

**Paying College Athletes:
An Analysis of Proposed Reforms for the Collegiate Athletic Model**

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ABSTRACT

On October 15, 2016, University of Wisconsin basketball star Nigel Hayes stood with a sign in view of ESPN's College Gameday set that was on campus for the Badgers football team's matchup against Ohio State (Curtis, 2016). Hayes' sign read: "BROKE COLLEGE ATHLETE ANYTHING HELPS" and listed the username of a Venmo account. Hayes' protest is an echo of the many public voices that have criticized the National Collegiate Athletic Association (NCAA) in recent years over its treatment of college athletes. College sports are a billion-dollar business, and perhaps the athletes deserve a greater cut of the revenue generated from their activities. The NCAA and universities have resisted these challenges, concerned that the influence of commercialization in collegiate athletics would threaten the educational ideal. Given the unique context of Division I collegiate athletics, what reforms can be implemented to appropriately address the status and treatment of student-athletes giving due consideration to both market-oriented principles and educational standards? Drawing upon interviews with *informed actors* in the space of college sports (primarily athletes and administrators from Duke University), I argue for a scheme of reform for the collegiate athletic model that better attends to both the educational achievement of student-athletes and to their fair treatment in a market-oriented setting. The three-part recommendation would give student-athletes full control of their publicity rights, include student-athletes in a revenue-sharing scheme tied to the profitability of their individual programs, and amend professional league eligibility requirements.

INTRODUCTION

In January of 2015, 80 school and athlete representatives from the nation's five premier college athletic conferences met during the NCAA's annual convention to overwhelmingly approve new stipulations that would expand the rights and benefits afforded to college athletes (Berkowitz, 2015). In a 79-1 vote, the NCAA authorized all Division I schools to award athletic scholarships that cover the full cost of attendance. Athletic scholarships may now pay for items such as transportation, personal expenses, and other general incidentals that increase the cost of attending college. A much closer vote reversed the practice of subjecting scholarships to annual renewal instead of a four-year guarantee. The new policy prevents schools from choosing not to renew a scholarship for athletic reasons, which would leave those athletes without a way to pay for school. A year earlier, the NCAA decided to allow schools to offer unlimited meals and snacks for their athletes.

These moves come in response to increasing public pressure that student-athletes and the media have placed on the NCAA to improve conditions for college athletes. NFL and former University of Tennessee running back Arian Foster confessed in 2013 that he illegally received payments while in college to afford rent and food (Ganguli, 2013). Foster's comments echo the sentiments of recent legal cases pushing to reform the treatment of college athletes. Initially filed in 2009, *Ed O'Bannon v. NCAA* challenged the NCAA's use of student-athletes' images for commercial purposes. Meanwhile, in 2014, Northwestern University football players filed a petition for unionization to the National Labor Relations Board, advocating for increased medical protections and greater say over their athletic time commitments. These actions have forced the public consciousness to consider the treatment of college athletes by the NCAA and universities as a legitimate issue.

Concerns over athlete treatment have become particularly acute in the context of the over \$800 million in revenue the NCAA generates each year (NCAA, n.d.). The NCAA is a non-profit, which means a portion of this revenue is used to fund NCAA events, while the rest is redistributed to the athletic departments of NCAA member universities. Although athletes receive scholarships and the indirect benefits from the money that their athletic departments spend on facilities and resources, they do not receive any direct compensation. Popular criticism of the NCAA almost always takes the same general form: if the NCAA makes so much money, do the athletes not deserve a cut of the revenue?

NCAA amateurism rules prevent college athletes from being paid beyond the value of their athletic scholarships. The NCAA argues that these rules are necessary to insulate the college sports environment from commercial influences and maintain the provision of athletic programs as an integral component of the overall educational experience. By contrast, critics of the NCAA claim that college athletes should be considered employees, with the ability to form unions, bargain collectively, and earn compensation. At issue in this debate are the varied interests of the NCAA, universities, and the treatment and conditions of student-athletes. These interests manifest themselves in a central tension that characterizes the arguments for and against reform on both sides. Reformers seek to introduce some type of market principles to better compensate student-athletes for their activities. The NCAA and universities are wary of the potentially negative influence of commercialism on the goals of academic institutions.

I will begin by examining the nuances of the debate over the status of college athletes – why proponents of NCAA reform argue college athletes deserve expanded benefits and why the NCAA and its defenders believe the current system is optimal and just. Then, within the context of these arguments, I will analyze the various proposals put forth for reform of the collegiate

athletic model, relying especially on a series of interviews with individuals who represent informed actors in the space of college athletics, such as players, coaches, athletic administrators, and academics. To conclude, I will argue for a scheme of reform that balances the sophisticated interplay among the guiding interests of college sports, student-athletes, and the NCAA. This model of reform repeals the NCAA's prohibition on student-athletes' ability to earn outside income, includes student-athletes in a revenue-sharing system, and suggests an amendment to professional league eligibility requirements.

BACKGROUND

It is important to understand the intricate relationship between athletes, the National Collegiate Athletic Association (NCAA), and the NCAA's member schools and institutions. The NCAA oversees approximately 1,200 colleges and universities that participate in 95 different athletic conferences. NCAA responsibilities include disseminating playing rules, hosting championship events, enforcing standards of academic eligibility, and advancing the development and growth of college athletics (Edelman, 2013). With its expansive system of rules and regulations, the NCAA supervises a massive college sports business, generating approximately \$800 million in revenue each year (NCAA, n.d.). Revenues are eventually redistributed to athletic conferences and NCAA member institutions, but not directly to college athletes themselves. This arrangement has stirred public calls for reform of the collegiate athletic model – the popular argument being that college athletes deserve a cut of the profits made from their activities. The debate has become so prominent that in May 2014, the House Education and the Workforce Committee held a hearing to debate the potential consequences of unionizing college athletes.

Although the issues of labor, employment, and college athletics have been converging for some time, recent debate over the status of student-athletes has been propelled by two high-profile legal cases. In August 2015, the National Labor Relations Board dismissed a petition for unionization by Northwestern University football players, whose broad aims were to have a greater say over issues such as athletic time commitments and long-term health care (Strauss, 2015). In the 2014 case *O'Bannon v. NCAA*, Ed O'Bannon led a group of plaintiffs who argued that NCAA eligibility rules illegally deny former college football and basketball players a share of the revenue made from the sale of jerseys and video games (among other items) that bear the use of their names and likenesses (Streeter, 2009).

These two cases illuminated the host of questions arising from debates over the status and treatment of college athletes. Are college athletes legally employees or are they *amateurs* as defined by NCAA eligibility rules? Do college athletes deserve collective bargaining rights or workers' compensation benefits? Should college athletes have the ability to profit from publicity rights and the use of their names, images, and likenesses? Are NCAA rules in violation of U.S. antitrust law? And the one question looming over them all: do college athletes deserve to be paid?

Complicating the debate, however, is the nature of the college sports industry. For the majority of institutions, only two sports, men's football and basketball, are economically self-supporting. The revenue produced by these sports (mostly through ticket sales, radio and television receipts, and alumni contributions) is often used to fund the remainder of a school's athletic department. Similarly, 81% of the NCAA's \$800-\$900 million total annual revenue comes from media rights, most of which accrues from broadcast of the Division I men's basketball tournament (NCAA, n.d.). For these reasons, the debate over the compensation and

treatment of college athletes has become divided along the lines of *revenue-generating* (men's football and basketball) vs. *non-revenue-generating* (all other) sports. The question thus is not simply whether college athletes deserve expanded benefits, but whether they all do. If men's football and basketball players are the players producing the wealth, are they the only ones that warrant compensation?

In the background that follows, I intend to trace the development of the arguments made concerning the treatment and status of college athletes, the rights they should or should not be afforded, and the legality and fairness of the NCAA's oversight of college athletics.

College Athlete Treatment

Concerns regarding the quality of treatment experienced by college athletes are the primary reason that reform of the collegiate athletic model is being debated at all. The argument that college athletes are mistreated, or perhaps more appropriately, undervalued is borne out of the observation that while money is made from their athletic participation, student-athletes are prohibited from collecting it. This argument only applies to athletes in men's football and basketball, however – the sports whose revenues are sufficient to both finance themselves as well as subsidize the provision of a school's other athletic offerings. For this reason, the overwhelming majority of public proposals aiming to compensate student-athletes for their on-field activities apply only to those athletes in the revenue-generating sports. However, revenue generation is not the only metric for the value of college athletes or the quality of their treatment. The lack of uniformity of current benefits to college athletes across both school and sport complicates proposals for reform. The difficulties, as Todd Mesibov, Duke University's Associate Director of Athletics/Compliance, explains, are that “you have 350 schools with very different sizes, shapes, academic profiles, financial profiles – but you have one set of rules that

needs to cover all of those.”¹ How is it possible to identify the value of a student-athlete when the advantages they receive vary across so many different dimensions?

For example, consider the relative expenses of the athletic departments at Duke University and Bryant University (Equity in Athletics Data Analysis, 2016). The comparison highlights the extraordinary degree to which resources vary between schools. The most recent data made available to the U.S. Department of Education reveals that Duke athletics operates on an approximately \$91 million budget with a total of 713 participating student-athletes – an average of roughly \$127,000 per student-athlete. Bryant’s \$16 million budget is spread across 547 participating student-athletes – an average of \$29,000 per student-athlete. These numbers reinforce the disparity present in college athletics, as schools that generate greater athletic revenue are able to spend more money on their athletic programs.

Multiple interview respondents seized upon the characterization of some athletic departments as being under-resourced compared to their counterparts, especially those schools that do not belong to the Power Five football conferences. The Power Five is a group of athletic conferences whose member schools compete in the NCAA Division I Football Bowl Subdivision in addition to five other athletic conferences. The Power Five conferences traditionally produce more successful football programs, which often translate to greater revenue and more benefits for their athletes. As one Duke men’s basketball player explained, concerns raised publicly by some student-athletes, such as not getting enough to eat or being unable to afford rent, are “shared very widely, especially outside of – I want to say the Power Five conferences, but outside of the 15 to 20 schools that generate revenue.” Proposals to reform the collegiate athletic model depend on a

¹ The content and method of the interviews is described in Appendix 2.

particular quality of athlete treatment to justify expanding benefits. When the standard varies so widely between schools, however, identifying a uniform level of quality becomes a difficult task.

