TAXES AND TOURNAMENTS

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What is the best way to reduce economic inequality? Economists, lawyers, political philosophers and politicians have pondered this question for decades. Yet there is another group of savvy and highly motivated individuals who have been thinking about redistribution for just as long. Commissioners of the National Football League, the National Basketball Association, the National Hockey League, and Major League Baseball together with team owners and player unions have been inventing and reinventing ways to redistribute resources, and they continue to do so today. The same is true of the President of National Collegiate Athletic Association along with the heads of Big Ten, Big Twelve and other powerful athletic conferences. This Essay asks what can we learn from their experiences.

The answer, it turns out, is that we can learn quite a bit. Key tax policy questions—whether it is better to have one tax base or many, whether non-tax rules should take distributional effects into account, whether it is better to redistribute in cash or in kind, whether redistribution should take place at the national or local level, and whether predistribution is superior to redistribution—all arise in major sports competitions. Running sports tournaments, it turns out, has more than a little in common with running a tax-and-transfer system. And the general approach reflected in the design of real-world tax systems and professional sports tournaments turns out to be the same: adopt many plausible solutions instead of searching for a perfect one.

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INTRODUCTION

Dallas Cowboys are the most valuable sports franchise in the world worth an astounding nine billion dollars.[1] Detroit Lions and Cincinnati Bengals are at the bottom of the National Football League (NFL) value rankings, each worth about $3.5 billion.[2] These multi-billion valuations come, in large part, from gigantic sums that content distributors are willing to pay for the right to broadcast football games. During the decade ending in 2033, the NFL is guaranteed $125.5 billion in television money, and that number may end up being significantly higher.[3] The enormous guaranteed sum comes out to $3.92 billion per team. And that is exactly how it will be divided—equally.[4]

The Lions and the Bengals have plenty of fans, but they operate in relatively small markets and have been mediocre or worse for a long time, though this has changed recently. The Cowboys are the "America's Team," with national, even global, fan base.[5] It is safe to assume that the Cowboys are a much bigger draw than the Lions and the Bengals. The $125.5 billion in television money is not based on the viewers in Detroit and Cincinnati, passionate and loyal as they are. Yet none of this matters in how the NFL divides the main source of its revenue. As late Baltimore Ravens owner Art Modell quipped about the NFL revenue sharing model, "We're 26 republicans who vote like socialists."[6]

Why would Jerry Jones, the owner of Dallas Cowboys, agree to this sharing? Why not insist that more popular teams, or more winning teams get more TV money? Why none of the top sports leagues follow the eat-what-you-kill approach?

The answer is no secret. Owners of professional teams face a tradeoff. On the one hand, each owner wants to maximize the team's profits. Capturing the greatest share of revenues earned by the league—and sharing no revenue earned by the individual team—seems like an obvious way to make the most money. Yet this approach has a crucial flaw. To excite the fans, the Cowboys need worthy opponents. If every game between the Cowboys and the Lions turns into a rout of the Motor City team, neither Dallas nor Detroit fans would pay attention for long. So it is

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[1] *See* Mike Ozanian & Justin Teitelbaum, *NFL Team Valuations*, FORBES (Aug. 30, 2023), https://www.forbes.com/lists/nfl-valuations/?sh=7a18e2617386.

[2] *See id*.

[3] *See* Mike Ozanian, *Why the NFL Could Reap More Than $126 Billion in TV Money by 2033*, FORBES (Aug. 30, 2023), https://www.forbes.com/sites/mikeozanian/2023/08/30/why-the-nfl-could-reap-more-than-126-billion-in-tv-money-by-2033/?sh=23e99c5115b5.

[4] *See* Justin Ehrlich et al., *NFL Team Revenue Distribution and Revenue Sharing: A Median Voter Theorem*, 47 MANAGERIAL FIN. 525, 525, 527 (2021).

[5] *See* Justin Birnbaum, *Dallas Cowboys Owner Jerry Jones Has 5.7 Billion More Reasons to Be Thankful This Year*, FORBES (Nov. 24, 2022), https://www.forbes.com/sites/justinbirnbaum/2022/11/24/dallas-cowboys-owner-jerry-jones-has-57-billion-more-reasons-to-be-thankful-this-year/?sh=9fe8c5864bb5.

[6] Ehrlich, *supra* note #, at 525. It follows immediately from the equal-sharing arrangement that the value of the Lions is inflated and the value of the Cowboys is depressed compared to what they would have been if each team captured the share of the total TV revenue proportionate to its popularity among fans. At least this would be true in the short term.

very much in Jerry Jones' interest to make sure that no NFL team is a total pushover. Otherwise Mr. Jones will be less fabulously wealthy holding a larger slice of a smaller pie.

What Mr. Jones and other owners of major professional sports teams seek is competitive balance. The imperative to achieve and maintain this balance pushes the owners toward more redistribution; a simple-minded profit motive pulls them towards less. The result of this push and pull is a carefully designed system—constantly evaluated and occasionally adjusted—that redistributes from financially stronger to weaker teams without excessively discouraging owners of stronger teams from making their franchises even more profitable and fun to watch.

If the tradeoff between greater individual profit and greater redistribution sounds familiar, it should. This tradeoff has much in common with the choice facing policymakers designing tax-and-transfer systems all over the world. On the one hand, governments want to maximize total economic output by supporting individuals' work, savings, innovation and the like. On the other hand, governments need revenue to pay for public goods, redistribute, service the national debt and so on. Raising revenue by taxing economic gains suppresses the incentives to create these gains. So governments need to balance profit incentives and demands of redistribution just as Jerry Jones and his fellow NFL owners need to do. Designers of taxes and tournaments face a very similar incentives-redistribution tradeoff.

There is a large literature addressing the design of tax-and-transfer systems. In addition to theoretical work, this literature studies the effects of changes in taxes and transfers on economic activity over time,[7] compares solutions adopted by different countries,[8] even searches for lessons in centuries past.[9] To understand people's preferences about redistribution, scholars conduct surveys and experiments.[10] But it appears that no one has asked what lessons can be learned from very visible and overt redistributive policies adopted in professional sports. This Essay takes on this task.

Part I begins by introducing the long-standing and ever-present concern about competitive balance that motivates the owners of every major professional sports league.[11] To achieve competitive balance every league redistributes from more economically successful to less economically successful franchises in multiple ways.

Studying this redistribution makes sense for a number of reasons in addition to the commonality of the incentives-redistribution tradeoff in

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[7] *See* David Splinter, U*.S. Tax Progressivity and Redistribution*, 73 NAT'L TAX J. 1005, 1009-14 (2020) (reporting on changes in tax progressivity since 1979).

[8] *See* Florian Scheuer & Joel Slemrod, *Taxing Our Wealth*, 35 J. ECON. PERSP. 207, 210-14 (2021) (describing wealth taxes in Europe).

[9] *See* Branko Milanovic et al., *Measuring Ancient Inequality* (Nat'l Bureau of Econ. Rsch., Working Paper No. 13550, 2007), https://www.nber.org/papers/w13550.

[10] *See* Stefanie Stantcheva, *Understanding Tax Policy: How Do People Reason?*, 136 Q.J. Econ. 2309 (2021).

[11] The same concern is central to the organization that, for the reasons discussed later on, may well be in the process of becoming something very close to a professional sports league, at least in part—the National Collegiate Athletic Association.

sports and in tax. Sports leagues are run by well-informed, rational, business-savvy individuals—team owners and, to a degree, player union representatives. These individuals are very attuned to the preferences of sports fans. The connection between redistributive choices made by the owners and the profitability of the leagues is much more clear and immediate than what tax reformers can ever hope to observe. No public choice issues plague professional sports decisionmaking. Every team owner is fully attentive and represented, and so are player unions. The problem of concentrated benefits and dispersed costs does not arise. Moreover, there are no concerns about human suffering that weigh heavily on the minds of real-world policymakers. It would be an overstatement to argue that one may think of professional sports as an ideal setting to study redistribution, but there is a kernel of truth to this argument.

Part II considers how sports leagues answer the main questions facing modern governments as they grapple with the incentives-redistribution tradeoff. It turns out that the leagues have implemented many policies closely analogous to government programs.

All leagues combine predistribution with redistribution. All leagues use both tax and non-tax rules to redistribute. Leagues rely on cash and non-cash transfers and use many different bases (in tax-speak)—including revenues, payrolls, wins, and league membership—rather than a single base viewed as the best. All professional leagues redistribute at the equivalent of the federal rather than state or local level. The National Collegiate Athletic Association (NCAA) does not, and it is facing significant challenges as a result.

The overall lesson is that thinking about tournaments, that is, the structure of competition in professional sports leagues, offers more than a few insights for tax system designers. The Conclusion suggests one more takeaway, perhaps the most important one of all: Rather than insisting on a perfect, optimal solution, it is wise to adopt a range of plausible ones.

I. COMPETITION AND REDISTRIBUTION IN PROFESSIONAL SPORTS

If the goal of a competition is to win, why would anyone help their opponent? In many sports this would, indeed, never happen. Michaela Shiffrin—the winningest skier of all time[12]—would never give tips about the slope conditions to her competitors. A leader of the Tour de France would not slow down when the pursuer just a few seconds behind in the general classification begins to struggle on a brutal climb. Not even Pierre de Coubertin's Olympic principles require competitors to help each

[12] *See* Bill Pennington, *How Michaela Shiffrin Won More World Cup Races Than Anyone*, N.Y. TIMES (Mar. 11, 2023), https://www.nytimes.com/2023/03/11/sports/skiing/shiffrin-stenmark-world-cup-record.html.

other.[13] As an oft-repeated saying goes, when it comes to sports, "winning is not everything, it's the only thing."[14]

Yet when competitors are teams united by membership in a professional sports league the calculus changes. Winning is no longer the only thing, profit is also—and even more—important. So key decisionmakers must solve a puzzle: How do they maximize the league's profitability, make all team owners and players richer than before, all while retaining the basic idea of playing to win? This Part describes how major professional sports leagues conceive of this puzzle, and why it behooves us to pay attention to their solutions.

