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COMMENT

**AMATEUR AMBITION: HOW ATHLETIC PROGRAMS
SHAPE UNIVERSITY POLICY**

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*Increasing university dependence on sports
program income has widespread implications
for education, and the lack of legal guidelines
allows corporatization to continue unchecked.*

Many people debate whether student athletes are entitled to the profits that universities hoard, tax-free, under the pretext of amateur sports exemptions. The capitalization of amateur athletics has heavily contributed to the rapid, unchecked corporatization of universities, the inflation of tuition, and the devaluation of student labor in general.

Football remains the most profitable collegiate sport in the United States, with an estimated annual revenue of \$3.4 billion, an amount which is set to increase in the future,¹ surpassing the \$1 billion generated annually by men's collegiate basketball.² Indeed, football has been a frontrunner of national intercollegiate league development and in the treatment of student athletes since the sport amassed popularity in the late nineteenth century.³ The NCAA was founded in 1906 at the

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¹ Cork Gaines, *College Football Reaches Record \$3.4 Billion in Revenue*, BUS. INSIDER (Dec. 17, 2014), <http://www.businessinsider.com/college-football-revenue-2014-12>.

² Steve Berkowitz, *NCAA Nearly Topped \$1 Billion in Revenue*, USA TODAY (Mar. 11, 2015), <http://www.usatoday.com/story/sports/college/2015/03/11/ncaa-financial-statement-2014-1-billion-revenue/70161386/>.

³ Jordan R. Bass, et al., *The "Front Porch"*, 141 ASHE HIGHER EDUC. REPORTER 1, 4.

request of President Theodore Roosevelt, and it expressly classified college athletes as amateur sportsmen.⁴ This idea of amateurism was directly challenged the same year when the Big Ten required coaches be full-time employees,⁵ thereby cementing college football's dual status as a nonprofit hobby and an entertainment cash cow.

The invention of the term "student athlete" can be attributed to Walter Bryers, who became the NCAA's first director in 1951.⁶ Bryers consciously promoted this term to avoid classifying players as university employees entitled to payment.⁷ In recent years, publicity has been generated surrounding NCAA student-athletes by the use of rhetoric likening them to slaves.⁸ Such arguments hinge on the assertion that unpaid athletes must be considered workers, and are therefore entitled to protection under workers' rights laws.⁹ The public auctions by which the NBA and NFL draft their teams certainly invite feelings of being treated like property.¹⁰ This appears to be a direct consequence of the overexpansion of the professional sports industry. College football not only acts as a development league for the NFL, but it also provides free publicity.¹¹

The rise of commercial NCAA sports can mostly be attributed to the decision, in 1973, to separate schools into divisions based on profitability, and subsequently increase public

⁴ *Id.* at 4-5.

⁵ *Id.* at 5.

⁶ *Id.* at 7, 8.

⁷ *Id.* at 8.

⁸ Maria L. Ontivarios, *NCAA Athletes, Unpaid Interns and the S-Word: Exploring the Rhetorical Impact of the Language of Slavery*, MICH. ST. L. REV. (forthcoming), <http://ssrn.com/abstract=2631183> (last visited Dec. 12, 2015).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Steve Almond, *College Football is Ruining Education*, NEW REPUBLIC (Aug. 23, 2014), <https://newrepublic.com/article/119012/nfl-profits-college-football-ruining-education-universities>.

exposure through television broadcasts.¹² Television companies found college broadcasting rights especially appealing because the production costs were low,¹³ presumably due to the absence of paid athletes. It wasn't until the removal of NCAA control over football telecasting, in 1984, that conferences and universities were given the freedom to negotiate television deals.¹⁴ The Supreme Court ruled in *NCAA v. Board of Regents of the University of Oklahoma*, that the NCAA violated the Sherman and Clayton Antitrust Acts by leveraging its television plan to raise prices and reduce output.¹⁵ This restraint upon the free market was found to fall squarely within the sort of monopolistic and anticompetitive behavior the Antitrust Acts were designed to protect against.¹⁶ However, this has not yet been found to extend to other sports, and so most of the NCAA's revenue is generated from basketball television rights. In 2010, CBS and Turner Broadcasting paid the NCAA \$10.8 billion for a fourteen-year exclusive broadcast monopoly on March Madness games.¹⁷ Division I schools profited similarly from football; ESPN paid \$7.3 billion for rights to broadcast six major bowl games and the national championships for twelve years.¹⁸ Ironically, although the intent behind *Board of Regents* was to prevent television from detracting from ticket sales, Power Five conferences have been deriving most of their revenue from television contracts for years.¹⁹

Thanks in part to television; athletic departments have become the "front porches" of universities, serving as a major

¹² Bass et al., *supra* note 3, at 8-10.