Additionally, significant discrepancies in budget allocations exist among sports within the same athletic department. At Duke, for example, football and men's basketball alone account for approximately \$43 million in expenses, or 47% of the entire athletics budget. The other 22 sports account for the rest. While the athletes at Duke found the benefits to be provisioned fairly equitably across sports, a Duke women's track athlete explained how "there are some sports, like the football and basketball teams, that have their own special buildings or privileges. You see that with revenue sports because those programs have money they make or that gets donated specifically to them and they can do additional things with it." At least by the numbers, the resources and benefits afforded to athletes in the revenue-generating sports certainly exceed those received by all others.

In practice, revenue-generating teams also end up receiving a higher level of scholarships than non-revenue-generating teams. The NCAA categorizes programs as either *head count* or *equivalency sports*, and the total number of scholarships a team can offer to athletes is dependent on this categorization (NCAA Division I Manual, 2009). Men's football and basketball are head count sports, which means the team is restricted to a certain number of its athletes granted full athletic scholarships (those scholarships that cover the full cost of attendance). Men's football may provide 85 full athletic scholarships to 85 athletes, and men's basketball may provide 13 full athletic scholarships to 13 athletes. On the women's side, gymnastics, volleyball, and tennis are also head count sports. All other athletic programs are equivalency sports, which means the team is restricted to a certain number of total scholarships that can be divided amongst its players. For example, men's baseball programs are free to divide up and disperse its 11.7 (essentially, 11.7

times the value of a single, full athletic scholarship) scholarships among however many players the coach chooses. The immediate consequence of this system is that most of the athletes in the non-revenue-generating, equivalency sports are on partial athletic scholarships to the school. The equivalency model also makes it easier for coaches to alter a player's scholarship offering from year to year depending on how the composition of a team changes. As a Duke women's golfer explained, the coach "tells me in the summer what my scholarship status is going to be like." A Duke women's track athlete echoed those sentiments, describing how scholarships are split up with "some people getting scholarships for only their sophomore and junior years, but not their freshman and senior years. Or people who only get 50 percent of a scholarship for all four years." While athletes in head count sports can more faithfully rely on the provision of their scholarship each year, equivalency athletes do not have the same kind of reassurance, and their scholarship level is prone to fluctuate.

Although it is important to consider the circumstances of all student-athletes as a factor in this debate, perhaps it is justified that current proposals to reform the collegiate athletic system are geared almost exclusively toward football and men's basketball players. The athletes in these sports typically incur the highest expenses in the athletic department, but it is these athletes whose activities actually generate the revenue. Football and men's basketball at Duke, while accounting for 47% of expenses, generate roughly \$66 million in revenue, or about 73% of the total revenue of the entire athletic department.

College Athletes and Labor Issues: The Northwestern Case

In deciding whether to approve a group of Northwestern University football players' petition for unionization, the National Labor Relations Board was tasked with deciding whether those football players who receive grant-in-aid scholarships are employees within the meaning of

the National Labor Relations Act. The Board dismissed the case, exercising its right to decline jurisdiction, and essentially abstained from making a decision (Decision on Review and Order, Northwestern University and College Athletes Players Association, 2015). The Board argued that deciding in this case would upset labor relations, as granting approval for unionization in this one particular instance would create confusion as to how the decision may apply to other teams at other schools and how collective bargaining could exist within the realm of NCAA and athletic conference regulations. The Board's non-decision allows the debate over college athletes' employment status to continue and opens the door for future legal challenges and petitions by student-athletes attempting to unionize.

The prominent issue of the case was a debate over the proper conception of today's college athletes. Are they students first, whose primary goal is education and to which athletic competition is a supplementary activity? Or are they athletes first, whose relationship with the university can best be described as one between employee and employer? Proponents of NCAA reform see the college athlete as an employee who deserves collective bargaining rights and workers' compensation for athletic injuries. Opponents argue that college athletes are not, by definition, employees and that granting collective bargaining rights to college athletes would disrupt the collegiate athletic model with negative consequences for the educational outcomes of athletes. Potential reform of the collegiate athletic model depends in part upon a legal determination of the college athlete's status, especially given the prevalence of several ongoing court cases challenging varying aspects of the student-athlete experience. As these various cases undergo legal battles, the courts' decisions could affect the way the NCAA and college sports operate.

Berger v. NCAA

Shortly after the unionization attempt by Northwestern football players, a tangentially related case brought suit against the NCAA claiming that student-athletes are employees of their respective universities. Three female track and field athletes at the University of Pennsylvania contended that the NCAA was in violation of the Fair Labor Standards Act and that student-athletes, being employees, are entitled to compensation (Piasecki, 2015). The case is notable because it features non-revenue-generating athletes as plaintiffs, thereby challenging the notion that only those athletes that participate in revenue-generating sports deserve expanded benefits.

Whereas Northwestern argued that athletic scholarships as a form of compensation were a feature of the players' professed employment status, the *Berger* plaintiffs pointed specifically to their lack of payment as the issue of contention. The athletes claimed that they deserved compensation because they performed non-academic functions for the benefit of the university. A federal district court ruled in favor of the NCAA – its initial finding being that the student-athlete was the primary beneficiary of the work performed, not the institution.

The Northwestern case was perhaps a more meritorious legal challenge because the players could point to the millions of dollars in revenue generated by their activities as justification for their complaint. The plaintiffs in *Berger* had no such ground from which to argue, which is a reason why they lost their challenge. However, their case is important in drawing a spotlight on the equity concerns that altering the collegiate athletic system could create.

College Athletes and Amateurism: *O'Bannon v. NCAA*

Another legal battle addressed student-athletes' status as amateurs and their inability to earn income outside their athletic scholarships. *O'Bannon v. NCAA* challenged the NCAA's use

of the images and likenesses of college athletes for commercial purposes, arguing that former student-athletes are entitled to a share of the revenue made from their names. At the crux of the debate were NCAA amateurism rules, whose goal is to preserve “an academic environment in which acquiring a quality education is the first priority” (Amateurism, 2013). These rules isolate student-athletes from commercial influences and include provisions that prevent student-athletes from signing contracts with professional teams, earning a salary for participating in athletics, benefiting from the advice of an agent, or accepting monetary compensation beyond the confines of their athletic scholarships. Amateurism rules are meant to demarcate college athletics from its professional counterparts. The *O’Bannon* case questioned whether college athletes deserved to benefit from commercial use of their publicity rights and whether NCAA amateurism rules, particularly those that set a cap on the value of athletic scholarships, violated antitrust laws.

Publicity Rights

Current NCAA rules prohibit college athletes from making any profit based on their status as athletes, which means they may not accept compensation for the use of their names, images, and likenesses (Cronk, 2012; Branch, 2011). Jersey sales, television deals, DVDs, online streaming content, and video games comprise a \$4.6 billion annual market for collegiate licensed merchandise, but the athletes earn none of the revenue (Cronk, 2012). In order to maintain athletic eligibility, the NCAA requires college athletes to sign a form permitting the NCAA to use their name or picture to promote NCAA events, activities, or programs. The NCAA also requires athletes to acknowledge the fact that they may not accept payment for the use of their names or pictures in connection with the sale or use of a commercial product in order to remain eligible. In *O’Bannon v. NCAA*, a federal judge determined the NCAA’s amateurism rules to be a form of price-fixing and allowed universities to set up a \$5,000 trust fund to compensate college

athletes for the use of their likenesses, which athletes could collect upon graduation (Nocera, 2015). An appeals court affirmed the ruling, but struck down the trust fund provision, arguing that paying college athletes cash compensation for purposes unrelated to education endangered the principle of amateurism. The appeals court denied direct monetary payments to college athletes for non-academic purposes. However, because the court found that amateurism rules violate antitrust regulations, the ruling also means that the NCAA can no longer use the preservation of amateurism as its only defense for restricting the compensation of college athletes if future legal challenges arise. The Supreme Court refused to hear an appeal of the case, which means the lower court ruling ensures that NCAA regulations are no longer exempt from antitrust law. Thus, the battle over athlete compensation will continue to play out in future legal cases. Two current lower court cases, for example, *Jenkins v. NCAA* and a separate class action suit, challenge the NCAA's ability to cap athlete compensation at the value of a scholarship (Associated Press, 2016). The extent to which these types of legal fights will continue will largely depend on the willingness of current and former student-athletes to challenge the status quo, and while much of the current debate was borne out of the efforts of athletes, it remains to be seen whether their activism will be sustained.

The Athletes' Perceptions

Gauging the attitudes of student-athletes regarding their treatment is important in estimating the likelihood of future changes to the current collegiate athletic model. It is no coincidence that the two most influential cases for NCAA reform so far (Northwestern and *O'Bannon*) have come from former student-athletes themselves, lending credence to the hypothesis that any alterations to the system will be a ground up process that begins with the players. For example, University of Connecticut star basketball player Shabazz Napier attracted

the public's attention when he told a reporter that he sometimes goes to bed starving despite having a meal plan covered by his athletic scholarship (Ganim, 2014). The comments prompted Connecticut lawmakers to explore ways to allow athletes at UConn to unionize, and Napier himself even expressed support of the efforts by Northwestern University football players to gain collective bargaining rights. To what extent college athletes share Napier's experiences and opinions is an important question that has been only partially explored.

Although the research is limited, studies have found that student-athletes generally support some type of NCAA reform that would compensate them for their activities. In 1988, a survey of athletes indicated that 43% saw nothing wrong in accepting money 'under the table' to pay for expenses not covered by their scholarships, and a similar 43% believed that college athletes deserved a share of the television revenue generated from broadcasts of their sports (Sack, 1988). A survey of college football and basketball players published in 2000 recorded 86% of respondents in favor of direct cash payments to student-athletes as a form of compensation (Schneider, 2000). A 2014 study found 49.29% of respondents supporting pay for play and 22.02% supporting unionization (Druckman et al., 2014).

While limited research on the subject indicates that college athletes would broadly support some type of NCAA reform that expands their benefits, student-athletes have only slowly begun to protest the status quo. It seems likely that NCAA reform will be an uphill battle if the idea fails to mobilize support from the very individuals it is meant to help. College athletes "have a collective action problem. The only student-athletes with an incentive to join [a union] are male athletes from major college football programs and the mid-tier to major college basketball programs. This does not provide a great deal of grass roots support" (Jenkins, 2002, 48). Lack of public outcry from student-athletes themselves may also be due to what Schneider

calls “pragmatic role acceptance,” wherein college athletes remain politically passive and apathetic for the sake of acting as faithful spokespersons of the system to which they belong (Schneider, 2000, 51). Moreover, it is likely that a majority of college athletes are simply uninformed regarding the key issues. Druckman et al. (2014) theorized that the low level of support for unionization reflects a lack of knowledge regarding the concept itself – only 13.13% of respondents had even heard of unionization efforts.

