

Antitrust Anachronism: The Interracial Wealth Transfer in Collegiate Athletics Under the Consumer Welfare Standard – Article Notes

*The NCAA's amateurism model is a model where "the laborers are the only people that are not being compensated for the work that they do while those in charge receive mighty compensations . . . **The only two systems where I've known that to be in place are slavery and the prison system. And now I see the NCAA as overseers of a system that is identical to that.**" – Kylie Carter (former D-I athlete and mother of former Duke basketball star Wendell Carter)*

Quantifying the Racial Exploitation in College Athletics

- I. College football and basketball coaches are commonly the highest paid public employee in their state
 - i. In 2017, 39 coaches were the highest paid public employee (35 were White, 4 were Black)
- II. The article points out that coaching salaries receive scrutiny but not salaries of the support staff when money spent on support staff often exceeds money spend on coaches salaries . . . but I would say that isn't a clear argument to make because the number of people that fall under "support staff" is typically far greater than the number of people that fall under "coaches." The argument that support staff still makes more money than college athletes (through GIAs) still works, but the framing of it when comparing coaches and support staff is not the strongest in my opinion
- III. Between 2005 and 2019, coaching compensation at Power 5 schools exceeded athlete aid by 46% and support staff compensation exceeded athlete aid by 52%
- IV. "The magnitude and thus the economic relevance of institutional expenditures on coaches and athletic-support personnel stand in sharp contrast to the claimed financial woes that have prompted universities to limit professor salaries and institute other austerity measures."
- V. Football revenues covered 90% of team expenses for all sports among Power 5 schools from 2003 to 2018
- VI. Taken together, football and basketball revenue exceeded all athletic team expenses by almost \$6 billion from 2003 to 2018
- VII. Football has been cemented as the breadwinning sport at Power 5 schools, while football athletes face significant risks of brain injury and long term damage associated with the sport
 - i. Black athletes represent the majority of college football players and as college athletes are prohibited from economic benefits resulting from their contributions and face the potential for a reduced quality of life as a result of playing the sport

Racial Demographics and Finances of College Athletics by Sport

- I. Three realities that characterize college athletics finances:
 - i. Football and basketball generate a majority of sport-specific revenues
 - ii. Football and basketball revenues have exceed football and basketball expenses by about \$19 billion at Power 5 schools between 2003 and 2018

- iii. Excess football and basketball revenues are used to cover sports populated by predominantly White athletes
- II. NCAA claims college athletic programs lose money, but from 2005 to 2019 net revenue from football and basketball (\$20.6 billion) exceeded the net losses from all other sports combined (\$9.3 billion) leaving \$11 billion still remaining

Athlete Demographics in the Power 5 (2012 to 2020)

- I. Greatest disparity between Black and White football athletes is in the SEC and ACC
 - i. PAC-12 has an even split and the BIG10 has a greater percentage of White athletes (but the difference has diminished over time)
- II. During the time examined, the SEC and ACC have won 14 of the 15 national championships, pointing to the contribution Black athletes make to the success of a program
 - i. In 2019 the SEC and ACC ranked first and third among conferences with former players in the NFL
- III. There is a similar trend in basketball: in 2007 minority athletes represented 64% of basketball players, which rose to 76% in 2020, while White athlete participation fell from 36% to 25% over the same time
- IV. Data from 2018 and 2019 shows Black athletes represent a greater percentage than White athletes in revenue-generating sports, while White athletes represent a greater percentage than black athletes in sports like golf, lacrosse, and tennis
 - i. At the Division I level, only two sports show positive net revenue (profit): football and basketball
 - ii. "Thanks to the labor of football and basketball players, I did not pay for college, took full advantage of attending one of the top public universities in the nation, and traveled to cool places on the school's dime." – Victoria Jackson on her time as a Track and Field athlete at UNC
- V. Over a 14-year period, examining 934 school-year combinations among Power 5 schools (1 school-year for each university, so if every PAC-12 school reported in 2020 that would be 12 school-years), 757 (81%) showed a positive net revenue
 - i. **For non Power 5 schools, only 29% of reported school years resulted in positive net revenue**
- VI. A sport having negative net revenue does not mean they cannot afford to compensate athletes, as expenses include expenses like coach compensation and promotional activities, but absent compensation restrictions, athlete compensation would take priority

Racial Demographics of College Athletic Department Staff

- I. Percentage of Black athletic administration and support personnel employees in Power 5 conference ranged from 6% to 14% between 2007 and 2016
 - i. While the top positions remain overwhelmingly White, there are a greater number of Black Athletic Directors at the top conferences than in Division I overall
- II. In 2015, the football coaching staff (excluding the head coach salary) received about three times as much as the average athletic department staff compensation
 - i. In this data set (from the *Dallas Morning News*) the lowest salaries reported were around \$25,000, but those salaries were usually paid to graduate assistants

