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# The Age of Innocence: The First 25 Years of the National Collegiate Athletic Association, 1906 to 1931

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## The Age of Innocence: The First 25 Years of The National Collegiate Athletic Association, 1906 to 1931

*W. Burlette Carter\**

*In 2006, the National Collegiate Athletic Association (“NCAA”), the most powerful body in intercollegiate athletics, celebrates its 100th anniversary. In this article, the author undertakes to survey the NCAA’s first twenty five years,<sup>1</sup> offering a revealing snapshot of the beginning of intercollegiate athletics in the United States. As with the author’s prior articles on this subject, this article continues the unique approach of using the proceedings of the NCAA and contemporaneous media articles to make its case. In so doing, the article challenges commonly held assumptions about the origins of present intercollegiate*

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\* Professor of Law, the George Washington University Law School, J.D. Harvard Law School. This article is part of a series on the NCAA. *See also* W. Burlette Carter, *Student Athlete Welfare in a Restructured NCAA*, 2 VA. J. SPORTS & L. 1 (2000); W. Burlette Carter, *Responding to the Perversion of In Loco Parentis: Using a Nonprofit Organization to Support Student-Athletes*, 35 IND. L. REV. 851 (2002). I thank the NCAA for long ago allowing me access to its library; Germaine Leahy of the George Washington University Library staff for her assistance and the editors of the Vanderbilt Journal of Entertainment and Technology Law for their superb assistance in getting this article to press.

1. Very few other detailed histories of the NCAA exist. The significant ones are both commemorative. The NCAA commissioned journalist Jack Falla to write its official Seventy-fifth Anniversary history. JACK FALLA, *NCAA, THE VOICE OF COLLEGE SPORTS: A DIAMOND ANNIVERSARY HISTORY, 1906-1981* (1981). It turned to the President of the University of Nevada, Reno, Joe Crowley, for its centennial version. JOE CROWLEY, *IN THE ARENA: THE NCAA'S FIRST CENTURY* (2006). For an abbreviated NCAA view see Kay Hawes, *Its Object Shall Be Regulation and Supervision: NCAA Born from Need to Bridge Football and Higher Education*, NCAA NEWS, Nov. 8, 1999, available at <http://www.ncaa.org/news/1999/19991108/active/3623n27.html>.

*athletics policy, providing a much-needed history to frame judicial, legislative and educational approaches to intercollegiate sports regulation.*

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The year 2006 marks the one hundredth anniversary of the founding of the National Collegiate Athletic Association (“NCAA”).<sup>2</sup> At this milestone the NCAA occupies a unique place in American educational history and in American law. Held up as a historical champion of amateurism in college sports, it has enjoyed the confidence of both legislators and the courts, and may well be the most powerful nongovernmental regulator in America. Commanding a budget that approaches 500 million dollars,<sup>3</sup> its power reaches not only the 1,000-plus educational institutions that are its members but also anyone who does business with them, not to mention hundreds of thousands of current and prospective participants in intercollegiate athletics. One hundred years has brought a great many changes. In important ways, the modern NCAA is quite different from the NCAA that its founders conceptualized.

This article investigates the first quarter of a century of the NCAA’s history, using as its primary sources the NCAA’s annual convention proceedings for that period and contemporaneously-written media reports. The goal is to identify the key debates that shaped the NCAA, to consider to what extent the assumptions, principles and ideals of the early NCAA are still reflected in the modern organization or have been abandoned in favor of new ones, to surmise what might have happened had the NCAA emerged from those debates to take different directions in shaping athletics policy than the paths it did indeed take, and to reflect upon how this information should affect the direction of intercollegiate athletics regulation in a modern era.

The author concludes that despite courts’ widespread adherence to the notion that intercollegiate athletics continues an American tradition of amateurism, an accurate historical perspective requires us to accept that many modern-day intercollegiate athletic

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2. As discussed in greater detail *infra* notes 19-20, in December 1905, at the behest of the Chancellor of New York University, a group of schools gathered in New York to shape a preliminary constitution for the Intercollegiate Athletic Association of the United States which later became the NCAA. Intercollegiate Athletic Ass’n of the United States, Palmer E. Pierce, *The International Athletic Association of the United States: Its Origin, Growth and Function*, in PROCEEDINGS OF THE SECOND ANNUAL CONVENTION OF THE INTERCOLLEGIATE ATHLETIC ASS’N OF THE UNITED STATES 27, 28 (1907) [hereinafter 1907 PROC.]. Schools joined the body throughout 1906 by individually ratifying the constitution. *Id.* The NCAA’s first official convention was in December 1906. *Id.*

3. See NCAA, The National Collegiate Athletic Association Revised Budget for Fiscal Year Ended August 31, 2005 (Nov. 7, 2005), [http://www1.ncaa.org/finance/2005-06\\_budget.pdf](http://www1.ncaa.org/finance/2005-06_budget.pdf).

programs lack key components of traditional amateurism. If courts are to continue to recognize amateurism as a value in cases challenging the NCAA and intercollegiate athletics policies; they must define what amateurism means in a modern era, identifying its essentials. To begin this process of redefining amateurism, the author urges a disentanglement of the terms “amateurism,” “education,” and “intercollegiate athletics,” arguing that these terms have become muddled over the years. Using a new amateurism yardstick, courts should place an amateurism thumb on the scale for intercollegiate athletics programs only if the program is infused with amateurism and only if challenged policies are also consistent with amateurism. The NCAA and member schools can help in this process of shaping a new amateurism; they cannot be its sole architects.

Part I of this article discusses the NCAA’s founding. Part II discusses the evolution of the NCAA within the first twenty-five years, by focusing on the key issues that confronted the founders. Part III discusses the role World War I played in the growth of intercollegiate athletics. Part IV discusses how the early NCAA dealt with the roles of minorities and women in sport. Part V discusses the emergence of professional leagues, particularly in football, and the NCAA’s response to the professionals as a perceived threat. Part VI discusses the NCAA’s historical relationship with the media. Part VII discusses NCAA contributions to rules promulgation, championships and the formation of a national Olympic association. Part VIII discusses cracks in the NCAA coalition that ultimately led to its membership splitting into three Divisions differentiated by size of program and amateurism philosophy. Finally, Part IX asks what the NCAA’s founders would say if they could see that organization now and how lessons learned from this history should affect modern regulation of amateur athletics and of the NCAA.

## I. IN THE BEGINNING

### *A. Football—and “False College Colors”: The Founding of the NCAA*

In the fall of 1905, nineteen year old William Moore, a Union College student and a resident of New York State was fatally injured

in a game between Union and New York University (“NYU”).<sup>4</sup> One newspaper reported the circumstances of his death in this way:

Moore was injured about the middle of the game, when the contest was closest and the play fiercest. Although the accident temporarily delayed the game, as soon as the unfortunate half-back had been carried off the field, he was practically forgotten and the game proceeded to the end.

In an attempt to get through the New York center Moore went at the line head first like a catapult. This play was his last. No one saw what Moore’s head struck but he dropped limply to one side of the scrimmage and the ball fell from his hands. All efforts to revive him failed. The spectators became so excited that they poured on the gridiron by the hundreds, until the police drove them back. Moore died within six hours without regaining consciousness.<sup>5</sup>

Moore was one of eighteen young men who died while playing football in the 1905 season. More than 150 other young men were injured in service to the game that year. Some branded it a brutal sport and called for its demise.<sup>6</sup> By November 1905, Columbia University abandoned the game altogether.<sup>7</sup>

Well before Columbia’s action and young Moore’s death, President Theodore Roosevelt was watching the football controversy from the White House.<sup>8</sup> An avid sportsman, Roosevelt strongly felt the game had to be saved.<sup>9</sup> In October of 1905, he called the athletic directors of the football programs at Harvard, Yale and Princeton to the White House to discuss what needed to be done.<sup>10</sup> For Roosevelt, the answer seemed to lie in changing the rules of the game to discourage hazardous play.<sup>11</sup> Indeed, the 1905 version of football was an amalgam of rugby and soccer, with plenty of extra roughness

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4. *Football Player Killed; William Moore, of Union College, Dies From Blow on Head*, WASH. POST, Nov. 26, 1905.

5. *Id.*

6. *See Deaths from Football Playing; Forty-Five Athletes Have Been Victims in the Past Five Years*, WASH. POST, Oct. 15, 1905; *see also* Cartoon, Theodore Roosevelt Conference with Football Athletes, WASH. POST, Oct. 15, 1905; *Reform in Football: Reform Must Come or the Game is Doomed, it is Declared*, WASH. POST, Oct. 15, 1905; *Few Injuries from Football, No Deaths Resulted from Southern Gridiron Season*, CONST. (Atlanta), Dec. 6, 1905, at 1 (claiming South had no deaths and conducted “clean athletics; comparing situation to that of eastern states and predicting new rules would come in 1906); *Ten Football Deaths is the Record to Date*, NEWARK DAILY ADVOC., Nov. 18, 1905 (noting record number of deaths, predicting more and discussing deaths in prior seasons).

7. *Columbia Takes Drastic Action; Decides to Abandon Football*, POST-STANDARD (Syracuse, N.Y.), Nov. 29, 1905, at 3.

8. *See* Ronald A. Smith, *Harvard and Columbia and a Reconsideration of the Football Crisis of 1905-06*, 8 J. OF SPORTS HIST. 5, 10-11 (Winter 1981).

9. *Id.* at 10.

10. *Id.* at 11.

11. *See id.* at 10-11.

thrown in.<sup>12</sup> Players could link arms together or stay in close formations to obtain extra force or leverage against opponents.<sup>13</sup> Modern protections such as helmets and shoulder pads were unheard of.<sup>14</sup>

Meeting the President at the White House that October were Walter Camp and John Owsley of Yale, J.B. Fine and A.R. Hillenbrand of Princeton, and Edward H. Nichols and William T. Reid Jr. of Harvard.<sup>15</sup> After the meeting, Camp, the General Athletics Advisor at Yale, and a later football legend, issued a statement signed by the athletic leaders of the involved schools. It read as follows:

In a meeting with the President of the United States it was agreed that we consider an honorable obligation exists to carry out in letter and in spirit the rules of the game of football relating to roughness, holding and foul play and the active coaches of our universities being present with us pledged themselves to so regard it and to do their utmost to carry out that obligation.<sup>16</sup>

Out of the Roosevelt meeting emerged what became known as the "American Football Rules Committee" ("FRC"). In December of 1905, Harvard, Yale and Princeton joined the U.S. Naval Academy, Cornell University, University of Chicago and the University of Pennsylvania in Philadelphia for the FRC's first meeting. That group began to promulgate football rules to be used nationally by those playing the game. By January of 1906, Harvard declared that if football's rules were not changed further, it too would abandon the game.<sup>17</sup>

For his part, President Roosevelt continued to keep his eye on things as matters progressed. Shortly after his October meeting, he attended the Harvard/Yale game, reportedly "to see whether his suggestions on the game have been put in place."<sup>18</sup>

12. Hawes, *supra* note 1.

13. *Id.*

14. For a description of dangerous aspects of early football play, see Hawes, *supra* note 1.

15. See Smith, *supra* note 8, at 11 n.38.

16. *Play by Rules, Request Made by Roosevelt; Walter Camp Issues Statement as to Conference at White House*, WASH. POST, Oct. 12, 1905, at 1. For more on the Roosevelt Meeting and football controversy see generally Smith, *supra* note 8.

17. *Harvard Demands Reform; If Rules Are Not Changed, There Will Be No Football Games*, WASH. POST, Jan. 5, 1906, at 3 (noting the position of Chairman of Harvard's Athletic Committee that if Football Rules Committee does not make radical changes Harvard will go it alone and noting that Harvard suffered 145 injuries serious enough to cause players to miss a game).

18. *Mr. Roosevelt Applies for Seats at the Harvard-Yale Game*, WASH. POST, Nov. 10, 1905.

Notably, the list of invitees to the White House and to the December Pennsylvania meeting was a limited one. But William Moore's death barely a month after the President's call for reform, spurred NYU's Chancellor, H.M. McCracken to action. First, McCracken tried to convince NYU's president to call for changes in football. Unsuccessful, McCracken made his own call for educational institutions, including the Roosevelt group, to meet in New York City at a National Football Conference to discuss changes in the game.<sup>19</sup> Sixty-eight institutions joined McCracken for that New York football conference in December of 1905.<sup>20</sup> There, they agreed to form the Intercollegiate Athletic Association of the United States ("IAAUS").<sup>21</sup> In 1910, seeking a more distinctive description that indicated their nationwide aspirations, that group changed its name to the National Collegiate Athletic Association or "NCAA."<sup>22</sup>

One might wonder why two different groups of educational institutions, both concerned about the brutality of football, would meet separately in the same month, or indeed, why Roosevelt did not invite an even larger number of schools to meet with him. One possibility is that Roosevelt, a Harvard alumnus, and the members of the Football Rules Committee were simply being elitist. There is no question that the schools Roosevelt targeted set both educational trends and the national tone of college football. But a close look also reveals that the two groups' founders had important differences in conceptions of how to cure the problem. Roosevelt and the schools he contacted dearly wished to save the game. NYU's Chancellor McCracken, on the other

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19. Three years later, in 1908, in addressing the very group he helped to found, Chancellor McCracken would reflect upon his actions in those days:

Little credit can be given me for taking the responsibility for the call of the first convention. The fatal accident upon the football field at University Heights coming when the agitation for the reform of football was at its height, constituted a loud call. After I had in vain urged a university president, who was my senior, to act, it was made an imperative duty upon me to do what I could. Hence the call in 1905.

Intercollegiate Athletic Ass'n of the United States, PROCEEDINGS OF THE THIRD ANNUAL CONVENTION OF THE INTERCOLLEGIATE ATHLETIC ASS'N OF THE UNITED STATES 6 (1909) [hereinafter 1908 PROC].

20. Palmer E. Pierce, *The International Athletic Association of the United States: Its Origin, Growth and Function, in 1907* PROC., *supra* note 2, at 28 (reflecting on the history of the IAAUS).

21. *Id.*

22. See W. Burlette Carter, *Responding to the Perversion of In Loco Parentis: Using a Nonprofit Organization to Support Student-Athletes*, 35 IND. L. REV. 851, 874 n.100 (2002) [hereinafter Carter, *In Loco Parentis*]. For ease of reference, henceforth in the text, the IAAUS will be referred to as the NCAA.



hand, along with the president of Union College, which William Moore had attended, felt strongly that the game should end. Of football, McCracken apparently felt that “its attendant evils [are] practically impossible of correction.”<sup>23</sup> Indeed, it was apparently common knowledge among those who convened in New York in 1905 that the original intent of that meeting was to seek the abolishment of football.<sup>24</sup>

There seemed to be one more difference between McCracken’s group and the smaller Football Rules Committee as the 1905 year ended. By the end of their conference, the McCracken group had extended its agenda to “the reform not only of football but of intercollegiate athletics as a whole.”<sup>25</sup> The agenda was dramatic because, in these days, most intercollegiate programs were controlled by undergraduate students.<sup>26</sup>

In 1907, Captain Palmer Pierce of West Point spoke of a concern that students were parading in “false college colors,” i.e., not adhering to the tenets of amateurism as a key animus for the formation of a new body:

The year 1905 was memorable in the athletic world on account of a campaign waged against the various abuses that had grown up in college athletics. Newspapers were filled with articles reflecting, not only on the methods of play in various sports, but also on the amateur status of many members of prominent college teams. Even the magazines took part in the discussion, and the need of change and reform in our supposedly amateur college athletics was emphasized by citing specific examples of proselyting, of prominent college players not really amateurs, and of the various covert forms of payment to certain men for their athletic services. It was related in detail under what disguise money returns were given. For instance, one prominent player was said to have derived hundreds of dollars from the privilege of furnishing programs for games; another received the profit from a special brand of cigarettes named after him; a third was the ostensible head of an eating club, while still others were in the private employ of rich college graduates.

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23. *Opinions on Football; Only Two Prominent College Presidents Favor Abolition of the Game*, DECATUR REV. (Ill.), Dec. 29, 1905, at 3.

24. Palmer E. Pierce, *The Intercollegiate Athletic Association of the United States*, in 1908 PROC. *supra* note 20, at 26 (noting division at 1905 meeting between those who wanted to abolish the game and those who wanted to reform it); *see also* Nat’l Collegiate Athletic Ass’n, PROCEEDINGS OF THE TWENTY-FIFTH ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 146 (1930) [hereinafter 1930 PROC.] (noting that Pierce was among those wanting to save the game in 1905).

25. 1930 PROC., *supra* note 24, at 146 (commenting on the broadening of the agenda); *see also infra* Part I.B. (discussing the first NCAA constitution).

26. For further discussion of the decision to oust athletics from student control, *see* Carter, *In Loco Parentis*, *supra* note 22, 855-76.

The use of athletic prowess for personal gain was said to be a widespread practice and it was hinted, if not directly stated, that the college authorities were cognizant of these violations of the principles of amateur sports.

Even the past history of many prominent athletes was brought before the public and their character as men of truth and as gentlemen was severely attacked. In a word it was claimed that many professional athletes were parading under false college colors.

This sweeping condemnation of the prevalent ethics of college athletics inaugurated a strong movement to reform the manner of playing the leading intercollegiate sports.<sup>27</sup>

Although McCracken was instrumental in founding the NCAA, he did not take a leadership part in its subsequent operations.<sup>28</sup> The group elected West Point's Palmer Pierce as its first President. Pierce would lead the institution for the better part of its first twenty-five years, stepping aside briefly during World War I because of military commitments.<sup>29</sup> At the 1905 meeting, the sixty-eight schools selected an Executive Committee and charged it to draft a constitution and bylaws for the new entity.<sup>30</sup>

Because there was little or no support for abolishing football, a compromise position emerged. First, the NCAA established its own Football Rules Committee to consider how to quell the game's most dangerous aspects.<sup>31</sup> Second, support was garnered for a resolution calling upon individual faculties to strictly limit intercollegiate athletics in favor of interclass and intramural games.

*Resolved*, That it is the sense of the Convention that, in the interest of the proper work of education, the number of intercollegiate match games in all branches of athletic sports, should be strictly limited by faculty vote.

27. Palmer E. Pierce, *The Intercollegiate Athletic Association of the United States*, in 1908 PROC. *supra* note 20, at 27.

28. See 1908 PROC., *supra* note 20, at 6 (noting that McCracken had not met with the group since its founding).

29. Pierce served as president from 1905 until 1913 and then returned to the Presidency in 1918 serving until 1929. 1907 PROC., *supra* note 2, at 26. In 1930 he began service as the "Honorary President." *Id.* The reason for the gap in service seems to have been his military deployment. *Id.* As evidence by length of service, Pierce was a very popular president. *Id.* Indeed, in 1907, he tried to tender his resignation after being called to active duty and stationed at Ft. Leavenworth, KS but the delegates declined to accept it. *Id.*

30. The Intercollegiate Athletic Ass'n of the United States, PROCEEDINGS OF THE FIRST ANNUAL CONVENTION OF THE INTERCOLLEGIATE ATHLETIC ASS'N OF THE UNITED STATES 10-12 (1906) [hereinafter 1906 PROC.].

31. *Report of Secretary and Treasurer*, in 1906 PROC., *supra* note 30, at 22.

That interclass games and intra-mural athletics in general should be fostered, to the end that a larger number of students may receive the benefits, and that intercollegiate competitions be made rather an incident than the main end of college and university athletic sports.<sup>32</sup>

For his own school, McCracken announced in 1906 that while NYU was “bound, in company with various other universities and colleges, to give the new game a trial,” its intercollegiate games would be “comparably few,” and that intramural games would dominate.<sup>33</sup>

*B. Drafting and Ratifying a Constitution and Bylaws: The Essentials of an Amateur Program*

On March 31, 1906, the NCAA’s Executive Committee, led by Palmer Pierce, offered a constitution to the various schools for ratification.<sup>34</sup> Article VIII made it clear that the parties were taking a bold step beyond football, and even beyond intercollegiate athletics, attempting to take control of campus athletics across the board:

The Colleges and Universities enrolled in this Association severally agree to take control of student athletic sports, as far as may be necessary to maintain in them a high standard of personal honor, eligibility, and fair play, and to remedy whatever abuses may exist.<sup>35</sup>

However, by providing that institutions “severally” agreed, the constitution also made it clear that the member institutions did not cede power to the national body, but retained their autonomy. The parties wanted an open relationship in which members were free to date others; they did not want marriage.<sup>36</sup> Thus, the constitution expressly provided that “the acceptance of a definite statement of eligibility rules” would not be a membership requirement and that, “the constituted authorities of each institution shall decide on methods of preventing the violation of the principles laid down in Article VI.”<sup>37</sup>

32. *Id.* at 25-26.

33. *Trial of New Football; New York University Feels Bound to Make Experiment*, WASH. POST, April 4, 1906, at 8.

34. 1906 PROC., *supra* note 30, at 12 (Pierce noting his leadership); *Report of Secretary and Treasurer*, in 1906 PROC., *supra* note 30, at 10.

35. Intercollegiate Athletic Ass’n of the United States, CONST. art. VIII, in 1906 PROC., *supra* note 30, at 31.

36. *Id.* at 12 (noting that it was clear that a constitution that required institutions to cede power to a national body could not be widely ratified). For a more detailed discussion of the evolution of the relationship among NCAA schools, see W. Burlette Carter, *Student Athlete Welfare in a Restructured NCAA*, 2 VA. J. SPORTS & L. 1 (2000) [hereinafter Carter, *Student Athlete*].

37. Intercollegiate Athletic Ass’n of the United States, BYLAWS art. VII, in 1906 PROC., *supra* note 30, at 34.

The constitution also spelled out the objective of the organization quite plainly:

Its object shall be the regulation and supervision of college athletics throughout the United States, in order that the athletic activities in the colleges and universities of the United States may be maintained on an ethical plane in keeping with the dignity and high purpose of education.<sup>38</sup>

The first constitution divided the country into seven districts, each of which would render a report on athletic affairs in its region at the convention. It embraced the principle of one delegate, one vote, provided for annual meetings, and named the organization's principle officers, as well as an Executive Committee made up of the officers and one member from each district not represented by the President or Secretary.<sup>39</sup> The Executive Committee was responsible for proposing amendments to the constitution and bylaws and conducting work of the Association in between conventions.<sup>40</sup> The bylaws provided that each district would render a report at the annual meetings.<sup>41</sup> As agreed, it also established a Football Rules Committee within the NCAA.<sup>42</sup>

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38. Intercollegiate Athletic Ass'n of the United States, CONST. art. II, *in* 1906 PROC., *supra* note 30, at 29.

