹⁴² "Education and Research," National Collegiate Athletic Association, <http://www.ncaa.org/>.

¹⁴³ "Academics," National Collegiate Athletic Association, <http://www.ncaa.org/>.

The Graduation Success Rate is the percentage of athletes who graduated within six years after starting college, with an important exception – outgoing transfers and other departures don't count in the calculation, so long as they were in good academic standing when they left. Ignoring outgoing transfers has the predictable effect of making graduation rates look higher than they were under the old method. Of course, making graduation rates look higher without having to actually change anything was the whole point of the GSRs.¹⁴⁴

At many institutions, GSR's drastically improve graduation rates, as seen in Table 1.

Table 1- Graduation Rates 2010-2011

College	All Students	Student Athletes	GSR Football	FGR Football	GSR Basketball	FGR Basketball
Florida	84%	58%	75%	49%	17%	6%
South Carolina	70%	58%	55%	44%	58%	30%
Miami (Florida)	78%	54%	94%	72%	87%	53%
UCLA	90%	79%	62%	51%	70%	54%
California (Berkley)	90%	68%	48%	47%	50%	36%
Oregon	66%	53%	60%	54%	85%	90%
USC	90%	63%	57%	48%	43%	18%
Florida State	74%	58%	55%	45%	57%	33%
Texas	81%	71%	58%	58%	71%	33%
Oklahoma	68%	63%	47%	38%	71%	45%
Wisconsin	83%	73%	65%	51%	40%	33%
Michigan	90%	81%	69%	59%	64%	58%

Source: "Academics", National Collegiate Athletic Association, 2013, <http://fs.ncaa.org/Docs/newmedia/public/rates/index.html>.

This table is a random collection of university graduation rates.¹⁴⁵ The GSR numbers inflate the true federal graduation rates. The numbers of student athletes that graduate are on average lower than the number of all students, but the rates for football and basketball, the revenue producing sports, are abysmally low. Many claim that a free education in exchange for playing a game is an excellent deal, but when forty to sixty percent of athletes are not graduating, how can this be considered a fair deal? If the athlete does not earn the degree, the school still

¹⁴⁴ "The Bootleg's 2012 Graduation Rate Analysis," The Bootleg, May 3, 2012, <http://stanford.scout.com/2/1183346.html>.

¹⁴⁵ This is a random collection of universities from the Southeastern, Atlantic Coast, Pac-12, Big-10, and Big-12 conferences. All university graduation rates are available here, <http://fs.ncaa.org/Docs/newmedia/public/rates/index.html>.

benefits from their talents.

With a never-ending supply of athletes, no athlete is irreplaceable. Some will generate more revenue than others, but there will always be a continued pipeline of elite athletic talent. The welfare of the individual is ignored. Universities seek to gain all they can from an athlete for as long as they can, and when they can no longer help you win, they are discarded. Neither the NCAA nor the universities care if the athlete graduates. The system is not designed to be concerned with the long-term success of any athlete, it merely seeks to get as much out of them as can be had while it can be had. The consequence of this is a substantial number of athletes that enter the system with lofty goals that go unfulfilled, who in the end finish with no professional prospects and no degree. Graduation rates show how few actually finish the process of completing a course of study, and those that do hardly excel in this undertaking. If the media and public begin to talk about low graduation rates, the Association can artificially raise them with things like the GSR, which increase graduation rates instantly.

At certain institutions, the educational product being given to all students is subpar to say the least. An administrator from a university in the Sun Belt Conference claims:

We certainly can't give our students a quality degree—not with class size growing geometrically and 30-to-1 faculty/student ratio—but at least we can encourage students to have fun, and identify with our teams while they're here. . . . Football Saturdays are great here and so are winter basketball nights. In our admissions office literature, we've stopped saying that we provide a good education—our lawyers warned us that we could get sued for misrepresentation—but we sure promote our college sports teams.¹⁴⁶

This statement appears in Murray Sperber's work, "Onward to Victory," and is used to explain the powerful affect athletics can have in a university setting. Sperber claims that intercollegiate athletics has become a tool universities utilize to entertain college students, a pleasant

¹⁴⁶ Murray Sperber, *Onward to Victory: The Creation of Modern College Sports* (New York: Henry Holt and Company, 1998), 509.

distraction, and to bring more tuition dollars into the university.¹⁴⁷ Athletics programs are the most visible part of a university, and the average student would like to attend an institution that offers a fun social life; athletics fills this role. Institutions of higher learning are supposed to stand for honor and integrity, yet this quote makes one want to condemn this particular university as frauds or dissemblers. The truth is this problem is not confined to one school in the Sun Belt conference; it is a nationwide concern that contributes to the exploitation of college athletes.

The problem of exploitation is very damaging to the psyche of college athletes. Gary Funk discusses the effects of elite athletes being given handouts and constantly being told not to worry about their educational priorities, “It is here that the term exploitation is so appropriate. Athletic programs, whose survival depends on the actions of a few gifted athletes, often help to create illusions and priorities that are detrimental to the healthy, productive life of the individual participant.”¹⁴⁸ Funk is describing the way in which university athletic programs seek to deemphasize every aspect of a player’s life, except for their sport and the potential millions that await them at the professional level. Athletes are told the way to achieve financial success is on the field, not in the classroom.

The problem of financial exploitation is the most pressing matter, as commercialization within intercollegiate athletics increases, so do revenues going to institutions, while athlete compensation remains minimal.¹⁴⁹ The current system functions to allow the rich to become richer and the poor remain stagnant. The amount of money currently involved in college sports is obscene. Simply put, concerning Division I football and basketball, university athletic departments generate millions of dollars a year off the athletic talents of young men who receive

¹⁴⁷ Sperber, *Onward to Victory*, 509.

¹⁴⁸ Gary D. Funk, *Major Violation: The Unbalanced Priorities in Athletics and Academics* (Champaign: Leisure Press, 1991), 90.

¹⁴⁹ Zimbalist, *Unpaid Professionals*, 100.

nowhere near a commensurate wage to what they produce.

The case of exploitation is most clearly made utilizing a formula created by Karl Marx, explained here by Andrew Kliman, who writes “to quantify the degree of exploitation, Marx takes the ratio of surplus-value, s , to variable capital, v . The result, s/v , is what he calls the rate of surplus value or rate of exploitation.”¹⁵⁰ Applying this theory to college sports, “ s ” is the amount of money a team makes, or their profit, and “ v ” is the amount of payment the players receive, or their full-ride scholarship.¹⁵¹

Table 2- Top Ten Revenue Producing Football Programs 2011-2012 Season

College	Football Revenue	Football Expenses	Expense Per Player
Texas	\$103,813,684	\$25,896,203	\$42,010
Michigan	\$85,209,247	\$23,640,337	\$46,082
Alabama	\$81,993,762	\$36,918,963	\$40,411
Auburn	\$77,170,242	\$33,334,595	\$32,273
Georgia	\$74,989,418	\$22,710,140	\$50,788
Florida	\$74,117,435	\$23,045,846	\$52,395
Notre Dame	\$68,986,659	\$25,757,968	\$44,623
Louisiana State	\$68,804,309	\$24,049,282	\$23,071
Penn State	\$66,210,503	\$30,206,692	\$23,632
Arkansas	\$64,193,826	\$24,325,173	\$50,704

Source: “The Equity in Athletics Data Analysis Cutting Tool,” U.S. Department of Education, 2013, <http://ope.ed.gov/athletics/index.aspx>.

Table 2 above lists the top ten revenue generating football programs from the 2011-2012 football season. These athletic department financial numbers are required to be self-reported annually by all colleges and universities that receive Title IX federal funding under the Equity in Athletics Disclosure act.¹⁵² It is important to reiterate these numbers are self-reported by

¹⁵⁰ Andrew Kliman, *Reclaiming Marx's "Capital": A Refutation of the Myth of Inconsistency* (Lanham: Lexington Books, 2007), 24.

¹⁵¹ Thanks to Christopher Byron for discussion on this point.

¹⁵² Jason Bolton, “In College Football, Money Buys Championships,” *Memphis Business Journal*, August 29, 2012, <http://www.bizjournals.com/memphis/news/2012/08/29/in-college-football-money-buys-champions.html?appSession=818239281177186&RecordID=&PageID=2&PrevPageID=&cpipage=1&CPISortType=&CPIorderBy=>.

individual institutions, and there are no uniform accounting practices embraced by all schools.¹⁵³

Nevertheless, big-time programs clearly are generating large amounts of revenue, and none of this money is finding its way into the hands of those who make college athletics possible, the players.

Table 3- Rate of Exploitation for College Football Players

College	Rate of Exploitation
Texas	247,116%
Michigan	184,907%
Alabama	202,899%
Auburn	239,117%
Georgia	147,651%
Florida	141,458%
Notre Dame	154,598%
Louisiana State	298,228%
Penn State	280,279%
Arkansas	126,605%

The figures in Table 3 show the rate of exploitation of football players at the institutions listed in Table 2 according to Marx's "s/v" formula. For Marx, the goal would be to eliminate these percentages, thus removing the exploitation. As evidenced by Table 3, college football players currently are being exploited at very high rates. If Marx is correct in his understanding of exploitation, then it is apparent the labor of college athletes is being unfairly taken advantage of by those whom are tasked with looking out for their well-being.

One might object that athletes consent to the current system of intercollegiate athletics as a necessary condition to pursue careers as professional athletes. They are taking a risk, and moving through the college system imposes certain burdens they must carry on their road to financial success in the pros. This may be true for the elite athlete (a miniscule percentage) but for the average college athlete (the overwhelming majority) they have no chance to make it to the professional level. The objection would contend these are the athletes who benefit in the form of

¹⁵³Zimbalist, Unpaid Professionals, 153.

a valuable college education. As evidenced by the graduation rates in Table 1, this simply is not the case. Even if the athlete does benefit, they are still being unfairly exploited.

For those who are still unconvinced the athlete is being exploited, let us ask if the current system of intercollegiate sports is fair. Fairness here is best understood as explained by John Rawls. The Rawlsian conception of fairness requires that individuals uphold their obligations within a just cooperative system, voluntarily abiding by agreed upon rules which will restrict their autonomy to a certain degree but will yield benefits for all.¹⁵⁴ No one should benefit from the labor of others unless they have completed their fair share, satisfying their obligations.¹⁵⁵ Essential here is the fact that the institution in question must be just. Rawls contends that if the institution is in fact unjust, an agent is not bound to the rules of this institution.¹⁵⁶

Concerning the NCAA, we can determine if it is a just institution by utilizing the Rawlsian hypothetical original position. The original position is designed to lead rational actors to create a just system.¹⁵⁷ To ensure that all are equal in the original position, not guided by perceived advantage, prejudice or bias, the veil of ignorance is invoked meaning each actor will not know what capacity they will fill in the system.¹⁵⁸ For our purposes, this means all potential actors in the current system, be it university presidents and athletic directors to third-string football bench players, will elucidate a fair arrangement that all can agree to without knowing what role they will fill in the system.¹⁵⁹

The benefit here is that all parties will want a fair system, because they would not want to be disadvantaged by unjust rules if they happen to be in a less well-off situation. If for instance,

¹⁵⁴ John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Harvard University Press, 1999), 96.

¹⁵⁵ Rawls, *A Theory of Justice*, 96.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*, 16.

¹⁵⁸ *Ibid.*, 118.

¹⁵⁹ *Ibid.*, 19.

the president of the NCAA were to enter the original position under the veil of ignorance, he would likely not choose the current arrangement as a just system of intercollegiate athletics. The reasoning would be that he very well may end up being an athlete from a low socioeconomic background who is currently underprepared for college level courses and overworked on the field. He could in fact be an elite athlete who generates millions for his university, but is unable to receive any of this money due to NCAA rules and he has no real chance of attaining a worthwhile degree, which is allegedly his reward for all his hard work on the playing field. As indicated by low graduation rates, this is a very real possibility.

A fair arrangement that is constructed from the original position would include equal opportunities for all actors. If coaches and university higher-ups enjoy free movement without penalty, it would seem fair to extend this privilege to the athletes as well. The current system of course does not offer this benefit to athletes in revenue producing sports. The original position would also call for a more equitable distribution of the wealth generated by the athletes who play the games. Currently, they are provided tuition, room and board, and other incidentals associated with the pursuit of a college degree, while coaches and athletic directors receive multi-million dollar compensation packages. This large disparity in remuneration would not be accepted by rational actors functioning behind the veil of ignorance. There is nothing unreasonable about wanting to be fairly compensated for one's labor, and Rawls' understanding of fairness forbids agents from benefiting from the labor of others when they have not done their fair share. We do not necessarily need equality, according to Rawls, but institutions must comply with the principle of fairness to be considered just.

Here, one could argue coaches may have a case for receiving large financial compensation packages. They are the designers of game plans and are tasked with teaching

athletes to properly execute plays. However, the athletes would have an equally valid case to be paid large financial compensation packages. They are, after all, the ones tasked with executing the coach's plays. A brilliant coach with untalented athletes is likely to lose more often than win, and will eventually be unemployed. The talent and hard work of the athletes is integral to the success of the coach. If the coach is highly paid because he is a winner, it stands to reason the athletes should be compensated accordingly to the role they play in his success.