Toward a Solution or Maintenance of the Status Quo?

Should college athletes be paid? That question has guided the public narrative over the status of college athletes with particular intensity over the past couple years. In addition to the economic and legal implications to consider, any resolution must carefully take into account the interests of the student-athletes themselves, the NCAA, and the college sports industry as a whole. There are certainly a variety of competing interests to consider, and not all of them see changing the collegiate athletic model as an appropriate response to the current debate. Evolving out of these competing interests is a tension between introducing market principles into collegiate athletics and the effects that may have on the ability for universities to carry out their educational mission with student-athletes.

ARGUMENTS IN FAVOR OF REFORM

Athlete Treatment

The arguments regarding the treatment of college athletes are less about an empirical evaluation of their welfare and more about a normative one. College athletes are, for the most part, treated very well, but are they really getting what they deserve?

At Duke, in particular, the athletes extolled the quality of treatment they receive, but some were left wondering how a handful of college athletes nationwide could be undergoing

financial stress when the system they help support generates billions of dollars in revenue. Despite all of the benefits, a Duke men's basketball player believes that some athletes are not "getting a fair deal because like I said, most of the student-athletes outside of the biggest schools are struggling." Jay Bilas, a former Duke basketball player and current ESPN college basketball analyst, is strongly in favor of a system that expands benefits to college athletes. He sees a system where administrator and coaches' salaries "are paid based upon this being a multi-billion industry" and believes that "the players deserve to share in that as well."

The argument that the collegiate athletic model is in need of corrective transformation rests on a belief that college athletes are not fairly compensated for the economic value they create. Given the huge sums of revenue that student-athletes, especially those in men's football and basketball, generate for their schools, athletic scholarships do not constitute adequate and fair compensation. If collegiate athletics were treated as an open, competitive market where athletes were free to devote their services to the highest bidder, the salaries they would earn in such a market would likely exceed the economic value of an athletic scholarship and other benefits they currently receive (Sanderson et al., 2015). A 2011 study attempted to quantify the market value of Division I football and men's basketball players by imagining that university athletic departments employed a revenue-sharing scheme similar in structure to those in the NFL and NBA, where revenues are split with the players at 45% and 50%, respectively (National College Players Association, 2011). The study concluded that the average football player would be worth \$121,048 and the average basketball player \$265,027. The highest valued basketball players, those at Duke University, would be worth approximately \$1 million. Even the value of a full athletic scholarship falls well short of the level of compensation that certain athletes could theoretically earn in an open market. As such, the argument proceeds, if student-athletes are to be

treated fairly, their compensation and benefits must scale beyond the current value of an athletic scholarship and cost of attendance.

Athlete Status

Employment and Labor Rights

Many legal analysts believe that college athletes are employees under the National Labor Relations Act (NLRA) and the provisions of the common law test (McCormick & McCormick, 2006). Classifying college athletes as employees under the NLRA would give them the ability to form a union, bargain collectively, negotiate a wage, and maintain the right to strike. The common law test defines the status of an employee by describing the characteristic aspects of the employee-employer relationship, namely that 1) the employer exerts a certain level of control over the work life of the employee, 2) an employee receives compensation for services, 3) the employee is economically dependent on the employer, and 4) the relationship between the employer and employee is primarily commercial. Legal analysts cite four primary factors that characterize college athletes as employees by the common law test. Universities control the daily lives of college athletes through a strict and intensive schedule mandated by the athletes' athletic teams, the grant-in-aid athletic scholarships that college athletes receive serve as a form of compensation for the athletic services the individuals provide, and college athletes are economically dependent on their universities because their subsistence (e.g. food and shelter) is met by the grant-in-aid scholarship.

Lastly and perhaps most importantly, however, proponents of reform argue that college athletes are employees because they share a principally commercial, not academic, relationship with their universities. The veracity of this fourth and final observation is supported by many characteristics of the student-athlete experience: athletes are the beneficiaries of special

admissions practices, athletes' athletic schedules may force them to neglect their academic responsibilities, universities often guide athletes into bogus academic programs with light requirements, athletes exhibit sub-standard academic performance with low graduation rates, and numerous institutions have overlooked academic fraud within their athletic programs (McCormick & McCormick, 2006; Branch, 2011). Student-athlete graduation data shows striking trends when broken down by sport (Carroll, 2014). While the overall graduation rate for all Division I athletes is 65 percent, men's football players (at FBS schools, a subdivision of top Division I football programs) graduate at a 59 percent rate and men's basketball players are even lower at 47 percent. Sports such as men's gymnastics and women's lacrosse, with graduation rates of 88 and 80 percent, respectively, offset the revenue-generating sports' lower rates. This difference in academic achievement is particularly significant given that the debate over college athletes' status is specifically targeted at athletes in revenue-generating sports and not other student-athletes. There is no argument that men's football and basketball players are responsible for the commercial viability of their university's athletic program. However, the NCAA justifies this circumstance by arguing that student-athletes' primary relationship with the university is academic, not economic. Yet if student-athletes' educational responsibilities are being neglected in favor of their athletic ones, it becomes more difficult for the NCAA to argue that the relationship between athlete and university is not fundamentally commercial.

In deciding whether college athletes are legally employees, the important factor then becomes evaluating to what extent student-athletes are students and to what extent they are athletes. Certain themes emerging from the interview data support the notion that the collegiate athletic system encourages student-athletes to prioritize their athletic participation above their academic work. Multiple athletes, from both revenue and non-revenue sports, admitted that their

primary commitment is to athletic success ahead of academic achievement. While they all extolled the values of obtaining a quality education, the sense, as one revenue-generating athlete put it, is that athletes are at school to compete athletically and with regard to their classwork, to do the “best that we can but just do enough to get by.” Athletes also explained that the university endorses a similar conception of the student-athlete experience. A Duke women’s golf player expressed regret over her inability to enroll in some of the classes she wanted to take because of their interference with her practice and workout schedule. She tried to justify this circumstance, admitting, “I know that athletes are here because they got recruited through a sport and their sport should be their number one priority.” Jay Bilas also argued that student-athletes could not be conceived as students first and athletes second because that is not the way they are recruited: “I was being recruited because they thought I could play. And that’s true of every athlete. Nobody is recruited as a student first.” The way in which universities treat student-athletes and the way in which student-athletes treat themselves both lend credence to the notion that student-athletes are athletes first and students second.

However, some interview participants took a more nuanced view, arguing that the degree to which certain student-athletes balance their athletic participation and academic work is largely dependent on the sport they play. For the most part, there is a moderate consensus that the star athletes in football and men’s basketball are using the college environment as a way to prepare for a professional career in athletics. The same circumstances do not apply to other college athletes because they simply do not have the same career opportunities in their sports, with the exception of a few. As Mitch Moser, Duke’s Deputy Director of Athletics and Chief Financial Officer, explains, this makes it “very hard to over generalize the student-athlete” because they are different from sport to sport. These differences between sports extend to the way these

athletes are treated by the NCAA. Doriane Coleman, a former student-athlete and current professor of law who has dealt in sports law, argues, “I don’t buy that the NCAA...with respect to some sports treat their student-athletes as students first and athletes second.” The conception of some student-athletes, especially those with post-college athletic career opportunities, as lacking in an academic relationship with their universities seems to be fairly widely shared.

Current NCAA rules regarding medical insurance and accident coverage for on-field athletic injuries have also been criticized. The NCAA administers the provision of a catastrophic insurance program for all student-athletes and also requires that all athletes maintain basic accident insurance coverage in order to be eligible to play. However, gaps in these coverage plans may often leave student-athletes with unforeseen costs, such as certain medical tests that are not covered, payments for out-of-network service providers, and various co-pays and deductibles. NCAA member institutions are additionally not liable for the long-term medical care of injured athletes, which the NCAA expects to be covered by the student-athlete’s individual or family health insurance policy, but often may not be (Sheely, 2015).

In addition, proponents contend that the NCAA created the term student-athlete specifically to deny employee status to college athletes in order to avoid liability for workers’ compensation (McCormick & McCormick, 2006, Branch, 2011; Cronk, 2012). In the 1953 case *University of Denver v. Nemeth*, the court ruled that a football player at the University of Denver was an employee within the meaning of the Colorado workers’ compensation statute. Therefore, the university was obligated to provide workers’ compensation for his football injuries. Following the case, the NCAA crafted the term student-athlete and encouraged its usage to diminish any characterization of college athletes as employees. Ever since, colleges have won numerous liability cases in court using the student-athlete defense (Branch, 2011).

Amateurism

There exists compelling evidence that amateurism rules only serve to undermine and exploit college athletes (Branch, 2011; Edelman, 2013; Goldman, 1989). NCAA rules formerly prohibited colleges from offering scholarships longer than a one-year commitment (and member institutions are still not required to offer 4-year scholarships). So, although the most recent rule change means coaches and schools are prohibited from not renewing an athlete's scholarship because of a drop in athletic performance, they may still choose not to renew an athlete's scholarship due to injury. From 2008 to 2009, 22% of scholarships for players on top Division I basketball teams were not renewed, and the NCAA has been wary to pursue the suggestion to allow a free market in scholarships (i.e. refrain from capping the amount in scholarships a school may provide) despite the very real notion that this would expand educational opportunities for its athletes (Branch, 2011). In addition, NCAA member schools limit the quantity of student-athletes' financial aid/scholarship amounts and NCAA bylaws prohibit athletes from profiting from the use of their names, images, or likenesses (Edelman, 2013).

Amateurism rules may in fact constitute antitrust violations by the NCAA (Goldman, 1989; Branch, 2011; Edelman, 2013). Grant-in-aid scholarship amounts are set by NCAA agreement and are limited to cover only tuition and fees, room and board, and required course-related textbooks. By setting restrictions on athlete compensation, the NCAA eliminates price competition among its member institutions, which in essence amounts to an illegal wage-fixing constraint (Edelman, 2013). At the same time, scholarship rules restrict colleges that might choose to pay their student-athletes beyond the fixed grant-in-aid amounts and inhibit players seeking to determine their market value by hiring agents or entering professional drafts. Such action may be construed as an illegal group boycott under antitrust legislation. In fact, the

O'Bannon ruling (discussed below) declared NCAA amateurism rules to be a violation of antitrust laws, while another lawsuit, *Jenkins v. NCAA*, aims to completely eliminate the NCAA's right to set compensation limits for student-athletes (Nocera, 2016).