39. The districts were the New England States, the Middle States and Maryland, the Southern States, the Middle Western States, the Northwestern States, the Southwestern States, and the Pacific Coast States. Intercollegiate Athletic Ass'n of the United States, CONST. art. IV., § 1, *in* 1906 PROC., *supra* note 30, at 29-30. It appears that in 1911 the Southwest District was divided in two to form the Sixth and Seventh Districts and a new Eighth District was added including the Pacific Coast, Colorado, Idaho, Montana, and Wyoming. *See* Nat'l Collegiate Athletic Ass'n, CONST., *in* PROCEEDINGS OF THE SIXTH ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N 66 (1911) [hereinafter 1911 PROC.]. The 1912 Eighth District report noted that there were some 40 Colleges in this district. Nat'l Collegiate Athletic Ass'n, *8th District Report*, *in* PROCEEDINGS OF THE SEVENTH ANNUAL CONVENTION OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 22 (1912) [hereinafter 1912 PROC.]. Later, after the number of Pacific Coast increased schools, those schools became part of a new Ninth District. *See, e.g.*, Nat'l Collegiate Athletic Ass'n, CONST., art. IV, *in* PROCEEDINGS OF THE ELEVENTH ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N 114-15 (1916) [hereinafter 1916 PROC.]. By following the district reports one can have some view of developments in each region. *See also id.* § 2 (listing the officers of the Association); *id.* art. VI (providing for an annual convention and giving each delegate one vote).

40. *See, e.g.*, 1908 PROC., *supra* note 20, at 21, 23 & 29.

41. Intercollegiate Athletic Ass'n of the United States, BYLAWS art. VIII, *in* 1906 PROC., *supra* note 30, at 36.

42. *Id.* art. V. The first members of that committee appear to have been Dr. Henry L. Williams (U. Minn.; chair); Prof. James T. Babbitt (Haverford), Lieutenant Charles D. Daly (West Point); Mr. E.K. Hall (Dartmouth); Prof. James T. Lees (U. Nebraska); C.W. Savage (Oberlin). *See* 1906 PROC., *supra* note 30, at 22-23 (thanking them for their service to the NCAA).

The bylaws set forth guidelines “suggested as a minimum.”<sup>43</sup> They reflected a strong focus upon the principle of amateurism. Because of the difficulty of access to these documents and the importance of the original language used, I quote them extensively here. First, Article VI defined the key “Principles of Amateur Sport.”

Principles of Amateur Sport

Each institution which is a member of this Association agrees to enact and enforce such measures as may be necessary to prevent violations of the principles of amateur sports such as

a. Proselyting.[sic]

1.The offering of inducements to players to enter Colleges or Universities because of their athletic abilities and of supporting or maintaining players while students on account of their athletic abilities, either by athletic organizations, individual alumni, or otherwise, directly or indirectly.

2.The singling out of prominent athletic students of preparatory schools and endeavoring to influence them to enter a particular College or University.

b. The playing of those ineligible as amateurs.

c. The playing of those who are not bona-fide students in good and regular standing.

d. Improper and unsportsmanlike conduct of any sort whatsoever, either on the part of the contestants, the coaches, their assistants, or the student body.<sup>44</sup>

In Article VII, the constitution went further to define eligibility rules for student athletes.

1. No student shall represent a College or University in any intercollegiate game or contest, who is not taking a full schedule of work as prescribed in the catalogue of the institution.

2. No student shall represent a College or University in any intercollegiate game or contest who has at any time received either directly or indirectly, money or other consideration, to play on any team, or for his athletic services as a college trainer, athletic or gymnasium instructor, or who has competed for a money prize or portion of gate money in any contest, or who has competed for any prize against a professional.

In applying this rule the constituted authorities shall discriminate between the deliberate use of athletic skill as a means to livelihood, and technical, unintentional or youthful infractions of the rule.

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43. See Intercollegiate Athletic Ass’n of the United States, BYLAWS art. VII, *in* 1906 PROC., *supra* note 30, at 34.

44. *Id.* art. VI.

3. No student shall represent a College or University in an intercollegiate game or contest who is paid or receives, directly or indirectly, any money or financial concession or emolument as past or present compensation for, or as prior consideration or inducement to play in, or enter any athletic contest, whether the said remuneration be received from, or paid by, or at the instance of any organization, committee or faculty of such College or University, or any individual whatever.

This rule shall be so construed as to disqualify a student who receives from any source whatever, gain or emolument, or position or profit, direct or indirect, in order to render it possible for him to participate in college or university athletics.

In case of training table expenses, no organization or individual shall be permitted to pay for the board of a player at said table more than the excess over and above the regular board of such player.

4. No student shall represent a College or University in any intercollegiate game or contest who has participated in intercollegiate games or contests during four previous years.

5. No student who has been registered as a member of any other College or University shall participate in any intercollegiate game or contest until he shall have been a student of the institution which he represents at least one college year.

6. Any football player who has participated in an intercollegiate football contest in any College or University and leaves without having been in attendance two-thirds of the college year in which he played shall not be allowed to play as a member of the team during the next year's attendance at the same institution.

7. Candidates for positions on athletic teams shall be required to fill out cards, which shall be placed on file, giving a full statement of their previous athletic records as follows:

Eligibility Card

Name of College or University.

Date.

Name of player or contestant.

Age of player or contestant.

Weight of player or contestant.

Branch of sport or contest.

Questions.

1. On what date this session did you register?

2. Have you ever at any time competed for a money prize, or against a professional for any kind of prize?

3. Have you ever received money or any other compensation or concession for your athletic services, directly or indirectly, either as a player or in any other capacity?

4. How many hours of recitations and lectures are you attending per week? How many hours of practical work?

5. How long have you been a student at (Name of your institution)?

6. Did you receive any inducement or concession to attend (Name of your institution)?

7. Have you ever participated in intercollegiate contests as a member of a (Name of your institution) team? If so, state what team or teams, and when.

8. Have you ever taken part in any intercollegiate contest as a member of the team of any College or University other than (Name of your institution)? If so, state what institution you represented, on what team or teams, and when

9. Have you won an initial at any institution? (In your answer give the date and place.)

10. If on a team in any other institution, what position did you fill?

11. Have you ever taken part, as a member of any athletic club team, in any baseball or football game or games, or any track event?

12. Have you ever played baseball on a summer team? If so, what team or teams, and when? Have you ever received for such playing any compensation or emolument?

13. Did you hold a scholarship of any kind? If so, how and by whom awarded?

14. Do you hold any official position in your College? If so, at what salary, and for how long have you held it?

15. Are you under a contract or understanding expressed or implied to engage in athletics at (Name of your institution) for money or any other consideration or emolument to be received from any source whatever, either directly or indirectly?

On my honor as a gentleman I state that the above answers contain the whole truth, without any mental reservation.

(Date)(Signature).<sup>45</sup>

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45. *Id.* art. V.

### C. Growing the Membership

Although sixty-eight institutions responded to McCracken's call to meet in 1905, by the end of 1906, only thirty-nine schools had ratified the NCAA constitution.<sup>46</sup>

Of these, only twenty-eight actually attended the first convention in December, 1906.<sup>47</sup>

When one looks at this list of original members, one notes several things. First, as discussed earlier, despite repeated invitations, conspicuously absent were the members of the FRC. Without these national academic and football powerhouses, the NCAA's power was limited.

Second, these original members were not representative of the entire country. Vanderbilt and North Carolina were the only Southeastern Institutions, and there were only a few from the Southwest, (although the University of Texas at Austin and University of Virginia would join the next year).<sup>48</sup> There were also no institutions from the Pacific Coast states.

One possible explanation for the absence of some institutions is distance and travel costs. But another clear reason for absences was that some schools already belonged to strong conferences that had the power to legislate for members. For example, the Southern Intercollegiate Athletic Association was organized in 1893.<sup>49</sup> Western schools could look to the Intercollegiate Conference of Faculty

46. These original members were: Allegheny College, Amherst College, Bucknell University, Colgate University, Dartmouth College, Denison University, Dickinson College, Franklin and Marshall, George Washington University, Grove City College, Haverford College, Lehigh University [Pa.], Miami University [Ohio], New York University, Niagara University, Oberlin College, Ohio Wesleyan University, Rutgers College, Seton Hall College, Swarthmore College, Syracuse University, Tufts College, Union College, University of Colorado [Boulder], University of Minnesota, University of Missouri, University of Nebraska, University of North Carolina [Chapel Hill], University of Penn[sylvania], University of Rochester, University of Wooster [Ohio], U.S. Military Academy [West Point], Vanderbilt University, Washington and Jefferson College, Wesleyan University (Conn.), Western University, Westminster College (Pa.), Williams College, and Wittenberg College. 1906 PROC., *supra* note 30, at 4, 11. *But see* Palmer E. Pierce, *The International Athletic Ass'n of the United States: Its Origin, Growth and Function*, in 1907 PROC., *supra* note 2, at 29 (asserting that 38 institutions had ratified the 1906 constitution).

47. 1906 PROC., *supra* note 30, at 7-9 (listing the "accredited delegates"). Missing were Amherst, Denison, George Washington, Grove City, Miami (Ohio), Tufts, Univ. of North Carolina, Univ. of Pennsylvania, Rochester, Westminster and Wittenburg. *Cf. id.*

48. 1907 PROC., *supra* note 2, at 2-4 (listing the roll of members).

49. *See* 1906 PROC., *supra* note 30, at 18; W.L. Dudley, *3d Dist. Rep.*, in 1907 PROC., *supra* note 2, at 9.



Representatives and the Intercollegiate Athletic Association of the Southwest which dated back to 1895 and 1903, respectively. The Big Ten Conference dates back to 1895.<sup>50</sup> Institutions belonging to conferences that had regulatory authority were hesitant to affiliate with a national group that might conflict with their conferences' will. Conference membership was also a valuable commodity not to be jeopardized.

One also notices that smaller colleges and universities dominate the initial group. Smaller schools were less likely to have large athletic programs and, consequently, were also less likely to have a financial investment in the perpetuation of athletics, alumni who would vocally challenge a cutback, or the budget to increase athletics. As a consequence, smaller institutions were also more likely to favor the reduction of intercollegiate athletics and specialized training in favor of universal participation and intramural models.<sup>51</sup>

The delegates at McCracken's first meeting were overwhelmingly faculty members with professorial status and no specific tie to an athletic department, with a few college presidents thrown in.<sup>52</sup> Eleven schools sent representatives to the 1906 convention as "visiting delegates," including historically African-American Howard University.<sup>53</sup> The University of Chicago, an FRC member, also visited in the person of its Director of Athletics, Alonzo Stagg.<sup>54</sup> Despite his visiting status, Stagg expressed his strong support for the formation of a national organization, and, after Chicago joined, he served on the NCAA's executive committee for several years.<sup>55</sup>

Recognizing that having two football rules committees was not workable, the NCAA asked the members of the FRC to form a single ruling group under the umbrella of the NCAA.<sup>56</sup> The FRC's members

50. See Big Ten Conference, Big Ten History, <http://bigten.collegesports.com/trads/big10-trads.html> (last visited Mar. 27, 2006). It was originally known as the Intercollegiate Conference of Faculty Representatives. *Id.*

51. Indeed, the Association of Colleges in New England passed a resolution to that very effect in 1907. See F.W. Nicolson, *1st Dist. Rep.*, in 1908 PROC., *supra* note 20, at 9.

52. 1906 PROC., *supra* note 30, at 7-9.

53. *Id.* at 9-10. Howard was represented by William J. Decatur. *Id.*

54. *Id.* Chicago was represented by Alonzo Stagg. *Id.*

55. *Id.* at 23.

56. Intercollegiate Athletic Ass'n of the United States, CONST., art. V in 1906 PROC., *supra* note 30, at 33; *id.* at 22 (resolving to make invitation); *Rep. of Comm. On Membership*, in 1907 PROC., *supra* note 2, at 17-18 (expressing willingness to revise Constitution if members of the AFRC were to join).

initially declined.<sup>57</sup> By the time of the 1906 NCAA convention, however, the parties had reached a temporary agreement, to be renewed annually. Under it, NCAA football rules committee and the FRC acted together as a single committee outside the NCAA structure. That body was named the American Intercollegiate Rules Committee (“AIRC”) or “the amalgamated committee.”<sup>58</sup> The NCAA rules committee also created a subcommittee, a “Central Board of Officials,” to be a central clearinghouse for those who would officiate the college game.<sup>59</sup> Through the joint football rules committee, football legend Walter Camp and others would shape the future of the game.<sup>60</sup>

The NCAA leadership realized that it could not claim national relevance without national membership. To further this goal, the NCAA published the addresses and the proceedings of its convention and sent them free of charge to schools across the country.<sup>61</sup> The NCAA fashioned itself as a declarant of ideals *only* and expressed support for the formation of local conferences, which it hoped would behave consistently with NCAA goals.

But within a year, this aspirational-only approach was testing the patience of those desiring changes in intercollegiate athletics. In 1907, the NCAA unanimously adopted an amendment to its Constitution, stating that its members were “bound by the provisions” of the NCAA’s Constitution and Bylaws and that legislation enacted in conferences was binding upon members unless the institution submitted a formal objection to the Executive Committee of the NCAA.<sup>62</sup> The next year the Association declared that although individual institutions retained responsibility for details, the

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57. *Rep. of Comm. On Membership, in 1907 PROC., supra note 2, at 19* (reporting that Harvard and Cornell declined invitation to join; U.S. Naval Academy, Yale and Princeton had not replied); *see also Lack Power to Unite; Overtures rejected by Football Rules Committee, WASH. POST, Dec. 30, 1905, at 8* (stating that the original rules committee lacks power to merge with IAAUS committee and must consult its individual member schools).

58. 1906 PROC., *supra note 30, at 13; Rep. of Comm. On Membership, in 1907 PROC., supra note 2, at 19.*

59. The Central board in turn appointed subsidiary regional boards. 1906 PROC., *supra note 30, at 13-14.* The reports of this subcommittee offer an interesting glimpse of the history of intercollegiate officiating.

60. *See, e.g., Rep. of the Chairman of the Rules Comm., in 1907 PROC., supra note 2, at 20* (noting Camp’s contribution).

61. *Address of President Palmer Pierce, in 1911 PROC., supra note 39, at 49* (noting influence of organization).

62. *Rep. of Comm. on Summer Baseball, in 1907 PROC., supra note 2, at 24-25.*

Association expected each member to make a bona fide effort to enforce the principles of amateur sports and encouraged members to form conferences through which this enforcement could be secured.<sup>63</sup> However, proposed language that would have authorized the Executive Committee to hear evidence of offenses was rejected.<sup>64</sup>

The approach of disowning any claim to legislative authority while still insisting on adherence to its constitution and bylaws revealed a schizophrenia that would plague the NCAA throughout its lifetime. The disease was born of the internal struggle between those members who wanted a weak central body and absolute institutional autonomy and those who wanted a strong NCAA with sanctioning authority.<sup>65</sup>

Recognizing that more schools, and especially schools with major athletic programs, were indispensable to their efforts, the NCAA created a special Membership Committee to woo them. In 1907, the committee's invitation letter assured recipients that "your institution will lose none of its independence if it should join us in the work."<sup>66</sup> In one of its most imaginative moves, in 1907 the NCAA allowed schools to join together and seek membership within the NCAA, either as a conference or as joint members.<sup>67</sup> Each group of joint members had a right to a single delegate.<sup>68</sup> This plan was ingenious, for it created a way for the powerful conferences to come under the NCAA umbrella, raising the potential that they could be subject to its control. It also allowed schools that could not convince their entire conferences to come on board or could not justify the minimal dues to band together in a membership.<sup>69</sup> But the plan was also potentially self-destructive. It stood to reason that if those favoring amateurism within the NCAA could not control the conferences, then the conferences would ultimately undercut amateurism within the NCAA.

Each year the NCAA's membership grew. At the 1911 proceedings, President Palmer Pierce proudly reflected upon that growth, noting, "In 1906, thirty-nine individual universities and

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63. *Amendments to Constitution and to By-Laws, in 1908 PROC., supra note 20, at 22. see also 1930 PROC., supra note 24, at 28 (encouraging the formation of conferences).*

64. *Amendments to Constitution and to By-Laws, in 1908 PROC., supra note 20, at 21-23.*

65. For more on this struggle see Carter, *Student Athlete, supra note 36, at 6-26.*

66. *Rep. of Comm. on Membership, in 1907 PROC., supra note 2, at 16.*

67. *Rep. of Comm. on Summer Baseball, in 1907 PROC., supra note 2, at 25.*

68. *Id.*

69. *Id.*

colleges were on its rolls; in 1907, forty-nine; in 1908, fifty-seven; in 1909, sixty-seven; in 1910, seventy-six; and this year ninety-five.”<sup>70</sup> One by one the members of the FRC joined. First was the University of Chicago in 1907;<sup>71</sup> then Harvard in 1909;<sup>72</sup> then Princeton and Cornell in 1914;<sup>73</sup> Yale in 1915;<sup>74</sup> and finally the Naval Academy in 1921.<sup>75</sup> By the end of its first twenty-five years, the institutional membership exceeded 150 schools. Today, of course, the number is in excess of 1200 four-year institutions.

#### D. A Moral Charge

The NCAA’s founders viewed themselves as fulfilling a moral charge and offering great national service by preparing young male citizens.

The effect upon the national character of permitting intercollegiate contests to be conducted under false pretenses . . . must be admitted to be seriously bad . . . . There can be no question but that a boy or young man, who is habituated to the endeavor to win games by means, some of which he knows to be unfair and against the rules, later will play the game of life with the same ethical standards.<sup>76</sup>

NCAA President Pierce argued that the approach to athletics in England allowed a personal tutor to guide a small group of students on both the intellectual and athletics issues and thus, by promoting amateurism, had a broad influence on national life in that country.<sup>77</sup> Pierce said, however, that the English system could not work in America, for the country was too large, its interests were too divergent, and the tutorial system was too infrequent in America.<sup>78</sup> He thus concluded that “[t]he same inference can become effective in

70. Pierce, 1911 PROC., *supra* note 39, at 58.

71. 1907 PROC., *supra* note 2, at 3.

72. Intercollegiate Athletic Ass’n of the United States, PROCEEDINGS OF THE FOURTH ANNUAL CONVENTION OF THE INTERCOLLEGIATE ATHLETIC ASS’N OF THE UNITED STATES 7 (1909) [hereinafter 1909 PROC.].

73. Nat’l Collegiate Athletic Ass’n, PROCEEDINGS OF THE ELEVENTH ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 7 (1914) [hereinafter 1914 PROC.].

74. Nat’l Collegiate Athletic Ass’n, PROCEEDINGS OF THE TENTH ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 8 (1915) [hereinafter 1915 PROC.].

75. Nat’l Collegiate Athletic Ass’n, PROCEEDINGS OF THE SIXTEENTH ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 3 (1921) [hereinafter 1921 PROC.] (Although unlike in other cases, the conference proceedings do not report the admission of the Naval Academy; that institution first appears on the membership roll in that year).

76. Palmer E. Pierce, *The Int’l Athletic Ass’n of the United States*, in 1907 PROC., *supra* note 2, at 30.

77. *Id.*

78. *Id.*

the United States only by the concerted efforts of educators, working through national organizations.”<sup>79</sup>

McCracken also stated the charge in moral terms. He stated, “When those activities of a young man which most fix his attention, excite his ambitions and stir his feelings are kept on a high moral plane, then a great deal is done towards making his a life of morality.”<sup>80</sup>

As I have argued in a prior article, “Responding to the Perversion of *In Loco Parentis*,” an important key to understanding how NCAA institutions viewed their right, and indeed obligation, to take over college athletics is the doctrine of *in loco parentis*.<sup>81</sup> Vis-à-vis their students, schools acted in the place of a parent, and could indeed control student behavior both on and off campus, if they felt that such control was for the good of the student.<sup>82</sup> Courts consistently rejected legal challenges to this authority, deferring to the sound judgment of educators.<sup>83</sup> Because they acted under the *in loco parentis* doctrine, these educators never questioned the extent of the authority they should have over student-athlete lives. Their power was a given.

## II. KEY DEBATES

### A. Amateurs and Amateur Programs

As I have described elsewhere, the model to which framers of the NCAA thought their students should aspire was that of the gentleman amateur. An amateur was one who played sports as an *avocation*, who derived his pleasure from the game itself and not external factors such as fame or fortune.<sup>84</sup>

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79. *Id.*

80. 1908 PROC., *supra* note 20, at 7.

81. *See* Carter, *In Loco Parentis*, *supra* note 22, at 852-53, 855-59, 862-63, 878-79; *see also* Clarence A. Waldo, *The Proper Control of College Athletic Sports*, in 1908 PROC., *supra* note 20, at 40, 43 (“Long and undisputed custom has left things to the faculty and properly so, for say what we will, the college faculty is *in loco parentis*.”).

82. Carter, *In Loco Parentis*, *supra* note 22, at 852-53, 855-59, 862-63, 878-79.

83. *Id.*

84. *Id.* at 862.

Amateurism purists were fond of citing something they called the “amateur spirit,”<sup>85</sup> which was a general way of approaching athletics embodying morality and fair play. Conceptions of fair play were a product of the times. Thus, actions like taking a time out merely to upset the rhythm of an opposing team,<sup>86</sup> blocking runners from a base or attempting to pry runners off base,<sup>87</sup> catchers talking trash to batsmen and general talking on the field<sup>88</sup> were considered unsportsmanlike conduct indicative of a professional spirit not an amateur one.

This spirit also prescribed fan behavior at amateur events. It was considered inappropriate for a crowd to cheer or chatter in order to rattle an opposing team during play.<sup>89</sup> Indeed, one First District report cited with giddy approval the behavior of losing fans at a New England college who cheered winning fans as the latter group did a triumphant snake dance on the field!<sup>90</sup> An on-field snake dance by winners would likely be received very differently by losing football fans at most of today’s games.

Pure amateurists railed against paid or professional coaches hired for merely a season or two. They argued that coaches should come from the regular faculty; and at the very least, coaches should have a permanent connection with the institution as educators or volunteer alumni. As athletics began to spiral out of control, some even argued that schools should return to using undergraduates as coaches.<sup>91</sup> Amateurism also defined *how* a coach coached. Proponents argued that unless they were undergraduates like the players, coaches should not coach from the sidelines during a game. Properly

85. See, e.g., Luther H. Gulick, *Amateurism*, in 1907 PROC., *supra* note 2, at 40-43; 1908 PROC., *supra* note 20, at 11, 64. The amateur purists are also discussed in Carter, *In Loco Parentis*, *supra* note 22, at 866-70.

86. 1911 PROC., *supra* note 39, at 31.

87. Nat’l Collegiate Athletic Ass’n, *Comm. on Ridding College Baseball of its Objectionable Features*, PROCEEDINGS OF THE EIGHTH ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 41 (1913) [hereinafter 1913 PROC.].

88. *Comm. on Ridding College Baseball of its Objectionable Features*, in 1913 PROC., *supra* note 87, at 42 (discussing catcher chatter); Nat’l Collegiate Athletic Ass’n, PROCEEDINGS OF THE NINTH ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 10 (1912) [hereinafter 1912 PROC.] (discussing “yapping” by players).

89. See 1921 PROC., *supra* note 75, at 47.

90. Nat’l Collegiate Athletic Ass’n, PROCEEDINGS OF THE TWENTY-SECOND ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 18 (1927) [hereinafter 1927 PROC.]. The Yale snake dance apparently dated back to the early 1900’s. See *Yale*, 6; *Harvard*, 0; *Sons of Old Eli Conquerors of Eastern Gridiron*, WASH. POST, Nov. 26, 1905.