A. Competitive Balance: What Is It, Who Wants It, and Why?

The first sport that discovered the importance of competitive balance in a professional league was baseball, and it learned its lesson the hard way. The National Association of Professional Baseball Players (NAPBP) was organized in 1870 and lasted less than five seasons.[15] Eager to win, its richer clubs "strip[ed] weaker ones of their best talent."[16] Many games turned into boring routs. Having no appealing product to offer, weaker clubs collapsed. Rich clubs did not have enough opponents to play, their ticket revenue tanked, and the league met an inglorious end.[17]

The National League rose from the ashes of NAPBP and it was determined not to repeat its fate.[18] The solution the National League adopted came to be known as the reserve clause. Any team that signed a player for an annual contract (the only term allowed at the time) reserved a right to resign the player for another year at the price (that is, salary) determined by the team.[19] No other team could lure the player away, no matter how much it was willing to pay him. Because it is difficult to predict future success of players early in their careers, the reasoning went, best players would end up dispersed among the league's teams giving each a chance to succeed over the course of the season.[20]

Baseball's efforts to achieve competitive balance were not unique. Bert Bell, the NFL commissioner between 1946 and 1959 has pursued parity among NFL teams "so adroitly that the conference champions [were] seldom decided before the last Sunday of the season."[21] Today, the

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[13] *See* Olympism, World Olympians Association, https://olympians.org/woa/olympism/. Olympic principles include respect for the rules and the sport, and a commitment to fair play, but they do not demand sacrificing a competitor's likelihood of winning for the sake of competitors.

[14] *See* Beau Dure, *Winning Isn't Everything; It's the Only Thing. Right?*, GUARDIAN (Sept. 24, 2015), https://www.theguardian.com/sport/2015/sep/24/winning-everything-sports.

[15] *See* Simon Rottenberg, *The Baseball Players' Labor Market*, 64 J. POL. ECON. 242, 247 (1956).

[16] *Id*.

[17] *See id*.

[18] *See id*.

[19] *See id*. at 245. The salary may not be lower than 75% of the previous year's salary.

[20] *See* Rottenberg, *supra* note #, at 246.

[21] Bulent Uyar & David Surdam, *Searching for On-Field Parity: Evidence from National Football League Scheduling During 1991-2006*, 14 J. SPORTS ECON. 479, 481 (2012).

NFL deploys many tools in addition to the highly egalitarian TV revenue sharing to make sure most teams remain competitive most of the time.[22] Other major professional sports leagues do the same.[23] The NCAA split its members into three divisions to avoid highly uneven matchups.[24] Competitive imbalance troubles league organizers across the Atlantic as well. An effort to reduce this imbalance was one of main drivers behind the fair financial play regulations implemented in 2011 by the Union of European Football Associations (UEFA).[25]

How serious are the competitive balance concerns? Serious enough to be respected by courts. The Supreme Court noted that maintaining competitive balance in the NFL is a "legitimate and important" concern,[26] and it expressed the same view about NCAA football competitions.[27] The Second Circuit reached a similar conclusion about major league baseball.[28] While an argument that workers' compensation must be controlled to maintain competitive balance is "virtually universally rejected in the general run of cartel cases," it wins when it comes to major sports leagues.[29]

One should be clear-eyed about competitive balance arguments. Baseball used them to defend the reserve clause whose clear effect was to depress payer's wages.[30] The NCAA used competitive balance concerns to justify not paying college athletes while making billions from their talents and efforts.[31] The NBA and the NHL used the same argument to justify capping team payrolls and player salaries.[32]

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[22] *See id*.

[23] *See* Stefan Szymanski, *The Economic Design of Sporting Contests*, 41 J. ECON. LIT. 1137, 1151 (2006). Baseball has remained vigilant about any one team having too much success. When the New York Yankees won four championships in five years between 1996 and 2000, *see* Allen R. Sanderson & John J. Siegfried, *Thinking About Competitive Balance*, 4 J. SPORTS ECON. 255, 256 (2003), the MLB assembled a Blue Ribbon Panel to advise the league how to return to greater parity that seemed to be evaporating despite all parity-promoting measures already in place. *See* Szymanski, *supra*, at 1140 n.11

[24] *See* Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS L. REV. 9, 15 (2000).

[25] *See* Daniel Plumley et al., *The Unintended Consequence of Financial Fair Play: An Examination of Competitive Balance Across Five European Football Leagues*, 9 SPORT, BUS. & MGMT. 118, 119 (2019).

[26] Am. Needle, Inc. v. Nat'l Football Leagues, 560 U.S. 183, 204 (2010).

[27] Nonetheless, the Court rejected the specific rule that the NCAA defended on this ground. *See* Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 117, 119-20 (1984) (hereinafter, *Board of Regents*). For a discussion, *see* Hovenkamp, *supra* note #, at 27-8.

[28] *See* Major League Baseball Props., Inc. v. Salvino, Inc., 542 F.3d 290, 328-39 (2d Cir. 2008).

[29] *Id*. at 27.

[30] *See* Rottenberg, *supra* note #, at 248.

[31] *See* Herbert Hovenkamp, *A Miser's Rule of Reason: The Supreme Court and Antitrust Limits on Student Athlete Compensation*, 78 NYU ANN. SURV. AM. L. 1, 26 (2022).

[32] *See* Sanderson & Siegfried, supra note #, at 267 (NBA), Helmut Dietl et al., *Organizational Differences between U.S. Major Leagues and European Leagues: Implications for Salary Caps* 8-9 (Nat'l Am. Assoc. Sports Econ., Working Paper No. 11-05, 2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3489168.

It is not even clear if competitive balance is changed by all these league-imposed restraints. Anticipating Coase's famous theorem, Simon Rottenberg argued that players would end up with teams that value them most all restrictions notwithstanding.[33] So there are reasons to question both the sincerity of competitive balance arguments and their plausibility.

Moreover, for all the attention to competitive balance, it is not clear what this term means. Is the league competition balanced if every team has close to a fifty percent chance of winning every game? Or is the relevant question how likely is any team to win the championship? Or build a dynasty like Michael Jordan's Bulls or Tom Brady's Patriots? One finds all these answers in the literature.[34] Other interpretations are possible. Baseball's charge to the Blue Ribbon commission defined competitive balance as a state where "every well-run club has a regularly recurring hope of reaching postseason play."[35] Economists suggested more rigorous criteria such as dispersion of win-loss percentages[36] and relative standard deviation,[37] among others.[38] One may wonder whether a criterion as loosely defined as competitive balance may serve a useful function.

And yet there is no way around the fact that if a single team wins all the time, or just a few teams do, while the rest of the league are perpetual losers, fans would lose interest, revenues would fall, and the history of the first, ill-fated professional sports league will repeat itself. The competitive balance concern is real, and every major sports league strives to address it by redistributing from the rich and the capable to the poor and the inapt. How the major sports leagues accomplish this redistribution is the central focus of this Essay. Before turning to it, however, it is worth highlighting why the redistributive solutions adopted by professional leagues are particularly interesting to tax system designers.

B. Redistribution Without Usual Complications

There are more than a few differences between reducing inequality through the tax-and-transfer system and achieving competitive balance in professional leagues. Yet the fundamental tradeoff is the same. Governments want workers to work, savers to save, inventors to invent and so on. Taxing the return from these activities reduces the incentive to engage in them. Similarly, sports leagues want teams to play better, excite more fans, and generate more profits. Taxing success, in whatever form, reduces the incentive to succeed. On the other hand, governments need revenue to support those in need, and leagues need resources to support

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[33] *See* Rottenberg, *supra* note #, at 254. Rottenberg's insight came to be known as the invariance principle. *See* Szymanski, *supra* note #, at 1140.

[34] *See* Szymanski, *supra* note #, at 1155.

[35] Szymanski, *supra* note #.

[36] *See* Sanderson & Siegfried, *supra* note #, at 259.

[37] *See* Uyar, *supra* note #, at 482.

[38] *See* Yang-Ming Chang & Shane Sanders, *Pool Revenue Sharing, Team Investments, and Competitive Balance in Professional Sports: A Theoretical Analysis*, 10 J. SPORTS ECON. 409, 420 (2009) (referring to a ratio and a difference between expected winning percentages of two team types).

struggling franchises. The trade-offs between incentives and redistribution arises in both settings.

Even so, decisionmakers running major leagues have an advantage: Many of the usual complications faced by government policymakers do not arise when it comes to professional sports.

First, and most obviously, when we think about football or baseball, only money and fandom are at stake. Money and fandom matter, of course, but only to a point. Decisionmakers running the NFL, MLB, NBA, and NHL do not need to worry about people going hungry or having no place to sleep, about children growing up in poverty and hopelessness, or about any other form of real human suffering and injustice. Anguish of football fans whose team loses an important game is just not that important by comparison. So professional sports present the tradeoff between incentives and inequality in a relatively low-stakes setting—without worries about the dire human costs of inadequate redistribution.

At the same time, a lot of money is at stake in professional sports. Scholars have long been trying to understand people's preferences for redistribution, funding of public goods, and fairness in general by conducting surveys and lab experiments.[39] Challenges in interpreting survey responses are well-known.[40] As for experiments, scholars try to improve the external validity of results by presenting participants with real monetary payoffs. These payoffs are typically small, however, making it difficult to draw conclusions about the design of much larger tax burdens and government benefits.[41] The small-stakes problem is surely absent in sports where billions of dollars are on the line. We do not need to worry that decisionmakers are not paying enough attention, not collecting enough information, or just not caring enough about the outcomes when it comes professional sports.

Another challenge that is much less daunting when it comes to sports is assessing the consequences of policy changes. Policymakers can only dream of the kind of feedback loop that league managers have at their disposal. If a league misjudges the extent of redistribution, or its form, consequences would appear in short order. Ticket revenues would fall, TV ratings would decline, merchandize sales would drop, and a wave of bad press and social media coverage would follow.

Moreover, in politics, distributional adjustments typically come as part of a larger package. Most of those concerned about the rise of inequality also support women's right to choose, more permissive immigration, greater gun control, and so on.[42] Policies rarely change one at a time—or even one area at a time—making it difficult for observers to

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[39] *See* Stantcheva, *supra* note #.

[40] *See* Marianne Bertrand & Sendhil Mullainathan, *Do People Mean What They Say? Implications for Subjective Survey Data*, 91 AEA PAP. PROC. 67 (2001).

[41] A common solution to the small stakes problem is to conduct experiments in poor countries where a given dollar amount looms much larger than in the U.S. Even in those cases what counts is large stake is close to a year's worth of income—certainly a very significant amount but not the kinds of sums that government decisionmakers operate with. *See* Steffen Andersen et al., *Stakes Matter in Ultimatum Games*, 101 AM. ECON. REV. 3427, 3428 (2011).

[42] *See, e.g.*, Bernie Sanders on Issues, https://berniesanders.com/issues/ (last accessed on May 28, 2024).

discern the effects of specific changes. Things are simpler in sports leagues, so evaluating which policies work and which fail is easier.