The consequences of amateurism rules include increased profits for colleges, the transfer of income from athletes to highly-paid coaches, and a theoretical depression in the wages of student-athletes if they were to receive compensation in an open market (Goldman, 1989). In other words, if college sports and recruiting were treated like a competitive free-market with no cap on the amount of an athletic scholarship that universities could pay out, the compensation that the top student-athletes would earn would be greater than the value of a current athletic scholarship. However, this would likely only be true for a portion of athletes participating in the revenue-generating sports. Since athletic departments are paying (albeit, in scholarships) athletes less than they are worth, the surplus funds are used to attract top-level coaches with huge contracts. Proponents of NCAA reform thus argue that athlete compensation should be governed by a free market system. In fact, applying antitrust laws would not even necessarily require paying athletes wages, but would only prohibit agreements among schools from fixing the price of scholarships, effectively allowing schools to offer larger scholarships to higher-valued recruits.

ARGUMENTS AGAINST REFORM

Athlete Treatment

Proponents of the status quo often oppose expanding the rights and benefits afforded to college athletes because they believe that student-athletes are already fairly compensated for their activities (Chudacoff, 2016). Student-athletes receive athletic scholarships and a debt-free education; they are beneficiaries of the best coaching, medical staff, and athletic trainers; they

use the most state-of-the-art weight and conditioning equipment and athletic facilities; they are offered academic resources beyond what is available to the average student; they are provided with apparel and gear; and they eat specialized diets and furnished meals. Although revenue-generating athletes are afforded these benefits to a far greater extent than other non-revenue-generating athletes, these are still advantages that all student-athletes enjoy and regular students do not. While the value of just an athletic scholarship may not be equal to what certain athletes could command in an open market, it is certainly not as if college athletes on the whole are struggling to get by. The provision of additional benefits for a group that already receives substantial advantages over the average student appears counterintuitive.

Interview participants across the board agreed that, in general, student-athletes at Duke are very well treated. Athlete treatment has even improved with the introduction of new rule changes that expanded the amount of food teams could provide for their athletes and extended scholarship values to cover cost of attendance. Todd Mesibov believes that as a result of the recent rule changes, schools are “able to do more for [athletes] now than we were in the past,” addressing concerns brought up in recent years. Each student-athlete extolled the variety of the benefits he/she receives at Duke, such as “access to equipment, gear, facilities, different food, travel, opportunities after college.” While some student-athletes acknowledged the validity of an argument that current compensation for some players is unfair, most seemed to agree with one basketball player who said about his experience at Duke, “I think this is as fair as it could get.”

Athlete Status

Employment and Labor Rights

Opponents of reform argue that college athletes are students first, and that athletic participation is a single, but important, component of the overall educational experience afforded

by the university. In fact, the NCAA takes great pride in the academic success of its student-athletes. Data for students who enrolled in 2006 show that 65 percent of Division I athletes graduated by 2012, compared to a 64 percent rate for the general student body (Carroll, 2014). Additionally, opponents argue that college athletes and universities do not share a principally economic relationship because the very purpose of college athletics is education, not profit (Brief 1; Brief 4). In fact, besides a select group of high-profile athletic programs, nearly all college and university athletic departments fail to generate net income (Brief 1). Universities fund athletic programs for the sake of the academic and personal development of student-athletes (in addition to the intangible benefits associated with school spirit and the campus social environment to which athletics contributes). Under this argument, it makes little sense to count the hours student-athletes spend on the practice field as work time in the same way that it would be absurd to say a theater student who spends 40 hours a week rehearsing and performing is an actor that deserves employee benefits (Brief 3).

Opponents further argue that college athletes do not properly meet the status of an employee as defined by the common law test. First, schools do not exert undue influence over the lives of student-athletes. For the most part, athletes are under control of the university to the same extent as other students that participate in extracurricular activities (Brief 2). Second, the athletic scholarship does not resemble a contract for hire or compensation for services rendered. Student-athletes participate in athletics for their own benefit, and the scholarship amount is calibrated to the cost of attendance of the university, not tied to the player's performance or skill level as would be the case with a contract for hire (Brief 1; Brief 2).

There exist significant economic and public policy ramifications of a ruling that classifies college athletes as employees and grants them collective bargaining rights. In fact, the

consequences of any ruling or policy adjustment that would grant some college athletes an extended level of benefits are so significant that they are worth considering as part of the normative question itself. Deciding whether to remedy certain aspects of the collegiate athletic model must carefully consider the effects that such a policy change would generate, which is why it is crucial to identify what these effects may be. For example, collective bargaining would undercut the freedom of universities to maintain academic standards. Unionizing college athletes would likely lead to negotiations over minimum GPA requirements, class attendance, and academic eligibility and codes of conduct, breaking down a school's ability to uphold its educational mission (Brief 1; Brief 5).

Team-by-team collective bargaining would also undermine the fairness and uniformity maintained by NCAA regulations that oversee all college athletic programs. Within the scope of the Northwestern case, the only athletes that would be eligible for union representation are those in revenue-generating sports (men's football and basketball). While unionized athletes negotiate for increased resources, their gains would likely be paid out of the budgets for the sports of their non-unionized counterparts (Brief 4; Brief 5; Brief 6; Parasuraman, 2007). A consequence of such a system would likely be the diminished provision of scholarships for athletes in the non-revenue-generating sports or the elimination of non-revenue-generating sports altogether. Athletic departments could also be at risk of failing to comply with Title IX requirements, which effectively require that universities provide equal resources for men's and women's sports. (Brief 2; Brief 3; Brief 6).

Athletic department administrators at Duke stressed the extent to which the school and athletic department emphasize the educational success of its student-athletes. Nina King, Duke University Deputy Director of Athletics/Administration, acknowledged that student-athletes

require a balance between academics and athletics, but “we really firmly believe at Duke that it’s academics first.” As a Duke swimmer explained, this is true for many athletes because while they have a commitment to their athletic team, many student-athletes participating in the non-revenue-generating sports will not have an opportunity to play in a professional league, which is why her end goal is “to graduate with a Duke degree and get a job.”

Amateurism

The NCAA and its supporters place high value in maintaining the amateur status of college athletes to emphasize the educational purpose of intercollegiate athletics. By insulating college athletes from commercialism and clearly distinguishing their status from that of professionals, amateur rules protect the academic relationship between student-athlete and university (Brief 6; Brief 7). Supporters of the amateur model believe the rules are necessary in promoting the role of athletics as a component of the educational experience – without them, the worry is, student-athletes would become too focused on their role as athletes and unconcerned with their role as students. Amateur rules are meant to improve the educational experience for student-athletes by leading to higher graduation rates and better job prospects (Brief 6).

Interview participants, particularly athletic department administrators, defended the amateur model as a system that is necessary to uphold any semblance of the importance of academics among athletes. The preeminent concern is that including student-athletes in a system of compensation would not only distract them from their academic work, but completely shift their priorities and incentives for attending university. Doriane Coleman worries that, especially if the sum paid to student-athletes is large, “the incentive to be a student...could be shifted.” When this happens, the value and purpose of the university is entirely undermined. Instead of an institution that fosters educational growth through both academic coursework and extracurricular

participation, the university effectively becomes a minor league system that funnels athletes to the professional ranks. However, despite the legitimate concerns of those opposed to altering the current system, the reasons for making some minor changes outweigh the negative consequences.

WHY REFORM IS NECESSARY

The primary tension in the debate over college athletics is between the educational ideal of amateurism and fairness with regard to market principles. The most compelling reason to pay some college athletes is because their activities generate enough revenue such that their value to the university exceeds that of their athletic scholarships and ancillary benefits. The most legitimate argument opposing this type of reform is that the introduction of such an overtly commercial arrangement has long-term, negative consequences for the educational system. However, the reason reform is necessary is because the current model fulfills neither of these standards very well, and there is room to improve on both accounts. Not only do many top Division I football and men's basketball players fail to graduate, but neither do they receive a complete education while in school. At the same time, their athletic scholarships leave them severely lacking compared to what they could theoretically earn for their activities in a competitive market setting. By crafting reform appropriately, the collegiate athletic model can both uphold the educational ideal for student-athletes and provide them with additional compensation in accordance with market principles to a better and more effective degree than is currently being done.

THE REFORM MOVEMENT

Various proposals exist advocating for different models of athlete compensation that furnish college athletes with a higher level of benefits than they currently enjoy, including direct

compensation and revenue-sharing programs, rule changes that allow student-athletes to earn outside income, and revisions to professional league eligibility requirements.

Proposed Reforms

Direct Compensation

To expand the monetary benefits afforded to college athletes, proponents have argued for direct compensation to athletes either through a free market or limited allocation approach.

Transforming the college athletics recruiting process into a free market would involve treating high school athletes like any other employees (Schott, 1996). Recruits would be allowed to market their talents and services to the highest bidder, and schools would be permitted to pay athletes according to their market value with no limit on the level of athletic scholarship they could provide. Of course, allowing college athletics to function as a free market makes the system essentially indistinguishable from its professional counterparts, which is why a limited allocation approach has been a more preferred solution for direct compensation to student athletes (Goplerud III, 1997; Nocera, 2016).

Limited allocation, in contrast to a free market approach, involves restricting the level of compensation that schools would be permitted to provide student athletes. This approach could be accomplished under the guise of a salary cap system or through the use of stipends. Under a salary cap system, every Division I men's football and basketball team would have a salary cap, a predetermined sum beyond which total compensation to athletes could not extend. However, each team would be required to pay athletes a minimum salary. Any money left over under the cap after paying all athletes the minimum would be used in recruiting to lure star athletes with the promise of a higher salary. A stipend system would work in a similar manner, the key difference being that all athletes would receive the same fixed sum amount as compensation.

Individual schools would have discretion over the amount of the stipend, but they would be constrained by a limit on the total amount of money they could disburse to student-athletes. Stipends would be available to athletes in the major revenue-generating sports and to women in sufficient numbers to satisfy Title IX requirements, meaning the same level of stipend compensation must be disbursed to male as well as female athletes.

