

Marquette Sports Law Review

Volume 29
Issue 1 Fall

Article 8

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Repository Citation

Lewis Kurlantzick, *The Anomalous Connection Between Athletics and Academics*, 29 Marq. Sports L. Rev. 239 (2018)
Available at: <https://scholarship.law.marquette.edu/sportslaw/vol29/iss1/8>

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THE ANOMALOUS CONNECTION BETWEEN ATHLETICS AND ACADEMICS

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Scandals in big-time intercollegiate athletics are a constant source of grist for the media's mills. Behavior violative of the National Collegiate Athletic Association's (NCAA) amateurism rules receive the most headlines. The recent Federal Bureau of Investigation's (FBI) bribery probe that identified players in over twenty Division I basketball programs, who may have been paid to play, is the most recent example. But, I am interested in a more subtle, fundamental issue—the strain placed on academic values by the organizational arrangement. The abuses recurrent in college athletics—abuses that compromise the academic integrity of institutions of higher education—are not simply the result of coaches or administrators running amok, hell-bent on circumventing the rules of the enterprise. Rather, to a considerable extent, these abuses are an inevitable by-product of the structure of the venture.

Though the issue of the apt response to academe's apparently futile efforts to protect the amateur status of collegiate athletics certainly is a serious question, the impact of the seemingly boundless desire of many schools to produce winning teams may well be more threatening to the health of higher education than the cupidity of those seeking to milk college athletics for personal gain in that it undermines the capacity of colleges and universities to fulfill their prime mission of education and research.

These attitudes both divert ever-shrinking resources from protection of the quality of university education and research, and occasion the recruitment into college of young men with no interest in a college education other than as a conduit to success in professional athletics. While I believe that the former (resource-diversion) problem is more serious than the latter, the creation of bifurcated academic institutions—which count as students young men who have little interest in, and often aptitude for, academic work—is itself serious enough. As the forces producing that problem are deep-seated, basic structural changes are needed to forestall continued corrosion of educational interests.

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In particular, the forced linkage between athletics and education necessarily produces undesirable pressures on academic norms.¹ This connection refers to the fundamental characteristic of a system under which athletes in the major Division I sports of basketball and football must attend college in order to receive the training and instruction needed to develop their skills for an anticipated professional career. The result is that athletes who have no independent interest in a college education, and who are present because the campus is the only vehicle for pre-professional training, are enrolled as students. The mismatch causes conflicts with educational goals and standards and consequent potential for institutional embarrassment, whether via low graduation rates of athletes, or the presence of phantom or non-rigorous courses, or assessments in order to preserve sports eligibility. The resulting abuses are unsurprising, and the various forms of corruption and devaluation of academic programs, including falsified transcripts and records and no-show classes, have become all too familiar.

So long as intercollegiate athletics remain as the only route for pre-professional training of basketball and football players who aspire to have professional careers, the inherent forces at work will necessarily impose strains on academic values. What is needed is a reordering of the structure—a break of the link—so as to alleviate conflicts with a school's academic program and to complement its educational goals. The creation of alternative training routes for aspiring athletes would yield benefits to athletes, students, and faculties. It would also eliminate or reduce the hypocrisy of the present arrangement under which we enroll athletes who are not, in any meaningful sense, students and often play little to no role in campus life.

These benefits are not just speculative. They attend the framework of other sports such as baseball, golf, and tennis.² The baseball player who exits high school has a choice. If his exclusive interest is preparation for a major league career, he need not attend college. Rather, he can opt for the minor leagues. The lack of periodic scandal in college baseball programs is not accidental, but

1. I do not pretend to be the first to recognize this link. Many years ago, Professor John C. Weistart noted “the unnatural athletic academic link” and some of its implications. John C. Weistart, *The Unnatural Athletic-Academic Link*, N.Y. TIMES, Aug. 5, 1984, <https://www.nytimes.com/1984/08/05/sports/the-unnatural-athletic-academic-link.html>. It is telling that in the decades since Weistart's articulation, little has been done to limit or eliminate the link.

2. PAUL C. WEILER, *LEVELING THE PLAYING FIELD: HOW THE LAW CAN MAKE SPORTS BETTER FOR FANS* 209 (Harvard University Press ed., 2001).

Golf certainly would not have been better off if the PGA Tour had told Tiger Woods that he had to compete three years at Stanford before joining the Tour, nor would tennis have improved if the Women's Tennis Association (WTA) had told Venus and Serena Williams to get through college (or even high school) before turning professional.

Id.

rather reflects the fact that baseball players who choose to enroll in college are voluntarily electing the alternative.

Though the athletic-academic link is accepted in the United States as customary, it is, in fact, unusual. In Germany, for example, universities occupy themselves with education while private clubs provide for both spectator and participant sports. Corruption of the university is avoided by the removal of temptation. Indeed, in foreign countries generally no connection exists between sports and institutions of higher education; to the foreign eye it is the American arrangement that is an aberration.³

The question, then, is how might we move towards severance of the link? What are the incentives in place and how might they be altered, if necessary? What changes might universities, in particular, effect? And finally, how efficacious would the changes likely be in reducing the tensions which lead to corrosion of academic values?