Relatedly, a small group of owners runs each major professional league, often in negotiations with powerful player unions. These negotiations are never simple, and player strikes, lockouts, and litigation are not unknown.[43] Still, getting a few dozen owners and the player union representatives to agree on a reform has to be easier than getting legislation through Congress, with its multiple veto points, polarization, and all the rest of well-known causes of gridlock. All major professional leagues take advantage of the antitrust exemption allowing multi-employer coordination during collective bargaining with unions—an exemption that surely facilitates the bargaining process.[44] So we may expect redistributive policies in professional leagues to reflect the preferences of key players fairly well.

Finally, public choice dynamics give rise to well-known obstacles to government policymaking.[45] Yet these dynamics are largely absent in professional sports. There is no small, unrepresentative interest group taking advantage of numerous but dispersed masses. While doctors, farmers, or small business owners may try to capture rents at the expense of the rest of the voters, there are no fan clubs attempting anything of a kind. Nor are there sports equivalents of legislators shaping policy with an eye to campaign contributions.[46] Parties with the stake in decisions (except for the fans) are all at the table, whether it is the owners hashing out their collective views or the owners and the player union representatives negotiating whatever issue happens to arise at the moment.[47]

One should not idealize sports leagues' decisionmaking—it is surely imperfect. But it is relatively free from several significant problems that confound real-world tax policymaking. So observing how professional sports deal with the incentives-redistribution tradeoff makes a lot of sense.

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[43] Allen R. Sanderson & John J. Siegfried, *Simon Rottenberg and Baseball, Then and Now: A Fiftieth Anniversary Retrospective*, 114 J. POL. ECON. 594, 601 (2006) ("The last 30 years [of MLB play] have seen five strikes and three lockouts"); Szymanski, *supra* note #, at 1171-2 (discussing baseball's 232-day strike in 1994-95 and multiple attempts by NFL and NBA players to decertify their unions to strengthen their bargaining positions).

[44] *See* PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION Sec. 557b (2024).

[45] For a description of public choice analysis of taxes *see, e.g.*, Daniel Shaviro, *Beyond Public Choice and Public Interest*, 139 U. PA. L. REV. 1, 64-76 (1990).

[46] *See* Edward J. McCaffery & Linda R. Cohen, *Shakedown at Gucci Gulch*, 84 N.C.L. REV. 1159, 1172-76 (2006) (describing rent extraction by politicians in charge of tax legislation).

[47] There is no doubt that the interests of superstars making astronomical amounts of money are not fully aligned with the interests of the rookies with uncertain future or the bench warmers hoping to prove themselves. The agency problem is not fully absent. But that problem is minor compared to the challenges that interest group politics brings to the functioning of the government.

II. What Can We Learn from Professional Sports?

All developed countries have progressive tax-and-transfer systems, and all governments face similar choices involved in systems' design. The degree of progressivity and the magnitude of transfers are the obvious ones, but there are many others. For example, governments must choose whether to tax income, consumption, or both; whether to make transfers in cash or in kind, and whether to make them conditional or not; whether to restrict in-kind transfers to support nutrition, housing, education, all of the above or something else.

Scholars spilled much ink on explaining—and debating—how to make these choices. Individuals running professional sports leagues just made them. But as different as the NFL's governing documents are from Title 26 (Internal Revenue), Title 42 (public health and social welfare), and the related parts of the U.S. Code, many choices made by professional sports leagues are quite similar to those made by Congress in designing the U.S. tax-and-transfer system. This Part considers these similarities and the lessons to be learned from them.

A. Predistribution or Redistribution?

During a 2011 speech in Oslo, Jacob Hacker slotted a "p" in front of "redistribution" and coined a new term—predistribution.[48] Within two years, Ed Miliband, a leader of the U.K. Labor Party at the time, championed the predistribution idea, and both the idea and the term entered academic and political discourse.[49]

The distinguishing characteristic of predistribution is that it is not redistribution—it is "distinct from simply taxing and providing benefits."[50] Thus predistribution encompasses all government policies aimed at decreasing economic inequality other than by taxing the rich and giving money to the poor.

It is useful to separate two broad types of predistribution. The first type consists of government control and use of economic resources. Government investments in education, childcare, job training and retraining, are examples of the first type of policies.[51] The same is true of government investments in infrastructure and green tech, as well as industrial and monetary policies aimed at more broadly shared prosperity.[52] The second type of predistribution is changes to legal rules. This section considers policies of the first type and the following section takes on the second.

The choice between redistribution and predistribution is momentous. When Democratic Party's commitment to the latter yielded to its preference for the former, the Party lost a large part of its working

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[48] *See* Jacob Hacker, *The Politics of Predistribution*, 21 Renewal 54, 55 (2013).

[49] *See id*. at 54.

[50] *Id*.

[51] These are all examples of government spending to build or improve people's income-earning capacity.

[52] These are examples of spending to give or expand people's opportunities to deploy their income-earning capacities in order to better their lives.

class base and replaced it with more educated, affluent Americans.[53] The Party's progressive wing is now trying to retain whatever is left of the Party's working-class constituency by promoting public investments of all kinds.[54] The populist Republican wing in control of that party is trying to do the same through advocacy of protectionist trade and restrictive immigration policies.[55]

Given such weighty stakes, the MLB or the NFL are not the first places that come to mind as sources of insight. Yet turning to sports does reveal a clear policy decision: professional leagues feature both redistribution and predistribution, and lots of it.

1. Redistribution in Professional Sports

The clearest example of redistribution is a luxury tax. Referred to as simply "tax" by the NBA[56] and the "competitive balance tax" by the MLB,[57] the luxury tax redistributes from teams with high payrolls to financially weaker teams. The details of this redistribution in both leagues are extremely complex,[58] but the underlying logic is clear and the effects are large. The New York Mets, for example, the greatest spenders in the MLB, paid $101 million in luxury tax in 2023.[59] The Golden State Warriors, the Mets' counterparts in the NBA, paid $170 million and stared at an astonishing $483 million luxury tax for 2023-24 season unless they got their payroll under control.[60] Teams able to afford exorbitant payrolls are forced to support franchises that lack resources to field comparably competitive teams. At least, that is the idea.[61]

Both the MLB and the NBA view greater over-spending as increasingly more problematic, so the tax rate increases for more profligate clubs. The rate is also higher for repeat offenders—teams that remain above the luxury tax threshold year after year. These patterns of escalating costs mimic the structure of graduated penalties found in tax law and elsewhere, with both aggressiveness and recidivism being

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53 *See* Ilyana Kuziemko et al., *"Compensate the Losers?" Economic Policy and Partisan Realignment in the US* 1-4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 31794, 2023), https://www.nber.org/papers/w31794.

54 *See* Bernie Sanders on Issues, *supra* note #.

55 *See* Jill Colvin, *Trump's Plans If He Returns to the White House Include Deportation Raids, Tariffs and Mass Firings*, ASSOCIATED PRESS (Nov. 12, 2023), https://apnews.com/article/trump-policies-agenda-election-2024-second-term-d656d8f08629a8da14a65c4075545e0f.

56 NAT'L BASKETBALL ASS'N, COLLECTIVE BARGAINING AGREEMENT 170 (Jul. 2023).

57 MAJOR LEAGUE BASEBALL, 2022-26 BASIC AGREEMENT 115.

58 For an excellent description of NBA's Collective Bargaining Agreement see Larry Coon, LARRY COON'S NBA SALARY CAP FAQ, http://www.cbafaq.com/salarycap.htm (last accessed June 4, 2024).

59 *See* Marc Carig, *Mets Hit with Record $101 Million Luxury Tax Bill After Failed Season*, N.Y. TIMES (Dec. 23, 2023), https://www.nytimes.com/athletic/5159257/2023/12/23/mets-luxury-tax-bill/.

60 *See* Reem Abdalazem & Jeffrey May, *What Is the NBA Luxury Tax? Which Team Pays the Most in Luxury Tax*, AS (Oct. 17, 2022), https://en.as.co.m/nba/what-is-the-nba-luxury-tax-which-team-pays-the-most-in-luxury-tax-n/.

61 Whether reality reflects this idea is a different matter. *See infra*, text accompanying notes #-#.

common "degrees of graduation."[62] So the NBA and MLB use their luxury taxes both for redistribution and for deterrence.

Another mechanism—revenue sharing—is purely redistributive.[63] Mind-numbing complexities of revenue sharing arrangements aside, the leagues use two basic models. The first model allocates revenues earned by the league, the second model forces high-revenue teams to contribute some of the revenues they earn to a pool that the league uses to subsidize the laggards.

The NFL is the starkest example of the first model, with each team receiving an equal share of TV and licensing revenues earned by the league, no matter how much (or how little) a given team contributes to generating that revenue.[64] The MLB, NBA, and NHL share at least some of the national TV revenue as well.[65] Another example comes from across the Atlantic. The English Premier League (EPL) splits fifty percent of its broadcasting revenues equally among its teams.[66]

Another revenue sharing model is more explicit. In the NBA, for example, all teams contribute an equal *percentage* of their revenues into a common fund and then receive an equal *amount* from that fund.[67] Because teams' revenues are unequal, simple arithmetic reveals that the NBA scheme redistributes from high-revenue to low-revenue teams.

Other forms of sharing exist as well. Both the MLB[68] and the NFL[69] teams share local revenue with visiting teams. This revenue is typically higher for more profitable teams. Thus if low-revenue Colts[70] play high-revenue Cowboys both in Dallas and in Indianapolis, the net result of local revenue sharing is a transfer from the Cowboys to the Colts.

The overall extent of shared revenue varies. It is the highest in the NFL, lower in the MLB, and lower still in the EPL.[71] In any case, all leagues reduce economic inequality among the competing teams by

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[62] *See* Alex Raskolnikov, *Six Degrees of Graduation: Law and Economics of Variable Sanctions*, 43 Fla. St. U.L. Rev. 1021, 1023-26, 1033-33 (2016) (describing aggressiveness- and offense-history-based graduation).

[63] *See* Chang, *supra* note #, at 423.

[64] *See* Ehrlich, *supra* note #; Justin R. Hunt, *To Share of Not to Share: Revenue Sharing Structures in Professional Sports*, 13 TEX. REV. ENT. & SPORTS L. 139, 143 (2012).

[65] *See* Howard Bloom, *NFL Revenue-Sharing Model Good for Business*, SPORTING NEWS (Sept. 5, 2014), https://www.sportingnews.com/us/nfl/news/nfl-revenue-sharing-television-contracts-2014-season-business-model-nba-nhl-mlb-comparison-salary-cap/1n3eelhvlxm0b1kngc4u8vqpk5; Hunt, *supra* note #, at 161.