¹³ *Id.* at 21.

¹⁴ Marc Tracy & Tim Rohan, *What Made College Football More Like the Pros? \$7.3 Billion, for a Start*, N.Y. TIMES (Dec. 30, 2014), http://www.nytimes.com/2014/12/31/sports/ncaafootball/what-made-college-ball-more-like-the-pros-73-billion-for-a-start.html?_r=0; Bass et al., *supra* note 3, at 22.

¹⁵ *NCAA v. Board of Regents*, 468 U.S. 85, 113 (1984).

¹⁶ *Id.* at 112-113.

¹⁷ Jonah Walters, *Against the NCAA*, JACOBIN MAG. (Apr. 4, 2015), <https://www.jacobinmag.com/2015/04/march-madness-ncaa-student-athletes/>.

¹⁸ Chris Isodore, *Wildly Profitable College Football*, CNN MONEY (Jan. 13, 2015), <http://money.cnn.com/2015/01/12/news/companies/college-football-profits/>; Tracy & Rohan, *supra* note 14.

¹⁹ Bass et al., *supra* note 3, at 22.

interface between academics and society.²⁰ By pushing athletics programs, universities increase their brand and consequently their enrollment and tuition rates.²¹ Most big football programs see over half—and in some cases over 70 percent of their budget from tuition and fees.²² These budgets are often equivalent to those granted to professional schools, such as law or medicine programs, and receive university subsidies even if they do not meet operating expenses.²³ An elite football program could cost over \$42 million.²⁴ This money primarily goes into forging multimillion-dollar contracts for coaching, media coverage, and outsourcing to management and marketing groups.²⁵ In 2014, more than twenty basketball college-level coaches had annual salaries exceeding \$2 million,²⁶ as did fifty-five football coaches.²⁷ The highest paid college football coach is former NFL coach Nick Saban, who makes \$7 million a year at Alabama.²⁸ Contrast this with the fact that only five professors in the United States have salaries exceeding even \$1 million.²⁹ Since 1984, average compensation for college professors

²⁰ *Id.* at 1.

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.* at 23.

²⁴ Adrienne Green, *'College' Football Has Almost Nothing to Do with College*, THE ATLANTIC (Sep. 19, 2015), <http://www.theatlantic.com/business/archive/2015/09/billion-dollar-ball-college-football-business/406249/>.

²⁵ *Id.*; Bass et al., *supra* note 3, at 58.

²⁶ Steve Berkowitz et al., *2015 NCAA Basketball Coaches' Pay*, USA TODAY (last updated Mar. 31, 2015), <http://sports.usatoday.com/ncaa/salaries/mens-basketball/coach> (last visited Dec. 12, 2015).

²⁷ Steve Berkowitz et al., *2015 NCAA Football Coaches Salaries*, USA TODAY (last updated Oct. 8, 2015), <http://sports.usatoday.com/ncaa/salaries/football/coach> (last visited Dec. 12, 2015).

²⁸ *Id.*; Tracy & Rohan, *supra* note 14.

²⁹ *10 Highest-Paid Professors in the U.S.*, THE BEST SCHOOLS, <http://www.thebestschools.org/blog/2013/11/25/10-highest-paid-college-professors-u-s/> (last visited Dec. 12, 2015).

increased by 32 percent, in contrast to head football coaches at 750 percent.³⁰

Athletic department investments have proven to be so profitable, that they have completely dominated university agendas. What Professor Murray Sperber coined as, the “Flutie Factor,” or the positive correlation between a college’s reputation and its athletic performance, has consumed university marketing. The term is named after a Hail Mary play by Doug Flutie in a televised 1984 Thanksgiving weekend game, which caused Boston College applications to rise 25 percent the next year.³¹ Between 2008 and 2015, average annual tuition increased 29 percent,³² but most noticeably, states with strong college football traditions and programs saw increases averaging 55 percent, thereby in direct correlation with the fees that go into the athletic departments.³³ Athletic departments have exploded in their employment—sometimes fourfold—just to keep players eligible and playing.³⁴ Even poor and unprofitable programs compete in an accelerating “arms race” with Division I teams, resorting to subsidies, tuition reallocations, and athletics fees—all of which are footed by their student bodies—to stem the “hemorrhaging” of funds.³⁵ Economists have noted that the few football programs that are in the black simply put the revenue back into the programs;³⁶ very little goes toward “academic programming,” and even most of that can be earmarked for athletic scholarships and other athletic expenses.³⁷

Yet despite how profitable universities would like sports programs to appear, state legislatures continue to cut public

³⁰ Bass et al., *supra* note 3, at 34.