91. For more on coaching see Carter, *In Loco Parentis*, *supra* note 22, at 861, 868-69, 884.

conducted, a coach's work was done *before* the game. Thus, during a game, coaches should either sit quietly on the bench or not appear on the bench at all if they were not themselves students.<sup>92</sup> In the view of amateurs, this approach preserved the game as primarily a game for undergraduates and avoided the image of professionalism.

Of course, the grand centerpiece on the altar of amateurism was the principle that the amateur did not receive pay for play, directly or indirectly. Amateurs opposed training tables and scholarships based in any part on athletic ability.<sup>93</sup> Most of the upper classes and many in the middle considered it despicable to make money playing sports or to play with those who did.<sup>94</sup> The gospel of amateurism was to guide all aspects of a sportsman's life. Thus, in 1927, when golfer Bobby Jones, then married with a family, decided to accept a job writing about golf while still playing as an amateur, he set off a firestorm of controversy.<sup>95</sup> Mary K. Browne did the same when she sought to be a professional in tennis, while an amateur in golf.<sup>96</sup>

Of course, amateurs opposed the training table and athletic scholarships. On the latter point, the author of the Carnegie Foundation's famous 1929 report on athletics programs at schools, asserted, "Athletic scholarships have no place in the American college . . . ."<sup>97</sup> And in 1930, the famous Carnegie Committee study on campus-based athletics concluded that athletic scholarships were "entirely inexcusable."<sup>98</sup> Somehow, it was believed, or at least professed, that the mere acceptance of money in any form made it impossible for a professional to enjoy the game for its own sake or to aspire to lofty principles such as sportsmanship. Similarly, if

92. See, e.g., 1911 PROC., *supra* note 39, at 11, 31, 55; 1912 PROC., *supra* note 39, at 10.

93. Carter, *In Loco Parentis*, *supra* note 22, at 862.

94. *Id.*

95. Grantland Rice, *The Sportlight*, BRIDGEPORT TELEGRAM, Apr. 27, 1927. The author argued that Jones should be afforded a chance to make a decent living to support his wife and children, given that other career options had not panned out for him financially and since others were making money off of his name. *Id.* Moreover, he argued that top rated amateurs were required to devote so much time to their sport it was unreasonable to completely bar them from trying to make a living in another sport or indirectly profiting from their amateur status. *Id.*

96. *Id.*

97. Howard J. Savage, *The Elimination of Recruiting and Subsidizing*, in 1930 PROC., *supra* note 24, at 127.

98. *Spec. Comm. Rep., Rep. of Comm. to Study Carnegie Found. Bulletin 23*, in 1930 PROC., *supra* note 24, at 83.

amateurs played with professionals, even if the amateurs did not accept money, they might gain unfair advantage, and even worse, bring the disease of professionalism back to infect amateur teams.

Theoretically, amateurism also defined a *school's* approach to its sports programs. Some who touted amateurism, objected to schools using their programs for advertising purposes and doubted the value of this argument as a reason for athletics.<sup>99</sup> They objected to schools collecting gate receipts, believing that these inevitably undermine the educational purpose of athletics, by making the program commercially dependent upon outsiders, and thus beholden to their views. Instead, they argued athletics should be financed through the institution.<sup>100</sup> These amateurists viewed the primary purpose of an institution's program to be athletics for all or universal participation. Thus, they argued that intercollegiate athletics should be minimized and intramurals should be the dominant approach. They argued against intersectional games, which required students to travel long distances and pitted unnatural rivals against each other. In their view, such games overextended athletes and undercut the educational purpose of sports. Purists were very much against specialized recruiting that targeted athletes.

As I have argued elsewhere, the amateurism debate also had a class context. Amateurists borrowed the concept of the gentleman-amateur from England. Pay for play was considered low-class and beneath a gentleman, so amateurism's values reflected some high-brow biases against the lower classes who regularly engaged in such activities to make extra money.<sup>101</sup> Opposition to developing intercollegiate athletics also reflected opposition to educational specialization *in any form*, a key tenet of supporters of the liberal arts's approach to education. Thus, the debate between proponents of a liberal arts approach and those who favored professional training directly impacted debates over specialized training and recruiting in intercollegiate athletics.<sup>102</sup> At the same time, some amateurists genuinely felt strongly that students and education would be harmed

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99. See, e.g., 1911 PROC., *supra* note 39, at 3 (colleges should not use sport for advertising); James R. Angell, *The Familiar Problems of College Athletics*, in 1930 PROC., *supra* note 24, at 109 (same view and also doubting advertising justification for athletics); C.W. Hetherington, *6th Dist. Rep.*, in 1908 PROC., *supra* note 20, at 16.

100. Dudley A. Sargent, *Competition in College Athletics*, in 1909 PROC., *supra* note 72, at 53.

101. Carter, *In Loco Parentis*, *supra* note 22, at 862-64.

102. *Id.* at 869-70.



if intercollegiate athletics programs were exploited by institutions, and that it was their duty to protect both.

As with all religions, amateurism's converts displayed ranges of zeal. Each school felt free to let the spirit guide it as it saw fit. In 1927, one delegate dared state that he did not understand why schools should not train athletes to enter the professional ranks, just as they train students to enter law or business, or why willing alumnae should not be allowed to provide students with financial support.<sup>103</sup> In 1925, another argued that it was impractical to insist on absolute amateurism, given the refusal of institutions to finance athletics as part of their general budgets.<sup>104</sup> Some converts saw no inconsistency in attacking others who professed professionalism, but supporting professional tendencies in amateur programs. In 1925 the Chairman of the Big Ten Conference attacked advocates of professional football, but praised the college intersectional "bowl" games that lined educational and private coffers and often took students thousands of miles away from classes.<sup>105</sup> Indeed, even as President Roosevelt denounced the college athlete who accepted money for play, he supported the moves of his 1905 group to expand intercollegiate football and increase their gate receipts.<sup>106</sup>

Interestingly, it was baseball, not football, that presented the greatest challenge to student adherence to amateurism principles in the NCAA's earliest days. This is true because by the time of the NCAA's founding, professional baseball teams and leagues were already well established outside of colleges and universities, and student participation in them during summer months and academic years was widespread. Despite the high and lofty principles in the NCAA's constitution and bylaws, district report after district report

103. D.A. Penick, *6th Dist. Rep.*, in 1927 PROC., *supra* note 90, at 32.

104. See Nat'l Collegiate Athletic Ass'n, PROCEEDINGS OF THE TWENTIETH ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N, 61-78 (1925) [hereinafter 1925 PROC.] (explaining the debate about whether amateur law should be enforced in all intercollegiate competitions).

105. See *Big Ten Athletic Commissioner Sees Harm in Professional Athletics*, IOWA CITY PRESS CITIZEN, July 10, 1925, at 6 (discussing the speech of Big Ten Conference Commissioner John Griffith); *Big Ten Chief Explains Why of Intersectional Football*, IOWA CITY PRESS CITIZEN, July 10, 1925, at 6.

106. Speaking to his Harvard Class, alumnus Roosevelt declared that the "college undergraduate who in furtive fashion becomes a semi-professional is an unmitigated curse" and argued that such students cannot help to put their country on a proper plane "if in his own college career his code of conduct has been warped and twisted. See *Honesty in Sport, Roosevelt's Plea: Semi-Professional Athlete Pronounced an Unmitigated Curse*, POST-STANDARD, June 29, 1905 (discussing President Roosevelt's comments on the topic).

soon made it clear that schools did not have the courage to declare ineligible some of their best athletes on the basis of summer baseball play.<sup>107</sup> Moreover, it was difficult to track student involvement in summer games, particularly if the student was not inclined to report it on the eligibility card. Thus, lacking NCAA legislative authority, amateurism purists had to watch in frustration.

### B. Preserving Academic Integrity Standards

A common problem for educational institutions was preserving academic integrity in the intercollegiate athletic environment. Alumni and the public pressured universities to admit students who did not meet and could not meet the college's admissions criteria, and to waive academic standards for admitted students who were also athletes. The term "sporty professor" came to be used for the professor willing to alter athlete grades.<sup>108</sup>

Here too, however, the prevailing culture of education made it difficult to protect intercollegiate athletics from outside influence. Many schools refused to recognize athletics training as part of their educational curriculum. Therefore, class schedules provided no time in a crowded school day for athletes to train or practice, leaving such work to after-hours periods.<sup>109</sup> The lack of recognition in the curriculum also meant no money provided to athletics in the general institutional budget. Thus, to finance athletics, teams had to win. As a result of these tensions, student athletes became overextended, both academically and physically. The problem was exacerbated when practices and games stretched into vacation periods and the pre- and post-seasons.<sup>110</sup>

Early on, the conferences and individual schools took steps toward establishing minimum requirements for athletes. These included establishing admissions standards, establishing minimum course hours for matriculation, limiting years of college competition

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107. E.g., H.A. Peck, *2d Dist. Rep.*, in 1908 PROC., *supra* note 20, at 11 (support for summer baseball exception); 1912 PROC., *supra* note 39, at 33 (reference to summer baseball promoters); S.V. Sanford, *3d Dist. Rep.*, in 1925 PROC., *supra* note 104, at 23 (summer baseball still a problem); see also Scott A. McQuilkin, *Summer Baseball and the NCAA: The Second "Vexation"*, 25 J. OF SPORTS HIST., at 18, n.74 (1998).

108. 1906 PROC., *supra* note 30, at 14, 15.

109. Dudley A. Sargent, *Competition in College Athletics*, in 1909 PROC., *supra* note 72, at 54 (noting college and student prejudices against athletics); 1911 PROC., *supra* note 39, at 43 (noting views of some that athletics incompatible with intellectual life).

110. See discussion *infra* Part II.F.

and banning freshmen from intercollegiate teams.<sup>111</sup> The NCAA put its support behind these efforts, but there was no uniform approach, to curb transfers and school hopping. It also encouraged the wider adoption of a “freshman rule,” requiring one year of residency at an institution before one could play varsity athletics.<sup>112</sup>

### C. Controlling the Rising Cost of Athletics

As institutions became more and more involved in athletics management, they found themselves struggling to curtail the rising costs of their programs. Two items were at the center of expenditures concerns: new stadiums and top coaches.

As fan demand increased, institutions built stadiums to meet that demand which resulted in competing institutions feeling a need to do the same to keep up. Thus, the Ninth District reported in 1921 that two stadiums had been added among its schools and over one million dollars had already been raised for a third.<sup>113</sup> Ohio State University completed a 64,000 seat stadium in 1921. That same year, the University of Illinois had plans to build a 75,000 seat stadium. Other Big Ten Schools were not far behind. Michigan, Chicago and Wisconsin had new stadiums or new stadium plans in 1921.<sup>114</sup> Brown University erected a \$750,000 gym in 1928.<sup>115</sup> Nebraska broke ground on a 30,000-person stadium in 1923.<sup>116</sup> Vanderbilt celebrated its new stadium the same year.<sup>117</sup> Indeed, one convention speaker called the twenties the “age of stadium building in America.”<sup>118</sup> It would also be

111. 6th Dist. Rep., in 1906 PROC., *supra* note 30, at 21 (noting that district allows three years of competition which must be completed in four and required 10-12 hours of coursework); 6th Dist. Rep., in 1906 PROC., *supra* note 30, at 14 (noting practically every 6th district school follows freshman rule).

112. R.B. Ogilby, 1st Dist. Rep., in 1921 PROC., *supra* note 75, at 31 (noting student and alumni resistance to freshman rule).

113. Leslie J. Ayer, 9th Dist. Rep., in 1921 PROC., *supra* note 75, at 49.

114. G.A. Goodenough, 5th Dist. Rep., in 1921 PROC., *supra* note 75, at 42; *Comments of Pres. C.A. Richmond*, in 1921 PROC., *supra* note 75, at 82; *see also Big Ten Schools Close Successful Financial Season; Five New Stadiums to be Built to Handle Large Crowds*, INDIANAPOLIS STAR, Nov. 25, 1921, at 14 (noting building at Ohio, Michigan).

115. Nat'l Collegiate Athletic Ass'n, OLIVER F. CUTTS, 1st Dist. Rep., in PROCEEDINGS OF THE TWENTY-THIRD ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N 18 (1928) [hereinafter 1928 PROC.].

116. LINCOLN SUNDAY STAR, Oct. 14, 1923 (groundbreaking for Nebraska stadium that seats 30,000).

117. *Vanderbilt to Have New Stadium*, BEE, (Danville, VA), Aug. 22, 1923.

118. S.V. Sanford, 3d Dist. Rep., in 1927 PROC., *supra* note 90, at 22.

the age of debt accumulation for some schools, as they struggled to pay the bonds that financed their new ventures.<sup>119</sup>

Proponents of this growth made several arguments in support. First, they claimed that increased athletic presence provided an advertising benefit that would lead to more buildings in traditional programs such as chemistry and art.<sup>120</sup> Second, they argued that if colleges did not build stadiums, private enterprise would, and football would fall into the latter's hands.<sup>121</sup> Professionalism supported by private investors was an unspeakable evil.

In addition, many viewed top coaches as essential to winning and such coaches were expensive. At the 1909 Proceedings, one speaker complained that some coaches commanded salaries higher than the college president at the same institutions.<sup>122</sup> In 1921, another complained of part time coaches receiving \$10,000 for ten weeks of work.<sup>123</sup> These salaries were driven by the fact that winning coaches came at a premium, particularly in an environment where there was little or no job security for coaches.

#### *D. Securing the Status of Coaches as Full Time Teachers*

When colleges took the management of athletics away from students, various organizational plans emerged. Famously, before the NCAA's founding, the University of Chicago's President, William Rainey Harper, created the position of Athletic Director ("director of the Department of Physical Culture") for Alonzo Stagg in 1892. In 1926, Harvard created the position of "Director of Athletics" and made its holder a member of the faculty of Arts and Sciences.<sup>124</sup> In 1906, Yale reportedly made the director of its gymnasium a full professor, after learning he was being courted by other schools.<sup>125</sup> Walter Camp,

119. See S.V. Sanford, *3d Dist. Rep.*, in 1928 PROC., *supra* note 115, at 28 (discussing the building of stadium).

120. S.V. Sanford, *3d Dist. Rep.*, in 1927 PROC., *supra* note 90, at 22.

121. Leslie J. Ayer, *9th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 49.

122. James Roscoe Day, *The Function of Intercollegiate Athletics*, in 1909 PROC., *supra* note 72, at 37.

123. R.B. Ogilby, *1st Dist. Rep.*, in 1921 PROC., *supra* note 75, at 29.

124. Oliver F. Cutts, *1st Dist. Rep.*, in 1928 PROC., *supra* note 115, at 19; *see also* Harvard Athletics, A Timeline of Tradition, <http://gocrimson.collegesports.com/genrel/101602aab.html> (last visited Mar. 28, 2006).

125. See *College Athletics*, WASH. POST, June 4, 1905, at 2; *see also* C.W. Hetherington, *6th Dist. Rep.*, in 1909 PROC., *supra* note 72, at 14 (noting that Midwestern Colleges were using department of physical education with faculty director); Hollon A.

the Director of Athletics at Yale, had a higher status than professor. He was football royalty.

Unless he was a professor or an administrator, a football coach's job security was tied to winning.<sup>126</sup> Some schools hired a coach for the season only, releasing him after it was over. Some campuses used alumni coaches who gave their time at a reduced rate. Others had contract coaches for a year or term of years.<sup>127</sup> But early on, very few football coaches had professorial status, much less tenure or long contracts.

At its 1910 convention, the NCAA adopted a resolution that coaching and training should be "confined to the regular members of the teaching staff, employed by the governing board of the institution, for the full academic year," and that athletics should "be made a regular department, and receive the same consideration and be given equal responsibility and be held to the same accountability as any other department in the college or university."<sup>128</sup> Needless to say, this idea did not immediately take hold. As resistance to integrating athletics into the curriculum continued, so too did the precarious situation of coaches.

### *E. Safety and the Future of Football*

The first football reforms came out of the Roosevelt group. They adopted rules recommended by the University of Pennsylvania at their December, 1905 meeting. The rules barred kneeling and slugging of players, imposed stiff penalties for rough play, added an umpire, and shortened the halves from thirty-five to thirty minutes.<sup>129</sup> In two major changes, the committee introduced the forward pass and

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Farr, *1st Dist. Rep.*, in 1916 PROC., *supra* note 39, at 10 (noting that New England colleges were still using student coaching in baseball).

126. See *5th Dist. Rep.*, in 1927 PROC., *supra* note 90, at 28 (noting coaching dismissals "without rhyme or reason").

127. Thomas F. Moran, *Courtesy and Sportsmanship in Intercollegiate Athletics*, in 1909 PROC., *supra* note 72, at 64-65 (discussing various coaching approaches used across country).

128. Nat'l Collegiate Athletic Ass'n, PROCEEDINGS OF THE SEVENTH ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N OF THE UNITED STATES 35 (1910) [hereinafter 1910 PROC.].

129. *Declares for Reform, Football Rules Committee's New Policy*, WASH. POST, Dec. 10, 1905; *Trial of New Football, For Football at Harvard, Chicago Favors Rules, Yale Athletic Reforms*, WASH. POST Apr. 4, 1906; see also John B. Foster, *Football As It is to be Played This Year*, DECATUR REV., Sept. 16, 1906 (reviewing rules of Football Rules Committee).

extended yards to down from five to ten.<sup>130</sup> By extending yardage to down, the Committee hoped to reduce mass plays that gain little yardage but had the potential to impose great pain upon opposing teams. With the same goal in mind, the Committee required that the team in possession must have six men on the scrimmage line at all times.<sup>131</sup> Other changes included limiting timeouts to three per half, the adoption of a neutral zone at the scrimmage line, new off-sides rules, clearer fair catch signals, requiring the referee to whistle when a player is “down,” and describing what being “down” meant.<sup>132</sup>

After its 1906 and 1907 meetings with the FRE, the NCAA football rules committee reported that a key objective of the new rules was to end mass play or piling up practices.<sup>133</sup> The NCAA Report notes that because the scrimmage line and yards to down rules seriously restricted the offense, the new rules introduced the forward pass and the onside kick as offensive options to even things out.<sup>134</sup> According to the committee, larger schools complained bitterly that these new rules tended to favor light, fast and versatile teams of the smaller colleges versus the heavier and physically more powerful teams that tended to populate the larger colleges.<sup>135</sup>

While these changes helped, a rash of football deaths in 1909 renewed criticisms that football was too brutal. In that year, according to an NCAA Committee, newspapers reported thirty-two deaths and numerous injuries in football. Among the casualties were a West Point Cadet who died and an Annapolis midshipman whose injuries were then believed to be fatal. The Committee claimed that only four men on the list of dead could really be properly called college players.<sup>136</sup> It argued also that while the game had its risks, proper attention to rulemaking and restricting play only to healthy mature players could make it a game that institutions could be proud of. Another delegate stated that he and others had investigated the deaths and found that of the thirty-two deaths, eighteen “were not due

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130. See *Declares for Reform*, *supra* note 129; *Trial of New Football*, *supra* note 129; Foster, *supra* note 129.

131. See *Declares for Reform*, *supra* note 129; *Trial of New Football*, *supra* note 129; Foster, *supra* note 129.

132. See *Declares for Reform*, *supra* note 129; *Trial of New Football*, *supra* note 129; Foster, *supra* note 129.

133. *Rep. of the Chairman of the Rules Comm.*, in 1907 PROC., *supra* note 2, at 20.

134. *Id.* at 21.

135. *Id.* at 21-22; see also *Rep. of Football Rules Comm.*, in 1909 PROC., *supra* note 72, at 18-19.

136. *Rep. of Football Rules Comm.*, in 1909 PROC., *supra* note 72, at 19-20.

to football”; three involved schoolboys from eleven to fifteen years of age; one was a member of an athletic club; and five were college students.<sup>137</sup> He could not obtain information on the others.<sup>138</sup>

Whatever the makeup of those dead players, sentiment against football was again aroused. Some even considered asking states to make the playing of football a crime.<sup>139</sup> Once again, however, the saviors of football carried the day.

The joint Football Rules Committee went back to the drawing board. This time it required that *seven* rather than six offensive players remain on the line of scrimmage and prohibited offensive players from pulling or pushing the man with the ball, presumably to help him advance. In addition, the rules prevented players from interlocking with each other on the line of scrimmage. They established forward pass interference rules and limited the forward pass to twenty yards beyond scrimmage. They determined that a kicked ball had to travel at least twenty yards to be valid (affecting primarily the onside kick). Diving tackles and “crawling with the ball” (referred to as “a well-recognized form of danger”) were prohibited. The Committee determined that when a ball was kicked neither side could interfere with an opponent within twenty yards of the line of scrimmage. Stating that many injuries occurred when players were overtired or exhausted, the Committee also reduced the playing time for each half, introduced a three minute rest in the middle of each half, and allowed for players to be taken out of a game at any point and restored to the game at the start of any subsequent quarter.<sup>140</sup>

By the 1911 Convention, the NCAA began to require an investigation whenever there were football fatalities among college men. Insisting that one of the five deaths in that year involved a young man with a preexisting condition, the report for that year stressed the need for close medical supervision of students who wish to play the game.<sup>141</sup> At this time, of course, there were virtually no guidelines for institutional medical care for student athletes, nor

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137. *Football Reform, in 1909 PROC., supra note 72, at 27.*

138. *Id.*

139. *Id.* at 25.

140. 1910 PROC., *supra note 128, at 27-28.*

141. *Rep. on Football Fatalities Among College Men, Season of 1911, in 1911 PROC., supra note 39, at 26-28* (reporting five college men deceased although questioning college status of one).

insurance programs to cover student-athletes<sup>142</sup> for catastrophic injuries resulting from a game.

*F. Scheduling, Post-Season Games and Travel*

Despite some founders' hopes that institutional intervention would lead to a de-emphasis of intercollegiate athletics, quite the opposite occurred once institutions took control of collegiate athletics away from students. The number of seasonal games played by college athletes increased dramatically, and each major sport's seasons extended well beyond the academic year. By 1907 it was not uncommon for a college team to play three baseball games a week in a ten week season.<sup>143</sup>

"Intersectional Contests"—games between schools in different conferences (and thus, different geographical areas)—posed yet another problem. These intersectional contests were precursors to the modern "bowl" games. Many of these contests predated the NCAA and emerged as local governments and businesses recognized football as a way to increase their exposure. The first nationally known intersectional contest was the Rose Bowl. It emerged out of the Tournament of Roses, an annual New Year's Day event initiated in 1890 by the Pasadena Hunt Club to showcase the California city's year-round mild weather.<sup>144</sup> The festivities initially consisted of a parade, accompanied by a day of various athletic events.<sup>145</sup> Soon, however, the association and authorities got the grand idea of a "bowl game."<sup>146</sup> In 1902 Stanford played Michigan in the first "Rose Bowl."<sup>147</sup> But the "home" team lost so badly (Michigan walloped Stanford 49-0) that city leaders opted for a chariot race the next year.<sup>148</sup> Still, football games returned for good to the festivities in

142. The term student-athlete is actually a recent term developed in the 1950s. In the time period covered here, the NCAA most commonly referred to student-athletes as "boys" or students.

143. Paul C. Phillips, *The Length of Intercollegiate Athletic Schedules*, in 1907 PROC., *supra* note 2, at 52 (noting the trend and questioning how students can do justice to college work and play three games a week).

