

Identifying Youth Sport

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The United States is steeped in the prevailing discourse that youth sport is part of a “good” childhood. With approximately 60 million children participating, it would seem that the conventional wisdom is true. Yet the dominant narrative occurs within a troubling empirical reality. What is often referred to as the “professionalization” of youth sport, which emphasizes early sport specialization, over-training to the point of injury, competition, and the drive to win, leads the majority of children who enter youth sport to quit by adolescence. Because professionalized youth sport is also costly, millions more, particularly children of color and children with disabilities, never have the opportunity to play. Despite the known harms of the current system, there has been little legal scholarly attention to youth sport and little meaningful reform.

This article seeks to lay the foundation for a different approach by taking a crucial threshold step: fully identifying what, in the U.S., youth sport is. While the answer may seem apparent, given our perceived familiarity with sport, I argue that it is more complex. This article explains that U.S. youth sport is a particular model infused with the power of the legal and policy choices, including the choice not to regulate, that reflect our historical moment. Youth sport occurring in this environment is not, as commonly thought, just a private family matter, but a site of significant societal production that supports all other levels of athletics. It is, in short, much more than simply play. Operating in this way, I argue that the U.S. youth sport model produces a surplus value that is distributed across society, from parents and fans to sports sponsors and state and local governments. By identifying youth sport by what it is, and not what it purports to be, this article reveals why the current system is resistant to change and sets the stage for more meaningful approaches to reform.

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INTRODUCTION

Since the time of the early Greeks, sport and healthy agonistic competition have been considered part of the “good life,”¹ and we often look to sport to develop character or teach life lessons. Yet at their core, sports are made-up games.² They are socially constructed, not naturally or divinely given.³ Social theorists therefore argue that we must avoid seeing sport as always positive or virtuous, but instead view it as it is, shaped by societal “structures and forces” that infuse sport with particular substance and significance.⁴ We should not view sport narrowly or simplistically. To “truly know” sport we must also understand the culture in which it operates.⁵

This effort in recent years has taken hold in nearly all sport settings. Courts, Congress, and at least one federal agency are re-examining the structures of Olympic⁶ and intercollegiate⁷ sport that contribute to economic and other forms of athlete harm. Yet this movement has for the most part not included youth sport.⁸ Youth sport, it is asserted, is part of a “good” childhood, and nearly everyone from the government to parents thinks that children should take part.

1. Lawrence J. Hatab, *The Drama of Agonistic Embodiment: Nietzschean Reflections on the Meaning of Sports*, 30 INT’L STUD. PHIL., 97, 98-99 (1998).

2. Stephen H. Hardy, *Entrepreneurs, Organizations, and the Sports Marketplace*, in THE NEW AMERICAN SPORT HISTORY 344 (S.W. Pope ed., 1997) (stating that “[o]bviously, the particular forms of any sport, in any historical period, are hardly inevitable derivatives of some *zeitgeist*. They are the products of conscious decision-making”). See also *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 699-701 (2001) (Scalia, J. dissenting) (stating that the PGA Tour has the authority to create the rules and define its version of the game of golf, and that “since it is the very nature of a game to have no object except amusement . . . it is quite impossible to say that any of a game’s arbitrary rules is ‘essential.’ . . . The only support for any of them is tradition and (in more modern times) insistence by what has come to be regarded as the ruling body of the sport.”).

3. Sport scholars have explained that sport has no required “universal elements” or content, but is instead “wholly relational.” BEN CARRINGTON & DAVID L. ANDREWS, *A COMPANION TO SPORT* 19 (David L. Andrews & Ben Carrington eds., 2013).

4. Ben Carrington & David L. Andrews, *Introduction: Sport as Escape, Struggle, and Art*, in *A COMPANION TO SPORT*, *supra* note 3, at 7-8.

5. *Id.* at 8.