Regardless of the specific form of which either of these approaches may take, there are important legal implications of student-athletes receiving direct compensation for their athletic services. The provision of a salary or stipend even to student-athletes would likely be construed by courts as a wage paid for services rendered (Goplerud III, 1997). Athletes who receive a salary or stipend would fall within the definition of employee and would likely be eligible for workers' compensation and collective bargaining rights under the NLRA.

Revenue-Sharing

Proponents have argued that college athletes be included in a revenue-sharing scheme that allows athletes to earn a portion of the money schools and the NCAA make from media rights, ticket sales, and marketing revenue, among other sources. Such a system could siphon off a fraction of money drawn from television rights payments, merchandise sales, and private donations into a trust fund for athletes to be distributed upon graduation (Cohen, 2011; Nocera, 2016; Schott, 1996). The trust fund plan would encourage athletes to stay in school, graduate, and refrain from violating NCAA rules.

Other revenue-sharing plans would allow student-athletes to receive a portion of the revenue generated by their individual team (Acain, 1997). Depending on their year in school, an athlete could receive a percentage of their team's revenue ranging from 0.25 – 1 percent. If a team fails to make a profit in a given year, the athletes on those teams would rely on their athletic

scholarship as their sole means of compensation. This type of revenue-sharing system, which apportions by team and is entirely dependent on profit, would apply to all men's and women's programs and would allow schools and sports that fail to generate revenue to survive.

Obstacles to Direct Compensation and Revenue-Sharing

Direct compensation and revenue-sharing approaches to paying college athletes fundamentally increase costs for athletic departments. Besides compensating athletes at higher levels than before, paying student-athletes could lead to further costs beyond salaries, stipends, or revenue shares (Chait, 2016, January 11; Goplerud III, 1997). Workers' compensation would require schools to purchase insurance coverage; paying student-athletes could open a school up to tax consequences; and a school may incur additional expenditures as a result of unionization and collective bargaining if student-athletes negotiate for expanded benefits.

The reality is that university athletic departments, operating the way they currently do, simply cannot afford these added costs, let alone the additional payments to athletes themselves. The majority of athletic departments actually lose money on athletic programs (Goplerud III, 1997; Sanderson et al., 2015). Once operating costs are taken into account, fewer than ten athletic departments a year generate a true surplus (Zimbalist, 2015). While men's football and basketball generally turn a profit, the rest of a school's athletic programs generally do not, which means the money made from the revenue-generating sports is used to subsidize the existence of the non-revenue-generating ones.

In order to pay college athletes (men's football and basketball at the very least) above the current level of benefits, athletic departments would likely be forced to redistribute the capital being used to fund the non-revenue sports (Remy, 2012; Schott, 1996; Zimbalist, 2015). Universities would simply be unable to afford paying all athletes (or even some athletes) and

maintain all of the athletic programs that they offer. If schools are compelled to expand the current level of benefits afforded to some athletes, the results would likely be a reduction in the scholarships available to non-revenue sports or an abolition of some of those programs altogether. Duke's athletic administrators confirmed this evaluation of their budget – that in order to offset increased funds awarded to some athletes, the department would have to decrease expenditures in other areas. Mitch Moser argues that in this type of system, “you’re going to impact the student-athlete experience and I don’t think you’re going to impact it in a positive way.” Despite improving the welfare of some athletes (those that get paid), athletes and administrators alike are concerned about the potential that a lack of funds in a system that expands benefits for certain athletes will lead to the demise of the non-revenue-generating sports.

The idea that university athletic departments are struggling financially fails to truly paint the entire picture, however. From 2006-2011, median Division I athletic department revenues grew over 27% -- an increase of over \$4 million (Hoffer, 2016). The reason athletic departments fail to turn a profit is because they simply convert the increased revenues to new expenditures. Jay Bilas argues that there is plenty of revenue to redistribute to paying college athletes, but that athletic departments are simply unwilling to reallocate funds from certain areas. Athletic revenues continue to rise, and as Bilas explains, despite the argument that there just is not enough money to pay athletes, athletic departments are not similarly “claiming there’s not enough money to keep paying coaches and their coaching salaries keep going up and up and up.” In recent years, the salaries paid to head football and basketball coaches have soared, and in 2012 alone, schools in the Power Five conferences spent over \$1 billion on facilities upgrades and construction projects (Hoffer, 2016). Partly as a result of the NCAA’s cap on athletic scholarships, increased athletic department revenues result in expenditures for coaches 7.5 times

more than direct expenditures for student-athletes, and that ratio increases to 10 times more for just the Power Five schools (Hoffer, 2016). To redistribute more funds to student-athletes, athletic departments could institute cost-cutting measures in order to trim the expenses of what usually is an extravagant budget. College athletics suffers from superfluous expenditures on stadiums, facilities, recruiting, team travel, and coaches' and administrators' salaries (Zimbalist, 2015). Putting a cap on excessive salaries and finding a way to trim wasteful expenditures in other areas could free up enough money to pay college athletes under one of the systems outlined above.

Olympic Model

Given the budgetary constraints of university athletic departments, proposals have been made to allow student-athletes to earn money on their own, without having to be paid by their school. The idea that the NCAA should modify its amateurism rules and allow student-athletes to profit based on their status as college athletes is referred to as the *Olympic model*. In the same way that Olympic rules were amended to allow those athletes to earn outside income, college athletes should be able to sell their publicity rights and earn money from the use of their names, images, and likenesses.

In this system, student-athletes could receive a portion of the merchandising and endorsement revenue they generate for their schools (Acain, 1997; Sharp, 2015). Sponsorship brands and companies could pay stipends to players, which would be negotiated into the overall licensing deal that the company has with the school. In addition, student-athletes would be free to commercially endorse products and take full control of their own marketing and publicity rights (Acain, 1997; Cohen, 2011; Miller, 2011; Nocera, 2016; Schott, 1996; Sharp, 2015; Zimbalist, 2015). College athletes would be able to hire agents, sign endorsement deals, and

contract with businesses and advertisers. The Olympic model would not cost the NCAA or member universities, although the NCAA would have to amend its bylaws to allow student-athletes to profit from the use of their likenesses and hire an agent/attorney.

Implementing the Olympic model in some fashion received almost across the board support from student-athletes, administrators, and others who saw this type of policy reform as a fair and less drastic solution that would cause fewer negative externalities for the collegiate athletic model. The only concern was whether permitting these types of benefits would alter the competitive playing field for athletic programs, especially with regard to recruiting because of the role that university boosters play in recruiting student-athletes. A Duke women's track athlete referenced some recently discussed proposals to deal with this problem. An idea is that "it could go through compliance offices, that schools could be a part of monitoring financial deals student-athletes made to ensure that they weren't, say, taking bribes from donors to go to other schools." As long as allowing athletes to sell their publicity rights does not negatively alter the competitive balance between athletic programs, the Olympic model appears to be the most reasonable proposal for expanding benefits to college athletes.

Professional League Eligibility

Supporters of reform criticize professional eligibility and league minimum age requirements that prevent pro-ready high school athletes from directly entering the professional ranks (Garofalo, 2015; Sanderson et al., 2015). The National Basketball Association has a minimum age requirement of 19 years while National Football League eligibility requires athletes to be at least three years removed from high school. These rules push high school players to attend college whether they want to or not, and they prevent many of these same players from going pro even if they are athletically ready.

Professional league eligibility minimums serve the interests of both the NCAA and the leagues themselves at the expense of the athletes. Of course, the NCAA benefits by having future professional players, who often become college stars, playing in their ranks. The professional leagues benefit by limiting the time span during which pro-ready college athletes can earn money. Minimum eligibility requirements prevent pro-ready athletes from entering the professional league and earning money right away, which, for example, could be up to \$4.5 million in the first year for a first round NBA draft pick. Additionally, built into the NBA's and NFL's collective bargaining agreements with their respective players' associations are rules that only grant free-agency to players once they have spent a certain number of years in the league. Thus, league eligibility minimums raise the average age at which players will reach free-agency, meaning the time at which star athletes will be able to demand high-paying contracts will occur further from their peak playing years, depressing the value of those contracts.

The current systems, with regard to football and basketball, benefit the professional leagues at the expense of both student-athletes and the goals of university athletic departments. An eligibility model that seems to be acceptable to both student-athletes and athletic administrators is that of professional baseball. High school graduates are eligible immediately for the Major League Baseball draft, but must remain in school for at least three years if they choose instead to attend a four-year university.

There appears to be room for improvement for both sides with regard to league eligibility rules that satisfies both players' desire to turn professional and universities' desire for athletes to complete their degrees. Athletes favor a system that allows them to turn pro when and if a franchise is willing to sign them. As a Duke men's basketball player explains, "I don't think there should be a restriction on when guys can and should leave. I think if you're ready, you're

ready.” While administrators did not express disdain for this logic, they clearly prefer a system that prioritizes an athlete’s educational attainment and keeps student-athletes in school for as long as possible. Kevin White, Duke’s Director of Athletics, is partial to the baseball model, believing the guaranteed three years in school “would be helpful – then kids could I think get back and over time make a dent in earning a degree.” At the very least, this ideal has been played out successfully at Duke. Todd Mesibov recalls that “baseball players [at Duke] who have gone pro after having been drafted after their third year largely have finished their programs and gotten their degrees or have been able to come back and just – they’ve been so close that they’ve been able to finish in future years.”

As we have seen, the issue of paying college athletes is complicated. The quality of their very treatment is up for debate. Their legal status is shrouded in unanswered questions regarding labor, employment, and amateurism that are still being debated in court. Proposed reforms and potential legal determinations vary widely in style and character, but all share the common feature of engendering significant and primarily economic ramifications for the collegiate athletic system. Most importantly, however, a solution to this debate must provide due attention to the educational ideal and the economic fairness of market principles.

POLICY RECOMMENDATION

Master Concept

The current model of collegiate athletics is rife with tensions and contradictions that primarily flow as a result of the competing influences of commercialism and the educational ideal. On the one hand, college sports are big business, but the business’ majority “laborers” are prohibited from participating in the market. On the other hand, college sports are not exempt from the university environment, and athletes are expected to make education a priority. These

two ideals are not mutually exclusive nor entirely at odds, which means achieving one does not have to come at the expense of abandoning the other. A reformation of the current system does not need to address the conflict entirely, but introduce a practical set of principles and objectives that better addresses the tensions between these ideals than does the current system.