144. Tournament of Roses, Tournament of Roses History, <http://www.tournamentofroses.com/history> (last visited Mar. 27, 2006).

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*



1916, with the event using military teams in respect for wartime.<sup>149</sup> Intersectional contests occurred in other sports as well, but football presented the most elaborate examples.<sup>150</sup>

The political and financial backing of local governments and businesses made intersectional contests difficult for many institutions to resist. Although many bowl games were originally scheduled as regular-season games, when the NCAA and others made attempts to limit the number of games in a regular season these intersectional contests were simply moved to post-season or pre-season play, thus taking up more time in the student athlete's schedule.<sup>151</sup>

The Pacific Coast schools were particularly defensive of intersectional contest criticisms. Noting that they had to travel great distances, even for regular season games, their NCAA district leader observed in 1921 that he failed to understand why travel for intersectional games was such an issue:

Here in the West, the term "intersectional contests" is applied almost exclusively to contests between teams from the far West and the East or middle West. We have become accustomed on the Coast to games between institutions in the northwest and those in the southwest. A team will travel from Los Angeles to Seattle, a distance of 1400 miles, or from Missoula, Montana to Los Angeles, a distance of 1700 miles, without exciting any comment. If a game is scheduled between a western institution and one in the East or Middle West, however, the distance to be traveled immediately draws attention and some criticism.<sup>152</sup>

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149. See *id.*; Tournament of Roses, Past Game Scores, <http://www.tournamentofroses.com/history/gamescores.asp> (last visited Mar. 27, 2006); see also Los Angeles Sports & Entertainment Commission, History of L.A. Sports Events, <http://www.lasec.net/sptshistory.htm> (last visited Mar. 27, 2006); Carter, *In Loco Parentis*, *supra* note 22, at 887-88 (discussing bowl proliferation into the 1940s); *infra* Part III for a discussion of the impact of World War I on intercollegiate athletics.

150. See, e.g., Nat'l Collegiate Athletic Ass'n, *3d Dist. Rep.*, in PROCEEDINGS OF THE TWENTY-SIXTH ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N OF THE UNITED STATES 31-32 (1929) [hereinafter 1929 PROC.] (noting that the invitation to the University of Alabama to play in the Rose Bowl was "recognition of the fact that football is played in one section of the country as another") see also Leslie J. Ayer, *9th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 50 (mentioning with approval "intersectional games" between the University of Washington and Dartmouth and the University of Washington and Penn. State); W.B. Owens, *8th Dist. Rep.*, in 1928 PROC., *supra* note 115, at 46 (noting that in the Ninth District intersectional contests have occurred also in track, basketball and swimming meets).

151. G.A. Goodenough, *5th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 41 (conference expressed disapproval of post season games); I.S. Ashburn, *7th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 45 (noting 7th district season extends into the first week in December); H.V. Carpenter, *8th Dist. Rep.*, in 1927 PROC., *supra* note 90, at 34 (noting larger Pacific Coast Institutions playing Eastern schools in post-season); 1929 PROC., *supra* note 150, at 46 (noting marked increase in East versus West games).

152. W.B. Owens, *8th Dist. Rep.*, in 1928 PROC., *supra* note 115, at 46.

Moreover, the same leader noted that the area's conference found that attempts to regulate schedules were "impracticable."<sup>153</sup>

Another development that troubled some amateurs about intersectional contests was the scheduling of games between schools of different sizes. Smaller schools desired such match-ups because of their moneymaking potential in local areas. Larger schools desired them because, by playing institutions that were not their rivals, they gained practice experience without possibly giving away any secrets. These games also often took students far away from their college or university.

The growth of post-season intersectional contests meant not only an increase in the number of games students played, but also an increase in the distances students traveled—by railroad—to play these games, and an increase in missed classes. Some schools tried to stem the tide. In 1908, Williams College adopted a limitation that students could not travel more than 200 miles on athletic trips.<sup>154</sup> But supporters of these contests heralded the airplane, stating that it was "only a matter of time" before that mode of travel would make game attendance much easier.<sup>155</sup>

Of course as pre- and post-season games emerged, so did the perceived need for starting practices earlier or extending them into student vacations and recesses.<sup>156</sup> Spring football practice became more and more common, and, though controversial, opponents did not or could not stop it.<sup>157</sup>

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153. Leslie J. Ayer, *9th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 48.

154. F.W. Nicolson, *1st Dist. Rep.*, in 1908 PROC., *supra* note 20, at 11.

155. See *6th Dist. Rep.*, in 1907 PROC., *supra* note 2, at 11 (suggesting that railroad travel and distance place a limit on growth of intercollegiate athletics); *8th Dist. Rep.*, in 1929 PROC., *supra* note 150, at 46 (noting that it will only be a matter of time before airplanes will be used); Palmer, *President's Address*, in 1929 PROC., *supra* note 150, at 73 (same). The Wright Brothers made their historic Kitty Hawk flight in December 1903, but it would be decades before commercial flights capable of carrying large numbers of passengers were available – and years more before athletic teams had the finances to take advantage of such travel.

156. 1911 PROC., *supra* note 39, at 9 (noting survey that mentions need to limit "Easter vacation games" and giving up of long trips); D.A. Penick, *6th Dist. Rep.*, in 1928 PROC., *supra* note 115, at 38 (referring to Thanksgiving game between A&M College and Univ. of Texas at Austin before a crowd of 46,000).

157. See, e.g., John Chester Adams, *1st Dist. Rep.*, in 1927 PROC., *supra* note 90, at 16; *Special Comm. of Five on Football*, in 1927 PROC., *supra* note 90, at 58-69 (providing a survey of schools on spring practices and other issues).

## III. WAR GAMES AND NATIONAL SERVICE

A. *Responding to the Country's Call*

The United States's entry into World War I had a dramatic effect upon intercollegiate athletics in the United States. Prior to U.S. involvement, references to the War at NCAA conventions were rare,<sup>158</sup> but President Woodrow Wilson's Declaration of War on Germany in April of 1917 changed all that. It also changed intercollegiate athletics, as the government immediately recognized the usefulness of colleges and universities as excellent training grounds for the men it would need to fight the War.

In the spirit of the times, the leaders of colleges and universities struggled to determine how they might be of service to their country. On August 2, 1917, the NCAA's Executive Committee met in Washington, D.C. to devise a plan for athletics during the war era.<sup>159</sup> The location facilitated the attendance of President Wilson's Secretary of War, Newton Baker.<sup>160</sup> Speaking at that session, Baker praised the athletics programs of colleges and universities and credited them with providing men fit for and easily adaptable to military life.<sup>161</sup> However, he urged colleges and universities to broaden their reach and to require physical exercise of every student.<sup>162</sup>

It is to the colleges that the country looks to maintain the steady flow of youths with preliminary training that best fits for the career of an officer. It is highly important that the college athletic program be continued to equip young men for the reception of military training. To attract young men to the colleges, nothing is

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158. In one exception, a speaker at the 1914 Convention argued that the US might actually profit from the war, given the reduction in European trade, but that such easily won prosperity could further weaken US citizenry, even as the War increased the courage and endurance of Europeans. C.W. Savage, *The Professional Versus the Educational in College Athletics*, in 1914 PROC., *supra* note 73, at 58-59. This softening of the US could be offset, he argued, by widespread participation in athletics, which would lead to men leaving their institutions physically, morally, and intellectually fit. *Id.* For a fascinating account of World War I, including a war timeline, maps, text, key documents and video clips see First World War.com, Multimedia History of World War One, <http://www.firstworldwar.com> (last visited Mar. 28, 2006).

159. Nat'l Collegiate Athletic Ass'n, PROCEEDINGS OF THE TWELFTH ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N 20-21 (1917) [hereinafter 1917 PROC.] (quoting large sections of Newton D. Baker's address).

160. *Id.* at 49.

161. *Id.* at 49-50.

162. *Id.*

more important than the continuation of athletic sports, and I trust there will be no suggestion of the abandonment of college athletics because of the fear of lack of decorum.<sup>163</sup>

Baker noted other ways that the direction of intercollegiate athletics was not entirely consistent with the army's goals.<sup>164</sup> Noting that institutions too often seek to develop men who were already big and strong, Baker argued for athletics training for all – or at least all young college men.<sup>165</sup>

There is one criticism that I have often felt constrained to make regarding college athletics, and that is that the wrong men are developed. The big strong men are taken and much attention is lavished upon them so that they are developed into specialized athletes, while the weak and anemic are left to play the part of observers. Gentlemen, there are not enough star athletes in the colleges to fill our armies. What the nation requires is that all our young men attending school shall have the benefit of physical training so as to develop their bodies and make them proper material for filling the armies of the country in the present emergency.<sup>166</sup>

Baker's concern was immediate. Once the War began, more than one-third of young men called and otherwise eligible would be found physically unfit for military service.

In December of 1917, just in time for the NCAA's meeting that year, Baker would again write to the NCAA and praise the worth of collegiate athletic training and again urge that athletics should not be limited to the few, but that participation should be widespread and available to the student body at large.<sup>167</sup> To his letter would be added one by the Secretary of the Navy, Josephus Daniels, who also praised the role of colleges and university athletic programs in preparing young men for military training.<sup>168</sup>

At the December, 1917 convention, the full NCAA formally adopted the recommendations made earlier by its Executive Committee at the Washington meeting:

RESOLVED; That we recommend to all educational institutions, collegiate and secondary:

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163. *Id.*

164. *Id.* at 50.

165. *Id.*

166. *Id.* at 50; *see also* Frederic A. Woll, *2d Dist. Rep., in 1917 PROC., supra* note 159, at 24 (mentioning conference and attempts to be consistent with Executive Committee recommendations); C.D. Coons, *5th Dist. Rep., in 1917 PROC., supra* note 159, at 26 (same); Roger H. Motten, *8th Dist. Rep., in 1917 PROC., supra* note 159, at 34 (same).

167. Palmer E. Pierce, *President's Address, in 1917 PROC., supra* note 159, at 50-51 (letter from Newton D. Baker).

168. *Id.* at 51-52.

First. That athletic sports be made subservient to the work of military preparation, and be made therefore an essential factor in military training.

Second. That intercollegiate and interscholastic schedules be arranged for so long a time and so far as national and local conditions permit, and that all possible encouragement be given to the development of intramural sports, with a view to promoting the participation of all students.

Third. That professional coaching and the expenses incidental thereto be reduced to a minimum.

Fourth. That there be no pre-season coaching or practice, no scouting, except at a public intercollegiate contest, and no training table.

Fifth. That the number of officials at intercollegiate games and their fees be kept as low as possible.

And further be it RESOLVED: That this Association reaffirms its belief in the eligibility rules which it has already endorsed, including the freshman rule, and therefore recommends that there be no lowering of eligibility standards during the present crisis.<sup>169</sup>

Every program speaker at the 1917 convention focused upon the institutions' and the NCAA's roles in the War effort.<sup>170</sup>

Beyond encouraging the colleges to offer athletics training to all young men, the government also passed the National Defense Act of 1916.<sup>171</sup> The act authorized civilian rifle clubs under the control of the National Rifle Association in cooperation with the U.S. War Department, thus facilitating the formation of campus rifle clubs.<sup>172</sup> At its December 1917 convention, the NCAA formally recommended that colleges and universities throughout the United States adopt military rifle shooting, "under the regulations of the National Board for the Promotion of Rifle Practice, approved by the Secretary of War."<sup>173</sup> Some schools had taken this step well before the resolution

169. *Evening Session Minutes, in 1917 PROC., supra note 159, at 43.*

170. *See Palmer E. Pierce, President's Address, in 1917 PROC., supra note 159, at 47-52; William H.P. Faunce, Athletics for the Service of the Nations, in 1917 PROC., supra note 159, at 52-58; Dr. Joseph E. Raycroft, Training Camp Activities, in 1917 PROC., supra note 159, at 59-65; Dr. McKenzie's Address, in 1917 PROC., supra note 159, at 70-73; W.P. Reeves, The Adoption of Military Rifle Shooting as an Intercollegiate Sport, in 1917 PROC., supra note 159, at 73-75.*

171. Ch. 134, 64 Pub. L. No. 85, 39 Stat. 166 (1916) (codified as amended in scattered sections of 32 U.S.C.). The Act is credited with federalizing the National Guard. 39 Stat. at 197.

172. 39 Stat. at 211.

173. *Evening Session Minutes, in 1917 PROC., supra note 159, at 43.*

was passed.<sup>174</sup> In the face of war and calls from the government for support, a number of schools even began to impose such training as a curricular requirement.<sup>175</sup>

The War Department also created a Commission on Training Camp Activities. The Commission secured some of the leading men in the field of amateur athletics to work along with the military in devising athletic programs for the enlisted men stationed at various military training camps.<sup>176</sup> Walter Camp, for example, headed up the Navy's Training Camp Activities.<sup>177</sup> At the December 1917 NCAA Convention, Camp called on institutions to allow the military to approach leading coaches and trainers to seek their service at the military's training camps saying "this is one of the big things that the National Collegiate Athletic Association can do" to support the war effort.<sup>178</sup> Schools also scheduled games against the teams of these various military training camps.<sup>179</sup>

Across the country, student athletes responded to their nation's call by enlisting. The war decimated many college and university teams. As a result, powerhouses Harvard, Princeton and Yale completely ceased their intercollegiate athletics programs. Harvard's

174. Hollon A. Farr, *1st Dist. Rep.*, in 1916 PROC., *supra* note 39, at 9-10 (noting discussion of subject among New England Schools); *see also* W.P. Reeves, *The Adoption of Military Rifle Shooting as an Intercollegiate Sport*, in 1917 PROC., *supra* note 159, at 73 (noting Ohio Athletic Conference voted to recommend recognition of rifle shooting as intercollegiate sport).

175. W.L. Driver, *7th Dist. Rep.*, in 1917 PROC., *supra* note 159, at 32 (noting nine schools have added military drills as required curricular work, but not as a replacement for intercollegiate athletics); Roger H. Motten, *8th Dist. Rep.*, in 1917 PROC., *supra* note 159, at 33 (University of Nevada requiring military drill of males).

176. Dr. Joseph E. Raycroft, *Training Camp Activities*, in 1917 PROC., *supra* note 159, at 61 (discussing training camp creation and activities). Congress had started summer military training camps for civilians as early as 1913 but the arrival of World War I introduced a new sense of urgency and an expansion of the camp movement for both enlisted and civilians. *See generally*, CENTER OF MILITARY HISTORY, ARMY MILITARY HISTORY, CH. 17: WORLD WAR I, THE FIRST THREE YEARS, *available at* <http://www.army.mil/cmh-pg/books/AMH/AMH-17.htm> (last updated Apr. 27, 2001) (discussing role of Student Army Camps in providing needed soldiers); DONALD M. KINGTON, FORGOTTEN SUMMERS: THE STORY OF THE CITIZENS' MILITARY TRAINING CAMPS, 1921-1940 (1995); Donald M. Kington, *The Plattsburg Movement and Its Legacy*, 6 RELEVANCE Q.J. GREAT WAR SOC'Y no. 4 (1997), *available at* <http://www.worldwar1.com/tgws/rel011.htm> (discussing government sponsored summer citizen's training camps from 1913 forward).

177. *See Navy Training Camp Activities*, in 1917 PROC., *supra* note 159, at 11-12 (providing a Training Camp report on activities and needs).

178. *Id.* at 12.

179. C.D. Coons, *5th Dist. Rep.*, in 1917 PROC., *supra* note 159, at 27 (noting contests).

Le Baron Briggs, then Dean of Harvard College's Faculty of Arts and Sciences, informed the NCAA that the athletic department felt, as did Harvard's president, "that intercollegiate games are out of place now, and that the continuance of them would lessen the emphasis on things military."<sup>180</sup> But Briggs also admitted that Harvard had suffered a significant loss of athletes to the military and was threatened at any time with losing more to active duty.

Practically all our men from Varsity squads are gone or are subject to immediate call. At any time we may hear that men who were closely associated with them have been killed. Our bigger games, those with Yale and Princeton, have been great public spectacles such as we do not like to be responsible for in times like these.<sup>181</sup>

Briggs provided the NCAA with a copy of a report that he had written for Harvard's president explaining the department's decision.

[T]he University teams as we have known them in recent years do not exist to-day. The college has been severely blamed for suspending intercollegiate athletics. Intercollegiate athletics in any recognizable sense of the name had become impossible and almost unimaginable. The spirit that makes a man an athlete makes him at the very first call of his country a soldier; and when war was declared, our games with Yale, which had seemed the most important events of life, became in a moment unrealities, to which no earnest man in a university team or crew could give serious thought. Practically all our athletes who did not enlist as volunteers gave themselves up to intensive military study and practice, till in the summer all but two of seventy-nine men in the University football squads were in some form of national service, or in training for it.<sup>182</sup>

Responding to those who said that Harvard should simply reconstitute its teams with more players, since most of its rivals were similarly crippled, Briggs said that while he viewed it as Harvard's duty to encourage sports, "in these times military training comes before athletics, and claims more than divided allegiance."<sup>183</sup> He added that spectacles such as the big football games with Yale and Princeton "are unbecoming now, when the friends and comrades of the participants are at the front, or on their way to it, and in imminent danger of a soldier's death."<sup>184</sup>

Yale asserted a similar approach once the United States entered the War:

At the declaration of war last spring all intercollegiate schedules were cancelled and nearly every "Y" man and every undergraduate manager entered some form of

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180. E. Herbert Botsford, *1st Dist. Rep.*, in 1917 PROC., *supra* note 159, at 13-14.

181. *Id.* at 14.

182. *Id.* at 14.

183. *Id.*

184. *Id.*

military service. At the opening of the fall term we made an attempt, which has proved successful so far, to make athletic training an efficient factor in our military establishment. It seemed to our Board of Athletic Control that athletics could perform an important military function, and those in charge of military matters here at Yale have cooperated heartily with us. Three days a week have been devoted to foot drill and three to various forms of athletic spots. It was decided further that membership on teams participating in intercollegiate contests should be confined to members of the Reserve Officers' Training Corps [ROTC] and the Naval Training Unit.<sup>185</sup>

Yale continued with intercollegiate games for freshman teams and also sponsored informal teams and intramural games.<sup>186</sup>

As both Yale and Harvard's reports indicate, many supporters of intercollegiate athletics were none too pleased at their decisions to discontinue intercollegiate sports. And with competitive juices flowing, some challenged the nobility of the Harvard, Princeton and Yale approaches, saying that these schools were hiding athletic infirmities under the guise of patriotism, preferring not to play than to lose badly.<sup>187</sup>

While all suffered losses, the large majority of schools took the approach of cutting back on intercollegiate athletic programs without totally ending them. As a result, the rule barring freshmen from varsity teams became a war casualty.<sup>188</sup> Harvard, Yale and Princeton aside, other New England schools continued playing football. Wesleyan argued that if athletics had value during peacetime, they certainly had value during wartime.<sup>189</sup> Amherst argued that athletics provided much needed diversion from the seriousness of military training.<sup>190</sup> Brown argued that continuing intercollegiate athletics, though at a reduced level, was its "patriotic duty."<sup>191</sup> Explaining its use of freshmen on varsity teams, Dartmouth said it could not justify the expense of separate freshman teams during wartime, but vowed to return to the "freshman rule" once the War was over.<sup>192</sup>

185. *Id.* at 15.

186. *Id.*

187. *Id.* at 14-15.

188. *E.g.*, Frederic A. Woll, *2d Dist. Rep.*, in 1917 PROC., *supra* note 159, at 20-21. This district consisted of schools in New York, New Jersey, Pennsylvania, and West Virginia. *Id.* A survey indicated twenty of twenty-eight schools reported that athletics programs had been continued; only twelve of twenty-seven respondents reported curtailment of athletics programs; and only two of those twelve reported canceling of all schedules. *Id.*; *see also* E. Herbert Botsford, *1st Dist. Rep.*, in 1917 PROC., *supra* note 159, at 13-14, 16.

189. E. Herbert Botsford, *1st Dist. Rep.*, in 1917 PROC., *supra* note 159, at 17-18.

190. *Id.* at 18.

191. *Id.*

192. *Id.* at 19.



The War also had financial consequences for campuses committed to athletic programs. Pacific Coast Schools argued that if intercollegiate athletics fell, so would intramurals, for the latter were largely supported by gate receipts of the former. They did, however, agree to a lowering of gate fees.<sup>193</sup>

In 1917, Congress raised an additional concern by imposing a War Tax on admissions at amusement events, which presumably included athletic events. State educational institutions were covered by an express exemption for state entities; however, private institutions were not so protected. The tax posed a new threat to their already diminishing wartime gate receipts. The NCAA used its new relationship with the government to negotiate an exemption for educational athletics.<sup>194</sup>

### B. The SATC's

Apart from encouraging student enlistment, the greatest contribution that colleges and universities made to the war effort came in 1918 with the introduction of the Student Army Training Corps ("SATC").<sup>195</sup> The military was in great need of more soldiers, particularly soldiers with the attributes that would make good officers; and colleges and universities had a full well of such men.<sup>196</sup> At the same time, massive student withdrawals and enlistments threatened the stability of educational institutions. To address these concerns, the War Department's Committee on Education and Special Training established the SATC program on hundreds of campuses across the nation.<sup>197</sup>

The deal was simple enough. All schools with 1,000 or more students would surrender their campuses as military training

193. A.D. Browne, *9th Dist. Rep.*, in 1917 PROC., *supra* note 159, at 35-36.

194. *E.g.*, *Evening Session*, in 1917 PROC., *supra* note 159, at 44 (questioning whether the war tax was to apply to educational institutions' programs and noting a committee to research); 1917 PROC., *supra* note 159, at 8 (discussing the appointment of a committee to investigate applicability of war tax and, if applicable, secure its consistent application to all schools); Nat'l Collegiate Athletic Ass'n, *Rep. of Special Comm.*, in PROCEEDINGS OF THE FOURTEENTH ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N 27 (1919) [hereinafter 1919 PROC.] (illustrating that taxed schools were subject to refund); *see also No War Tax on Football*, LINCOLN DAILY STAR, Nov. 2, 1917, at 12 (concluding that the University of Nebraska was not subject to tax).

195. *See Plans to Give Military Instruction in Colleges*, FORT WAYNE NEWS AND SENTINEL, May 21, 1917, at 15.

196. *See id.*

197. *See id.*

grounds.<sup>198</sup> They would encourage their male students (and the government would later require them) to enlist in the army.<sup>199</sup> Training for these enlisted men would be provided on the campuses under the supervision of Army personnel, who would be based on site.<sup>200</sup> In return, the army would provide the institution with a fixed amount of money per soldier.<sup>201</sup> The SATC program put military training front and center on university campuses. NYU, for example, trained military men in both traditional education courses as well as vocational ones.<sup>202</sup> Its approach was typical of schools in the day, as described in this excerpt from a report on the program written by the NYU library staff:

At NYU, Captain [later Major] William S. Maulsby was the military program commander, and Charles Snow, dean of the College of Engineering, was the civilian director of the National Army Training Detachment. Fifteen committees, made up of faculty and staff of the university, were appointed to administer specific areas. The school agreed to provide the soldier with instruction, food, and quarters. The government, in turn, agreed to reimburse the university a fixed amount per soldier.