6. *E.g.*, Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, Pub. L. No. 115-126, 132 Stat. 318 (Feb. 14, 2018) (responding to reports of Olympic movement athlete abuse by, among other things, establishing United States Center for Safe Sport); Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. No. 116-189, 134 Stat. 943 (Oct. 30, 2020) (creating additional duties for United States Olympic and Paralympic Committee to protect athletes).

7. *E.g.*, *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S.Ct. 2141 (2021) (holding that the NCAA’s “amateurism” model violates antitrust law to the extent it limits the amount of education-related benefits schools can provide athletes); N.L.R.B., OFF. OF THE GEN. COUNS., MEMORANDUM GC-21-08, STATUTORY RIGHTS OF PLAYERS AT ACADEMIC INSTITUTIONS (STUDENT-ATHLETES) UNDER THE NATIONAL LABOR RELATIONS ACT (2021) (advising that certain athletes at some colleges and universities will be considered “employees” under the National Labor Relations Act and that “misclassifying” these persons as “student-athletes” to mislead them about their rights will be considered a violation of the Act).

8. I use the term “youth sport” in this article to refer to sport for individuals under the age of 18. Because persons under age 18 can participate in different sport settings (*e.g.*, Olympic movement sport or high school sport) the specific sport context will be noted when relevant to the discussion.

The “youth sport is good” narrative, however, has for some time bumped up against a troubling reality. Most children quit by the time they reach adolescence, and they often do so because of what is frequently referred to as the “professionalization” of youth sport.⁹ This includes pressure to specialize in one sport at a young age,¹⁰ over-training in an effort to develop talent, and an emphasis on competition and winning.¹¹ The consequences of this approach include what the medical community has labeled an “epidemic” of (largely preventable) youth sport injuries.¹² Professionalization of youth sport also makes participation costly, so that millions of children, particularly children of color and children with disabilities, lack access.¹³

Critics around the world, from sports sociologists to physicians, have taken on different aspects of professionalized youth sport. In the United States, however, despite its cultural ubiquity, the legal scholarship on the law of sport and the law of the child largely neglects youth sport.¹⁴ Even with the significant and widely known consequences of our current approach, the system and the “youth sport is good” narrative persists. This article seeks to explain why, and seeks to set the stage for meaningful reform, by raising our collective consciousness¹⁵ around youth sport

9. James R. Andrews, *Why Are There So Many Injuries to Our Young Athletes? Professionalization and Specialization in Youth Sport*, 40 U.BALT. L. REV. 575, 577 (2011). At least one scholar has referred to this as an “adult-induced dropout rate.” Douglas E. Abrams, *The Challenge Facing Parents and Coaches in Youth Sports: Assuring Children Fun and Equal Opportunity*, 8 VILL. SPORTS & ENT. L. J. 253, 255 (2002) [hereinafter *The Challenge in Youth Sports*].

10. JAY COAKLEY, *SPORT IN SOCIETY: ISSUES & CONTROVERSIES* 116 (7th ed. 2001) [hereinafter *SPORT IN SOCIETY*]; D. STANLEY EITZEN, *FAIR AND FOUL: BEYOND THE MYTHS AND PARADOXES OF SPORT* 114 (6th ed. 2016).

11. COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 113.

12. Andrews, *supra* note 9, at 577.

13. ASPEN INSTITUTE PROJECT PLAY, *Youth Sports Facts: Challenges*, <https://perma.cc/6V9H-AHT2> (explaining that the cost of youth sport is a barrier to initial and continuing participation, especially for specific demographic groups); COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 114; NATIONAL YOUTH SPORTS STRATEGY, ASS’T SEC. HEALTH, U.S. DEP’T. HEALTH & HUM. SERV. 54 (Sept. 2019) [hereinafter, *YOUTH SPORTS STRATEGY*], <https://perma.cc/HCG4-84PQ> (stating that the “professionalization and pay-to-play system disproportionately excludes youth from lower socioeconomic status and youth with lower levels of fitness.”); N. Jeremi Duru, *It’s Not Child’s Play: A Regulatory Approach to Reforming American Youth Sports*, 20 VA. SPORTS & ENT. L.J. 25, 41 (2021) (citing “socioeconomic stratification” as a problem in youth sport).