³¹ *Id.* at 39.

³² Emily Jane Fox, *Where Public University Tuition Has Skyrocketed*, CNN MONEY (May 13, 2015), <http://money.cnn.com/2015/05/13/pf/college/public-university-tuition-increase/>.

³³ Robert Greenwald, *College Football is Stealing Your Education*, HUFFINGTON POST (Oct. 13, 2015), http://www.huffingtonpost.com/robert-greenwald/college-football-is-steal_b_8282690.html.

³⁴ Green, *supra* note 24.

³⁵ Bass et al., *supra* note 3, at 31-34.

³⁶ Ben Mangrum, *Is College Football Profitable for Universities?* ETHOS (27 Mar. 2014), <http://www.ethosreview.org/intellectual-spaces/is-college-football-profitable/>; Almond, *supra* note 11

³⁷ Mangrum, *supra* note 36.

funding,³⁸ encouraging universities to adopt a “corporatization” model as they privatize revenue generators.³⁹ Rising tuition costs, and the administrative erosion of the tenure system with adjunct labor, serve to subsidize college football.⁴⁰ Average university tuition has increased by 1,120 percent from 1978 to 2012, four times faster than the consumer price index.⁴¹ In the past 40 years, universities have experienced a sharp increase in the proportion of administrators to faculty and students, in an attempt to operate as big businesses.⁴² Just as corporations are courting college sports programs to build arenas and license apparel,⁴³ universities are investing income they don’t have on highly specialized facilities to attract star faculty, or leisure structures to attract larger student bodies—all in the interest of boosting rankings.⁴⁴

Corporate ambition is redefining university roles. Presidents spend more time raising money than leading their institutions, and professors are expected to act as “academic entrepreneurs,” where their ability to generate revenue through prestige and research grants is prioritized over educating the students.⁴⁵ Oftentimes, they are simply replaced with adjunct faculty, who can be paid less and excluded from decision-

³⁸ Fox, *supra* note 32 (stating that average state spending decreased 20% from 2008 to 2015).

³⁹ Bass et al., *supra* note 3, at 40-41.

⁴⁰ Mangrum, *supra* note 36.

⁴¹ Michelle Jamrisko & Ilan Kolet, *Cost of College Degree in U.S. Soars 12 Fold*, BLOOMBERG BUS. (Aug. 15, 2012), <http://www.bloomberg.com/news/articles/2012-08-15/cost-of-college-degree-in-u-s-soars-12-fold-chart-of-the-day>.

⁴² See Noam Chomsky, *How America’s Great University System is Being Destroyed*, JACOBIN MAG. (Mar. 3, 2014), <http://www.alternet.org/corporate-accountability-and-workplace/chomsky-how-americas-great-university-system-getting>.

⁴³ Bass et al., *supra* note 3, at 43-45.

⁴⁴ Andrew Rossi, *How American Universities Turned into Corporations*, TIME MAG. (May 22, 2014), <http://time.com/108311/how-american-universities-are-ripping-off-your-education/>.

⁴⁵ Bass et al., *supra* note 3, at 41, 42.

making,⁴⁶ while administrators take advantage of this manufactured job insecurity.⁴⁷ Without any cost to the university, graduate students are expected to perform instruction, conduct research, and accept internships all in precarious unemployment.⁴⁸ If this doesn't qualify as slave labor, whatever menial grading and research tasks that commonly spill over to undergraduates surely must. Ultimately, it is this offloading of inconveniences that allow universities to keep their true operating costs invisible, reinforcing artificially high valuations on what is essentially a growing snowball of middle men, and forcing laborers to bargain their wages to zero just to participate.

The corporatization of universities holds particularly ominous implications for scientific research. The Bayh-Doyle Act of 1980, which allowed institutions to claim patent and trademark rights to federally funded discoveries, largely enabled this shift in ideology.⁴⁹ The attempt to stimulate the American economy effectively privatized publicly funded research and increased the interaction between academia and industry.⁵⁰ Corporate funding followed on the footsteps of multi-million, multi-year "strategic corporate alliances."⁵¹ Undoubtedly, the increased emphasis on production has also exacerbated the pressure for academics to "publish or perish," calling the integrity of research into question, and producing a "landfill" of published articles that range anywhere from unoriginal, to useless, to downright misleading.⁵² Most recently, it was discovered that of 100 experiments published in three top psychology journals, only 39 could be replicated with a fair

⁴⁶ Chomsky, *supra* note 42.