[66] *See* Daniel Plumley et al., *Looking Forward, Glancing Back; Competitive Balance and the EPL*, 23 SOCCER & SOC. 466, 476 (2022).

[67] *See* Coons, *supra* note #, Question 21.

[68] *See* Szymanski, *supra* note #, at 1151.

[69] *See* Sanderson & Siegfried, *supra* note #, at 629 (the NFL shares gate receipts 66/34 to the home team/visiting team).

[70] *See* Clay Moorehead, Note, *Revenue Sharing and the Salary Cap in the NFL: Perfecting the Balance Between NFL Socialism and Unrestrained Free-Trade*, 8 VAND. J. ENT. & TECH. L. 641, 669 (2006) (noting that the Colts spend 70% of their revenues on player salaries while richer teams spend only 38%, though both teams are subject to the same salary cap).

[71] *See* Peter J. Sloane, *The Economics of Professional Football Revisited*, 62 SCOTS J. POL. ECON. 1, 4 (2015) (reporting that total revenue sharing is 33% in the EPL, 50% in the MLB and 67% in the NFL).

redistributing revenues to some extent, that is, by using taxes and transfers.

Curiously, the logic behind these efforts finds only weak support in economic theory.[72] Yet ambiguity in academic literature—not an uncommon phenomenon when it comes to economics[73]—has not deterred team owners and players from staking billions of dollars on their strong intuition that redistributing from the rich to the poor levels the playing field.

2. Predistribution in Professional Sports

With billions of dollars changing hands among teams in all major professional sports, one may conclude that redistribution is the leagues' solution to competitive balance concerns. Yet even a casual sports fan knows that there is much more to the leagues' equalizing efforts. These additional measures are forms of predistribution. Today, they consist of rules imposed on all teams by collective bargaining agreements negotiated by league owners and players. The rules vary but the objective remains the same—greater parity among competing teams.

The oldest predistribution-type rule was already mentioned—baseball's reserve clause.[74] While there is no direct evidence that English soccer borrowed the idea, soccer's Retain and Transfer System that persisted until 1963 bore an uncanny resemblance to the infamous clause (which, itself, met its demise in 1976).[75] Both rules reduced the ability of richer teams to outbid everyone else in competition for the most skilled players.

The reverse draft is a more modern invention, and the one that remains important today.[76] Teams that are least successful during the season—teams that also tend to be among financially weakest—are among the first to choose players ready to join the league every year.[77] This is how LeBron James ended up in Cleveland[78] and Caitlin Clarke in

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[72] *See* Sanderson & Siegfried, *supra* note #, at 269 ("Contrary to popular belief, the effect of revenue sharing on competitive balance … could go in either direction."); Sloane, *supra* note #, at 3.

[73] See Alex Raskolnikov, *Distributional Arguments, in Reverse*, 105 MINN. L. REV. 1583 (2021) (discussing unending disagreements among economists about distributional effects of trade, antitrust, immigration, and other major government policies).

[74] *See supra*, text accompanying note #.

[75] *See* Szymanski, *supra* note #, at 1158-61. The demise of the reserve clause was not complete, however. MBL teams control players and their salaries for the first two years after rookie signing, and players are eligible for arbitration for the following four years, reaching free agency after six years in the league. *See* Ryan Pinheiro & Stefan Szymanski, *All Runs Are Created Equal: Labor Market Efficiency in Major League Baseball*, 23 J. SPORTS ECON. 1046, 1050 (2022).

[76] See Rodney Fort & James Quirk, *Cross-Subsidization, Incentives, and Outcomes in Professional Team Sports Leagues*, 33 J. ECON. LIT. 1265, 1282 (1995) (describing the origins of rookie drafts in all four major sports leagues).

[77] *See* Szymanski, *supra* note #, at 1161 ("The stated intention of the rookie draft system is to provide weaker teams with opportunities to acquire talented players by awarding them first pick").

[78] James was the number one pick in the 2023 draft, *see* Nate Ulrich, *20 Years Ago the Cavaliers Picked Akron Phenom LeBron James and Change Their Franchise*,

Indiana.[79] The NFL was the first to adopt the reverse draft in 1936, and today all major leagues feature some version of it.[80]

Then there is the salary cap—perhaps the most obvious form of predistribution. Rich teams are simply not allowed to spend more on player salaries than poor teams.[81] The cap is really a limitation on team payrolls, not on individual player salaries. But the term "salary cap" is too entrenched to argue about it.

The NBA was the first league to adopt the cap in 1984[82] as an explicit response to player free agency.[83] Once players were allowed to sign with the highest bidders, the advantage of large-market teams became overwhelming. The cap was adopted to eliminate this advantage before the first game of the free agency era was played.

Yet again, the NFL is the most egalitarian league. The cap is hard in football—no team is allowed to exceed it for any reason.[84] The NBA has a soft cap that is full of what tax law critics would call loopholes.[85] So the NBA complements the cap with a luxury tax.[86] The NHL has a version of the cap as well, while the MLB does not.[87] The NCAA oversees a system in which no player receives a salary, yet it has a functional salary cap as well. That is because NCAA limits the size of scholarships that teams may offer prospective student athletes.[88]

Roster limits are next on the menu. Salary cap limits the amount a team may pay its players, roster limits restrict the number of players on a team.[89] The idea is to prevent rich teams from hoarding players—a distinct possibility especially if the salary cap is leaky or absent

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AKRON BEACON J. (May 22, 2023), https://www.beaconjournal.com/story/sports/pro/cavs/2023/05/22/lebron-james-cavs-nba-draft-lottery-lakers-nuggets-western-conference-finals-playoffs-2023/70189309007/.

[79] *See* Coy Wire & Jill Martin, *WNBA Draft: Caitlin Clark Selected No. 1 by Indiana Fever, While Kamilla Acrdoso and Angel Rese Are Teaming Up in Chicago*, CNN (Apr. 15, 2024), https://www.cnn.com/2024/04/15/sport/wnba-draft-2024-spt-intl/index.html.

[80] *See* Szymanski, *supra* note #, at 1161.

[81] *See* Sanderson & Siegfried, supra note #, at 267 ("a binding ceiling on total payroll limits the amount of talent a high-revenue team can accumulate").

[82] *See* Ira Horowitz, *Competitive Balance in the NBA Playoffs*, 63 AM. ECON. 215, 219 (2018).

[83] *See* Helmut Dietl et al., *Organizational Difference between U.S. Major Leagues and European Leagues: Implications for Salary Caps* 9 (N. Am. Ass'n Sports Econ. Working Paper No. 11-05, 2011).

[84] *See* William W. Berry, *Superstars, Superteams, and the Future of Player Movement*, 13 J. SPORTS & ENT. L. 199, 213 (2022).

[85] *See id*.

[86] *See id*.

[87] *See* Dietl, *supra* note #.

[88] *See* Hovenkamp, *supra* note #, at 27. Not coincidentally, the massive, $2.8 billion *House* settlement being negotiated by the NCAA and college athlete representatives is said to include a $20 million cap on player compensation going forward. See Jesse Dougherty, *The NCAA and Major Conferences Agreed to a Settlement That Would Establish a Revenue-Sharing Model for Athletes Beginning in the Fall of 2025, Though Many Steps Remain to Finalize the Arrangement*, WASH POST (May 23, 2024), https://www.washingtonpost.com/sports/2024/05/23/ncaa-settlement-revenue-sharing/.

[89] *See* Szymanski, *supra* note #, at 1172.

altogether. Roster limits exist in every major professional league.[90] In fact, the MLB is in the process of tightening its late-season limit.[91] The NCAA imposes a similar constraint by limiting the number of scholarships a college team may offer.[92]

Last but not least, the leagues impose severe restrictions on player trades. Until the 1950s, teams could simply buy players from other teams for cash. The Yankees acquired Babe Ruth from the Red Sox for a single payment of $100,000.[93] The Red Sox, that is, their owner Harry Frazee, were short on cash, the Yankees had plenty of it, and baseball history took a sharp turn.[94]

Today all major leagues, as well as their European soccer counterparts, regulate player trades in some fashion. League Commissioners and player union representatives police these rules with vigor.[95]

The overall result of all these predistribution-type measures is a comprehensive set of constraints that profoundly structure the economic environment in which teams compete. It may be true that cash-strapped Indianapolis Colts operate in a different financial universe compared to the vast business empire that Jerry Jones built around Dallas Cowboys.[96] But the Cowboys cannot hire more players than the Colts, cannot have a higher payroll, cannot buy Colts stars' contracts from the Indianapolis owner, and cannot sign the best player in the annual rookie draft because the Colts have the right to pick ahead of the them. One does not need to be a sports aficionado to appreciate how powerful these constraints are. They are also varied. Faced with the choice between predistribution and redistribution, all major leagues chose both, and a range of each to boot.

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[90] *See* MAJOR LEAGUE BASEBALL, *supra* note #, at 72 (MLB); NAT'L HOCKEY LEAGUE, HOCKEY OPERATIONS GUIDELINES, http://www.nhl.com/ice/page.htm?id=26377 (NHL); Coons, *supra* note #, Question 79 (NBA); Marc Lillibridge, The Anatomy of a 53-Man Roster in the NFL, Bleacher Report (May 16, 2013), https://bleacherreport.com/articles/1640782-the-anatomy-of-a-53-man-roster-in-the-nfl (NFL).

[91] *See* MAJOR LEAGUE BASEBALL, *supra* note #, at 71-72 (limiting the expanded September rosters to 28 players).

[92] *See* Hovenkamp, *supra* note #, at 27.

[93] *See* Jane Leavy, *Why on Earth Did Boston Sell Babe Ruth to the Yankees?*, N.Y. TIMES (Dec. 30, 2019), https://www.nytimes.com/2019/12/30/opinion/babe-ruth-yankees-baseball.html

[94] *See id*.

[95] Perhaps the most famous unsuccessful trade of the past several decades—the deal that would send Alex Rodrigues to Boston Red Sox—fell apart under threat from players' union that objected to A-Rod's agreement to reduce his salary to enable the deal to meet the rules. *See* Jack Curry, *Baseball; Union Rejects Boston's Rodriguez Bid*, N.Y. TIMES (Dec. 18, 2003), https://www.nytimes.com/2003/12/18/sports/baseball-union-rejects-boston-s-rodriguez-bid.html.