The first group of soldiers arrived on April 11 and, together with later inductees, received instruction in such trades as auto mechanics, blacksmiths, carpenters, chauffeurs, concrete workers, electricians, machinists, and radio operators. During a two month period, the men received training in their trade, military instruction and, beginning in July, a course on "War Issues."

At the beginning of the fall semester, 524 institutions enrolled about 140,000 men into SATC units. At that time, the National Army Training Detachments were absorbed into SATC as Section B vocationals. In all, between April 11 and demobilization on December 19, 1918, 1,613 men took part in this section at NYU.

NYU agreed to accept 2,000 men. The NYU SATC unit eventually enrolled 1,564 student-soldiers in two divisions: 1,288 at University Heights and 276 at University and Bellevue Hospital Medical College. . . .

. . . [T]he collegiate or Section A SATC students were required to fulfill the requirements for college admission and to be accepted as matriculated students by the school. Inducted as privates in the regular army and subject to military discipline, the student-soldiers lived in barracks, ate at mess and were accorded a

198. *See id.*

199. *Id.*

200. *Id.*

201. *See id.*; *see generally* CAROL S. GRUBER, *MARS AND MINERVA: WORLD WAR I AND THE USES OF HIGHER LEARNING IN AMERICA* (Louisiana State University Press 1975).

202. *See* New York University Archives, Guide to the Records of the Student Army Training Corps, 1916-1921, <http://dlib.nyu.edu:8083/archead/servlet/SaxonServlet?source=/satc.xml&style=saxon01a2002.xsl> (last visited Mar. 28, 2006). Numerous other institutions have online library sites discussing the content of their respective SATC files.

monthly allowance of \$30, in addition to having their tuition paid. They were to receive a total of 42 hours of “essential” and “allied” subjects while also performing military drill for 11 hours per week. Essential courses included “military law and practice,” “hygiene and sanitation,” “surveying and map making,” “modern ordinance,” and the “war issues” course. At the end of their studies [between one and three terms, depending on age] the students were assigned to officer or non-commissioned officer training programs, a depot brigade, or permitted further study in engineering, medicine, or law.<sup>203</sup>

The impact of the SATC’s is clearly reflected in NCAA Proceedings for 1918. At that convention NCAA Vice President Samuel Beyer (Iowa State), addressing the 1918 convention in the absence of Palmer Pierce, noted the schools’ contributions with pride, saying most colleges had “turned their plants over to the Federal authorities,” and that “[a]thletics became a part of the military establishment.”<sup>204</sup> As the above excerpt explains, however, the transition from civilian educational campus to military training center was not without its problems. Intercollegiate athletics—and in some cases, ordinary athletics in general—were brought to a virtual standstill on America’s college and university campuses as military training took precedence. And although the NCAA’s 1917 resolution urged that eligibility standards *not* be lowered, institutions were forced to abandon eligibility rules, such as amateurism requirements, because many of the military’s prospects could not meet them, and it was felt that the military’s expressed needs should override such rules.<sup>205</sup>

The SATC’s also changed campus life for all students dramatically. While affirming their patriotism, leaders of intercollegiate athletics often referred to the impact of the SATC’s as demoralizing for students, faculty and staff.<sup>206</sup> Support for this view is also reflected in a report prepared by the Penn State library on the program at that campus.

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203. *Id.*

204. Nat’l Collegiate Athletic Ass’n, S.W. Beyer, *Vice President’s Address*, in PROCEEDINGS OF THE THIRTEENTH ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 37 (1918) [hereinafter 1918 PROC.] (noting with pride that many colleges have done so); see E. Herbert Botsford, *1st Dist. Rep.*, in 1918 PROC., at 13-14 (noting that Williams College and Yale have done so).

205. Frederic A. Woll, *2d Dist. Rep.*, in 1918 PROC., *supra* note 204, at 17; J.B. Crenshaw, *4th Dist. Rep.*, in 1918 PROC., *supra* note 204, at 20 (showing that eligibility rules were cast aside and professionals were allowed)

206. R.T. Abercrombie, *3d Dist. Rep.*, in 1918 PROC., *supra* note 204, at 18 (stating that SATC brought football to a standstill and was demoralizing for students); J.C. Futrall, *7th Dist. Rep.*, in 1918 PROC., *supra* note 204, at 21 (although a few smaller schools noted benefits, larger schools generally reported SATC produced reduced student morale in all respects).

The SATC snuffed out the remnants of student social life at Penn State. Undergraduates had to wear uniforms at all times and observe military regulations just as they would at any other military base. To meet the demand for additional living quarters, fraternity houses were converted to barracks, two new barracks were erected on Old Beaver Field, and a mess hall was built adjacent to McAllister Hall. A rigidly prescribed schedule governed daily activities, with students rising promptly at 7:00 A.M., marching to and from classes and meals, and observing a strict 8:30 P.M. curfew. While this routine bore only an approximate resemblance to real military life—surely most troops on active duty did not enjoy the luxury of a seven o'clock reveille—and was well insulated from the horrors of combat, it did make freshman customs seem downright childish by comparison. Among the five hundred undergraduates disqualified from the SATC (that is, female students and males who did not pass the physical exam), green dinks and ribbons disappeared as quickly as the old taboo prohibiting freshmen from walking on the grass. Compulsory attendance at daily and Sunday chapel was also discontinued for the first time in the College's history.<sup>207</sup>

Friction developed between campus leadership and military officials over who should be in charge on campuses. The matter reached such a point that, after the War, some colleges resisted plans to establish Reserve Officers Training Corps ("ROTC") units on their campuses. To quell the rising storm, the military sent a representative to the NCAA to express its interest in making changes to alleviate any of the schools' concerns.<sup>208</sup>

As if relegating their campuses to military control were not enough, the worldwide flu pandemic of 1918 made matters worse for students and supporters of intercollegiate athletics. The pandemic caused hundreds of thousands of deaths worldwide.<sup>209</sup> In the United States, state health authorities outlawed or limited athletic events like football games for fear that they might lead to a spread of the disease.<sup>210</sup> The flu epidemic, coupled with the changes wrought by the

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207. Michael Bezilla, Doughboy Center, Penn State Goes to War, <http://www.worldwar1.com/dbc/pennstate.htm> (last visited Mar. 28, 2006) (providing a case study of Penn State's involvement in the War and general discussion of how colleges across the nation supported the War effort and also displaying pictures of the Penn State SATC).

208. See *Stenographic Rep. of Discussion at the Evening Session, in 1918 PROC.*, *supra* note 204, at 100-02 (Colonel Frank P. Morrow speaking of unhappy experience of SATCs, urging support for ROTC and expressing willingness to work out difficulties); *Stenographic Report of Discussion at the Evening Session, in 1918 PROC.*, *supra* note 204, at 99 (Chairman introducing Morrow and noting past friction between military and educational leaders).

209. Molly Billings, (June 1997), <http://www.stanford.edu/group/virus/uda/> (noting that more people died from this epidemic than in World War I itself).

210. See, e.g., Roger H. Motten, *8th Dist. Rep.*, in *1918 PROC.*, *supra* note 204, at 22-23.

War, spelled disaster for all but the most modest campus athletic programs.<sup>211</sup>

### C. Recovering from War

While no one wanted war, some saw a silver lining, suggesting that World War I offered an opportunity to remedy the evils of intercollegiate athletics. The president of Brown University, William Faunce, argued that the war was offering a “priceless opportunity for appraisal and revision,” a chance to strip away the extravagant approaches that have led to abuse and criticism.<sup>212</sup> While stressing the need to reinforce eligibility rules, he also argued for a model of universal participation. “The army has no interest in developing a few Samsons or Sandows. It is interested in a campaign to develop every man in the line.”<sup>213</sup> Harvard’s LeBaron Briggs opined that if colleges “fail to reduce the expense of coaching and training, to inculcate notions less luxurious, and to foster a better understanding of the relation between athletics and other interests of life, we shall lose one of the opportunities so dearly bought by this war.”<sup>214</sup>

Addressing the December 1918 convention, Dean J.R. Angell, then of the University of Chicago (later president of Yale) also saw the War’s end as an opportunity, saying that “now the critical moment has come when we must decide whether the old system, compact, as it was, of good and evil, shall be revived, or whether instead we shall try to build a bigger, better, and more enduring one.”<sup>215</sup> Angell then proceeded to offer what he called his “Brief Confession of Faith in Matters Athletic,” listing what he deemed the essentials of a solidly amateur intercollegiate athletics program.<sup>216</sup> In addition to calling for an end to training tables, he stated:

I believe that the chief aim of college athletics should be the physical and moral improvement of the entire group . . . rather than the production of a few highly trained semi-professionals . . . .

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211. See, e.g., *id.* at 22 (flu epidemic and war requirements have played havoc with athletics).

212. William H. P. Faunce, *Athletics for the Service of the Nation*, in 1917 PROC., *supra* note 159, at 57.

213. *Id.*

214. E. Herbert Botsford, *1st Dist. Rep.*, in 1917 PROC., *supra* note 159, at 14-15.

215. J.R. Angell, *The Reconstruction Program for Physical Education in the Colleges*, in 1918 PROC., *supra* note 204, at 45.

216. See *id.* at 46-48.

I believe that amateurism is an absolute essential to wholesome college games and that it means high-minded love of gentlemanly sport for its own sake.

I believe that professionalism consists of a spirit, a point of view . . . . Men who play for motives other than the love of the game, men to whom victory, however won, is the controlling end, are men already on the road to professionalism, men who have in some measure sacrificed their amateurism.

I believe that a good deal of the professional training of athletic teams, particularly in football, has been grossly objectionable in overworking boys whose primary obligation is to the academic aims of the college. The result has often been that the boy has done neither job well – has been too exhausted to study and too much disturbed at his class deficiencies to put his whole spirit into the games.

I believe that any system [that allowed] proselyting among boy athletes in secondary schools is pernicious . . . .

. . . I believe that high-priced temporary coach is inimical to the development of a permanently high tone in the athletic affairs of a college . . . .

. . . I do not believe there is any obligation on the part of the college to furnish the general public with substitutes for the circus, the prize fight, and the gladiatorial combat.

. . . I do not believe that there are convincing statistics to prove the supposed advertising value of successful athletic teams . . . .

I do not believe the possible benefit gained by a few men trained for spectacular contests is an adequate offset for the time and money invested, the distortion of social and educational values, both inside and outside the college, and the unequivocal loss to the mass of undergraduates arising from the concentration of interest in the athletic exploitation of a favored few.<sup>217</sup>

Angell further argued that, “both in the legal and in the moral sense of the word,” athletics was frequently being controlled by those outside the institutions.<sup>218</sup>

Certainly, the War offered supporters an opportunity to tout the value of athletics and its appropriate place in a school’s regular curriculum. By exposing so many undergraduate males to physical education, it secured converts to the gospel of physical fitness. Vice-President Beyers noted in 1918 that athletes tended to be less subject to diseases. “It is a matter of common knowledge that the army and navy authorities were inclined to place college athletes in a preferred class as officer material.”<sup>219</sup> It stood to reason, he said, that when the

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217. *Id.* at 46-48.

218. *Id.* at 48.

219. S.W. Beyer, *The Vice President’s Address, in 1918 PROC.*, *supra* note 204, at 37.

war ended trades, industries and professions would be equally discriminating.<sup>220</sup>

Upon the end of the war, features of collegiate athletics deemed objectionable again reared their heads. Hoping to mend its tattered blanket of eligibility rules, the NCAA passed resolutions reaffirming its pre-War positions:

Resolved, That the Association reaffirms its previous resolution, that seasonal coaches, scouting (except at public intercollegiate contests), training tables, organized training or coaching in the summer vacation, and post-season games are menaces to the spirit of amateur college athletics, and are contrary to the aims of this Association.<sup>221</sup>

But not all were convinced that schools were taking advantage of the new opportunity to reform athletics. A year later, in 1920, the reporter for the Second District argued that the prevailing situation was worse than when the NCAA was first formed:

We still have the seasonal coach; this is a mild abuse . . . . Pre-season training, training camps, and summer camps are the rule and not the exception. The extent of the training table is governed only by the size of the bank account . . . . Scouts looking among the preparatory schools for material are numerous and active, and their "offers" to desirable boys range from a "scholarship" up through "tuition," "board and room," "books and clothes," "spending money," to a flat salary of so much per annum. There are cases in the minds of each one of you of men migrating from one college to another. These travelers are very often good athletes. They seem to go from a college of more moderate financial means to one more blest . . . . There is no use dealing in particulars or going farther into conditions . . . . To say we are back to conditions existing when this organization first started is covering the truth.<sup>222</sup>

This speaker opined that these problems would continue "as long as there is an income at the gate."<sup>223</sup>

In contrast, others argued the post-War period was an opportunity to exploit intercollegiate athletics further to the good of the programs and their institutions. The Ninth District's reporter offered a rosy picture in 1920, asserting that scouting at secondary schools had been eliminated, that there was "entire accord" on eligibility rules, and that there were "flourishing conditions within the [west] coast colleges" and "the most cordial good will and co[o]peration on the part of the public."<sup>224</sup> He further noted that, assisted by the

220. *Id.* at 37.

221. *Miscellaneous Business*, in 1919 PROC., *supra* note 194, at 55.

222. Nat'l Collegiate Athletic Ass'n, E.C. Huntington, *2d Dist. Rep.*, in PROCEEDINGS OF THE FIFTEENTH ANNUAL CONVENTION OF THE NAT'L COLLEGIATE ATHLETIC ASS'N 13 (1920) [hereinafter 1920 PROC.].

223. *Id.* at 14.

224. H.C. Howe, *9th Dist. Rep.*, in 1920 PROC., *supra* note 222, at 26.

addition of paved roads, “The public interest in college athletics, which, during the war, lapsed so completely that the contests could no longer be financed, has now brought out larger crowds than before the war.”<sup>225</sup> He heralded, as well, the great success of Rose Bowl games.

#### IV. SEGREGATION AND ATHLETICS “FOR MEN”

Up to this point, the focus of this article has been upon what was discussed in the early NCAA proceedings. But it is worthy to note what was *not* discussed. One finds little discussion of minorities or women. The primary aim of the NCAA’s founders, like the aim of so many leaders of that time, was to satisfy the needs of the young white males who they envisioned would be the country’s leaders.

Though not inevitable, these approaches were a product of the times. Until the ratification of the Nineteenth Amendment in August 1920, women could not vote and were denied other citizenry rights. But the War pressed women into new decision-making positions at home, and in the workplace. After the War ended in 1918, the movement for women’s rights gained new steam. Among the targets of that agitation were institutions that belonged to the NCAA. In his 1922 convention report, one district reporter commented that there was widespread and sustained interest in women’s athletics programs in his district, and he hoped that the NCAA would take the matter up. This agitation was likely increased by the fact that other groups, including NCAA’s then nemesis, the Amateur Athletic Union (AAU), had opened their events to women and minorities, and also to the formation of the National Amateur and Athletic Federation, whose goal was to put women and men’s athletic programs on equal footing.<sup>226</sup>

Still, the NCAA was resistant. The only hints that the NCAA was open to expanding women’s participation in sports are oblique references to alliances that might be formed with amateur sports organizations that welcomed women, including groups like the Young Women’s Christian Association, the National Amateur Athletic Federation (which had a men’s and women’s division) and, on occasion, the AAU.<sup>227</sup> There were no women in the NCAA leadership;

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225. *Id.* at 25.

226. For a fascinating progress report on women’s sports from 1900 to 1929 see St. Lawrence County Branch, History of Women in Sports Timeline, Pt. II, <http://www.northnet.org/stlawrenceaaaw/timelne2.htm> (last visited Mar. 28, 2006).

227. *E.g.*, 1911 PROC., *supra* note 39, App. at 11; Palmer E. Pierce, *Rep. on the National Amateur Athletic Federation, in 1925 PROC.*, *supra* note 104, at 55-56.



they were not represented among the delegates attending the convention; they were not represented in significant numbers among the faculty of these bodies, not to mention their athletics staffs; nor did they occupy significant positions in the governmental bodies that might press change. Occasionally, sympathetic actors in the predominantly male sports media would run an article or two about successful sportswomen, but generally notice of or interest in women's involvement in sports was few and far between.<sup>228</sup>

Of course, the resistance to women's involvement in athletics was not only from men. As calls for more female sports participation increased, even some women joined arguments that competition and vigorous activity were not feminine and that participation in athletics might be physically harmful to the female body.<sup>229</sup> In 1938, the director of New York State's Department of Education, who also was the chair of the State's Physical Education Association, barred interschool competition for girls at New York public schools. He established an all female commission to protect the perceived feminine traits of girls against the perils of "too vigorous a sports program." Not everyone agreed with this approach, however, and he complained that commercial and community interests were impeding the work of protecting girls from the dangers of competition.<sup>230</sup>

Lest the reader think that resistance within the NCAA to including women in its intercollegiate athletics championships was limited to a narrow earlier period, it should be noted that the NCAA would retain its male-only position for a number of years, even as its individual institutions began to dramatically broaden their women's sports programs. In 1964, the NCAA's executive committee rejected a call from women's groups and their own long range planning committee to include women's sports in their championship events, issuing the following regulation: "The games committee shall limit participation to eligible male athletes."<sup>231</sup> The NCAA Council set up a committee to meet with women's sports groups to discuss how women

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228. See Sybil Bauer, *Swimming Star, for Women in All Sports*, SHEBOYGAN PRESS-TELEGRAM, Mar. 30, 1923, at 3 (discussing views of Northwestern University student-athlete).

229. Royal S. Copeland, *Are Sports Harmful to Girls?*, STAR (Marion, Ohio), Sept. 10, 1930. *Contra* Sybil Bauer, *supra* note 228, at 3.

230. *Too Vigorous Athletics by Women Hit*, SYRACUSE HERALD-AMERICAN, Oct. 15, 1939.

231. *Ladies Locked Out as NCAA Remains Strictly for Men*, NCAA NEWS, May 1964, at 1, available at [http://web1.ncaa.org/web\\_video/NCAANewsArchive/1964/196405.pdf](http://web1.ncaa.org/web_video/NCAANewsArchive/1964/196405.pdf).

could take advantage of some of the benefits offered by the NCAA.<sup>232</sup> Four years later in 1968, the NCAA joined with Chevrolet Motor Division to sponsor the first “College Football Centennial Queen” contest. Each major conference was to select a candidate for “queen” to be voted upon by fans.<sup>233</sup> The December issue also featured a spread with pictures of and a short write-up about each candidate for queen.<sup>234</sup>

Things would remain the same at the NCAA until Congress passed Title IX in 1972. In light of that statute, and upon advice of legal counsel, the NCAA rescinded its rule prohibiting female athletes from competing in NCAA-sponsored events. That same year, the first female competed in a NCAA Championship, the NCAA’s National Swimming and Diving Championship. But separate championships for women would not be created until 1981.<sup>235</sup> Today, of course, while many would argue there is still much to be accomplished, female participation in NCAA sports is widespread.

Minority student athletes were also denied opportunities in the early years of the NCAA. Despite the fact that the first NCAA constitution provided that “[a]ll Colleges and Universities in the United States” were eligible for membership in the association,<sup>236</sup> minority colleges had a difficult time joining the NCAA. No historically black institutions were among its original members, even though, as noted earlier, historically African American Howard University was an early participant in NCAA conferences as a visitor. Black teams and white teams that had black players also had to deal with state “Jim Crow” laws barring blacks from certain public places and prohibiting blacks and whites from playing together. Even when interracial play was not barred by law, white schools, teams, or

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232. *Id.* A good overview of women in NCAA competition is found in Kaye Hawes, *Women’s Sports Enter NCAA Arena*, THE NCAA NEWS, Dec. 6, 1999, available at <http://www.ncaa.org/wps/portal/> (search for “hawes ‘women’s sports enter’”).

233. *First Centennial Queen Candidates Chosen*, NCAA NEWS, Nov. 1968, at 1, available at [http://web1.ncaa.org/web\\_video/NCAANewsArchive/1968/196811.pdf](http://web1.ncaa.org/web_video/NCAANewsArchive/1968/196811.pdf); *Grid Queen Balloting Is Now Underway*, NCAA NEWS, Dec. 1968, at 1, available at [http://web1.ncaa.org/web\\_video/NCAANewsArchive/1968/196812.pdf](http://web1.ncaa.org/web_video/NCAANewsArchive/1968/196812.pdf); see also *Centennial Queen Barbara Specht Begins Reign*, NCAA NEWS, Feb. 1969, at 5-6, available at [http://web1.ncaa.org/web\\_video/NCAANewsArchive/1969/196902.pdf](http://web1.ncaa.org/web_video/NCAANewsArchive/1969/196902.pdf).

234. *First Centennial Queen Candidates Chosen*, *supra* note 233, at 6-7.

235. See Hawes, *supra* note 232. According to Hawes, the NCAA actually sought Congressional support for exclusion from Title IX stating that it would irreparably damage men’s intercollegiate athletics. *Id.*

236. Interscholastic Athletic Ass’n of the United States, CONST. art. II, in 1906 PROC., *supra* note 30, at 29.

coaches sometimes refused to play if it meant they had to play with or against black players.<sup>237</sup> In the first quarter of its existence, the NCAA ignored the problems that racial discrimination posed for intercollegiate athletes. Athletics for all did not really mean athletics for everyone. The AAU, by contrast, took a very different stance, advocating equal opportunity and sponsoring championships for teams at minority educational institutions.<sup>238</sup>

Unable to find widespread acceptance among the memberships of the white conferences black institutions combined to form their own Colored Intercollegiate Athletic Association (“CIAA”) in 1912, which was based at Hampton Normal and Agricultural Institute (later Hampton University).<sup>239</sup> They also began to sponsor their own meets and championships.<sup>240</sup> The CIAA became a conference member of the NCAA in 1921,<sup>241</sup> and in 1924, Howard University became the first historically black college elected to individual membership.<sup>242</sup> These admissions did not, however, compel NCAA member institutions to compete against them.

Another predominantly minority institution, the Carlisle Indian School, did from time to time attract the NCAA’s attention. Carlisle was the nation’s first off-reservation federally supported school for Indians. Its most famous athlete is Jim Thorpe, who won both the decathlon and the pentathlon at the 1912 Olympic Games.

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237. See, e.g., *Nebraska Men Assert No Agreement to Bar Negroes Exists*, LINCOLN DAILY NEWS, Oct. 28, 1913, at 3 (reporting that Nebraska University denied that “gentlemen’s agreement” existed by which no black athletes could compete in Missouri Valley collegiate athletics, but conceding that officials were asked to discourage competition by Negroes; also noting student support for a black player).

238. See *Plan to Transfer Title Track Meet Is Disproved*, BRIDGEPORT TELEGRAM, Apr. 27, 1927, at col. 7 (discussing possibility that the AAU may have to move its national title track meet from New Orleans after the city refused to guarantee equal treatment of “colored athletes”).

239. See HoopHall.com, *Black Colleges: Separate but Equal*, in FREEDOM TO PLAY: THE LIFE AND TIMES OF BASKETBALL’S AFRICAN-AMERICAN PIONEERS, [http://www.hoopball.com/exhibits/freedom\\_black\\_colleges.htm](http://www.hoopball.com/exhibits/freedom_black_colleges.htm) (last visited Mar. 28, 2006). The CIAA later changed its name to the Central Intercollegiate Athletic Conference.

