

## Chapter 8

# Race and Gender Issues in Intercollegiate Sports

*I would never in my wildest dreams thought there would be so many [Black coaches] in the [ACC]. But these days, schools look for the best person for the program. Presidents and chancellors look at ~~is~~ as, 'Who can get us to the NCAA tournament . . . ' ?*

— Bob Wade, Former Head Maryland Men's Basketball Coach

replace "is" with "it"

"former" not capitalized?

*52% of NCAA football players and 61% of NCAA men's basketball players are African-American, compared with 12.5% for the general U.S. population . . . [t]he excess revenues generated by these . . . athletes are spent on other programs (sports and academics) elsewhere on campus where the population is often predominately white.*

— Daniel Rascher, Sports Economist

should this be capitalized? it is not an official job title like NCAA President

*We're not anywhere close to where we need to be in football. . . . I'm encouraged that coaches of color are appearing as finalists for positions, but seven out of 119, that's just too darn low.*

— Myles Brand, NCAA President

### 8.1 Introduction

In Chapter 3 we focused on the labor market for college athletes. You learned that in traditional competitive labor markets, economists expect workers to be paid according to their marginal revenue product (MRP), their contribution to a firm's profitability. The NCAA's cartel position, however, allows some athletes to receive

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compensation that is far less than what they contribute to the team's bottom line, while a majority of athletes (particularly those in non-revenue generating sports) may receive compensation greater than their MRP.

In this chapter we examine another factor that influences athlete participation and compensation — racial and gender discrimination. We will examine the extent to which discrimination occurs and the economic motivations for and consequences of discrimination. Finally, we will look in-depth at Title IX, the highly controversial 1972 legislation intended to increase opportunities for female athletic participation and to promote gender equity in sports programs offered by educational institutions. We will follow Title IX along its legislative and legal journey, examine its costs and benefits, and clear up some commonly held misconceptions.

### **8.2 Does Discrimination Exist in College Sports?**

Instances of discrimination occur in all aspects of life, so there is no reason to believe that college sports are immune. The question is whether or not discrimination is widespread and systemic, or whether it occurs only sporadically, in isolated cases. How we answer that question can help us determine the appropriate policy response. A widespread problem might call for a more sweeping policy action, while sporadic instances might be better handled through the courts. Before we worry about policy, we need to identify the relevant types of discrimination, and then determine the extent of the problem.

#### **8.2.1 Wage and occupational discrimination**

Labor economists distinguish between two main forms of discrimination, wage discrimination and occupational (or employment or access) discrimination. **Wage discrimination** occurs when workers from different demographic groups (race, gender, ethnic) earn different pay for the same job. Not all wage differentials are discriminatory; some are attributable to discrepancies in education, skills, or experience. Only when someone receives greater or less pay due

to their gender, race, ethnicity, religion, age, or sexual orientation is it considered wage discrimination. **Occupational discrimination** refers to disparities in access to certain types of employment. If women, for example, are not allowed to coach football because of their gender, that is occupational discrimination. Alternatively, if a woman is passed over for a football coaching job in favor of a qualified male coach with more training and experience, that would not be considered occupational discrimination.<sup>1</sup> As we turn now to measuring the problem of discrimination, we look first at occupational discrimination.

*The Racial and Gender Report Card* (Lapchick, 2005), put out by the Institute for Diversity and Ethics in Sport at the University of Central Florida's DeVos School of Sport Business Management, presents data on both professional and college sports, issuing grades on progress toward racial diversity and gender balance. Specifically, the performance of the NCAA and its member schools is compared to Major League Baseball (MLB), Major League Soccer (MLS), the National Basketball Association (NBA), the National Football League (NFL), and the Women's National Basketball Association (WNBA).

Data are collected from and verified by the NCAA. Though data from all NCAA divisions are included, in most categories grades are only issued for the Division I level. Grades are based on how well the racial and gender profiles in colleges and professional sports organizations compare to the general population. An "A" for race is earned if the racial profile of employees (measured as a percentage of total employees) matches the racial profile of the population. For the 2004 survey, an "A" required that at least 24 percent of employees (or student-athletes) were people of color. A "B" was earned for 12% representation, and a "C" for 9%.

On the gender side of the *Report Card*, employing 40% women earned an "A," 35% received a "B," 30% a "C," and 25% for a "D."

<sup>1</sup> That does not mean, however, that it is not the product of some past discrimination, and that's where the matter gets sticky. Even if current employers are non-discriminatory in their hiring practices, the system may still be biased against applicants who, as a result of prior discrimination, were unable to acquire the necessary qualifications to compete in that labor market.

Anything below 25% received a failing grade. In the section of this chapter on Title IX, we will see that earning an "A" grade for gender in *The Racial and Gender Report Card* does not necessarily equate to compliance with the law.

The report for the 2003–2004 academic year, issued in June 2005, reveals that college sports are near the bottom in terms of racial diversity (just ahead of Major League Soccer), but, perhaps not surprisingly, better than all men's professional leagues in terms of gender (only the WNBA scored better for gender). The grades reflect improvement in intercollegiate gender balance from the 2003 report, but a worsening of representation by racial minorities.

The report card evaluates college sports from top to bottom, issuing grades for NCAA headquarters, conference commissioners, athletic directors, head coaches, assistant coaches, associate and assistant athletic directors, university presidents, senior women's administrators, faculty athletic representatives, professional administration, and student-athletes. While the NCAA received an overall B– for race and a B+ for gender, performance at the different levels in the NCAA hierarchy varies tremendously. Grades for each group appear in Table 8.1.

As Table 8.1 reveals, higher grades for racial and gender diversity tend to be earned at lower levels in the system. There are exceptions, but the NCAA and its members score well in hiring assistant and associate coaches and directors, but do poorly in the higher ranks of coaching and administration. On the gender side, this is consistent with the "glass ceiling"<sup>2</sup> commonly reported in non-sports corporations.

Turning now to wage discrimination, college basketball provides the most directly comparable evidence of gender discrimination in the coaching ranks. In 1997, the base salary for a female head coach of a Division 1A women's basketball team was US\$60,603, only 61% of the US\$99,283 base pay received by male head coaches

change "1A to I-A" (number 1 to capital i)

<sup>2</sup> The "glass ceiling" refers to the circumstance where women's advancement beyond certain corporate management levels is limited. The ceiling (upper limit) is glass because it is often not readily discernible (i.e., transparent).

**Table 8.1.** Grades for the NCAA from *The 2004 racial and gender report card*.

	Grade for race	Grade for gender
NCAA Headquarters	B+	A+
Division I Conference Commissioners	F	F
Division I-A University Presidents	F	F
Division I Athletic Directors	F	F
Division I Associate and Assistant Athletic Directors	C	C
Senior Women's Administrators	B-	A
Division I Faculty Athletics Representatives	D+	F
Division I Professional Administrators	B	C
Head Coaches: all Division I Men's Teams	B-	N/A
Head Coaches: all Division I Women's Teams	C	A
Head Coaches: Division I Football Teams	F	N/A
Head Coaches: Division I Men's Basketball Teams	A	N/A
Head Coaches: Division I Women's Basketball Teams	B-	A+
Assistant Coaches on Men's Teams	A-	N/A
Assistant Coaches on Women's Teams	B+	A
Student-athletes	A/A+	A

Source: Lapchick (2005).

of men's teams (Zimbalist, 1999, p 80). This does not include additional compensation opportunities typically available only to men, including product endorsements, broadcasting, performance bonuses, and speaking engagements. Defenders of these pay differences argue that they are justified because men's basketball generates positive net revenue while women's basketball does not. To the extent this is true (despite perceptions, few college sports programs, men's or women's, actually pay for themselves), coaches of men's teams would have greater MRPs than for women's teams, and the salary differentials could be justified by the productivity differences. However, part of the revenue differential between men's and

women's programs results from greater institutional spending on publicity, facilities, equipment, and support staff for men's sports (Zimbalist, 1999, p. 86). Furthermore, even if the pay disparities are solely the result of market forces, most colleges and universities receive support from public funds and should have some accountability to the public interest. As Zimbalist (1999) points out,

... the drive toward gender equity in intercollegiate athletics has caught the NCAA in its ultimate contradiction. When the NCAA wants to protect its members from payroll taxes, unrelated business income taxes, and antitrust review as well as to preserve their tax-exempt bonding status, it raises the lofty banner proclaiming college sports, above all else, to be an integral part of the larger educational enterprise. Yet when women's demands for equal access to educational resources becomes too strident, the NCAA and its member schools are quick to point out the inherent commercial nature of big-time college sports. As long as the struggle for gender equity endures, intercollegiate sports will be confronted with this deepening identity crisis. (p. 89).

delete the period

In a study of over 3600 NCAA basketball coaches, sociologist Mikaela Dufur (2000) identified a number of explanations for occupational disparities between White male, female, and minority coaches. These include productivity, human capital, social and professional connections, family structure, and an institution's exposure to Title IX. Differential impacts of these factors across racial and gender lines suggest that discrimination is still a going concern. For example, coaching productivity was a necessary characteristic for female and minority coaches; strong productivity helped White males secure coaching positions, but low productivity did not adversely affect them.<sup>3</sup> In the area of human capital,

<sup>3</sup> According to Dufur (2000, p. 281), the issue of productivity is complex, as there are many ways it can be measured. Winning percentage, number of championships, tournament appearances, fundraising, recruiting, and graduation rates are all potential measures of success. Which measure is appropriate depends, in part, on the level of the institution. Prominent Division I-A schools emphasize athletic success; Division III schools are more likely to favor high graduation rates.

White males had a significant advantage if they had professional playing experience. Women did not have the same access to such opportunities, and the stereotype of minority players was that they reached the professional level more because of natural ability than from hard work and intelligence. In the area of family rearing, having children appeared to benefit White male coaches, but negatively impacted minority women's coaching prospects.

### 8.2.2 Other forms of discrimination

There are other, more subtle forms of discrimination that may exist in college sports. In Chapter 4 we discussed how admission requirements such as those in Proposition 48 may be racially biased, particularly if they are based on standardized tests that put racial minorities at a disadvantage relative to White students. Given the already disadvantaged educational backgrounds of some minority student-athletes, racially biased admissions tests would increase the likelihood of minority players being unable to secure athletic eligibility. For some, this would close off the only avenue to economic advancement, whether that student has the potential for a professional sports career or merely needs the scholarship access to complete a college degree and earn a decent wage.

The media also discriminates, both on the basis of gender and race, in its presentation of college sports. On the gender side, as one would expect, coverage is heavily tilted toward coverage of men's sports. Some would say that this is evidence enough of gender discrimination, and that even if media providers are just broadcasting what the public "wants," the media is responsible for perpetuating those gender-biased wants. Beyond the quantitative differences in coverage, there are two other important ways in which media coverage is gender-biased. **First**, studies suggest that presentation of women's sports often sexually objectifies the female athlete. Rather than present women's sports for fans to enjoy the contest or athleticism as they would with men's sports, some women's sports coverage becomes an exercise in sexual voyeurism (Messner, Duncan, and Cooky, 2003).

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*Second*, the language used to describe female athletes and their play exhibits gender bias. An analysis of the 1989 men's and women's NCAA basketball tournaments revealed some subtle but pervasive forms of discrimination (Messner, Duncan, and Jensen, 1993). This includes practices such as **gender marking**, identifying a sport by gender. References were made to "The Women's Final Four" and the "NCAA Women's National Championship Game," but the men's contests were simply "The Final Four" and the "NCAA National Championship Game." Additionally, commentators would often refer to ~~women~~ as "girls," "young ladies," and "women." ~~Boys~~ were referred to as "men" or "young men," but never as "boys." Finally, and perhaps most illustrative of biased attitudes, commentators' analysis of men's and women's play differed in important ways. Men succeeded because of talent, instinct, and intelligence; they failed because of the abilities of their opponents. Women also succeeded for the reasons men did, but also because of luck, togetherness, and family. Women's failures were attributed to nervousness, lack of confidence, and lack of aggression, not because of the strength of the opposition.

