

# ARTICLES

## RACE AND INTEREST CONVERGENCE IN NCAA SPORTS

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### INTRODUCTION

College football and men's basketball teams, once racially segregated, are now disproportionately populated by African Americans<sup>1</sup> whose labor has helped make the college sports business stunningly lucrative.<sup>2</sup> At the same time, National

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1. See Robert A. McCormick & Amy Christian McCormick, *Major College Sports: A Modern Apartheid*, 12 TEX. REV. ENT. & SPORTS L. 13, 41, 43 (2010) (presenting findings showing that, during the 2009–2010 season, the starting lineups of the top twenty-five college football teams were, on average, 61 percent African American and that the rosters for the top twenty-five college basketball teams were, on average, 66 percent African American).

2. See NCAA, 2009–10 NCAA MEMBERSHIP REPORT 26 (2010), available at <http://catalog.proemags.com/publication/0affe96d#/0affe96d/28> [hereinafter MEMBERSHIP REPORT] (showing that NCAA revenues for the reported period totaled \$749,822,258, of which 86 percent were attributed to “television and marketing rights fees”); NCAA, FINANCIAL REVIEW OF 2010–11 POSTSEASON BOWLS: FIVE-YEAR SUMMARY OF GROSS RECEIPTS (2011), <http://www.ncaa.org/wps/wcm/connect/111c0f80472da438a309e7071e1ceb2b/5+yr+Summary+Gross+Receipts.pdf?MOD=AJPERES&CACHEID=111c0f80472da438a309e7071e1ceb2b> (showing that gross receipts from postseason bowls during the 2010–2011 season totaled \$401,701,524). Much of this revenue is used to pay coaches, NCAA and conference officials, and university athletic directors. *E.g.*, *The 10 Highest Paid Coaches in College Sports*, U. REV. ONLINE (Feb. 28, 2011), <http://www.universityreviewsonline.com/2011/02/the-10-highest-paid-coaches-in-college-sports.html> (explaining that Bill Self of the University of Kansas, the lowest-paid of the top ten coaches discussed, received a salary of \$3,675,656 in 2010 and that Nick Saban and Mike Krzyzewski were the highest-paid college football and basketball coaches for that year, earning over \$6 million and \$4 million, respectively).

Collegiate Athletic Association (“NCAA”) amateurism rules forbid these young men from receiving any compensation beyond the cost of attending college<sup>3</sup> and reserve the vast financial rewards for the managers of college sports who are almost exclusively of European American descent.<sup>4</sup> This regime, thus, adversely burdens African Americans who are required to relinquish the pecuniary fruits of their labor.<sup>5</sup>

Of course, despite its many flaws, even this system is vastly superior to the prior regime under which African Americans were excluded altogether from participating in college sports.<sup>6</sup> History demonstrates, however, that this advance emerged not always as a result of enlightened wisdom on the part of university administrators, but instead primarily out of their commercial interests.<sup>7</sup> In that sense, the racial integration of college sports fits nicely within Professor Derrick Bell’s “interest-convergence” theory that the advancement of African Americans in society has been possible only when it converges with the interests of European Americans and not when it challenges the superior social status of the majority.<sup>8</sup> Thus, while the inclusion of African Americans in college football and men’s basketball has enabled

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3. NCAA, 2011–12 NCAA DIVISION I MANUAL, arts. 15.1, 15.02.2 (2011), *available at* <http://www.ncaapublications.com/productdownloads/D112.pdf> [hereinafter DIV. I MANUAL]. Article 15.1 prohibits an athlete from receiving financial aid exceeding the cost of attendance. *Id.* Article 15.02.2 defines “cost of attendance” as including tuition and fees, room and board, books, supplies, transportation, and other education-related expenses. *Id.*

4. See McCormick & McCormick, *supra* note 1, at 41, 43 (presenting findings showing that, during the 2009–2010 season, only a small percentage of athletic program administrators surveyed at top sports schools were African American).

5. *Id.*

6. See, e.g., LANE DEMAS, INTEGRATING THE GRIDIRON: BLACK CIVIL RIGHTS AND AMERICAN COLLEGE FOOTBALL 2 (2010) (“[B]lack athletes . . . endured more than one hundred years of struggle before they could fully participate in college [football], . . . [and] there were entire decades when [black] participation was zero . . .”); Charles H. Martin, *Jim Crow in the Gymnasium: The Integration of College Basketball in the American South*, 10 INT’L J. HIST. SPORT 68, 68 (1993) (noting the history of racial exclusion in college basketball).

7. See *infra* Part III. A–E.

8. See generally Derrick A. Bell Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524 (1980) (arguing that the landmark decision in *Brown v. Board of Education* is attributable to “those whites in policymaking positions able to see the economic and political advances at home and abroad that would follow abandonment of segregation”).

college athletic teams to compete successfully<sup>9</sup>—and therefore to enjoy bountiful economic gain—longstanding NCAA amateurism rules simultaneously require those athletes to labor under a modern form of peonage where others harvest the fruits of their labor.<sup>10</sup> Under such a system, the superior social and economic status of the European American managers of college sports remains intact.

This Article will first reveal that the NCAA has campaigned for nearly sixty years to ensure that college athletes are characterized as students and not as employees as the law should require,<sup>11</sup> and that its amateurism rules—which apply solely to athletes—guarantee that the athletes receive only a sliver of the economic value their labor helps produce.<sup>12</sup> Part II will demonstrate that the players on elite football and men’s basketball teams are disproportionately of African American descent, while the managers and recipients of college sports revenue are nearly exclusively of European American extraction.<sup>13</sup> Part III will trace the history of racial integration in college sports to demonstrate that it took place when it simultaneously served the economic interests of white-run bowl organizations and universities to field

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9. See, e.g., DEMAS, *supra* note 6, at 31 (describing the unexpected and inspiring success of the 1939 University of California, Los Angeles (“UCLA”) Bruins, one of the first college football teams to include black athletes); see also Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22 FORDHAM URB. L.J. 615, 633 (1995) (“During the post-World War II era, the African-American student-athlete emerged as a force to be reckoned with at predominately white colleges and universities.”). Of course, we do not assert that any one race has more genetic athletic talent or ability than another. See Harry Edwards, *The Collegiate Athletic Arms Race: Origins and Implications of the “Rule 48” Controversy*, 8 J. SPORT & SOC. ISSUES 4, 9–10 (1984). Rather, the best athletic teams do not limit their rosters on the arbitrary basis of race, but draw from the broadest possible sources of talent.

10. See DIV. I MANUAL, *supra* note 3, arts. 12.1.2, 12.4.1.1 (rendering an athlete ineligible to compete if he uses his athletic skill directly or indirectly for pay and prohibiting him from receiving compensation on the basis of his “publicity, reputation, fame, or personal following”), 15.1, 15.02.2 (limiting an athlete’s financial aid to the cost of attending his university); Amy Christian McCormick & Robert A. McCormick, *The Emperor’s New Clothes: Lifting the NCAA’s Veil of Amateurism*, 45 SAN DIEGO L. REV. 495 (2008) [hereinafter McCormick & McCormick, *Emperor’s*]; McCormick & McCormick, *supra* note 1; Robert A. McCormick & Amy Christian McCormick, *The Myth of the Student-Athlete: The College Athlete as Employee*, 81 WASH. L. REV. 71 (2006) [hereinafter McCormick & McCormick, *Myth*].

11. See *infra* notes 16 through 32 and accompanying text.

12. See *infra* notes 33 through 36 and accompanying text.

13. See *infra* Part II.

the most competitive teams and thereby to enjoy the consequent financial reward.<sup>14</sup> Drawing on the scholarship of Professor Bell, this Article concludes that the history of racial integration in college sports closely mirrors the interest convergence theory regarding the advancement of African Americans in society generally.<sup>15</sup>

### I. THE COLLEGE ATHLETE AS EMPLOYEE

For the past decade, the NCAA has sponsored repeated advertisements during the annual men's basketball tournament known as "March Madness." Those vignettes depict young men and women metamorphosing from college athletes into airline pilots and other professionals and emphasize that most "student-athletes" at NCAA institutions will be "going pro" in something other than sports.<sup>16</sup> Why should the NCAA ceaselessly repeat to millions of viewers<sup>17</sup> and devote such valuable airtime<sup>18</sup> to promote the idea that college athletes are "student-athletes"?

In fact, the NCAA invented the term "student-athlete" in the 1950s in swift and alarmed response to a Colorado Supreme Court decision<sup>19</sup> that an injured football player was, in fact, an employee of his institution and entitled to compensation for his

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14. See *infra* Part III.