By utilizing Rawls' original position and veil of ignorance, it is evident that the current arrangement is unjust. Rational beings who are seeking a fair arrangement of intercollegiate athletics would not choose the current system. Those who work the hardest to generate benefits for all involved are in fact receiving the least amount of benefits in return. Those who are benefitting the most are in positions of authority, the NCAA executives and university higher-ups, far removed from the labor product that actually generates the revenue they enjoy so much. These actors play a role in the system, yet they are being benefitted in ways that are highly disproportionate to the contributions they make, an unjust system according to a Rawlsian understanding of fairness.

This discussion of fairness leads to a different understanding of exploitation. Marx's theory allowed for exploitation to be quantified, but this is not the only way we can conceive of the term. Chris Myers has developed a theory known as beneficent exploitation, which claims "it is possible for someone to be wrongly exploited even if that person benefits from the exploitation and even if the person prefers the exploitation over all other options."¹⁶⁰ Myers understands exploitation in terms of fairness.¹⁶¹ For our purposes, beneficent exploitation refers to the fact

¹⁶⁰ Chris Myers, "Wrongful Beneficence: Exploitation and Third World Sweatshops," *Journal of Social Philosophy* 35, no. 3 (Fall 2004): 320.

¹⁶¹ *Ibid.*

that colleges and universities are benefiting from the labor of college athletes disproportionately. Looking at the numbers from Table 2 and the percentages in Table 3 this becomes clear.

Beneficent exploitation fits the current plight of college athletes. Even those football and basketball players that earn degrees, which is a benefit, are being exploited by a broken system. Universities make millions from the talent of athletes, and do not offer anything close to a fair wage for their highly valuable workforce. If we understand exploitation in this way, one can see the intercollegiate athletic system is in desperate need of reform. Peter French criticizes the current system, stating that college athletes are “being treated as mere means to an end from which they only marginally benefit, if at all.”¹⁶² French is invoking the Kantian principle of respect for persons here, arguing that the current system fails to respect the rational nature of the players.

An objection one could lobby would be that college athletes are like any other employee-employer relationship, where the employee agrees to perform services for a settled wage, thus not using the employee as a mere means.¹⁶³ French however contends that this is not what is occurring in the current intercollegiate athletic system. Athletes, according to the NCAA and its member institutions, are not employees of the university; they are allegedly students who happen to compete in athletic competition for the university.¹⁶⁴ The NCAA has fought numerous court battles to ensure their athletes are not considered employees of the university. For French, under a Kantian understanding of respect for persons, the athletes have a right to be fully informed of the goals of coaches and athletic departments who recruit them, as well as the right not to be used

¹⁶² French, *Ethics and College Sports*, 93.

¹⁶³ *Ibid.*, 96.

¹⁶⁴ *Ibid.*

in ways the athletes would not consent to.¹⁶⁵ Athletes are not being coerced to sign with college programs, but there is deception involved. Bait-and-switch tactics are common among recruiters, or the practice of selling one picture of an athletic program to a recruit when the reality is far different.

In the current system of intercollegiate athletics, athletes are not informed in this manner. They are not aware of the coaches' true intentions for them as players, nor of the coaches' true intentions regarding his future employment. If a coach were to recruit an elite athlete and inform them that the university planned to make millions of dollars from their athletic prowess, and to then use this money to pay large compensation packages to the program's coaches and athletic department executives, while the athlete gets the bare minimum to survive and has roughly a fifty percent chance to graduate, athletes may no longer want to participate in this system. Athletes can never expect to be fully informed, but these facts seem simple enough to disclose, and may have a drastic effect on whether or not the athlete wishes to involve himself in this arrangement.

Walter Byers, the first president of the Association and the man responsible for building the current system, argues aptly just before leaving office in 1985, that athletes need to have the same opportunities coaches enjoy in terms of the free market. He claims they should be able to endorse products and capitalize off their own celebrity on account of the exploitation they currently endure at the hands of the system.¹⁶⁶ The money they generate through these endeavors could be placed in a trust for the athlete after their collegiate career has come to an end or they graduate.¹⁶⁷ This was a novel idea in 1985, and also the reason Byers has fallen out of the good

¹⁶⁵ French, *Ethics and College Sports*, 97.

¹⁶⁶ Byers and Hammer, *Unsportsmanlike Conduct*, 13.

¹⁶⁷ *Ibid.*

graces of the Association. By placing any earnings in a trust, athletes would not simply mirror the professional model, which so many fear. Had this been implemented, perhaps the situation would not be as dire as it is now. Given the current landscape of college sports, this indeed should be implemented, however, simple fairness demands more. Players deserve a piece of the revenues they produce for their universities.

Instead, we have a system that rewards already wealthy coaches and athletic directors by taking the surplus generated from the exploited athletes and paying these groups well in excess of the value they produce.¹⁶⁸ The compensation currently provided to athletes is the same for elite players and marginal role players, a clear sign of collusion to keep player costs down. The true beneficiaries of athletic scholarships are students that compete in nonrevenue producing sports; they commit much less required time to their sports and graduate at much higher levels.¹⁶⁹ As an example, recall the FGR and GSR graduation percentages from the University of Florida football (FGR 49%, GSR 75%) and basketball (FGR 6%, GSR 17%) programs and compare these numbers to Florida's women's volleyball team (FGR 100%, GSR 100%).¹⁷⁰ Concerning exploitation, the athletes in revenue producing sports are the ones that are being harmed the most by the present system.

Roger Noll explains that for athletes who have no interest in academics, “the ‘scholarship’ received by the athlete is essentially valueless, except insofar as it gives him four to five years of training, medical attention, and room and board while he prepares for his shot at

¹⁶⁸ Zimbalist, *Unpaid Professionals*, 87. In 1999, Zimbalist estimates a generous MRP for excellent Division I college basketball coaches at a range of \$121,000 to \$172,000, many of whom make substantially more than that (86).

¹⁶⁹ *Ibid.*, 52.

¹⁷⁰ “Academics,” National Collegiate Athletic Association, <http://fs.ncaa.org/Docs/newmedia/public/rates/index.html>.

professional sports.”¹⁷¹ Why would an institute of higher learning be willing to admit a student with zero academic interests while funding their room, board and tuition? Why would these institutions continually serve as the unofficial, uncompensated minor league for the NFL? The answer is that in these athletes who have no academic interests, colleges have found a gold mine. These players will generate massive amounts of revenue, while colleges only have to pay them pittance and not be concerned about the quality of education provided, as the athlete has no interest in erudition. Former Iowa State football coach Jim Walden has been quoted as saying, “not more than 20 percent of football players go to college for an education. And that may be a high figure.”¹⁷²

Statements like this do not shock the public, or if they do the shock factor does not last. How is it that this broken system continues to function relatively unmolested? We know a substantial number of these young men do not have any academic interests, yet we force them to put on a show, thus affording the public the opportunity to villainize them when they mess up this golden opportunity generously provided to them by the NCAA. College is not for everyone. In fact, a substantial number of the population does not attain a college degree. The NFL is the only business that effectively requires an individual to attend college but does not require them to obtain a degree.¹⁷³

This is less of a problem in basketball, as there are other viable opportunities for players only seeking a professional career. The National Basketball Association (NBA) used to allow high school players to jump straight from high school to the professional ranks. Many players made a seamless transition in this endeavor, such as LeBron James, Kobe Bryant, and Kevin

¹⁷¹ Noll, "The Economics of Intercollegiate Sports," 206.

¹⁷² Zimbalist, *Unpaid Professionals*, 39.

¹⁷³ Sperber, *College Sports Inc.*, 7.

Garnett. Some struggled, never reaching their full potential, like Kwame Brown. To respond to this crisis (that was not actually a crisis) of players not succeeding, the NBA enacted what has been deemed the one-and-done-rule in 2006, requiring a player to be one year removed from high school to be eligible for the NBA draft. Many players attend college for essentially one semester and declare for the draft. They can manage an easy course load and hone their skills until it is time to make the jump.

However, there is another option. Some athletes, like Brandon Jennings, spend this one season playing in other professional leagues, often overseas. This gives them the opportunity to earn a decent wage while testing their skills against professional talent. The NBA instituted an arbitrary admission requirement which has benefited colleges for the most part. Players like John Wall, who attended the University of Kentucky and Derrick Rose who attended the University of Memphis likely would not have attended these institutions if they were allowed to jump directly to the professional ranks. Without these two players, their respective teams may not have made such deep runs in the NCAA tournament, which earn both the university and the coach more dollars.¹⁷⁴

The fact is athletes should be free to pursue careers as professionals without having to pretend they are interested in obtaining a college degree.¹⁷⁵ George Sage describes the situation the NCAA has created in cohorts with its member institutions, “stripped of the rhetoric used to convince athletes and the public that athletic scholarships are philanthropic ‘free rides’ and that athletes are living the best of all possible worlds, the NCAA scholarship is first and foremost a

¹⁷⁴ Ironically both athletes played for the same coach, John Calipari, whose contract incentives for making deep runs in the year end tournament will be discussed later.

¹⁷⁵ Zimbalist, *Unpaid Professionals*, 41.

conspiracy to hold down athletes' wages.”¹⁷⁶ Sage goes on to describe how athletes are trapped in the grasps of the NCAA cartel, unable to sell their athletic talents on the free market to the highest bidder.¹⁷⁷

This chapter makes several arguments for ways in which athletes are currently being exploited by the NCAA and its member institutions. Academically speaking, graduation rates for athletes in the two main revenue producing sports are on average significantly lower than that of all students. The NCAA, at the request of athletic directors created the GSR's to give the impression that student athletes were graduating at higher rates than indicated by the original FGR standard. Also, information is presented that highlights how poor the educational product offered by many schools actually is, and for those athletes that do manage to graduate, their course of study is not typically a very demanding or rewarding educational pursuit. The revenue seeking universities create a flawed sense of priorities for many athletes, allowing them to believe they have a shot at securing a lucrative professional contract, when in reality only about three percent of these players has a realistic chance to achieve this. Athletes that do not make it to the professional ranks end up with a degree that will not aid them in future employment opportunities or worse still, without any degree at all.

Financially speaking, the amount of revenue produced in college sports is incredible, yet this money is not finding its way back to those who make generating it possible. Utilizing the s/v Marxist formula to quantify the rate of exploitation at the top ten revenue producing football programs the financial exploitation inherent in the current system is apparent. For many jobs, rates of exploitation according to Marx's theory can be high, but few other endeavors create percentages as high as those seen in intercollegiate revenue producing sports.

¹⁷⁶ Sage, “The Intercollegiate Sport Cartel,” 135.

¹⁷⁷ Ibid.

To rectify this, a case is presented for simple fairness in the arrangement of intercollegiate sports. Using a Rawlsian account of justice as fairness, it becomes clear that no rational actor would agree to the current terms of the system when we invoke the original position thought experiment coupled with the veil of ignorance. The current system is not just, and thus actors cannot be bound by the rules of the game as fairness would dictate.

For those athletes that do manage to graduate, Chris Myers's beneficent exploitation shows that it is possible to be benefitted by an arrangement that one enters into freely and still be exploited. This occurs when one group, namely coaches, athletic directors, and the NCAA disproportionately benefit in a collaborative effort. During the recruiting process, athletes are often exposed to bait and switch tactics, where recruiters distort reality and conceal vital information to secure recruits commitments to athletic programs. This shows a clear lack of respect for persons in the Kantian sense. Athletes in revenue producing sports simply are not getting the deal sold to them during the recruiting process. Athletics are the most visible part of a university, and yet far too many are ignorant of the inherent exploitation in college sports.

Chapter 8: The Truth about Intercollegiate Athletics

The numbers do not lie; college sports are designed to make money.¹⁷⁸ The evidence put forth so far is convincing; college sports are big business. The NCAA, functioning as a cartel has, in conjunction with its member institutions, succeeded in building an empire in college sports specializing in exploiting the talent of young men for financial gain. Functioning as a business, the system attempts to achieve maximum gain at minimal cost, which is made much easier by the tax breaks afforded to both the Association and its member institutions that are in name non-profit groups.¹⁷⁹ Former Association head Walter Byers describes the situation:

Today, the NCAA Presidents Commission is preoccupied with tightening a few loose bolts in a worn machine, firmly committed to the neo-plantation belief that enormous proceeds from college games belong to the overseers (the administrators) and supervisors (coaches). The plantation workers performing in the arena may receive only those benefits authorized by the overseers.¹⁸⁰

This damning indictment comes from a very credible source. Byers, who is a major contributor to the current system, has since decided his creation is unjust. This is a reasonable and apt assessment given the discussion of justice from chapter seven. He unfortunately made this discovery when he no longer had the power to change the system. Because college sports function as business, winning is and must be the primary goal.¹⁸¹ When functioning as a business, only winning programs generate maximum revenue. Coaches are evaluated by professional standards (win-loss records) but they must operate within the confines of amateur

¹⁷⁸ Sperber, *College Sports Inc.*, 1.

¹⁷⁹ Sack, "Cui Bono?", 81.

¹⁸⁰ Byers and Hammer, *Unsportsmanlike Conduct*, 2-3.

