

## **Reaction to “An Economic Look at the Sustainability of FBS Athletic Departments:” Implications for Reform**

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Professor Rodney Fort’s study titled, “An Economic Look at the Economic Sustainability of FBS Athletic Departments,” is a welcome complement to recent studies that have examined the economics of FBS college athletics. Professor Fort’s conclusion is straightforward—from a historical perspective, the economic sustainability of FBS athletic programs has not been dramatically impacted by past recessions. As Professor Fort acknowledges, however, his conclusion raises myriad questions. In commenting on the current recession, Professor Fort refers to certain events that have “wreaked the greatest havoc on the economy since the Great Depression.” (Fort, 2010, p. 4). As we await additional data on the impact of the current recession on FBS athletic programs, one of the more prominent of the questions that arises is whether the severity of the current recession will result in a departure from the historical trends identified in Professor Fort’s study.

A number of other questions emerge as well. For example, Professor Fort concludes that his analysis suggests no appreciable impact of past recessions on attendance at FBS football games. Professor Fort identifies two important caveats in this regard. First, he astutely states that we will never be able to determine the extent to which past recessions stymied increases in attendance. Secondly, Professor Fort suggests that attendance is a product of multiple variables, such as pricing choices made by athletic departments, which may have lessened the impact of past recessions on attendance. (Fort, 2010).

Others questions emerge from Professor Fort’s attendance data. Does the absence of an appreciable decline in FBS football attendance speak to the socioeconomic status and demographics of those who attend FBS football games? Is the absence of an appreciable decline during recessionary periods a manifestation of the commercialized nature of FBS football as a component of the larger entertainment industry? On the other hand, does the lack of an appreciable decline speak to something more basic: the importance of college sports, and in particular college football, as a social and cultural phenomenon in American society and the priority that consumers give to sporting events as it relates to how they spend their discretionary income? Questions also emerge

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from Professor Fort's findings relating to game rights fees and conference contract values, which as he reports are inconsistent with an industry severely impacted by recessions. (Fort, 2010)

Questions arise from Professor Fort's preliminary evidence suggesting that basketball has not been as immune to recessionary impacts as FBS football. Additional study will be required to determine the variables that may account for this difference. But preliminary questions emerge, such as socioeconomic and demographic differences between those who attend college basketball and FBS football games. Moreover, has basketball attained the same cultural and psychological prominence in American society as FBS football and if it has not, why?

Professor Fort's finding relating to revenue and expenses represents another area ripe for further exploration. Professor Fort concludes that the "real annual growth rate in the average report of both revenues and expenses is 4.9 percent." (Fort, 2010, p. 12). His conclusion brings into question the accuracy of financial data reported in other studies or at least the way in which data are interpreted. In its 2009 study, "College Sports 101," the Knight Commission on Intercollegiate Athletics concludes "that no matter what the size of an athletic department's budget, over the past decade expenditures have been rising dramatically every year and much faster than revenue is growing." (Knight Commission, 2009, pp. 3-4). Professor Fort's finding regarding revenues and expenses will also no doubt foster the ongoing debate concerning the variables that are considered in determining expenses. For instance, the Knight Commission has questioned whether data produced by athletic departments "understate[s] the true cost of intercollegiate athletics." (Knight Commission 2009, p. 11).

Perhaps the most significant of the unanswered questions that emerges from Professor Fort's study requires us to address the difference between sustainability as it relates to the impact of past recessions and sustainability as it relates to the long-term viability of the current economic model of FBS college athletics. Professor Fort's paper does not address this issue which has been addressed by other studies, including the Knight Commission's report, "College Sports 101."

## Implications for Reform

In the conclusion to his study, Professor Fort observes "that athletic departments emerg[ing] relatively unscathed may add to the other philosophical and political criticisms of big-time college sport." (Fort, 2010, p. 17). I agree with this observation. Indeed, Professor Fort's study is likely to provide support for proposals advanced by organizations and commentators who urge moderate to radical structural reforms of intercollegiate athletics.

Those advocating for the reform of Division I college athletics may find support for their reform proposals in Professor Fort's report. Among the concerns voiced by such advocates is the long-term sustainability of intercollegiate athletics. Consequently, as alluded to above, reform advocates will likely distinguish the sustainability of FBS college athletics during recessionary periods from the long-term sustainability of the current economic model of college sport, which they assert fosters an athletics arms race and produces the reality of expenses outpacing revenues.

