TROY UNIVERISTY

Amateurism within Collegiate Athletics

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Introduction

The National Collegiate Athletic Association (NCAA) has been the subject of criticism due to claims that they are profiting off of student-athletes by using the term amateurism as a catch all defense. The NCAA continues to shield themselves with a ruling from 1984, in the case of the *NCAA v. Board of Regents*, which set precedent in collegiate athletics that "to preserve the character and quality of the product, athletes must not be paid" (Porto, 2016). Porto asserts the current model of amateurism is perceived to be as outdated as this ruling. Amateurism as a concept, amour, the French word for love, as in the love of the game is antiquated. When collegiate athletics started to become the commercial enterprise that it is today, is when amateurs possibly should have shifted to professionals with it (Crabb, 2017).

Amateurism and Anti-Trust Law

The 'product' referred to in the *NCAA v Board of Regents* case of 1984 are the student-athletes that are bringing in all the NCAA's revenue. Once these athletes became a product for the NCAA to market, they started flirting with the line that is Anti-Trust Law (Sherman Antitrust Act of 1890). Their product appears to be employees that are not being paid by the cartel that is governing them (Nocera & Strauss, 2016). An athlete's eligibility comes into question every time they receive any 'compensation' for their athletic body of work. Terlap (2014) points out a few issues that may be faced if compensation is to be made to student-athletes and their amateur status removed. Terlap asks, how to compensate or if they should compensate nonrevenue sports, how to deal with schools that cannot afford to provide compensation, and players that bring in larger amounts of revenue than their counterparts.

Waldon (2019) uses an example of a player that garnered significant attention while attending college, Duke's Zion Williamson. In a heavily watched Duke Men's Basketball game,

Zion's Nike shoe broke open when he tried to make a cut and his foot went right out the side of the shoe. Granted Zion weighs over 280 pounds, but a social media fire storm erupted over the quality of Nike's shoes and other products in general.

When Connecticut Senator, Chris Murphy, saw the incident unfold, his eyes were open to the injustice within the NCAA's treatment of student-athletes. His reasoning was this, seeing a large company like Nike tank in market value by a billion dollars because of one 'amateur' athlete's equipment malfunction, must mean something is wrong with the current system of how student-athletes are valued. He also weighed in on racial disparities in college athletics that are striking (Waldron, 2019). Senator Murphy stated, "the coaches, athletic directors, and sports company executives are mainly white…all making money. The athletes, who are predominantly African American, are getting almost nothing…making this a civil rights issue." Furthering the plot of indentured servitude and slavery comparisons within collegiate athletics. Senator Murphy also points out that both football and basketball, the two top revenue producing sports for the NCAA are predominantly African American (Waldron, 2019).

Alston v. NCAA, 2019

The case of *Alston v. NCAA* is one of the most pivotal cases to date in the journey of pay to play collegiate sports. The plaintiffs (all student-athletes or ex-student-athletes) started the class action lawsuit in March of 2014. The defendants were the NCAA and all FBS Division 1 schools. The athletes alleged that the NCAA is engaged with the FBS Division 1 schools in fixing the price of their services to athletic scholarships, which would violate Sherman Anti-Trust Law. The defendants stated that their rules are in place to maintain the purity of amateur sport and having more compensation than scholarships would degrade the value of obtaining a

college education. They also insisted that fans of collegiate sports would be less inclined to watch if the NCAA's bylaws were undercut to allow athlete compensation.

Judge Claudia Wilken of the Federal District Court then weighed whether the NCAA's bylaws on their economic pros and cons. These are whether the fans will care if the amateur nature of college sports is taken away and shift to a nature of professionalism and if a college education will be devalued after compensating student-athletes. Judge Wilkin presided over *O'Bannon v. NCAA (; Electronic Arts; Collegiate Licensing Company)*, which she awarded to O'Bannon and the athletes, but was partially reversed when the NCAA appealed the ruling. Judge Wilkins did find the NCAA guilty of violating Anti-Trust Law, which is a huge breakthrough for possible future progression on these issues.

The NCAA tried to have the trial (*Alston v. NCAA*) dismissed because they insisted the O'Bannon case displayed the same issues and was resolved, however, there is just enough difference in the plaintiff's suit that the trial must continue. The athletes in *Alston v. NCAA* still had the burden of proof and had to convince Judge Wilkens that compensation of athletes will not hinder any of the NCAA defenses, but positively enhance them. Due to the ruling in *O'Bannon v NCAA*, the student-athletes could only pursue more compensation as it relates to their educational expenses, because O'Bannon pursued compensation outside the scope of educational expenses and the case was declined at the highest level in the land (the Supreme Court), which set precedent with the 9th Circuit Court decision.