[96] *See* Clay Moorehead, Note, *Revenue Sharing and the Salary Cap in the NFL: Perfecting the Balance Between NFL Socialism and Unrestrained Free-Trade*, 8 VAND. J. ENT. & TECH. L. 641, 669 (2006) (noting that the Colts spend 70% of their revenues on player salaries while richer teams spend only 38%).

B. Distributionally Informed Legal Rules?

Few people doubt that governments should use taxes and transfers to reduce inequality and help the poor. Whether non-tax legal rules should be used for the same purpose is more controversial. An influential argument states that no laws outside of the tax-and-transfer system should take redistribution into account.[97] Legal rules, according to this view, should be designed to maximize efficiency. Embedding distributional concerns into efficient laws makes them less efficient yet without adding to redistribution that may be accomplished by taxes and transfers. Everyone may be made better off if equity-informed (or, if one prefers, equity-distorted) contract, property, antitrust or other rules are made fully efficient while the tax system is adjusted to offset the regressive effect of the reform.[98]

A decades-long debate about the merits of this view in theory and, especially, in practice shows no sign of abating.[99] This Essay asks whether we can learn anything relevant to this debate from professional sports.

The answer is that we surely can. First, as is obvious from the discussion of redistribution, all major leagues do use their tax-and-transfer systems a great deal. They raise revenue from rich teams, transfer it to "poor" ones, and they do it a massive scale. But as we are about to discover, leagues also adjust their tournaments—the rules that shape the competition itself—to produce greater parity among competing teams.

Adjustments to "legal rules" of professional sports come in two flavors: changes to the basic rules of the game and reforms to the structure of league-wide competition.

Examples the latter are not hard to find. One well-known strategy is to arrange competition so that teams do not vary too much in strength, or that teams of roughly equal strength play each other more often. The NFL

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[97] The key statements of this argument are Louis Kaplow & Steven Shavell, *Why the Legal System Is Less Efficient Than the Income Tax in Redistributing Income*, 23 J. LEGAL STUD. 667 (1994) and Steven Shavell, *A Note on Efficiency vs. Distributional Equity in Legal Rulemaking: Should Distributional Equity Matter Given Optimal Income Taxation?*, 71 AM. ECON. ASS'N PAPERS & PROC. 414 (1981). For an earlier expression of the same idea, *see* Aanund Hylland & Richard Zeckhauser, *Distributional Objectives Should Affect Taxes but Not Program Choice or Design*, 81 SCAND. J. ECON. 264 (1979).

[98] If any.

[99] For recent work doubting the efficiency-only view of legal rules, *see, e.g.*, Lee Anne Fennell & Richard H. McAdams, *The Distributive Deficit in Law and Economics*, 100 MINN. L. REV. 1051 (2014) (arguing that political impediments to offsetting distributive adjustments defeat the unequivocal prescription of the efficiency-only argument); Zachary Liscow, Note, *Reducing Inequality on the Cheap: When Legal Rule Design Should Incorporate Equity as Well as Efficiency*, 123 YALE L.J. 2478 (2014) (arguing that legal rules may be more efficient than tax-and-transfer system in reducing inequality in certain circumstances); Alex Raskolnikov, *Distributional Arguments, in Reverse*, 105 MINN. L. REV. 1583, 1602-1624 (2021) (arguing that some of the fundamental assumption on which important economic arguments about redistribution rely failed to materialize in practice with devastating effects). For a recent response see David A. Weisbach, *Constrained Income Redistribution and Inequality: Legal Rules Compared to Taxes and Transfers* (U. Chi. Coase-Sandor Inst. L. & Econ. Working Paper No. 969), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4328824.

Commissioner Bert Bell who guided the NFL from 1946 to 1959 was so good at creating even matchups that conference champions were often decided on the very last day of the season.[100] The entire premise behind a multi-divisional architecture of collegiate athletics is to prevent teams of vastly unequal strength from playing against each other.[101] Promotion and relegation in European soccer is yet another example of the same approach.[102]

Another strategy that gives weaker teams a leg up is revising the rules under which the champion is crowned. All four major U.S. professional sports, as well as college football, have been doing exactly that. The core insight is that a weaker team has very little chance to outperform a stronger team over a course of a long season.[103] But in a single game or a short series the odds change. The weaker team can get a few lucky bounces, a star player on the stronger team may have a bad game or be out with an injury, so the weaker team has a higher chance of prevailing.[104] All four major leagues crown its champions on the basis of playoffs, not the regular season's best record.

Given this logic, the leagues may "redistribute" from the richer and stronger teams to the poorer and weaker teams by expanding the playoff eligibility. This is exactly what the MLB has done, time and again. Under the rules in place between 1901 and 1968, the entire postseason consisted of two teams competing in the World Series.[105] The MLB expanded playoffs to four, eight, ten, and eventually twelve teams by 2022.[106] Under the current rules, a team may finish fourth in its five-team division and still make the playoffs.[107] To a baseball fan circa 1960, this

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[100] *See* Uyar & Surdam, *supra* note #, at 480.

[101] *See* Hovenkamp, *supra* note #, at 27.

[102] *See* Szymanski, *supra* note #, at 1175 (explaining that the promotion/relegation system leads to a "less extreme difference between the best and the worst" teams in a league).

[103] *See* Neil Longley & Nelson J. Lacey, *The "Second" Season: The Effects of Playoff Tournaments on Competitive Balance Outcome in the NHL and NBA*, 13 J. SPORTS ECON. 471, 472 (2012).

[104] See Sanderson & Siegfried, supra note #, at 271 (pointing out that weaker teams are more likely to win in short series, noting that baseball teams with best regular season records fared poorly after the first playoff expansion in 1969)). "In the nine seasons since MLB expanded the playoffs to include a wild-card game … the team with the best regular season record in its league has gone to the World Series less than half of the time (7 out of 18)." Fred Bowen, *MLB Playoffs Expansion Aims for Fairness Without Killing the Fun*, WASH. POST (Oct. 6, 2022), https://www.washingtonpost.com/kidspost/2022/10/06/mlb-playoffs-expansion-aims-fairness-without-killing-fun/.

[105] *See* Young Hoon Lee, *The Impact of Postseason Restructuring on the Competitive Balance and Fan Demand in Major League Baseball*, 10 J. SPORTS ECON. 219, 221 (2009) (describing MLB playoff expansion from 1901 to 1994).

[106] *See id*. (describing expansions from two to four to eight teams); Fred Bowen, *MLB Playoffs Expansion Aims for Fairness Without Killing the Fun*, WASH. POST (Oct. 6, 2022), https://www.washingtonpost.com/kidspost/2022/10/06/mlb-playoffs-expansion-aims-fairness-without-killing-fun/ (describing the 2022 expansion from a 10- to a 12-team playoff format).

[107] Each of American and National Leagues are separated in three 5-team divisions. With a 12-team post-season, teams eligible for the playoffs are all division winners (total of six) plus three in each League (total of six) with the best overall record other than the division winners. There is no rule preventing these three teams

arrangement would be a gross violation of baseball rules. And yet the MLB repeatedly changed its rules to give weaker teams more of a fighting chance.[108]

Another way of capitalizing on the same logic—weaker teams have a better chance of success in short competitions—is to create an alternative, knock-out-style tournament and run it in parallel to the regular season. European soccer has adopted that model long ago with various "cups."[109] The NBA introduced the highly successful in-season tournament with a similar format in 2023.[110]

Matching teams by strengths, expanding playoffs, and creating alternative tournaments all help weaker teams to compete for and win a prize. Other changes in "legal rules" of the game help weaker teams win any given game. Baseball, in particular, has been active recently in making such changes.

The highest-paid baseball players are generally power hitters.[111] They may miss a lot of pitches, and they may not run very fast, but all that matters little if they hit a lot of home runs. Financially weak teams cannot afford to sign expensive players, so power hitters players tend to play for richer teams.

The MLB was surely aware of this reality when it made several changes before the start of 2022-23 season. First, it prohibited the so-called shift.[112] Second, it enlarged the base pads.[113] And third, it finalized a new rule placing a runner on second base at the beginning of any extra half-inning.[114] None of these changes affect home run hitters. But prohibiting the shift makes it easier for ground-ball hitters to reach base,

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from coming from the same division, which would make them second-, third-, and fourth-best teams in that five-team division.

[108] The NHL expanded its playoffs as well. *See* Longley & Lacey, *supra* note #, at 480.

[109] England's FA Cup is a prominent example, and Wigan's stunning win over Manchester City in the 2013 FA Cup final is a reminder that anything can happen in a single game. *See* Daniel Taylor, *Wigan, Manchester City and a "strange, beautiful" FA Cup upset—10 Year On*, N.Y. TIMES (May 11, 2023), https://www.nytimes.com/athletic/4498559/2023/05/11/wigan-manchester-city-fa-cup-final-10-years/.

[110] *See* Chris Mannix, *The NBA's In-Season Tournament Is an Unqualified Success*, SPORTS ILLUSTRATED (Dec. 6, 2023), https://www.si.com/nba/2023/12/06/nbas-in-season-tournament-unmitigated-success.

[111] *See* Mustafa R. Yilmaz et al., *Improvement by Spreading the Wealth: The Case of Home Runs in Major League Baseball*, 2 J. SPORTS ECON. 181, 182 (2001) ("Top home run hitters are much more highly paid than other good hitters are."); see also Pinheiro & Szymanski, *supra* note #, at 1046, 1058 (concluding that free agents are compensated according to their run values, noting that home runs, singles and walks contribute similarly to team runs, while recognizing that a hitter needs many more walks and singles to achieve a run value equivalent to that of a home run).

[112] *See* Jay Cohen, *Major League Teams Searching for Advantages with New Rules*, ASSOCIATED PRESS (Feb. 20, 2023), https://apnews.com/article/mlb-new-rules-changes-pitch-clock-bigger-bases-a0ff698a43baaddf84bc69a5b0cbc828.

[113] *See id*.

[114] *See* Evan Drellich & Eno Sarris, *MLB Makes Extra-inning Ghost-runner Rule Permanent, per Sources: How Has It Changed the Game?*, N.Y. TIMES (Feb. 13, 2023), https://www.nytimes.com/athletic/4191908/2023/02/13/mlb-extra-innings-position-player-rules/.

placing a runner on second base makes it easier for a team to score on a ground ball (especially if the runner is fast), and enlarging the base pads helps fast base runners to steal bases.[115] It just happens to be the case that there are more ground ball hitters and fast runners than power hitters, so the former are cheaper for teams to sign.[116] Because the three changes just described made ground-ball hitters and fast runners more effective in producing runs, these changes helped weaker teams more than rich ones. Greater competitive balance was not emphasized by league officials in discussing any of these changes, but it was a very likely result of them.