Media discrimination along racial lines is revealed in how commentators comparatively describe the accomplishments of White and Black athletes. White players succeed because of intelligence and hard work; Blacks because of natural athleticism (Messner *et al.*, 1993). Regardless of the intentions of commentators, their choice of language perpetuates both racial and gender stereotypes.

A final and unique form of discrimination that has drawn considerable attention in recent years comes in the form of mascots. A number of schools, when they formed athletic teams and looked for symbols to rally fans around, chose Native American based nicknames and imagery. Some names were generic (Arkansas State *Indians*; Bradley *Braves*), others were linked to specific tribes with historic, if not present, connections to the area (Florida State *Seminoles*; Illinois *Illini*). All have drawn criticism from the Native American community. The complaint is that Native Americans are portrayed as primitive and savage, perpetuating long-standing stereotypes that hinder Native American acceptance and integration into the rest of American society. Defenders of these schools,

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replace "women" with  
"female players"replace "Boys" with "Male  
players"



including some within the Native American community, claim that their use of Native American mascots is done in a way that honors and respects those cultures.

In August 2005, the NCAA announced that it would prohibit the use of Native American mascots during postseason events. Effective February 1, 2006, team uniforms or other apparel worn during an NCAA tournament were not allowed to portray any nicknames or mascots considered "hostile or abusive." No mascot prohibition was extended to pre- or regular season contests, or to other college or university events.

Schools have responded to the mascot ban in a number of ways. Some have changed their nicknames and imagery; the St John's *Redmen* became the *Red Storm*, and Marquette University changed from the *Warriors* to the *Golden Eagles*. Other schools, such as the University of North Dakota (*Fighting Sioux*) and Bradley, have appealed the ban. The NCAA and North Dakota are currently locked in a court battle over the issue. Florida State, Central Michigan (*Chippewas*), and Utah (*Utes*) received the support of local Native American tribes, and were allowed to retain their nicknames and logos.

*Fast fact.* In 2002, an intramural basketball team at the University of Northern Colorado adopted the nickname "The Fighting Whities," complete with a logo of a middle-aged White man. The team, comprised of Native Americans, Hispanics, and Whites, chose the mascot to protest nearby Eaton High School's refusal to change its nickname (the Fightin' Reds) and logo (a Native American caricature). The nickname "Fighting Whities" drew a mixture of support and criticism, and generated a fair amount of entrepreneurial activity. To make their point clearly understood, the team printed and sold t-shirts with their nickname and logo, and added the phrase "Fighting the use of Native American stereotypes."

Banning Native American mascots raises questions about other potentially offensive team symbols. Should Notre Dame be forced to change mascots if the Irish community objects? What about the

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On February 21, 2007, Illinois retired Chief Illiniweek, bringing the University in compliance with NCAA regulations, and becoming eligible to host post-season NCAA contests.

Bethany College *Swedes* or Albion College *Britons*? If Native American caricatures are banned, what about the Florida Southern College *Moccasins* or the Massachusetts College of Liberal Arts *Mohawks*? In the interest of religious tolerance, should the NCAA ban the mascots of the Earlham College *Hustlin' Quakers* or the Ohio Wesleyan University *Battling Bishops*?

On a more serious note, the NCAA has effectively banned schools in Mississippi and South Carolina from hosting pre-set post-season contests (like March Madness) because both states fly the Confederate flag. In January 2007, the NCAA considered extending the restrictions, but the Minority Opportunities and Interests Committee decided against it. Their position was that, unlike mascots, colleges and universities could not control the states' placement of the "hostile and abusive" symbols ("NCAA keeps policy," 2007).

Whether one views the mascot issue as a legitimate social concern or as political correctness run amok, there is no question about the economic implications for the schools involved. Fans spend hundreds of thousands of dollars (and more) on merchandise depicting their team's logo. The costs of designing new mascots and replacing old images can be extensive. On the other hand, schools failing to comply can lose significant revenues if they are unable to host or participate in postseason events. In the middle of all this are some alumni and boosters that donate millions to these universities. Some have tied their contributions to the continued use of Native American imagery, putting school officials in the uncomfortable position of either accepting the money but incurring the wrath of the NCAA, or turning down hefty sums to be in compliance.

replace "that" with "who"

replace "used" with "use"

*Fast fact.* The University of North Dakota's hockey team plays in the Ralph Engelstad Arena, known affectionately as "The Ralph." Engelstad financed the US\$104 million arena under the condition that the Fighting Sioux name and imagery remain. The arena is under the ownership and control of an Engelstad trust until 2033, when the arena becomes university property.

### 8.3 The Economic Explanation for Discrimination

Most people would agree that it is wrong to discriminate on the basis of race and gender. Even if it were not illegal, most would object to discrimination on moral and ethical grounds. Most economists would agree with the moral and ethical arguments, and yet economists recognize that discrimination can sometimes be an economically rational behavior.

Discriminatory attitudes develop from many factors outside the normal purview of economic analysis. Broader social and psychological forces are at work forming racial and gender biases. Regardless of the source, discriminatory behaviors that result may still be economically rational, even if they result in monetary losses. Economist Gary Becker's (1971) **taste for discrimination** model identifies three different types of discrimination that we can apply to the sports industry: employer discrimination, employee discrimination, and consumer discrimination.

**Employer discrimination** occurs when employers (coaches, general managers, and/or owners) favor a certain race so much that they are willing to make material sacrifices (i.e., less revenue or profit) in order to have employees (players and coaches) of a particular racial profile (Becker, 1971, p. 39).<sup>4</sup> In professional sports this means paying higher salaries for preferred-race players or coaches, or discriminating against non-preferred race players and coaches in the hiring process. In college sports, where the maximum "wage" for a player is limited to a full-ride scholarship, discrimination may take the form of offering scholarships disproportionately to preferred-race players.

**Employee discrimination** in sports (teammate or **player discrimination**) occurs when players refuse to play with members of a non-preferred race, or require additional compensation above the amount necessary to secure their services on a racially homogenous team (Becker, 1971, p. 55). Player discrimination was common

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<sup>4</sup> While this explanation of Becker's model focuses on race, the analytical framework also applies to discrimination on the basis of gender, religion, disability, and sexual orientation.

in the United States until the last 25 years or so of the 20th century, especially around the moments when racial integration in sports was beginning, but cases of player discrimination now appear to be mostly isolated events.

**Consumer discrimination (fan discrimination)** occurs when fans are biased against a particular race and willing to pay more to see preferred race players than non-preferred race players (Becker, 1971, p. 75). As we developed in Chapter 3, economists expect firms to hire inputs so long as an input's marginal revenue product (MRP) exceeds the cost of securing its services. Fan demand (both live and via media) generates the revenue for the sports product and, by extension, the demand for the inputs that produce it (what economists call **derived demand**). If fan discrimination is present, fans have a greater willingness to pay to see preferred race players, and the MRPs of those players will exceed those of non-preferred race players. Under those circumstances, discriminating against the non-preferred race may reap financial rewards for the team, making discrimination economically rational, even if it is morally reprehensible.

One alleged example of consumer discrimination in college football is **booster discrimination**, and it appears to be directed toward the coaching ranks. Only seven of 119 Division I-A football programs have Black coaches, and some have attributed the lack of diversity to the influence of predominantly White boosters wanting same-race coaches. Boosters, as they have since the beginning of college sports, want their contributions to exert influence. Some boosters may believe that their influence is weakened if the coach is of a different race, and athletic directors do not want to risk alienating the big spending boosters. As University of Washington Coach Tyrone Willingham put it, "It is access to power. It is about asking, is my access to power diminished because of diversity?" (*New York Times*, January 28, 2007)

insert "allow them to"

*Fast fact. Tyrone Willingham, who is Black, coached at Notre Dame for three years before being fired, and replaced by Charlie Weis, who is White. The reason for Willingham's termination was the team's*

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*failure to win big games, but Weis has not exactly flourished in high-profile contests. Comparing the two, Jon Wilner (2007) asks "So why has not Irish Coach Charlie Weis been fired?"*

In Becker's model, the degree of bias can be represented with a **discrimination coefficient** (Becker, 1971, p. 14). The coefficient can be thought of in a couple of different ways. *First*, it can represent how much extra it "costs" to hire employees of the non-preferred race. These costs represent the disutility resulting from having to interact with the non-preferred race. *Second*, the coefficient can represent how much extra employers are willing to pay for preferred race (or gender) employees over non-preferred race employees. Suppose for example that Alex and Brandon both have an MRP of US\$12 per hour, but Alex is White and Brandon is Black.<sup>5</sup> If a biased employer prefers White employees and has a discrimination coefficient of US\$3 per hour, and the market wage is US\$12 per hour, the employer will view the cost of employing Brandon as US\$15 per hour. Alternatively, one can view the discrimination coefficient as how much more the employer is willing to pay to have a preferred race employee. If the employer is selling in a competitive market, the higher costs faced to satisfy racial bias will make it difficult to compete against firms unwilling to pay a **race premium** for preferred race employees.

As another example of how the discrimination coefficient can produce less than economically efficient hiring decisions, suppose that Brandon's MRP is US\$14 per hour, US\$2 per hour higher than Alex's. With a discrimination coefficient (US\$3) greater than the difference in their MRPs (US\$2), the employer will hire the less productive Alex, and pay more to get him! Brandon would have to be

<sup>5</sup> The authors considered thoughtfully whether to use the term "African-Americans" or "Blacks." We opted for the latter for two main reasons: *First*, there are many NCAA athletes of color that are not American. *Second*, organizations that work to eliminate discrimination in college sports or promote the advancement of racial minorities tend to use "Black" in their names. We will only deviate from that convention when necessary to accurately represent quoted sources.

at least US\$3 per hour more productive than Alex, or receive at least US\$3 less per hour, in order for Brandon to be hired over Alex.

Becker (1971) argued that under competitive market conditions, discrimination by employers would not last. Discriminating firms would pay wages to the preferred race that were too high, and not secure the most productive workers by excluding non-preferred race employees. The economic losses incurred by discriminating would either drive firms out of the market or require them to stop discriminating to be economically viable. In the case of fan discrimination, however, discriminating against the non-preferred race may not only be economically viable, it may be the most profitable course of action.

As we have seen many times throughout this book, the structure and dynamics of college sports makes it somewhat different from professional sports and non-sports business operations. Do these differences suggest anything about whether college sports are more or less likely to discriminate? If college sports programs attempt to profit-maximize, then the decision to discriminate only makes sense if the fans demand a particular racial profile. Even then, discrimination may have adverse economic effects for a sports team. If satisfying racial bias comes at the expense of a less talented pool of athletes, the team may sacrifice competitive success. Fans may have a taste for a particular racial group, but they also have a taste for winning. Less success on the field or court may adversely affect ticket sales and profit (suggesting that the MRPs of the preferred race players fall below those of the non-preferred race players). An additional consideration is that almost every college and university receives some type of federal and state financial support, be it through a direct budgetary support or student financial aid. Colleges risk losing that government-based financial support if found guilty of discrimination.

If college sports are not driven by profit-maximization, does that increase or lessen the likelihood of discrimination? Absence of a profit motive, on the one hand, would free colleges from the economic pressures of fan discrimination. On the other hand, discrimination by coaches or management that is not supported by fans could not be punished effectively by the market. Based on the data

from the race and gender report card, discrimination in the coaching and administrative ranks does not generate sufficient monetary costs to discourage its occurrence.

Even when the market punishes discrimination, it will often persist when it is motivated by non-economic considerations. As reflected in the race and gender report card, racial minorities are underrepresented in head coaching positions. In their study of NCAA Division I men's basketball programs, George Cunningham and Michael Sagas (2005) found evidence of occupational discrimination, and two explanations for it that do not bode well for improving diversity. The first explanation, **homologous reproduction**, is that those in power are most likely to hire someone with similar social and physical characteristics (particularly race and gender). The second, **self-categorization**, argues that out of a need to boost self-esteem by comparing themselves to others, those in power positions will hire like individuals. The two explanations are complementary and both suggest that White head coaches will hire more White assistant coaches relative to the pool of applicants, and that Black coaches are more likely to hire Black assistants. Given that new head coaches are drawn from the assistant ranks, and given the predominance of White head coaches, Cunningham and Sagas' findings suggest that these biases will only perpetuate the lack of diversity in the head coaching ranks.