An improved model of collegiate athletics would effectively blend the two ideals in a manner that upholds the importance of education and accepts, to some extent, the fairness of the commercial market. Such a system is possible despite critics' arguments that commercial influence threatens the educational ideal. Critics have failed to answer exactly what compensation for performance has to do with the integrity of an athlete's participation in collegiate athletics and academics. The reasons that the NCAA and universities use to defend amateurism, namely that athletes who earn money will begin to neglect their academic responsibilities, are not very compelling given that athletes would still be required to maintain certain academic standards and benchmarks to remain eligible – these will not change under any reform to the system. More important, however, is that the current model fails to provide an adequate education for a significant portion of athletes. Division I football and men's basketball players are prone to particularly low graduation rates, and many of them are steered into spurious academic programs with light requirements that give priority to their athletic schedules. Given these considerations, there is an opportunity to implement a system that both expands compensation for student-athletes using a limited market approach and provides a more robust educational experience.

In order to address the variety of concerns that plague the collegiate athletic model, while also attempting to maintain some of the important ideals of the current system, I propose the following three-part reform. First, the NCAA should amend its bylaws to allow all student-

athletes to earn outside income and profit from the use of their own names, images, and likenesses. Student-athletes would be free to market and sell their publicity rights, sign endorsement deals, contract with businesses, and hire an agent or attorney. Second, university athletic departments should include student-athletes in a limited allocation, revenue-sharing scheme in which the athletes on a team are collectively allotted a modest percentage (e.g., 1%) of the revenue generated by their individual team each year. This money should be collected in a trust fund disbursed to the athlete upon the condition of graduation. Athletes on those teams that fail to generate positive net revenue in a given year would rely on their athletic scholarship as their sole means of compensation. Total disbursements of equal value will need to be provided to men and women to satisfy Title IX requirements. Finally, the National Football League and National Basketball Association should amend their minimum eligibility requirements for entering athletes to mimic the rules employed by Major League Baseball. Pro-ready athletes who have graduated high school should be allowed to enter the professional draft process and sign contracts with franchises. If an athlete decides to attend a four-year college or university, then that athlete will not be professionally eligible until the completion of their third academic year.

Part 1: Publicity Rights

Allowing college athletes to market and sell their publicity rights would not only involve treating college athletes like any other employee (which college athletes technically are not), but treating them like any other person that does not play college sports. In briefings for the Northwestern case, the NCAA argued that paying college athletes for athletic participation would be just as absurd as paying other college students for their extracurricular activities (e.g., the thespian for participating in a theater production or the saxophonist for playing in the jazz ensemble). However, unlike the college athlete, those students are not restricted from marketing

their skills and earning outside income based on their unique talents. The notion that college *athletes*, distinguished from college *students* by virtue of the rules of amateurism, should be prohibited from earning compensation outside the university environment is unnecessarily restrictive and unfair.

Of course, universities will argue that *student-athletes* are different than *students* primarily in the way they are already treated by the school. Student-athletes are awarded merit-based athletic scholarships and are recruited to attend the university on the basis of their athletic achievement and talent. They receive benefits (meals, travel accommodations, medical treatment, facilities usage, etc.) that far exceed the privileges afforded to regular students. This argument is not particularly compelling especially given that allowing athletes to market their publicity rights would not change the balance of benefits provisioned by the universities specifically. So while some athletes earn expanded benefits, they do not come at a cost to the university. In addition, this is not the argument that the NCAA nor universities most often make in defending the virtues of an amateur model that prohibits student-athletes from earning outside income. Instead, they argue that the influence of commercialism will detract from the educational experience of student-athletes. If that is true, then it must also be true for non-student-athletes, but universities do not restrict regular students from marketing themselves and earning compensation.

Of the various potential reform possibilities, awarding college athletes discretion over their publicity rights is by far the most feasible option. It would require no alterations to the current system besides a simple amendment to the NCAA bylaws. In addition, this Olympic Model would apply equally to all student-athletes, allowing a women's fencer to earn money outside of the athletic scholarship in the same way a men's basketball player would (While the fencer may not earn endorsement contracts like the basketball player, she would be free to earn

outside income in other ways, such as by running a summer camp). Critics of this system are technically correct when they argue that this model inherently favors the revenue-generating athletes whose publicity rights will be in higher demand. While this is a consequence of the market, it is a result that should be respected rather than condemned. Whereas the previous model prohibited any athlete to profit from his/her status, within this scheme, every athlete would be eligible to earn money and would earn it according to his/her market value. While allowing the market to dictate athlete compensation in this case may not be equitable, it would be fair in the sense that athletes could leverage their own publicity rights to make money like any other student. Giving the athletes full control over their publicity rights in the market achieves two objectives. First, athletes would receive compensation that is commensurate with their commercial value. Second, any gains made by athletes in this way would not be taken from the benefits already being dispersed to their peers by university athletic departments. This system trades equity for fairness, as the most marketable cohort of athletes will earn more money than their colleagues. This inequity, however, would be limited in scope, as only a handful of the most popular college athletes would have the ability to leverage their publicity rights to a fuller extent. Given the overall balance of objectives at play, this slight inequity is a small price to play for a system that more fairly rewards college athletes for their marketability.

Current amateurism rules prevent college athletes from earning money or receiving benefits based on their athletic abilities, and the NCAA's justification for such rules are simple – insulate student-athletes from the harms of commercialism, demarcate the college sports arena from that of the professional ranks, and foster an atmosphere in which student-athletes prioritize their education. Not only does the current model fail to uphold these standards, but amending amateurism would only marginally exacerbate these concerns. The college sports landscape is

already stoked in commercialism. It is a multibillion dollar industry complete with corporate sponsors, mega-sized television contracts, merchandising and license deals, inflated coaches' salaries, and massive cash flow through university athletic departments that is tied directly to a school's athletic performance. In 2010, the NCAA suspended Georgia wide receiver A.J. Green for selling one of his own game-worn jerseys, all the while the Bulldogs continued selling replicas of Green's jersey in the team store for \$39.95 (Branch, 2011). It is hypocritical to claim that student-athletes are not already intimately involved in the business of college sports.

Emphasizing education is an important ideal for student-athletes, but it is clearly just an ideal and only more sporadically carried out in practice. Most importantly, however, the NCAA has failed to address exactly what outside compensation has to do with the integrity of an athlete's participation in collegiate athletics and academics.

Part 2: Revenue-Sharing

In a revenue-sharing system, university athletic departments would set aside 1% (for example) of a team's revenue generated in a given year to be divided evenly among the scholarship athletes on that team. The funds accumulated in a trust fund over an athlete's four-year college athletic career would be disbursed upon the condition of graduation. So long as athletic departments continue to provision an equal level of resources for men's and women's sports, the additional payments to certain athletes would not constitute a Title IX violation. We can see how this system would work by looking at four different university athletic departments that generate varying degrees of revenue (Equity in Athletics Data Analysis, 2016)². For simplicity, the model assumes that football and men's basketball are the only revenue-generating programs at each school.

² A financing breakdown of the revenue-sharing scheme can be found in Appendix 5.

The second row of the table indicates the total athletic department revenue in a year. The fourth row reveals the revenue generated by men's basketball and football, respectively. The values in the fifth row are equal to 1% of the revenue generated by each of those sports because that is the total amount that will be put aside to be distributed among the trust funds for men's basketball and football players. The values in the sixth row are the total amounts of money set aside for the athletes in each sport divided by the number of athletes – this is the amount of money that will be placed into an individual athlete's trust fund in a given year. The value in the seventh row represents the total amount of money potentially redistributed directly to athletes. This includes the total amount allocated for men's basketball and football players multiplied by two because an equal disbursement must be made to female athletes to satisfy Title IX requirements. Finally, the last row shows the percentage of the total athletic budget that would be reallocated to student-athletes.

The monetary consequences of this system are multi-faceted. As seen in the examples above, the range for athlete compensation will vary widely according to the revenue that a particular team generates. An Alabama football player could be eligible to receive almost \$50,000 upon graduation; a Duke basketball player could earn roughly \$100,000; and a Bryant University football player may only be disbursed \$1,600. For this system to work, a team does not have to be profitable nor does an individual athletic department. For any team that fails to generate a net profit, their athletes would simply rely on their athletic scholarships and would not be awarded any additional compensation in the given year. Athletic departments would be expected not to draw additional funds to pay athletes from a surplus, but rather to curb certain extravagant expenses in their budgets. This should not be too difficult, as even the richest athletic departments would be expected to reallocate less than 2% of their entire budget – a percentage

that decreases for more lacking schools. The total compensation for athletes would even likely be less than the values calculated in the table because some student-athletes will turn professional before they graduate, thereby foregoing the money accumulated in their trust funds. With athletic departments cutting expenses, university subsidies to athletic departments would remain unchanged.

The system as outlined here maintains a variety of benefits. First, revenue-sharing directly addresses appeals for college athletes to earn a portion of the revenue that their athletic participation helps generate beyond the benefits of their scholarships. While this model falls short of a true market-based solution (in which a cap on athletic scholarships would not exist and universities could essentially “pay” athletes however much it takes to recruit them), it still awards athletes compensation in accordance with their value to the market – the athletes on those teams that generate more revenue receive higher levels of compensation. Second, this system encourages and rewards student-athletes to prioritize their education and graduate with a degree. The athletes will only be eligible to collect their accumulated compensation upon a condition of graduation. The compensation amount is likely insufficient to induce star football players or basketball’s *one and done* players from staying in school. For example, the potential ~\$80,000 Brandon Ingram could have collected under this system after four years at Duke is a pittance compared to the \$5.3 million that he will earn just as salary in his first year with the Los Angeles Lakers. However, the sum is a reasonable way to fairly compensate athletes for their athletic participation and support the NCAA’s and universities’ emphasis on academic success for student-athletes. Lastly, this system is realistic and feasible. The reason most university athletic departments fail to turn a profit is because they spend just as much on expenses as they produce in revenue, and the majority of schools spend lavishly and extravagantly. As the numbers show,

although this revenue-sharing system would require athletic departments to reorganize their funds, it certainly does not demand a complete overhaul of their budgets. By slightly cutting expenses in certain areas that are traditionally prone to excess (e.g. coaches' salaries, travel, and facilities), schools would be able to set aside money for student-athletes and maintain their entire roster of athletic teams without having to cut any programs. Athletes are rewarded because if their team generates net revenue then they earn additional compensation. Universities would be content with this plan because it requires athletes to graduate and does not upset athletic department budgets to a significant extent.