¹⁸¹ Sack, "Cui Bono?", 83.

rules.¹⁸² The fact is that coaches who run clean programs and graduate students at high levels simply do not last, especially at elite universities. Smaller schools may tolerate losing for a time, but will not keep a coach that cannot put a winner on the field. The dilemma for a head coach is simply this; run a clean program in an ethical manner, weighting appropriately the demands of both the coursework and the practice time of your athletes, and you will be disadvantaged because most programs focus all of their time on the latter.¹⁸³

Allen Sack argues the problem is not that the university is in the business of mass commercial entertainment; it's that they refuse to acknowledge it.¹⁸⁴ He writes, "professional sport in academia need not produce the corruption, exploitation, and unethical conduct which have prompted so much criticisms and debate over the years."¹⁸⁵ By admitting the primary goal in Division I athletic endeavors is to make money, universities can end the hypocrisy, deception, and exploitation we currently find in college sports. Admitting this would require changes in player compensation, as they would clearly be viewed as employees of the university recruited to provide commercial entertainment. Unfortunately, they have no incentive to give up the charade. The public has been brainwashed by the NCAA to believe college sports are simply supported and played for the love of the game, and anyone who breaks the Association's rules is corrupt; attempting to destroy the sanctity and intrinsic goods involved in an amateur athletic pursuit.

Athletes are required, under the current arrangement, to succeed both in the classroom and on the field. Failure in one area results in losing the other. A player who is excelling in school, but failing on the field can have their scholarship revoked at any time, for any capricious, arbitrary reason their coach can create. On the other hand, an athlete excelling on the field who

¹⁸² Sack, "Cui Bono? ", 83.

¹⁸³ Funk, Major Violation, 142.

¹⁸⁴ Sack, "Cui Bono? ", 83.

¹⁸⁵ See note 184 above.

fails their coursework is kicked off the team. The role of full time student and elite athlete are often contradictory.¹⁸⁶ Athletes must, and are often expected to make sacrifices for their sport.¹⁸⁷ Athletes in the revenue producing sports are not encouraged to pursue their academic dreams, if they indeed have any at all. They are told by coaches their focus needs to be on athletics first and foremost; after all that is why they have an athletic scholarship to the university. To neglect your athletic pursuits in favor of devoting more time to your intellectual pursuits can, at most institutions, result in revocation of your scholarship, which in turn puts an end to your intellectual pursuits.

This is not an exaggerated problem. Many athletes struggle with the mixed messages sent from their coaches and the NCAA. One would refer to them as student-athletes, while the other as athletes who also are required to be students. Many big-time college coaches ask that you only achieve enough in the classroom to remain eligible for competition. If you can succeed in the classroom with what little free time you have away from your sport, kudos to you. However, you must remember that sports come first. Every season, many athletes are suspended from competition for failing courses and dropping their GPA below what is minimally required. If one of the goals of intercollegiate athletics is to foster the development of both athletic and intellectual skills, why is this a re-occurring problem? If the system is designed to create both excellent students and athletes, why do we then marvel at instances where this actually comes to fruition?

In reality many do not expect much at all from athletes in the classroom. Murray Sperber writes about the dichotomy faced by athletes who are attempting to reconcile the demands of being a full-time athlete and a full-time student. This is what the current system requires. Far too

¹⁸⁶ Sack, "Cui Bono? ", 84.

¹⁸⁷ Sack and Staurowsky, *College Athletes for Hire*, 95.

many athletes neglect the latter, at the instruction of those tasked with looking out for their best interests, their coaches. Sperber describes this phony curriculum athletes are pushed into as “a school’s Division of Ridiculous Studies,” meaning courses that lack any meaningful educational value.¹⁸⁸

It is difficult for any athlete to truly flourish in the present system. NCAA rules coupled with an extremely demanding schedule, as Sperber points out, often contributes to an athlete withdrawing from one of these roles in order to attempt to maximize their ability in the other. The NCAA and their member institutions have made a habit of admitting students to college who have no reasonable chance at prolonged success academically. Failure in the classroom when one does not have the prerequisite skills to succeed is damaging on many levels, and cannot be considered contributing to flourishing in any meaningful sense. If athletes can only realize their full potential in one area, why does the NCAA require them to pursue both, something that could lead to mediocre or failing results? The consequence of admitting underprepared athletes to college and requiring them to undergo the activities of a full-time student while meeting the training regiments of a professional athlete is setting them up for failure.

A less demanding academic or athletic schedule seems much more conducive to flourishing and is less likely to set an individual up for failure. Currently, the revenue producing sports in intercollegiate athletics do not create opportunities to flourish, but instead create an atmosphere where failure is common, in some sense expected. If the well-being of the athlete were of central concern to the powers that be, a less demanding schedule, either on the field or in the classroom would be created. Perhaps athletes could be part-time students, or pursue degrees after their playing days have come to an end. These options would force the NCAA and its

¹⁸⁸ Sperber, College Sports Inc., 9.

member institutions to admit that college athletes are brought to universities to play sports however, and they simply refuse to do this.

Many athletes enter college at a marked disadvantage academically. John Gerdy, in his work, “Air Ball,” comments on a study that explains athletes have reported “being underprepared and outperformed academically, overworked athletically, isolated in an athletic ‘womb,’ with little money to enjoy anything close to a ‘normal’ life as a college student.”¹⁸⁹

The NCAA has restrictions limiting practice time for football at twenty hours per week; however, Walter Byers explains these limitations are ineffective because coaches simply make non-mandatory (mandatory) sessions.¹⁹⁰ Essentially, if you do not show up for these sessions, you will see your playing time diminish and possibly not have your scholarship renewed for disciplinary purposes.¹⁹¹ Brandon Mitchell, a former Division II running back from a college in the Patriot League conference described to me how this system operates.¹⁹²

In the fall, practices were held for 21 days before the other students arrived on campus for the upcoming semester. Practice times alternated from three hours a day to six hours a day. It was all football, all the time. Athletes typically got twelve hours to themselves a day during camp, however there were no other students on campus to interact with. The practice limitation rule was not explained to the athletes. When the semester began, Monday was a scheduled off day. Tuesday through Thursday practice was held from 3:30 to 6:30, and athletes had to report to the field by 3:00 for meetings. Friday’s practice was one hour shorter, with games on Saturday.

¹⁸⁹ John R. Gerdy, *Air Ball: American Education's Failed Experiment with Elite Athletics* (Oxford: University Press of Mississippi, 2006), 130. The athletic “womb” refers to athletes often being isolated on campus. Athlete only dorms were common in history, and many athletes take classes together, which coupled with their training regiments’ left little if any time for other campus activities.

¹⁹⁰ Byers and Hammer, *Unsportsmanlike Conduct*, 103.

¹⁹¹ *Ibid.* Byers also points out here the irony of colleges requiring students to skip class for a college sanctioned event, where non-compliance can result in the loss of financial aid.

¹⁹² Brandon Mitchell, conversation with author, October 27, 2012.

If it was a road game, meetings were held Friday evening after practice.

Athletes were strongly encouraged to have all their classes early; missing team activities for class would jeopardize an athlete's playing time. Players were looked down on for taking classes that conflicted with the team's schedule. Brandon, a biology major, was told several times by coaches and advisors that they do not recommend such a demanding major. Brandon was a scholar athlete in high school, and a proven good student, however, they did not want him to risk being overburdened by school work.

The weight-lifting schedule was to be done on the athletes own time, Monday through Thursday before practice, or there was disciplinary action. Brandon found out after he graduated this was in fact an NCAA violation. What is the purpose of a rule that cannot be enforced? It gives the public the image that athletes are not being overworked. Starting players were also expected to come to the facility to watch game and practice film once a week. For road trips, the team would depart Friday evening after practice and film study. Longer trips required leaving Friday morning, causing athletes to miss class.

Athletes were expected to do as they were told, and academics only received priority when a player's eligibility was becoming an issue. According to Brandon, "once you arrived, they had you." On top of such a busy schedule, freshmen were required to go to study hall three days a week, from 8:00 to 10:00 during their first semester. If your grade point average was lower than 3.0, you had to attend your whole first year. Sophomore's also had to attend if they had a 2.5 GPA or lower. While this seems like a great idea, it actually hurt those who wished to take their studies seriously. Essentially there would be twenty-five freshman and fifteen upperclassmen in a room with no supervision. He describes it as a hang out session as opposed to a study hall. He would often have to go to the library after study hall to finish his course work.

When players reported the difficult atmosphere to coaches, nothing was done to remedy the situation. Off-season workouts were similarly taxing and time consuming. Athletes do agree to these conditions, however, is it fair to call a full-time athlete who was recruited to play football a student-athlete? This schedule was at a Division II school, where athletes could only get need-based financial aid. Elite, nationally ranked programs run a much more difficult schedule.

Some athletes take full advantage of the system. They go into college using athletics to fund a degree of their choice, and gain something valuable from their experience. Many others are not so lucky. Even under the Division II need-based model of financial aid, coaches are expected to produce victories, and this means pushing athletes away from the classroom and onto the field.

The current system of intercollegiate athletics is designed to make money from the popularity of Division I men's football and basketball. Because of this business oriented goal, winning becomes a necessary and sufficient condition to financial success. The contradictory roles of full-time student and full-time athlete create an atmosphere where athletes are expected and in some cases required to make academic sacrifices in order to stay on scholarship. This design flaw in the system stretches athletes too thin, and waters down the successful pursuit of a degree for many college athletes. College football and basketball players are being set up for failure, and their rigorous schedules prohibit them from truly flourishing during their time in college. A close examination of Brandon Mitchell's experience as a Division II athlete shows that the NCAA cannot enforce practice limitations, as workouts that exceed the allotted twenty hours a week are labeled voluntary, even though they are in reality required. Brandon's case also highlights that academic pursuits are not taken seriously by those in positions of power, and even

when time is set aside for studying, there is no supervision to ensure progress is made. There is always however a system of supervision and accountability to ensure athletic pursuits are not neglected.

Chapter 9: The Association's Rules and Enforcements

The NCAA does not create legislation to govern college sports. Rules are proposed, voted on, and passed by the Association's member institutions. Once a rule has been adopted, the NCAA is tasked with interpretation and enforcement.¹⁹³ The current NCAA rules manual is now 439 pages and growing, governing all interactions and relationships between student athletes and coaches, as well as outside third parties. The biggest problem with such an expansive rule book is no one bound to follow the rules (coaches and athletes) actually knows what they are.¹⁹⁴

Former division II running back Brandon Mitchell said soon after players arrive, there is a brief discussion of common infractions players commit, but no formal discussion of the rules is given.

It is no surprise athletes and coaches do not know the rules that govern their lives, very few could find the time to read such a document, and fewer still can actually grasp what is being said. I have had the privilege of reading the manual, and one can lose hours and hours reading rule after rule. Seemingly every possible scenario is discussed. Bylaw 13.1.9 is probably the most disturbing;

Funeral/Memorial Services. An institutional staff member may attend the funeral or memorial services of a student-athlete, a prospective student-athlete or a member of the student-athlete's or a prospective student-athlete's immediate family, at which prospective student-athletes also may be in attendance, provided no recruiting contact occurs. The involved prospective student-athlete must have signed a National Letter of Intent, or a written offer of admission and/or financial aid with the institution, or the institution must have received a financial deposit in response to the institution's offer of admission. (Adopted: 4/28/05, Revised: 1/15/11, effective 8/1/11).¹⁹⁵

¹⁹³ Yeager, *Undue Process*, 91.

¹⁹⁴ *Ibid.*, 93.

¹⁹⁵ National Collegiate Athletic Association, 2011-2012 NCAA Division I Manual (Indianapolis, Indiana, July 2011), 99. <http://www.ncaapublications.com/productdownloads/D112.pdf>.

Everything imaginable is covered by the Association rulebook. Sometimes, rules are proposed by small schools trying to keep up with the big-time programs, others are from small occurrences that disadvantage one school, so they create a rule to level the playing field.¹⁹⁶

It would appear rules are proposed and passed typically for one or two occurrences that may or may not have taken place. Bylaw 13.9.1 looks like a prime example of this. A coach may have attended a funeral and had a player commit to his program shortly after, so we now need a rule regulating what can be said at a funeral. The overregulation has become absurd. Imagine this scenario: A university professor is driving to campus, and spots a student with a broken down car in the rain. The professor is polite enough to offer the student a ride to campus, no problem. If the student is replaced with a basketball player whom the professor recognizes, providing transportation would be an NCAA violation.¹⁹⁷ In 2010, University of Southern California running back Dillon Baxter was suspended one game for catching a ride on a golf cart to practice.

The only ones in this system without a voice are the athletes. NCAA rules are often cited as looking out for the well-being of athletes. Ask Dillon Baxter if he agrees with this audacious claim. Athlete welfare is of no concern to the NCAA. Their mission is to regulate any ridiculous piece of legislation passed by its member institutions. The rules are supposed to make sure athletes are treated like any other student, when in reality they encroach on every activity an athlete partakes in, on and off campus. Former agent Mike Trope had this to say regarding NCAA rules: “The NCAA rules are not the laws of the United States. They’re simply a bunch of hypocritical and unworkable rules set up by the NCAA. I would no sooner abide by the rules and

¹⁹⁶ Yeager, *Undue Process*, 95.