- ii. Paying graduate assistants (i.e., students at the university) to work in the same sport that prohibits athlete compensation exposes the NCAA's incoherent arguments that compensating athletes would subvert the "educational mission" of college athletics
 - iii. Athletes work under the same (arguably more rigorous) conditions as graduate assistants while also incurring the risk of injury and being subject to strict team health/diet/social rules, yet the NCAA's compensation restraint only applies to athletes
- III. If the importance of education for college athletes was reflective of the emphasis the NCAA put on it, we would see more Black employees in athletic departments, especially given the percentage of athletes who are Black at the highest levels
- i. The NCAA claims such a small percentage of college athletes "go pro" but there are so many opportunities for those athletes to go into athletics administration, but instead those positions are filled almost entirely by White employees
- IV. "With regard to the preponderance of White head coaches, institutions of higher education appear comfortable with Black individuals leading their teams to victory on the field but far less so with affording them the opportunity to do so from the sidelines as coaches."

Amateurism's Other Institutional Beneficiaries

- I. Institutional resources also benefit from the "ready pool of college athlete study subjects"
 - i. There have been 72 grants given to colleges totaling \$38 million for research that identified "football" in the abstract (the grant total does not include private grants)
- II. In 2014, the NCAA and Department of Defense entered into an agreement for a \$20 million grant because of the researchers' claim that college football player are a comparable population to military service members for research purposes
 - i. While the pool of subjects was primarily Black athletes, not a single researcher among the main structure of the research group was Black

Quantifying the Counterfactual

- I. In the NBA in 2020–2021, Black athletes represented 80% of the NBA and accounted for around 83% of the total player salary
 - i. When limiting the count to only NBA players who played in college, Black athletes account for 90% of the total salary paid
- II. Taking a 50/50 revenue split (similar to the NBA's 51/49 split in favor of the players) Black college athletes in the two revenue sports (football and basketball) would command about 45% of the revenue given to athletes (90% of their 50%)
- III. The authors calculated that between 2005 and 2019, Black athletes lost wages of between \$17.3 and \$21.5 billion (or about \$1.2 to \$1.4 billion per year)
- IV. Addressing the NCAA argument that time spent in college prepares athletes for "the next level":
 - i. The average salary for an NBA player who played in college was \$7.05 million in 2020 to 2021, while the average salary for a player who did not play in college was \$7.72 million during the same time
 - i. Players who did not go to college earned about 10% more than players who did go to college
 - ii. Limiting the analysis to only Black NBA players, the average salaries are nearly identical (\$7.33 million and \$7.26 million)
- V. **"Once institutions have extracted the benefits of their labor, many of these athletes are discarded much like an expended battery. Some return to their communities with little to show**

for their labor other than physical injuries that may last the rest of their lives and a few memories of bygone days of glory. Meanwhile, the plantation awaits another season to begin a new harvest of Black athlete labor to exploit.”

The Anachronism of NCAA v. Board of Regents

- I. Ninth Circuit Court of Appeals Judge Smith in *Alston v. NCAA*: “The treatment of Student-Athletes is not the result of free market competition. To the contrary, it is the result of a cartel of buyers acting in concert to artificially depress the price that sellers could otherwise receive for their services. Our antitrust laws were originally meant to prohibit exactly this sort of distortion.”
- II. The NCAA has historically altered the definition of “amateurism” in order to serve its own cartel interests or comply with legal settlements
- III. The previous ruling by the Seventh Circuit the rules classified as “eligibility rules” are exempt from antitrust scrutiny “reflects at best an anachronistic view of college sports, and to continue to accept tis description of amateurism necessitates a willful suspension of disbelief worthy of the Marvel universe”
- IV. Universities pay athletes “in kind” rather than in cash (room-and-board, training, access to facilities, etc.) similar to how casinos offer free drinks or food in order to keep customers gambling, ensuring that the profits of the “house” will continue to rise
- V. Payment that makes an athlete ineligible is whatever the NCAA decides it is at any given time (just like the NCAA definition of amateur is whatever it wants it to be at any given time)
 - i. “A professional athlete is one who receives any kind of payment, directly or indirectly, for athletics participation **except as permitted by the governing legislation of the Association**” (Bylaw 12.02.11)
 - ii. Kyler Murray was able to play college football after signing a contract with the Oakland Athletics and receiving a \$4.7 million bonus, because the NCAA says an athlete who is a professional in one sport can be an amateur in another

The NCAA’s Miseducation of Capital Hill and the Judiciary

- I. Economist Gary Backer on the NCAA’s pro-education argument: “Unfortunately for the NCAA, the facts are blatantly inconsistent with these defenses. . . . It is impossible for an outsider to look at these rules without concluding that their main aim is to make the NCAA an effective cartel that severely constrains competition among schools for players”
- II. In 2013 and 2014, audiences for college football were 80% and 82% White respectively, showing that regardless of whether the NCAA justifies amateurism based on consumer demand or a pro-competitive model, they elevate the entertainment of predominantly White audiences over the value of Black athletes