Coaches are in a unique position in that in many cases they are both employers and employees. Especially in the college system, coaches decide whom they want to pursue with scholarship offers and, subject to the constraint of what admissions committees will allow, coaches decide which student-athletes to bring to the team. At the same time coaches are employees and may themselves be victims or beneficiaries of employer discrimination. Those coaches that are hired as a result of employer discrimination on the part of the athletic director or upper administration may be expected to extend that preferential treatment in the recruitment of players. For reasons identified above, there is a tendency for head coaches to hire assistant coaches of their same race.

Coaches represent the athletic director and upper administration. In the language of economists, the coach is the **agent** and the

administration hiring the coach is the **principal**. If coaches have and act on a taste for discrimination not shared by the athletic director and upper administration, then a **principal-agent problem** occurs. In general economic terms, the principal-agent problem occurs when the principal and the agent have conflicting interests, and the agent, acting on behalf of the principal, behaves in ways harmful to the principal. In a large corporation the principal might be the stockholders wanting maximum share value or dividends, while the agents are the managers trying to maximize their salaries and budgets. If a coach is discriminatory and upper administrators and fans are not, we would expect less-than-optimal outcomes for the program, both financially and on the field of play.

#### 8.4 Discrimination Remedies and Long Term Prospects

Legal remedies for discrimination already exist. The 1964 Civil Rights Act, along with subsequent amendments, make discrimination on the basis of race, gender, ethnic origin, etc. illegal and open for litigation by injured parties. **Title IX**, which we shall examine shortly, addresses the issue of gender equity at the player level. Racial inequity at the player level does not appear to be a widespread problem as previously blocked minorities are now overrepresented in some sports relative to the student population.

As the racial and gender report card reveals, under-representation of minorities and females occurs in the coaching ranks, but is most egregious at the level of athletic director and above. **Title VII** of the Civil Rights Act addresses treatment of employees, requiring equal treatment in terms of hiring, compensation, and workplace conditions. As with Title IX, private litigation is the usual means by which discrimination is remedied.

Although the members of the NCAA fail to achieve racial and gender diversity in the most prominent positions, there may be reason to believe that that will improve over time. Current imbalances are frequently the result of past imbalances, so as diversity improves at the lower levels, one might see this trickle up as more minority and female players move through college athletics and



aspire to coaching and administrative positions. This is not to say that the NCAA could not achieve greater diversity more quickly, but even in the absence of deliberate action, the change will come eventually.

## 8.5 What is Title IX?

*The principle objective of Title IX is to avoid the use of federal money to support sexually discriminatory practices in education programs such as sexual harassment and employment discrimination, and to provide individual citizens effective protection against those practices.*

— Civil Rights Division of the U.S. Department of Justice  
(2001b)

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Title IX is the legislation that has probably generated the most controversy, in both legal courts and the court of public opinion, that college sports has seen over the past 35 years. Supporters point to the dramatic growth in women's sports as evidence of both its necessity and its success. Opponents decry the loss of participation opportunities for male athletes. The remainder of this chapter describes what Title IX is, what it is not, and evaluates the benefits and costs of this highly contentious legislation.

Title IX is part of the 1972 Education Amendments of the 1964 Civil Rights Act. The law prohibits any educational program or activity that is receiving federal funds from discriminating on the basis of gender. Forms of discrimination include exclusion from participation and denial of program benefits. The law covers schools ranging from the elementary to college levels, plus any other institution that offers educational programs and receives federal financial assistance, even if the institution's primary mission is not educational. Title IX applies to virtually every program an educational institution might offer. As it applies specifically to athletics, the law states that

No person shall on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any

interscholastic, intercollegiate, club or intramural athletics offered by a recipient [of federal financial assistance], and no recipient shall provide such athletics separately on such basis.<sup>6</sup>

Title IX requires that schools “effectively accommodate the interests and abilities of members of both sexes,”<sup>7</sup> which has meant providing equal opportunities for male and female athletes in the following three ways:

1. Proportionality in participation opportunities — the percentage of a gender group represented in the student population must match the percentage of that gender group represented on athletic teams.
2. Proportionality in scholarship dollars — the percentage of a gender group represented in the student population must match the percentage of athletic scholarship dollars going to that gender group.
3. Equity in other program benefits — both gender groups must receive comparable benefits in terms of practice and competitive facilities, equipment, coaches, travel, recruiting, and scheduling of games and practices. This goes beyond simply providing facilities, equipment, etc. to both genders; it requires that the *quality* of those benefits be comparable.

The basic principle of Title IX is captured in the following analogy ~~often used by its proponents~~. Suppose there is a community school with 100 students, where 50 are female and 50 are male. Now suppose that in the school, there are only 20 desks for female student use, but 50 available for male students. Alternatively, suppose that IBM donates computers to the school, but only male students (or only female students) are allowed to use them.

Most would agree that the inequities portrayed in our fictitious school should not be tolerated, and in fact both cases would clearly

<sup>6</sup> 65 Fed. Reg. 52872 at § \_\_\_\_ .450 (a) as cited in USDOJ (2001a, p. 93).

<sup>7</sup> 34 CFR § 106.41 as cited in USDOE (2003, p. 15).

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violate Title IX's provisions. Proponents of Title IX and gender parity in sports argue that athletics should be treated no differently than any other educational program.

### 8.6 How is Compliance Assessed?

The list above might suggest that assessing compliance is easy — schools that achieve proportionality in participation and scholarships, and equity in program benefits, are in compliance; those failing to meet any of those three standards are not. It was recognized early into Title IX's existence that compliance was difficult for any school to attain, and was especially difficult if the percentages of males and females interested in athletic participation did not already match their relative proportion to the student population. This gave rise to the **three-part test** implemented by the Department of Health, Education, and Welfare's 1979 *Intercollegiate Athletics Policy Interpretation*. This test judges an institution to be in compliance if it satisfies one of the following three provisions (as cited in <sup>8/9</sup>U.S. Department of Education [USDOE], 1996):

1. The ratio of male to female athletes is "substantially proportionate" to the ratio of male to female undergraduates enrolled at the institution.
2. The institution has one sex underrepresented but can demonstrate a "history and continuing practice of program expansion" for the historically underrepresented sex.
3. The institution cannot satisfy either of the first two tests, but can demonstrate that "the interests and abilities of the members of that [underrepresented] sex have been fully and effectively accommodated by the present program."

### 8.7 What Does Title IX Not Require?

There are many misconceptions about what Title IX includes. Some of the misunderstanding has been sown by the opponents of Title IX; some has resulted from misreading or changes in the law.

ital

Specific misconceptions, followed by the correct interpretation, include:

1. *Title IX requires schools to cut participation opportunities.* Title IX does *not* require that any school eliminate teams or reduce the number of participants on teams. Reducing participation opportunities for one gender (typically males) is one option schools have, but it is up to each school to decide where and how to achieve proportionality. For reasons we will examine later, Title IX has been blamed for cuts in men's programs, but the law does not mandate any reductions in programs for either gender. Still, some schools have chosen to comply by limiting men's sports. However, as Title IX scholars Linda Carpenter and Vivian Acosta (2005, p. 159) explain, "Capping team roster size [for men] is legal, but doing so is not within the spirit of Title IX because it does not provide fuller access to opportunities long denied to females. The action is a sham and a shell game, but it is legal. It is a substitute for reevaluating bloated or expansive budgets for some favored men's teams, but it is legal."
2. *Title IX requires that there be an equal number of teams for each gender.* Title IX does *not* require that there be an equal number of teams for each gender, nor does it specify what sports must be offered. The law requires that men and women be provided opportunities proportional to their representation in the general student population. If 60% of students at an institution are male, then men are entitled to 60% of the slots on athletic teams.
3. *Title IX requires equal (or proportional) dollar expenditures for each gender.* Title IX does *not* require equal (or proportional) dollar expenditures (except for scholarships) so long as the benefits provided by expenditures are equitable. For example, if a school hires two head basketball coaches of comparable quality, one each for its men's and women's programs, but the coach of the men's team commands a higher salary (as determined by that labor market), the inequality in expenditure for coaches

would not violate Title IX.<sup>8</sup> If, however, the two teams travel to face the same conference opponent and one team flies while the other is required to take a bus, the inequality of benefits provided could constitute a Title IX violation.<sup>9</sup>

4. *Title IX applies only to athletics.* Athletics is only a small part of Title IX. The law also applies to course offerings, counseling services, housing, health care, financial aid, employment assistance, and issues such as sexual harassment. Title IX may be best known for its impact on interscholastic and intercollegiate athletics, but its actual scope is far greater and its original intent was only marginally focused on athletics (US Department of Justice [USDOJ], 2001a).

## 8.8 History and Rationale

Prior to the passage of Title IX, collegiate women's sports were virtually nonexistent, especially in comparison to men's athletics. In 1971–1972, there were slightly fewer than 30,000 female athletes in NCAA institutions, representing only 15% of the total number of athletes (US Department of Education [USDOE], 2003, p. 13). Facilities and equipment were generally substandard. Coaches, if they were provided, were poorly paid (if at all), and many lacked expertise in coaching the sport. Female athletes often had to buy their own uniforms and equipment, and pay for any travel expenses. Despite the lack of resources and recognition, participation in 1971–1972 was almost double that of 1966–67, reflecting females' growing interest in intercollegiate sports (USDOE, 2003, p. 13).

In the 1960s and early 1970s, female labor force participation increased dramatically, the women's civil rights movement was

<sup>8</sup> Although it does not violate Title IX, it could be a violation of Title VII. For an interesting case that may violate both Titles VII and IX, see the story of Marianne Stanley in Zimbalist (1999, pp. 74–79).

<sup>9</sup> This assumes all else equal. If the team that rides the bus chooses the bus so that they can apply some of their budgetary allocation to travel to an extra competitive event (such as an out-of-state pre-season tournament), this is allowed under Title IX.

growing, and attention was turning to problems of sex bias and discrimination in schools. The significant gap in earnings between men and women was a central concern, and eliminating bias in schools was seen as critical to improving women's future employment prospects (USDOJ, 2001a, p. 16). In response to a number of class action suits filed against colleges and universities by women's advocacy groups, Congress formed a special House Subcommittee on Education that began hearings in 1970. In 1971, Subcommittee chair and Representative Edith Green (Oregon) introduced a bill similar to Title IX that would have made sex discrimination illegal under the Education Amendments of 1971 (USDOJ, 2001a, pp. 16–17). Representative Green's attempt failed, but the next year Senator Birch Bayh (Indiana) introduced the amendment that would become Title IX and be signed into law by President Nixon in June 1972. Senator Bayh's testimony highlighted the connection between education and employment opportunities for women:

The field of education is just one of many areas where differential treatment [between men and women] has been documented but because education provides access to jobs and financial security, discrimination here is doubly destructive for women. Therefore a strong and comprehensive measure is needed to provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women (118 Cong. Rec. 5806-07, as cited in USDOJ, 2001a, p. 17).

Although Title IX includes reference to athletics, its initial focus was on educational opportunities for women and girls in general. It would be a few years before it would gain the teeth to significantly impact intercollegiate athletics. The **Javits amendment** in 1974 directed the then Department of Health, Education, and Welfare to develop and implement Title IX regulations pertaining to intercollegiate athletics (USDOE, 2003, p. 15). The Javits amendment also declared that dollar expenditures need not be equal so

long as there is equity in benefits received (Carpenter and Acosta, 2005, p. 31).

The first federal regulations for enforcing Title IX were not implemented until 1975, and those regulations gave schools until 1978 to comply with the law. The 1975 regulations dealing with athletics required schools to “effectively accommodate the interests and abilities of members of both sexes” and required that men and women be provided athletic facilities and support services on an equal basis (34 CFR § 106.41, as cited in USDOE, 2003, p. 15).

When 1978 arrived, the stated requirements of Title IX were far from being met. Although female participation at the high school and college levels had more than doubled from when Title IX was implemented, schools were a long way from achieving proportionality (Zimbalist, 1999, p. 58). Recognizing that the vast majority of institutions were not in compliance, nor were they likely to be any time soon thereafter, the Office of Civil Rights adopted the three-part test in 1979. The three-part test remains in effect today.