15. See *infra* notes 139 through 148 and accompanying text.

16. E.g., NCAA, *NCAA Public Service Announcement: Basketball*, YOUTUBE (Apr. 24, 2008), <http://www.youtube.com/watch?v=G40g9RTxurw>.

17. Greg Johnson, *Men's Tournament Draws Highest Viewership in Six Years*, NCAA LATEST NEWS (Apr. 7, 2011), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2011/April/Mens+tournament+draws+highest+viewership+in+six+years> ("The 2011 NCAA Division I Men's Basketball Championship averaged 10.2 million viewers per game . . .").

18. Indeed, although broadcasters pay enormous sums to the NCAA and conferences for the right to broadcast athletic events, they earn even larger amounts by selling advertising time during those events. In 2001–2002, for example, the college sports broadcasters American Broadcasting Company ("ABC"), Entertainment and Sports Programming Network ("ESPN"), National Broadcasting Company ("NBC"), and Columbia Broadcasting System ("CBS") paid a total of \$479 million for the right to broadcast all football and men's basketball games. See Penelope Patsuris, *A Wider World of TV Sports*, FORBES.COM (Dec. 12, 2002), [http://www.forbes.com/2002/12/12/cx\\_pp\\_1212sports.html](http://www.forbes.com/2002/12/12/cx_pp_1212sports.html). The advertising revenue, however, amounted to significantly more, or \$616 million, demonstrating significant value of each minute of airtime. *Id.* Of course, ads aired during the popular March Madness tournament, during which the NCAA broadcasts its message, would use some of the most valuable of that airtime. *Id.*

19. See *Univ. of Denver v. Nemeth*, 257 P.2d 423 (Colo. 1953) (en banc).

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football injuries under state workers' compensation laws.<sup>20</sup> Shocked by this development, the NCAA immediately coined the term "student-athlete" and required all NCAA members to use that term exclusively thereafter.<sup>21</sup> By characterizing the athletes as "students," the NCAA sought to thwart any tendency to identify them as employees. As then-NCAA Executive Director Walter Byers later wrote:

[The] threat was the dreaded notion that NCAA athletes could be identified as *employees* by state industrial commissions and the courts.

[To address that threat, w]e crafted the term *student-athlete*, and soon it was embedded in all NCAA rules and interpretations as a mandated substitute for such words as players and athletes.<sup>22</sup>

Through its advertising campaign and invented terminology, the NCAA has urgently sought to convince the public that college players are students, and, therefore, not employees. This year—2011—the NCAA's commercials announce that sports "is not the goal" or "the finish line."<sup>23</sup> The implication is that something else, not sports, must be the goal. Like the earlier versions, these messages are designed to persuade the viewer that these young men and women are learning important "life lessons" from sports, and that they are students, not mere athletes. And if they are students, the thinking goes, they must not be employees.

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20. *Id.* at 430 ("In view of the facts herein recited and the weight of authority involving similar and related situations, it is apparent that there is sufficient relationship to the employment in the activity of Nemeth at the time of his injury to justify the conclusion that he is entitled to compensation.").

21. WALTER BYERS WITH CHARLES HAMMER, UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES 69–76, 371–72 (1995); MURRAY SPERBER, ONWARD TO VICTORY: THE CRISES THAT SHAPED COLLEGE SPORTS 445–46 (1998).

22. BYERS & HAMMER, *supra* note 21, at 69 (emphasis in original).

23. See *NCAA Public Service Announcement* (CBS television broadcast Mar. 2011), available at <http://ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/Who+We+Are/TV+Spots+landing+page/> (click "Watch the Endings PSA" hyperlink). The 2011 version of this ad campaign visually integrates words into vignettes of athletic competition: "This is not the final buzzer; This is not the last inning; This is not the final goal; This is not a finish line." The words "It's a beginning" then appear during a graduation ceremony. Simultaneously, the narrator intones that nearly all of the more than 400,000 NCAA student-athletes will be "going pro" in something other than sports. *Id.*

Contrary to this propaganda, however, athletes in revenue-generating sports at NCAA institutions should, in fact, be viewed as “employees” under the law.<sup>24</sup> They meet the common law standard for employee status<sup>25</sup> as well as the statutory test for such status applicable to university students.<sup>26</sup> As a result, these particular athletes should be able to enjoy the rights of employees, including the rights to bargain collectively,<sup>27</sup> to be paid a market wage,<sup>28</sup> and to receive protection under Title VII of the Civil Rights Act of 1964,<sup>29</sup> the Occupational Safety and Health Act of 1970,<sup>30</sup> the Fair Labor Standards Act,<sup>31</sup> workers’ compensation acts,<sup>32</sup> and other laws.

NCAA amateurism rules, however, fail to treat college athletes as employees.<sup>33</sup> Instead, they prevent these athletes from being paid even though their labor is an essential component of the lucrative product of college sports.<sup>34</sup> Amateurism rules are imposed only on athletes, not on coaches, athletic directors, university officials, NCAA or conference officials, or anyone else in the college sports world.<sup>35</sup> As we will show below, by applying only to athletes, NCAA amateurism rules operate to burden African Americans disproportionately and to benefit European Americans by reserving the revenue generated by these young men only for the managers of college sports.<sup>36</sup>

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24. McCormick & McCormick, *Myth*, *supra* note 10; *see also* DEMAS, *supra* note 6, at 134–35 (describing the transformation of amateur college athletics into a professional and “lucrative business venture” and the athletes’ abilities and roles as being consistent with working effectively in the business world).

25. McCormick & McCormick, *Myth*, *supra* note 10, at 97–119.

26. *Id.* at 119–53.

27. *Id.* at 80–81.

28. *Id.* at 80.

29. 42 U.S.C. §§ 2000e *et seq.* (2006).

30. 29 U.S.C. § 651 *et seq.* (2006).

31. 29 U.S.C. §§ 201–219 (2006).

32. McCormick & McCormick, *Myth*, *supra* note 10, at 83 n.41.

33. McCormick & McCormick, *Emperor’s*, *supra* note 10, at 507–08.

34. *See* DIV. I MANUAL, *supra* note 3, arts. 12.1.2, 12.4.1.1, 15.1, 15.02.2; McCormick & McCormick, *Emperor’s*, *supra* note 10, 505–44; McCormick & McCormick, *Myth*, *supra* note 10, at 74 n.11, 131–35 (describing how NCAA rules prevent college athletes from being paid); *see supra* notes 2, 18, and accompanying text (describing economic impact of college sports).

35. *See* DIV. I MANUAL, *supra* note 3, art. 12.01.1 (requiring amateur status only for “student-athlete[s]”); McCormick & McCormick, *supra* note 1, at 24.

36. McCormick & McCormick, *supra* note 1, at 45.

## II. ADVERSE RACIAL IMPACT OF NCAA AMATEURISM REGIME

An examination of the racial composition of players on the top-ranked football and men's basketball teams reveals, not surprisingly, that the overall pattern among these elite teams—the teams that generate the bulk of college sports revenue<sup>37</sup>—is that players tend to be African American in very large numbers<sup>38</sup> while the primary officials at those same schools are almost entirely of European American descent.<sup>39</sup> Indeed, among the top twenty-five college football teams in January 2010, 61 percent of the players were African American while 96 percent of the administrators were European American.<sup>40</sup> Among the top twenty-five men's basketball teams, some 66 percent of players were African American, while 92 percent of administrators were European American.<sup>41</sup> At the same time, only 5 percent of the undergraduate students at the football schools were African American, while just 7 percent of the undergraduates at the basketball schools were African American.<sup>42</sup>

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37. Universities are rewarded financially for athletic success. For example, football teams earn revenue for their conferences by winning, or even attending, a BCS Bowl Game. See Bowl Championship Series, *The BCS is . . .*, BOWL CHAMPIONSHIP SERIES (July 22, 2011, 1:09 PM), <http://www.bcsfootball.org/news/story?id=4809716> (noting that a conference with one team qualifying for a BCS bowl receives approximately \$22 million in net revenue and another \$6 million if a second conference member qualifies). Moreover, men's basketball teams earn payments for their conferences for each game they play in the March Madness tournament. See MEMBERSHIP REPORT, *supra* note 2, at 29. In 2010–2011, the NCAA paid conferences some \$239,664 for each game a conference member won during the March 2011 NCAA men's basketball tournament. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2010–2011 REVENUE DISTRIBUTION PLAN 7 (2011), *available at* <http://www.ncaa.org/wps/wcm/connect/46f776004e0d547d9ef9fe1ad6fc8b25/2010-11+Revenue+Distribution+Plan+%28Current%29+%28Revisions%29.pdf?MOD=AJPERES&CACHEID=46f776004e0d547d9ef9fe1ad6fc8b25>. Conferences then distribute their revenues, in large part, to their member universities. See, e.g., Big Twelve Conference, Inc., I.R.S. Form 990, EIN 75-2604555, FYE June 30, 2008, *available at* <http://www.guidestar.org/FinDocuments/2008/752/604/2008-752604555-04c467d6-9.pdf>. The more athletic success a team enjoys, the more revenue is generated for its conference, and thus, for the conference members.