Overall, while the four major leagues surely redistribute through taxes and transfers, they also redistribute through changes in the sports' equivalent of legal rules to a significant extent.

C. One Tax Base or Many?

Given that the government should tax something, what should it tax? Should it be income, consumption, wealth, wealth transfers, expenditures, luxury goods, or something else entirely? The choice of the tax base—the thing subject to tax—is one of the most fundamental tax policy choices. It is also controversial. The key disagreement is between those advocating for a single tax base and those favoring many.

The argument in favor of a single, optimal tax base comes from economics, and that optimal base is consumption (or equivalently, under the assumptions of the model, labor income[117]). The core idea is the same as the one supporting the claim that only the tax-and-transfer system should be used for redistribution.[118] Taxing consumption introduces a single distortion—a disincentive to earn labor income. Taxing savings or wealth, to take two alternatives, introduces an additional disincentive to save without—a crucial point—reducing the distortion introduced by a revenue-equivalent single-base labor income tax. So nothing is gained and some economic value is lost by choosing any tax base other than consumption.[119]

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[115] Joe Drape & Tania Ganguli, *With Fans Ever More Fickle, Sports Leagues Warm to Rule Changes*, N.Y. TIMES (Oct. 28, 2023), https://www.nytimes.com/2023/10/28/business/baseball-rule-changes-pitch-clock.html (explaining that larger base pads makes base stealing easier).

[116] *See* M.R. Yilmaz & Sangit Chatterjee, *Salaries, Performance, and Owners' Goals in Major League Baseball: A View Through Data*, 15 J. MANAGERIAL ISSUES 243, 248 Tbl.1 (2003) (showing that while higher-compensates player produce more home runs per at-bat, lower compensated players produce more stolen bases while higher-compensated players having only somewhat higher batting average).

[117] *See* Chris William Sanchirico, *Optimal Tax Policy and the Symmetries of Ignorance*, 66 TAX L. REV. 1, 4-5 (2012) (explaining the reason for equivalence).

[118] Both arguments are grounded in the same foundational paper. *See* A.B. Atkinson & J.E. Stiglitz, *The Design of Tax Structure: Direct Versus Indirect Taxation*, 6 J. Publ. Econ. 55 (1976).

[119] *See* LOUIS KAPLOW, THE THEORY OF TAXATION AND PUBLIC ECONOMICS 122-23 (2008); Joseph Bankman & David A. Weisbach, *The Superiority of an Ideal Consumption Tax Over an Ideal Income Tax*, 58 STAN. L. REV. 1413, 1414-17 (2006).

Multiple counterarguments challenge both the assumptions underlying this strong claim and its real-world significance.[120] The question here is what, if anything, can be learned by looking at professional sports.

Yet again, thinking about tournaments proves to be useful for thinking about taxes. Recall that the concern animating redistribution in professional sports is the importance of achieving competitive balance. The most direct way of improving that balance is to take from the winners and give to the losers. Thus the obvious tax base is teams' records at the end of the season.

This conclusion tracks the single-base argument from public economics rather closely. The ideal tax base in public economics is not labor earnings but ability to generate them.[121] Actual (observable) earnings are the best proxy for that (unobservable) ability, but they are an imperfect proxy nonetheless. Likewise, what professional leagues really would love to tax is not winning but ability to win. That is because just as with taxing ability to earn in economy writ large, taxing ability to win in professional sports gives rise to no deadweight loss because such tax cannot be avoided. Taxing any proxy—be it actual earnings or actual wins—does undermine the relevant incentive to earn or to win.

Extending the tax base beyond winnings runs into the same objection as extending the base beyond labor income. Imagine that the leagues tax not only winnings but payrolls as well. Because high-payroll teams are generally more successful on the field of play, a payroll tax is another, imperfect proxy for ability to win. So taxing payrolls would indirectly undermine the incentive to win.

But a payroll tax would also have a perverse effect. Imagine two baseball teams—one with very talented management (let us call it the "Orioles") and another with a very poor one (let us call it the "Mets").[122] The Orioles have low payroll and win a lot. The Mets are high-spenders and also losers. An ideal tax on ability to win would tax the Orioles and subsidize the Mets. An actual tax on winning would do the same. But a payroll tax would do the opposite—it would tax a team that is already a loser and subsidize the winner. That is not the way to achieve competitive

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[120] *See* Janet Currie & Firouz Gahvari, *Transfers in Cash and In-Kind: Theory Meets the Data*, 46 J. ECON. LIT. 333, 356-57 (2008) (pointing out that "available econometric studies do not support the [key] assumption" on which Atkinson and Stiglitz argument relies, as well as the sufficiency of that assumption, even if met, in the presence of multi-source heterogeneity); Sanchirico, *supra* note #, at 9-10 (arguing that neither the available information to the extent of uncertainty support the single-base argument); Chris William Sanchirico, *A Critical Look at the Economic Argument for Taxing Only Labor Income*, 63 TAX L. REV. 867, 873-75 (2010) (critiquing the model supporting the single-base argument).

[121] *See* Louis Kaplow, *Taxation*, *in* 1 HANDBOOK OF LAW AND ECONOMICS 651, 659 (A. Mitchell Polinsky & Steven Shavell eds. 2007).

[122] In 2023 season, the Mets had the highest payroll in the MLB (over $330 million) and finished with one of the worst records in baseball, winning only 75 games. The Orioles had one of the lowest payrolls (just over $60 million) and had a great season, winning 101 games. *See* Cot's Baseball Contracts, https://legacy.baseballprospectus.com/compensation/cots/al-east/baltimore-orioles/.

balance, at least in theory. The logic of the single-base argument seems to apply to tournaments just as it does to taxes.

Yet, as must be clear by now, professional leagues reject this logic, just as real-world governments do. To be sure, all leagues subsidize losing and, therefore, penalize winning. The reverse draft procedure clearly does so. Playoff expansions, alternative knock-out tournaments, and certain changes to the rules of the game (like a prohibition on the shift in baseball) all have this effect.

Yet all professional leagues insist on distributing and redistributing economic resources on grounds other than the win-loss records alone. First, and most obviously, both the MLB and the NBA do use payrolls as a base for redistribution—both leagues have payroll luxury taxes. Moreover, a payroll cap is akin to a 100 percent tax on payrolls above the cap.

Second, recall that the NFL shares its television revenues equally, even though some teams surely generate greater viewership and advertising dollars than others. The EPL does the same for half of its TV dollar haul. The base of distribution here is simply membership in the league.

Third, some forms or local revenue are shared between the two teams involved in a given game. As explained earlier, this arrangement results in a direct revenue transfer from a high-revenue to a low-revenue team. The base of redistribution here is revenue.

The overall results is that major leagues distribute and redistribute based on multiple bases: competitive success, payrolls, revenues, and league membership as well. A single base is surely not what we find in professional sports.

D. In Cash or In Kind?

Much government assistance to the poor does not take the form of cash grants. Healthcare, nutrition, housing, and education are all delivered in-kind both in the United States and in many countries around the world.[123] A large literature in economics aims to explain why it may make sense for the government to provide in-kind benefits rather than give people money and let them decide how to spend it.[124]

A comprehensive review of that literature by Janet Currie and Firouz Gahvari finds that many explanations are fairly unpersuasive or limited. The author's own "reading of the evidence suggests that paternalism and interdependent preferences are leading overall explanations for the existence of in-kind transfer programs, [while] political economy considerations must also be part of the story."[125]

Paternalism and interdependent preferences explanations have an unmistakable flavor of assuming the answer however. Models simply

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[123] *See* Janet Currie & Firouz Gahvari, *Transfers in Cash and In-Kind: Theory Meets the Data*, 46 J. ECON. LIT. 333, 333, 336 (2008) ("In virtually all countries, developed and developing, a significant amount of redistribution occurs in-kind.").

[124] Currie and Gahvari refer to an "enduring puzzle" this government choice presents, *id*.

[125] Id. at 333.

posit that "the quantity of some goods directly enters the society's social welfare function,"[126] or that "individuals may have 'societal preferences' that are different from personal preferences,"[127] or that individuals want everyone to have adequate access to necessities,[128] or that people believe that their fellow citizens "have rights to certain specific things, not to the cash equivalent of these things."[129] Political economy models seek conditions for majority-voting equilibria, but they rely on "an extremely limited set of policy tools" and "often do not explicitly address the issue of why transfers are given in-kind rather than in cash."[130] Economics, in other words, does not have a persuasive explanation for a major set of government policies.

What about sports? All professional leagues support weaker teams using both cash and in-kind transfers. The reverse draft "transfers" the strongest rookies to the weakest teams. Trade restrictions are an in-kind constraint on weak teams willing to part ways with their best players. Expanded playoffs and knock-out tournaments are an in-kind transfer of opportunity to win a trophy from teams with best records to the also-runs. Overall then, there is quite a bit of in-kind redistribution in professional leagues. Why so?

Paternalistic explanations seem to have even less explanatory power when it comes to sports then they do in government provision. If Jerry Jones wants Indianapolis Colts to remain competitive, it is surely not because he wants to make sure that the Colts' owner has adequate housing, nutrition, and educational opportunities. Voting behavior models of league governance do exist, but they do not distinguish between cash and in-kind provision. However, another explanation fits much better, even though the best that Currie and Gahvari can say about it is that it "is not obviously controverted by the evidence" in public economics.[131]

That explanation is the so-called Samaritan's dilemma. Currie and Gahvari explain:

> Suppose the current transfer recipients are entitled to receive benefits as long as they are poor. This undermines their willingness to invest in activities that reduce the likelihood of their being poor in the future. The reason is that they bear the costs of such investments but not the benefits. When the investments pay off and they pull themselves out of poverty, their future entitlements will be eliminated or reduced. This realization distorts the recipients' current decisions and results in an inefficiently low level of human capital investment on their part.[132]

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[126] *Id*. at 338.
[127] *Id*. at 339.
[128] *See id*.
[129] *Id*.
[130] *Id*. at 374.
[131] *Id*. at 377.
[132] *Id*. at 369.

The government's dilemma arises because it is very difficult to give poor individuals money now (be a good Samaritan) while also promising—credibly—not to give them money in the future if they fail to make an effort to improve their lot even though the same individuals remain as poor in the future as they are today. Two ways out of the dilemma are in-kind benefits such as job training and conditional transfers that include work requirements, to take one example.[133]

The Samaritan's dilemma considers behavior of poor individuals. Owners of professional sports are rich by any measure. Yet it turns out that the incentive problems are very similar in both settings.