Supporters of Title IX suffered a setback when the Supreme Court effectively gutted the law in its 1984 decision in *Grove City College v. Bell*. The high court effectively ruled that Title IX did not apply to college athletics by decreeing that only programs receiving federal financial assistance directly were covered. Following the *Grove City* decision, several colleges eliminated scholarships for female athletes and began dismantling women’s teams. Lawsuits and complaints filed with the Office of Civil Rights were cancelled or dismissed (Carpenter and Acosta, 2005, p. 121). For Title IX proponents the good news from *Grove City* was that it affirmed that any federal funding, even funds received indirectly through federal financial aid to students, gives Title IX jurisdiction over an institution (Carpenter and Acosta, 2005, p. 120).

In 1988, in response to the *Grove City* ruling, Congress overrode the veto of President Reagan and established clearly in the **Civil Rights Restoration Act of 1987** that Title IX applies to athletics. This certainly did not end the debate about the scope of Title IX, but it did mean that once again institutions would have to work toward proportionality in athletics.

delete "US"

The US Supreme Court ruled unanimously in the 1992 case *Franklin v. Gwinnett County Public Schools* that successful Title IX plaintiffs could receive compensatory and punitive damages. This ruling was a watershed event in the history of Title IX, as prior to this time the only punishment schools faced was the threatened removal of federal financial aid. These federal funds were never taken away so there was no real cost to non-compliance (Carpenter and Acosta, 2005, p. 128). Prior to *Franklin*, schools would delay compliance in hopes that those filing complaints would give up or graduate, or that the law would change to make compliance easier.

Monetary damages serve an important economic function, as they provide schools with a financial incentive to comply. With the *Franklin* ruling, lawyers smelled blood in the water and were happy to take on contingency cases that could earn significant monetary damages. A number of lawsuits were filed after the *Franklin* ruling and many schools soon discovered it was more cost effective to expand women's sports than to fight lawsuits. In addition to litigation costs and potential monetary damages, schools risked the negative publicity that often comes with a prolonged legal battle.

Among the lawsuits filed in the aftermath of *Franklin*, *Favia v. Indiana University of Pennsylvania* (1993) addressed a number of important questions. *First*, it established that fiscal constraints do not justify discrimination. The court opinion stated that "Title IX does not provide for any exception to its requirements simply because of a school's financial difficulties. In other words, a cash crunch is no excuse" (*Favia v. Indiana University of Pennsylvania [IUP]*, 1993, p. 7). *Second*, the ruling established that the promise of future programs is not an acceptable substitute for actual compliance in the present. In the court's words, "You can not replace programs with promises" (*Favia v. IUP*, 1993, p. 9). *Third*, Indiana University had attempted to comply by cutting equal numbers of men's and women's teams, and leaving equal numbers of each remaining. However, the percentage of women participating in intercollegiate athletics, already well below the proportion of women at the university, fell even further. The court cited the low and falling percentages when ruling that IUP failed to meet the first two parts of the three-part test. The effect of this ruling was to deny the right

the quote uses "can not" so do not change to "cannot"



to claim compliance through an equal number of teams (*Favia v. IUP*, 1993, p. 9). *Favia* established that even those with the best of intentions could be found in violation of Title IX. While the court sympathized with the financial problems of the university and recognized that equal cuts in the number of teams was done with good intention, it ordered reinstatement of the women's gymnastic and field hockey teams that had been eliminated (*Favia v. IUP*, 1993, p. 10).

In response to the numerous legal challenges that have emerged since the *Franklin* decision, congressional subcommittee hearings were held in 1995, and the Commission on Opportunities in Athletics was formed and conducted hearings in 2002 (Carpenter and Acosta, 2005, pp. 196–197). Both the 1995 and 2002 hearings resulted in affirmation of the ~~three-point~~ test. The Commission on Opportunities in Athletics report was issued in February 2003. It offered 23 recommendations, 15 of which were approved unanimously (USDOE, 2003, p. 1). Most of the recommendations were affirmations of the need to effectively communicate and enforce Title IX requirements; some provided clarification. One of potential ~~import~~ to programs deciding how best to comply was Recommendation 5: “The Office for Civil Rights should make clear that cutting teams in order to demonstrate compliance with Title IX is a disfavored practice” (USDOE, 2003, p. 34). While this does not prohibit programs from cutting men's sports, it does affirm that the intent of Title IX is to expand opportunities for participation, not promote reverse discrimination.

replace "three-point" with  
"three-part"

replace with "importance"

## 8.9 The NCAA's "Relationship" with Title IX

As mentioned in Chapter 1 on the history of college sports, for many years the NCAA focused exclusively on men's sports. Women's sports existed, but were administered under different organizations.<sup>10</sup> In 1964, two women from the Division of Girls and Women in Sport (DGWS) visited the NCAA convention to inquire

<sup>10</sup> More accurately, women's sports were administered by a single organization that went through a series of name changes. For more on the history of these organizations, see Carpenter and Acosta (2005, pp. 93–109).

**Box 8.1.** Highlights of the title IX timeline.

- 1964 Civil Rights Act passed.
- 1972 Educational amendments to the 1964 Civil Rights Act create Title IX.
- 1974 Tower amendment failed — would have removed revenue generating sports from Title IX jurisdiction.
- 1974 Javits amendment passed — inequality in expenditures does not constitute a Title IX violation so long as there is equity in benefits received.
- 1975 First regulations for Title IX compliance implemented; 1978 set as compliance deadline.
- 1978 First year for which compliance is required.
- 1979 Department of Health, Education, and Welfare issues Intercollegiate Athletics Policy Interpretation that implements three-part test for Title IX compliance.
- 1984 *Grove City College v. Bell* Supreme Court ruling strips Title IX of its jurisdiction over athletics. However, it also establishes that programs receiving only indirect federal funding (e.g., federal financial aid) are still subject to Title IX jurisdiction.
- 1988 Civil Rights Restoration Act 1987 passed by congressional override of President Reagan's veto, establishes definitively that Title IX applies to athletics.
- 1992 *Franklin v. Gwinnett County Public School* ruling establishes that successful Title IX plaintiffs are eligible to receive both compensatory and punitive damages.
- 1992 NCAA completes first comprehensive assessment of female athletic participation.
- 1993 *Favia v. Indiana University of Pennsylvania* court ruling establishes that financial constraints are not a valid excuse to discriminate, future promises do not constitute present compliance, an equal number of men's and

(Continued)

insert "of" after "Act"

change "School" to "Schools"

**Box. 8.1** (Continued)

- women's teams does not ensure compliance, and intent to discriminate is irrelevant to compliance.
- 1994 Equity in Athletics Disclosure Act (EADA) passed, requiring colleges and universities to report financial information on their men's and women's sports programs.
- 1995 House Subcommittee on Postsecondary Education holds hearings on the three-part test in response to flurry of lawsuits filed after *Franklin v. Gwinnett* decision. No change is made in the three-part test.
- 2002 National Wrestling Coaches Association (NWCA) files lawsuit against the Department of Education challenging the three-part test.
- 2002 Commission on Opportunities in Athletics is formed and hears testimony on Title IX.
- 2003 Commission issues its final report, *Open to All: Title IX at Thirty*. The report offers 23 recommendations, 15 approved unanimously by the committee.
- 2003 NWCA ("wrestlers case") dismissed; appeals follow later in the year.
- 2003 Gerald Reynolds, Assistant Secretary for OCR, issues the *2003 Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance*. Title IX and the three-part test are reaffirmed.
- 2004 NWCA appeal is denied.
- 2006 Eric Butler files Title IX case claiming the pregnancy exception to the eligibility clock should apply to both males and females. (See Box 8.2 at the end of Section 8.11)

about the NCAA's plans to include women's intercollegiate sports. In March 1966, the NCAA responded that their jurisdiction was limited to male athletes and that regulations prohibited women from participating in NCAA championships. At the same time, the

NCAA offered its support to the DGWS efforts (Carpenter and Acosta, 2005, pp. 102-103).

The DGWS formed the Commission on Intercollegiate Athletics for Women (CIAW) that, in conjunction with the DGWS, would ultimately form the Association for Intercollegiate Athletics for Women (AIAW). Shortly after forming the CIAW, however, the NCAA changed its position and expressed an interest in controlling women's intercollegiate athletics (Carpenter and Acosta, 2005, pp. 103-104). The AIAW began operating in 1971, providing "41 national championships in 19 sports to cover 6000 teams in 960 member colleges and universities" in its lifetime (Carpenter and Acosta, 2005, pp. 106-107). It was aided and emboldened in its efforts by passage of Title IX.

The NCAA fought Title IX both before and following its passage. It initially lobbied against the inclusion of Title IX in the 1972 Education amendments. The NCAA then spent US\$300,000 from 1972 to 1974 attempting to get the athletics component removed from Title IX (Zimbalist, 1999, p. 59). This included direct lobbying of the Department of Health, Education, and Welfare, and then supporting the 1974 **Tower amendment** (see Box 8.1).

Unable to stop or effectively weaken Title IX, the NCAA tapped its significant resources in an effort to take control over women's sports. As successful as the AIAW was, it lacked the resources to compete with the NCAA, which in 1980 began offering its own women's championships that competed directly with AIAW events, and included television coverage and paid expenses for participants. The AIAW closed its doors in 1982 (Zimbalist, 1999, p. 60).

As far as gender equity and Title IX are concerned, we might ask, what difference does it make whether the AIAW or NCAA is controlling women's intercollegiate sports? The answer lies in the gender composition of the administrative structure. The AIAW was run primarily by women, the NCAA primarily by men (exclusively for many years). When the NCAA took control of women's sports, men held and maintained leadership roles (e.g., athletic directors) in sports programs. The effect of that is apparent when one examines the significant rise in the percentage of men coaching women's teams since the passage of Title IX (detailed in Section 8.10). It

would also help explain why few schools have achieved Title IX compliance under the first part of the three-part test, and why the progress of many schools has been slow.

### 8.10 What Has Title IX Achieved?

*Without a doubt, Title IX has opened the doors of opportunity for generations of women and girls to compete, to achieve, and to pursue their American Dreams. This Administration is committed to building on those successes.*

— Rod Paige, US Secretary of Education

In order to evaluate the success or failure of Title IX, it is necessary to examine how things have changed since implementation. The evidence will show that while strides toward gender equity have been made, full compliance with Title IX has not yet been achieved.

In 1968, there were approximately 16,000 female college athletes. In 2004, there were 8402 women's college *teams*, carrying over 150,000 female athletes (Carpenter and Acosta, 2005, pp. 171, 175). In 1970, there was an average of 2.5 women's teams per school (Acosta and Carpenter, 2004). By 1978, Title IX's first compliance date, the number had risen to 5.61 per school. In 2004, there were 8.32 women's intercollegiate NCAA teams per school. The percentage of NCAA varsity athletes that are women has risen to 41 percent (USDOE, 2003, p. 19).

The benefits to women of participating in sports are well documented. Fewer health problems (breast cancer, stroke, osteoporosis, and depression), more healthy decisions (decreased smoking, drinking, illegal drug use), greater academic success (higher graduation rates), and better self-esteem are just a few of the positive outcomes attributed to female participation in athletics (Carpenter and Acosta, 2005, pp. 165–166). Given the individual and social costs of treating health problems, substance abuse, unwanted pregnancies, and other social ills, our investment in women's athletics appears to have been a good bargain for society.

While the gains cited above are substantial, full equity (as defined by the Title IX legislation) has not yet been achieved.

Scholarship and recruiting expenditures still heavily favor men's programs. In 2002–2003, women received only 42% of the athletic scholarships and US\$133 million less than men; in 2001–2002, the average Division I-A athletic program spent more than twice as much (US\$369,200–US\$159,300) recruiting male athletes as they did recruiting female athletes (Carpenter and Acosta, 2005, p. 177). These disparities are significant in and of themselves, but they are particularly problematic when one considers that scholarships and recruiting are the main instruments used to attract athletes. Opponents of Title IX claim that women are less interested in participating in college sports, but would that be the case if the same number of dollars were expended to attract them? Title IX opponents also claim that men's sports are more popular to fans than women's sports. While this is no doubt true in many cases, some differences in fan support may be artificially created. Evidence presented in the *Favia* case revealed that at halftime of each football and men's basketball game, IUP would raffle off a scholarship for a semester's tuition (*Favia v. IUP*, 1993, p. 5). No wonder football and men's basketball were popular for fans at IUP!