38. See McCormick & McCormick, *supra* note 1, at 34.

39. *Id.* at 33.

40. *Id.* at 41.

41. *Id.* at 43.

42. *Id.* at 41, 43; see also DEMAS, *supra* note 6, at 138–39 (criticizing the low rates of African American students at U.S. universities in contrast to the higher rates of African American students on those institutions' football and men's basketball teams).

Moreover, a survey of the most highly ranked and recruited high school seniors in January 2010—the vast majority of whom now play football or men’s basketball at NCAA institutions—shows that the overwhelming majority were African American.<sup>43</sup> Indeed, 82 percent of the top two hundred and fifty high school senior football players in America were African American, while more than 88 percent of the top one hundred and fifty high school basketball players were African American.<sup>44</sup>

By contrast, that same year some 92.5 percent of university presidents at Football Bowl Subdivision schools were European American,<sup>45</sup> while only 4 percent were African American.<sup>46</sup> As for athletic directors at Division I schools, some 88.8 percent were European American, while only 7.4 percent were African American.<sup>47</sup> And while 21 percent of men’s Division I basketball coaches were African American,<sup>48</sup> only 11 percent of head coaches in football—where most of the money in college sports is generated—were African American.<sup>49</sup>

This evidence shows that the players—a largely African American work force—are generating tremendous wealth by creating the product of college sports, but are forbidden from sharing in that wealth. On the contrary, NCAA amateurism rules *guarantee* that the money generated in substantial part by the athletes’ arduous and often dangerous work will be reserved to benefit the overwhelmingly European American managers of the college sports industry.<sup>50</sup> In this way, the NCAA amateurism regime—in which free market principles determine compensation for coaches and all other economic beneficiaries of college sports,

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43. McCormick & McCormick, *supra* note 1, at 43–44.

44. *Id.* at 44; Edwards, *supra* note 9, at 10 (positing that athletics attracts a disproportionate number of young African American men for the dual reasons that African Americans see successful models mainly in that field, not in others such as science, medicine, or law, while young white men, by contrast, “are exposed to countless role models and occupational opportunities” and, therefore, do not necessarily pursue athletics as a career).

45. Richard Lapchick, *The 2010 Racial and Gender Report Card: College Sport 3* (March 3, 2011), <http://www.bus.ucf.edu/documents/sport/2010-college-rgrc.pdf>.

46. *Id.* at 10.

47. *Id.* at 19, 21.

48. *Id.* at 1.

49. *Id.* at 15.

50. See McCormick & McCormick, *supra* note 1, at 14; DIV. I MANUAL, *supra* note 3, arts. 12.1.2, 12.4.1.1, 15.1, and 15.02.2.

but not for athletes—replicates apartheid-like systems that have existed throughout history and under which members of the racial majority have exploited the labor of minorities for entertainment and profit.<sup>51</sup>

### III. INTEREST CONVERGENCE AND INTEGRATION OF COLLEGE ATHLETICS

It is plainly true that college teams have high percentages of African American players as a result of the integration of college sports which had previously been entirely, or almost entirely, white.<sup>52</sup> And integration, of course, was a monumental step forward from the previous exclusionary regime. The racial integration of college sports meant that college educations became available to many young black men who might never have otherwise attended college.<sup>53</sup> Furthermore, young white men and

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51. McCormick & McCormick, *supra* note 1, at 23–26 (describing parallels between particular provisions of South African economic and labor legislation under Apartheid and NCAA amateurism rules); *see also* Robert A. McCormick & Amy Christian McCormick, Letter to the Editor, ‘Amateurism’ Rules Benefit Whites at Blacks’ Expense, CHRON. HIGHER EDUC. (May 20, 2011), <http://chronicle.com/article/Amateurism-Rules-Benefit/127544/>.

52. *See supra* note 6 (describing prior segregation in college sports); McCormick & McCormick, *supra* note 1, at 14 (describing how players on contemporary college teams are mostly made up of African Americans).

53. *See, e.g.*, DEMAS, *supra* note 6, at 109–10 (noting that in 1968 “recruitment of minority athletes helped African Americans obtain what little access universities granted them in the wake of the 1964 Civil Rights Act”); *id.* at 118 (stating that “America was . . . convinced of the benefits and opportunities athletics offered young black men[,]” including “riches, fame, and a free education”); *id.* at 120 (describing Americans’ views that athletics gave African American athletes “a special opportunity” and “an immense favor” by allowing them the “chance to really do something for their people by getting that education”); *id.* at 135 (describing widespread American view that sports provided African American college athletes with an education); BILL ELDER, ALL GUTS AND NO GLORY: AN ALABAMA COACH’S MEMOIR OF DESEGREGATING COLLEGE ATHLETICS 128 (NewSouth Books 2007) (noting that integrating his junior college basketball team “provide[d] an opportunity for black athletes to get a college education”); KENNETH L. SHROPSHIRE, IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA 103 (1996) (noting “the concept of the student-athlete experience as a route of academic opportunity for African-Americans”); *id.* at 106 (describing educational opportunities some African American athletes have obtained through their athletic scholarships); Dana D. Brooks & Ronald Althouse, *The Legacy of Brown: Commodification of the African American Student-Athlete?*, in REVERSING FIELD: EXAMINING COMMERCIALIZATION, LABOR, GENDER, AND RACE IN 21ST-CENTURY SPORTS LAW 301, 308 (André Douglas Pond Cummings & Anne Marie Lofaso eds., 2010) [hereinafter REVERSING FIELD] (asserting that “sports . . . provide a vehicle through which African American athletes gain access to higher education”); Leonard J. Elmore, *The Continuing Dilemma*, in REVERSING FIELD, *supra*, at 284 (asserting that “[s]ports

women were exposed to more black people in the educational setting.<sup>54</sup>

At the same time, however, the quality of the education that many athletes receive is questionable for a variety of reasons,<sup>55</sup>

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can . . . create and generate educational and financial opportunities for many individuals of every hue who are . . . shut out of the mainstream of opportunity”).

54. Cf. Bell, *supra* note 8, at 533 (noting the value many white parents see in integrating their children’s schools); Robert A. Garda, *The White Interest in School Integration*, 63 FLA. L. REV. 599, 600–03 (2011) (describing the social and academic benefits white children receive from attending integrated schools).

55. See, e.g., SHROPSHIRE, *supra* note 53, at 106 (noting the friction between athletic success and academic study in college); Brooks & Althouse, *supra* note 53, at 307 (asserting that “[c]ollege campuses and junior college campuses are scandalized by the ways in which courses are selected, grades changed, and eligibility extended for African American athletes”); Elmore, *supra* note 53, at 290 (describing a variety of obstacles barring access to true education for college athletes, including under-preparation in high school, valuing athletic ability over academic ability in recruiting decisions, “patronizing attitudes,” “dummy courses,” and exceptional pressures facing the student-athlete); McCormick & McCormick, *Myth*, *supra* note 10, at 135–55; Norman R. Yetman & Forrest J. Berghorn, *Racial Participation and Integration in Intercollegiate Basketball: A Longitudinal Perspective*, 10 SOC. SPORT J. 301, 311 (1993) (revealing continued negative educational outcomes for African American college basketball athletes); E-mail from Frank G. Splitt, former McCormick Faculty Fellow, Northwestern University, to Thomas G. Palaima, Raymond F. Dickson Centennial Professor of Classics, University of Texas at Austin (May 18, 2011) (on file with author) (stating that “athletes are kept eligible to play via participation in clustered classes and diploma-mill like programs engineered at jocks-only academic resource centers—notwithstanding very limited time to study because of . . . intense time demands of their sport . . . [and] these athletes are exposed to brain trauma” and noting that “[s]imply put, these athletes really have little chance of getting a meaningful college education”).