¹⁹⁷ Adapted from: Yeager, *Undue Process*, 109.

regulations of the NCAA than I would the Ku Klux Klan.”¹⁹⁸ The fact is there are too many players, too many schools, and too many boosters and various other outsiders for the NCAA to ever enforce anything evenhandedly and fairly.¹⁹⁹ Walter Byers admits to the NCAA’s limited ability to effectively catch rule violators, asking if any organization could enforce constantly changing, increasingly arbitrary rules.²⁰⁰

The NCAA rule system has had a predictable effect. Lisa Kihl discusses how the utilization of a stringent rulebook inhibits the use of practical morality, or the ability to properly exercise moral judgments in practical cases.²⁰¹ Kihl conducted a study of ten compliance officers in the Pac-12 Conference (Pacific 10 at the time) to understand how the compliance officers’ morally thought about their professional roles and responsibilities.²⁰² The study yielded some interesting results.

One compliance officer disclosed a difficulty in admitting students who did not appear to be academically ready for college level work, something not against NCAA rules, but something the officer believed was morally problematic.²⁰³ Another officer describes the difficulty in relaying bad news, such as loss of eligibility, to players and coaches: “I guess that is where we see the emotional or the ‘human’ side of the rules. I don’t believe that those issuing the rulings or interpretations see that side.”²⁰⁴ Oyvind Kvalnes and Liv Hemmestad explain the biggest pitfall of rule based ethical approaches in sports is that the detailed list of rules tells actor’s there are no more moral issues to sort through; all potential ethical decisions have already been decided and

¹⁹⁸ Zimbalist, *Unpaid Professionals*, 26.

¹⁹⁹ *Ibid.*, 46.

²⁰⁰ Byers and Hammer, *Unsportsmanlike Conduct*, 197.

²⁰¹ Lisa Kihl, "Moral Codes, Moral Tensions and Hiding behind the Rules: A Snapshot of Athletic Administrators' Practical Morality," *Sport Management Review*, (2007): 280.

²⁰² Kihl, "Moral Codes," 286.

²⁰³ *Ibid.*, 291.

²⁰⁴ *Ibid.*, 293.

one simply has to follow the rule book.²⁰⁵

One compliance officer in the Kihl study sums up precisely this sentiment: “What I try to do in this job is to say the book is right, the book is right. I don’t have to make moral judgments [hits rule book with hand]. What it says in the book is the way it is supposed to be. If it ain’t that way then I have a problem.”²⁰⁶ The comments of the compliance officers’ paint a very problematic situation for the Association. We are left with loophole ethics, where individual actors appeal to the fact they have not broken any rules through their conduct.²⁰⁷ Citing the annually growing NCAA manual as evidence, this approach just leads to more rules. If an action is not expressly forbidden, then it is perceived as an acceptable act; when in fact each new case may be cause for ethical reflection. Every situation is different, and this particular problem may be a new issue that has not yet come up before, meaning silence from the rule book.²⁰⁸ This is especially pertinent because the lives and futures of innocent young athletes are hanging in the balance, their fate being decided by the arbitrary commands of a distant, unaffected group.

This is precisely the worry with rule based approaches to ethical dilemmas. The NCAA says the rules are the fault of their member institutions, claiming they do not make the rules, while the member schools claim the NCAA is interpreting the rules they passed in the wrong way. No one is being held accountable, insane rules are being passed and the athletes are suffering.

Meanwhile, athletes accused of rules violations are guilty until proven innocent.²⁰⁹ As

²⁰⁵ Oyvind Kvalnes and Liv Hemmestad, "Loophole Ethics in Sport," *Etikk i praksis: Nordic Journal of Applied Ethics* 4, no. 1 (2010): 57-58.

²⁰⁶ Kihl, "Moral Codes," 297.

²⁰⁷ Kvalnes and Hemmestad, "Loophole Ethics in Sport," 59.

²⁰⁸ *Ibid.*, 58.

²⁰⁹ Andy Staples, "It's Time for the NCAA to Make Sweeping Changes," *SI.com*, January 24, 2013, <http://sportsillustrated.cnn.com/college-football/news/20130124/mark-emmert-ncaa-amateurism-changes/>.

soon as an athlete is implicated in any wrongdoing, rabid fan bases, and the media take the story and run wild. If they have been accused, they surely have to be guilty! Even after an athlete is cleared of wrong doing, the stigma remains because they typically are not fully vindicated, simply not punished. Cam Newton's case mentioned earlier highlights this point. For months leading up to the NFL Draft, ESPN reported multiple times about the possible ramifications of him being implicated in an attempted pay for play scenario.

When an athlete does actually break the Association's rules, they are forever branded a cheater. A.J. Green, former wide receiver for the University of Georgia, sold one of his game worn jerseys in 2010 for \$1,000. He was suspended four games. The NCAA discovered this horrible transgression by investigating Green for attending a party in Miami, something they discovered through the crack news agency, TMZ.²¹⁰ Upon finding out Green had not attended the party, they asked for his bank records and discovered the \$1,000 dollar deposit, and he told them it came from selling one of his jersey's.²¹¹

The case of A.J. Green is ludicrous on every angle. How can an athlete be punished for selling their own property? How can an organization initiate investigations from the findings of a celebrity gossip column? The NCAA has an answer to these concerns. According to the Association's website, "the mission of the NCAA enforcement program is to reduce violations of NCAA legislation and impose appropriate penalties if violations occur. The program is committed to the fairness of procedures and to the timely and equitable resolution of infractions cases."²¹² Also, "the enforcement staff receives information about possible violations from

²¹⁰ Tim Tucker, "A.J. Green: I Sold Jersey for 'Extra Cash' During Spring Break," Atlanta Journal-Constitution, September 28, 2010, <http://blogs.ajc.com/uga-sports-blog/2010/09/28/a-j-green-i-sold-jersey-for-extra-cash-during-spring-break/>.

²¹¹ Ibid.

²¹² "Enforcement," National Collegiate Athletic Association, <http://www.ncaa.org/>.

several different sources. Member institutions, media reports, confidential/anonymous sources and other individuals all can provide information.”²¹³ I find these statements thoroughly unconvincing.

The NCAA is well aware they can never effectively police all institutions under their control. Given the number of current rules, they can reasonably assume there are violations at just about every institution. As was the case with Green, any hint of wrongdoing and the Association will show up and dig until a violation is found. The enforcement process is not even handed. The NCAA lacks subpoena power, and cannot compel anyone outside its cooperative principle (athletes, institutions and their employees) to provide a statement.²¹⁴ Agents, common rule breakers, operate outside this principle and do not have to answer to anyone when they are implicated in wrongdoing. Players and coaches can also escape the wrath of the Association by going to the professional level, as Pete Carroll did before the University of Southern California was hit hard with sanctions in 2010.

For this reason, sanctions that are applied to institutions often miss their intended target. Referring back to USC, in an attempt to punish the school for violations that occurred six years earlier, the school was placed on two-year bowl ban from 2010-2011, had to vacate wins, and lost scholarships.²¹⁵ During the same time span the basketball program lost scholarships, got limits on recruiting, and had to repay money received from a final four appearance because a player accepted impermissible benefits.²¹⁶ These sanctions, meant to teach USC a lesson, only worked in harming athletes who did not break NCAA rules. Players with postseason eligibility

²¹³ “Enforcement,” National Collegiate Athletic Association, <http://www.ncaa.org/>.

²¹⁴ Ibid.

²¹⁵ Maureen A. Weston, "NCAA Sanctions: Assigning Blame Where it Belongs," *Boston College Law Review* 52 (2011): 557. Sanctions related to Reggie Bush, who was already in the NFL.

²¹⁶ See note 215 above. Sanctions related to O.J. Mayo, who left for the NBA.

that extends beyond the ban cannot transfer to a new institution, unless the school decides to release them from their scholarship.

Bylaw 13.1.1.3.3 and 13.1.1.3.4 limit the restrictions of athletes who can transfer from sanctioned universities to only those who will run out of eligibility before the sanctions expire.²¹⁷ To their credit, USC released some recruits out of their scholarships, but they were by no means required.²¹⁸ USC will violate Association rules again, as will all other universities. The only people hurt by the penalties handed down by the NCAA are the athletes left in the wake of these alleged scandals. Matt Barkley, former USC starting quarterback, missed opportunities to play in bowl games his sophomore and junior seasons because the school was being punished for actions that took place before he even arrived at the university.

In 1996, Marcus Camby was ruled ineligible for accepting money while playing basketball at the University of Massachusetts Amherst. UMass had to vacate their tournament appearance and pay back 7.5% of earnings achieved through that appearance. Camby who was then in the NBA, cut the university a check for \$151,617 in a tax deductible donation. In the end, the only loser is the federal government, who received about \$60,000 less than they would have been owed from Marcus Camby in income taxes.²¹⁹ What is actually gained through these enforcement mechanisms? These few cases are simply brief examples of the absurdity that is the NCAA. One could write volumes on the thousands and thousands of similar ludicrous investigations and punishments of the Association.

The large rulebook used by the NCAA creates several moral issues that must be addressed. First, the sheer volume of the rules manual makes it impossible for coaches or athletes

²¹⁷ NCAA Division I Manual, 83. <http://www.ncaapublications.com/productdownloads/D112.pdf>.

²¹⁸ Weston, "NCAA Sanctions," 567.

²¹⁹ Zimbalist, Unpaid Professionals, 115-16.

to fully know and comprehend the rules that govern most aspects of their lives. The consequence of not knowing a rule is the same as the penalty for willingly breaking rules; there are no mitigating factors. The rationale behind the creation and implementation of new rules is hidden in a shroud of secrecy, lacking any true accountability or transparency. Athletes have no voice in this system, and this simple fact contributes greatly to the level of exploitation.

Second, the NCAA rulebook inhibits the use of practical moral deliberation about ethical problems, and has the effect of allowing those tasked with enforcement to mitigate their ethical failings by appealing to the rulebook. Athletes who are accused of breaking rules are labeled as cheaters, whether they have actually broken a rule or not. The NCAA is well aware that they cannot effectively police all colleges and universities, but they manage to level penalties frequently as violations tend to occur at every institution in the system. Enforcement of rules is not evenhanded, and the sanctions handed down by the Association often miss their intended targets, as players and coaches can flee to professional ranks without accepting punishment. Those athletes that have not broken any rules are often left to suffer the consequences.

These unfortunate truths about the system are yet another example of the exploitation suffered by college athletes. The following two chapters will examine the policies of the NCAA in more depth, further stressing the need for reform in college athletics.

Chapter 10: The Amateur Propaganda

NCAA Bylaw 12.01.1 decrees only amateurs may compete in intercollegiate athletics.²²⁰ Article 12 of the Division I manual lays out all rules concerning the amateur status of athletes. In Bylaw 12.01.4, the Association claims a grant-in-aid scholarship does not constitute pay for athletic performance so long as it does not exceed what is permitted by the NCAA.²²¹ The Association and its member schools cannot possibly believe this. In all likelihood, they do not. But they do not have to, so long as the public believes it, their system is safe.

Sack and Staurowsky argue that institutions of higher learning paying expenses for talented athletes so they can provide entertainment is not inherently wrong, but we can however morally question the utilization of the term amateur to set an arbitrary limit on what constitutes permissible payment.²²² They contend that denying these athletes fair compensation, when they are clearly being recruited as athletes first is “anachronistic and highly exploitive.”²²³

No other university student is so highly restricted and regulated than the college athlete. Students in any other area can use the skills they are developing in college to earn a living outside the school without jeopardizing their scholarship. Theatre students, band students, and even academically gifted students can all use their talents in any way they see fit to earn money, with the exception of the college athlete.

The concept of an amateur is a relatively recent invention. Supporters of the amateur

²²⁰ NCAA Division I Manual, 61. <http://www.ncaapublications.com/productdownloads/D112.pdf>.

²²¹ Ibid.

²²² Sack and Staurowsky, *College Athletes for Hire*, 91-92.

²²³ Ibid., 136.

model argue that the ancient Greek and Roman sportsmen were the first original amateurs. However, as Peter French points out this certainly was not the case, as these athletes often competed for precious metals and varying other valuable goods.²²⁴ French explains how the word evolved from being used to describe something undertaken as a hobby to something used to “perpetuate what we now regard as a morally indefensible social system” in nineteenth century Britain.²²⁵ The British used the term amateur to exclude certain groups from athletic competition, namely the working class, deeming those who worked for a living as professionals.²²⁶

Amateurism was simply a device to exclude those who were in a lower class, presumably because these individuals were better suited to compete in athletic contests, but the main purpose was to delineate social status.²²⁷ Amateurs were supposed to perfect their sporting craft in their spare time, avoiding any type of methodical training.²²⁸ The NCAA’s ideal of an amateur athlete is one who seeks the internal goods of sport, for the love of the game, as opposed to seeking financial remuneration. The Olympics clung to this antiquated notion until 1987.²²⁹

The NCAA soon realized that the best athletes could not, or would not play college sports without some type of compensation. In the early years of the Association, living expenses and tuition were commonly paid by members of the community or local boosters. In order to standardized compensation across all institutions, the NCAA allowed full athletic grant-in-aid scholarships. This step effectively ended the associations experiment with amateur athletics. Athletes are now being paid a wage to compete in intercollegiate athletics, yet the NCAA

²²⁴ French, *Ethics and College Sports*, 10.

²²⁵ *Ibid.*, 11.

²²⁶ *Ibid.*

²²⁷ Sack and Staurowsky, *College Athletes for Hire*, 15.