In some areas, the relative position of women has worsened. In 1972, more than 90% of the head coaches of women's college teams were women. By 2004, that percentage had slipped to just over 44%. In contrast, approximately 2% of the head coaches for men's teams are women, a figure that has been stable since the inception of Title IX (Carpenter and Acosta, 2005, p. 175).

The decline in the percentage of female head coaches for women's teams is not a violation of Title IX. As noted earlier, prohibitions on employment discrimination (including hiring and compensation) are covered under Title VII of the 1964 Civil Rights Act. Title IX specifies that both genders must receive the same benefit in terms of coaching services; it does not specify that the coach be of a certain gender. As the creation of new women's programs added head coaching positions, and as pay increased for new and existing head coaching positions, these jobs attracted men seeking to join or advance in the coaching ranks. Women who had coached prior to the implementation of Title IX were

often physical education teachers now forced to choose between teaching and coaching. Most chose teaching, in part because women's sports now fell under the supervision of male athletic directors (Carpenter and Acosta, 2005, p. 174).

There is another, somewhat curious explanation as to why the percentage of female head coaches has fallen. In her research, ~~sociologist~~ Mikaela Dufur (2000) found that schools exposed to or threatened by Title IX lawsuits were more likely to hire White male coaches for women's teams. At first glance one might expect the opposite result, with schools hiring more female coaches to improve appearances. However, as Dufur (2000, p. 236) explains, "Athletic directors who have had to deal with Title IX may perceive female coaches as potential troublemakers, even if there is no evidence that these women have instigated Title IX investigations."

delete "sociologist"

Though having a smaller percentage of women coaches may not be a violation of Title IX, it may help explain why female interest in sports isn't greater. For the same reasons cited earlier in the chapter as to why head coaches tend to hire same race and gender assistants, female athletes may identify more readily with female head coaches.

### 8.11 Criticisms of Title IX

*Between 1993 and 1999 alone 53 men's golf teams, 39 men's track teams, 43 wrestling teams, and 16 baseball teams have been eliminated. The University of Miami's diving team, which has produced 15 Olympic athletes, is gone.*

— Christine Stolba, fellow, Independent Women's Forum

The most common criticism of Title IX is that it has led to the reduction of opportunities for male participation in sports, either by cutting teams or limiting roster sizes. While it is true that many programs, such as wrestling and gymnastics, have been cut since the passage of Title IX, the evidence suggests that factors unrelated to Title IX are to blame. As ~~sports economist~~ Andrew Zimbalist (2003, pp. 55–56) observes, most of the cuts in men's wrestling and gymnastics teams

delete "sports economist"

occurred during 1982–1992, a period where enforcement was lax and the 1984 *Grove City* Supreme Court decision effectively gutted Title IX. Furthermore, over the same period more than twice as many women’s gymnastics teams (83) were eliminated than men’s (39). If anything, the cuts that occurred while Title IX was at its weakest only serve to affirm that Title IX is not to blame for the demise of certain men’s sports. As explained above, Title IX does not require cuts in any programs. Institutions choose how to comply, and some have chosen to move toward proportionality goals by removing opportunities for men rather than creating more opportunities for women. Many cuts in men’s programs, however, have nothing to do with meeting Title IX requirements.

insert "had" after "have"

Opponents of Title IX sometimes claim that “revenue generating” sports like football subsidize women’s sports. As we demonstrated in earlier chapters, few college sports programs generate positive net revenue themselves, let alone have the ability to subsidize other teams. Economists Michael Leeds, Yelena Suris, and Jennifer Durkin (2004, pp. 149–150) found that only nine Division I-A football programs provided subsidies for women’s sports. They find that, on average, Division I-A football programs *drain* about US\$184,000 per year from women’s sports.

Football is the “sacred cow” often extolled as the “cash cow” for colleges and universities, and is frequently the target for legislative protection from those opposed to Title IX. The evidence of Leeds, Suris, and Durkin raises the controversial question: would it be so bad to cut football programs? Football rosters often carry five or more players for each position on the field. Many of these players never play in actual contests, yet put in countless hours of practice that could be spent in more academic pursuits. In addressing the important question of how athletic participation impacts academic performance, economists John Fizel and Timothy Smaby (2004, pp. 172–173) found that only in football was there a negative impact both in terms of grade point average and in taking a less challenging curriculum. Schools are allowed to offer 85 football scholarships, enough to fill three or four women’s teams (or other men’s teams) in various sports. Significant resources are expended



by both the program and the participants, and many of these resources could be reallocated to more productive purposes.

One criticism that Title IX supporters accept, is that although Title IX has improved gender equity, its benefits have disproportionately favored White women. Many of the women's sports added in the wake of Title IX, such as gymnastics, lacrosse, and swimming, tend to attract a disproportionate number of White participants. While it is recognized that Black females tend to concentrate in well-established sports such as basketball and track and field, many believe that opportunity expansion should occur for all women, not just those of a certain racial group. How should this be accomplished? Some, such as Tina Sloan-Green, President of the Black Women in Sport Foundation, contend that "Within Title IX there needs to be some sort of initiative that provides an incentive for organizing bodies or colleges to include African-American women or recruit them in sports or to take on administrative roles" (Hammer, 2003). Others emphasize the need to create participation opportunities at earlier ages, so that there is interest in a wider variety of sports once college age is reached.

Ironically, Title IX has also been blamed for contributing to the United States' obesity epidemic. Critics claim that the law has driven up the cost of physical education programs, leading to cut-backs that have reduced activity levels of elementary and secondary students. In 1999, only 29 percent of US high school students were enrolled in daily physical education courses, down from 42% in 1991 (Greenblatt, 2003).

Much of the Title IX debate centers on the general and nebulous issue of fairness. Some claim that the law effectively discriminates in favor of women, particularly when it appears that, for whatever reason, men have greater interest in sports than women at a given institution. Taking it one step further, some argue that "two wrongs do not make a right," so we should not discriminate against one group in an attempt to correct past discrimination against another (**reverse discrimination**). Title IX supporters would respond by saying that the law does not discriminate in favor of women; it merely requires colleges and universities to provide equal opportunity in

**Box 8.2.** Reverse discrimination or the birth of a new policy?

When an NCAA athlete begins at a college or university, he or she has five years in which to complete four years of athletic eligibility. This five-year period is sometimes referred to as the "eligibility clock." The NCAA has policies that allow an extension of the eligibility clock, one such being the pregnancy exception. According to NCAA Bylaw 14.2.1.3, a school "may approve a one-year extension of the five-year period of eligibility for a female student for reasons of pregnancy."

Eric Butler's eligibility clock began in 2001 when he enrolled in DeVry University. Butler took the year off from athletics that year to help his wife following the birth of their daughter. Butler finally took the field in 2003, playing for Avila University of the NAIA, and as a walk-on at the University of Kansas in 2005. His eligibility expired after the 2005 season. Out of five seasons of eligibility, Butler was only able to play for two, and his request to the NCAA for an extension of eligibility was denied.

Butler filed a federal civil rights lawsuit in spring 2006, claiming that the NCAA violated Title IX because the extension for pregnancy is only granted to females. The NCAA indicated that this is the first time a male student athlete has challenged the pregnancy rule (Whiteside, 2006).

The main point of contention is whether the rule applies only to the physical condition of pregnancy, or whether it includes child-rearing, something for which paternity leave might be appropriate. According to NCAA spokesman Erik Christianson, "The pregnancy exception is explicitly written for female students whose physical condition due to pregnancy prevents their participation in intercollegiate athletics, and therefore is not applicable in this case" (Whiteside, 2006).

The outcome of the case is still pending. Even if the court sides with Butler, it is unlikely the decision will significantly

*(Continued)*

**Box 8.2.** (Continued)

impact Title IX. There may be a few players who would extend their eligibility clock with "pregnancy redshirting," but it is hard to imagine that college football players will start a baby boom for the purpose of playing one more year.

sports, just as they would in the provision of other educational services. While the authors of this book would tend to side with Title IX supporters on that argument, there is at least one case, presented in Box 8.2 ~~below~~, where the law may discriminate against men.

delete "below"

**8.12 Proposed Reforms to Title IX**

Supporters and opponents both agree that the goal of Title IX is not to eliminate participation opportunities, but to create them. Compliance has been difficult for most institutions; most have fallen short, and some have turned to cutting men's sports to move closer to proportionality. This has led some to propose changes that would ease the compliance burden; these include:

1. *Interest surveys.* Part three of the three-part test allows compliance by demonstrating that "interests and abilities have been fully and effectively accommodated." Surveys could potentially measure whether interests are being met, but they would have to be constructed carefully. The danger for institutions wanting to use surveys for compliance is that expressed interests might overwhelm a school's ability to meet them. If an institution opts to use surveys, are they bound by the results, even if the results pose a seemingly impossible challenge? In *Cohen v. Brown University* (1997), the court ruled that surveys are not acceptable as a means of compliance. Brown argued that based on its survey of students it satisfied part three of the three-part test (interests and abilities accommodated). The court responded to Brown's assertion as follows:

We view Brown's assertion that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion

that institutions should be required to accommodate the interests and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, with great suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based upon the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's interests and abilities.

Interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience. The Policy Interpretation recognizes that women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports (Cohen v. Brown, 1997).

In the eyes of the court, interest surveys merely reflect existing biases bred from past discrimination. To both gauge and build interest, court rulings suggest that programs for women should be built to levels comparable to men's sports. Only then can we judge whether there is comparable interest.

2. *Exclusion of football and other "revenue generating sports" from Title IX counts.* Institutions with large football programs often have the greatest difficulty complying with Title IX requirements. Some programs carry over 100 players, though not all on scholarship, and there is no equivalent female sport to offset the high number of males on the football roster. Volleyball, the women's sport that runs along with football in the fall season, accommodates about twenty players per season. Junior varsity teams for women's sports can help balance the numbers, but that requires sufficient interest for those teams. Excluding football teams from the count would improve proportionality, but would do nothing to create more opportunities for women.

There have been numerous efforts to exclude football and other "revenue generating sports" from Title IX jurisdiction. The failed 1974 Tower amendment would have exempted revenue generating sports from Title IX participation counts. Schools would have been allowed to remove a sport from compliance calculations by declaring it as "potentially revenue producing" (Carpenter and Acosta,

2005, pp. 122–123). In a 1987 case tried under state Title IX law in Washington, *Blair v. Washington State University*, the appellate court ruled that “The football program may not be excluded from the calculations of participation opportunities, scholarships, or distribution of nonrevenue funds” (*Blair v. Washington State University*, 1987).

In fact, critics contend, excluding football numbers would reduce the impetus for schools to expand women’s athletic programs. While helping schools meet the letter of Title IX, it would not be consistent with the objective of increasing women’s participation in sports.

Zimbalist (2003) rejects the exclusion of football because he sees too many resources directed that way, resources that could be used to expand women’s programs or spare men’s programs such as wrestling from budgetary elimination.

... DIA [Division I-A] football does not need 85 scholarships. Sixty would do fine. NFL teams have 45 roster, plus seven reserve, players. The average Division 1A team has 32 walk-ons plus 85 scholarship players. If football scholarships were cut to 60, the average college would save approximately US\$750,000 annually, enough to finance more than two wrestling teams (whose average cost is US\$330,000 per team) (p. 57).

In response to coaches’ concerns about injuries depleting rosters, Zimbalist (2003, p. 57) notes that the injury rates in college football are so low that even tripling the average number of injuries in games and practice would mean that fewer than ten players per game would sit out injured. At 60 scholarships per team, teams would still have 50 players, not counting walk-ons.

