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# Let's Start Paying College Athletes

By **JOE NOCERA**

Mark Emmert, the president of the National Collegiate Athletic Association, the almighty overseer of American college sports, likes to think of himself as a reformer. A few months ago, after he'd been on the job for a little more than a year, he pushed through a series of improvements, including slightly higher academic standards for college athletes, a full-scale review of the N.C.A.A.'s fat rule book and a new provision giving universities the option of offering four-year scholarships. The current one-year deals are, believe it or not, renewable at the discretion of coaches, who can effectively cut injured or underperforming "student athletes," as the N.C.A.A. likes to call them.

And one other thing: With Emmert's backing, the N.C.A.A.'s board of directors, composed of college and university presidents (Emmert himself is a former president of the University of Washington), agreed to make it permissible for Division I schools to pay their athletes a \$2,000 stipend. When I saw Emmert in November, shortly after the new rule went into effect, I told him that the stipend struck me as a form of payment to the players. He visibly stiffened. "If we move toward a pay-for-play model — if we were to convert our student athletes to employees of the university — that would be the death of college athletics," Emmert retorted. "Then they are subcontractors. Why would you even want them to be students? Why would you care about their graduation rates? Why would you care about their behavior?" No, he insisted, the extra \$2,000 was an effort to increase the value of the scholarships, which some studies estimate falls on average about \$3,500 short of the full cost of attending college annually.

At the time I spoke to Emmert, high-school athletes were signing binding letters of intent to attend a university — letters that said they would get the \$2,000. But over the next month, college athletic directors and conference commissioners began protesting the new stipend, claiming they couldn't afford it. Within a month, more than 125 of them had signed an "override request." And so it was that just a few weeks ago, the [N.C.A.A. decided to suspend the payment](#). For legal reasons, those athletes who were already promised the \$2,000 will most likely still get it. But any athlete granted a scholarship after the stipend was canceled may not. (The N.C.A.A. plans to review the issue on Jan. 14.) In other words, some lucky handful of incoming freshmen will be handed \$2,000 without jeopardizing their status as amateurs. Yet any other college

athlete who manages to get his hands on an extra \$2,000 — by taking money from an overenthusiastic booster, say, or selling some of their team paraphernalia, as a few Ohio State football players did — will be violating the N.C.A.A.'s rules regarding amateurism and will probably face a multigame suspension. Behold the logic of the N.C.A.A. at work.

The hypocrisy that permeates big-money college sports takes your breath away. College football and men's basketball have become such huge commercial enterprises that together they generate more than \$6 billion in annual revenue, more than the National Basketball Association. A top college coach can make as much or more than a professional coach; Ohio State just agreed to pay Urban Meyer \$24 million over six years. Powerful conferences like the S.E.C. and the Pac 12 have signed lucrative TV deals, while the Big 10 and the University of Texas have created their *own* sports networks. Companies like Coors and Chick-fil-A eagerly toss millions in marketing dollars at college sports. Last year, Turner Broadcasting and CBS signed a 14-year, \$10.8 billion deal for the television rights to the N.C.A.A.'s men's basketball national championship tournament (a.k.a. "March Madness"). And what does the labor force that makes it possible for coaches to earn millions, and causes marketers to spend billions, get? Nothing. The workers are supposed to be content with a scholarship that does not even cover the full cost of attending college. Any student athlete who accepts an unapproved, free hamburger from a coach, or even a fan, is in violation of N.C.A.A. rules.

This glaring, and increasingly untenable, discrepancy between what football and basketball players get and what everyone else in their food chain reaps has led to two things. First, it has bred a deep cynicism among the athletes themselves. Players aren't stupid. They look around and see jerseys with their names on them being sold in the bookstores. They see 100,000 people in the stands on a Saturday afternoon. During the season, they can end up putting in 50-hour weeks at their sports, and they learn early on not to take any course that might require real effort or interfere with the primary reason they are on campus: to play football or basketball. The N.C.A.A. can piously define them as students first, but the players know better. They know they are making money for the athletic department. The N.C.A.A.'s often-stated contention that it is protecting the players from "excessive commercialism" is ludicrous; the only thing it's protecting is everyone else's revenue stream. (The N.C.A.A. itself takes in nearly \$800 million a year, mostly from its March Madness TV contracts.) "Athletes in football and basketball feel unfairly treated," Leigh Steinberg, a prominent sports agent, says. "The dominant attitude among players is that there is no moral or ethical reason not to take money, because the system is ripping them off."