In fact, many college athletes fail altogether to graduate, and the graduation rates for African American athletes have remained particularly troubling. Richard E. Lapchick, *Keeping Score When It Counts: Assessing the 2010–11 Bowl-Bound College Football Teams—Academic Performance Improves But Race Still Matters*, available at [http://www.tidesport.org/Grad%20Rates/2010-11\\_APR-GSR\\_BowlStudy.pdf](http://www.tidesport.org/Grad%20Rates/2010-11_APR-GSR_BowlStudy.pdf) (last visited on July 12, 2011); Richard E. Lapchick, *Keeping Score When It Counts: Graduation Success and Academic Progress Rates for the 2011 NCAA Division I Men’s Basketball Tournament Teams*, available at [http://www.tidesport.org/Grad%20Rates/2011\\_Mens\\_Bball\\_FINAL.pdf](http://www.tidesport.org/Grad%20Rates/2011_Mens_Bball_FINAL.pdf) (last visited on July 12, 2011); see also SHROPSHIRE, *supra* note 53, at 126 (discussing low graduation rates for African American athletes); Brooks & Althouse, *supra* note 53, at 304 (discussing low graduation rates for African American athletes); Elmore, *supra* note 53, at 289 (discussing low graduation rates for African American athletes); cf. Edwards, *supra* note 9, at 7 (noting that the promise of an education in exchange for athletic services “turns out to be far less than an iron-clad guarantee” because the athletic scholarship is “technically given [only] one year at a time under existing NCAA rules”); *id.* at 7–8 (describing various factors that contribute to low graduation rates for African American college athletes, including the fact that most non-athlete students need more than four years to complete degree requirements, widespread poor academic preparation before college, the time commitment required for athletic activities, and the exhaustion they experience from their sports); Pat Eaton-Robb, *Jackson: Ohio State Forced Transfer: Ex-Grand Ledge Football Star Says He Didn’t Know Scholarship Was Year to Year*, LANSING ST. J., June 26, 2011, at 1D

and black athletes' presence on campus for their athletic ability, not their intellectual promise, stereotypes them as "jocks," not learners,<sup>56</sup> thereby nurturing unconscious racism in society generally. These stereotypes are harmful in many ways,<sup>57</sup> not the least of which is that they may serve to dissuade many young black Americans from pursuing careers in science, medicine, law, and other professions and induce them instead to pursue the virtually impossible dream of a career in professional sports.<sup>58</sup>

Regardless, the integration of college sports, as well as the availability of athletic scholarships for young African Americans, emerged, in our view, not from the enlightened beneficence of U.S. universities and their leaders, desirous of improving the lot of

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(describing NCAA rules limiting athletic scholarships to a period of one year and, therefore, preventing many financially constrained African American athletes from finishing their degrees if the coach declines to renew their scholarships).

56. Davis, *supra* note 9, at 674 (describing this phenomenon); Elmore, *supra* note 53, at 289 (describing the presence of athletes who lack academic success as generating stereotypes with negative racial overtones); *see also* DEMAS, *supra* note 6, at 138–39 (describing the problems of low African American enrollment at universities as a whole and the "We Shall Not Be the Only Ones" campaign that protested the discrepancy between the presence of African Americans in college sports and their relative absence in the overall student body); Brooks & Althouse, *supra* note 53, at 307 (suggesting that stereotypes about African American athletes also affect African Americans who are not athletes).

57. *See generally* Davis, *supra* note 9, at 643–78 (providing an in-depth analysis of racial stereotypes in sports and the harms they pose); *see also* DEMAS, *supra* note 6, at 137 (describing the view of some black athletes that "America's infatuation with sport hindered blacks in higher education by limiting their options, perpetuating misunderstanding, stereotyping black masculinity, and reinforcing white domination in the form of all-powerful coaches and administrators"); Brooks & Althouse, *supra* note 53, at 304 (describing negative effects of stereotypes of African American athletes); Todd J. Clark, *Professional Equality: The Rooney Rule, Introduction*, in REVERSING FIELD, *supra* note 53, at 350 (describing the tendency for African Americans to be described as successful only when they have athletic ability, and not because of their decision-making or leadership skills); Elmore, *supra* note 53, at 288 (describing stereotypes even distinguished academics accorded to athletes as including the words "'dumb,' 'violent,' 'rapist,' and 'drug user'").

58. Brooks & Althouse, *supra* note 53, at 304; Edwards, *supra* note 9, at 9–11, 13 (describing sociological factors that encourage African Americans towards athletic as opposed to other forms of achievement and describing how few sports-related jobs exist in the United States). Even NCAA-published figures indicate that less than 2 percent of NCAA college athletes will become professional athletes, demonstrating that a career in professional sports is a virtually impossible dream. NCAA, ESTIMATED PROBABILITY OF COMPETING IN ATHLETICS BEYOND THE HIGH SCHOOL INTERSCHOLASTIC LEVEL, *available at* <http://www.ncaa.org/wps/wcm/connect/public/ncaa/issues/recruiting/probability+of+going+pro> (last visited July 6, 2011) (noting that only 1.2 percent of NCAA men's basketball players and only 1.7 percent of NCAA football players will become professional athletes).

African Americans, but instead from the economic interests of those same, predominantly European American leaders.<sup>59</sup>

In his landmark 1980 *Harvard Law Review* article, *Brown v. Board of Education and the Interest-Convergence Dilemma*, Professor Derrick Bell introduced the interest-convergence theory in legal scholarship.<sup>60</sup> This principle provides that “[t]he interest of blacks

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59. See, e.g., ELDER, *supra* note 53, at 13 (“[T]he people who made the decisions that brought black players into the mainstream of athletics did not have altruistic motives. The thing uppermost in the[ir] minds . . . was winning, not bringing about social change.”); Davis, *supra* note 9, at 622 (positing that “economic considerations were one of the significant influences leading to the eventual end of segregation in college sport”); *id.* at 635–36 (applying interest convergence analysis to college sports by describing how African American athletes have been incorporated into the revenue-generating sports, but not into the non-revenue sports, and suggesting that colleges were willing to “set aside discriminatory practices” only when financial rewards could be reaped); Ronald E. Marcelllo, *The Integration of Intercollegiate Athletics in Texas: North Texas State College as a Test Case, 1956*, 14 J. SPORT HIST. 286, 299–300 (1987) (“It would be a mistake . . . to view these coaches as crusaders in the . . . civil rights movement. Rather they . . . understood that . . . there was a vast reservoir of black football talent in Texas that would make them winners for years to come.”); *id.* at 300 (“[T]he coaches readily understood that black athletes were potential contributors to the team’s success”); *id.* at 309 (describing change in attitudes of white players because they understood that the presence of African American players “represented a potential contribution towards victories” which would “benefit[] everyone, black and white”); *id.* (describing coaches’ realization that “winning seasons enhanced” their own “prestige and gained additional revenues for the football program” and that “[i]t was to their benefit, therefore, to play the best athletes . . . regardless of skin color”); *id.* at 310 (describing fans’ acceptance and enthusiasm for North Texas State College’s first African American player because his ability meant they were winning: “[w]hatever their racial prejudices, most North Texas fans were colorblind when it came to supporting a winner”); *id.* at 316 (stating that “since winning benefitted everyone, toleration became profitable for everyone, black and white”); John Whittaker, *An Open Letter to K.L. (Tug) Wilson, Commissioner, Big Ten Conference*, HAMMOND TIMES, Mar. 24, 1947, reprinted in TOM GRAHAM & RACHEL GRAHAM CODY, GETTING OPEN: THE UNKNOWN STORY OF BILL GARRETT AND THE INTEGRATION OF COLLEGE BASKETBALL 87 (Atria Books 2006) (advocating integration of Big Ten basketball teams and pointing out that such integration in Big Ten football had drawn \$200,000 crowds); see also Charles H. Martin, *Hold That (Color) Line! Black Exclusion and Southeastern Conference Football*, in HIGHER EDUCATION AND THE CIVIL RIGHTS MOVEMENT: WHITE SUPREMACY, BLACK SOUTHERNERS, AND COLLEGE CAMPUSES 167, 168 (Peter Wallenstein ed., 2008) (describing the southern desire to maintain white supremacy as being in conflict with the desire to win football games). These attitudes illustrate that it was not racial enlightenment, but rather self-interest, that spurred the integration of college sports. Although North Texas State College welcomed African American players in 1956 for the chance to win more football games, integration was limited to the field. “Three years passed . . . before . . . [the new African American star athlete could] reside on campus and eat in the dormitories [because those venues remained segregated]. The black athletes were an equal part of the team but not an equal part of the college.” Marcelllo, *supra*, at 316; see also *id.* at 295–96, 311. The lack of full integration in dining and living facilities demonstrated that it was white self-interest, not altruism, prompting the admission of black athletes.

60. Bell, *supra* note 8.

in achieving racial equality will be accommodated only when it converges with the interests of whites . . . . [And it will not be accommodated] where the remedy sought threatens the superior societal status of middle and upper class whites.”<sup>61</sup> Professor Bell argued that the Supreme Court’s decision in *Brown v. Board of Education*<sup>62</sup> was possible, for example, only because it served to advance the interests of the majority race.<sup>63</sup> The remainder of this Article will trace significant historical highlights of college sports integration and discuss the applicability of Bell’s interest-convergence theory in that context.