240. *Negro Football Title Will Be Settled Here*, CONST. (Atlanta), Nov. 18, 1913, at 10 (noting Morehouse College and Fisk University to compete for “the colored football championship of the South”).

241. 1921 PROC., *supra* note 75, at 5. When it finally was able to join the NCAA, the conference included Howard University, Lincoln University, Union University, Virginia Normal and Industrial Institute, Virginia Theological Seminary and College, Shaw University, and Hampton Institute. 1921 PROC., *supra* note 75, at 5.

242. Nat’l Collegiate Athletic Ass’n, PROCEEDINGS OF THE NINETEENTH ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 10 (1924) [hereinafter 1924 PROC.].

Carlisle was not a college-level institution, but the athletic skill of its students, often led to competitions against college teams and led colleges to recruit its students. When Carlisle students entered college, some argued that they should be treated as if they had played collegiate athletics for a year, thus reducing their eligibility, or even possibly subjecting them to transfer rules requiring them to sit out a year.<sup>243</sup>

#### V. THE “THREAT” OF THE PROFESSIONAL GAME

While the end of the War brought a return to college football, it also brought a new threat: professional football. Semi-professional and professional football teams had been around for some time, but the formation of the American Professional Football Association (later the “National Football League”) in 1920 was backed by big money and, thus, introduced a new era. Smaller leagues did not completely disappear, however. In fact, even the American Legion conducted a professional football program.<sup>244</sup> In response, critics from the NCAA complained that professionalism was being conducted under the guise of patriotism.<sup>245</sup>

Leaders of big time athletic programs at NCAA schools generally wanted no professionalism of the sport. Of course, there was some concern that the existence of professional leagues might affect the amateur spirit at college games or even lead collegians to accept pay in order to enhance their skills at the college level. Noting that the only source from which professional teams could pull their players were collegiate teams, Charles Kennedy argued that the NCAA should “put themselves on record against the professionalizing of football.”<sup>246</sup> But the opposition to professional football was much broader than just a concern for amateurism. First, there was the social concern that, irrespective of its effect upon amateur sports, professional athletics would introduce undesired social evils. But second, and some would

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243. When a Carlisle student entered Syracuse University, the student was treated as if he had expended a year of eligibility. The NCAA distinguished that case from another Carlisle student who was enrolled in both Carlisle and nearby Dickinson College noting that those institutions were in the same town and supplemented each other’s work while the Syracuse “was without modifying circumstances.” H.A. Peck, *2d Dist. Rep., in 1908 PROC., supra* note 20, at 12 (paraphrasing university’s decision); *see also 5th Dist. Rep., in 1927 PROC., supra* note 90, at 28 (stating that the Fifth District will count Carlisle team membership against entrance requirements).

244. *See* S.W. Beyer, *6th Dist. Rep., in 1921 PROC., supra* note 75, at 43.

245. *Id.*

246. *2d Dist. Rep., in 1921 PROC., supra* note 75, at 20.

say most importantly, was another reason. Some colleges were steeped in debt obligations that supported stadium building and other expenses, and were still under great pressure from alumni and the public to continue their intercollegiate athletic programs. Many schools feared a frightening financial hit if professional athletics lured fans and, even worse, star collegiate players, away from the college game.<sup>247</sup> Some individuals no doubt feared for their jobs. It was in the financial interest of the NCAA, member schools, and the administrators of intercollegiate athletics to stop professional football.

In 1919, the NCAA adopted a resolution stating that anyone who participated in a professional game “either during their college course or after leaving college” would forfeit his college letters.<sup>248</sup> In 1921, it organized the College Football Coaches Association—open solely to coaches at NCAA member schools—which at its first official meeting issued a resolution condemning the professional game and vowing to stop it:

*Be it hereby resolved* that it is the sense of the American Football Coaches Association that professional football is detrimental to the best interests of American football and American youth. *It is further resolved* that football coaches lend their influence to the discouragement of professional football, and *be it further resolved* that football coaches hereby heartily second the policy and stand of the Western Intercollegiate Conference on professional football, and *be it further resolved*, that the coaches recommend that football officials who officiate at professional football games be not allowed to officiate at college contests.<sup>249</sup>

As the resolution indicated, the conferences also put their weight against the professional game.<sup>250</sup>

That these groups did not consider these actions to stop the professional game a possible violation of the antitrust laws may be a reflection of the times. The following year the Supreme Court decided

247. 1921 PROC., *supra* note 75, at 41, 43, 78, 83 (noting various districts describe professional teams as recruiting amateurs and had a negative effect upon amateur players, and expressing dislike for these teams).

248. *Miscellaneous Business*, in 1919 PROC., *supra* note 194, at 55 (emphasis added).

249. *Miscellaneous Business, Football Coaches Ass'n*, in 1921 PROC., *supra* note 75, at 89; *see also* 1921 PROC., *supra* note 75, at 68-74 (noting membership in association limited and organization has already made “a good start in expressing opposition to professional football” as well as other matters).

250. *See e.g.*, *5th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 41 (referring to “vigorous measures” of conferences to stop professional teams from luring away college players); S.V. Sanford, *3d Dist. Rep.*, in 1925 PROC., *supra* note 104, at 20-24 (stating Southern conferences will not hire coaches who have engaged in professional games and will not allow students who have done so to act as officials); *5th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 27 (Missouri Valley Conference takes similar step); *6th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 29 (Southwest conference recommends that members discourage professional baseball and football playing and the signing of professional contracts).

the infamous *Federal Baseball* case, which determined that professional baseball was not engaged in interstate commerce and therefore could not be sued under the antitrust laws.<sup>251</sup> Many, including this writer, have argued that the case reflected a view of baseball (and sports) as not being a true business, *i.e.*, it was a game and not the type of thing that antitrust laws were intended to affect.

<sup>252</sup>

The kitchen grew hotter when, at the end of his final collegiate season, Red Grange signed with a professional team for a reported \$100,000, and Ernie Nevers went pro shortly thereafter.<sup>253</sup> These signings evoked a range of opinions. Some argued that the teamwork needed in the college program was impossible if athletes were aspiring to ultimate professional glory. Arguing for the adoption of some sort of rule, one news editor argued that without one, fans would not know whether a college player was playing for the love of the game or for “grand stand glory that will get him a fat contract along about Thanksgiving [D]ay.”<sup>254</sup> That writer claimed that the latter alternative would lead to a “withering of college enthusiasm” and an end to the college football spirit.<sup>255</sup> However, not all onlookers agreed that students should be barred from taking professional contracts after college play. Famed commentator Will Rogers was not alone when he argued that the sole reason colleges feared the professional game was that it threatened their ability to make money on the backs of collegiate players.<sup>256</sup>

Some schools used the rise of the professional game and private control of sports to argue that intercollegiate football involvement should be *increased*. In 1921, the reporter for the NCAA’s Ninth

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251. *Fed. Baseball Club of Baltimore, Inc. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200 (1922).

252. See W. Burlette Carter, *What Makes a “Field” a Field?*, 1 VA. J. SPORTS & L. 235, 241 (1999); see also *Fed. Baseball Club of Baltimore*, 259 U.S. 200. The Supreme Court later rejected the logic of *Federal Baseball* repeatedly, but adhered to it on the ground of *stare decisis*. It would take Congressional legislation to finally reverse its impact. See Curt Flood Act of 1998, 15 U.S.C. § 26(b) (2000).

253. Hugh Bezdek, in 1921 PROC., *supra* note 75, at 89 (giving a report by Penn State Football Coach Hugo Bezdek that at its first meeting the night before the newly formed coaches association had adopted the resolution); see also Davis J. Walsh, *Coaches Deplore Grange Case but Red Gets Coin*, LINCOLN STAR, Dec. 28, 1925, at 6 (discussing Grange incident).

254. Walsh, *supra* note 253, at 6.

255. *Id.*

256. Will Rogers, *Red Grange Chose the Better Part*, LINCOLN SUNDAY STAR, Dec. 6, 1925, at 4.

District (the west coast) reported “some difficulty” in controlling the Rose Bowl games, but noted that rather than a policy of “hands off,” colleges needed to become intricately involved in regulating such events or face the possibility that they will fall into the hands of private enterprise.<sup>257</sup>

The NCAA saw the Grange incident as demonstrating the need for further action. In 1925, it recommended that schools dismiss anyone who “may be at any time connected in any capacity with professional football” after September of 1926.<sup>258</sup> NCAA President Palmer Pierce opined that he saw no problem with the development of both amateur and professional sports, “provided the two classes of sports can be kept separate.”<sup>259</sup> By separate Pierce meant that student athletes should be discouraged from playing professional athletics, whether it be during or *after* graduation.<sup>260</sup>

Under pressure from the amateur game and its supporters in January of 1926, the owners of professional football teams met in New York to discuss how to resolve this dispute with the colleges, the NCAA and the supporters of their product.<sup>261</sup> Eventually, the far weaker professional leagues agreed not to touch college athletes until after the athlete’s high school or college *class* had graduated, whether or not the athlete himself did.<sup>262</sup> This rule was the earliest ancestor of the notorious “three year” rule that was the center of litigation in *Clarett v. NFL*.<sup>263</sup> Of course, the rule offered some benefits to the

257. *9th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 50.

258. *Evening Session*, in 1925 PROC., *supra* note 104, at 12-13; *see also Football Rules Comm. Rep.*, in 1925 PROC., *supra* note 104, at 42-44 (stating professional football “has departed from its own field” and not only raided college teams but also high school teams).

259. Palmer E. Pierce, *The Annual Presidential Address*, in 1925 PROC., *supra* note 104, at 85.

260. *Id.* at 86 (noting that the number of undergraduates who have started to play the professional game at the close of their college season is an indication of professionalism’s negative effect on collegiate football).

261. *Saving College Football*, DAILY NORTHWESTERN, Jan. 6, 1926, at 6.

262. Foster Eaton, “Red” to Play at Yankee Stadium; *Illinois Flash Seeks Right to Direct “Pro” Team at Gotham Park*, LINCOLN SUNDAY STAR, Feb. 7, 1926, at 2 (noting League’s unanimous adoption of rule to fine or revoke charter of any club that negotiated with college players before graduation); *Big Bill Edwards Appointed High Judge of Pro Football; Will Rule New Organization at 25,000 Per*, LIMA NEWS AND TIMES-DEMOCRAT, Mar. 8, 1926 (noting appointment of William H. Edwards, former captain and coach at Princeton, to lead American League of Professional Football Players and his act of inserting into bylaws a rule prohibiting professional teams from touching high school or college players until the players’ class has graduated from high school or college).

263. *Clarett v. Nat’l Football League*, 306 F. Supp. 2d 379, 386-87 (S.D.N.Y. 2004) *rev’d in part, vacated in part and remanded*, 369 F.3d 124 (2d Cir. 2004), *cert denied*, 125 S.

league, as well. It meant that players who came to them would be better-developed physically and mentally, without the expense of a minor league program. It also meant continued good relations with the NCAA, member schools and conferences. By 1926 an NCAA committee would report that the professional game did not “loom up as such a dire menace” as it did in 1925 and would express appreciation to pro teams for adopting rules that prohibited tampering with collegiate players.<sup>264</sup>

## VI. THE “THREAT” OF THE MEDIA

Early on, the NCAA leadership was keenly aware of the media’s potential role in their success. In 1907, President Palmer Pierce suggested that the NCAA could become “[a] central bureau of propaganda concerning college athletics” by employing, among other approaches, “newspaper statements of aims and policies” and “circulars and other published literature.”<sup>265</sup> In 1909, the NCAA’s president called for greater use of newspapers to get the Association’s story across to the public and to students.<sup>266</sup> Certainly, the NCAA made sure that reports of its proceedings made their way into local newspapers.<sup>267</sup> Of course, the media had its own mission. Thus, the relationship in each party’s eyes, was necessary, but troubled.

The print press dominated coverage in the NCAA’s early years. Newspaper editors angered some NCAA operatives by deciding to select and announce a “national champion” in football and by their selection of All-American teams.<sup>268</sup> However, NCAA member schools

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Ct. 1728 (2005). Maurice Clarett, then an Ohio State sophomore and a rising college star with professional aspirations, unsuccessfully challenged the NFL’s three-year rule. *Id.* at 390-92. He claimed it violated federal antitrust laws and was not subject to the antitrust labor exemption because it was not, and should have been, the subject of collective bargaining between the union and the league. *Id.* Clarett’s complaint charged a horizontal conspiracy among NFL owners and teams. *Id.* He did not implicate the NCAA or his institution in the conspiracy or join them as defendants. *Id.*

264. Nat’l Collegiate Athletic Ass’n, *Rep. of Special Comm. of Five*, PROCEEDINGS OF THE TWENTY-FIRST ANNUAL CONVENTION OF THE NAT’L COLLEGIATE ATHLETIC ASS’N 60-61 (1926) [hereinafter 1926 PROC.].

265. 1907 PROC., *supra* note 2, at 27, 31.

266. Palmer E. Pierce, *The Intercollegiate Athletic Ass’n of the United States*, in 1909 PROC., *supra* note 72, at 31.

267. *E.g.*, Palmer E. Pierce, *The Intercollegiate Athletic Ass’n of the United States*, in 1908 PROC., *supra* note 20, at 29.

268. W.L. Dudley, *3d Dist. Rep.*, in 1908 PROC., *supra* note 20, at 13 (complaining that sporting editors were exhibiting the professional spirit through awarding a “championship” “to some college, somewhere, by means of a mathematical process which is



were complicit in these arrangements because their coaches, often provided information to the press from which the selections were made.<sup>269</sup>

As press coverage increased, so did fan appeal, and vice versa. By the late 1920's radio made live play-by-play coverage available to many more fans. In 1928, NBC Radio planned to carry sixteen games, beginning with Navy and Notre Dame.<sup>270</sup> When the athletics board of the University of Iowa decided to end radio coverage of football games, claiming that it negatively affected fan attendance, the decision caused such an uproar that the board reversed themselves immediately.<sup>271</sup>

The 1929 Carnegie Commission report on athletics summarized the prevailing arguments against the sports media.<sup>272</sup> It was argued that media were professionalizing the amateur game by singling out coaches and athletes for special attention through interviews, special coverage, or awards. Schools accused the media of sensationalizing negative sports news, such as deaths and injuries and resisting attempts to maintain amateurism by whipping up public opposition to institutional actions. It is hard to say when the media was merely reporting public opinion or actually whipping it up. Probably, as today, they were doing a bit of both.

It is clear that, while they did sensationalize at times, the media also kept NCAA institutions honest by offering a viewpoint that was different from that packaged by the institutions. In 1909, the *Washington Post* conducted a survey that it claimed proved that the trend among schools was to minimize the dangers of football to avoid

usually ingenious, if not sound"). The University of Michigan library staff has compiled a history of "championship" designations that date back to 1901. See Bentley Historical Library, University of Michigan Athletics History, National Championships, <http://www.umich.edu/~bhl/athdept/football/misc/natchamp.htm> (last visited Mar. 28, 2006).

269. WM. R. Laporte, *8th Dist. Rep., in 1925 PROC., supra* note 104, at 38 (district speaker complaining that newspapers were resisting efforts to better athletic programs by promoting the "spectacular rather than the educational" and asking for advice on how to handle bad publicity); see also Wikipedia, Walter Camp, [http://en.wikipedia.org/wiki/Walter\\_Camp](http://en.wikipedia.org/wiki/Walter_Camp) (last visited Mar. 19, 2006) (biography of Walter Camp noting that he may have suggested the selection of the first All-American team and certainly remained involved throughout his career).

270. *16 Big Games to be Covered on N.B.C. Chain*, DECATUR HERALD, Oct. 7, 1928, at 10.

271. *Heavy Protest Restores Radio Football News*, TIMES RECORDER, (date and page unknown).

272. Howard J. Savage et al., *American College Athletics*, BULLETIN NO. 23, at 266-90 (1929).

waning support.<sup>273</sup> As noted earlier, Will Rogers's editorial was also key among those arguing that schools' interest in preventing professional play was primarily financial.<sup>274</sup> The media's reports on football injuries no doubt spurred the public pressure that led even the most stubborn to reform. And despite the fact that much majority-run press denied the contributions of women and minorities, a few papers gave coverage.<sup>275</sup>

Certainly, though, the press was not always constructively critical of intercollegiate athletics. Far more often than it was witnessed challenging the proponents of commercialization and exploitation, the media was found in bed with them. Arguably, the press also facilitated the exploitation of which they complained, serving up full vials of euphoric media exposure, enough to make an impressionable student-athlete forget about the academic shortcomings that would surely cripple him after the cheering stopped.

#### VII. OLYMPICS, PHYSICAL FITNESS, RULES, AND CHAMPIONSHIPS

After the War, the NCAA faced a number of other issues. It began to take advantage of its new relationship with the government, lobbying federal and state authorities for support of physical education in the nation's schools.<sup>276</sup> It formed coalitions with groups advocating physical fitness, such as the YMCA. It also put its weight behind the federal Fess-Capper bill that offered federal money to states to establish physical education programs in schools.<sup>277</sup>

The NCAA was also intricately involved in the formation of what ultimately became the U.S. Olympic Committee. After the War, the federal government strongly pushed amateur athletics groups to form a single national organization to advance America's interests in the Olympics. In 1920, the NCAA agreed to engage in discussions

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273. *For Sane Football*, WASH. POST, Nov. 2, 1909 (claiming trend is for institutional leaders to minimize game's dangers).

274. Will Rogers, *Red Grange Chose the Better Part*, LINCOLN SUNDAY STAR, Dec. 6, 1925, at 4.

275. E.B. Henderson, *Howard Had Great Team*, WASH. POST, Dec. 13, 1908, at 6 (noting Howard's success despite obstacles and school not receiving its share of news coverage); see also discussion accompanying notes 226-235 discussing female athletes.

276. See, e.g., *Rep. of Special Comm.*, in 1920 PROC., *supra* note 222, at 42-45.

277. See *id.*; *Comm. on the Fess Capper Bill*, in 1921 PROC., *supra* note 75, at 52-53; *Miscellaneous Business*, in 1921 PROC., *supra* note 75, at 61-63 (National Physical Education Service thanking NCAA for support and reporting on progress on Fess-Capper bill).

with other groups to form such an association, however, the NCAA's ongoing feud with the AAU almost got in the way of its involvement. Eventually, those involved reached a power sharing agreement.<sup>278</sup>

The NCAA also became a major promulgator of rules and sponsor of championships. By the end of its first twenty-five years, it produced rules and/or sponsored national championships in thirteen sports: Football, Basketball, Baseball, Boxing, Fencing, Gymnastics, Hockey, Lacrosse, Soccer, Swimming, Track, Volleyball and Wrestling.

### VIII. CRACKS IN THE COALITION

In the mid-1920s, the NCAA requested that the Carnegie Foundation for the Advancement of Teaching conduct an examination of American intercollegiate athletics programs.<sup>279</sup> It seems that opponents of the growing commercialism in intercollegiate athletics saw the Carnegie Foundation as a friend whose critiques and recommendations might provide the kind of wake-up call that they, themselves, could not accomplish within the organization.<sup>280</sup>

When it was finally published in 1929, Carnegie Bulletin No. 23 issued a strong indictment of intercollegiate athletics programs, touching upon every controversy that had plagued the NCAA for its first quarter.<sup>281</sup> A NCAA Committee established to study the Carnegie Bulletin agreed with much of what Bulletin 23 said.<sup>282</sup> But despite the solidarity of the Committee, the NCAA as a whole was a house divided.

The contrast in two district approaches revealed the problem early on. The small New England schools of the First District—

278. *E.g.*, 1920 PROC., *supra* note 222, at 9 (voting to participate); Palmer E. Pierce, *Comm. on the Proposed Olympic Ass'n*, in 1921 PROC., *supra* note 75, at 53-61 (complaining AAU had too much voting power in Olympic Association under constitution and discussing tensions between two organizations); 1921 PROC., *supra* note 75, at 61-63 (NCAA deciding not to participate unless constitution changed); Charles W. Kennedy, *Presidential Address*, in 1930 PROC., *supra* note 24, at 85-88 (noting changes in Olympic Association Constitution that NCAA was able to secure and NCAA acceptance of invitation to join association).

279. Palmer E. Pierce, *The Annual Presidential Address*, in 1925 PROC., *supra* note 104, at 87-88; Palmer E. Pierce, *Presidential Address*, in 1926 PROC., *supra* note 264, at 69-70; 1928 PROC., *supra* note 115, at 13; C.W. Mendell, *Rep. of Comm. to Study Carnegie Found. Bulletin. 23*, in 1930 PROC., *supra* note 24, at 79 (noting report undertaken at NCAA request).

280. S.V. Sanford, *3d Dist. Rep.*, in 1928 PROC., *supra* note 115, at 31 (for further reform, NCAA needed to look to outside scholarly groups like Carnegie Foundation).

281. Savage, *supra* note 272, at 266-90.

282. C.W. Mendell, *Rep. of Comm. to Study Carnegie Found. Bulletin. 23*, in 1930 PROC., *supra* note 24, at 79-84.

lacking Harvard, Yale and Princeton—generally supported the move away from intercollegiate athletics and toward intramurals. In 1907, the district reported that a majority of its schools were in favor of “a movement looking toward the restriction of intercollegiate athletics.”<sup>283</sup>

By contrast, the Pacific Coast schools in the Ninth District were dominated by large universities that depended upon governmental support of their athletics programs and had strong legislative conferences. Speaking of intercollegiate program growth, in 1928 the Ninth District’s reporter stated that, “[c]ontrary to the attitude of some of our Eastern brethren, we are not alarmed by this . . .”<sup>284</sup> Moreover, the reporter added:

We fail to see a necessary inconsistency between large crowds and clean sport. As a matter of fact, we believe football attracts to a great extent because of its cleanliness. We feel that most of the possible evils due to this increased interest are more than offset by three distinct advantages: First, the creation of a spirit of loyalty in our own large student bodies; second, the sustaining of the alumni’s interest in their *alma mater*; and finally, the awakening of the general public by their interest in athletics indirectly to a favorable attitude and consideration of education generally.<sup>285</sup>

Rather than reducing intercollegiate athletics, the report noted, the problem was meeting the growing demand for it. The result was the construction of two collegiate stadiums and over \$1,000,000 raised for the construction of a third, and “the construction of more is threatened by the various municipalities of the West or Pacific Coast.”<sup>286</sup> Not surprisingly, the “Big Ten” schools of the Midwest shared the Pacific Coast institutions’ point of view regarding expansion.

While individual educators certainly evidenced differences in approaches to amateurism, at the end of the day the difference between *institutional* approaches to intercollegiate athletics was not so much a difference in respect for amateurism as it was a reflection of the geography, history, politics and the culture of the regions that supported those institutions. Intercollegiate athletics policy did not spring full-grown, but was the product of compromise between people with very different visions of the role amateurism should play in intercollegiate athletics.

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283. H.D. Wild, *1st Dist. Rep.*, in 1907 PROC., *supra* note 2, at 7.