It's a system that enables misconduct to flourish. The abuse scandals that have swirled around Penn State football and Syracuse basketball. The revelation that a University of Miami booster — now in prison, convicted of running a [Ponzi scheme](#) — provided dozens of Miami football

players with money, cars and even prostitutes. The Ohio State merchandise scandal that cost the coach, Jim Tressel, his job. The financial scandal at the Fiesta Bowl that led to the firing of its chief executive and the indictment of another top executive.

Another consequence of this economic discrepancy between the players and everyone else, though, is the increasingly loud calls for reform. Not the kind of reform that Emmert talks about — change that nibbles around the edges, while trying to maintain the illusion that college football and men's basketball players are merely partaking in an extracurricular activity like theater or the chess club. That illusion was shattered long ago, surely. "The huge TV contracts and excessive commercialization have corrupted intercollegiate athletics," says Brit Kirwan, the chancellor at the University of Maryland system. "To some extent they have compromised the integrity of the universities."

The new breed of reformers, whose perspective I share, believes that the only way the major sports schools can achieve any integrity is to end the hypocrisy and recognize that college football and men's basketball are big businesses. Most of these new reformers love college sports — as do I. They realize that having universities in charge of a major form of American entertainment is far from ideal, but they are also realistic enough to know that scaling back big-time college sports is implausible, given the money at stake. Instead, the best approach is to openly acknowledge their commercialization — and pay the work force. This is, by now, a moral imperative. The historian Taylor Branch, who in October published a [lengthy excoriation of the N.C.A.A. in The Atlantic](#), comparing it to "the plantation," was only the most recent voice to call for players to be paid. Like most such would-be reformers, however, he didn't offer a way to go about it.

That's what I'm setting out to do here. Over the last few months, in consultation with sports economists, antitrust lawyers and reformers, I put together the outlines of what I believe to be a realistic plan to pay those who play football and men's basketball in college. Although the approach may appear radical at first glance, that's mainly because we've been brainwashed into believing that there's something fundamentally wrong with rewarding college athletes with cold, hard cash. There isn't. Paying football and basketball players will not ruin college sports or cause them to become "subcontractors." Indeed, given the way big-time college sports are going, paying the players may be the only way to save them.

**There are five** elements to my plan. The first is a modified free-market approach to recruiting college players. Instead of sweet-talking recruits, college coaches will instead offer athletes real contracts, just as professional teams do. One school might think a star halfback is worth \$40,000 a year; another might think he's worth \$60,000. When the player chooses a school, money will inevitably be part of the equation. For both coaches and players, sweet-talking will

take a back seat to clear-eyed financial calculations.

The second element is a salary cap for every team, along with a minimum annual salary for every scholarship athlete. The salary caps I have in mind are pretty low, all things considered: \$3 million for the salaries for the football team, and \$650,000 for basketball, with a minimum salary of \$25,000 per athlete. I would keep the number of basketball scholarships the same, at 13, while reducing the number of football scholarships from 85 to a more reasonable 60, close to the size of N.F.L. rosters. Thus, each football team would spend \$1.5 million on the minimum salaries, and have the rest to attract star players. Basketball teams would use \$325,000 on minimum salaries, and have another \$325,000 to allocate as they wish among players. Every player who stays in school for four years would also get an additional two-year scholarship, which he could use either to complete his bachelor's or get a master's degree. That's the third element.

The fourth: Each player would have lifetime health insurance. And the fifth: An organization would be created to represent both current and former college athletes. It may well turn out to be that this body takes on the form of a players' union, since a salary cap is illegal under antitrust law unless it is part of a collective-bargaining agreement. (That's why most professional sports leagues embrace players' unions.) This organization — let's call it the College Players Association — would manage the health insurance, negotiate with the N.C.A.A. to set the salary caps and salary minimums, distribute royalties and serve as an all-around counterweight to the N.C.A.A.