### A. Southern Segregation Requirements

Like southern universities, southern college football and basketball teams were strictly segregated on the basis of race from their inceptions.<sup>64</sup> Southern schools did not accept African Americans as students and, therefore, had no African American athletes on their teams.<sup>65</sup> As intersectional games became more frequent because of the growing popularity of these sports, the possibility arose that a southern team would be matched against a northern team with one or more African American players.<sup>66</sup> According to southern sensibilities, such mixed-race competitions would suggest equality between races and, therefore, could not be permitted.<sup>67</sup> Thus, as a condition of competing, southern schools

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61. *Id.* at 523.

62. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

63. Bell, *supra* note 8, at 523–26.

64. See DEMAS, *supra* note 6, at 2–3, 8 (discussing segregation in football); Martin, *supra* note 6, at 68 (discussing segregation in basketball).

65. See, e.g., DEMAS, *supra* note 6, at 8; Davis, *supra* note 9, at 624. Because this Article addresses integration, we do not discuss the cadre of historically black colleges and universities, and our statements about southern schools are not intended to apply to them.

66. See Charles H. Martin, *Integrating New Year’s Day: The Racial Politics of College Bowl Games in the American South*, 24 J. SPORT HIST. 358, 361 (1997) (observing that because “the new events were located in the Lower South[,] . . . possible conflicts [could arise] for those northern schools whose rosters included . . . [any] black athletes”).

67. *Id.* at 373 (“To grant equality on the playing field, even if only for three hours, represented an unacceptable symbolic action because it suggested the possibility of equality in other areas of southern life.”); see Davis, *supra* note 9, at 626 (describing interracial competitions as “out of the question”); Martin, *supra* note 6, at 75.

demanded that northern schools exclude any African American players from participating in the contests.<sup>68</sup>

*B. Northern Acquiescence in Southern Segregation During the 1930s and Early 1940s*

By the 1930s, regular-season intersectional games and bowl competitions were growing more popular and, therefore, beginning to proliferate and generate substantial revenue.<sup>69</sup> By the end of that decade, the Orange Bowl, Cotton Bowl, and Sugar Bowl, located in Miami, Dallas, and New Orleans, respectively, were becoming prestigious and lucrative, both for their organizers and for the universities that participated.<sup>70</sup> And because these games were played in the South, African American athletes were prohibited from playing.<sup>71</sup> To reap the revenue from regular-season intersectional games as well as the acclaim and increasing financial rewards of post-season bowl competition, northern teams universally acquiesced in, and therefore enabled, southern demands for racial exclusion during this period.<sup>72</sup>

For example, in 1940, Boston College agreed to bench its African American player, Lou Montgomery, in order to accept an invitation to compete against Clemson University in the Cotton Bowl.<sup>73</sup> The following year, Boston College again excluded Montgomery so it could play in the Sugar Bowl.<sup>74</sup> These events

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68. *E.g.*, Davis, *supra* note 9, at 627–28; Martin, *supra* note 66, at 360; Martin, *supra* note 6, at 74, 76 (providing numerous examples of southern schools refusing to participate in interracial competitions).

69. DEMAS, *supra* note 6, at 32 (stating that “intersectional sporting contests became an important means by which schools and teams earned rankings, reputations, and popularity” and noting that “[e]ven before the age of television, by 1939 an invitation to play in any of the five bowls guaranteed the institutions significant income, press coverage, and prestige”); *id.* at 77. Indeed, the “generous payouts . . . that bowl games provided,” Martin, *supra* note 66, at 360, prompted one newspaper in 1939 to call them “\$100,000 gravy-bowl games.” DEMAS, *supra* note 6, at 38.

70. *See* Martin, *supra* note 66, at 359–61.

71. *See id.* at 359–360 (noting that the South’s “strategic grip on January 1 thus enabled whites in Dixie to impose their racial values on nonsouthern teams, in effect, ‘southernizing’ the national sport”).

72. *See id.* at 359–61.

73. *Id.* at 362. Boston College had already excluded Montgomery from two home games against Auburn University and the University of Florida during the 1939 regular season. *Id.*

74. *Id.*

revealed “the willingness of ambitious northern universities to abandon their black players in pursuit of athletic success and financial rewards.”<sup>75</sup> In that manner, when the economic interests of northern schools conflicted with the interests of African Americans, the economic interests prevailed. Put differently, when the interests of African American students failed to converge with those of white university officials, the northern colleges abandoned the former for the latter. Because African American interests in equal treatment did not converge with those of white university officials, African American interests were sacrificed.<sup>76</sup>

*C. World War II and the Post-War Period—Beginnings of Northern Transition*

During World War II, the available pool of white college-aged men declined sharply.<sup>77</sup> To avoid cancelling their athletic seasons and foregoing revenue and other benefits, northern colleges filled their rosters by enrolling more African American athletes.<sup>78</sup> Again, when the northern universities’ economic interests converged with the interests of African Americans, racial progress could take place.<sup>79</sup>

After World War II, northern schools, which had increasingly desegregated during the war, began objecting to

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75. *Id.*; see also *id.* at 359–360 (“This capitulation by northern coaches and administrators . . . reflected their tolerance for racial discrimination, the small number of black players on their squads, . . . and the growing lure of generous payouts and national prestige that bowl games provided.”).

76. *Cf.* Bell, *supra* note 8, at 522–26 (describing interest convergence in the context of educational integration).

77. See Davis, *supra* note 9, at 633–34.

78. *Id.* (noting that American involvement in World War II created a shortage of white college-aged athletes and thereby suggesting that commercial interests, therefore, led northern universities to fill team rosters by resorting to African American athletes rather than to cancel their seasons); Harry Edwards, *Playoffs and Payoffs: The African-American Athlete as an Institutional Resource*, in *THE STATE OF BLACK AMERICA* 91 (Billy J. Tidwell ed., 1994) (describing the shortage of white players during World War II and the resulting opportunities for African American players in college); Donald Spivey, *The Black Athlete in Big-Time Intercollegiate Sports, 1941–1968*, 44 *PHYLON: ATLANTA U. REV. RACE & CULTURE* 116, 121 (1983) (identifying the vacuum of white manpower in college sports caused by World War II as a primary reason why universities utilized black athletes during that period).

79. *Cf.* Bell, *supra* note 8 (describing interest convergence in the context of educational integration).

southern segregation rules.<sup>80</sup> Their few African American players tended to be among their most talented<sup>81</sup> and, seeking to preserve this advantage, northern schools began to resist, and some refused outright, the demands of southern schools that African American players not compete.<sup>82</sup> As a result, several games were cancelled and some intersectional rivalries were terminated when northern teams insisted on reserving the right of African Americans to participate.<sup>83</sup> For example, in November 1946, Penn State University (“Penn State”) refused to leave its two African American players out of a scheduled game with the University of Miami, and the game was cancelled.<sup>84</sup> Penn State subsequently issued the following formal statement: “It is the policy of the college to compete only under circumstances which will permit the playing of any or all members of its athletic teams.”<sup>85</sup>

While some northern universities were plainly motivated by egalitarian principles,<sup>86</sup> to the extent they were prompted by the desire to keep growing numbers of talented African American athletes available for competition against southern rivals, their economic interests converged with black players’ interests

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80. During this period, many northern schools stopped benching African American players for intersectional games they played in northern venues, and some even challenged the “policy of racial exclusion for games played in Dixie.” Martin, *supra* note 66, at 362.

81. Davis, *supra* note 9, at 629–30.

82. Martin, *supra* note 66, at 362.

83. *Id.* Economic advantage, apparently, was not the sole motive behind the greater integration of northern teams and their objection to southern exclusionary rules. “As a result of the wartime campaign against Nazi doctrines of Aryan supremacy, liberal attitudes favoring equal opportunity in sports became commonplace on northern campuses.” *Id.*

84. *Id.* at 363, 368.

85. *Id.* at 363.

