



**“NCAA and Athlete-students: De-commercializing in a
Commercial Age”**

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NCAA and Athlete-students: De-commercializing in a commercial age

Picture an organization earning 11 billion dollars from the sale of its products meanwhile the skilled individuals who created the products were not paid a single penny (Edelman 1). Very quickly and easily we judge this to be exploitation of the workers by the organization. However, with each additional detail, this situation becomes exponentially complicated to judge. For example, what if instead of paying the people with money, the organization provided them with the opportunity to attend a university along with room and board, meal plans, and health insurance. Sure, one can argue that there is a set value on education: the cost of attendance. However, when education is used as a currency, education cannot be considered equal to the cost of attendance. In other words, the dollar has a set value in the market; however, education's value is subjective. With a \$20 bill, one can walk in a store and buy an item marked with that price. On the contrary, one cannot pay with an amount of education. The value of education has to be harvested by individuals. On the other hand, education has much more potential than a \$20 bill. Hence, is it a fair payment method for those people? Moreover, how will people balance attending college while producing the product? And the questions keep going.

Such is the relationship between the National Collegiate Athletic Association (NCAA) and student-athletes. The NCAA is the non-profit governing body that establishes rules, limits, and organizes competitions for intercollegiate sports. It is responsible for protecting

student-athletes participating in intercollegiate sports. The NCAA dictated that the student-athletes remain amateurs while they compete in intercollegiate sports and be limitedly compensated by a partial or full scholarship to attend their respective universities. On the other hand, the NCAA earns billions of dollars in revenue from the labor of these student-athletes. Meanwhile, the concession stands workers, coaches, and custodians earn wages and salaries while the student-athletes, the reason they have their job, are not given any wage or salary. The skewed ratio of revenue and compensation begs to question the NCAA's regulation or exploitation of intercollegiate athletics. Moreover, despite many attempts of challenging NCAA regulations in circuit courts and the supreme court, the NCAA has been able to rule unchecked by antitrust laws.

The NCAA aggressively monitors student-athletes' amateur status because it claims that “[s]tudent-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises” (NCAA Manual). Moreover, the NCAA claims that amateurism is necessary to keep intercollegiate sports popular and distinct from professional leagues. On the other side, the National College Player Association (NCPA) strives to provide student-athletes employee status under the law. This idea has gained supporters like Marc Edelman, Professor of Law at the Zicklin School of Business who justified why student-athletes should be considered as traditional employees. Kurt W. Rothhoff and Kaylyn R. Sanbower from Seton Hall University show that student-athletes have become professional athletes in title only.

By qualifying and refining NCAA's claims, I will show the absence of correlation and causation in their logic which will reveal the shortcomings of NCAA's claims. Furthermore, I will reveal the relationship between the NCAA's motivations and its claims. Consequently, this will expose the downright hypocrisy and illusions of modern intercollegiate sports. Lastly, I will analyze the court's decision and treatment of NCAA that will shed light on the core problem that led to the issues mentioned above. In doing so, I will stress the issue if athletics is a minor occupation or not and if student-athletes should be considered employees and be able to unionize. The presented arguments will reveal the structural flaws of governance of intercollegiate sports and misapplication of antitrust laws on NCAA which will reveal that the bigger issue at hand is NCAA's monopsony power over intercollegiate sports market. Hence, resolving these issues instead of professionalizing intercollegiate athletics and student-athletes provides the best response to the exploitation of student-athletes.

Today, the roots of intercollegiate athletics have been lost. Before the NCAA was incepted, students played in their spare time for competition and for the love of the sport. Because of the NCAA's abuse of powers, these roots have been cut. Therefore, a complete solution should not only respond to the structural issues but also get as close as possible to the ideal vision of intercollegiate sports. Thus, Matthew Mitten and Stephen Ross's arguments in "A regulatory solution to better promote the educational values and economic sustainability of intercollegiate athletics" provide the proper response to the structural issue. This paper will show that there has been little accommodation for student-athletes in the changing landscape of intercollegiate sports, expose the clear imbalance of power and right between the NCAA and

student-athletes, and mark their relationship as an “uncontract”. Hence, the commercial/educational model where universities have paramount power must be reformed.

Unveiling the Parasite:

NCAA’s claims rely on three interlinked arguments: amateurism ensures that education is the primary motivation for student-athletes, protects student-athletes from being exploited by professional and commercial enterprises, and renders intercollegiate sports distinct from professional leagues. Though these claims are noble in cause, they are outdated and act as a facade over the unethical practices of the NCAA. Just like the “psychological parasite” corrupts social movements like feminism to exploit optimizers, the NCAA uses the policy of amateurism to hide the commercial and for-profit culture which exploits the student-athletes (Tolentino 65). Here I will reveal the inconsistencies and misfits in NCAA’s claims and actions will define its relationship with student-athletes as an “uncontract” hence, prove the existence of this parasite.