If we justify athlete compensation on the basis of a market approach, critics might argue that a market approach justifies expenses for coaches' salaries, travel, and facilities. However, the only reason athletic departments have increased funds to spend on these outlays is because student-athlete compensation in the form of the athletic scholarship is capped at the cost of attendance – if scholarship amounts were not capped, expenditures on athlete scholarships would likely be higher. The coaches' salaries and facilities expenses, for example, are trumped up because of their value as a recruiting tool. The additional monies that athletic departments are restricted from spending directly to the best athletes are allocated for the types of investments that are used to lure those athletes in recruiting battles. If scholarship amounts were not fixed, or schools could provide athletes with additional monetary compensation, athletic department spending on coaches, facilities, and other areas would likely not be as lavish.

Critics will argue that this model will create anti-competitive effects in college sports as recruits will be lured to the schools where they could potentially earn more money upon graduation. The effect could be an unequal, two-tier system where the more talented and advantaged student-athletes will go to the wealthier schools and earn more money while the less

talented, less advantaged athletes will go to poorer schools and earn less. While this is a legitimate concern, the effects are likely to be largely over-exaggerated. Since players cannot access their compensation until they graduate, those athletes who plan to play professionally after a minimum number of years in school are unlikely to be swayed by the potential value of their trust fund. In addition, the appeal of potentially higher compensation for athletes from schools that generate greater revenue is unlikely to shift the balance of the current recruiting environment. The schools with the ability to pay their athletes more (i.e. greater revenue) are already the schools spending more to benefit their athletes (i.e. expenses). In this system, the schools that already possess current recruiting advantages would simply maintain those advantages. Effectively, an unequal system already exists, and at worst, this plan to compensate student-athletes only maintains that system.

Critics may also argue that if athletes were to be paid in this expanded fashion, then the logic would imply that all students that produce supplementary benefits for the university (e.g., a Rhodes Scholar) should also receive additional compensation. However, the benefits from these students are not nearly as monetarily quantifiable as those produced by athletes, and the university does not so explicitly leverage the successes of these students for its own benefit as it does rely upon athletics to generate revenue. Whether the university should or should not pay these other types of students is really beside the point. The fact of the matter is that there currently is no restriction against the university engaging in such payments like there is for athletes. The reason these students are not paid is because there is no market for the benefits they provide, whereas the market for athletes is much more robust.

Part 3: Professional League Eligibility

There are two primary objectives in amending professional league minimum eligibility requirements for the National Football League and National Basketball Association. First, the goal is to treat pro-ready, high school athletes just like any other soon-to-be professional with a sought-after and marketable skill. If the athlete is ready to play professionally, then he should be allowed to play professionally. Second, and perhaps more importantly, if an athlete decides to attend university, then he should be required to attend for at least three years before turning professional. This stipulation is appealing for two reasons. By compelling athletes to stay in school for at least three years, the requirement gets more professional-bound athletes closer to graduation, fulfilling the NCAA and university's goals of prioritizing academic success. Additionally, by keeping more professional-bound athletes in school for longer periods of time, the college athletics product will be improved by the presence of more highly-skilled and veteran players. Changing the rules in this way produces benefits for each of the parties involved. The most prolific athletes have the opportunity to transition from high school directly to a professional career, universities will succeed in propelling more student-athletes toward earning a degree, and the professional leagues will benefit from the influx of more mature players and developed talent that enter their drafts after three years or more in school.

This type of system has some notable concerns. Despite the fact that this solution would rely entirely on the professional leagues to change their rules (which is highly unlikely), critics worry that the model could introduce recent high school graduates into a professional environment that they are both physically and emotionally unprepared for. Unlike Major League Baseball, the National Football League and National Basketball Association do not maintain a robust minor league system of their own to develop young athletes (although the NBA

Development League is a quasi-minor league system). Instead, the leagues rely on university athletic programs to supply the type of structure and growth that young athletes need to be ready for a transition to the pros. Ironically, while critics are worried that paying college athletes will turn college sports into a virtual minor league, it appears that that is the way professional football and basketball already treat their collegiate counterparts.

CONCLUSION

The collegiate athletic system requires reformation. Critics of the system lament the treatment and conditions of college athletes and call for their compensation according to market principles. The NCAA and universities defend the current system and its amateurism regulations as a way to maintain the precedence of education for student-athletes. The problem is that the current system underperforms on both metrics. Top football and men's basketball players are not being fairly compensated for their value, but neither are many student athletes obtaining a quality education. The recommendation for reform that I have made aims to improve outcomes for athletes on both accounts.

Giving athletes full control of their publicity rights and the privilege to earn outside income will allow athletes to take advantage of their commercial value in an open market setting. The most popular athletes will perhaps sign the most lucrative endorsement deals, but amending amateurism rules in this way would give all student-athletes the potential to earn income apart from their scholarships on account of their athletic ability. The concern that incentives for athletes to prioritize their education would wane is certainly valid, but athletes would still be required to meet academic eligibility standards. Finally, this additional compensation to student-athletes would require no additional costs for university athletic departments.

A revenue-sharing scheme is an important step in addressing concerns that college athletes should be compensated for their athletic participation and commensurate with the revenue that their activities help generate. To satisfy the interests of the NCAA and universities, the amount of money awarded to athletes is relatively small, and athletes may only collect the sum upon a condition of graduation. Altogether, this revenue-sharing system compensates athletes in a market setting, prioritizes academic achievement by withholding compensation until graduation, and relieves university athletic departments of an undue financial burden by keeping the revenue-sharing allocation relatively small.

Finally, amending professional league eligibility requirements would allow professional-ready high school graduates to turn professional. If athletes decide to attend university, then requiring them to stay for at least three years before being eligible for a professional draft would get them closer to graduation. The NCAA worries that paying student-athletes would turn college sports into a minor league system. However, it is the trend in the current system of athletes staying at their schools for one or two years before going pro that makes college sports a minor league already. With these reforms, it is possible to both improve the fair treatment of student-athletes and make the college sports system one that takes seriously the goals of university education.

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APPENDICES

1. Limitations and Opportunities for Further Research

The above recommendation is theoretical in the sense that its application depends on the actions of various bodies that make their own, unilateral decisions. Professional league eligibility requirements are at the sole discretion of the National Basketball Association and National Football League, and those leagues have a vested interest in maintaining the rules of the current system. Paying college athletes through revenue raised by university athletic departments or altering NCAA amateurism rules would require an amendment or adoption of a proposal by the NCAA Legislative Council, a 31-member body made up of athletic administrators, faculty athletics representatives, and institutional administrators from the various athletic conferences.

My analysis and recommendation were informed by a series of interviews conducted with informed actors in the space of college athletics, including athletic administrators, current and former student-athletes, and academics. However, my interview sample was constrained to the confines of Duke University and may not be entirely representative of the wide and varied interests and experiences of those involved in collegiate athletics at other schools.

My review of the literature did not provide a rich discussion of the socioeconomic and race implications inherent in the debate of paying college athletes. My interview series also neglected to reveal concerns regarding these metrics (besides from a single interview respondent who pointed out that some student athletes are “struggling” and do not have the money to buy food every day). However, the idea that the collegiate athletic system is perhaps taking advantage of poor and disadvantaged athletes must be taken seriously. A 2011 study compared the value of a full athletic scholarship to the guideline amount of the federal poverty line for a single individual (National College Players Association, 2011). The study only considered the

room and board components of the scholarship and did not consider such items as tuition, fees, and books because these provisions do not affect an athlete's ability to pay for necessities. The study concluded that the percentage of FBS Division I schools whose full athletic scholarships leave their players in poverty is roughly 85 percent. Of course, this calculation does not account for any economic support from families that athletes may be receiving. Still, although exact statistics are difficult to find, many athletes on scholarship tend to come from low-income families (Fulton, 2014). In addition, black athletes account for a majority of the participants in the revenue-generating sports. In 2012 African-Americans accounted for 51.6 percent and 57.2 percent of FBS Division I football and Division I men's basketball, respectively (Lapchick, 2013). So, the argument to pay athletes based on the revenue generated from their activities cuts across racial components as well. Future deliberation on this topic should give due consideration to the way the collegiate athletic system treats athletes from poor and minority backgrounds.

2. Methods

Overview

The main section of empirical research for this project came from a series of interviews I conducted with informed actors in the space of college athletics. As for the public debate over the status and treatment of college athletes thus far, the majority of the argument has been dominated by legal analysts, journalists, and sports and political media pundits. The individuals I interviewed, however, are those who are most directly, or closely, involved with the very system of college athletics. This group of individuals includes student-athletes in revenue-generating and non-revenue-generating sports, coaches, college athletic department administrators, and academics whose primary research involves sports law and economics. These individuals were chosen based either on their relevant knowledge of the debate, their stake in its outcome, or both.

Speaking with informed actors not only provided a perspective on the debate that had yet to be fully fleshed out, but also helped inform a construction of potential reform to the current model of college sports that fully accounts for the interests of the college sports industry, the NCAA, and student-athletes. The group as a whole was representative of the wide range of opinions at play in the debate over the status of college athletes.

Sample

I recruited interview participants via my relationship with the Director of Basketball Operations for Duke University's men's basketball team. I interviewed approximately seven current Duke student-athletes, three of which participate in revenue-generating sports while the remaining four participate in non-revenue-generating sports. I interviewed one athletic coach and five Duke athletic department administrators, including the Deputy Director of Athletics/Administration, Deputy Director of Athletics/Operations, and Vice President/Director of Athletics. Additionally, I interviewed law professor Doriane Coleman and former Duke basketball player Jay Bilas.³

Interview Structure

The purpose of conducting interviews with informed actors in the space of college athletics is to collect and evaluate their perspectives with regards to various proposals seeking to reform the collegiate athletic model. I synthesized the array of information and attitudes I collected through the interviews to inform a construction of a policy solution for the collegiate athletic model that fairly balances the issue's competing interests. The accumulation of the various perspectives represented in the interview sample effectively accounted for these competing interests. In conducting the interviews, I was able to learn whether those individuals

³ The full list of interview participants can be found in Appendix 3.

most intimately involved in collegiate athletics believe systemic reform is necessary, and if so, how they believe such change can best be accomplished.

Athletic administrators, coaches, and players are uniquely situated to provide commentary on the current system, and their opinions have largely been ignored in the current literature. Speaking with athletes in both revenue-generating and non-revenue-generating sports allowed me to analyze policy reforms from a perspective that accounts for all student-athletes, not just a few. Coaches and administrators were able to inform a perspective that must not only consider the well-being of student-athletes, but also that of the university and the provision of its athletic programs. Finally, Professor Coleman was able to comment on the legal and economic viability of the various proposed reforms.