There have been other pay-the-player schemes put forward recently, in particular a [Sports Illustrated proposal](#) that would pay every athlete on campus a small stipend, including lacrosse players, golfers and volleyball players. But I think it's better to acknowledge forthrightly that those who play football and men's basketball are different from other college athletes — and that the players in those two revenue sports should be treated accordingly. Baseball and hockey players have a choice that football and basketball players don't have: they can go pro as soon as they leave high school, thanks to the existence of minor leagues. And sports like wrestling and rowing don't offer the possibility of a pro career — wrestlers and rowers are true amateurs. As James Duderstadt, the former president of the University of Michigan, told me: "Most sports can be justified as part of what a university does. But big-time football and men's basketball are clearly commercial entertainment and have been pulled away from the fundamental purpose of a university." The denial of that central fact is the primary reason those sports are so troubled today. Paying the players will cause the vast majority of the scandals to go away. In economic terms, the players' incentives will be realigned.

To see how, let's take a closer look at the elements of the plan.

## Bidding for Players

Yes, I know: I had a hard time coming to grips with this, too. Then I met two Bay Area economists, Andy Schwarz and Dan Rascher, who work as litigation consultants and have a longstanding interest in the economics of college sports. (Rascher is also a professor of sport management at the University of San Francisco.) The case they make for using the free market to recruit players makes an overwhelming amount of sense.

One of the N.C.A.A.'s primary arguments against paying players is that the concept of amateurism is what defines college sports and make it special — and that to abandon that amateurism would ruin the college “brand.” But Schwarz and Rascher argue amateurism has nothing to do with why fans love college sports. “What draws us to college athletics is that we love seeing students representing our schools,” Schwarz says. “That would be just as true if they were being paid. The N.C.A.A. likes to conflate paying college athletes with the issue of whether they would still be students. Students get paid all the time.”

What about the argument that football and basketball profits subsidize the other athletic programs? “If having a good lacrosse team is part of what the community values, then the university should pay for it,” Schwarz says. “They shouldn’t ask the football team to subsidize it.” As for the objection that colleges with major sports programs don’t have the money to pay \$2,000 stipends, much less free-market salaries, Schwarz and Rascher just roll their eyes. “It’s already an arms race,” Schwarz says. Rascher points not just to the millions the coaches make but also to the money schools spend on facilities to impress recruits. Wouldn’t it make more sense to simply pay some of that money *to* the recruits instead? “Economically, a big chunk of that money really does belong to the players,” Schwarz says. The fact that they are not getting anything is precisely why everyone else is getting so much.

If it is still hard to imagine schools dangling financial contracts in front of high-school kids, consider that nonathletes get stipends all the time from universities. Besides, how much worse could it be than the status quo, in which parents and hangers-on too often angle for a little something to steer their children to this school or that one? In the world Schwarz and Rascher envision, athletes would hire advisers to help them. Legitimizing relations between agents and college athletes would be another huge improvement, because players could get good advice about their professional prospects. Currently, any player who so much as talks to an agent loses his eligibility to continue playing college sports.

Would coaches sometimes overpay players who turn out to be duds? Of course. But they would learn, just as the pros have had to learn, how to bring a financial perspective to evaluating talent. Actual coaching — x’s and o’s — would become more important. The number of

recruiting violations would quite likely shrink to a negligible figure, as would most of the scandals that involve players taking money. They wouldn't need to take money because they would be paid for their work.

## **The Salary Cap and the Minimum Salary**

Not everybody can be a highly paid star, of course. Teams need right tackles and backup point guards too. The minimum salary is not meant to make anybody rich. It is meant to ensure that no matter what your status on the team, you can still live like other students on campus — maybe even a tad better — even if you come from a disadvantaged background. For all the stereotypes of college jocks living large, the reality is often quite harsh. Indeed, to inquire about the life of college athletes is to hear, invariably, about players who wear the same clothes every day because they don't own any others. N.C.A.A. rules make no allowance for poverty, yet surely college athletes should be able to go on a date, rent an off-campus apartment, lease a car, have some clothes, visit home and pay for their parents to see them play once in a while. That is what the minimum salary will provide.

As for the salary cap, it is an acknowledgment of two things. First, without a cap of some sort, the wealthiest athletic departments, like Texas's, with its own sports network, and Oklahoma State's, which has Boone Pickens's fortune behind it, could well dominate the recruiting of top players. A salary caps equalizes the amount every team can pay to recruit players. Those who succeed will be those who use that money most intelligently. (Competitive balance is another reason the N.C.A.A. gives for not paying players.)