Reform advocates are likely to find additional support in Professor Fort's study for their calls for reform. Professor Fort's findings regarding the response of athletic directors to the current recession may suggest to reform advocates the increased autonomy of FBS athletic departments within the university structure and the erosion of presidential control. The Knight Commission has noted that "Division I athletic programs operate as semiautonomous units within the university enterprise, but they share commonalities with both academic and auxiliary enterprises." (Knight Commission, 2009, p. 9). Critics of athletic department spending also argue that although athletic departments are dependent on subsidies from central university funds, during recessionary periods, athletic departments do not appear to have been subject to the same internal university cost containment measures as other institutional units. Professor Fort's preliminary findings regarding athletic directors' tendency, during the current recession, to make largely insignificant cost reductions may lend some support for the above views and the perspective that colleges are increasingly willing to compromise core functions including teaching, research, and student services as they divert resources from those endeavors in order to underwrite the ever increasing demands of athletics. (Knight Commission, 2009, p. 3).

The response of athletic directors during the current recession may further support the position of advocates who argue that institutions are unwilling unilaterally to contain costs. (Knight Commission, 2009). Consequently, reformist argue that broad based structural changes, at conference and NCAA levels, must occur to effectuate meaningful financial reforms in college athletics. Promulgating, implementing and enforcing such changes, however, particularly as they relate to commercial matters, create the potential for legal challenges as illustrated by the 1998 case *Law v. NCAA*, which involved NCAA mandated restrictions on coaching compensation.

Professor Fort's findings regarding the sustainability of media revenue could be seized upon by reform proponents who have voiced concerns regarding external revenue streams. FBS athletic programs will seek new sources of revenue in their effort to keep pace with expanding costs. In doing so, they are increasingly likely to turn to commercial interests. (Knight Commission, 2010). Concerns have been raised as to whether the increased reliance of college athletic departments on external revenues streams derived from commercial partners will lead to further compromises of core values relating to the educational mission, student-athlete well-being, and the avoidance of commercial exploitation of student-athletes. For example, two commentators have critically asserted that "[a]nother particularly pernicious way in which universities have grown crassly and indeed abusively commercial is in their taking of their athletes' images for commercial enhancement. [R]ecently, they have begun earning fees from licensing star athletes' images to video game manufacturers who use the players as characters in their products." (McCormick & McCormick, 2008, p. 540). University athletic influenced partnerships with commercial entities will also provide the impetus for legal entanglements. The recent lawsuits filed by former student-athletes against Electronic Arts and the NCAA illustrate the type of intellectual property and other legal issues that are likely to arise from athletic department and NCAA partnerships with commercial entities.

Other reform advocates will point to Professor Fort's conclusions regarding attendance figures, the increase in conference contract values, the substantial sums earned from postseason bowl payouts, the BSC's recently negotiated \$500

million TV deal with ESPN, and the growth in athletic department expenses and revenues, as evidence of increased commercialization of Division I intercollegiate sports. Advocates for moderate reforms such as Professors Mitten, Musselman and Burton, may be among them. Unlike some critics of the current model of Division I college athletics, Mitten, Musselman, and Burton do not decry the increased commercialization of intercollegiate athletics. Rather, they view commercialization as merely the product of the way in which the marketplace has responded to cultural demands that emanate from innate drives related to athletic competition. (Mitten, Musselman & Burton, 2009). In a recent article they argue that: "Elemental forces of human nature create cultural desires, which are quickly satisfied by the creation of products and services through the operation of a free marketplace." (Mitten, Musselman & Burton, 2009, pp. 204–05).

Although Professors Mitten, Musselman, and Burton view commercialized college sport as a product of cultural and market forces, they acknowledge the need to institute policies that will stymie its deleterious effects. In this regard they conclude the interplay of cultural desires and the market produce "powerful economic forces with corresponding commercial incentives" that also lead to potential "social and political conflicts as well as abuses." (Mitten, Musselman & Burton, 2009, pp. 204–05). The potential abuses and conflicts identified by Professors Mitten, Musselman and Burton that result from the blending of athletics and academics in Division I intercollegiate sport include: "an overemphasis on winning and generating sports-based revenues; a misallocation of scarce university resources to the athletic department; subordination of higher education academic values to the forces of commercialization; and student-athletes' inability to realize the educational benefits of the quid pro quo for providing playing services" (Mitten, Musselman & Burton, 2009, p. 226).