284. Leslie J. Ayer, *9th Dist. Rep.*, in 1921 PROC., *supra* note 75, at 49.

285. *Id.*

286. *Id.*

Consider, for example, that the West and the Midwest tended to have large, state supported institutions. Their populations were spread out over broad expanses with very little mass transportation between communities and little industry. By contrast, the Eastern institutions tended to be smaller and closer together with more privately supported institutions among them. The populations surrounding eastern institutions also were denser, and thus able to support many different types of recreation. State-supported institutions had to satisfy governments that provided their funding. In areas where other forms of recreation were scarce, governments actively supported and encouraged the development of intercollegiate athletics because the events were popular with the people, and governments felt they served a public purpose. Perhaps, under the circumstances that confronted some of the large West Coast and Midwestern schools, educators *did* feel pressure to provide the public with an alternative to the circus, the prize fight or the gladiatorial combat, because such other large-scale recreation was not easily accessible.<sup>287</sup> It seems that intercollegiate football first became king in places where there was not a lot of other big time organized recreation.

Whatever the cause, the differences among NCAA members so much frustrated a Committee on Proper Administration of College Athletics in 1909 that it even proposed a realignment of colleges into completely separate organizations “according to their ideas,” one for amateur programs and one for professional.<sup>288</sup> Said the Committee,

Those that believe professional athletes may rightly have a place on a college team, and those that, becoming weary of lying students, see no remedy except to cease asking questions—let them seek each other in friendly rivalry.

On the other hand those colleges that will have amateur athletics or none – let them seek their kind. Thus we will have two great national organizations and between two members of different groups let there be scheduled no athletic contests of any kind. Let the one group admit to its teams, if it wishes, principally those who outside of college and school grounds have had training and experience and become known as experts . . . . Let it throw its teams wide open to professionals, with only residence and scholarship restrictions, or agonize with the problem of finding a point between semi-professionalism and wide-open professionalism, where students when sorely tempted by self-interest will not

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287. See J.R. Angell, *The Reconstruction Program for Physical Education in the Colleges*, in 1918 PROC., *supra* note 204, at 47 (“I do not believe there is any obligation on the part of the college to furnish the general public with substitutes for the circus, the prize fight, and the gladiatorial combat.”).

288. *Rep. of the Comm. on Proper Admin. of Athletics*, in 1909 PROC., *supra* note 72, at 17.

falsify. Let it welcome the well-developed poor boy, who, to get money to pay for his education, finds it needful to place his skill on exhibition for wages with summer baseball teams and let it thus establish conditions which finally and necessarily restrict membership on its teams to men of like experience, making college athletics for the amusement rather than the physical training of the many. Let the amateur group agonize with the problem of the deceitful collegian; let it say to the man who falsifies his record that he will surely suffer the same penalty as the man who cheats in examination or is guilty of other dishonesty, namely that he will be dishonorably dismissed from his institution. One theory or the other would soon control all the colleges of the land and we would have peace.<sup>289</sup>

The Committee was percipient in its recognition that the NCAA could not stand if it ignored the divisions in its own house. At the December 1930 convention, NCAA President Charles W. Kennedy, then the president of Princeton University, tried again, calling for drastic changes in football including the reduction of schedules to not more than five or six games, an end to spring and summer vacation practices, and an end to “intersectional or national championships in football.”<sup>290</sup> As to the latter, he said that colleges had no “true or natural interests” in such games.<sup>291</sup>

That these comments came from Kennedy is ironic because his institution, Princeton, was among the football leaders invited to President Roosevelt’s October 1905 meeting to reform the game, and among those who formed the first Football Rules Committee. Similar irony was reflected in the comments of James R. Angell who had then taken on the presidency at Yale, another Roosevelt invitee and FRE member:

In the present era of high-powered and somewhat commercialized athletics, it is difficult to recall that they grew out of the wholly informal sports and games of college students conducted originally for sheer fun and wholesome exercise, with no thought whatever of intercollegiate competition, which was a *late and relatively casual outcome of these unorganized domestic amusements.*<sup>292</sup>

The context of these comments is also important. Whether by fate or by institutional design, Harvard, Yale and Princeton never regained their status as football’s leaders. The schools of the Big Ten and Pacific Coast forged ahead with southern schools soon to follow. It could be said that in such an environment, expressions of disfavor for intersectional contests were not as costly as they might have been in years past. And yet, in fairness, both men had been consistent in

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289. *Id.*

290. Charles Kennedy, *Presidential Address, in 1930 PROC.*, *supra* note 24, at 92.

291. *Id.* at 92.

292. James R. Angell, *The Familiar Problems of College Athletics, in 1930 PROC.*, *supra* note 24, at 98 (emphasis added).

their views throughout their affiliation with NCAA and their rise to leadership at their institutions and within the NCAA represented a remarkable shift for those organizations.

By 1932, smaller colleges sought separate discussion meetings at the NCAA national convention, noting that their concerns differed substantially from those of larger schools that also tended to have larger athletic programs.<sup>293</sup> Such differences ultimately led the body to split into three NCAA “Divisions” in the 1970’s, separated largely by size of athletic program and intercollegiate athletics philosophy.<sup>294</sup> Division I schools are those with the largest athletic programs and the greatest number of sports and athletic scholarships. Division II allows athletics scholarships, but has fewer and smaller programs. Division III schools do not offer athletic scholarships and have much smaller intercollegiate athletics programs.

For some time these divisions were tied together by a legislative structure that often required the support of all divisions for major action. But that approach also began to wane, as the NCAA began to untangle the Divisions from each other by classifying legislation. However, this was not enough. In 1996, continuing differences among the divisions led to a historical restructuring effort that for all practical purposes made the three Divisions autonomous—and gave the conferences renewed power. The NCAA called its new plan a “federated” approach. As I have argued elsewhere, by restoring significant autonomy to the divisions and the conferences, the NCAA came full circle, looking more like the group that it “severally agree[d]” it was when it first organized in 1905-06.<sup>295</sup>

When we examine the status of the original members of the NCAA, it is easy to see that dissention followed that body through the years because of key differences in athletics philosophy that were present even at the body’s inception. Today, seventeen of the original thirty-eight members are Division I schools and of those, ten have football programs classified as Division IA, the most competitive

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293. See, e.g., Nat’l Collegiate Athletic Ass’n, *Athletic Budgets*, in PROCEEDINGS OF THE TWENTY-SEVENTH ANNUAL CONVENTION OF THE INTERCOLLEGIATE ATHLETIC ASSOCIATION OF THE UNITED STATES 3-4 (1932) [hereinafter 1932 PROC.] (noting the adoption of the roundtable format in 1931 and that smaller colleges sought separate meetings for the 1932 gathering).

294. See Historical Outline of Multidivision Classification, [http://www1.ncaa.org/eprise/main/administrator/Historical\\_Outline.pdf](http://www1.ncaa.org/eprise/main/administrator/Historical_Outline.pdf) (last visited Mar. 28, 2006) (according to the NCAA, this divisional split occurred in 1973).

295. See Carter, *Student Athlete*, *supra* note 36, at 9.

football classification.<sup>296</sup> The remaining twenty-one original schools fall into Division III. Interestingly, none of the original members of the NCAA or the FRC are represented in the middle position of Division II. Of the members of the FRC, all except the University of Chicago (Division III) have Division I programs, and the U.S. Naval Academy's football program is further classified in the most competitive I-A subdivision.<sup>297</sup>

#### IX. REFLECTIONS ON THE PAST AND A CALL FOR A NEW AMATEURISM

Chancellor McCracken died in 1918, well before the NCAA celebrated its twenty-fifth birthday.<sup>298</sup> Walter Camp passed in 1925.<sup>299</sup> But before his passing, each surely knew he had been a part of a major undertaking.

What would the early leaders of the NCAA think of intercollegiate athletics and the NCAA today? The founders would likely be very proud to see that their dream of a nationally-recognized NCAA has become a reality. Virtually every four-year college in the country is now a member. By legislating the terms of the eligibility for intercollegiate sport, NCAA regulations reach not only more than 360,000 current collegiate student-athletes, but also prospective student athletes. It sponsors eighty-eight national championships in twenty-three sports with men's and women's divisions in most of them. It also is a leading promulgator of amateur sports rules.

The early effort to create a "central bureau of propaganda"<sup>300</sup> has evolved into a Washington, D.C. lobbying office, a media/publishing department and a General Counsel's office. The use

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296. See List of Active NCAA Member Institutions, <http://www.ncaa.org/conferences/index.html> (last visited Mar. 28, 2006).

297. When this article went to press, the original NCAA members with Division I programs and IA football were U. Colorado (Boulder), Univ. of Miami (Ohio), Univ. of Minnesota, Univ. of Missouri, Univ. of Nebraska, Univ. of North Carolina (Chapel Hill), Syracuse, Rutgers Univ. (New Brunswick), the U.S. Military Academy and Vanderbilt Univ. The other original members in Division I (but not IA football) were Bucknell, Colgate Univ. George Washington Univ., Lehigh, Niagara, U. Penn. and Seton Hall U. All other original members have Division III programs. See *id.*

298. See *New Business*, in 1918 PROC., *supra* note 204, at 32 (providing comments about McCracken's death in tribute).

299. See *Evening Session*, in 1925 PROC., *supra* note 104, at 12 (resolution memorializing Camp); E.K. Hall, *Memorial to Walter Camp*, in 1925 PROC., *supra* note 104, at 58-61.

300. See 1907 PROC., *supra* note 2, at 27, 31.



of television, radio and the internet now allows the NCAA and its members to spread their messages to millions.<sup>301</sup>

Most founders would be surprised that the doors of opportunity have been opened for women and minorities, although there is work still to be done. Social changes would also likely stun many of them. Earlier ideas of unsportsmanlike conduct have yielded to more flexible views of player and fan behavior. In stark contrast to the days of encouraging abstinence from alcohol and Prohibition, institutions now sponsor and profit from the sale of alcohol at games. Scantly clad female cheerleaders and crowd histrionics would likely confound the founders.

No doubt all founders would be pleased that physical fitness education and opportunities are now available to all students at all educational levels. They would celebrate America's continuing success in the Olympic Games. Likely, they would not be surprised that different NCAA schools have gone different ways with their athletic programs. Some, however, would be surprised that institutions with such divergent approaches still occupy the same body. Amateurs firmly believed that amateurism and professionalism could not live together in the same house, and they would view many aspects of today's programs as "professional" in nature.

That point brings us to the most significant difference the founders would note. They would be surprised at what qualifies as an "amateur" program today, particularly in revenue-producing sports. Today, revenues from television and radio contracts for coverage of NCAA championships are mind-boggling.<sup>302</sup> Most of that money is channeled back to Division I schools, which in turn pump it back into their athletic programs. In 2005, the NCAA licensed twenty-eight

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301. See Carter, *Student Athlete*, *supra* note 36 (providing an overview of the NCAA's work).

302. In 1999 the NCAA signed an 11-year, 6 billion-dollar-plus agreement with CBS Sports averaging 545 million per year for coverage of men's basketball and other sports starting with 2002-03 academic year). The "bundled" rights deal included year-round promotion of NCAA championships as well as cable, internet, radio, championship program publication and other rights. *Editor's Note*, THE DIVISION 11 UPDATE (NCAA Division 11 Governance Staff, Indianapolis, IN), Dec. 1999, at 1; see also *Division 1 Revenue Distribution Chart*, NCAA NEWS, Sept. 27, 2004 (noting distribution of more than \$280,000,000 dollars); *Division I Revenue Distribution Chart*, NCAA NEWS, Sept. 29, 2003, available at <http://www.ncaa.org/news/2003/20030929/div1/4020n12.html> (noting distribution of more than \$260,000,000 dollars); Press Release, NCAA Reaches Rights Agreement with CBS Sports, (Nov. 18, 1999), available at <http://www.ncaa.org/releases/champother/1999/1999111801co.htm>.

post-season football “bowl” games.<sup>303</sup> Those bowls, conducted largely through the holiday season, brought their participating conferences and teams millions. “Corporate partners” pay millions for advertising rights and the opportunity to say that they are affiliated with the NCAA, conferences, and member schools. Athletic apparel manufacturers do the same. Conferences and powerhouse schools also negotiate their own television, radio, and marketing contracts.<sup>304</sup> At every level, the “property” of intercollegiate athletics that is for sale is not merely the games, but also the student-athletes themselves. They are shuttled to and from coach’s shows and media circuses.<sup>305</sup> Calls for institutions to cease requiring student athletes to sport the labels of corporate sponsors on their uniforms have fallen on deaf ears.<sup>306</sup> Multi-million dollar media contracts for the coverage of games and championships would astound early amateurists.<sup>307</sup> They would view such contracts as sacrilegious profiteering.

Courts across the country fondly refer to amateurism as a “tradition.” In 1984, in *NCAA v. Board of Regents* the U.S. Supreme Court referenced “a revered tradition of amateurism in college sports,” and said the NCAA plays a “critical” role in maintaining that tradition.<sup>308</sup> But a “tradition” is a pattern or practice that doesn’t change dramatically over time.<sup>309</sup> This look at the NCAA’s first

303. See *Number of Bowl Games Remains At 28 for 2005-06 Season*, NCAA NEWS, MAY 9, 2005. Since the U.S. Supreme Court decision in *NCAA v. Board of Regents*, 468 U.S. 85 (1984), the money from football has bypassed the NCAA and gone directly to conferences and participants. See Kay Hawes, *Gridiron Gridlock: Landmark Lawsuit Caused Football Television to Change Channels*, NCAA NEWS, Dec. 6, 1999 available at <http://www.ncaa.org/news/1999/19991206/active/3625n36.html> (noting contract for year case was decided would have been worth 73.6 million to NCAA and members).

304. See Press Release, Big Ten Conference, Big Ten Announces Contract Extension with CBS (Dec. 21, 2004), available at <http://bigten.collegesports.com/sports/m-baskbl/spec-rel/122104aac.html> (referencing multiyear agreement with CBS for coverage through 2009-10).

305. For more on the evolution of NCAA media rules as they relate to student-athletes, see Carter, *Student Athlete*, *supra* note 36 (noting efforts to allow student-athletes greater freedoms to write and participate in school plays resulted instead in the creation of opportunities for additional exploitation by coaches and media).

306. See Knight Commission on Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education* (2001), available at [http://www.knightcommission.org/about/a\\_call\\_to\\_action\\_a\\_call\\_to\\_action/](http://www.knightcommission.org/about/a_call_to_action_a_call_to_action/).

307. The invention of television for public use had not yet been perfected by 1931. In 1938, the University of Pennsylvania would become the first institution to televise publicly a collegiate game. See *NCAA v. Board of Regents*, 468 U.S. 85, 89 (1984).

308. *Id.* at 120.

309. See MERRIAM-WEBSTER’S ONLINE DICTIONARY, <http://www.mw.com/>

quarter of a century shows that the amateurism of the NCAA's inception is starkly different from what intercollegiate athletics offers now.

#### *A. A New Amateurism*

Today it is too often forgotten that, historically, “amateur” was meant to define not merely how the student-athlete approached athletics, but also how a school conducted its intercollegiate athletics programs. It was considered wrong—and a sign of professionalism—to use student-athletes for advertising purposes. Amateurs abhorred any funding structure for athletics that subjected the institution's programs to outside control. They would frown upon stadium luxury boxes, extensive post-season play, institutions inviting media coverage of their games and students, or corporate sponsorships in exchange for financial gain.

A far different reality prevails today than in the period from 1906-1931. The overwhelming number of NCAA programs—certainly most in Divisions I and II—could never pass the litmus tests for amateurism found in Angell's 1918 “Confession of Faith.”<sup>310</sup> That new reality requires a reassessment of the role of amateurism in our legal treatment of intercollegiate athletics. It requires “a new amateurism.”

Defining the new amateurism requires the unraveling of three ideas that have become a tangled mush in recent decades: (1) amateurism, (2) education, and (3) intercollegiate athletics. Historically, amateurism was a principle that stood apart from education. Indeed, educational institutions did not recognize athletics activities as being a part of their mission. Campus athletics first emerged as mere student games. Amateurism was a way of life, and even a person who was not in school could be an amateur.

Institutions took control of athletics away from students because they feared that their students were not adhering to the amateur spirit; because they feared that athletics might overtake the college campus; because they had safety concerns; and, cynics might say, because they saw a golden financial opportunity. Thus, the relationship between amateurism in athletics on the one hand and education on the other was born. Educators who supported intercollegiate athletics then decided that, to control athletics, they had to ensure that athletic programs were integrated into their

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dictionary/tradition (last visited Mar. 28, 2006).

310. See discussion *supra* Part III.C.

educational programs. That integration was not necessary for amateurism; it existed in many non-educational environments. Instead, integration was deemed necessary by those who wanted amateur athletics to continue in an *educational* environment. Significantly, institutions absolutely did not want the private sector to take over athletics, particularly after they had committed to millions in debt or come to rely upon the lucrative receipts of their programs.

As discussed, the institutions, and the NCAA itself, faced internal struggles. The promised integration never occurred because of opposition within the institution to recognizing athletics and funding it in the general budget. Essentially, what resulted was a bifurcated university wherein athletics was left to find its own funding, and coaches were left to fashion their own means of job security.<sup>311</sup>

The third concept that needs unraveling is “intercollegiate athletics.” Intercollegiate athletics is merely competition between collegiate institutions; the inadvertent result of the student-run games, later taken over by the colleges and universities. Intercollegiate athletics are not *inherently* either amateur or educational. They may, in fact, be run in a professional and/or non-educational manner.<sup>312</sup>

Confusion of these three terms—or a merging of them, really—has led courts to offer muddled guidance in cases involving challenges to intercollegiate athletics. An example of this confusion is found in the Supreme Court’s famous decision in *NCAA v. Board of Regents*. That case revolved around a television plan adopted by the NCAA in the 1950’s, which essentially required NCAA schools to jointly negotiate contracts for television coverage. One of the many goals of the plan was to ensure that smaller schools that could not command their own contracts got a piece of the pie. Another was to exercise controls on television broadcasts to avoid feared drops in attendance.

Schools with larger programs (and the power to negotiate on their own) resisted the plan and brought an action claiming that the plan violated the Sherman Antitrust Act, because it restrained the rights of schools to offer their product and consumers to buy it. The

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311. See discussion *supra* Part II.C-E; Carter, *In Loco Parentis*, *supra* note 22, at 882-89 (discussing the bifurcated institution).

312. Thus, more than a few have suggested that so called “big time” athletic programs should be spun off into what is effectively a minor league or semi-professional program. See discussion *infra* Part IX.C (describing Division I’s plan to separate from the NCAA).

Supreme Court agreed. After noting the “critical role” that the NCAA plays in the maintenance of “a revered tradition of amateurism in college sports,”<sup>313</sup> the court’s opinion then muddied the waters by merging the notions of amateurism, education and intercollegiate athletics.

There can be no question but that [the NCAA] needs ample latitude to play [its] role, or that the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is entirely consistent with the goals of the Sherman Act. But consistent with the Sherman Act, the role of the NCAA must be to *preserve* a tradition that might otherwise die; rules that restrict output are hardly consistent with this role. Today we hold only that the record supports the District Court’s conclusion that by curtailing output and blunting the ability of member institutions to respond to consumer preference, the NCAA has restricted rather than enhanced the place of intercollegiate athletics in the Nation’s life.<sup>314</sup>

The final paragraph of the opinion began with a reference to “a revered tradition of amateurism.”<sup>315</sup> It then said that “the role of the NCAA must be to *preserve* a tradition that might otherwise die.”<sup>316</sup> It concluded that “rules that restrict output” would not be “consistent with this role,” and that the NCAA has “*restricted rather than enhanced* the place of intercollegiate athletics in the Nation’s life.”<sup>317</sup>

What is the “tradition” the court is referencing? A tradition of amateurism? A tradition of intercollegiate athletics? A tradition of preservation of the student-athlete in higher education?<sup>318</sup> Here, in speaking of tradition, the court merges the concepts of amateurism, education and intercollegiate athletics, treating them as if they are essentially the same thing. Historically they were not, and they are not now. Moreover, contrary to traditional amateurism, the court seemed to look outside the institution—speaking of the role of intercollegiate athletics “in the Nation’s life” and the right of consumer access to the product—rather than focusing upon the role of intercollegiate athletics inside respective institutions, or even among them.

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313. NCAA v. Board of Regents, 468 U.S. 85, 120 (1984).

314. *Id.*

315. *Id.* at 120.

316. *Id.*

317. *Id.* (emphasis added).

318. See, e.g., Gary Roberts, *The NCAA, Antitrust and Consumer Welfare*, 70 TUL. L. REV. 2631, 2635 n.12 (1996) (pointing out how the Court failed to identify any particular rules that it considered to promote amateurism or academic values but merely assumed these traits).

Early amateurists would say that an amateur program should be assessed by its relevance to the undergraduate student body, not to outsiders. Indirectly, the public would benefit from this internal focus because, according to amateurists, this focus preserved the educational mission. The problem may be that the court embraces a narrow view of amateurism, one that does not address institutional commercialism, but rather one that focuses primarily on rules that keep the student athlete an integral part of the institution.<sup>319</sup> Thus, it seems, while the Supreme Court used the language of amateurism to describe the NCAA's role, the court actually ended up treating big-time intercollegiate athletics as if they were a professional or semi-professional programs.

The dissent in *Board of Regents* recognized this latter point, complaining that the majority erred "in treating intercollegiate athletics under the NCAA's control as a purely commercial venture in which colleges and universities participate solely, or even primarily, in the pursuit of profits."<sup>320</sup> Chastising the majority for failing to note the non-economic benefits of the plan, the dissent said, "the plan fosters the goal of amateurism by spreading revenues among various schools and reducing the financial incentives toward professionalism."<sup>321</sup>

The problem with the dissent's point of view is that traditional amateurism does not embrace spreading commercial wealth from television contracts, because it rejects the very notion of such lucrative television contracts in the first place. Moreover, the wealth gained from such contracts is not today used, in any significant measure, to promote traditional academic programs for the larger student body. Instead, most of that wealth goes back into those schools' athletic

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319. *NCAA*, 468 U.S. at 120. No doubt the court was lured into this thinking by the NCAA's own statement of its fundamental policy and its principle of amateurism. That fundamental policy states:

The competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association is 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 CONST. art. 1, § 1.3.1, in 2005-2006 DIVISION I MANUAL, at 1, available at [http://www.ncaa.org/library/membership/division\\_i\\_manual/2005-06/200506\\_d1\\_manual.pdf](http://www.ncaa.org/library/membership/division_i_manual/2005-06/200506_d1_manual.pdf) [hereinafter DIVISION I MANUAL].

However, as I have argued elsewhere, even that statement has changed over the years. See Carter, *Student Athlete*, *supra* note 36, at 70-71.

320. *NCAA*, 468 U.S. at 121 (White, J., dissenting).

321. *Id.* at 135.

programs to fund more stadiums, higher paid coaches and more commercialism. Even that portion of the money that goes to academic enhancement programs benefits student-athletes, not the general student body. It even could be argued that student athletes are in need of such programs primarily because the rigorous schedule of intercollegiate athletics does not allow them to be ordinary students,<sup>322</sup> or that such athlete-only programs are a poor substitute for the learning that can come through the diversity presented in general student body settings. Traditional amateurism's theory of "give everyone a chance" cannot be imported properly to justify the spreading of wealth generated by commercial activities in intercollegiate athletics that are themselves inconsistent with amateurism. So the outcome of *Board of Regents* was right; the reasoning was wrong.