²²⁸ *Ibid.*, 16.

²²⁹ French, *Ethics and College Sports*, 17.

permits this so long as they can dictate how much the athlete gets, a rather random amount.

If the NCAA is truly concerned with the welfare of college athletes, why would they ever revoke a player's eligibility?²³⁰ To illustrate how little the Association cares about athlete welfare, consider the case of Vincent Edward Jackson, better known simply as Bo. Arguably the greatest athlete of all-time, Bo Jackson was in fact the best two-sport athlete we have ever seen. He dominated on both the baseball field, crushing 500 foot homeruns with ease, and on the football field, overpowering and out running defenses.²³¹

Bo could not finish his senior baseball season at Auburn University because he flew on a private jet owned by Hugh Culverhouse to visit and workout with the Tampa Bay Buccaneers, also owned by Culverhouse. Buccaneer team executives had told Bo they cleared the trip with NCAA compliance officers, as he was worried about losing his eligibility for baseball, a sport he loved to play.²³² In his words; "My senior year, I am tearing the cover off the ball."²³³ Four or five days after his trip, Bo was preparing for an upcoming baseball game. He was approached on the field by his coach who asked if he had indeed flew on Culverhouse's jet, to which Bo responded yes, but it had been cleared through the NCAA.

Bo's coach responded by telling him that the trip was not cleared, and he had been ruled permanently ineligible for all sports by the NCAA. Bo Jackson describes the situation; "I sat there on that ground and I cried like a baby."²³⁴ Hal Baird, Bo's baseball coach at Auburn, said "it crushed Bo, and it crushed all of us because it was as innocent a thing as could be and it cost him the second half of his senior year in baseball, and at that time, we all thought it had cost him

²³⁰ French, *Ethics and College Sports*, 21.

²³¹ *You Don't Know Bo*, Directed by Michael Bonfiglio, (2012; ESPN Films: 30 For 30, documentary).

²³² Same as note 231 above.

²³³ Same as note 231 above.

²³⁴ Same as note 231 above.

first round status in the baseball draft.”²³⁵

Bo Jackson was a Heisman Trophy winning running back, one of the best athletes to step foot on a college campus, and the NCAA took away his eligibility for plane ride. A case like this highlights how trivial NCAA rules can be. The Association claims most rules are to ensure competitive equity and amateurism, and yet this punishment does neither. Bo Jackson did not gain any competitive advantage from being on that plane, and it is only an impermissible benefit because the Association deemed it as such. If the welfare of student athletes is what is most important, why are cases like this the norm?

The fact is colleges do not run their athletic departments as amateur endeavors. Peter French describes the situation:

Amateurism, defined in monetary terms, is the relatively easy way the NCAA has attempted to promote the ideal of competitive equity, and it does so, not surprisingly, along lines roughly similar to those used by upper-class sportsmen, the gentlemen amateurs to exclude what they regarded as those who would skew the level of competition because they were better fit to succeed at the sport. All the rest is mere rhetoric without substance in intercollegiate athletics.²³⁶

Amateurism is a device used to restrict what the cartel’s unrecognized labor force can earn for their participation in sport. If athletes were given a commensurate wage for what they are required to do, what exactly would change about college sports? The games would go on, universities would continue to make millions of dollars off the hard work of their athletes, and everyone could stop pretending, removing the hypocrisy inherent in the current system.

The general public has bought the NCAA rhetoric. When rules are broken, and college amateurs cross that imaginary line into professional sports, they are vilified by the media and rabid fan bases. Cries of corruption erupt from the masses; young adults are treated like

²³⁵ You Don’t Know Bo, Directed by Michael Bonfiglio, (2012; ESPN Films: 30 For 30, documentary).

²³⁶ French, Ethics and College Sports, 29.

criminals, criminals who sully the good name of amateur college sports, college sports which should be played solely for the intrinsic goods of the game. The millions universities pull in are not mentioned. It is time we reject the semantics and rhetoric of the NCAA, and shift our focus to the real problem, the exploitation and manipulation of college athletes.

Amateurism, defined in financial terms by the NCAA is the most sacred principle held in college sports. This is morally problematic because there is no clear rationale given for adherence to this principle. Amateurism, as the NCAA understands it does not have historic significance as evidenced by the fact that ancient Greek and Roman competitors competed for valuable prizes. The Association cannot show why this principle is necessary, and by clinging to it they are harming those whom they claim they are protecting, student athletes. The story of Bo Jackson is a prime example of this, and is not merely an isolated incident. Thousands of student athletes suffer undue harms in this system, and the reasoning offered does not justify the harm being done. The intercollegiate principle of amateurism is morally problematic, and must be eliminated from the NCAA vernacular. This point will be further elucidated in chapter fifteen.

Chapter 11: Recruiting and Transfer Rules: Stabilizing the Workforce

Like all pieces of Association legislation, rules restricting the movement of athletes have an ulterior motive. Simply put, recruiting rules are intended to curtail wild spending sprees by universities in pursuit of highly sought after athletes.²³⁷ By putting restrictions on recruiting, it standardizes how schools can go about trying to bring in elite athletes. This keeps recruiting costs to a minimum, not allowing coaches to transfer rents from institutions and themselves to recruits and their families.²³⁸ In theory, if all schools play by the rules (for the most part), they all accumulate revenues.

When recruiting rules are not followed, chaos ensues. A look at the infamous Southwest conference between the 1960's and the 1980's is a classic example²³⁹. During this time period, illicit payments to athletes were common place among all member institutions, and the end result was athletes shaking down universities for as much money as they could get. Athletes were given large amounts of money and even cars in exchange for their commitment. The end result was all conference members being forced to break rules to keep up in recruiting. Arthur Fleischer, Brian Goff and Robert Tollison point out that the NCAA, like most cartels, faces a problem of schools cheating in order to gain an advantage, which increases their share of cartel rents.²⁴⁰

If one school cheats against the agreement, they can see substantial benefits, so long as they avoid detection by the NCAA. When all schools cheat, it gives the power to the athletes.

²³⁷ Fleischer III, Goff, and Tollison, *The National Collegiate Athletic Association*, 95.

²³⁸ See note 237 above.

²³⁹ *Pony Excess*, Directed by Thaddeus D. Matula, (2010; ESPN Films: 30 for 30, documentary).

²⁴⁰ Fleischer III, Goff, and Tollison, *The National Collegiate Athletic Association*, 101.

Athletes in this scenario can demand anything they wish from schools, which will pay so they do not lose prized recruits to heated rivals. Recruiting rules are covered in article 13 of the Association manual and covers all conceivable interactions between anyone associated with an institution and the prospective athlete.

Perhaps the most glaring indication the NCAA is a cartel determined to maximize profits for its member institutions is the transfer restrictions that apply to athletes. If a player transfers from one Division I institution to another, they are required to sit out of competition for one full academic year, per Bylaw 14.5.1:

Bylaw 14.5.1 - A student who transfers (see Bylaw 14.5.2) to a member institution from any collegiate institution is required to complete one full academic year of residence (see Bylaw 14.02.13) at the certifying institution before being eligible to compete for or to receive travel expenses from the member institution (see Bylaw 16.8.1.2), unless the student satisfies the applicable transfer requirements or qualifies for an exception as set forth in this bylaw. (Revised: 1/10/91 effective 8/1/91, 4/27/00 effective 8/1/01, 5/19/08, 6/24/09, 4/14/10)²⁴¹

Bylaw 14.5.5.1 explains this residency rule, “[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 (two full semesters or three full quarters) at the certifying institution.”²⁴²

The rationale for this rule is that athletes are supposedly students first and must become acclimated to a new academic atmosphere before competing in intercollegiate competition, yet in reality it is clearly a way to inhibit the movement of athletes amongst universities.²⁴³ George Sage describes transfer rules as market stabilizers, which function as a way to save money for the

²⁴¹ NCAA Division I Manual, 173. <http://www.ncaapublications.com/productdownloads/D112.pdf>. A player who has yet to use their redshirt can use it during this time. Redshirting extends an athlete’s window to compete in college athletics by one year, and potentially two depending on the circumstances of the case.

²⁴² *Ibid.*, 177.

²⁴³ Sperber, College Sports Inc., 239.

cartel by not allowing schools to bid on athletes from other institutions.²⁴⁴ Without transfer restrictions, an athlete who slipped through the recruiting nets of big-time programs could go to a smaller institution, compile impressive statistics for one season, and jump to a larger school the following year.

By requiring an athlete to sit out a full season, the incentive to leave is greatly diminished. Athletes have a finite amount of eligibility, and for a player eying professional ball a year on the bench can negatively impact their draft stock. Unfortunately for the Association, their actions have undercut their unconvincing rationale for this rule. As discussed earlier, in the wake of scandal at an institution, athletes who will run out of eligibility before the postseason sanctions are lifted are free to transfer to any institution that will have them without being required to sit out a year.

If an athlete needs a residence year to become a true member of their student body like the Association claims, why are athletes from scandal ridden schools allowed to transfer and play immediately at new institutions? The scandal at Penn State which led to a four year postseason ban for the football program, among many other sanctions, for example, was levied in July of 2012, just two months before the start of the 2012 season. All current Penn State football players were allowed to transfer to any school and were immediately eligible to play. Other universities use opportunities like this to raid a program.²⁴⁵

If these athletes do not need time to adjust and integrate into their student bodies, why would any athlete? According to bylaw 14.5.5.2.10, the residency rule only applies to baseball, basketball, men's ice hockey, and FBS football. These four sports also happen to be the only consistent producers of large revenues for colleges. Athletes in these sports can also transfer to

²⁴⁴ Sage, *The Intercollegiate Sport Cartel*, 137.

²⁴⁵ A similar incident occurred at SMU after the death penalty was issued against the program.

Division II or III schools without being forced to sit out a year. The number of athletes willing to lose the publicity Division I athletics brings is small, so there is no reason to restrict downward movement. The Division II transfer is commonly used by athletes who get in trouble and need to stay on the field one more season before turning pro.²⁴⁶

This serves as clear evidence that the NCAA only seeks to restrict the movement of athletes in revenue producing sports. Transfer rules serve wholly as a means to limit the mobility of the unrecognized employees of universities. Coaches and athletic directors can move freely at any time they wish, with the biggest restriction being an exit fee required to buy out their current contract, something their new institution usually picks up. If an athlete is recruited and commits to a university to play for a specific coach, that athlete cannot follow his coach to the new institution without being forced to sit out one year, and this can only happen if the current institution releases the athlete and does not block their new institution request. As we have seen, the only function served by transfer rules is to keep athlete movement under control.

The 2013 college basketball season shows an example of how coaches can abandon the athletes they allegedly care so much about. Florida Gulf Coast University head men's basketball coach Andy Enfield brought his small program into the national spotlight by advancing the fifteenth seed Eagles into the Sweet Sixteen in the NCAA Championship tournament. The Eagles were featured on sports and news programs all week long leading up to their matchup with the Florida Gators, with Enfield often discussing how proud he was of his players. After their victory over the two seeded Georgetown University Hoyas, the players gathered around their beloved coach and chanted "Andy."

²⁴⁶ See the cases of Janoris Jenkins, who transferred from the University of Florida to North Alabama after being kicked off the team for drug use, and Isaiah Crowell, who transferred from the University of Georgia to Alabama State University after encountering legal troubles as examples.

The Eagles ran out of magic on March 29th, being knocked out of the tournament after a loss to the Gators. The media and the country had fallen in love with the small program from Fort Myers, Florida, and many hoped to see the program improve on its success the following season. However, just three days later Enfield accepted the head coaching position at the University of Southern California, signing a six-year contract. This is the problem with college sports. Coaches are free to move at any time and the players they recruit are simply afterthoughts in their pursuit to fame and fortune.

Transfer rules, much like recruiting rules have a rationale given by the Association that they are necessary for equity in athletics. However, further investigation shows that these rules, much like all other NCAA rules, conveniently benefit the Association and its member institutions while causing undue harm to the athletes. These severe restrictions on athlete autonomy further the case that college athletes are being unfairly exploited. All actors in the present system can move without penalty with the exception of those athletes in revenue producing sports. The NCAA, through legislation adopted by its member institutions finds itself occupying a morally indefensible position. The following chapter will address how former student athletes are attempting to institute a change in the status quo through a landmark court case that could permanently alter the current landscape of intercollegiate athletics.

Chapter 12: Change on the Horizon?

The NCAA is currently involved in a legal battle that could potentially alter the current college landscape in an unprecedented way. The case has been described as the NCAA's worst nightmare, and it seeks to change how athletes are compensated for the use of their images.²⁴⁷ What is at issue in this case is whether or not the law requires athletes to be compensated for the unauthorized use of their image in video games and television broadcasts facilitated by the NCAA.²⁴⁸

The original suit was filed in 2009 by Sam Keller, a former college quarterback for Arizona State University from 2003 to 2005, and the University of Nebraska in 2007.²⁴⁹ Keller filed suit against Electronic Arts, Inc. (hereafter EA), a popular video game manufacturer, as well as the NCAA and the Collegiate Licensing Company (hereafter CLC) for, among other things, violating his right of publicity, contending that the NCAA violated his amateur status by licensing EA to use his image in their video game.²⁵⁰ The right of publicity complaint covers all representation that can reasonably be understood to represent a specific individual; hence it does not actually have to be a portrait of the complaining party.²⁵¹ The case has since been consolidated with separate cases, including two filed by former University of California, Los Angeles (UCLA) basketball player Ed O'Bannon and former University of Cincinnati basketball

²⁴⁷ Tom Farrey, "Change in Compensation Sought," ESPN.com, September 2, 2012, http://espn.go.com/college-sports/story/_/id/8324732/new-motion-lawsuit-ncaa-change-how-athletes-compensated.