Judge Wilkins ruled in favor of the (plaintiff) athletes, which they will be granted tangible items (like computers and books) outside the cost of attendance. The Court still ruled in favor of current caps on cash or cash in relation to scholastic opportunities. This ruling was affirmed in the U.S. Court of Appeals and they agreed that the NCAA is guilty of violating

Sherman Anti-Trust Laws, but they also ruled in favor of keeping the current standard of amateurism. The NCAA keeps their veil of vague language regarding amateurism and its purity close to their chest. In the case of *Alston v. NCAA*, the plaintiff's closing statement was that "the trial exposed the NCAA's concept of 'amateurism' as sheer pretext, a chameleon-like principle that constantly changes colors with the whim of whatever the NCAA's majority says it means" (*Alston v. NCAA*).

In regards to compensation differentiation clarified after *O'Bannon v. NCAA*, Groves (2016, p.107) breaks it down into two categories, "scholarship – pay for play – during college, during eligibility vs. royalties, license agreement income – pay for name, image, likeness (NIL) – after college, after eligibility expires."

Law v. NCAA, 1998

In *Law v. NCAA*, final judgement came down from the Court of Appeals. The NCAA attempted to appeal a ruling on the district court level by undercutting the grounds on which the ruling was made. The case's issue was the NCAA's promotion of a rule they created to restrict the compensation of entry-level Division 1 coaches to $16,000 annually. Coaches adversely affected by this rule filed a class action lawsuit, stating that it violates the Sherman Antitrust Act. The district court granted summary judgement and issued a permanent injunction, not allowing the promotion of the rule or any other rules as it relates to compensation restrictions.

The NCAA appealed on the ground of per se analysis not being used and the court's failure to define the market and if the NCAA holds power in the market. The Court of Appeals affirmed the decision of the district court, by saying there was no need for per se analysis, because the standard must be clear-cut. Also, the rule was a naked price restraint not an

agreement between competitors, which means there is no need to define the relevant market or figure out if the NCAA possesses power in that market.

International Olympic Committee (IOC), Amateurism Shift to Professionalism

Amateurism is an issue Olympians delt with for a majority of the 20th century. The International Olympic Committee (IOC) removed the amateur restrictions/status of the Olympians competing in the Olympic Games in 1986. The need for professionals and their skillsets in the games was too pressing. The IOC have positively benefited revenue wise after the change, but it might be due to their circumvention of rules (like the NCAA) (Hemphill, 2001). Even after shifting to professional status Olympians had compensation issues arise. The IOC allowing star (Olympian) athletes to accept endorsement deals and sell autographs were solid first steps (Crabb, 2017). Olympic Committees are still facing discrepancies in gender wage gaps, i.e., the United States' Women's Soccer Team filed a lawsuit against the United States of America - National Olympic Committee (NOC) for their difference in wages compared to their male counterparts. I think the NCAA and the United States Courts could use the IOC and Olympians' transition to professionalism as a road map for future positive progression.

An Antiquated System

Paying some entities (like coaches/colleges), while leaving the athlete whom are generating all the intrigue of the entire 'product' behind in fair compensation for their efforts. Porto (2016) affirms that the current model the NCAA is pushing is not sustainable. Jumping back to *Alston v NCAA*, the plaintiff's burden of proof included proving if they were compensated the fans would still support/watch collegiate sports without 'amateurism.' If you've attended a Division 1 institution with at least one FBS revenue generating sports team, you'll know how die-hard fans are about their school. There is no tangible or intangible

relationship between amateurism and whether someone attending a university chooses to exhibit fandom. Porto insists that over the 100 plus years of the NCAA's existence, they should have evolved with the times.

In Straurowsky's (1996) journal article, she brings up the fact that the term student-athlete was crafted by the first Executive Director of the NCAA, Walter Byers, to avoid workers compensation for student-athletes. This practice is still in place today. If a student-athlete is injured during a team activity and cannot participate, they may lose their scholarship, which some are unable to pay for upon release from the team.

Compensating Student-Athletes -- Possible Remedies

McDavis's (2018) article *Value of Amateurism* makes readers look objectively from both sides of the issue in question (student-athlete compensation). He agrees that the NCAA is conducting themselves poorly in the face of this issue and with television and streaming rights deals reaching billions of dollars, they should be able to make compromises. Making comparisons of the NCAA to a 'cartel,' and providing context as to the violations the NCAA is guilty of in regards to Anti-Trust Law.

McDavis interjects, the NCAA reports that only a handful colleges are barely making profits year over year, while the majority are functioning within a deficit of funds. The two major revenue generating sports, FBS Division 1 Men's Basketball and Football appear to be carrying the load for all other non-revenue generating sports in colligate athletics. Suggesting a possible remedy of paying only the revenue generating sports athletes and cutting some non-revenue generating sports at certain schools to level off costs. This remedy appears to work on the surface, but it may lead to resentment among college sports, genders, and fans disappointment in non-revenue sports being cut and other unconsidered losses.

Waldron (2019), suggested that the Free Market and Lawmakers pose the largest threat to the NCAA in maintaining the amateurism status quo. Having another league appear that challenges the NCAA and has them show their cartel like tendencies openly could open up compensation talks. This other league could accept amateur players and pay them, making them professionals that can advance further to the ultimate goal of the NBA or just paying bills with what they earn through the value of their work. The NBA is already conducting an experiment like this in the G-League with top prospects out of high school.