In case after case, courts and lawmakers have put a thumb on the scale for intercollegiate athletics and its regulators on the ground that intercollegiate athletics is deemed "amateur" or "educational." Thus, it is important to ask, "What are the contours of modern amateurism?" What does an "educational" intercollegiate athletics program look like? The complete answer would surely require another article, but some essentials come to mind.

First, historically, amateurism defined not merely student behavior, but also how an institution was to run its program. Increasingly, however, the applicability of amateurism's tenets to program operations in intercollegiate athletics seems to be forgotten. Too often, amateurism is deemed accomplished when a program emphasizes academic requirements and "no pay for play" for student-athletes. Historically, amateurism was far more than that.<sup>323</sup>

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322. See, e.g., Carter, *Student Athlete*, *supra* note 36, at 20.

323. The NCAA's Constitution now has sixteen specific principles for the conduct of intercollegiate athletics. "The Principle of Amateurism," focuses primarily on shaping the student's motivation to play sports and refers to protecting the student athlete from commercial exploitation. It thus follows the old *in loco parentis* model by assuming that that exploitation will come from outside. The principle states:

Student-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 CONST. art. 2, § 2.9, *in* DIVISION I MANUAL, *supra* note 319. Similarly, the NCAA constitution uses the term "amateurism" in connection with eligibility rules. See *id.* art. 1, § 1.2. While the NCAA has many principles relating to how the institution should conduct its intercollegiate athletic programs, they are not described in terms of amateurism.

A proper yardstick for modern amateurism would focus on program and policies beyond academics and eligibility, ensuring that the motivation for *all* policies are consistent with amateurism. Indeed, an institution may have an amateur approach with respect to one matter and a professional approach with respect to another matter. For example, an institution may impose academic standards on student-athletes because it has the political power to do so. At the same time, that institution could require student-athletes to engage in substantial seasonal, vacation and postseason practice and play; require the student-athlete to sport favored athletic apparel; trot the student-athlete out to the media; fail to satisfy the student-athlete's full financial need because of concerns of competitive parity; and, in the process, reap millions. Academic standards are consistent with amateurism because they advance an interest in keeping the athlete integrated into the student body, and, thus, athletics remains an avocation as required under an amateur model. However, post-season or vacation play are hard to fit into athletics as an avocation model. Athletics policies that merely promote parity and ignore student athlete need, or that are driven by the *commercial value* of the sport to those administering it also are inconsistent with an amateurism model.

For these reasons, in this highly commercial environment of intercollegiate athletics, before putting a thumb on the scales, courts must insist that amateurism flow throughout the program. When individual policies are challenged, they must determine that those particular policies have an amateurism motivation. In other words, professional programs should not be able to piggyback on amateur policies or a tradition of amateurism that they do not embrace.

Second, an amateur program must have limits on commercialism. Unlike the days of the early NCAA, educational institutions today regularly engage in commercial activity that is not directly related to the educational mission.<sup>324</sup> For example, they own

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324. The operation of intercollegiate athletics programs, particularly the post-season bowls, has raised interesting issues of whether the operations should be subject to the unrelated business income tax. Exempt organizations may be subject to tax on income derived from operations not directly related to their exempt purpose. Congress has saved post-season intercollegiate athletics for now, but the debate is ongoing. A new vision of amateurism is very relevant to that discussion. See, e.g., Eric Guruli, *Commerciality of College Sports: Should the IRS Intercept?*, 12 SPORTS LAW. J. 43 (2005); Richard L. Kaplan, *Intercollegiate Athletics and the Unrelated Business Income Tax*, 80 COLUM. L. REV. 1430 (1980); James L. Musselmann, *Recent Tax Issues Regarding Professional and Amateur Sports*, 13 MARQ. SPORTS L. REV. 195 (2003).



commercial real estate and rent it to the general public. They rent their campus buildings to outsiders for a fee. But those activities differ in two important respects from intercollegiate athletics. First, the income from such activities generally is available to the institution as a whole and supports further broad educational endeavors. Second, those transactions tend to sell only physical property. Intercollegiate athletics, under an umbrella of amateurism, puts the intellectual assets of an institution—its students and teachers—up for sale.

For this reason, rank commercialism in the guise of amateur athletics is particularly dangerous. Commercialism should be strictly limited in amateur programs run by educational institutions, primarily because commercialism creates a dangerous conflict of interest between student and institution. Thus, the author's beef with the NCAA in *Board of Regents*: the NCAA merely sought to cut the commercial pie into more slices, not to require schools to push away from the table. Amateur programs impose significant limits on student-athlete rights under the theory that the institution will protect the welfare of the athlete. On that same theory, courts and lawmakers have granted schools leeway and upheld restrictions on student-athlete behavior. If an institution is to take full advantage of commercialism, there is really no reason why student athletes should not be paid to play or even why they should not be represented by unions. Indeed, an argument could be made that it is *necessary* that they have outside representation, given the conflicted nature of the institution.<sup>325</sup>

Another important aspect of a modern amateur model in the context of education is the integration of intercollegiate athletics and the student-athlete into the fabric of the institution. Where programs are concerned, the most significant difficulty here is financial integration. Today, financial integration of intercollegiate athletics programs is allegedly accomplished by requiring institutional CEO's to be responsible for budget approval and expenditures, and requiring that athletics be subject to the "normal" budgetary operations of the college or university.<sup>326</sup> That is not enough. It should mean that

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325. See generally Carter, *In Loco Parentis*, *supra* note 22 (arguing for a nonprofit organization to represent student athletes).

326. See, e.g., NCAA CONST. art. 6, § 6.2, DIVISION I MANUAL, *supra* note 319 (requiring CEOs to approve budget, requiring athletics to be subject to institution's "normal" budgeting procedures, and requiring independent auditor.); see also *id.* art. 12, § 12.6.1.4 (allowing institution to receive money from professional sports organization for support of general fund, general scholarship fund, or as part of a "reciprocal marketing relationship").

institutional budgets reflect athletic income and expenditures, along with other income and expenditures. Moreover, financial integration should mean that some significant portion of the income from intercollegiate athletics goes to support general institutional operations. This is the minimum gift that intercollegiate athletics can make to institutions that support it; by allowing it to use its name and goodwill, its grounds, its buildings, its students, its administrative structure, its security apparatus, and, indeed, by guaranteeing its debts.

Integration also means integration of the student-athlete into the general student body. Of course, it means the athlete should be required to satisfy minimum academic standards. But it also means that the time commitment required by athletics—practice, playing and travel—should be such that the goal of academic success, not just minimum success, can reasonably be achieved. It means that playing and practice seasons should not extend significantly beyond the academic year. As discussed elsewhere, in contrast to the dominant image of student-athletes as privileged, in fact, student-athletes stood on the fringes of the revolution in rights that affected most in the general student body after the Vietnam War. In big time programs, they exist apart, in one side of a bifurcated institution, subject to the whims of a small group of individuals with the power to determine their futures.<sup>327</sup> The NCAA has rightly given attention to ensuring that institutions conform to academic standards in student athlete admissions. However, there is far more. Vestiges of the broken stool of *in loco parentis*<sup>328</sup> still place student-athletes in precarious positions, where policies applicable to them are a function of their commercial value to the program, rather than a function of amateurism and educational considerations. Grievance procedures available to the student-athlete are not the same as those afforded the

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327. See, e.g., Carter, *In Loco Parentis*, *supra* note 22, at 879-82.

328. I have elsewhere described *in loco parentis* as a three legged stool: (1) control; (2) student welfare; and (3) judicial and legislative deference. See *id.* at 859.

The control leg permitted the institution to place broad controls on student behavior. . . . Balancing the control leg was the welfare leg. It provided justification for the controls by positing that the controls were needed to protect the student's welfare . . . . Of course, conceptions of student welfare were controlled by the assumption that students were infants with no independent rights. . . . Finally, the deference leg gave the doctrine its teeth . . . .

*Id.* I have argued that the student welfare leg of that stool has been broken, creating an imbalance. See *id.* 891-92. Despite the demise of *in loco parentis* in matters involving the general student body, it continues in a perverted fashion in matters involving student athletes. *Id.*

ordinary student. Still, institutions extract professional commitments from student-athletes under the guise of amateurism.

That brings us to another important aspect of an amateur program in the context of education. Such a program protects the welfare of its student-athletes. Here again, commercialism is key. Commercialism places the institution at odds with the student-athlete, often leading the institution to choose pay-dirt over student athlete needs. As stated elsewhere,

[T]he alleged parent (the institution) continues to exercise broad controls over the child (the student athlete) and yet the parent is unable to fulfill its responsibilities in protecting the welfare of the alleged child because the parent has an overwhelming financial interest in exploiting the child's talents. Indeed, like the greedy parents of a financially-valuable child actor, institutions have consistently pushed their charges onto more and more national stages in pursuit of greater and greater financial returns, all the while insisting that their charges cannot handle greater independence.<sup>329</sup>

Finally, an amateur intercollegiate athletics program in the context of education should be transparent. The legal benefits athletic programs gain from the amateur label are a gift from the public. No group should be allowed to insist on these benefits and also insist that its operations be closeted from the public. The only way to unspin the spin of a bureau of propaganda is to have information on how it operates and what factors went into decisions.

Fashioning a new amateurism that focuses upon the motivation behind policies should not be overly burdensome to the court. Indeed, investigation into the purposes behind policies occurs now. In *Board of Regents*, the lawyers and the court did substantial investigation into the reasoning behind the television plan at issue. But the court should have assessed whether or not the television plan promoted *amateurism*. I have suggested that it did not. The mere promotion of intercollegiate athletics competition without more should not justify special treatment historically afforded to amateur programs.

### *B. Is Amateurism Outdated?*

Is "amateurism" an outdated concept? Today Olympic athletes have corporate sponsors who support their training. Athletic scholarships are, essentially, pay for play, although some might argue not enough. Student-athletes at NCAA schools may keep the cash prizes they receive for medaling at the Olympic games. Student-

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329. Carter, *In Loco Parentis*, *supra* note 22, at 853.

athletes may be a professional in one sport, but an amateur in another, although their right to income from professional activity is limited.<sup>330</sup> Intercollegiate athletics programs make millions upon millions, and the public cannot seem to get enough.

Clearly too, some of the social assumptions that supported traditional amateurism are outdated. Consider, for example, historical objections to athletically-based financial aid including scholarships and meals. Certainly, opponents feared that such “pay” would affect the athlete’s approach to the game, and they feared that outsiders who provided such scholarships would then have the power to determine the course of the institution. But there were at least four other social objections driving the opposition to athletically-related aid in those days. First, many believed that the *only* appropriate basis for scholarships was superior academic performance in a liberal arts program.<sup>331</sup> They opposed scholarships based upon any other ground, including need. Today, while minimum academic standards apply, scholarships are offered on a whole host of grounds. Second, as discussed earlier, professionalism—even outside of the college or university—was viewed as a social evil to be eradicated, thus, the slightest movement away from pure amateurism was deemed offensive. Today, while society still seems to wish to respect the line between amateurism and professionalism, society’s view of professionalism is more measured. Thus, social mores today don’t justify a flat out opposition to athletically-related aid on professionalism grounds. Third, some amateurists had biases against the lower classes that were more likely to pay for play because they had financial need.<sup>332</sup> Modern society rejects such class biases as a basis for policy. Fourth, some opposed intercollegiate athletics in general, and thus, athletically-related aid, for they knew that without such aid, intercollegiate athletics could not grow. Today, society has fully embraced intercollegiate athletics, properly conducted, as a social good.

On the other hand, athletically-related aid in today’s highly commercial context raises new problems. As the Knight Commission has noted, there is a potential for a negative dynamic between

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330. NCAA CONST. art. 12, § 12.1.1.1.4.3.1-2, in DIVISION I MANUAL, *supra* note 319 (stating that a student-athlete may accept “Operation Gold” grant from U.S. Olympic Committee); *Bloom v. NCAA*, 93 P.3d 621 (Colo. Ct. App. 2004) (restricting endorsement opportunities of student athlete who was a professional in one sport and an amateur in another).

331. W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1, 73-74 (1997).

332. See text accompanying note 101.

student-athlete and coach when the student is so dependent upon the coach for the continuance of his or her education. Moreover, if the continuance of a scholarship is based upon student athletic performance, there is reason to fear that the student-athlete will be inclined to put athletics first. For this reason, the Commission and others have urged needs-based scholarships in amateur programs.<sup>333</sup>

It certainly seems right that in a new amateurism model, student-athletes who can qualify based on need should receive at least a substantial portion of their financial aid on that basis. One could imagine a more generous needs test for those playing intercollegiate athletics, given the fact that, by virtue of their commitment, student-athletes have far less time for outside work than other students. However, athletic performance as one of several bases for aid is not wholly objectionable, given that institutions now allow aid based upon a wide range of issues, including the mere fact that the donor and the recipient are from the same state. The problem lies in how such aid is determined and delivered. Too often professionalism has crept into financial aid issues as student-athlete financial aid has gotten tangled up with issues of competitive parity. For example, School X wanted restrictions on scholarships so that School Y could not outbid it for student-athletes. In the midst of these arguments, student-athletes with need suffered. But it seems that athletics as a basis for scholarships is not wholly objectionable in a modern scheme, so long as the source of the funding is under the control of the CEO, and an objective method of distributing the scholarships can be found.<sup>334</sup>

Those who claim that big-time intercollegiate athletics are still “amateur” athletics will no doubt assert that athletics is itself educational. But as argued earlier, athletics is not inherently educational, no more than requiring students to wash a professor’s car once a week is inherently educational. Students will derive physical benefits from both exercises. In both cases, they will learn a skill that theoretically could some day earn them money. Like athletics, group car washing takes teamwork. But these attributes, without more, do not make athletics or car washing an education. Athletics is only educational if it is conducted in an educational way, in an educational context with educational standards. Post-season bowl games that teach student-athletes that practicing and playing during holidays is more important than time with family at home are of questionable

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333. See Knight Commission, *supra* note 306.

334. One option might be to make all athletically based aid the same dollar amount for all student-athletes who do not meet a need-based, academic or other test.

educational value.<sup>335</sup> Lessons are no doubt learned, but they are not the ones educational institutions should be teaching.

*C. The Future of Intercollegiate Athletics: Amateurism or Professionalism?*

Early, amateurs felt that professionalism and amateurism could not live in the same house.<sup>336</sup> Yet, in intercollegiate athletics today professional and amateur approaches essentially share the same living space. Certainly, the Restructuring that occurred in 1996 and 1997 has altered the landscape a bit. But Restructuring was triggered by a threat from Division I institutions that they leave the NCAA if they were not given more autonomy to determine their own programs, and to exploit their commercial potential and the benefit of the revenues that their programs produced.<sup>337</sup> But as discussed elsewhere, Restructuring put amateurism at greater risk than before, because it allowed rank commercialism and professionalism to exist openly, even as those administering such professional programs reaped the legal benefits of an amateur program classification. Essentially, to save its body, the NCAA had to sell its soul.<sup>338</sup>

Likely, we have today some programs that could still pass a modern test as an amateur program in an educational context. The obvious place to look is Division III. But the truth is that what we have in America today are *three* types of professional programs: major league professional, minor league professional and collegiate league

335. In the 2005 holiday season, many teams chose to take their student athletes on the road to prepare for prestigious bowl games rather than having them spend time at home with families. Families are sometimes quieted by perks that allow them to come along and the belief that such trips are necessary for their son to secure a professional sports career. Potentially negative press is staved off by photo shoots showing student-athletes participate in some charity event. *See, e.g.*, Elton Alexander, *Getsy glad he's not home for Christmas; Akron QB happy to be in Motor City*, PLAIN DEALER (Cleveland), Dec. 20, 2005, at D1; Furman Bisher, *College athletics has found financial trough, lost its way*, ATLANTA J.-CONST., Dec. 14, 2005, at B2 (noting earlier resistance to bowl games on Christmas day gave way to desires for financial gain).

336. *See* discussion *supra* Part II.A.

337. *See* Carter, *Student Athlete*, *supra* note 36, at 49-51, 50 n.164 (discussing Division I's threat to leave if it did not receive more autonomy).

338. *Id.* at 49-51; *see also* Knight Commission, *supra* note 306 (expressing fear that more and more colleges are moving toward commercialism and a professional model) (last visited March 21, 2006); Gary T. Brown, *Members Reflect on Efforts to Federate Governance 10 Years Ago*, NCAA NEWS, Jan. 1, 2006.

professional.<sup>339</sup> Some commentators have suggested that these big time programs, at least Division I-A football and Division I basketball, should spin off and separate from their universities. The plans range from those in which the university maintains control to those in which they do not. The Knight Commission has strongly opposed such spin-offs, arguing that the result will be unsportsmanlike and unethical conduct, and a loss of academic integrity.<sup>340</sup> Instead, they have suggested that the NFL and NBA create a minor league for those who do not want to go to college. But why would the professionals do that when a minor league is provided for free?<sup>341</sup>

A partial spin-off from educational institutions, with the benefits of still claiming amateur status and an educational mission, would greatly exacerbate the existing problems, allowing even greater commercialism and more unmonitored exploitation of student-athletes and educational resources. On the other hand, if there is a corporate separation of the big league collegiate programs from their educational institutions—even in a parent-subsidiary sense but with a separate board and rules to respect the corporate veil—the true cost of athletics would then be realized. These new entities supervising intercollegiate athletics would have to compensate the universities for the services that intercollegiate athletics now take for granted; including, first and foremost, the use of the university name, but also the use of space, security, and other assets previously mentioned. That compensation would flow to the general student body.

Such a separation would remove the guise of amateurism. There would then be no objection to unions for student-athletes to represent players and negotiate adequate pay and workplace conditions. Playing rules could require students to carry at least a minimum number of hours at the institution and limit the time allowed to achieve a degree. Because the entities would be corporately separated from the university, they would have fewer opportunities to pressure institutions into academic compromises. Some might initially object to an institution blatantly renting out its name, but then, that is exactly what is occurring today in corporate sponsorship and advertising deals.

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339. I must leave to another day the broader implications of this conclusion, but the claim that college sports are professional has been made by many commentators before, although perhaps not in this way.

340. See, Knight Commission, *supra* note 306.

341. See, *e.g.*, *id.*

Whatever the ultimate model, while the NCAA and its member schools can help with this process of defining the new amateurism, they cannot be its sole architects. While they bring a wealth of knowledge to the table, their commercial investment in athletics also creates inevitable conflicts of interest.

One question remains: what would have happened had the NCAA and its member schools taken a different road? For example, suppose they had decided to withdraw from management of intercollegiate contests and focus solely on intramural or interclass games, just as McCracken wanted. Suppose they had continued intercollegiate athletics, but rejected lucrative corporate deals that go along with it. Or suppose they had limited game schedules by both distance and number of games, and rejected postseason play? *Could they have done this?* The theoretical answer is yes. The practical answer is more difficult to provide. Although some institutions did pull back, presidents were under a great deal of pressure to support the growth of intercollegiate athletics or at least tolerate it.

Had they been able to withdraw completely, or even significantly, it is clear that private enterprise *would* have filled that gap in the form of minor league programs.<sup>342</sup> Intercollegiate athletics would still have existed, but likely on a more modest and much less highly commercialized level. Indeed, it seems that the reason that baseball could develop its own minor league, despite a college game, was precisely because, in contrast to basketball and football, baseball was well established professionally and in the public's mind before the time the college game came around.

Would the McCracken model or a toned-down amateur model for "big time" athletics have really been so bad? While some might argue that without athletics, institutions would have lost out on lucrative financial opportunities, the truth is that they would also have lost out on crippling athletic expenses and troubling ethical dilemmas, as well. Coaches' salaries, equipment and insurance costs, and new stadiums are among the items that would likely not have such high price tags. Conflicts of interest between school and student athlete also would have been lessened, as would public pressure to look aside as academic standards were jeopardized in favor of athletic success. It might even be argued that without the commercial

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342. The Knight Commission has called upon the NBA and NFL to form professional minor leagues. *Id.* The idea proffered is that persons uninterested in study could pursue those options. *Id.*



pressures presented by the current model, institutions would provide a better education to their student-athletes.

What of the so-called advertising and financial benefits of the game? Recent studies confirm the doubts James Angell expressed in 1918 about the so-called advertising value of athletics. They show that big athletic programs do not translate into higher yields for non-athletic programs at the same institution or an increase in the *quality* of the student body.<sup>343</sup> One could imagine that schools could require that a significant percentage of any targeted athletic gift and all athletics income go into a non-athletically-related general fund, but they have not done so. At most, they have gently encouraged athletic donors to support other programs. It could be argued that if students are selecting institutions solely because of their athletics programs, perhaps such an advertising benefit is not well deserved anyway. Finally, the suggestion that team spirit requires commercialism is contrary to the traditional amateurist's argument that commercialism would undercut team spirit.

Chancellor McCracken, and others who supported him in calling that December 1905 meeting, were bold, but they were also naive. They believed that educators could take over intercollegiate athletics and restore them to a higher moral plane. They believed educators would do this because educators themselves stood on a higher moral plane. Educators had a higher calling than mere financial gain; educators celebrated learning and would insist that it be central to any enterprise their institutions undertook. But the educators who gathered in New York City that winter were merely men. In the midst of pressure from students, alumni, and the public—under the heat of the media's glare—some fled to the ivory tower. Others sold their caps and gowns to the highest bidder. Only a courageous few remained, and still remain, to fight.

History reveals that the hopes and dreams of these founders were greater than the will of the educators who engendered their

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343. Indeed, independent studies commissioned by the NCAA demonstrate that schools that increase their athletic programs end up with reductions in their general budgets. *See generally* Johnathan M. Orszag and Peter R. Orszag, *The Empirical Effects of Collegiate Athletics: An Interim Report* (2003), *available at* [http://www.ncaa.org/library/research/athletic\\_spending/2003/empirical\\_effects\\_of\\_collegiate\\_athletics\\_interim\\_report.pdf](http://www.ncaa.org/library/research/athletic_spending/2003/empirical_effects_of_collegiate_athletics_interim_report.pdf); Johnathan M. Orszag and Peter R. Orszag, *The Physical Capital Stock Used in Collegiate Athletics* (2005), *available at* [http://www.ncaa.org/library/research/athletic\\_spending/2005/physical\\_capital\\_stock\\_used\\_in\\_collegiate\\_athletics.pdf](http://www.ncaa.org/library/research/athletic_spending/2005/physical_capital_stock_used_in_collegiate_athletics.pdf). The same view is taken in a Knight Commission Study. *See generally* Robert H. Frank, *Challenging the Myth: A Review of the Links Between College Athletic Success, Student Quality, and Donations* (2004), [http://www.knightcommission.org/about/frank\\_report/](http://www.knightcommission.org/about/frank_report/).

faith. The first twenty-five years of the NCAA was an age of controversy. The first twenty five years of the NCAA was an age of patriotism. And, because the founders truly believed that most educators would stand down and choose education over commercialism, the first twenty-five years of the NCAA was also an age of innocence.