²⁴⁸ Cross, "The NCAA as Publicity Enemy Number One," 1221.

²⁴⁹ *Ibid.*, 1222.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*, 1226.

player Oscar Robertson, among others.²⁵²

These former players are arguing the NCAA unlawfully profited from the use of their images and are seeking compensation from the sale of video games and a slice of broadcast revenues as well.²⁵³ Stanford University economist Roger Noll has created a formula to show how much money the players would be entitled to share if the NCAA did not put restrictions on athlete earnings, breaking the numbers down by conferences and individual schools.²⁵⁴ For example, under this formula SEC football players during the 2009-2010 season would be entitled to share \$61.5 million.²⁵⁵ If the NCAA indeed loses this court case, athletes will be compensated for their work by earning a percentage of the revenues they generate.

The video games in question refer to NCAA Football and NCAA Basketball, which are created annually by EA. The problem with these games is they portray current student athletes in vivid detail. For example, NCAA football 13 has most college football players (real rosters usually have 90-120 player's whereas the games rosters are capped at 70) from the 2012 season, including some incoming freshman yet to play a collegiate game. The players on the game correspond to real-life players exactly, featuring their accessories and even their hometowns. The only difference is there are no names listed. Players are identified on the game by their position and number, so Matt Elam, strong safety for the Florida Gators is represented as SS #22.

College teams are listed by name, and the stadiums, along with the atmosphere surrounding them is recreated in extraordinary detail. EA pays the NCAA for exclusive rights to trademarked college football content, and each game the company produces must be approved by

²⁵² "NCAA Legal Issues" National Collegiate Athletic Association, <http://www.ncaa.org/>.

²⁵³ Steve Berkowitz, "Report Quantifies Value of College Athletes' Images," USA TODAY, October 22, 2012, <http://www.usatoday.com/story/sports/college/2012/10/22/obannon-case-ncaa-documents-roger-noll/1650677/>.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

the Association and its member institutions.²⁵⁶ The brilliant irony of the Keller lawsuit is he actually is accusing the NCAA of jeopardizing his amateur status.²⁵⁷

The NCAA has several bylaws that speak to this issue in some degree, but none that directly address it. For instance, bylaw 12.5.1.9.1.1 allows corporate sponsors to use team names and images, but not images of individual athletes. Bylaw 12.5.2.1 forbids athletes from profiting off the use of their likeness for any reason, and bylaw 12.5.2.2. requires athletes to take steps to stop anyone from using their image to promote products or events.²⁵⁸ In order for EA to refute the right of publicity complaint, they must show that they are a member of the news media, which they are not, that their purpose was not commercial, which it is, or that it sufficiently transformed player's likenesses, which they also have not.²⁵⁹ Further weakening EA's case is the fact that they, through their own volition, decided to remunerate quite handsomely the professional athletes depicted in its games.²⁶⁰ The Association has released a statement by Chief Legal Officer and Executive Vice President Donald Remy on the pending case through their website:

The NCAA is not exploiting current or former student-athletes but instead provides enormous benefit to them and to the public. This case has always been wrong -- wrong on the facts and wrong on the law. We look forward to its eventual resolution in the courts. Amateurism in intercollegiate sports has been repeatedly upheld by courts at all levels from the Supreme Court in 1984 to a District Court just last month.²⁶¹

This response is not surprising. The NCAA and its cohorts are again using their successful public relations skills to vilify these players as agents attempting to destroy amateurism in sports. What they fail to explain however and too many fail to ask is what is so unreasonable about wanting to

²⁵⁶ Cross, "The NCAA as Publicity Enemy Number One," 1222.

²⁵⁷ *Ibid.*, 1223.

²⁵⁸ NCAA Division I Manual, 75. <http://www.ncaapublications.com/productdownloads/D112.pdf>.

²⁵⁹ Cross, "The NCAA as Publicity Enemy Number One," 1228.

²⁶⁰ *Ibid.*, 1238.

²⁶¹ "NCAA Legal Issues," National Collegiate Athletic Association, <http://www.ncaa.org/>.

be fairly compensated for work that cannot be made without your labor. Without the athletes, colleges would not make a dime off athletics, yet they treat the athletes as entirely insignificant.

In 2012, emails surfaced showing EA and the CLC knowingly used the characteristics of individual college players in the creation of their video games, which contradicts prior claims by the NCAA that these images are not based on real athletes.²⁶² The fact that the game images are based off real players is apparent to even a casual observer of college football. The reason EA sports does so well in selling the game is the vivid detail and life-like nature involved. As the case unfolded, University of Nebraska Chancellor Harvey Perlman wrote in an email, "I'm still trying to figure out by what authority the NCAA licenses these rights to the game makers and others. I looked at what our student athletes sign by way of waiver and it doesn't come close."²⁶³

CLC executive emails show a correspondence discussing how current player names are used in the development of games to calculate the proper stats for each player before stripping the names prior to the release of the game.²⁶⁴ To muddy the waters even further, Big Ten President Jim Delaney has released a statement declaring that any rulings allowing athletes to be paid television revenues may result in deemphasizing sport within the Big Ten conference.²⁶⁵ Delaney is threatening to take the Big Ten back to need-based only financial aid for athletes. Delaney is absolutely against pay-for-play models of college sports, yet he somehow missed the memo of how college athletes are currently being paid. As John Gerdy points out, it is clear to all relevant actors (coaches, fans, media, university faculty, and the athletes) that athletes are brought on campus to play ball, making the scholarship a form of payment for their athletic

²⁶² Jon Solomon, "EA Sports and Collegiate Licensing Co. Used Real NCAA Players in Video Games, e-mails suggest," AL.com, September 18, 2012, http://www.al.com/sports/index.ssf/2012/09/ea_sports_and_collegiate_licen.html.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Andy Staples, "Delany: Big Ten could De-emphasize Athletics if O'Bannon Plaintiffs Win," SI.com, March 18, 2013. <http://sportsillustrated.cnn.com/college-football/news/20130318/big-ten-jim-delany-ncaa-obannon/>.

services.²⁶⁶

Some say they applaud Delaney's comments, and feel the deemphasizing of big-time sport is an action that should be lauded, putting education ahead of college sports dollars.²⁶⁷ Delaney is receiving too much credit. Those who applaud his statement clearly did not listen to what he said. Right now, he is completely fine with college sports. He sees no problem in exploiting the athletic talents of young men for financial gain. The only problem he has is when these athletes demand what they are rightfully entitled to. This, to Delaney, is completely out of the question. He would rather cut off all money for his conference than settle for a more reasonable piece of the pie. This should not be applauded by anyone.

In 1994, the Big Ten distributed \$43.5 million to its eleven conference members; in 2012, the conference distributed \$284 million to twelve schools, a 600% revenue increase.²⁶⁸ There is plenty of money to go around, plenty of money to end the hypocrisy and dead rhetoric of the Association, yet, to people like Jim Delaney, there's only enough for the plantation owners. The case will get even more interesting as it plays out. Walter Byers, former NCAA President has agreed to be deposed.²⁶⁹ Byers can be credited with turning the Association into what it is today, and he may play a large role in taking it down. Sports columnist Clay Travis sums up the situation rather appropriately:

If the NCAA ends up settling this case -- which it would likely do if the case is certified as a class action -- then those payments would violate NCAA rules, rendering every current player ineligible under NCAA rules. Yep, the NCAA would become the greatest infringer of NCAA rules in the history of amateur athletics. What a fitting ending to the organization.²⁷⁰

²⁶⁶ Gerdy, Air Ball, 81.

²⁶⁷ Staples, "Delaney: Big Ten Could De-emphasize Sport," <http://sportsillustrated.cnn.com/college-football/news/20130318/big-ten-jim-delany-ncaa-obannon/>.

²⁶⁸ Ibid.

²⁶⁹ Farrey, "Change in Compensation Sought," http://espn.go.com/college-sports/story/_/id/8324732/new-motion-lawsuit-ncaa-change-how-athletes-compensated.

²⁷⁰ Travis, "Johnny Manziel Opens Massive Loophole," <http://outkickthecoverage.com/johnny-manziel->

The O'Bannon Court case may have a profound impact on the intercollegiate athletic system. The NCAA has a mixed history with the court system, losing key battles in the past, as seen in the Nemeth case, the Van Horn case, and the anti-trust case of 1984 discussed in previous chapters. The comments offered by Big Ten President Jim Delaney show how entrenched the NCAA and its cohorts have become in their own rhetoric. They can no longer view the system objectively, and their partisanship has blinded them to the blatant exploitation inherent in the system. The NCAA could see reform of the system forced on them by the courts because they have violated their own rules on amateurism by selling the images and likenesses of student athletes without permission for the purpose of making a profit. The financial picture of intercollegiate sports is bright, as seen in Table 2 from chapter seven. Chapter 13 will explore these financial issues further.

Chapter 13: The Financial Picture

The NCAA and its member institutions function as non-profit entities, which affords them numerous financial protections and tax breaks. In August 1997, H.R. 2014 was signed into law, which allows nonprofit entities the right not to pay taxes on advertisement payments they receive.²⁷¹ The law allows for companies such as Nike to pay advertising dollars to universities in exchange for corporate logos, so long as there are no comparisons to other companies, and colleges do not have to pay the corporate tax rate associated with advertising payments.²⁷² Booster donations are tax exempt as well, even though most colleges use donations as a prerequisite for purchasing season tickets; making these not donations but prices for desired goods.²⁷³

Colleges also bring in millions of untaxed dollars annually through their sports programs, mainly in Division I college football and basketball. As mentioned in chapter seven, athletic department financial figures are required to be reported annually under The Equity in Athletics Act, applying to all colleges and universities receiving Title IX funding.²⁷⁴ The accounting practices utilized by schools vary wildly from institution to institution, so the true numbers are often difficult to ascertain.²⁷⁵ For example, an expense to one institution may not even be listed on the books by another institution. For smaller institutions, revenues from football will match

²⁷¹ Zimbalist, Unpaid Professionals, 128.

²⁷² Ibid., 129.

²⁷³ Ibid.

²⁷⁴ Bolton, "In College Football, Money Buys Championships,"

<http://www.bizjournals.com/memphis/news/2012/08/29/in-college-football-money-buys-champions.html?appSession=818239281177186&RecordID=&PageID=2&PrevPageID=&cpipage=1&CPISortType=&CPIorderBy=>.

²⁷⁵ Zimbalist, Unpaid Professionals, 153.

precisely the expense for that sport. In 2011, Arkansas State University reported a \$4,341,626 football revenue figure, which corresponded identically with a \$4,341,626 football expense number.²⁷⁶

This is either a fiscal miracle that magically repeats itself at dozens of institutions yearly, or colleges are afraid to admit they run a losing program. For schools like Texas, Michigan, and Alabama the numbers are more indicative of how the program fares. The particular numbers are not so important however, as the system is not designed for universities to report huge surpluses each year.²⁷⁷ Because colleges are nonprofit institutions, there is no one waiting to claim the money left over, thus surpluses must and indeed do find their way into expense categories.²⁷⁸ If huge surplus revenues are known to exist, boosters may stop giving, athletes will want their fair share, and the perks afforded to NCAA and university employees may well dry up.²⁷⁹

Because there are no shareholders to claim excess revenues, all available money must be spent. The presence of an elite athlete on a university campus can generate millions of dollars for an institution, as is currently the case with Johnny Manziel (Texas A&M), and has been with Bo Jackson (Auburn), Tim Tebow (Florida), Patrick Ewing (Georgetown), and Doug Flutie (Boston College). According to The Equity in Athletics Data Analysis, the NCAA Division I grand total of revenue for all teams under its jurisdiction in 2011 was \$6,698,111,630.²⁸⁰ Football accounted for \$2,956,499,371 of this total, while basketball was just over \$893 million, and women's basketball which has been growing in popularity in recent years accumulated over \$172

²⁷⁶ “The Equity in Athletics Data Analysis Cutting Tool,” U.S. Department of Education, <http://ope.ed.gov/athletics/index.aspx>.

²⁷⁷ Fleischer III, Goff, and Tollison, *The National Collegiate Athletic Association*, 83.

²⁷⁸ *Ibid.*, 86-87.

²⁷⁹ *Ibid.*, 90.

²⁸⁰ “The Equity in Athletics Data Analysis Cutting Tool,” U.S. Department of Education, <http://ope.ed.gov/athletics/index.aspx>.

million.²⁸¹ Very few in the general public realize college sports is a six-and-a-half billion dollar a year industry, which perhaps leads to the public's anger at athletes who speak out against a system the NCAA has convinced them is fair and balanced; one they should be lucky to be a part of.