14. A notable exception in the legal literature is Professor Jeremi Duru’s recent article, *supra* note 13, and scholarship that addresses youth sport concussions. *E.g.*, Katharine Silbaugh, *The Legal Design for Parenting Concussion Risk*, 53 U.C. DAVIS L. REV. 197 (2019); Sydney Diekmann, Christine Egan, Carly Rasmussen, Francis X. Shen, *The Failure of Youth Sports Concussion Laws and the Limits of Legislating Health Education*, 19 YALE J. HEALTH POL’Y, L. & ETHICS 1 (2019); Vivian E. Hamilton, *Play Now, Pay Later?: Youth and Adolescent Collision Sports*, 71 HASTINGS L.J. 151 (2019). Critical theorists have pointed out that the inclusion of sport in late-stage capitalist, neoliberal “formation” has “yet to generate the type of theoretically informed dialogue that one would expect.” David L. Andrews, *Sport, Culture and Late Capitalism*, in BEN CARRINGTON & IAN McDONALD, *MARXISM, CULTURAL STUDIES AND SPORT* 228 (2009).

15. Catherine A. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 SIGNS 515, 519 (1982) (explaining “consciousness raising” as the “major . . . theory of social change of the women’s movement.”). *See* MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* 6 (2007) (explaining what she terms “hermeneutical injustice” as a type of “epistemic

through an examination of a crucial threshold issue: identifying what U.S. youth sport actually is.

To do so, this article goes beyond what youth sport purports to be to identify how it actually operates. I begin by describing the legal background conditions that create the environment in which U.S. youth sport exists. First is the structure of amateur sport Congress established through the Ted Stevens Olympic and Amateur Sports Act, which created a privatized system for amateur sport and rejected an approach, common throughout the world, of a government agency with power to regulate. Second is the legal emphasis on parental authority and the presumption that parents act in the best interests of their children (and the corollary that children have few rights). Third is the larger political and historical context in which youth sport takes place. In this environment, the values of the market and dominant political ideology powerfully shape the youth sport experience. From these conditions, we can more readily see that U.S. youth sport is, despite the conventional wisdom, a particular model and not an accident.

With this understanding, this article then argues that key to fully identifying U.S. youth sport is tracing the surplus value the model creates and revealing its distributional effects. In doing so, I argue that the surplus created by children who participate is represented by the difference between “play,” which is an activity engaged in solely for the pleasure of the child, and “sport,” which is an activity that generates benefits not only for players but also for others. I then describe how the surplus created by the current youth sport model flows to a wide range of actors, from the youth sport industry, sport regulators, and state and local governments to parents, sports fans, future elite athletes, and society at large. I conclude by explaining that this broader, more complete identification of youth sport provides a foundation for meaningful future reform.

I. THE UNITED STATES YOUTH SPORT MODEL

To fully identify youth sport in the U.S., we must first appreciate the established understandings¹⁶ and background rules that shape the landscape. To that end, this part reviews the prevailing discourse¹⁷ and the law and policy foundations for youth sport that exist within our particular political

injustice” that arises from a “gap in our shared tools of social interpretation,” as was the case of women experiencing sexual harassment before it was a legal and social concept).

16. Douglas Booth, *Constructing Knowledge: Histories of Modern Sport*, in *A COMPANION TO SPORT*, *supra* note 3, at 31 (stating that “just as modern sport is socially constructed, so too is our knowledge about it and its forms, development, and meaning.”). See SARAH J. JACKSON, MOYA BAILEY, BROOKE FOUCAULT WELLES, #HASHTAG ACTIVISM: NETWORKS OF RACE & GENDER JUSTICE, at xxxii (2020) (explaining that “contemporary civil society is in part constructed, maintained, and moved toward or away from change by mediated messages that inform the public.”).