Due to the development of professional sports careers and NCAA forcing athletic over education, intercollegiate sports have taken over education as the primary motivation for student-athletes to attend college. Intercollegiate sports have become the main source of talent for professional leagues like the National Basketball Association (NBA) and the National Football League (NFL). Hence, “athletes participating in NCAA Division I football and basketball often are more interested in developing their skills in the hope of a future professional playing career than in earning a college degree” (Mitten 2). This is no different than a person acquiring a degree for a professional career except for student-athletes their degree and grades are their game statistics and championship wins. Therefore, even though universities only mandate 20 hours of practice per week, Division I athletes put in around 40 hours per week

(Edwards, Toby). In most situations, they end up devoting hundreds of hours to sports-related activities and end up becoming athletes first and students second (Miller 2). Intercollegiate sports are no longer an “avocation” for student-athletes, they are a stepping stone to a professional career. With the status of a full-time athlete, the student-athletes must sacrifice a quality education if they want a successful professional career. The NCAA, well aware of this structural paradox, has not taken appropriate steps to assist student-athletes.

In reality, the structure of the NCAA forces student-athletes to be athletes first so they can earn more revenue meanwhile it insisting that athletics are minor occupations. In fact, the sole premise of offering athletic scholarships enforces the idea that student-athletes are attending the university for primarily sports because they lose their scholarship if they are not eligible to play. Moreover, student-athletes cannot register for classes until their athletic schedule is available (Edwards, Toby). Hence, their academics are programmed and limited by their athletics not. Furthermore, universities like A minor occupation or hobby do not compose a person’s life rather a minor occupation revolves around a persona’s life.

Though the NCAA identifies itself as a non-profit organization that governs amateur sports, its actions speak a very different story. The NCAA cannot assure that amateurism protects student-athletes from commercial exploitation when the NCAA itself is a commercial enterprise. In 1984, in *NCAA v. Board of Regents*, the Supreme Court held that “NCAA and its member institutions are in fact organized to maximize revenues.” Moreover, though the NCAA is a non-profit organization, the individual universities’ athletic departments are not. Therefore, student-athletes are directly governed by a for-profit organization. Clear evidence of this is the way athletic departments spend their revenue. They spend most of the revenue on salaries and

marketing like a for-profit business does (Edwards and Toby). Furthermore, the 10 largest football stadiums in the U.S are owned by colleges so they can sell more tickets (John Oliver). The NCAA earns billion dollars alone from television streaming rights (John Oliver). It is clear that the universities' focus is on selling the product to the consumers not the wellbeing of student-athletes. It is a clear conflict-of-interest situation but it is not treated as such which leaves the student-athletes with the short end of the stick. Therefore, it is dangerous and reckless to leave the governing of student-athletes to an organization whose motivations do not place their well being above their profits.

The NCAA also claims that “amateurism—appeals to consumers through the image of players who play for the love of the game and their schools—is the way it differentiates its product” (Harrison J, Harrison C 930). One of the main holes in this argument is the “the Court did not assess the value of amateurism or rely on any evidence as to whether amateurism was necessary to assure the popularity of the college game” (Harrison J, Harrison C 930). First, the purpose of amateurism is not to raise the popularity of the sport, it is to protect the student-athletes and educate them. Claiming that amateurism is necessary to “assure the popularity of the college game” just fortifies the argument that amateurism is in place so universities can profit off of the “popularity” over the exploitation of student-athletes. Furthermore, NCAA’s monopsony rule is highlighted by the fact that the NCAA has no competition from professional leagues. With this amount of leeway from the government and the market, NCAA is unquestionably able to rule over the student-athletes without oversight.

In reality, it is unclear that the amateurism is even necessary to ensure the popularity of the college game. “In reality, the focus of most promotions in college football and basketball

deal with school loyalty and rivalries, and, as the Court notes, ‘academic tradition’” (Harrison J, Harrison C 930). If these promotions are tapping school loyalty and rivalries, the value of the product is largely measured by the ‘school loyalty and rivalries’ that the authors argue are “built-in” as opposed to the amateur status of the players. Hence, whether the players play for money or only for the love of the sport does not have an effect on the loyalty of the customers or the rivalries of the school because these are the characteristics of the universities rather than the athletes representing it. Thus, students playing for money do not set apart universities from professional leagues. In fact, using amateurism to earn revenue from college sports just renders intercollegiate athletics to be comparable to professional leagues because of their common for-profit culture.