Professors Mitten, Musselman and Burton offer comprehensive recommendations for reform. At the centerpiece of their recommendations is Congressional legislation that would grant a limited antitrust exemption to the NCAA and its member institutions. The limited exemption would be conditioned on external reform measures aimed at ensuring that "intercollegiate athletics furthers legitimate higher education objectives," promotes the ability of student athletes to obtain the full benefit of the bargain with their institutions, and "enhances the likelihood that [student athletes] will obtain a college education that maximizes their future career opportunities other than playing professional sports." (Mitten, Musselman & Burton, p. 226).

In contrast to the comprehensive reform proposal advanced by Professors Mitten, Musselman and Burton, other moderate reformers advance more limited reform proposals. These include: 1) a relaxation of the NCAA's no-agent, no-draft rules, and redefining who is an amateur to allow student athletes increased flexibility to test their market potential as professionals without jeopardizing their intercollegiate eligibility (Fitt, 2009); and, 2) characterizing the legal relationship between student athletes and universities as fiduciary in nature. Such a characterization would impose heightened legal obligations on institutions toward their athletes (Salgado, 2007).

Professor Fort's conclusions also may lend support for those who propose that commercialized college athletics requires radical structural and legal changes. These changes include recharacterization of legal relationships extant in Division I

college athletics, and ending the considerable deference courts have afforded colleges and the NCAA in legal disputes, particularly those in which student athletes have challenged NCAA amateurism and athlete eligibility rules. For example, Professors Robert and Amy McCormick conclude that in Division I athletics, particularly football and men's basketball, the "athlete-university relationship is primarily commercial and not academic." (McCormick & McCormick, 2008, p. 500). As such, they vigorously assert that universities have subjugated academic interests of student athletes to commercial interests. (McCormick and McCormick, 2006). One consequence of this shift in priority should be classification of student-athletes engaged in the major revenue producing sports as employees. Such a redefinition would bring with it fundamental changes in the legal relationships between athletes and their colleges; these could potentially include the right of student athletes to form unions to engage in collective bargaining and the right to strike under federal labor law. (McCormick & McCormick, 2008, p. 500).

Notwithstanding views to the contrary, the McCormicks and other commentators also urge an end to the tax exempt status of the revenues generated in college sports. (McCormick & McCormick, 2008). They argue that the NCAA's tax-exempt status should be reexamined given that Division I football and men's basketball fail to promote education.

NCAA academic rules are designed to promote commercial, not academic values. The proliferation of corporate sponsorships and television revenues has introduced powerful commercial, profit based incentives into NCAA and university athletics decision. Excessive and ever-escalating salaries for coaches, conference commissioners, and NCAA executives indisputably constitute the use of athletic revenues for private financial benefit not for an educational, public purpose. (McCormick & McCormick, 2008, p. 504).

The McCormicks contend that such facts lead to the inevitable conclusion that revenues generated from Division I football and basketball should not be tax exempt.

Those calling for fundamental changes in relationships also identify the commercialization of college sports as grounds for ending the deference that courts have traditionally afforded the NCAA in antitrust cases in which athletes have challenged eligibility rules. (McCormick & McCormick, 2008). Reform advocates contend that the realities of commercialized athletics undermine two critical underpinning on which have the judiciary has granted deference: amateurism and competitive balance. With respect to the latter, reformist point to indicators of commercialized sport, such as the huge sums spent on high-profile coaches, and the proliferation in state of the art stadiums and practice facilities as eroding the competitive balance rationale courts have often enunciated as a grounds for shielding the NCAA's academic and eligibility rules from antitrust scrutiny. (Lazaroff, 2007, p. 361). As it relates to the amateurism rationale, one prominent scholar argues that "the amateurism rules that restrict compensation and other economic benefits to NCAA athletes should not escape antitrust scrutiny by means of a dichotomy [the line of demarcation between professional and intercollegiate athletics] that does not comport with real world economic models." (Lazaroff, 2007, p. 355). Professor Lazaroff concludes that the judiciary's historical reticence to apply federal antitrust laws to athlete eligibility disputes does not comport with an irrefutable reality:

"NCAA student-athletes are engaged in a commercial endeavor both as students (consumers of educational services) and as athletes (sellers of sports talents)." (Lazaroff, 2007, pp. 362–63).

## Conclusion

I began my comments by observing that Professor Fort's report raises a myriad of questions regarding the impact of past recessions on FBS college sports programs. That however understates the significance of his study. Notwithstanding the questions that emerge, Professor Fort's report will serve as an important source of information for proponents of change in intercollegiate athletics. His study will also enliven the vigorous debate regarding, not only the economics of Division I intercollegiate athletics, but its academic, social and cultural dimensions.

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