The NCAA also receives television revenue rights from the annual men's March Madness basketball tournament, of which about sixty percent is returned to Division I level conferences and universities.²⁸² The 2011-2012 fiscal year reported that figure was \$503 million dollars, roughly sixty-two percent.²⁸³ For the 2008-2009 fiscal year, the number was \$388,901,094, which is a 29.338% increase in just three years.

Another common expense of big-time athletic programs is known as a guarantee game. This is where larger, well established programs pay smaller universities to travel to their stadium with the expectation of probably losing the game.²⁸⁴ Bigger FBS programs will pay FCS schools to come to their stadium for what usually turns out to be an easy victory.²⁸⁵ The money changing hands for these games can range anywhere from a few hundred thousand dollars up to a million-and-a-half dollars. Ohio State paid the Naval Academy \$1.45 million dollars in 2009 to travel to Columbus and get beaten thoroughly.²⁸⁶

These games have become commonplace, with 101 out of 124 FBS teams (81.4percent; 86.7 percent from the big six conferences) playing at least one game against an FCS opponent

²⁸¹ "The Equity in Athletics Data Analysis Cutting Tool," U.S. Department of Education, <http://ope.ed.gov/athletics/index.aspx>.

²⁸² "Distributions," National Collegiate Athletic Association, <http://www.ncaa.org/>.

²⁸³ Ibid.

²⁸⁴ Jack Carey, "For Small Schools, There's a Big Payoff to Road Trips," USA TODAY, September 3, 2009, http://usatoday30.usatoday.com/sports/college/football/2009-09-02-smallschool_payoffs_N.htm.

²⁸⁵ They also pay other FBS opponents who are, for the most part, athletically inferior, but these games typically cost more (Carey 2009).

²⁸⁶ Paul Steinbach, "Non-Conference Scheduling Leads to Lopsided Scores, Balanced Books," Athletic Business, November 2010, <http://www.athleticbusiness.com/articles/article.aspx?articleid=3656&zoneid=8>.

last season.²⁸⁷ This is not only confined to football, basketball teams engage in these arrangements as well. In 2010, Mississippi Valley State University racked up \$700 thousand to play a grueling thirteen consecutive games on the road against, among others, the University of Kentucky, Marquette University, and Butler University; all of whom rank annually in the top 25 polls.²⁸⁸

Clearly, college sports is big business. Since we know the money is not going to the players who generate it, a reasonable question would be who is in fact benefiting from this arrangement. One aspect that has been overlooked thus far is the coaches' salaries. College coaches are paid quite handsomely, and it is actually against NCAA rules for a coach to work for free (the irony is palpable).²⁸⁹

John Calipari, head basketball coach at the University of Kentucky has quite a lucrative contract.²⁹⁰ To begin, Kentucky paid coach Calipari's exit fee from the University of Memphis, \$200 thousand, and paid him a base salary of \$400 thousand a year. He gets anywhere from \$2.85-\$3.4 million a year from broadcasting and endorsement payments. In bonuses, he can receive \$50 thousand each for winning the regular season SEC title and the SEC conference tournament, \$100 thousand for a Sweet 16 appearance in the NCAA end of year tournament, \$175 thousand for advancing to the Final Four, \$375 thousand for winning the tournament, \$100 thousand more if his players meet academic progress and graduation numbers, \$750 thousand for staying at the university in 2014, and \$1 million if he is still at the university in 2015.

²⁸⁷ Jesse Temple, "Money Makes FCS-FBS Mismatches go Round," Fox Sports Wisconsin, August 30, 2012, http://www.foxsportswisconsin.com/08/30/12/Money-makes-FCS-FBS-mismatches-go-round/landing_badgers.html?blockID=782187. These games do not always work out how they are supposed to. In 2007, Appalachian State University received \$400k to play number five ranked Michigan, beating the Wolverines 34-32 in front of 109,218 fans.

²⁸⁸ Ibid.

²⁸⁹ See the Case of Lou Henson, who worked at his alma mater for a dollar a month in 1997-1998 (Zimbalist, 1999, 80).

²⁹⁰ Wong, *Essentials of Sports Law*, 420-430. Calipari's contract is laid out in full here.

On top of this he is given two new cars for business and pleasure, along with reimbursement for all business related mileage, an expense account, and relocation reimbursements. He is given twenty prime, lower level tickets for each basketball home game and for each postseason tournament game, as well as eight complimentary football home game tickets. Also included, one month's paid vacation and membership in a local golf and country club of his choice, with the university picking up the initiation fees and monthly dues.

After leading Memphis to the 2008 National Championship game, the university extended his contract through 2012-2013 with a base salary of \$2.35 million, and a \$5 million bonus if he stayed through the duration of his contract. Shortly after the loss, Calipari agreed to become the head coach at Kentucky. I suppose the bluegrass is greener. Peter French assesses the situation: "The issue that we could raise with respect to the compensation of coaches in the elite sports is that even though there may be no moral prohibition against their receiving multimillion-dollar compensation packages, a moral line is overstepped if one of the bases of those compensation packages is the exploitation of other human beings."²⁹¹ The current system of intercollegiate athletics has become so commonplace it is not questioned by those who can effect change. The arrangement is accepted because that is simply the way it works. We must question why more college coaches do not see a problem earning millions of dollars off the blood and sweat of broke, young adults.

The tax exempt status of the NCAA and its member institutions serves as a primary reason to refuse that intercollegiate sports are in fact a business venture designed to generate revenue. If this is admitted, the Association and its members would be required to pay taxes associated with this fiscal endeavor. There is an extortionate amount of money involved in intercollegiate sports,

²⁹¹ French, *Ethics and College Sports*, 95.

and because these institutions are labeled as non-profit, there are no shareholders to collect dividends. The money made is used to finance large perk and compensation packages for the overseers of college sports, while those who make the generation of this money possible receive nothing commensurate for the work they do. This arrangement is unfair according to a Rawlsian understanding of fairness, which requires that each actor should benefit after having completed their fair workload in a just arrangement. The system is not just, and the overseers do not contribute enough to the system to justify their paychecks. The following chapter will invoke a deontological ethic to further validate these claims.

Chapter 14: An Ethical Audit of the System

Based on the evidence provided, college sports function as a business enterprise intent on generating revenue. The purpose for generating this revenue is multifaceted; it can serve as a tool to evaluate athletic programs, it can contribute to the growth and overall success of a program, and it can be used to offer perks to those who oversee the program, among many other things. So is any of this inherently wrong? On face value, the answer is no. Each of these goals is not in and of itself morally problematic.

The problem is uncovered when we look closely at how the money for these goals is being generated. College athletes are being exploited by universities and the NCAA in an effort to generate enormous sums of money. In order to ethically evaluate this system however, we must look at it in more depth; at the intricacies and nuances involved to see where ethical shortcomings lie, and determine what, if any changes can and should be made to the present state of affairs. To accomplish this, utilization of a deontological ethic will prove useful and insightful.

A deontological ethical system will focus on moral principles as duties. Our discussion thus far has highlighted several principles we can examine within the framework of intercollegiate athletics, such as fairness, autonomy, and voluntary informed consent. To begin we must define what is meant by these terms. Fairness, as discussed earlier in chapter seven is understood as fulfilling ones agreed upon role in a just system. James Shulman and William Bowen add that fairness entails “treating equally individuals in the same circumstances and

avoiding undeserved favoritism.”²⁹² Fairness does not demand all individuals be treated alike; it simply calls for equitable treatment in similar cases.

Autonomy asks for individuals to be in charge of their lives, or the ability to choose freely one’s own path in life. In a similar vein, voluntary informed consent requires that individuals have the opportunity to make decisions about their lives in possession of all relevant facts about a given situation. Voluntary informed consent then is inextricably linked to autonomy in the sense that it is impossible to choose one’s own path if they are not in possession of all relevant facts. Let us begin with fairness.

The issue of fairness has come up many times in the discussion of the NCAA, most notably in discussions of compensation. It is not unreasonable for individuals to expect a fair wage in return for services rendered. The most generous estimation of a Division I football scholarship’s value over a four-year period is around \$230,000. All of this money however is tied up in costs associated with room, board, tuition, and fees. The university however, can expect to bring in on the low end \$80 million to \$100 million during this span, and on the high end \$200 million to \$400 million. The athlete in this scenario is receiving well under one percent of the revenue they are responsible for producing.

The amount of money big-time college football programs bring in is staggering, while the costs to fund athletes living expenses are minimal in comparison. The system is designed to function in this manner. Immanuel Kant, the most renowned deontological ethical theorist, in his third formulation of the categorical imperative writes, “for rational beings all stand under the law that every one of them ought to treat itself and others never merely as means, but always at the

²⁹² James L. Shulman and William G. Bowen, *The Game of Life: College Sports and Educational Values* (Princeton: Princeton University Press, 2001), 300.

same time as [an] end in itself.”²⁹³ This means that rational human beings are not prohibited from using one another to achieve their goals in life; however, they must not use another merely as a means to achieve their own ends. Treating an individual as a mere means fails to respect that individual’s rational nature, or their autonomy. Kant is speaking of a basic respect for persons.

For our purposes, athletic departments are using football and basketball players merely as a means to generate revenue. As we have seen, their individual well-being is of no concern to the powers that be. The never-ending supply of athletes ensures that the well of talented athletes will never dry out, couple this with the lack of viable alternatives for athletes, and we clearly see the athletes are being used solely for sake of generating revenues.

Fairness however can apply to the system in other ways. Concerning the enforcement of NCAA rules, punishments are hardly consistent and evenhanded. Punishments for infractions vary widely depending on the school, conference affiliation, and the player. Like cases are almost never treated similarly. The NCAA arbitrarily hands down whatever punishment it is in the mood for on that current day. Recall the case of A.J. Green, suspended four games for selling his jersey. Former Ohio State running back Daniel “Boom” Herron was suspended five games in 2010 for selling his jersey, pants, and shoes, also for \$1,000.

Why was Herron’s suspension one game more than Green’s for the same amount of money? Also, Herron was suspended at the end of the year, before Ohio State’s bowl game, yet he was allowed to participate in that contest, as were fellow suspended teammates Terrell Pryor, and DeVeir Posey, among others. Could it be Ohio State was slated to play in the All State Sugar Bowl that season? The absence of these players could have severely altered the outcome of the game, which saw Ohio State defeat Arkansas 31-26. The lack of transparency within the

²⁹³ Immanuel Kant, *Groundwork for the Metaphysics of Morals*, translated and edited by Allen W. Wood (New Haven: Yale University Press, 2002), 51.

Association prohibits us from understanding the logic, if there is indeed any, behind the arbitrariness of their rulings.

Continuing with fairness, why is the University of Georgia allowed to sell A.J. Green's jersey, yet he is not? While Green attended Georgia, his jersey was for sale in many different varieties with price tags ranging from \$59.99 to \$150.²⁹⁴ Fairness would dictate Green receive some, if not most of that money, or be allowed to sell his jersey on his own, or that Georgia not be allowed to sell his jersey either. It is difficult to see any logic in the NCAA's policy against athletes selling their property. Would Green or Herron have been suspended for selling their televisions? Because someone happens to play college sports, they cannot sell their own property. Perhaps, if athletes were paid a living wage to engage in sports, they would not have to sell their possession to live a normal life. The system is clearly not fair to the athletes.

Switching to autonomy, we see here too the system fails to meet the moral requirements of a deontic ethic. Playing Division I football or basketball is a voluntary activity. No one is forced into athletic competition. The problem arises when we realize that, concerning football at least, there are no true viable alternatives available to athletes who seek to play in the NFL. There are arena football leagues and the Canadian Football League, but these are not realistic avenues for an eighteen year old to pursue if their ultimate goal is to play in the NFL. There are a limited number of teams in these leagues, and they do not garner the same high level media exposure even the worst college teams enjoy.

Major League Baseball (MLB) has an expansive minor league system designed to develop the skills of athletes attempting to pursue a professional career in baseball. High school baseball players with the requisite skills thus have a choice; attend a university and handle the

²⁹⁴ Andy Staples, "Double Standard Doubly Frustrating," SI.com, September 8, 2010, http://sportsillustrated.cnn.com/2010/writers/andy_staples/09/08/green.suspension/index.html.

demands of being both a student and an athlete, or sign with a professional team and focus solely on becoming an excellent athlete. The result is higher graduation rates for college baseball players because they have made the choice to pursue education, it was not forced on them as a caveat to pursuing dreams of reaching the professional ranks like it is on football and basketball players. Because baseball players are given a choice, their graduation rates are on average higher than football and basketball. Those who become student athletes do so as a result of an autonomous choice.

For football players, this choice does not exist. Because of this, many enroll in college not actually wanting to be there, and attempt to scrape by in the classroom and avoid trouble off the field long enough to meet the requirements for the NFL Draft. They are forced to attend because there are no other realistic avenues for them to pursue. Player autonomy is also severely inhibited by the NCAA rules. We have seen this already by restricting what players can do with what they thought was their property, but it is also evidenced in the transfer restriction imposed on them.

For whatever reason, an athlete may decide he no longer wants to attend a university. Why are they then not allowed to transfer to any institution they wish? Why do transfers rules only apply to revenue producing sports? An athlete who grows up with the desire to play with a specific coach may get that dream realized, but if his coach leaves for a better job, the athlete is forced to surrender a year of his eligibility to follow his dream. If his coach were to leave again the following year, something not out of the question in this day and age, the athlete could not follow him or he would never get a chance to see the field.