Decommercialization:

It is clear that today’s economic environment of intercollegiate sports contrast with the ideal world the NCAA’s claims. If professionalizing student-athletes goes against the principles of intercollegiate sports, then sponsorship, endorsements, television deals, and million-dollar coaching contracts also go against the principles of intercollegiate sports. There is no minor extracurricular that requires millions of dollars of funding unless it is an entertainment business. Hence, to restore the values of intercollegiate sports, the “uncontract” between the NCAA and student-athletes must be transformed. As Matthew J Mitten explains, relying on internal reforms and antitrust laws will not solve the inherent structural problems that come with a self-governing body (Mitten 857). Contrary to popular opinion, intercollegiate sports must be restored, as humanly as possible, to an amateur sports league while encompassing the least commercial policies as possible. To do so, the role of intercollegiate sports in current society must be

recognized, student-athletes must be given the right to negotiate and reason, and an independent party must also have a say in the matters regarding intercollegiate sports. These corrections not only justify my argument against professionalizing student-athletes but also seeks to reunite intercollegiate athletics to its roots.

Professionalizing intercollegiate athletes not only separates it from its roots but also exposes more problems than it solves. Firstly, amateurism is necessary “to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports” (NCAA Manual). Professionalizing athletics not reduces the potential for student-athletes to gain a quality education but also places them above the rest of the student body. Intercollegiate sports will no longer be an avocation and even though, student-athlete exploitation might be resolved, the interest of the public will be exploited. Not to mention the trickiness of complying with Title XI. Hence, decommercializing without eliminating amateurism to promote reasoning and equality to protect student-athletes and public interest is a better reform strategy.

Firstly, the modern role of intercollegiate sports must be recognized by the independent party to ensure that the transformed structure fulfills the need of the student-athletes as well as the market. Intercollegiate sports have become a preamble to a professional career for Division I student-athletes. Hence, the athletic-education model must be reprogrammed around this role. Thus, student-athletes shall be given an education that will be valuable in their professional career, not a paper class degree in African-American studies or classes in Swahili that are no use to the student-athletes (Edwards and Toby). The education model should teach student-athletes

with part-time academic commitment, personal and professional finance, basic sports medicine, and politics and policies. Though, reducing education seems counterproductive to providing quality education. Accepting the new role of intercollegiate sports also implies that student-athletes are full-time athletes. As such reducing academic responsibilities and providing an education that matters will fulfill not only the goal of providing quality traditional education but also athletic education. Moreover, this education model shall also insure 4 years guaranteed athletic scholarship even if the student-athletes get injured. Furthermore, student-athletes shall be given scholarships to finish a four-year education program in the future. Fulfilling the promise of giving quality education will go a far longer way than giving student-athletes expensive contracts because these efforts will not only nurture well-rounded professionals but also leave them in a better state should they chose not to become professional. In this athletic/education model education is not a currency but value and skill that is eternal.

Second, the judicial branch must give unionization rights to student-athletes. “Courts also have ruled that student-athletes are not employees under the federal Fair Labor Standards Act because ‘the long tradition of amateurism in college sports, by definition, shows that student-athletes—like all other amateur athletes—participate in their sports for reasons wholly unrelated to immediate compensation . . . and have done so for over 100 years under the NCAA—without any real expectation of earning an income’” (Mitten 67). However, the courts’ decision is not just. Their decision would be valid if intercollegiate sports were amateur but they are anything but. Moreover, to reinforce their claim by saying “people have been doing it for over 100 years” while not taking into account the past is quite amateur. To take away the student-athletes’ right to unionize takes away their right to negotiate and reason in a commercial

market. Self-governing organizations do not possess the moral judgment to realize labor exploitation is not a valid way to earn revenue and history is a witness to that. From slavery to child labor, laborers had to fight for labor rights and the government has had to rectify its mistakes. Hence, it is quintessential that student-athletes are given the right to unionize and form non-profit organizations like the National Basketball Players Association to represent their interests. These organizations will speak for and represent the student-athlete body regardless of the universities they represent. They also must have equal say as the NCAA in decisions regarding intercollegiate sports regulation. Hence, both parties will have a representative so that one's will would not take over the will of the other. Lastly, to control the NCAA's monopsony power in the market, an overruling independent party shall oversee the NCAA's market decisions. The focus of this organization will not only be to limit the power of the NCAA but also control the distribution of revenue.

These refinements and implications aim to show the importance of intercollegiate sport's original purpose, the amateur status of intercollegiate sports, and its modern role in society. Moreover, these should be considered when analyzing this issue further. This paper comes at an important time in our historical junction. As e-commerce has boosted in recent years, warehouse employees have felt the pressure of keeping up with the demands of the customers. Recent protests by warehouse workers against companies like Amazon speak to the issues of unfavorable working conditions and insufficient accommodation by employers. It eerily seems familiar to the situation discussed in this paper. This not only reinforces the exploitative and for-profit nature of intercollegiate sports but also provides a way of confronting the issues exclaimed by warehouse workers.

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