One obstacle to significant change is the longtime, cozy, and mutually beneficial relationship between the major professional basketball and football leagues and the college sports programs. College programs provide the equivalent of a minor-league system for the development of valuable players' skills and reputation at no cost to the professionals.⁴ Some inroads on the athletes' restricted choices and on the captive, divided market for football and basketball talent have been made by modification of historic league eligibility rules, which barred underclassmen from the draft,⁵ thereby limiting professional opportunities to those whose college classes had graduated.⁶ The removal of these restrictions followed, in part, from legal challenges brought, and threatened, under the antitrust laws, which condemned the industry-wide

3. In fact, the National Basketball Association's (NBA) six international academies, now established in several countries, enroll players six to eighteen years of age, are designed for elite player development, and share many of the characteristics of the European clubs. See, e.g., Gerald Imray, *NBA to Open Academy in Africa in 2017*, NBA (Dec. 21, 2016), <http://www.nba.com/article/2016/12/21/nba-academy-africa>.

4. The support of college football coaches for the NFL arrangements is unsurprising. College coaches rely for their success on athletes who may be good enough to play professionally even before their graduation or end of collegiate eligibility. Thus, these officials welcome league restrictions on the drafting of student-players, for these restrictions provide colleges with exclusive control of pre-professional talent for a period of several years and insulate the college programs from competition for their cheap labor.

5. NBA rules about which players are eligible to be drafted have shifted significantly over time. Traditionally, the key eligibility rule in basketball (and football) was that a player was not included in the draft until four years had elapsed after his high school class had graduated. The present NBA eligibility rule requires, essentially, that the player be at least nineteen years of age and one year out of high school. See Collective Bargaining Agreement Between the Nat'l Basketball Ass'n and the Nat'l Basketball Players Ass'n art. X, at § 1(b)(i) (Dec. 8, 2011), available at <https://www.scribd.com/doc/172760974/NBA-NBPA-CBA-2011>.

6. If the most talented college players were to turn professional before their eligibility expired, college programs might be less able to perform the player-development role.

barriers to employment as an unreasonable restraint of trade. Predictions of dire consequences following liberalization of these rules proved off-target. Of course, the fact that college and professional basketball have coexisted quite successfully despite the abandonment of the National Basketball Association's (NBA) rule against drafting and signing underclassmen does not mean that the professional league has an interest in further inroads on the division of labor markets or in the financing of minor-leagues. The professional leagues are still large-scale beneficiaries of the present arrangement, and those benefits are not likely to make them enthusiastic volunteers in the formulation and implementation of a system that looks to loosen the athletic-academic tie and to hold out more choice to the prospective athlete.

Historically, the formation of new basketball leagues, which would allow players to bypass college, appeared responsive. Two of these leagues, the National Rookie League and the Teenage Professional Basketball League, were independent of the NBA and expected to draw athletes who decided not to attend college.⁷ These ventures held out the promise of offering a training vehicle for players who were not (yet) good enough to play in the NBA, or who were either not interested in college, or were not good enough in the classroom to qualify to compete as freshmen at Division I or II schools.⁸ Also, the possibility existed that the Continental Basketball Association (CBA), a developmental league for the NBA, which received some NBA funding, and did not target such young players, would change its policy as a result of persuasion or legal challenge.

Though these leagues foundered, the NBA's establishment and operation of the G-League, a move towards a minor-league system, is encouraging. The G-League's eligibility rules are not tied to college attendance and therefore effect a shift in incentives.⁹ An eighteen-year-old may move directly to the G-League (where money received from agents and endorsement deals is permissible).¹⁰ Though the compensation is not as generous as what might be available abroad, the G-League salary has been significantly raised in recent years.¹¹ And the introduction of two-way contracts presents the possibility of movement from the G-League to the affiliated NBA team and payment then at the much higher rookie scale.¹² Moreover, the G-League's recently announced

7. See ANDREW ZIMBALIST, UNPAID PROFESSIONALS 199-200 (Princeton University Press ed., 1999).

8. See *id.*

9. See *Frequently Asked Questions*, NBA G LEAGUE, <https://gleague.nba.com/faq/> (last visited Dec. 13, 2018).

10. *Id.*

11. *Id.*

12. *Id.*

change to its eligibility rules represents a modest step in the direction of choice. Under the plan, starting next year, the league will offer a group of select eighteen-year-old players who have finished their high school eligibility \$125,000. (There is no determination yet of how players will be identified as potential targets for such a contract nor how these select players will be allocated to G-League teams).¹³

One result of this new arrangement is that it will permit the best players to turn professional without going overseas. And, as Jeffrey Dorfman has noted, star players will have a floor for estimating their value. Thus, if most top prospects still choose college over the G-League, it will confirm that they see a value in playing college ball that exceeds \$125,000 per year.¹⁴

The formation of these kinds of new leagues holds out the promise of moderating the academic-athletic problem even though it may well not eliminate it. As long as colleges are intent on having winning teams, they will continue to recruit athletes, i.e., induce people to come who would not otherwise come, even if alternative athletic training routes are established. However, an element of self-selection is likely to operate so that those least interested and less suitable for college will not wind up there, and athletes more suitable for college will enroll.