The debate over college athletics is complex and multi-faceted, and many solutions or reforms of the model have been proposed publicly, albeit with little regard for the variety of impacts that changing the current system will have. My interview sample was designed to account for a diversity of opinions that is representative of the many interests involved in this issue: the NCAA, its member institutions and athletic departments, players and coaches, and the industry of college sports itself. The majority of the individuals I interviewed are the very people whom any NCAA policy changes will affect, which is why their unique assessment of the issues was so important to capture.

I used a semi-structured interview scheme, collected the interview data via audio recording, and converted the audio to transcripts using a transcription service. The informal interview protocol allowed me to utilize follow-up questions to probe my interviewee's responses for greater depth and a better understanding of their attitudes with regard to the issues. I organized the interview questions by topic, which included *The Status Quo, Direct*

Compensation and Revenue Sharing, The Olympic Model and Professional League Eligibility, and *Labor Rights and Collective Bargaining*. I also used sets of questions that are *Athletic Administration Specific* and *Athlete Specific*.⁴

The first category of questions were designed to get a sense of the informed actors' perspectives on *The Status Quo*. The goal was to understand how the interview participants view the current model of collegiate athletics, whether they believe athletes are treated fairly, and whether they think any changes to the current model are necessary. I strived to identify the priorities of the various groups involved in college sports, i.e. players, universities, and the NCAA – What is important to each of these groups? In other words, do student-athletes think about the way they are treated, how do universities balance the urgency to make a profit with the provision of equal opportunities to participate in athletic programs, and how does the NCAA balance the influence of commercialism in college sports with its commitment to the educational experience of its college athletes?

The majority of the remaining questions were categorized according to the types of proposed reforms for the collegiate athletic model. Questions concerning *Direct Compensation and Revenue Sharing* were designed to evaluate interview participants' opinions on proposals to pay student athletes either through some form of a salary distributed by university athletic departments or through percentages siphoned off from media rights and marketing deals that the NCAA and universities have with various corporations and business partners. Questions concerning *The Olympic Model and Professional League Eligibility* evaluated the informed actors' thoughts regarding allowing student-athletes to profit from their publicity rights and potentially altering professional league eligibility rules to lower or eliminate a minimum age

⁴ A full interview protocol can be found in Appendix 4.

requirement. Questions concerning *Labor Rights and Collective Bargaining* assessed whether the informed actors believe student-athletes resemble employees, whether student-athletes deserve labor rights, and whether a college sports model can function with student-athlete collective bargaining. Finally, I included sets of questions that are *Athlete and Athletic Administrator Specific*. *Athlete Specific* questions asked the student-athletes to describe the benefits they receive for their athletic participation, to explain how they feel their athletic competition has played a role in their academic experience, and whether they would vote for unionization and if they think they should be able to profit from their publicity rights. *Athletic Administrator Specific* questions asked administrators explicitly about how athletic departments redistribute revenue between sports and the implications that paying college athletes will have on their budgets and this distribution.

Data Analysis

I used the qualitative data analysis software Nvivo to aid in a thematic analysis of the interview data. This analysis was meant to identify patterns among the interview responses that informed an answer to my research question. In reviewing the data, I looked specifically for certain common themes among how the informed actors view:

- 1) The degree to which the collegiate athletic model treats athletes unfairly, if at all
- 2) The individual roles of the NCAA, universities, and student-athletes in this model
- 3) The extent to which college athletes deserve expanded benefits/labor rights, if at all, and for what reasons
- 4) The possible implementation of proposed reforms of the collegiate athletic model

I was able to find consistent themes among the interview data that also corroborate evidence presented in the literature review in order to advocate for a particular system of reform of the collegiate athletic model.

3. Interview Participants

[name confidential]	Duke University basketball player
[name confidential]	Duke University basketball player
[name confidential]	Duke University football player
[name confidential]	Duke University baseball player
[name confidential]	Duke University swimmer
[name confidential]	Duke University golfer
[name confidential]	Duke University track athlete
Jon Whithaus	Duke University Assistant Women's Golf Coach
Nina King	Duke University Deputy Director of Athletics/Administration, Legal Affairs and Chief of Staff
Mitch Moser	Duke University Deputy Director of Athletics/Chief Financial Officer
Todd Mesibov	Duke University Associate Director of Athletics/Compliance
Kevin White	Duke University Vice President, Director of Athletics & Adjunct Professor of Business Administration
Jay Bilas	former Duke University basketball player and current ESPN college basketball analyst
Doriane Coleman	Duke University Professor of Law and former student-athlete

4. Interview Guide

The Status Quo

- Within the context of college athletics, what would you say are the ultimate interests or goals of:
 - The NCAA?
 - The college sports industry?
 - The universities?
 - The student-athletes?
- A few former college athletes, most notably Shabazz Napier and Arian Foster, came out publicly and discussed the failure of the NCAA and their universities to adequately provide for their meals and living expenses. Do you think this discontent is widespread?
 - Napier and Foster are two examples of athletes speaking out, and obviously both the Northwestern case and *O'Bannon* were facilitated by former student-athletes. Do you think a majority of student-athletes have concerns about their treatment?
- The NCAA has come under criticism for its treatment of college athletes, with many arguing that those athletes who generate the most revenue for their schools (men's football and basketball players) should be paid to play, or, at the very least, be provided

with some package of extended benefits beyond the current level. What are your thoughts?

- Last year, the NCAA approved two rule changes. One rule change authorized all Division I schools to award athletic scholarships that cover the full cost of attendance. The other prevents schools from choosing not to renew an athlete's scholarship for athletic reasons, essentially meaning that schools can now offer guaranteed 4-year scholarships.
 - Are there any other ways in which you believe the collegiate athletic model is due to change?
- In many ways, the public perception of college athletes is that they are treated almost like campus royalty. They graduate, presumably, with a debt-free education, they are provided with meals, apparel, and gear, they enjoy state-of-the-art workout facilities and specialized academic services, and they benefit from high-level coaching and quality medical and training staff. At the same time, given the revenue that schools bring in from their athletic participation, certain student-athletes may actually deserve more compensation than they are currently awarded. Where do you stand on this issue?

Direct Compensation and Revenue Sharing

- Do college athletes deserve to be paid a salary for their athletic participation?
 - Some proponents have qualified this argument, saying it should only apply to men's football and basketball players because it is those two sports that drive the athletic revenue for universities. Do you think that is fair?
 - Some proposals suggest a limited allocation approach, in which a school or athletic team has discretion over a fixed sum of money to distribute to its student athletes. What do you think of this proposal?
- Could a free-market system of scholarships be viable in which schools were not limited to a maximum value in scholarships they could disperse?
- University athletic departments make a lot of money from media rights, ticket sales, and marketing revenues.
 - Should student-athletes be included in a revenue-sharing scheme that allows athletes to earn a portion of the money schools draw from these sources?
- Paying college athletes in these ways would increase costs for university athletic departments. This could potentially force some schools to eliminate non-revenue-generating sports.
 - Is this a sacrifice schools should make?
- The NCAA believes that college athletics is an integral part of the academic offerings of a university – that college athletes are students first, and athletic participation is a single, but important component of their educational experience.
 - Can you speak at all to this characterization?
 - Would paying college athletes (whether it's a salary, a stipend, or in some other form) in some way detract from or threaten their educational experience?

The Olympic Model and Professional League Eligibility

- A recent legal case, *O'Bannon v. NCAA*, challenged the NCAA's use of college athletes' names and likenesses for commercial purposes.
 - Should student-athletes be able to profit from the sale of their own publicity rights?

- How do professional sports leagues' minimum age requirements affect college sports and the athletes?
 - If a high school athlete is physically able to play his/her sport a professional level, should he/she be restricted from doing so?

Labor Rights and Collective Bargaining

- Football players at Northwestern University filed a petition to the National Labor Relations Board that would have given the players the ability to form a union, although the petition was dismissed.
 - Should college athletes be able to unionize and bargain collectively?
 - In filing the initial petition, the players' main primary interests were to gain greater control over their athletic time commitments and more expansive long-term medical care. Do you think a majority of student-athletes share these concerns?
- Do you believe college athletics could exist where student-athlete collective bargaining or unionization is a part of the model?
- There are concerns over the long-term medical care of student-athletes, especially ones that are injured while playing.
 - What are your thoughts on the provision of workers' compensation for injured student-athletes?

Athletic Administrator Specific

- Can you describe the process for how NCAA revenue is redistributed to member universities and, in turn, how those university athletic departments use that money on resources for student-athletes?
- To what extent does the revenue produced by men's football and basketball fund the existence of the so-called non-revenue-generating sports at Duke?

Athlete Specific

- Describe some of the benefits you receive as a Division I scholarship athlete at Duke?
 - Do you feel fairly compensated for your participation in the sport you play?
- With regard to the Northwestern case:
 - If your team was holding a vote for unionization, would you vote against or in favor?
- With regard to the *O'Bannon* case:
 - According to NCAA rules, you cannot profit from the use of your name, image, or likeness. In other words, you may not receive monetary compensation for your status as a college athlete. What do you think about this rule?
- Can you speak about how your participation in your sport has played a role in your broader experience at Duke?

5. Financing Breakdown of Revenue-Sharing Scheme

	The University of Alabama		Duke University		Boston College		Bryant University	
Total Athletic Department Revenue	\$150 million		\$91 million		\$69 million		\$16 million	
	Men's Basketball	Football	Men's Basketball	Football	Men's Basketball	Football	Men's Basketball	Football
Total Revenue Generated by Sport	\$12,700,000	\$97,000,000	\$33,700,000	\$32,400,000	\$6,800,000	\$27,200,000	\$1,700,000	\$3,100,000
Revenue Shared w/ Athletes (1% of above value)	\$127,000	\$970,000	\$337,000	\$324,000	\$68,000	\$272,000	\$17,000	\$31,000
Amount Allocated to Individual Athlete's Trust Fund per Year (Basketball: above value/13; Football above value/85)	\$9,700	\$11,400	\$26,000	\$3,800	\$5,200	\$3,200	\$1,300	\$365
Total Revenue Reallocated to Athletes per Year (sum of totals disbursed to football and men's basketball multiplied by two to account for female athletes)	\$2,200,000		\$1,300,000		\$680,000		\$96,000	
Percent of Athletic Department Budget that Reallocation Accounts For	1.50%		1.40%		1.00%		0.60%	