While all major leagues make large cash transfers to financially weak teams, concerns about the ways in which these teams spend the cash are both evident and well-founded. There is little doubt that many team owners want their teams to win, and use revenue sharing and luxury tax receipts to improve their rosters. For example, both the Colorado Rockies and the Detroit Tigers received multi-million transfers in 2006, spent them on improving their teams, and found success the following year.[134]

But not all owners care about winning. In 2006, Florida Marlins received a $31 million revenue-sharing transfer and proceeded to drastically cut their payroll to $14.9 million.[135] The Marlins finished the 2007 campaign with the second-worst record in the National League and the MLB-leading $43 million profit.[136] This is not what a league worried about competitive balance wants to incentivize.[137]

So it is no surprise that the MLB's Basic Agreement contains an elaborate set of rules about how the revenue sharing dollars should—and should not—be used.[138] The NBA ties revenue sharing to team-specific local revenue benchmarks set based on the team's local market size.[139] If a "poor" NBA team does not do enough to help itself, the NBA is not going to help either. The NFL implemented a special revenue sharing program specifically designed to allow low-revenue teams to construct new stadiums, grow local revenue, and become stronger financially in the long run (but not simply pocket the cash as the Marlins did).[140]

Clearly, the incentive problem arising from unconditional cash transfers is both real and, when it comes to professional sports, easily observed. That this problem explains conditional transfers is clear from conditions themselves. It is very likely that the same problem explains the leagues' reliance on in-kind benefits aimed to improve competitive

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[133] *See id*.

[134] *See* Chang & Sanders, *supra* note #, at 417.

[135] *See id*. at 423.

[136] *See id*.

[137] The MLB made its displeasure with the Marlins clear a few years later. *See* F. Gibbons Addison, Note, *A Proposed Wealth Redistribution System Based on the Underlying Premise of Revenue Sharing in American Pro Sports*, 89 TEX. L. REV. 1179, 1190 (2011) (referring to a joint statement of the MLB and the Marlins regarding the latter's use of revenue sharing dollars to repay debt).

[138] *See* MAJOR LEAGUE BASEBALL, *supra* note #, at 153-54.

[139] *See* Coons, *supra* note #, Question 21.

[140] *See* Clay Moorhead, Note, *Revenue Sharing and the Salary Cap in the NFL: Perfecting the Balance Between NFL Socialism and Unrestrained Free-Trade*, 8 VAND. J. ENT. & TECH. L. 641, 673 (2006) (describing the program).

balance. Turning from sports to government policies, it seems that the Samaritan's dilemma may be a much better explanation of government's provision of in-kind benefits than economists currently realize.

E. Lessons for Fiscal Federalism

The final important issue illuminated by professional sports is the question of central-versus-local policymaking. The key idea that when governing complex, heterogeneous systems, it is not wise to concentrate all authority at the apex of power. Europeans call this idea subsidiarity,[141] the British call it devolution,[142] and Americans call it federalism.[143] When it comes to taxes and transfers, the question becomes whether redistribution is the task for the central government, local authorities, or both.

The fiscal federalism literature has studied this question since at least 1950s when Charles Tiebout published his famous paper.[144] The answer is not obvious because local preferences vary but taxpayers are mobile. It may well be true that most voters in California favor more redistribution than the majority of Floridians. Federal tax rates cannot take this difference into account but state tax rates can. The implication seems to be that California should have a more redistributive system than Florida.

However, if California raises taxes on the rich to fund transfers to the poor too much, rich Californians may decamp to South Beach leaving California worse off than it was before the attempted tax increase.[145] This concern has led economists to conclude that the central government should play "major role … in establishing an equitable distribution of income" while local governments should "play a supporting role."[146]

The crucial question is how responsive taxpayers—and in particular high-income taxpayers—are to taxes. The answer is that we do not really know.[147] It is hard to imagine, given existing evidence, that if California raises its top income tax rate from the current 13.2 percent[148] to 14.2

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[141] *See* Kees Van Kersbergen & Bertjan Verbeek, *The Politics of Subsidiarity in the European Union*, 32 J. COMMON MKT. STUD. 215, 215 (1994) (pointing out that the term subsidiarity "entered the fashionable language of Eurospeak" after the signing of the Maastricht Treaty).

[142] *See* Danny MacKinnon, *Devolution, State Restructuring and Policy Divergence in the UK*, 181 GEOGRAPHICAL J. 47, 47 (2015) (noting that "devolution was enacted by the then Labour Government" in the late 1990s).

[143] *See* Wallace E. Oates, *Toward a Second-Generation Theory of Fiscal Federalism*, 12 INT'L TAX & PUB. FIN. 349 (2005).

[144] Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

[145] *See* Oates, *supra* note #, at 351. In 2023, California's top rate was 12.3% and it was imposed on incomes above $677,275. Florida had no income tax. *See* Tax Policy Center, State Individual Income Taxes, 2023, https://www.taxpolicycenter.org/statistics/state-individual-income-tax-rates (last accessed June 12, 2024).

[146] Oates, *supra* note #, at 351-52.

[147] *See* Henrik Kleven et al., *Taxation and Migration: Evidence and Policy Implications*, 34 J. ECON. PERSP. 119, 120 (2020) ("Despite its importance in economic theory and its salience in the policy debate, empirical evidence on the responsiveness of individual location decisions to taxes has been remarkably scant.").

[148] *See* Tax Policy Center, *supra* note #.

percent we would see a mass exodus of rich Californians. But what if the Golden state doubles or triples its top rate? Are large-scale taxpayer responses possible in practice and not just in theory?

Reliance on local rather than central redistribution gives rise to another problem that is rarely discussed in the fiscal federalism literature, perhaps because it is so farfetched given the U.S. tax system as it actually exists.

In 2023, California's GDP was $3.64 trillion[149] and its per capita income was $80,423.[150] The corresponding numbers for West Virginia were $99.5 billion[151] and $52,585.[152] Imagine that all U.S. redistribution takes place entirely within each state. Even if preferences for redistribution in the two states just mentioned are exactly the same, California would redistribute more simply because it is that much richer than West Virginia. Poor West Virginians would want to move to California to receive its more generous benefits that West Virginia simply cannot afford. Rich West Virginias would also want to move to California to avoid the burden of supporting West Virginia's large low-income population. The entire federal system would become destabilized.

Centralized redistribution subtly mitigates this problem. By collecting taxes from rich individuals and transferring funds to poor ones, the U.S. tax-and-transfer system takes funds from rich states and transfers them to poor ones. With federal-level redistribution in place—that is, in the U.S. fiscal system as it exists—California does support West Virginia, and the wider the economic gap between the two states, the greater the degree of support. Importantly, this state-to-state redistribution takes place without any explicit, federal-imposed state-to-state transfers.[153]

A look at the sports leagues offers two takeaways relevant to fiscal federalism concerns. First, the key choice made by almost all leagues confirms the main takeaway of the fiscal federalism literature: the leagues redistribute at the highest level of governance—the league itself. Second, a league that took a different path and left redistribution to its subdivisions has become destabilized just as the California-West Virginia hypothetical suggests.

Fiscal federalism questions may not be particularly obvious when it comes to professional sports, but these questions are surely there. Consider baseball revenue-sharing arrangements. The MLB collects its luxury tax from teams with payrolls in excess of the threshold and redistributes it, in part, to low-revenue clubs that make sufficient efforts

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[149] *See* Bureau Econ. Analysis, *Gross Domestic Product by State and Personal Income by State, 4th Quarter 2023 and Preliminary 2023* 9 Tbl.1 (2024), https://www.bea.gov/sites/default/files/2024-03/stgdppi4q23-a2023.pdf.

[150] *See id*. at 21 Tbl.9.

[151] *See id*. at 9 Tbl.1.

[152] *See id*. at 21 Tbl.9.

[153] Political implications of this arrangements are well-known. *See* Andrew Van Dam & Linda Chong, *Do Blue-State Taxes Really Subsidies Red-State Benefits?*, WASH. POST (Jul. 7, 2023), https://www.washingtonpost.com/business/2023/07/07/states-federal-benefits/ (finding that they do, and that "the patters is clear but not absolute").

to grow their local revenues.[154] Nothing in this mechanism reflects the structure of regular season play. The MLB consists of two leagues, each divided into three divisions. MLB schedule reflects this structure but MLB's redistributive mechanism does not. Yet one can certainly make an argument that it should.

Consider the Tampa Bay Rays—one of the "poorest" teams in baseball.[155] It plays in the same five-team division of the American League as the financial behemoth the New York Yankees. Another poor team—the Milwaukee Brewers—plays in the National League. Because of the way in which the MLB arranges regular season, the Rays played the Yankees thirteen times in 2023,[156] while the Brewers had to face the Yankees only three times that year.[157]

Consider another fact. Two teams in the Ray's five-team division exceeded the luxury tax threshold in 2023.[158] No team did the same in the division where the Brewers play.[159] If baseball redistribution was local rather than league-wide, the Rays would receive a multi-million luxury-tax-funded transfer while the Brewers would receive none.

This disparity would be easy to explain. Low-revenue, low-payroll Rays have to face rich teams with whom they share division all the time. The Brewers, on the other hand, face no comparably rich teams in their own division and face the Yankees and the like only rarely. It would make perfect sense, it seems, for the Rays to object to a league-wide revenue sharing, and for the MLB to accept the Rays' arguments.

Yet the MLB does no such thing. The problems with local, within-division redistribution just described are obvious. Every poor team would be lobbying to be in a division with rich teams. In the terminology of fiscal federalism, divisions with rich teams would become "welfare

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[154] *See* MAJOR LEAGUE BASEBALL, *supra* note #, at 143-147. For an easier to grasp summary, *see* J.J. Cooper, *Details from the New 2022-2026 Collective Bargaining Agreement*, BASEBALL AMERICA (May 9, 2023), https://www.baseballamerica.com/stories/details-from-the-new-2022-2026-collective-bargaining-agreement/. The rest of the luxury tax proceeds fund players' retirement accounts, *see id*.

[155] I use the scare quotes here for two reasons. First, no major league team owner is remotely poor by any measure except for the one used here. Second, there is a difference between a team's value and its payroll. Some low-payroll teams are quite profitable, as we have seen, precisely because of league-wide redistribution. *See supra*, text accompanying note #. So "poor" in the discussion in text is used as a short-cut for "low-payroll."

[156] *See* Statmuse, Yankees vs Rays 2023, https://www.statmuse.com/mlb/ask/yankees-vs-rays-2023 (last accessed June 12, 2024).