These helpful developments have been initiated by outside parties with the university as a passive beneficiary of such efforts. But what active steps might universities themselves take? One desirable move would be increased revenue sharing among colleges. As long as: (1) universities look to earn substantial revenues from the performances of their basketball and football teams, and the marketing of apparel sporting the university's name through corporate licensing agreements with athletic equipment companies, and (2) successful teams salable to television are a precondition to the earning of that income, the tension between academics and athletics will endure.

National and conference sharing of revenues mutes this tension. Revenue sharing among colleges weakens the incentive of any college to cheat. A system that still recognized winners and their excellence but divided income generously would significantly lessen the pressure to befoul academic pursuits. Ironically, such generous revenue sharing among members is typical of many

13. Victor Mather & Kevin Draper, *N.B.A. G League to Offer Prospects \$125,000 as Alternative to 'One and Done'*, N.Y. TIMES, Oct. 18, 2018, <https://www.nytimes.com/2018/10/18/sports/nba-g-league-one-and-done.html>.

14. Jeffrey Dorfman, *The NBA G League Is About to Show What College Athletes Are Really Earning*, FORBES (Oct. 22, 2018), <https://www.forbes.com/sites/jeffreydorfman/2018/10/22/the-nba-g-league-is-about-to-show-what-college-athletes-are-really-earning/#37a8c014612c>.

professional sports leagues. Unfortunately, to date, there is little evidence that such increased sharing practices are on the collegiate horizon.

The most direct action colleges can take to remove the student uninterested in higher education from campus is to abolish athletic scholarships and adopt a single-track system for admissions, with athletic ability discounted in making the admission decision. A likely and plausible objection to this move is that the athletic scholarship is being singled out while music scholarships, for example, are not similarly targeted. This objection has force in principle, but the consequences that attend the two arrangements are dramatically different. The practice of a music scholarship has not led to, nor is it likely to lead to, the same corrosion of academic values as an athletic scholarship. While a dramatic change like the elimination of athletic scholarships may not be politically feasible, some change in the elementary forces that exert pressure on academic norms demands consideration.

Are there other decision-makers, public or private, who might act to encourage structural alterations, including the establishment of alternative pre-professional training routes? One possibility would be federal congressional and/or executive action.¹⁵ The receipt of federal funds by educational institutions might be conditioned on the elimination of athletic scholarships. Such a proposal raises the question of whether the national interest here is so strong that it warrants such intervention in the affairs of colleges and universities. My thinking is that external intervention of this sort cannot be justified.

There are other possible routes to effect a severance between the anomalous academic-athletic link, but they would be more radical and, therefore, probably less likely to attract adherents. For example, the academic connection could be removed entirely.¹⁶ That is, the University of Wisconsin Badgers could still be the Wisconsin Badgers and play their games in Madison, but the football and basketball players would have no necessary connection to the university.¹⁷ Instead, the teams, with subsidies from the professionals, would operate as a separate business entity.¹⁸ It would lease the stadium or arena from the university, and some of its players might be part-time students.¹⁹ However, all its players would be compensated as minor-league football or basketball

15. As long as most constituents are apathetic about college sports reform and the NCAA follows a policy of provision of perquisites to members and staffers, there is little chance of Congress playing a progressive role.

16. ZIMBALIST, *supra* note 7.

17. *Id.*

18. *Id.*

19. *Id.*

players.²⁰ The Wisconsin students could still root for their local team, and Wisconsin boosters should be just as happy.²¹

A reduction in, or severance of, the link between academics and athletics is necessary for the long-term health of the university's educational enterprise. A structural rearrangement would be beneficial as it offers increased choice to athletes and reduces the strain on academic values. Institutional decisions about who is admitted to the school, what treatment they receive when they enroll, and the distribution of resources in a period of financial strain would, then, be guided by educational, rather than athletic, concerns. Unfortunately, professional sports leagues are unlikely to take steps to alter this link—though the NBA's G-League offers some promise—and most colleges also may well not embrace the idea of an alteration. The federal government might take action, but the national interest in the matter is not strong enough to justify intervention. As a result, and perhaps ironically, the formation of alternate leagues by those outside the university holds out the most promise of ameliorating the problem at this point in time.

The severance proposal is both foundational and modest. It is foundational in that it addresses a basic structural defect. It is modest because it does not pretend to address the issues of recruitment, admission, transfer, and compensation of college athletes, or the [in]capacity of the NCAA to police itself.

20. *Id.*

21. *Id.* Under a less radical version of this approach the NCAA could allow each Division IA football and basketball team to have a certain number of players be non-matriculated athletes—for example, six of its basketball players. *Id.*