86. As early as 1940, Penn State had refused to comply with the U.S. Naval Academy’s insistence that black sprinter, Barney Ewell, be benched in an Annapolis track meet and instead forced the meet to be moved to State College where Ewell could compete. *Id.* Then, in 1947, Penn State “declined an invitation to send . . . [its] boxing team to the . . . Sugar Bowl boxing tournament, from which African American boxers were excluded. The action was based entirely on principle, since there were no black boxers on the current team.” *Id.*

Some other schools followed suit. In January 1947, “Duquesne University canceled an outdoor basketball game” at the University of Miami, and “[s]everal other intersectional football and basketball games were canceled . . . in the late 1940s and early 1950s for similar reasons.” *Id.* at 368. By 1956, “several midwestern schools including Indiana University announced that they would no longer schedule games in the South if their black players were barred.” Martin, *supra* note 6, at 71.

whenever intersectional games were not cancelled,<sup>87</sup> and change became possible.<sup>88</sup>

*D. Southern Bowls Forced to Adapt in the Face of Northern Resistance*

The increasing resistance of northern teams to southern segregation demands forced bowl committees to reconsider their policies lest they risk losing the enhanced prestige and revenue that accompanied exciting intersectional bowl games.<sup>89</sup> This post-war development “forced southern bowl committees to reevaluate their commitment to racial purity on the gridiron, since it now threatened to interfere with their desire to offer the public the most exciting possible match up and to maximize their own revenues.”<sup>90</sup> Indeed, “[c]onfronted with a new firmness by . . . [northern] colleges, southern bowls began to waver in their loyalty to Jim Crow, fearing that they might lose the appeal and profits of attractive intersectional match ups if they did not modify their policies.”<sup>91</sup> As described below, many southern bowl games

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87. For example, the University of Georgia first began playing integrated northern teams in 1950. See Martin, *supra* note 59, at 184–85.

88. While university officials may, therefore, have been influenced by self-interest, it also seems likely that northern attitudes in the general public changed in the aftermath of a world war fought by both black and white Americans against a racist foreign enemy. Given the participation by African American soldiers in a war defending U.S. freedoms, black Americans rightly demanded more freedom after returning home. Bell, *supra* note 8, at 524–25. Additionally, more white Americans felt the hypocrisy of denying that freedom. *E.g.*, Martin, *supra* note 66, at 362–63. Thus, increased athletic integration in northern universities after World War II may have been influenced by the principled desires for equality and racial progress, not exclusively by northern universities’ economic interests. That is, concerns for racial advancement converged with economic interests.

89. See Martin, *supra* note 66, at 359–60.

90. *Id.* at 362.

91. *Id.* at 373. In addition to bowls, some individual universities were also forced to adapt to the new northern resistance. “[S]o anxious were Georgia administrators to maintain the prestige and profits of intersectional matches that, starting in 1950, they actually permitted the Bulldogs to schedule integrated opponents, the first SEC member from the Deep South to do so.” Martin, *supra* note 59, at 184–85; see also *id.* at 169 (describing decisions by administrators of other SEC universities to play integrated opponents in intersectional games in the late 1950s because they feared “the absence of such popular contests would hurt their team’s national profile and their athletic department’s revenue”). The University of Alabama refused to play regular-season games against any team with a black player until the late 1960s. *Id.* at 183. But “[t]his absence from intersectional competition eventually endangered Alabama’s national rankings, forcing [Coach Bear] Bryant and school officials to reconsider their policies.” *Id.*

eventually modified their policies and permitted participation by African American players.<sup>92</sup> The interests of black athletes were furthered, but only because they converged with the financial interests of the white organizers of these bowl games.<sup>93</sup>

#### i. The Cotton Bowl

The first of the three major southern bowl games to bend was the Cotton Bowl.<sup>94</sup> At the end of the 1947 season, Penn State was undefeated, had won the Lambert Trophy, and was ranked fourth in the Associated Press poll,<sup>95</sup> while Southern Methodist University (“SMU”)—a local Dallas favorite—was its conference champion, was ranked third in the country, and was likewise undefeated.<sup>96</sup> Due to the box office appeal of a contest between a “home team” and the eastern champions, the Cotton Bowl committee invited Penn State to play even though it knew Penn State would insist on the participation of its two African American players.<sup>97</sup> The result was record-setting demand for tickets with 100,000 fans applying for tickets in the first four days.<sup>98</sup> An overflow crowd generated record-breaking revenue and aided the Cotton Bowl committee in financing an expansion of its stadium.<sup>99</sup> The following year, Cotton Bowl officials invited another integrated team, the University of Oregon, with its three African American players, to play SMU—again resulting in an overflow crowd in the newly expanded stadium.<sup>100</sup>

The gamble paid off handsomely, as the Cotton Bowl profited enormously from the two consecutive outstanding pairings. Although race relations in Dallas were conservative and paternalistic, bowl officials and

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92. See Martin, *supra* note 66, at 359–60.

93. Cf. Bell, *supra* note 8 (describing interest convergence in the context of educational integration).

94. Martin, *supra* note 66, at 362.

95. At the time, the Lambert Trophy was awarded to the best eastern football team. *Id.* at 363.

96. SMU had an 8-0-1 record that season. *Id.*

97. See *id.* at 363–64.

98. *Id.* at 364.

99. *Id.* at 365.

100. *Id.*

city fathers understood the financial and public relations benefits that their city could gain from flexibility in athletic scheduling. The Cotton Bowl's willingness to breach the color line for one day each year also gave it a competitive advantage over the Sugar Bowl and Orange Bowl in recruiting top-ranked nonsouthern teams, since these two competitors retained their policies of racial exclusion.<sup>101</sup>

As was so often the case, it was only the convergence of black interests with the economic interests of whites that permitted racial progress.<sup>102</sup> That is, the Cotton Bowl committee was willing to invite the best teams, even if integrated, if its games could be the most popular and thereby generate the greatest revenue. Moreover, by hosting an integrated team, the committee in Texas gained a competitive advantage over the other southern bowls in Louisiana and Miami which remained staunchly segregated.<sup>103</sup> In this manner, the economic interests of the Cotton Bowl committee converged with the civil rights of African Americans, allowing the African American interests to advance.<sup>104</sup>

## ii. The Sugar Bowl

By the time the Sugar Bowl experimented with integration eight years later, the southern social landscape had regressed significantly in the aftermath of the Supreme Court's 1954 decision in *Brown v. Board of Education*, becoming explosively hostile to any form of integration.<sup>105</sup> This change set the stage for bitter controversy when the Sugar Bowl committee invited the University of Pittsburgh, with one African American player, to participate in its January 1, 1956, contest.<sup>106</sup>

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101. *Id.*

102. *Cf.* Bell, *supra* note 8 (describing interest convergence in the context of educational integration).

103. Martin, *supra* note 66, at 365.

104. *Cf.* Bell, *supra* note 8 (describing interest convergence in the context of educational integration).

105. *E.g.*, DEMAS, *supra* note 6, at 80–81; Bell, *supra* note 8, at 525–26; Martin, *supra* note 66, at 370.

106. *See* Martin, *supra* note 66, at 370. The Supreme Court's 1954 *Brown v. Board of Education* decision had "ignited an explosion of southern white resistance." *Id.* In fact,

By late 1955, the Sugar Bowl had been experiencing difficulty finding and attracting top-ranked teams. By then, the Atlantic Coast Conference (“ACC”), the Big 7 (later the Big 8), and the Southwest Conference champions were all contractually obligated to participate in other January 1 bowl games.<sup>107</sup> So to maximize the potential excitement and, therefore, the value of its game, Sugar Bowl officials did not limit their search to all-white teams, but instead considered teams’ records of athletic success apart from their racial composition. Given the standings of both the University of Pittsburgh and Georgia Tech University (“Georgia Tech”), the Sugar Bowl committee extended invitations for both to participate in the January 1, 1956, game.<sup>108</sup>

The decision resulted in an enormous backlash.<sup>109</sup> Prompted by massive complaints from segregationists, Governor Marvin Griffin forbade Georgia Tech from participating, which, in turn, sparked overnight demonstrations by Georgia Tech students who wanted the game to go forward.<sup>110</sup> University regents reluctantly approved the trip.<sup>111</sup> “[T]he school’s desire to reap the benefits of national success in football—television dollars, recognition, and so on—clashed with the state[’s] . . . reaction to *Brown* and the specter of forced integration.”<sup>112</sup>

Although the student demonstrations appear to have been prompted primarily by a desire to attend the football game, not to end all segregation,<sup>113</sup>

the reaction of [Georgia] Tech’s administrators and student body [nonetheless] show[ed] how the greater rewards awaiting successful college football programs could generate a willingness to fight segregation [on the football field] in exchange for winning football teams . . . . [T]he importance of participating in a

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“[l]egislatures in the former Confederate states [had] enacted some 450 segregationist laws and resolutions’ during the ten years following the *Brown* ruling.” *Id.*

107. *Id.*

108. *See id.*

109. *Id.* at 370–71.

110. *Id.*

111. *See id.* at 371.