Second, the salary cap recognizes that university athletic departments don't have unlimited sums of money to throw at football and basketball players. Andrew Zimbalist, the noted sports economist at Smith College — and a critic of many N.C.A.A. practices — told me he agrees with the contention that schools can't afford to pay players. In his recent book of essays about college sports, "[Circling the Bases](#)," he also called for federal legislation to cap — and lower — coaches' egregious salaries. But if the players were paid, the market would probably readjust coaches' salaries all by itself. At the University of Texas, Mack Brown, the football coach, can earn up to \$6 million with bonuses. Texas could pay its entire salary cap merely by hiring a \$3 million coach instead of a \$6 million one. The point is, if schools had to pay their workers, they would find the money. It would simply mean trimming excess elsewhere.

There is another possible benefit. Schools could turn to boosters to help raise money to pay the players. What an improvement that would be — using booster money to legitimately pay players instead of handing them cash under the table.

One obvious rejoinder is that paying players will create haves and have-nots in college sports.

That is true — the Alabamas and Florida States would have a much easier time coming up with \$3.65 million for their football and basketball players than Youngstown State. But the big-name college programs already have overwhelming advantages over the smaller Division I schools; paying the players doesn't really change that fact. What it will most likely do is force smaller schools to rethink their commitment to big-time athletics. Schools that truly couldn't afford to pay their players would be forced to de-emphasize football and men's basketball — and, perhaps, regain their identity as institutions of higher learning. Ultimately, I suspect that if schools had to start paying their players, we would wind up with maybe 72 football schools (six conferences of 12 teams each) — down from the current 120 Football Bowl Subdivision programs — and 100 or so major basketball schools instead of the 338 that now play in Division I. Seems about right, doesn't it?

### **The Six-Year Scholarship**

If you were starting from scratch, you would never devise a system that relies on universities to serve as a feeder system for pro sports. It is not what universities were intended to do, and no other country in the world does it that way. In Europe, where soccer is king, children with professional potential are culled from the educational system in their early teens and often receive separate schooling from their soccer teams. Those who don't wind up playing professionally are then ruthlessly tossed aside.

College athletes are routinely tossed aside, too — after they have used up their athletic eligibility. Even those who officially “graduate” often do so without getting a real education. It is the unspoken scandal that permeates college sports, and it is corrosive not just for the athletes but also for the entire student body. “Within two or three weeks of coming to a university, players often find out they are woefully underprepared for college work,” Duderstadt says. “Very quickly they give up and major in eligibility. They take the cupcake courses. It is an insidious thing.”

There is another issue: Players who were stars in high school inevitably come to college with big dreams of going pro one day. Yet, as Emmert notes, “we had 5,500 Division I men's basketball players last year, and only 50 went to the N.B.A.” By the time most players realize that they are not going to make it to the professional ranks, so much time has been lost that they can never catch up academically. In most cases, they also can't afford to quit football and concentrate on their studies, because that would cost them their athletic scholarships.

The primary purpose of a six-year scholarship is to give athletes whose playing days have ended a chance to get their degrees — and to really have time to focus on classes that can prepare them for a future without football or basketball. It would allow players to take fewer

courses during their years of athletic eligibility, giving them a better chance to succeed at the courses they do take. And it would make it possible for those players who do graduate within four years to pursue a graduate degree. The N.C.A.A. would no longer need to obsess over an athlete's academic performance; as long as he met the same standard the school applied to every other student, he could stay in school and play on the team. The extra two years would place the onus on the athlete to get an education, while also giving him the opportunity. Isn't that how it should work anyway?

### **Lifetime Health Insurance and the College Players Association**

It is not just professional football players who have concussions. Nor are they the only ones who take painkillers to disguise their injuries — or who suffer chronic pain by the time they are in their 30s thanks to the beatings their bodies took during their athletic careers. Taylor Branch, the author of the Atlantic essay, was a good football player in high school, but he turned down a football scholarship to Georgia Tech because he knew his body was already breaking down just from playing high-school football. "I wouldn't have had any shoulders left if I had played football in college," he told me recently. Providing lifetime health insurance as a benefit for anyone who plays at least two years of college ball is a no-brainer.

