Betting on Incentives

The intersection between the legal world and the economic world is often very interesting. The usual topic of debate centering on the deregulation or prohibition of some activity that is not criminal/immoral, per se, but rather permitted or banned for hosts of different reasons. The tension between the two sides of the argument reveals a great deal about the self-interests roiling in the economy. Who should get to [sale coffins](http://commoncents.blogwyrm.com/?p=360); what kind of a [license](http://commoncents.blogwyrm.com/?p=495), if any, should you have to work; How should the [internet be regulated](http://commoncents.blogwyrm.com/?p=324)?

Now add to that list: just how should we safeguard sports from the taint of gambling?

<>

On this, particular question, the Supreme Court has recently written a decision in the case [16-476 Murphy *et al* v. NCAA *et al*](https://www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf), basically declaring that *The Professional and Amateur Sports Protection Act* (PASPA) to be unconstitutional. PASPA outlawed states “to sponsor, operate, advertise, promote, license, or authorize by law or compact” gambling on competitive sporting events. The Supreme Court sided with the State of New Jersey (Murphy, who is Governor) that the law violated the Constitution’s [anticommandeering principle](http://tenthamendmentcenter.com/2015/02/03/anti-commandeering-the-legal-basis-for-refusing-to-participate/) (10th Amendment) by not outlawing sports gambling but rather proscribed the States from legalizing it.

Of course, the Federal Government couldn’t outlaw sports betting as four states already permitted such activities, the most prominent example being the State of Nevada and its glitzy mecca: Las Vegas, and so it simply outlawed any other states from opening the door. The status quo may have persisted longer except for the rise of online sports betting. As Richard Wolf points out in his USA TODAY piece [*Supreme Court strikes down ban on sports betting in victory for New Jersey*](https://www.usatoday.com/story/news/politics/2018/05/14/supreme-court-strikes-down-ban-sports-betting-new-jersey/1053022001/),

<What has made the [PASPA] law anachronistic is the advent and rapid growth of Internet gambling. Rather than stopping sports betting, it helped push more of it underground, creating a $150 billion annual industry. That dwarfs the $5 billion bet in Nevada, the lone state with a legal sports book that preceded the federal law.>

With that much money on the line, it was no wonder that various states and municipalities wanted their hands in the boodle bag. The key question is why did the National Collegiate Athletic Association (NCAA) (along with the big four mens professional sport leagues) bring multiple actions to block New Jersey’s desire to legalize sports betting?

The surface answer to this question is simple. These businesses look to guard their interests in the integrity of the game, an interest that grew out of past scandals. The most well-known example is the scandal of the [Black Sox](https://en.wikipedia.org/wiki/Black_Sox_Scandal), in which members of the Chicago White Sox are accused of throwing the 1919 World Series in exchange for money from a gambling syndicate. The most important example for the NCAA is the [City College of New York point shaving scandal in 1951](https://en.wikipedia.org/wiki/CCNY_point_shaving_scandal), in which numerous college players, across many teams, were implicated in fixing games for quick money. Both of these scandals severely damaged public trust in organized sports, in turn damaging the marketability of the product these leagues offer.

But does this answer really hold water? According to [Supreme Court Ruling Favors Sports Betting](https://www.nytimes.com/2018/05/14/us/politics/supreme-court-sports-betting-new-jersey.html) by Adam Liptak and Kevin Draper of the NY Times

<Officials across sports have for years complained that legalized wagering would lead to the corruption of their games through match-fixing, though there is no indication that is a realistic concern. Sports betting is legal and wildly popular in Britain, for example, but the integrity of the Premier League has not suffered. In fact, legalizing gambling allows companies and leagues to monitor gambling patterns and flag betting irregularities that could suggest corruption.>

Liptak and Draper conjecture that:

<The leagues and their teams long fought efforts to make it so, because, among other reasons, they were not assured of being able to directly tap into the new, vast revenue stream.>

suggesting something akin to professional jealousy.

I think that the real answer, at least in the case of the NCAA, lies deeper in the fact that their economic viability depends on what is essentially an indentured workforce. The reason that college players are interested in ‘quick money’ is that they are the primary talent for a multi-billion-dollar industry but share in very little of the benefits.

Sure, they receive tuition remittance (i.e. scholarship) from the institution that they attend and won’t be burdened with student debt for an education that may be worthless (as so many degrees seem to be these days) but that’s about it. They have to work very hard for this perk. Often, they have to risk their health in meeting their athletics obligations. They don’t have the amounts of free time other students have and they are subjected to substantial limitations on their free speech and their pursuit of economic success.

I am not arguing that they should be given a better deal or that the institutional agreements are unfair. These students have decided, for a variety reasons known only to them, to engage in a contract with the colleges and universities. And it is true that some of them strike it rich after they’ve paid their dues as college players by joining the professional leagues; but the percentages are quite low and the promise of a fat payday will only keep a small fraction of the players in line.

Rather, I am simply arguing that the amateur athletes feel a lack of equity (in the economic sense) and can be tempted easily by gambling. The cleanest way for the NCAA to protect the integrity of the game is to drop the fig-leaf illusion of student-athletes – an idea may have made sense decades ago when intercollegiate sports was more a tradition and far less a business – and pay the students.

A bit of reflection should show that PASPA never really protected collegiate sports as intended. Any sufficiently industrious player can figure out a way to thwart the ban on sports gambling. Maybe Johnny the star wide-receiver can’t bet but second cousin George can and how can we prevent them from conspiring to fix a game. The better course of action is to provide Johnny with an economic incentive to play honestly; but doing so cuts into NCAA profits. Rather the NCAA would rather have the government bear the cost of safeguarding the integrity of the sport – an unsportsmanlike attitude if there ever was one.