112. DEMAS, *supra* note 6, at 24.

113. *See id.* at 72–101; Martin, *supra* note 66, at 370–71 (showing student placard: “We want to go to the Sugar Bowl”).

prestigious bowl game seemed to trump, if only briefly, the clear code of segregation at Georgia Tech.<sup>114</sup>

The Sugar Bowl's decision to invite the University of Pittsburgh, despite the fact that it had an African American player, was prompted by its economic interest in fielding a competitive team. Similarly, Georgia Tech's decision to attend the game, in spite of the governor's demand, was likewise motivated by the lure of economic reward and prestige from participating. Consequently, the integration of the Sugar Bowl for this event occurred only because African American interests converged with the economic interests of powerful white institutions, not because of concern for racial equality.<sup>115</sup>

Commercial interests, not principle, prompted the adaptations southern bowl committees made by allowing integrated teams to participate when faced with northern resistance to segregation.<sup>116</sup> Money could be made by integrating bowl games, but in regional games between southern teams, no

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114. DEMAS, *supra* note 6, at 25.

115. In the aftermath of this episode, Louisiana enacted a variety of strict segregation laws. Martin, *supra* note 66, at 372; Martin, *supra* note 6, at 74. For example, Louisiana prohibited interracial sporting contests altogether and re-segregated seating at all public events, Martin, *supra* note 66, at 372; Martin, *supra* note 6, at 74, despite a warning from Sugar Bowl officials that the laws would "seriously damage our sports program." Martin, *supra* note 66, at 372. In fact, the new laws did harm the Sugar Bowl as northern teams again refused to play. Until federal courts invalidated these state laws, the Sugar Bowl football game and basketball tournament became "regional events exclusively between all-white southern teams," markedly reducing the Sugar Bowl's national visibility as well as its value and influence as an organization. *Id.* In 1964, the last of these laws was invalidated, and in January 1965, the Sugar Bowl resumed its non-discrimination policy, inviting Syracuse—with eight African American players—to play against LSU. *Id.* It took several years, however, for the Sugar Bowl "to fully erase . . . [the] stigma" of its former segregationist policy "and reestablish strong television ratings." *Id.* at 372–73.

Although reintegration at this time served both African American interests and allowed the Sugar Bowl to become more competitive and, therefore, eventually to improve its economic standing, it cannot be said that reintegration was undertaken out of a sense of social conscience. Had concern for racial equality been the driving force, the new integration should not have been limited to the playing field, but would have also extended to the Sugar Bowl organization. Nevertheless, that organization remained fully white. *Id.* at 373. As Professor Bell has observed, "[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites . . . [and will not be accommodated] where the remedy sought threatens the superior societal status of middle and upper class whites." Bell, *supra* note 8, at 523.

116. See DEMAS, *supra* note 6, at 48; cf. Davis, *supra* note 9, at 634–35 (describing commercial forces prompting integration of college football and basketball generally).

financial gain would be derived by integrating.<sup>117</sup> Had the reform been undertaken for principle, integration in other southern games would have been expected as well. However, “most southern white universities did not rush to” invite integrated opponents for regular-season games, nor did they seek to integrate their *own* teams.<sup>118</sup> This lack of broader change provides evidence that integration in some southern bowls was motivated by economic self-interest, not by enlightened goodwill.

*E. As Non-Southern Teams Transitioned to Widespread  
Integration in the Mid-1940s, 1950s, and 1960s,  
Pressure Increased on Southern Teams to Do So as Well*

College sports remained a highly segregated institution in the early post-war years until it became apparent to universities, conferences, and bowl organizations that racial integration was essential to compete successfully.<sup>119</sup> Subsequently, college sports, which had already enjoyed some commercial success because of the popular intersectional contests and bowl games, began generating more significant revenue because of television.<sup>120</sup> This increased commercialization—especially for football and men’s basketball—gave universities even greater incentive to win games.<sup>121</sup> To improve the chances of athletic success, it became

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117. In the mid-1950s, integration in southern football was limited to southern bowl games. Martin, *supra* note 66, at 374.

118. *Id.*

119. To maximize athletic success, those institutions’ leaders needed to integrate teams to draw from the broadest possible sources of talent. See Davis, *supra* note 9, at 634–35; *supra* note 9 (denying that differences in physical ability are based upon innate racial differences).

120. DEMAS, *supra* note 6, at 4 (“The advent of television spurred institutes of higher education to embrace intersectional contests and a national sporting ethos, most notably in the formation of major athletic conferences, televised ‘bowl games,’ and a national ranking system.”); *id.* at 32 (describing “the postwar advent of television”); *id.* at 48 (describing how post-World War II “lucrative television contracts . . . forced segregated schools to consider accepting prestigious bowl bids without regard to the opponent” even those that included African American players); *id.* at 60 (characterizing as valuable the publicity afforded by nationwide television coverage); *id.* at 71 (describing the increase in the popularity and importance of football after World War II); Davis, *supra* note 9, at 634–35.

121. *E.g.*, DEMAS, *supra* note 6, at 56–57 (describing the financial benefits of building successful football teams in the form of “gate receipts[,] . . . local economic stimulus, . . . recognition, extensive television and print coverage, and the greater potential to play in

vitality important for universities not only to agree to play integrated opponents, but also to abandon the practice of excluding athletes from their own teams on the arbitrary basis of race.<sup>122</sup>

Not surprisingly, northern teams began integrating first in larger numbers.<sup>123</sup> Once the northern teams integrated, the pressure was on southern teams to do so as well.<sup>124</sup> Then, and only then—when the economic consequences of winning games became paramount—did many colleges integrate their own teams.<sup>125</sup> The 1966 NCAA basketball championship contest was a

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all-important bowl games”); *id.* at 140 (describing the “large economic payoffs” of “a school’s athletic achievement”).

122. *Id.* at 64; Davis, *supra* note 9, at 634–35; Martin, *supra* note 6, at 78–79. The first college football team with more than one or two African American players was UCLA from 1938 to 1941. DEMAS, *supra* note 6, at 22 (noting that the squad had five African American players). “UCLA’s on-field success garnered high national rankings and publicity.” *Id.* By allowing African American athletes to participate, UCLA was able to “compete . . . on a national level” and thereby to gain national prominence. *Id.* at 22, 30 (illustrating the economic advantages of integration).

123. DEMAS, *supra* note 6, at 2–3 (describing integration in northern colleges during periods of continued segregation in the South); *id.* at 7–10 (describing slow integration among northern teams before World War II but no participation by black football players on southern teams for decades after World War II); Spivey, *supra* note 78, at 122 (“Intercollegiate sports was cashing in on black athletes. The post-war era was the coming of age of big time intercollegiate sports and the final victory in collegiate athletics of the win-at-any-cost mentality.”).

124. DEMAS, *supra* note 6, at 3 (describing integration of SEC universities’ own athletic teams as beginning after 1966); Martin, *supra* note 59, at 172 (quoting a newspaper editorial advocating integration of University of Kentucky athletic teams: “Think of what a rich recruiting field the South would offer if its own schools started seeking out good Negro athletes, instead of losing them by default to the rest of the country!”); *id.* at 173 (describing both the competitive advantage Kentucky could gain over its SEC rivals by being the first to integrate and the view of administrators that athletic success could “upgrade the university’s national image”); Martin, *supra* note 6, at 73.

125. DEMAS, *supra* note 6, at 108 (describing the rich financial rewards schools obtained by the late 1960s from successful football programs and how “[b]lack student athletes—hitherto considered direct threats to social stability at southern universities—were now crucial to the imagined communities these very schools desired”); ELDER, *supra* note 53, at 84 (“I knew recruiting black players would give me a chance to have a better basketball team . . . I knew that adding black athletes would help us be more competitive.”); Forrest J. Berghorn et al., *Racial Participation and Integration in Men’s and Women’s Intercollegiate Basketball: Continuity and Change, 1958–1985*, 5 SOC. SPORT J. 107, 109 (1988) (describing the large increase in the percentage of black men’s basketball players in NCAA universities from 1948 through 1980); Martin, *supra* note 59, at 181 (describing Auburn University’s first admission of an African American basketball player in 1968 and the school’s defense that it was a “means of strengthening the various Tiger teams”); *id.* at 182 (describing the failure of the all-white football team at Mississippi State University to

dramatic watershed in the long path toward racial integration in college sports. The game pitted southern powerhouse and number-one-ranked University of Kentucky against tiny Texas Western College.<sup>126</sup> The Kentucky team was all white, while Texas Western fielded seven African Americans, all of whom were starters or top reserve players.<sup>127</sup> “For the first time ever in an NCAA final, five black starters played against five white starters.”<sup>128</sup> Texas Western’s victory shocked the college basketball world and changed the racial landscape of southern basketball forever.<sup>129</sup> The game demonstrated graphically that southern teams would have to integrate to remain competitive.