[157] *See id*., Yankees vs Marlins 2023, https://www.statmuse.com/mlb/ask/yankees-vs-marlins-2023 (last accessed June 12, 2024).

[158] These were the Yankees and the Toronto Blue Jays. *See* Marc Carig, *Mets Hit with Record $101 Million Luxury Tax Bill After Failed Season*, N.Y. TIMES (Dec. 23, 2023), https://www.nytimes.com/athletic/5159257/2023/12/23/mets-luxury-tax-bill/.

[159] *See id*. None of the eight teams subject to the 2023 tax—the Mets, the Padres, the Yankees, the Dodgers, the Phillies, the Braves, the Rangers and the Blue Jays, *see* Carig *supra*—play in NL Central division where the Brewers play.

magnets."[160] Satisfying poor teams' demands would require a major restructuring of the MLB with difficult to predict consequences that possibly include a market decline in competitive balance at least in the short run.[161]

If, on the other hand, Brewers' lobbying is unsuccessful, teams like the Rays would continuously improve using luxury-tax-funded cash infusions while teams like the Brewers would inevitably decline without them. If the MLB cares about the stability of the league as a whole and the league-wide competitive balance, it should insist on league-wide redistribution, which is exactly what it does.

The MLB is not unique. The NFL, the NBA, and the NHL all use league-wide redistribution.[162] The EPL does as well, and it goes even further. It transfers some of its revenues to lower leagues of English soccer.[163] Newer American professional sports leagues use the most radical approach to facilitate centralized redistribution: both Major League Soccer and the Women's National Basketball Association are organized as single entities.[164]

Which brings us to a single, glaring counterexample—the league that does not feature centralized redistribution of its greatest source of revenue. That league is the NCAA.

The NCAA was established in 1906 to organize and supervise inter-collegiate athletic competitions, primarily football games.[165] Money were already at the center of college football.[166] Profits grew and their sharing became more important when the NCAA signed its first television contract for broadcasting college football games in the early 1950s.[167] The league remained in charge of football dollars until 1984, when it lost a pivotal case in the Supreme Court. In the *NCAA vs. Board of Regents of the University of Oklahoma*, the Court held that the NCAA's monopoly on

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[160] While evidence of poor people moving to such "magnets" is very weak, *see* Kleven et al., *supra* note #, at 122 n.3, the problem in professional sports is likely to be more severe. "Poor" teams are not really poor, after all, and rearranging divisions is much easier, as a technical matter, than uprooting one's life.

[161] For example, the MLB may reorganize divisions to match richest teams with poorest ones. Other divisions will house middle-of-the-pack franchises. Because teams play more games within their divisions, such a realignment would give a clear advantage to rich (and, generally, stronger) teams.

[162] *See supra*, text accompanying note # (NFL), note # (NBA), note # (NHL)

[163] *See* Plumley, *supra* note #, at 467-68. Granted, the amounts transferred to lower leagues are much smaller than within-EPL revenue sharing. But the fact that the EPL shares anything with teams several levels down speaks for itself.

[164] *See* Sanderson & Siegfried, *supra* note #, at 274 n.6; Sloane, *supra* note #, at 2. Needless to say, organizing a league as a single entity also allows the league owners to control player salaries and restrict player movement, *see id*.

[165] *See* Smith, *supra* note #, at 12 (describing the creation of Intercollegiate Athletic Association with sixty-two original members, and the renaming of that Association to NCAA in 1910).

[166] *See* Rodney K. Smith, *The National Collegiate Athletic Association's Death Penalty: How Educators Punish Themselves and Others*, 62 IND. L.J. 985, 989 (1987) (reporting that "payment of compensation to the best athletes was well entrenched by the latter part of the nineteenth century).

[167] *See id*. at 993.

dissemination of football broadcasts violated antitrust law.[168] The Court agreed with the NCAA that "the interest in maintaining a competitive balance among amateur athletic teams is a legitimate and important" interest.[169] But given the conference-based structure of college football competition, the Court concluded that this interest does not justify NCAA's control over national TV dissemination rights.[170]

At the time of the *Board of Regents* decision, five powerful football conferences already banded into the College Football Association (CFA) to strengthen their negotiating position with the NCAA.[171] Yet it were individual conferences and teams—not the CFA—that acquired the TV rights that the NCAA lost.[172] The power to sign media deals moved from the center (NCAA) to the regions (individual athletic conferences).

What may not have seemed like a monumental decision in 1984 turned out to be monumental forty years later. It turned out that the great "Power Five" football conferences were not all equally great. Two turned out to be "Californias" (continuing with the earlier example) while one (and possibly more) turned into a "West Virginia." Without centralized redistribution from rich teams in any Power Five conference to poor teams in any of the Power Five, the gap between the rich Big Ten and South-Eastern Conference on the one hand and the "poor" Pac 12 and, to a lesser extent, Atlantic Coast Conference (ACC) continued to grow. The result of this divergence confirms the wisdom of the fiscal federalism conclusion favoring centralized redistribution.

Few people could imagine just a few years ago that the storied, 123-year-old Conference of Champions—the Power Five member Pac 12 — would disintegrate, yet this is exactly what happened.[173] Its rich members—football powerhouses USC and UCLA—decided that they would be better off sharing a much larger pie that belongs to the Big Ten and bolted in 2022.[174] Once that happened, dominoes started to fall.[175] Today, Pac-12 is "dead as we know it."[176] Another Power Five (now Four) conference—the ACC—now faces a similar problem with its own football

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[168] Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85 (1984).

[169] *Id*. at 117.

[170] *See id*. In contrast with major sports leagues discussed in this Essay all of which conduct league-wide annual competitions, there was no single NCAA Division I football tournament where all teams bound by the TV deal negotiated by the NCAA competed. Many Division I colleges had not football teams at all, so sharing TV revenues with them could not have possibly enhance competitive balance. *See id*.

[171] *See id*. at 85.

[172] *See* Andrew Zimbalist, *Reforming College Sports and a Constrained, Conditional Antitrust Exemption*, 38 MANAGERIAL & DECISION ECON. 634, 634-35 (2017).

[173] *See* Dennis Dodd, *The Pac-12 Is Dead as We Know It, Just Don't Expect the Big Ten, Big 12 or Anyone Else to Take the Blame*, CBS SPORTS (Aug. 4, 2023), https://www.cbssports.com/college-football/news/the-pac-12-is-dead-as-we-know-it-just-dontexpect-the-big-ten-big-12-or-anyone-else-to-take-the-blame/.

[174] *See id*.

[175] *See id*.

[176] Id.

powerhouses Clemson and Florida State suing the ACC for the right to leave for greener pastures.[177]

Not only is there much tumult within the (former) Power Five, the structure of the NCAA Division I as a whole is under stress. The Power Four conferences are in process of separating themselves from twenty eight other Division I conferences. Without a strong central authority controlling the main source of revenue, big football schools are rethinking whether it makes sense for them to share their profits and abide by the same rules as the rest.[178] It remains to be seen what such rethinking will mean for the future of Division I, and possibly the NCAA itself.

The lesson is clear. When the financial incentives and financial disparities become large enough, neither tradition, nor contractual obligations, concerns about wellbeing of student athletes, or anything else could compensate for the flawed redistributive arrangement in college football and, therefore, college sports. So the U.S. is wise to place most of the redistributive burden at the federal level. And high-tax states should think hard before doubling their income tax rates.

CONCLUSION

Having asked if policymakers have anything to learn from professional sports, this Essay found that there is quite a bit to learn. Not, of course, in a sense that the Internal Revenue Code should be promptly revised to reflect any given arrangement adopted by the NFL, MLB, or any other league. Rather, redistributive policies adopted by these and other major sports leagues support the key choices reflected in real-world tax-and-transfer systems of advanced capitalist democracies.

There is one further, overarching takeaway from this Essay's study: those in charge of professional sports leagues exhibit the opposite of hubris. Individuals running these leagues, experienced and successful though they are, apparently recognize that they do not have a perfect answer to every question. So they act accordingly and adopt many plausible solutions instead of searching for a perfect one.

The leagues use both predistribution and redistribution, they redistribute both through taxes and through non-tax rules, they make transfers both in cash and in kind and make some of them conditional and others unconditional, and they redistribute based on wins, revenue, payroll, and league membership as well. Notably, they do so even though

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[177] Or, rather, the right to leave without paying very large compensation to the ACC. *See* Ralph D. Russo, *Clemson Joins Florida State, Becomes Second School to Sue ACC as It Seeks to Exit Conference*, ASSOCIATED PRESS (Mar. 19, 2024), https://apnews.com/article/clemson-sues-acc-ec231745cfe4690ec282050c33c144ed.

[178] *See* Ross Dellenger, *With the Future of College Sports Uncertain, One Thing Is Clear: An Official and Permanent Split of NCAA Division I Is Here*, Y!SPORTS (Jun. 24, 2024), https://sports.yahoo.com/with-the-future-of-college-sports-uncertain-one-thing-is-clear-an-official-and-permanent-split-of-ncaa-division-i-is-here-123034315.html (discussing the new governance structure discussed by the Power Four commissioners without consulting with commissioners of the other 28 NCAA Division I conferences).

they are free to experiment in an effort to find perfect solutions, their mistakes would be easy to spot, and wrong-headed policies, if adopted, would cause no real harm.

Modesty, even humility reflected in this approach is quite familiar to government policymakers. They, too, rely on predistribution and redistribution, redistribute through both taxes and non-tax legal rules, use multiple tax bases and so on. In contrast, academics debate whether this cautious approach should yield to solutions that economists like to call optimal. To those who have doubts about our ability to devise—and implement—optimal policies,[179] this Essay offers another reason to be wary of perfect solutions.

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[179] I confess to be among the doubters. *See* Giuseppe Dari-Mattiacci & Alex Raskolnikov, *Unexpected Effects of Expected Sanctions*, 50 J. Legal. Stud. 35 (2021) (finding that some of the basic results of optimal deterrence theory (tax enforcement included) do not hold in common circumstances); Alex Raskolnikov, *Distributional Arguments, in Reverse*, 105 MINN. L. REV. 1583, 1602-1624 (2021) (arguing that some of the fundamental assumption on which important economic arguments about redistribution rely failed to materialize in practice with devastating effects); Alex Raskolnikov, *Accepting the Limits of Tax Law and Economics*, 98 CORNELL L. REV. 523, 557-60 (2013) (explaining that optimal tax policy is so far removed from the real-world tax system that it has little to offer in terms of that system's reform).