3. *Count slots, not actual number of participants.* Some have suggested that compliance requirements should be satisfied if an institution provides a proportionate number of spaces on men’s and women’s athletic teams. The rationale is that even if schools provide opportunities, they should not be held accountable if athletes don’t come forward to participate. Changing current requirements would effectively overturn precedents set by case law. *Cohen v. Brown University* (1997) established that simply providing slots

was not sufficient. Adding spaces to existing teams would be an easy, low cost path to compliance, but in the court's opinion would not adequately meet the interests and abilities of athletes. This decision is consistent with what we saw in *Favia*, where the court ruled that having an equal number of teams does not satisfy proportionality requirements. Court rulings have clearly established that it is the number and percentage of people served that matter, and that alternate methods susceptible to manipulation are not acceptable.

*Fast fact.* Cheerleading, marching bands, and dance teams can be counted as intercollegiate sports if they can demonstrate to the Office of Civil Rights that they engage in a sufficient number of events at a high enough level of competition. A team's primary purpose must be to compete against other teams, not to provide ancillary entertainment for other sporting events such as football or basketball.

### 8.13 An Economic Analysis of Title IX

Often in economics we find that policies that strive to promote equity do so at the expense of efficiency. By revisiting marginal benefit–marginal cost analysis, in this section we will examine whether attempts to comply with Title IX hinder or promote efficiency. For a more in-depth analysis, consult the appendix to this chapter.

Assessing efficiency in traditional markets is relatively easy — does the amount produced and sold at a given price match what society wants and is willing to pay for? College sports are different in that in most cases they do not generate sufficient revenue to cover their costs. We have already seen that the revenue generating sports at most institutions do not turn a profit. Even in the absence of Title IX requirements, few sports are likely to meet the strictest criteria for efficiency. Despite this, many would agree that the benefits of participation to athletes and society outweigh the costs (with the possible exception of the sometimes egregious behavior of high-profile-sport athletes).

In a private market sense it is difficult to justify virtually any college sport. However, college sports generate both benefits and costs that extend beyond what we can measure directly in the market. It is long recognized that participants on sports teams develop teamwork, time management, and leadership skills, and that these skills carry forward into subsequent professional life and create significant positive externalities. The health and lifestyle benefits for women participating in sports have already been documented. Beyond the turnstiles, there are benefits to offering intercollegiate sports that are not measured by how much fans are willing to pay to see games.

It has also been long recognized that participation in college athletics, or at least what some see as the obsession with college sports, can carry significant costs. Emphasis on winning games versus educating the athlete, as reflected through rigorous training schedules and the provision of academic "short cuts" impose costs by diminishing the educational experience and the positive externalities they create. Scandals surrounding performance enhancing substances, and the criminal exploits of high profile players and programs, undermine the positive effects college sports can have on society.

Identifying, understanding, and ultimately measuring the positive and negative externalities are critical to determining what resources society should allocate toward college sports. Externalities, combined with the costs and benefits faced by the direct participants, are all important to determining whether society has achieved the efficient level of intercollegiate athletics.

Economists typically identify two types of efficiency: **productive efficiency** and **allocative efficiency**. Productive efficiency occurs when a given set of output is produced in the least-costly way possible. Allocative efficiency is achieved when the allocation of resources among different products maximizes the satisfaction of society. Allocative efficiency is achieved when for each product the marginal benefit of the last unit produced equals the marginal cost ( $MB = MC$ ). How much we value the last unit ( $MB$ ) should never fall below the value of the resources used to produce the last unit ( $MC$ ); otherwise those resources are better allocated to some other purpose.

Productive efficiency is a necessary but not sufficient condition for allocative efficiency, as producing in a manner that does not minimize cost implies that more of that good could be produced without taking away resources from other goods, thus improving society's well-being. For purposes of this discussion we will make the somewhat tenuous assumption that athletic departments minimize cost, allowing us to focus exclusively on the question of allocative efficiency. We will also assume that the marginal benefit and cost curves we're about to examine incorporate any positive or negative externalities created by the college sports product.

As it applies to college sports, the question is whether Title IX gives us the most desired allocation of resources possible. Figure 8.1 illustrates the views of those who criticize Title IX for its adverse effects on men's programs. ~~Figures 8.1a, b depict~~ hypothetical MB and MC curves for men's and women's sports participation opportunities. In each graph,  $Q_T$  represents the quantity of opportunities offered because of institutional responses to Title IX.  $Q_O$  represents the optimal amount of participation opportunities based on the marginal benefits and marginal costs of providing those opportunities for each gender.<sup>11</sup> Figure 8.1a represents circumstances where the marginal benefit ( $MB_{TM}$ ) of additional male participation opportunities, beyond what the school provides ( $Q_{TM}$ ), outweighs the marginal cost ( $MC_{TM}$ ) of providing those opportunities, up to the point  $Q_{OM}$ . The value to society that is lost by providing only  $Q_{TM}$  opportunities, as opposed to  $Q_{OM}$ , is the **deadweight loss** (or **efficiency loss**) that we learned about in Chapter 3, and is represented by the shaded triangle. Conversely, in Figure 8.1b, the opportunities provided because of Title IX exceed the optimal quantity. The marginal benefit ( $MB_{TF}$ ) of opportunities beyond  $Q_{OF}$  is outweighed by the marginal cost ( $MC_{TF}$ ) of providing them. As in Figure 8.1a, there is an efficiency loss created, this time by an overallocation of resources to female participation opportunities.

replace "Figures" with "Figure" and delete "a, b" and replace "depict" with "depicts"

<sup>11</sup> This treatment presumes ~~nothing about the optimal quantity~~ for men versus for women; it only compares the optimal quantity for each gender relative to the institutional choices made in light of Title IX requirements.

replace "the" with "a hypothetical"



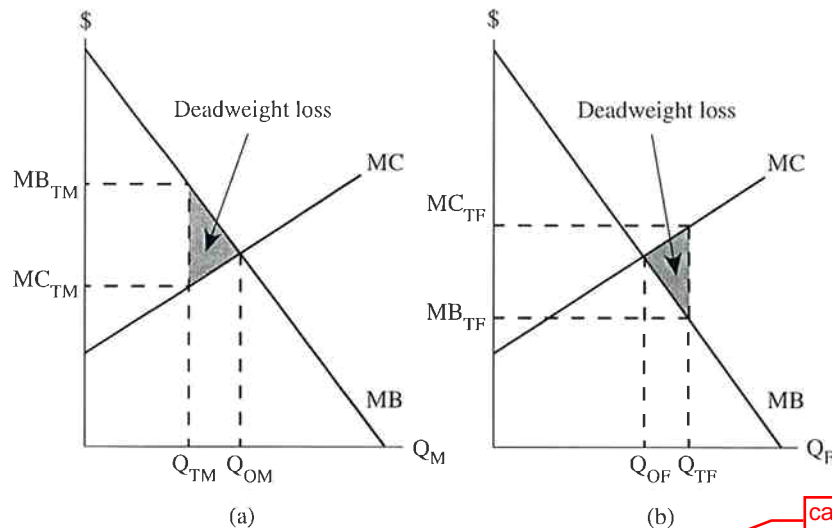


Figure 8.1. Efficiency argument against title IX.

The views of Title IX supporters are represented in Figure 8.2. Figure 8.2, like 8.1a, depicts circumstances where the number of opportunities falls short of the optimal. In this case the marginal benefit of providing additional opportunities for women would outweigh the marginal cost of providing them. The difference between Figures 8.2 and 8.1a is that there are no legal constraints discouraging the provision of more female opportunities. Why then don't institutions provide the spaces on athletic teams? Even though the marginal benefit outweighs the marginal cost, the school will incur most of the costs while the benefits will be widely dispersed among the participants and as positive externalities. In other words, the increased expenditures necessary to provide these opportunities will not generate sufficient revenue to support them. The marginal benefit curve from society's perspective would not be the same as the one faced by the college or university.

At this point you may be wondering, who bears the deadweight loss of an inefficient allocation? There can be many affected, but in the case of an underallocation, those who suffer the deadweight loss are those excluded from participation and those who would have

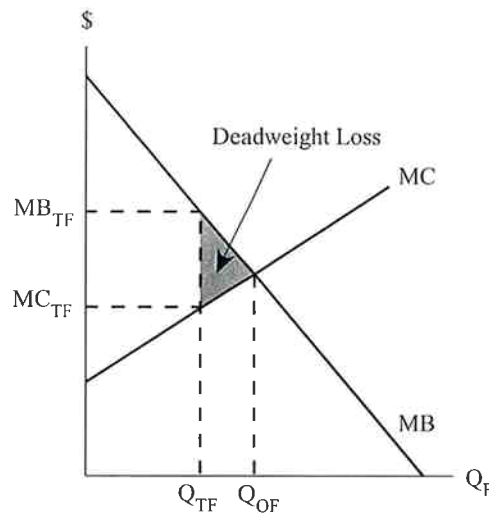


Figure 8.2. Efficiency argument for title IX.

*Caps*

benefited (positive externalities) from their participation. In the case of overallocation, the institution incurs the direct monetary cost, but ultimately bearing the cost are taxpayers, tuition-paying students, potential beneficiaries in non-sports programs, and those in the underallocated segment that are denied participation opportunities.

Do supporters of Title IX believe that too many opportunities are provided to men, creating a situation similar to Figure 8.1b? The views on this issue are mixed. Title IX proponents generally have no interest in cutting back men's sports; their focus is on increasing opportunities for women. At the same time, when women are denied opportunities to play intercollegiate sports, Title IX supporters ask why sports like football need rosters that near or exceed 100 players.

Figure 8.1 represents a situation where institutional responses to Title IX produce an inefficient outcome. An important caveat here is that it is the institutional response, and not necessarily Title IX itself, that causes the misallocation of resources. Some schools decide to cut male programs to keep athletic department budgets within certain constraints, rather than expand athletic department

budgets to provide more female opportunities without losing male opportunities. In all fairness, some institutions choose this path because of severe budget constraints, but others simply place a lower priority on expanding opportunities for women. However, if Figure 8.1 represents a situation where the school is in compliance under the first part of the three-part test, then there is no reallocation of participation slots that will be both efficient and in compliance with Title IX.

As we have seen, institutions have two basic budgetary options for complying with Title IX. The first is to leave the total athletics budget as it is, and reallocate funds within existing budget constraints. If the school is not already in compliance, this approach requires programs to curtail men's opportunities in favor of women's sports. This is not the only option for institutions, however. Expanding the budget for athletics would allow additions to women's sports without reducing men's participation opportunities. Scarcity forces choices, and Title IX constrains those choices, but Title IX does not dictate what those choices will be. A more in-depth analysis of that decision-making process appears in the appendix to this chapter.

#### **8.14 Reductions in Men's Programs — How to Decide What to Cut**

For schools that determine that men's programs shall be cut to comply with Title IX, how do they decide whether to scale back roster sizes or eliminate teams altogether? Some schools have opted to cut entire teams rather than scale back football rosters already carrying more players than can ever be accommodated in terms of playing time. Is this a rational economic decision or simply an unhealthy obsession with football? Wrestling programs have been hit particularly hard; why might it make sense to eliminate those opportunities rather than keep but simply scale back all programs?

Sports teams tend to have high fixed costs and, except in the case of scholarships, relatively low marginal costs. Coaches' salaries, practice and game facilities, equipment, and travel costs are largely

fixed. The cost of 25 extra uniforms for football players who will use existing facilities and may never travel with the team (because of travel roster limitations) is far less than the cost of providing a full team for, say, wrestling or gymnastics. While reducing the football roster and preserving wrestling would provide more opportunities for actual intercollegiate participation, it would also place more of a strain on the athletic department budget.

Football programs have an incentive to maximize roster size so that they can stockpile talent. Beyond simply protecting against inevitable injuries and academic ineligibility, Division I football teams try to improve their competitive position by hoarding talented players who would see regular playing time in rival programs.