A similar watershed event took place for football in 1970 when the University of Alabama played the University of Southern California, led by several African American players, in Birmingham, Alabama.<sup>130</sup> This game represented Alabama’s first major intersectional home game in nearly twenty years<sup>131</sup> and resulted in its humiliating defeat.<sup>132</sup> While African Americans had theretofore attended Big Ten and Pacific-10 (“Pac-10”) schools, this game finally prompted the most staunchly segregated

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win even one game against an SEC rival from 1966 through 1969 once other SEC teams had begun to integrate and the coach’s subsequent recruitment of two African Americans); *id.* at 184 (asserting that LSU’s football success resulted from its decision in 1971 to begin recruiting black athletes); *id.* at 188–89 (describing the signing of the first African American football player at the University of Mississippi (“Ole Miss”) in May 1969 at a time when several other SEC schools were considering black prospects); *id.* at 189–90 (describing the University of Mississippi’s embarrassing loss to a formerly weak but recently integrated University of Southern Mississippi, prompting calls for Ole Miss to integrate); Martin, *supra* note 6, at 78–79 (noting that Texas Western College began the integration of southern college basketball in 1956 but that the two new African American players were required to live off campus because of continued dormitory segregation, illustrating that college officials were more interested in improving their athletic record than in advancing civil rights); *id.* at 80–84 (describing period of integration of basketball at southern universities and asserting it was undertaken to win games, not to further racial equality).

126. Martin, *supra* note 6, at 80.

127. *Id.*

128. *Id.*

129. *Id.*; see also ELDER, *supra* note 53, at 12–13. The Texas Western “team was (and still is) credited with hastening the desegregation of college basketball in the South.” DEMAS, *supra* note 6, at 112.

130. See ELDER, *supra* note 53, at 12; Martin, *supra* note 59, at 183.

131. Martin, *supra* note 59, at 183.

132. *Id.*

southern schools to open their doors to opportunities for African Americans.<sup>133</sup>

While many whites were unquestionably motivated by a desire for fairness and equality in the long evolution toward integration in college athletics,<sup>134</sup> the evidence strongly suggests that desegregation of these sports teams would not have occurred had it not also served the economic interests of the white college sports establishment.<sup>135</sup> In every major shift along that evolution, change was motivated by the leaders' economic interests while altruism was not always present.<sup>136</sup> Moreover, accommodating racial integration in college sports not only allowed universities to compete athletically and therefore to benefit commercially, it also carried no threat to the superior societal status of middle- and upper-class whites<sup>137</sup> because under amateurism, the athletes could not be paid and remained in economic peonage.<sup>138</sup>

#### CONCLUSION

The racial integration of NCAA football and men's basketball fits squarely within Professor Bell's thesis—that African Americans' interest in achieving racial equality advanced only

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133. ELDER, *supra* note 53, at 12; Martin, *supra* note 59, at 183.

134. See, e.g., ELDER, *supra* note 53, at 15; cf. Bell, *supra* note 8, at 525 (asserting in the context of educational integration that some whites were motivated by morality).

135. Cf. Bell, *supra* note 8 (describing interest convergence in the context of educational integration).

136. See *id.*; Davis, *supra* note 9, at 635.

137. See SHROPSHIRE, *supra* note 53, at 34 (noting that for African Americans to gain a representative role among sports managers, whites would have to give up power and that this has not occurred); Timothy Davis, *Who's In and Who's Out: Racial Discrimination in Sports*, 28 PAC. L.J. 341, 351 (1997) (reviewing KENNETH L. SHROPSHIRE, *IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA* (1996)) (stating that "racial equity in sports will be impeded by beliefs that African-Americans' gains translate into a corresponding loss of power by whites"); Martin, *supra* note 66, at 373 (describing white reluctance to include African Americans as associate members of the Sugar Bowl organization, a role that had formerly been reserved for whites); see also Bell, *supra* note 8, at 523 (noting generally that African Americans' interests will not be accommodated "where the remedy sought threatens the superior societal status of middle and upper class whites").

138. See DIV. I MANUAL, *supra* note 3, arts. 12.1.2, 12.4.1.1, 15.02.2, and 15.1; McCormick & McCormick, *supra* note 1, at 14; McCormick & McCormick, *Myth*, *supra* note 10, at 74 (noting that universities fail to pay athletes a competitive wage and thereby profit fantastically from their labor).

when it converged with European Americans' interests, but not when it conflicted with their superior societal standing.<sup>139</sup>

Although the racial integration of athletic teams in American universities has created opportunities for African American athletes to attend college, this privilege also requires them to experience the exploitation that accompanies the status of being an amateur "student-athlete."<sup>140</sup> Thus, while African American athletes may now participate in NCAA athletics, under the current NCAA amateurism regime, these young men are simultaneously exploited in that their work generates vast wealth that is reserved for the benefit of almost exclusively European American managers of college sports.<sup>141</sup> At the same time, the educations they receive are frequently of dubious value<sup>142</sup> and too often do not result in the conferment of a degree.<sup>143</sup> Now, instead of outright exclusion from college sports, young black athletes are exploited for the entertainment and profit of whites. This phenomenon, too, neatly fits Professor Bell's observation that "[w]hat appears to be progress toward racial justice is, in fact, a cyclical process. Barriers are lowered in one era only to reveal a new set of often more sophisticated but no less effective policies that maintain Blacks in a subordinate status."<sup>144</sup>

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139. See generally Bell, *supra* note 8.

140. Brooks & Althouse, *supra* note 53, at 304, 307 (describing the relationship between African American athletes and universities as one characterized by "exploitation"); Davis, *supra* note 9, at 678 (positing that the unconscious racism fostered by racist athletic stereotypes results in the "devaluation of the African-American student-athlete's academic interest," thereby raising the issue of the "exploitation of black student-athletes who provide valuable services, yet too often leave their institutions . . . without having obtained the academic preparation necessary . . . to cope successfully"); Edwards, *supra* note 9, at 9–10 (describing specific instances of African American athlete exploitation); McCormick & McCormick, *Emperor's*, *supra* note 10, at 506–07; McCormick & McCormick, *supra* note 1, at 16; McCormick & McCormick, *Myth*, *supra* note 10, at 74; cf. DEMAS, *supra* note 6, at 132–33 (describing the movement in the late 1960s in which African American athletes protested their treatment on the University of Wyoming football team as being "worse than [Jackie] Robinson's . . . experience at UCLA" in the late 1930s).

141. Cf. Davis, *supra* note 9, at 678 (characterizing as exploitative the regime in which African American athletes provide valuable services without receiving an adequate education).

142. E.g., McCormick & McCormick, *Myth*, *supra* note 10, at 135–55.

143. See *id.*; *supra* note 55 (regarding graduation rates).

144. DERRICK A. BELL JR., RACE, RACISM AND AMERICAN LAW 8 (3d ed. 1993).

Although barriers were lowered in the 1940s through the 1970s through the desegregation of college sports teams,<sup>145</sup> other policies remain—specifically NCAA amateurism rules—which have the effect of perpetuating economic and social exploitation and subordination of young African American men.<sup>146</sup> Much remains to be done to reform college sports. A good place to start would be to integrate further the ranks of university administrators, coaches, athletic directors, and conference and NCAA officials.<sup>147</sup> To accomplish full reform, however, athletes should have real opportunities to benefit from their college educations, and significantly, hypocritical NCAA amateurism rules should be repealed.<sup>148</sup> African American athletes should not be relegated to providing services virtually for free to benefit and entertain white Americans.

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145. Davis, *supra* note 9, at 633–37.

146. McCormick & McCormick, *Myth*, *supra* note 10, at 74.

147. See, e.g., SHROPSHIRE, *supra* note 53, at 121–27 (advocating for increased African American representation in the “power positions” of athletic management); Brooks & Althouse, *supra* note 53, at 304; Clark, *supra* note 57, at 351; Elmore, *supra* note 53, at 291–92; Floyd Keith, *Minorities are Separate and Unequal: A Look at Minority Hiring Practices in Collegiate and Professional Athletics*, in REVERSING FIELD, *supra* note 53, at 354; Cyrus Merhi, *The Critical Role of the Fritz Pollard Alliance*, in REVERSING FIELD, *supra* note 53, at 365; Kenneth L. Shropshire, *The Changing Landscape of African Americans in Sports*, in REVERSING FIELD, *supra* note 53, at 359, 361; Lapchick, *supra* note 45.

148. Establishing educational primacy would entail numerous reforms, including, for example: allowing athletes more time to study; giving them more freedom in selecting majors; scheduling fewer games; requiring less travel; assuring better pre-college academic preparation; giving more attention to academic ability in recruiting; and allowing athletes to return to college with a scholarship to graduate in case a professional career fails. See generally McCormick & McCormick, *Myth*, *supra* note 10 (describing multiple barriers to athlete education and advocating free-market compensation for Division I college football and men’s basketball players).