These restrictions are in place to stabilize the unacknowledged workforce of intercollegiate athletics. There is no other logical explanation that can be given. The issue of

voluntary informed consent is relevant here as well. Coaches and recruiters paint very rosy pictures of their programs during the recruiting process. Sales pitches often do not include the coach saying, “I plan on leaving for another, high paying job shortly after you commit.” They also do not tell athletes parents, “We struggle to graduate 47 percent of our football players.” This is what is known as a bait-and-switch. Recruits are being deceived by coaches who highlight only positive aspects of their program, ignoring crucial information the athlete only realizes after he arrives on campus as an enrolled student. By this time, it is too late. In order for the athlete to transfer to a new program, they must sit out of competition one full year to satisfy the NCAA’s residency rule requirement. College athletes are not getting the deal they agree to when they are convinced to sign their national letter-of-intent.

Informed consent plays a role in rules violations as well. There are no classes given on what the NCAA rules actually are. Common violations are often disclosed, but few have the time, and fewer still the ability to comprehend such an immense, confusing document. Athletes are thrown into the system and the onus is on them to know the rules that govern their lives. Many who commit rules violations are unaware what they are doing is a violation. Recall the case of Bo Jackson. Bo did know (because “Bo Knows”) that flying on a private jet could be an NCAA violation.²⁹⁵ His crime was trusting executives from the Tampa Bay Buccaneers whom he thought had his best interests at heart. Had he known the ramifications of that flight he never would have gone, or perhaps arranged a different means of transportation.

Concerning voluntary informed consent, all actors have a role to play. Coaches need to be honest with prospective athletes about their plans for the future, their plans for the athlete, and about the academic success of their program. Athletes too however, if they hope to make the best

²⁹⁵ “Bo Knows” was a popular Nike marketing campaign aired during Jackson’s heyday.

choice for their future must learn to research institutions they wish to go to and ask the appropriate questions. Both parties have obligations they must fulfill. Given our discussion of fairness, autonomy, and voluntary informed consent, we can see how all of these principles work with one another. The NCAA and its member institutions however are currently working contrary to them.

A close examination of the principles of autonomy, fairness, voluntary informed consent, and respect for persons shows very clearly that college athletes are being exploited in an unjust system. The lack of viable alternatives, especially in football, makes the system inescapable to athletes, and they lack the power to institute change to the status quo. Those who can bring about change do not see the need for change, or if they do see the need, they lack the requisite motivation to effectuate sweeping reforms to a broken system. The following chapter outlines several steps that could fix college athletics, removing the exploitation aspect and providing a fair deal for all actors.

Chapter 15: Proposals for Change

The current situation of intercollegiate athletics looks dire. Many upon learning the facts of the situation, and some without knowing, call for big-time athletics to be removed from universities all together. This is not the proper response to the problem however. The issue is not that universities utilize their athletic departments to generate large amounts of revenue; the issue is they refuse to admit their goals, and the athletes are exploited in the process.

The first step towards re-inventing college athletics is to do away with the NCAA rule book. We have seen the problems associated with the rules, including their arbitrary enforcement. The problem with rule based approaches is individuals typically blindly follow the rules and do not exercise practical morality. The rules that govern college athletics should be replaced by a set of general principles that require agents to think about specific cases and exercise moral judgment.²⁹⁶ A switch to general principles would require those enforcing the rules to think about cases and to provide justification for their rulings.²⁹⁷ The justifications will need to be made public to provide much needed transparency to the system.

This switch in governing philosophy will also see an end to arbitrary rules that cannot be justified. Athletes will be afforded the same benefits all others involved with this system have. The transfer rule will be eliminated, as will rules regarding what athletes can earn off their image and celebrity, and their own property as well.²⁹⁸ This will mean some athletes are afforded opportunities that others are not, but fairness does not dictate we treat all athletes the same. Some

²⁹⁶ Kvalnes and Hemmestad, "Loophole Ethics in Sport," 62.

²⁹⁷ See note 296 above.

²⁹⁸ Byers and Hammer, *Unsportsmanlike Conduct*, 13.

are more valuable than others, and there is nothing inherently wrong with this. More marketable skills earn individuals higher wages in all walks of life, college sports are no different.

To cover the average athlete, we should also require the NCAA and its member intuitions to offer an equal share of broadcasting rights, merchandise sales, and video game sales. The pending O'Bannon case discussed earlier provides a template for this arrangement. Stanford economist Roger Noll has made the argument that athletes are entitled to fifty percent of television revenues and one-third of video game revenues.²⁹⁹ Merchandise that is currently sold by universities often includes a few of the star player's jerseys, minus the name, but the numbers always match the current star or stars of the team. These jersey should include the player's name, and they should receive at least fifty percent of the profits generated from these sales.

Because athletic departments will be operating with less money, they will need to scale down their size and cut wasteful expenditures. A 2011 article in Sports Illustrated devised a model for how this would work. George Dohrmann, in conjunction with Stephen Ross, a law professor at Penn State University, a tax lawyer, two Title IX experts, an antitrust lawyer, a former university accountant, current and former college athletes, a sports agent and others collaborated to undertake this task.³⁰⁰ Their biggest proposal is to cut athletic scholarships in football from 85 to 63, and cap the total roster size at 90.³⁰¹ Currently many schools have football rosters with well over 100 hundred players. Alabama for example lists 138 football players currently on the team.³⁰²

²⁹⁹ Berkowitz, "Report Quantifies Value of College Athletes' Images," <http://www.usatoday.com/story/sports/college/2012/10/22/obannon-case-ncaa-documents-roger-noll/1650677/>.

³⁰⁰ George Dohrmann, "Pay For Play," SI Vault: Your Link to Sports History, November 7, 2011, <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1191778/index.htm>.

³⁰¹ See note 300 above.

³⁰² "The Equity in Athletics Data Analysis Cutting Tool," U.S. Department of Education, <http://ope.ed.gov/athletics/index.aspx>. Florida has 125 football players, Texas has 121, LSU has 132, and Georgia lists 118. It is the norm for big-time football programs to carry over 100 members.

This one step will save many institutions millions of dollars a year, not just in scholarship money, but in travel and training expenses as well. The next step would be to eliminate NCAA mandates dictating how many Division I teams a school is required to field, which will result in the demotion of men's sports programs that do not financially support themselves to club status.³⁰³ This does not mean the elimination of all men's sports; ice hockey, lacrosse and baseball are likely to survive in their designated regions.³⁰⁴

Concerning Title IX, schools are required to meet one of three standards to be considered in compliance. The first requires that schools have substantial proportionality, or that their sports programs for men and women field an equal ratio of athletes.³⁰⁵ The second way a school can be considered to be in compliance with the law is to have a history or continued progress toward inclusion.³⁰⁶ Finally, a school can have processes of adjustments that are needed to support the involvement of women's sports in their athletic programs.³⁰⁷ The last two measures are intentionally vague, but they essentially require that schools continue to expand opportunities for women in intercollegiate competition.³⁰⁸

Schools that meet the first test before cuts to men's programs can make similar cuts to their women's programs to save even more money, but schools meeting the latter two requirements cannot touch their women's programs, as they do not yet possess an equal ratio.³⁰⁹ Schools can save money in other ways as well. By re-drawing conferences to reflect regional

³⁰³ Dohrmann, "Pay For Play,"
<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1191778/index.htm>.

³⁰⁴ Ibid.

³⁰⁵ National Collegiate Athletic Association, 2013,
<http://www.ncaa.org/wps/wcm/connect/0a93878049d4991ab235bbd285abf5d2/NCAA+Convention+2012+Title+IX+session.pdf?MOD=AJPERES&CACHEID=0a93878049d4991ab235bbd285abf5d2>.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Dohrmann, "Pay For Play,"
<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1191778/index.htm>.

³⁰⁹ See note 308 above.

associations as opposed to who can generate the most television dollars, schools will save in travel costs. Keeping with travel, athletic departments can also hit the road in lighter fashion, not bringing the spirit squad, the baton team, the cheerleaders, and band members on every road trip. Or perhaps they could work out rotating schedules to allow some to attend each away game, but not all.

Athletic departments need to be scaled down, and if the plaintiffs prevail in the O'Bannon case, they will be required to. USC's Athletic Director Pat Haden has called for his colleagues to prepare for the possibility that the NCAA will lose this case.³¹⁰ Universities can take other steps to help with the loss of some of their revenues, and the tax costs and other business related expenses associated with their new honest system of intercollegiate athletics.

One way this could be achieved is put forth by Murray Sperber, calling for colleges to stop footing the bill for running professional sports team's minor league programs. In football for example, universities could charge NFL teams for drafting their players, say a few hundred-thousand dollars for first round selections, and devise a downward sliding scale for each subsequent round.³¹¹ This would be a fair arrangement and one that is long overdue. The NFL has used college football sports as a free farm system for far too long, and it is wholly unclear why universities and particularly the NCAA have not taken steps to address this issue, given all the money that could potentially be involved.

As for our student-athletes, universities and the NCAA can take two steps to end the academic exploitation involved. The first would be to allow non-matriculated athletes to compete

³¹⁰ Ben Kercheval, "Pat Haden: Schools Should Prepare for an O'Bannon Victory," NBC Sports, April 1, 2013, <http://collegefootballtalk.nbcsports.com/2013/04/01/pat-haden-schools-should-prepare-for-an-obannon-victory/>.

³¹¹ Sperber, *College Sports Inc.*, 349.

in intercollegiate sports.³¹² This model could be applied in any number of ways, but the most important point is athletes who have no interest in school can stop pretending, and the NCAA member institutions can stop enrolling under qualified students.³¹³ Universities can have a set number of these students who still have caps on their eligibility, and they can receive tuition credits that can be cashed in up to ten years after their eligibility runs out.³¹⁴ Athletes can attend any schedule of classes they think they can manage, full-time, part-time, and for the few elites, no classes. If their professional careers do not pan out, they can return to school if they wish to cash in the tuition credits and attempt to earn a degree.

The final step universities should take is to attempt to engage athletes in courses they see as useful to their lives, i.e. sports. Allow athletes to major in sports.³¹⁵ In a plan developed by David Pargman, a professor emeritus of educational psychology at Florida State University, college athletes would still need to fulfill general education requirements, but could then take courses designated as football and basketball majors.³¹⁶ Some of the courses Pargman lays out are specific to these sports, but this is not a walk-in-the-park degree. Some of the more challenging courses are anatomy and physiology, elements of business law, and elements of contract law.³¹⁷ This is an innovative approach that could actually motivate some athletes to take their course work seriously. These programs of study would be able to keep athlete interest; as well as supply them a meaningful degree they could actually apply to their lives.

These changes can be implemented in intercollegiate sports without substantial costs. The result would be the end of an exploitive system and a fair arrangement all rational actors could

³¹² Sperber, College Sports Inc., 348.

³¹³ Ibid.

³¹⁴ Sack and Staurowsky, College Athletes For Hire, 142-43.

³¹⁵ Sean Gregory, "Should College Athletes Just Major in Sports?", TIME.com, November 27, 2012, <http://keepingscore.blogs.time.com/2012/11/27/should-jocks-just-major-in-sports>.

³¹⁶ See note 315 above.

³¹⁷ See note 315 above.

accept. The money currently involved in college sports is plentiful, and there is more than enough to go around. By agreeing to accept a smaller share, the NCAA and its member institutions can rectify a great wrong and put an end to an extremely harmful arrangement. The Association was created for a good reason, and it did an excellent job in fixing the ills in college football. The system however has gotten out of control, but it is not too late to repair it. In order for the Association to redeem itself and restore an ethically acceptable arrangement, these measures must be implemented.

Conclusion

It appears difficult for a reasonable person to deny the inherent exploitation of college athletes in the current system of intercollegiate sports. College football and basketball players simply have no real viable alternatives to avoid this exploitation, and no voice in the present system to effect change. They are merely replaceable cogs in the juggernaut machine that is intercollegiate sports.

The exploitation of college athletes has gone on long enough. The NCAA and its member institutions have succeeded in deceiving the American public for far too long with their hypocrisy and rhetoric. Change in college athletics is needed. Given the prospects of the pending O'Bannon court case, the NCAA would appear to have two options; reform now, or roll the dice and risk allowing the courts to reform them later. The general public and the media are beginning to realize the semantic tricks and double speak utilized by the Association is merely a cover for their highly profitable commercial enterprise.

The NCAA is falling out of favor with the public, and cannot seem to go a month without decreeing some unjustifiable ruling or exhibiting extremely unethical behavior. Their willingness to utilize a known criminal to aid in their investigation of the University of Miami, and the total decimation of Penn State's football program have swayed public opinion against them. It is time to admit the true intentions behind why athletic programs are operated the way they are.

The Association has functioned as a highly effective labor cartel for over fifty years, and if they continue to cling to antiquated notions of amateurism when they are clearly running a corporate enterprise, they may show themselves to be no longer useful. As an organization that

has been a master at spinning deceitful webs through strategic public relations stunts, the NCAA needs to accept that their reign has come to an end and embrace a new world of intercollegiate sports. A new order that can feature a less powerful, more understanding Association, or one that devises a new legislative body altogether. It is time to end the corruption and exploitation currently associated with college sports. Change is needed. Change is coming.

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