⁴⁷ Risa L. Lieberwitz, *The Corporatization of the University: Distance Learning at the Cost of Academic Freedom?*, 12 B.U. PUB. INT. L.J. 73, 98 (2002).

⁴⁸ See Chomsky, *supra* note 42.

⁴⁹ 35 U.S.C. § 200 (2006).

⁵⁰ Risa L. Lieberwitz, *Education Law: The Corporatization of Academic Research: Whose Interests Are Served?*, 38 AKRON L. REV. 759, 764-65 (2005).

⁵¹ *Id.* at 766.

⁵² See Wes Alwan, *Please Stop Contributing to the Publish-or-Perish Landfill*, PARTIALLYEXAMINEDLIFE.COM (Apr. 9, 2014), <https://www.partiallyexaminedlife.com/2014/04/09/please-stop-contributing-to-the-publish-or-perish-landfill/>.

degree of leniency.⁵³ Proposals have been made to protect objective and disinterested reporting of research, such as the disclosure of potential conflicts, where financial or personal considerations may compromise professional judgment,⁵⁴ but solutions like this fail to adequately address the systemic devaluation of truth in the pursuit of prestige and profit. Similar developments can be observed in other college programs as they attempt to keep up with and support athletics programs.

In conclusion, the likelihood of student athletes gaining more than nominal living stipends is ridiculously impractical because the housing of university sports programs are mostly done at the expense of academics.⁵⁵ The present model barely allows for professors to be paid, let alone students. The average student-athlete, despite restrictions on scholarships and income, receives academic scholarship and training worth about \$125,000.⁵⁶ The only available income to student-athletes would either have to come from athletics programs themselves, or tuition hikes. Most athletics programs cannot even turn a profit, and those that do are reliant upon reinvesting that profit to continue generating any significant revenue.

Increasing tuition, then, seems to be the only option. Already tuition rates are pushing the limits of sustainability. Total student loan debt in the United States surpassed \$1 trillion in 2012.⁵⁷ Paying athletes would cause tuition to inflate even faster and attendance could plummet. Universities would lose all incentive to accept anyone who couldn't generate the necessary income to fund student-athletes, and universities could likely abandon major academic initiatives altogether.

⁵³ John Bohannon, *Many Psychology Papers Fail Replication Test*, SCI. MAG., Aug. 28 2015, at 910.

⁵⁴ Risa L. Lieberwitz, *The Marketing of Higher Education: The Price of the University's Soul*, 89 CORNELL L. REV. 763, 772 (2004) (reviewing DEREK BOK, *UNIVERSITIES IN THE MARKETPLACE* (2003)).

⁵⁵ Mangrum, *supra* note 36.

⁵⁶ Jeffrey Dorfman, *Pay College Athletes?*, FORBES (Aug. 29, 2013), <http://www.forbes.com/sites/jeffreydorfman/2013/08/29/pay-college-athletes-theyre-already-paid-up-to-125000year/>.

⁵⁷ Bass et al., *supra* note 3, at 34.

The problem, it seems, is not that student-athletes are underpaid, but instead their craft has been overvalued at their expense. Unlike graduate students, athletes' roles in universities are more charismatic than productive; they don't directly further the educational goals of an institution, or serve as anything more than a distraction—albeit an inspiring one—to society. While a case could be made for student-athletes to have more influence over how athletic programs are run, to claim anything that places more university income into non-educational pursuits is to doom secondary education as a whole.

As of now, there have been no legal efforts to reign in the rampant growth of the cancer that collegiate sports represent to higher education. There have been isolated pushbacks at several universities by students and faculty, but these efforts seem to be drowned out by the increasing widespread popularity of college athletics.⁵⁸ Although most universities are state or privately funded, past measures suggest federal action is necessary to effectively moderate the NCAA. Given how pervasive college sports have become to American pastimes, and the level of social mobility they provide, such a measure would likely be extremely polarizing. Yet all the money that this nonprofit generates, and how much it squanders on hype and paraphernalia, flies in the face of the universities that support it, and the original spirit of intercollegiate sports.

⁵⁸ See generally *id.* at 34-36.