The decline in programs such as wrestling and gymnastics has a cascading effect. As each program is eliminated, it becomes more difficult and costly for remaining teams at other schools to secure competition. The increased cost makes it harder to justify the sport's inclusion in the athletic department budget. Further, as the pool of competitors shrinks, athlete interest wanes. High school athletes are attracted to a college or university not only because of the teams for which they would play, but also by the teams against whom they would compete. The process of decline is mutually reinforcing; as colleges eliminate certain sports it reduces the incentive for high school students to pursue those sports. Declining interest at the high school level means that fewer athletes show interest in the sport at the intercollegiate level. Disinterest and cuts breed further disinterest and cuts, up and down the levels of competition.

Wrestling's downfall is football's boon. As the lower profile sports are eliminated, student-athletes seeking participation opportunities shift to other sports, even if their chances of seeing the field are slim. As a sport that can accommodate large numbers, football attracts many of these athletes. Football participation increases by default, but athletic directors point to the large numbers of students coming to the sport as evidence of its popularity, both in absolute terms and relative to other sports. This twist of

logic further reinforces the decision to keep football rosters large, even if it means eliminating other men's sports.

### 8.15 What About Donations?

When cuts in a sports program appear imminent, prospective donors often step forward to offer financial support. Donors also offer to finance projects that expand or improve facilities for their favored sport. These donations are a way to save programs or enhance facilities, but not without constraint. If donor dollars are pouring in to buy equipment, facilities, or opportunities for men, there needs to be equivalent expenditures for women's programs if the institution is to be or remain in compliance with Title IX requirements. Suppose, for example, that someone donates funds to install lights at the baseball stadium. An institution could accept those donated funds for that purpose, so long as money is also found, for example, to install lights on the softball field.

### 8.16 Chapter Summary

In this chapter we have seen that significant progress has been made improving opportunities for women and minorities in college sports, but that there is still room for improvement. Economic theory helps us to understand that sometimes discrimination is rational, at other times costly. Policies to correct racial and gender imbalances may not fit society's short-term interests, even if they may maximize society's well-being in the long run. We are also left with questions. To what extent are current preferences the result of past discrimination? Should we discriminate in the present to compensate for past discrimination? In industries regulated by private market forces, we expect discrimination to be punished and ultimately eliminated. In college sports, where market forces are at best distorted, can we rely on them to correct inequities? The overarching normative question society must address is, what is the fairest way to allocate the scarce resources available for college sports?

replace comma with colon?

### 8.17 Key Terms

Access discrimination	Homologous reproduction
Agent	Indifference curve
AIAW	Javits amendment
Allocative efficiency	Indifference curve
Booster discrimination	(appendix) →
Budget constraint (appendix)	Marginal revenue product
Civil Rights Restoration Act	Player discrimination
<i>Cohen v. Brown University</i>	Principal
Consumer discrimination	Principal-agent problem
Deadweight loss	Productive efficiency
Derived demand	Proportionality
Discrimination coefficient	Race and Gender Report
Efficiency loss	Card →
Employee discrimination	Race premium
Employer discrimination	Reverse discrimination
Fan discrimination	Self-categorization
<i>Favia v. Indiana University of</i>	Taste for discrimination
<i>Pennsylvania</i> →	Three-part test
<i>Franklin v. Gwinnett County</i>	Title VII
<i>Public Schools</i> →	Title IX
Gender marking	Tower amendment
<i>Grove City College v. Bell</i>	Treatment discrimination

indents x 4

### 8.18 Review Questions

1. How do *wage discrimination* and *occupational discrimination* differ? How are they similar?
2. What is *The Racial and Gender Report Card*, how are the grades determined, and what areas receive the best and worst grades?
3. According to Andrew Zimbalist, how does the issue of gender equity reveal a major contradiction in the NCAA?
4. How does the media discriminate along racial and gender lines in its coverage of college sporting events?

5. Why are some Native American mascots allowed and others banned?
6. What are the three types of discrimination from Becker's *taste for discrimination* model that are relevant to college sports?
7. Why does the source of the discrimination matter in terms of the market's ability to eliminate it?
8. How can discrimination in the recruiting of college athletes be an example of the *principal-agent problem*? Is it necessarily a principal-agent problem? Explain.
9. What is Title IX, what are its requirements, and what is the three-part test?
10. State and refute the common misconceptions about Title IX.
11. Explain the significance of the Javits Amendment, the Tower Amendment, *Grove City College v. Bell*, Civil Rights Restoration Act of 1987, *Franklin v. Gwinnett County Public Schools*, *Favia v. Indiana University of Pennsylvania*, and *Cohen v. Brown University*, to the history and current status of Title IX.
12. What has Title IX accomplished? What negative impacts have resulted from responses to the legislation?
13. Identify the common criticisms of Title IX.
14. Why are interest surveys generally not an acceptable way to determine interest in athletic programs?
15. What are some ways that schools can comply with the letter of the Title IX law, but still violate its spirit?
16. Under what circumstances would the addition of participation opportunities for women not satisfy Title IX requirements?
17. Why do cuts in particular sports give rise to further cuts in that sport (at other institutions)?
18. Explain how donations may or may not be violations of Title IX.

### 8.19 Discussion Questions

1. Does the *Racial and Gender Report Card* discriminate by labeling coaching positions for all men's teams as "N/A" in terms of their grade for gender?
2. If media broadcasters were to refer to women in the same manner as men, do you think fans would start taking women's

- sports more seriously? If so, would it be enough to noticeably increase fan demand?
3. When asked about the *Fighting Irish* mascot question, one NCAA official indicated that it was not a concern because no Irish had complained. Should these bans be based on whether someone vocalizes offense, or should there be a more objective standard?
  4. Where does the "taste for discrimination" come from? Why might that question be important in terms of designing policies to discourage it?
  5. Suppose that a university is looking at two quarterback recruits. Lucian, a non-preferred race player, is expected to have an MRP of US\$200,000 per year. Brinley is of a preferred race, but is only expected to generate US\$150,000 per year. Assuming the head coach decides who is offered the scholarship, what would the coach's discrimination coefficient have to be to make him indifferent between the two players? Is this a case of employer or consumer discrimination? Explain.
  6. Has the involvement of the NCAA in women's sports advanced or hindered the objectives of Title IX? Explain.
  7. Should we reform Title IX? If so, how? Explain your rationale.
  8. Respond to the following statement: "Eliminating college football would solve the gender equity problem in college sports."
  9. Suppose that Equity University is currently providing sports participation opportunities that are out of compliance with Title IX (60/40 male to female ratio despite a 50/50 ratio in the general student population), yet the quantity of participants relative to the optimal is represented by Figure 8.1a and Figure 8.2. Assuming Equity U. has made improvements in the past, what options are available that would keep them in compliance? Are these options necessarily efficient? Explain.
  10. The number of college wrestling programs has been in decline in recent years. Some attribute it to Title IX, others to the "arms race" in the revenue generating sports. Based on what you've read in this book (and other places), what is your assessment?
  11. Will women's sports ever be as popular as men's? Consider the question from the perspective of both of fans and prospective



- college athletes. Why is the answer to this question important from a Title IX perspective?
12. (Appendix) The presentation of budget lines assumes that the cost of providing opportunities is the same across sports and genders. What would be the effect on the budget line and efficient allocation if women's sports were only half the cost of men's sports for an equal number of participation slots? (Hint: Use Appendix Figure 8.1 and assume that the maximum number of men's slots doesn't change. Then construct an indifference map with curves tangent to both the old and new budget lines.)
  13. (Appendix) As more and more women participate in intercollegiate sports and then go on to raise female children that play sports, what would happen to society's indifference curve for men's and women's sports?

## 8.20 Assignments/Internet Questions

1. Tune into one of the many ESPN stations, CSTV, or one of the FOX sports stations, and watch both a men's and women's team event. Listen to how the commentators refer to men v. women, and Whites v. non-Whites. Are there differences that support the claims of this chapter? Provide evidence for your conclusions. Also note, if possible, the races and genders of the commentators. If there is a mix, does it seem to affect whether their remarks exhibit racial or gender bias.
2. Using a search engine, type in terms like "NCAA mascot ban" and update the status of the North Dakota, Bradley, or similar cases.
3. Go to the internet and update the Eric Butler case. (How) has it been resolved? Does the court's decision have any significant implications for the future of Title IX?

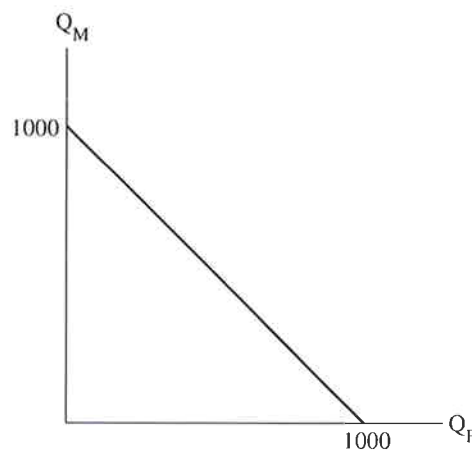
## Appendix 8.1 Indifference Curve Analysis

**Indifference curve** analysis is another way to assess whether resource allocation is optimal. Budget constraints (lines) show us

all of the feasible options, and indifference curves allow us to identify the combination of goods that will yield the most utility. Using the hypothetical institution Egalitarian University, we will develop and apply indifference curves and budget constraints to Title IX compliance decisions.

Egalitarian's athletic department is limited in what it can spend, requiring it to make decisions on the allocation between men's and women's programs and among the various sports (soccer, football, basketball, etc.). For purposes of analyzing Title IX, we will examine the decision of how to allocate spending between men's and women's athletics. With a given pool of money, also known as a **budget constraint**, every dollar that Egalitarian allocates toward women's sports cannot be allocated toward men's sports, and vice versa. Our simple budget constraint is illustrated in Appendix Figure 8.1 below.

What is Egalitarian University's athletics budget buying? In keeping with the focus of Title IX, we will assume that the athletic department is buying participation opportunities for male and female athletes. In Appendix Figure 8.1, the vertical and horizontal intercept quantities of 1000 for men's and women's sports represent



Appendix Figure 8.1. Egalitarian University's Budget Constraint.

the maximum of each that could be provided if no opportunities were provided for the other sex.

The location of a budget line depends not only on how much money an athletic department has available to spend, but also on the prices of what they are buying. Appendix Figure 8.1, with a slope of -1, reflects a case where the price of providing opportunities for men equals the price of providing opportunities for women. In other words, if men's and women's sports face the same costs for coaches, equipment, facilities, travel, etc., then a given amount of money will buy the same number of participation opportunities for either gender. The slope of the budget line will differ if, for example, men's sports are more expensive to provide (perhaps the prevailing market wage for coaches of men's teams is higher than for women's teams). If the cost of providing opportunities for men is twice the cost of providing opportunities for women, the maximum number of men's sports participation opportunities will be only half the number for women (500 in ~~App.~~ Appendix Figure 8.1). Of course Egalitarian can expand the maximum number of participation opportunities for both men and women if budgetary allocations to the athletic department are increased and prices remain unchanged.

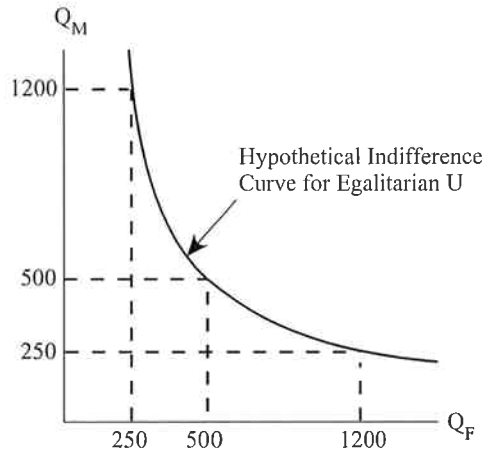
What combination of men's and women's sports should Egalitarian provide? In order to comply with Title IX requirements, it should be proportionate to male and female ratios in the general student population. Faced with the budget line in Appendix Figure 8.1, if 55% of Egalitarian U. students are female, then the university should provide 550 spaces for women, and 450 slots for men. For the remainder of our discussion, we will assume that Egalitarian U. has an equal number of men and women in attendance.

If Egalitarian U. complies with Title IX requirements, is that allocation of budgetary resources efficient in the sense that it maximizes total utility? In order to answer that, we need to introduce *indifference curves*, a tool that will help us represent what combination of men's and women's sports society would most prefer.