The College Players Association, which would administer the health-insurance plan, would also represent the players whenever salary caps or minimum salaries are being set, as well as on those occasions when the N.C.A.A. or a college conference is cutting a deal with a television network or a marketing firm. Players would receive a percentage of the revenues — I am thinking 10 percent at first, though that, too, would quite likely rise — to be disbursed after they leave school, giving them a small share of the revenue their team generated while they were there. The organization would handle licensing deals on behalf of players whose jerseys are being sold, too, and collect fees whenever the N.C.A.A. markets the images of former players. (A portion of those fees would be used to pay the health insurance costs.) This clearinghouse role would resemble the system by which songwriters receive royalties from B.M.I. or Ascap whenever their songs are played on the radio or on television.

I borrowed the idea of a college players' association from Michael D. Hausfeld, a plaintiffs' lawyer who likes to take on high-profile cases with an element of social justice to them. Since the summer of 2009, he has been representing former Division I college football and basketball players in a class-action antitrust lawsuit against the N.C.A.A. for licensing their images without compensating them. It's called the O'Bannon case, after the lead plaintiff, Ed O'Bannon, a former college basketball star who led U.C.L.A. to a national championship in 1995. A trial is scheduled for May 2013.



(Full disclosure: William Isaacson, a lawyer with Boies, Schiller & Flexner, is among more than a dozen attorneys from various firms who have assisted Hausfeld in bringing the O'Bannon lawsuit. My fiancée is the firm's director of communications. She has played no role in the case, and does not stand to profit if O'Bannon wins.)

The case has received attention because it's a legitimate threat — maybe the first one ever — to the N.C.A.A.'s longstanding refusal to compensate its players. This is partly because the plaintiffs are former players — including basketball greats like Oscar Robertson and Bill Russell — who do not appear to be in it for a quick buck but seem to genuinely view themselves as trailblazers. For his part, Hausfeld has embraced this litigation as a cause akin to a lawsuit he once filed against Texaco for discriminating against minority employees. That case, he says proudly, “resulted not just in a monetary judgment, but a restructuring of the company's relationship with minorities.”

Hausfeld insists that athletes have rights: “They have rights to a fair allocation of revenue, to health care, to career development, to education and to posteducational opportunities.” He says that he believes that the O'Bannon case could well lead to a “restructuring” of the relationship between college athletes and the N.C.A.A. Which, in turn, might lead to paying the players.

**It is possible**, certainly, that the N.C.A.A. could win the O'Bannon case. It is also possible that the case could be decided or settled narrowly — allowing former players to be compensated for the use of their images but leaving the status of current players unchanged. But both Hausfeld and the N.C.A.A. have been acting as if the stakes are higher than that. Hausfeld has been attacking the concept of amateurism head-on, and the N.C.A.A. has been defending it with equal fervor. So there is at least a possibility that a judge will conclude that the N.C.A.A.'s refusal to pay its players has less to do with protecting the sanctity of amateur athletics than with its needs as a cartel to illegally suppress wages.

Anticipating the day when a judge might ask him what sort of remedy he would propose for the plaintiffs, Hausfeld has put forward the idea of an organization that would negotiate licensing agreements on behalf of former players and then act to collect and distribute the money they are due. I would take that notion a step further, and have that organization represent current players as well and negotiate a wider range of issues on their behalf. If Hausfeld wins the case, that may be where we are headed anyway.

To those who question why I am willing to pay these two categories of male athletes, but not any female athletes, my simple answer is that football and men's basketball players occupy a different role on campus — the role of an employee as well as a student — that female (and most other male) athletes do not. If the time comes when women's basketball is as

commercialized and profit-driven as men's basketball, then yes, the women should be paid as well. But we're a long way from that point.

There are almost surely Title IX issues surrounding my plan, which would probably have to be settled by the courts. (Title IX is the law that guarantees women equal athletic opportunities in college sports.) But I would argue that the employee status of those who play football and men's basketball means that paying them does not violate Title IX. It is worth noting that, even now, 40 years after Title IX became the law of the land, many schools still spend far more money on men's than women's sports without running afoul of it.

**To hear the** gnashing of teeth by those who believe that money will soil college sports is to hark back to the days when baseball was on the cusp of free agency, or the Olympics was considering abandoning its longstanding adherence to amateurism. In both cases, critics feared that the introduction of serious and legitimate money would damage the sports, turn off the fans and lead to chaos. Instead, baseball and the Olympics got much better.

College sports will become more honest once players are paid, and more honorable. Fans will be able to enjoy football and men's basketball without having to avert their eyes from the scandals and the hypocrisy. Yes, it's true: paying players will change college sports. They will be better, too.

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