According to Groves (2012, p.112), the $10.8 billion that the NCAA are scheduled to make from their CBS Sports and Turner Broadcasting deal over 14-year period should easily be attributed to a select few student-athletes who participate in the March Madness tournament. Yet, that money and all the other endorsement money the NCAA makes they pocket or divide amongst collegiate programs. In rulings like *O'Bannon v. NCAA* and *Alston v. NCAA,* some progress was made to NIL rights after student-athletes' eligibility expires, like the possibility of receiving up to $5,000. However, the courts have decided against such payment for the moment.

As stated by Johnson and Acquaviva (2012), coaches at the Division 1 collegiate level in revenue generating sports are making exorbitant amounts of money. The NCAA's rules do not cap salary, which could be attributed to *Law v. NCAA,* but there are far more ways to pursue compensation as a coach than a player in collegiate sports. Coaches can sign endorsement deals, collect NIL revenue, etc. There remains a gap between sponsorship funding and the actual cost of attendance, which seems to be widening every year. Meaning, the revenue coming in annually is noticeably different than what the cost of an athlete's attendance is in a scholarship. The lucrative billion-dollar contracts that the NCAA are signing keep becoming hand over fist more lucrative, almost exponentially in the last two decades.

Cunningham (2014) as alludes to the aforementioned exorbitant Division 1 coach contracts that exist and the 'hypocritical' nature of them. It definitely makes people wonder if there was a reallocation of compensation and coaches had a salary cap, still maintaining their freedom to pursue other revenue streams, such as endorsement deals. Would things be more equal and fairer within collegiate athletics? Could a free market ideal shake up the NCAA? These questions do not have clear and concise answers, but it would be interesting to see them put in motion.

Discussion

The NCAA's use of the 'amateur rule' has been driven by their bottom line, profiting off student athletes' skill, raw talent, and efforts, in exchange for athletic scholarship opportunities. I have seen first-hand a revenue producing sport governed by the NCAA's bylaws. As a Virginia Tech Men's Basketball Manager, I witnessed the day in day out routines that student-athletes have to adhere to throughout a regular year. Their job is basketball; practicing, film, traveling for competitions, weight training, recovery. Time is precious in college and it is easy to squander. These athletes would miss classes, review sessions, and exams for practice and games. I had a few classes with them and they would oversleep or try to find time to socialize instead of attending class. Placing student in front of the word athlete is extremely misleading in terms of where a student-athletes' priorities truly must lie. Student-athletes appear to live their lives on borrowed time in college.

The concerns and issues I have regarding student-athlete's constraints in time and ability to participate as college students pursuing their degrees were surveyed in the Pac-12 (Penn Schoen Berland, 2015). The student-athletes in the Pac-12 affirmed my beliefs with striking statistics. For example, athletes said they are involved in athletics related activities on average,

50 hours a week, during the season. A regular employee in the United States is due overtime (time and a half) pay when they exceed 40 hours of work each week. The Pac-12 survey also shows the number one issue student-athletes have while participating in athletics is lack of sleep, which hurts them as a student and an athlete. If athletes want to be the very best in their sport they have to put in a ton of time, not spent on their education (Penn Schoen Berland, 2015).

As an athlete you always need to strive to be the best at your craft, and I'm sure the majority of athletes believe they can make it professionally if they put in the time and work. However, the percentage of athletes that go pro every year is extremely low. Which makes them obtaining an education that much more important, but the NCAA needs them to strive for athletic greatness rather than academic for their bottom line. If athletes have a failing/bad grade in a class they are not allowed to participate until they improve, which I felt was a caveat or a hurdle to jump over to participate in athletic competition, rather than the reason they are at the university. I honestly believe compensation for student-athletes will happen in my lifetime, but it may be in a form I have not yet considered.

Conclusion

Student-athletes are due compensation to match the value of their work, which does not appear to match-up in educational attendance costs, tangible items like computers or books (*Alston v. NCAA*), or even the certificate at the end of the 4-year degree they might have earned with their scholarship opportunity. The hurdles they must endure to reach that degree are rigorous and what seem like a civil rights issue, when you consider the racial disparities in the levels of control in collegiate athletics (Waldron, 2019). The terms and conditions in which a student-athlete must live their lives while maintaining eligibly need adjustment for the times we are living. The NCAA continues to cling to their outdated ideals of 'amateur' athletics, to hold

on to their product (student-athletes). Currently, the divide that has to be closed is compensation, and there are plenty of proposed remedies that need to be attempted to actually find out if they would work. The comparisons of indentured servitude to a student-athlete's life are striking and concerning in the day in age we are living. Progress continues to be made in the courts, decisions that find the NCAA guilty of violations of Anti-Trust Law allow future cases to build upon these rulings and their precedent. The NCAA needs to be brought into the new millennium; their 'cartel' ways will come to a halt in the future. There will be positive progression for the rights of student-athletes and their mislabeled body of work, 'amateurism.'

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