Indifference curves represent different combinations of goods that give the same level of utility, or satisfaction. In this case our bundle of goods consists of men's and women's sports participation

opportunities. Indifference curves have a few important properties that must be identified:

1. Every point on a given indifference curve represents an equal level of utility, hence the label "indifference." If an indifference curve accurately represents our preferences, we do not care whether we are at one point or another on a given curve. If the participation combinations of 400 men and 200 women, and 200 men and 300 women both lay on the same indifference curve, we would say they are equally preferred (that is, they give equal satisfaction). Points not on a given indifference curve lay on another curve and represent different levels of utility, by definition.
2. Indifference curves can be constructed for cheeseburgers and milkshakes, or any bundle of goods we want, and we can construct budget constraints for those same bundles of goods. Indifference curves can be constructed for individuals or communities (societies).
3. Indifference curves rank bundles of goods based on a consumer's or society's preferences, and more is preferred to less. The goal is to reach the highest indifference curve possible, as that represents the maximum amount of utility that can be attained under a given budget constraint. Indifference curves in the northeastern part of the graph (up and to the right) are preferred to those in the southwestern region (closest to the origin). An indifference curve containing the combination 300 men and 400 women would lay above (i.e., yield greater utility) our hypothetical indifference curve that contains the combination of 200 men and 300 women.
4. Indifference curves are everywhere on the graph. Just as any point on a map represents a geographic space, any point on an indifference map represents a level of utility that could be attained if that combination of goods was produced.
5. Indifference curves are generally convex to the origin. This reflects a preference for variety. For example, in Appendix Figure 8.2, indifference curve  $IC_1$  contains the combination of 500 men's and 500 women's participation opportunities. If we move up and to the left along that indifference curve, we see that society is



Appendix Figure 8.2. A hypothetical indifference curve for egalitarian university.

cap  
cap

increasingly less willing to give up opportunities for women to gain more opportunities for men. Society would only be willing to give up 250 spaces for women if it created an additional 600 spaces for men. The same thing occurs if we move down and to the right. Society is only willing to give up 250 spaces for men if it gains an additional 300 spaces for women.

replace "600" with "700"

replace "300" with "700"

6. Indifference curves cannot intersect. The formal way economists say this is that preferences must be transitive. If we are indifferent between bundles A and B, and indifferent between bundles B and C, then logically we must also be indifferent between bundles A and C. As a counter example, suppose that A and B lay on indifference curve  $IC_1$ . If bundles B and C lay on indifference curve  $IC_2$  that intersects  $IC_1$  at point B, then bundles A and C will lay on different curves, meaning those bundles provide different levels of utility.<sup>12</sup>

<sup>12</sup> Strictly speaking, intransitivity of preferences can occur with social (v. individual) indifference curves. The classic illustration of this problem is Kenneth Arrow's impossibility theorem (also known as the voting paradox). For our purposes, however, we will assume that the property of transitivity holds.

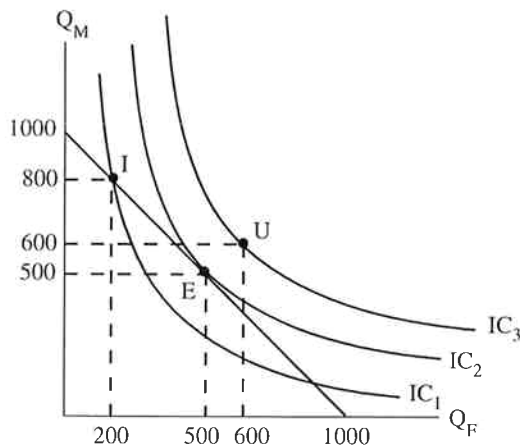
**Finding the optimal mix — indifference curves and budget lines combined**

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A budget line tells us the maximum number of goods we can obtain. For purposes of our Title IX discussion, it tells us how many men’s and women’s sports opportunities can be created given an athletic department’s budget and the cost of providing opportunities (which for now we assume to be equal for men’s and women’s sports). The budget constraint is a boundary that we cannot exceed without changing prices or the amount of money available.

Indifference curves reflect the utility we can attain from various combinations, and the goal is to reach the highest possible curve given the budget constraint. Graphically, this occurs when we have reached the indifference curve that is tangent to the budget line (see Appendix Figure 8.3 below). Any lower indifference curve, by definition, gives us less satisfaction and represents an inefficient allocation of resources. Higher indifference curves are not attainable unless the budget line can be shifted out.

Suppose that Appendix Figure 8.3 represents our fictitious Egalitarian U. Recall that indifference curves are everywhere on this graph, but let’s look at three of particular interest. If Egalitarian U.

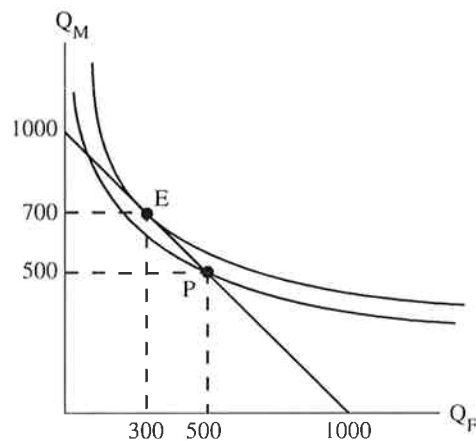


Appendix Figure 8.3. Efficient, inefficient, and unattainable allocation decisions.

initially provides 800 spaces for men and 200 for women, it will be at point I on indifference curve  $IC_1$ . From society's point of view, point I ("inefficient") represents an inefficient allocation of resources (expressed as participation opportunities), because it is possible to reallocate the existing budget and reach a higher indifference curve. Point E ("efficient") on  $IC_2$  (with 500 spaces each for men and women) represents the most efficient allocation for Egalitarian U., and assuming an equal number of males and females in the general student population, would also represent compliance with Title IX. Point U ("unattainable") on  $IC_3$  would also satisfy the proportionality requirements of Title IX and provide even greater utility (with 600 spaces each for men and women), but point U is unattainable given the current budget.

Appendix Figure 8.3 presents a case supportive of Title IX. It is also something of a special case in that it represents the Title IX requirements aligning perfectly with society's preferences. Given the contentious nature of Title IX, that is probably not a safe assumption.

Appendix Figure 8.4 presents a case against Title IX, where compliance reduces society's total utility. Point E (700 men, 300 women) represents the most efficient allocation of participation opportunities, given the budget and society's preferences. Again assuming a

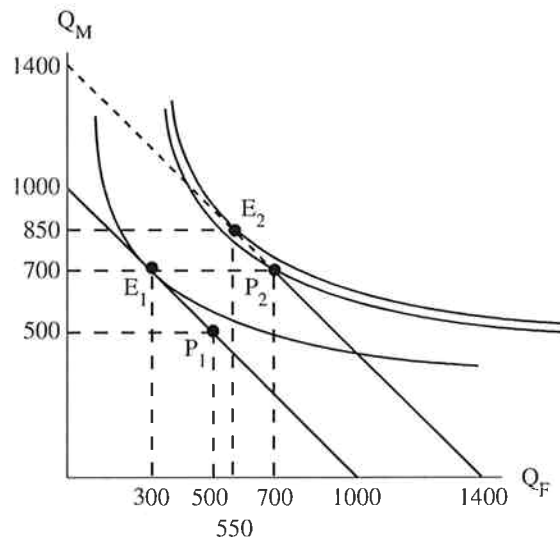


Appendix Figure 8.4. Proportional allocations that are not efficient.

gender-balanced student population, resource reallocation to comply with Title IX would move the institution to point P ("proportional" at 500/500), a point that balances participation opportunities but provides less than the maximum attainable utility.

The case against Title IX made by Appendix Figure 8.4 assumes a fixed budget and a reallocation of participation opportunities from men to women. Compliance can also be achieved by expanding the budget to provide more opportunities for women without sacrificing opportunities for men. Suppose that Appendix Figures 8.4 and 8.5 depict the preferences and budget constraint facing another fictitious institution, Utils University. Even though it is maximizing utility, Utils finds itself out of compliance at  $E_1$  and decides to increase the athletic department's budget to create 400 more opportunities for women. Assume that Utils also decides to leave men's sports capped at 700 until proportionality is reached. The decision to increase the budget shifts the budget line from  $B_1$  to  $B_2$ , but the restriction that the budgetary increases apply only to women's sports means that  $B_2$  does not extend all the way to the vertical axis

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Appendix Figure 8.5. Expanding the budget to achieve IX compliance.



(a discontinuity in the function is created). The dashed part of  $B_2$  represents that part of the new budget line that would exist if not for the capping of men's opportunities at 700. Given Utils University's indifference map, and its self-imposed restrictions to achieve Title IX compliance, it would provide an equal number of opportunities and achieve proportionality at point  $P_2$ . This point would not be efficient, however, if shifting some of the additional budget allocation to men's sports would increase total utility by moving us to the higher indifference curve containing point  $E_2$ .

Is it possible for Utils to move to  $E_2$  and still be in compliance? Recall that compliance can be achieved, at least in the short run, by demonstrating a "history and continuing practice of program expansion" for the underrepresented sex. At  $E_2$ , Utils would increase the number of men's slots by 150, and the number of women's spaces by 250. They would also be closer to proportionality, moving from a 70/30 split to almost 60/40. Assuming that Utils has a history of increasing opportunities for women, moving from  $E_1$  to  $E_2$  would leave Utils in compliance under part 2 of the three-part test. The upside for Utils is that it would achieve short-run compliance while maximizing utility. The downside is that future budgetary expansion or reallocation would be necessary for the university to continue making progress toward proportionality.

### ***Limitations to the above analysis***

The indifference curves presented in this discussion are intended to represent society's preferences. The question is, how do we know society's desires? Are they determined (ascertained?) primarily by the athletic department or the university as a whole? What about fans and boosters? What about those who dislike college sports and what it has become (commercialized)? The preferences of the athletes themselves would be part of the society's indifference map. All of those groups and many more form society's preferences for college sports in general, and for the distribution of men's and women's sports opportunities in particular. Some preferences are clearly expressed in the market; some sports generate more

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ticket sales and revenue than others. Colleges and universities want the positive publicity (and resultant surge in admission applications) that results from a winning sports program. However, as we have discussed before, college sports also create externalities. Homeowners around a football stadium experience negative externalities in the form of noise and game day traffic. Positive externalities are created when success of the local college team generates wider excitement in the community, and when student-athletes use their scholarship-funded educations to give back to society. It is difficult to measure the value of these externalities, but they affect the total value of college sports to society.

Social preference functions are an amalgamation of many individual functions. Clearly not everyone will agree on the optimal allocation or more desirable combination of sports opportunities. Further complicating the issue is how to measure the intensity of preferences. Direct participants in the athletic program tend to have stronger preferences for certain outcomes than do members of the general public. Within athletic programs intensity of preferences can vary. In our 50/50 split (500 men, 500 women), suppose that the utility that would be gained by the 501st male athlete exceeds that of the 500th female athlete (assume all athletes enter the program in order of the utility they expect to receive from participation). That would suggest that total satisfaction could be increased by reallocating that 500th female slot to the 501st male athlete.

Preference functions also change over time. Proponents of Title IX have long held that the allegedly low interest in female sports is the result of few opportunities. Legal rulings with regard to survey use support this position. As society as a whole becomes less discriminatory and more accepting of women in roles traditionally held by men, the notion of equal opportunity in sports becomes more acceptable. As the first generation of Title IX beneficiaries imparts the love of sports in their daughters, we would expect society's indifference map to shift toward preferring greater equality of opportunity.

What does experience tell us about society's preferences? The implementation of Title IX suggests two obvious things: (1) Pre-Title IX preferences of athletic departments were strongly skewed

toward men's sports. (2) Part of society (and those representing them in the legislature) had a preference function favoring much greater equality of opportunity than was being provided in the early 1970s. Over 30 years later, the ongoing battles to reform and challenge Title IX, and the general lack of compliance under part 1 of the three-part test, suggest that the preferences of those allocating the resources continue to favor men's sports.

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