17. KEN ROBERTS, *SOCIAL THEORY, SPORT, LEISURE* 129 (2016) (explaining the influence of Foucault’s theory of discourse in sport and stating that “the relevant discourses make the production of healthy bodies—fit for both work and leisure—into a personal responsibility.”).

and historical moment. In doing so, I conclude that U.S. youth sport is in fact a model—that is, a specific approach to engaging children in sport.

A. *The Traditional Discourse*

We can begin to identify U.S. youth sport by reviewing what we are told it is. The prevailing narrative is that participation in sport is highly beneficial and an important part of a healthy childhood.¹⁸ We are also told that the problems in youth sport—primarily lack of access and lack of retention—should be addressed to increase participation.¹⁹ Together, these messages supply our governing “truths”²⁰ about U.S. youth sport.

While the messages about youth sport are clear, much of the information about it is not. There is no uniform explanation of what youth sport is.²¹ The federal government states that “youth sports is measured in a variety of ways” and there is no standard snapshot that can fully explain it.²² Much of the data on youth sport is collected by the private sector, from groups such as the National Sporting Goods Association.²³ This is perhaps because the United States’ approach to youth sport is markedly different from that taken in other countries.²⁴ What we know to be youth sport in the United States is a patchwork of programs “on the local, state, and national levels,”²⁵ usually coached by middle-class men.²⁶ There is no “sports ministry” or other

18. YOUTH SPORTS STRATEGY, *supra* note 13, at 11; Andrew Bloodworth, Mike McNamee & Richard Bailey, *Sport, Physical Activity & Well-Being: An Objectivist Account*, 17 SPORT, EDUC. & SOC’Y 497 (2012) (stating that “it is widely maintained that sport contributes to the development of young people’s well-being”); see Doune MacDonald et al., *The Will for Inclusion: Bothering the Inclusion/Exclusion Discourses of Sport*, in INCLUSION AND EXCLUSION THROUGH YOUTH SPORT 9 (Symeon Dagkas & Kathleen Armour eds., 2012) (stating that “worldwide, governments extol the virtues of sport for the benefit of the individual and society”).

19. Michael A. Messner & Michela Musto, *Introduction: Kids and Sport*, in CHILD’S PLAY 9 (Michael A. Messner & Michela Musto eds., 2016) (stating that more research is needed on children who do not play sports, and the research “should not focus exclusively on access and attrition,” as doing so “risks colluding with an ascendant popular health discourse that uncritically promotes sports participation as always good and healthy for kids.”).

20. MacDonald et al., *supra* note 18, at 10.

21. B. DAVID RIDPATH, ALTERNATIVE MODELS OF SPORTS DEVELOPMENT IN AMERICA, at xvi (2018); YOUTH SPORTS STRATEGY, *supra* note 13, at 12 (stating that “there is no standard definition of youth sports used in national surveys.”).

22. YOUTH SPORTS STRATEGY, *supra* note 13, at 12, 41 (stating that “there is a distinct lack of a single, comprehensive data source. No single system, Federal or non-Federal, measures all aspects of sports participation” and that “few surveys collect information on youth with disabilities and accessible physical activity or sports-related opportunities.”). The NYSS also notes that “another limitation” on the available youth sports data “is that there is little distinction between sports and other physical activities.” *Id.* at 43.

23. YOUTH SPORTS STRATEGY, *supra* note 13, at 40.

24. STEVEN J. OVERMAN, THE YOUTH SPORTS CRISIS: OUT-OF-CONTROL ADULTS, HELPLESS KIDS 7 (2014).

25. *Id.* at 8.

26. Aspen Institute Sports and Society Program, Project Play, *State of Play 2020 Report, Ages 13-17*, <https://perma.cc/NH5F-VKES> [hereinafter *State of Play 2020*] (stating that most youth sports coaches are male, aged 25-44, and with annual incomes of \$75,000 or higher). While research established that youth sports coaches are largely male, data is not available on other identifying characteristics, such as race and ethnicity.

government entity that funds, organizes, or otherwise supports youth sport.²⁷ There is also no federal policy regulating youth sport.²⁸ The National Council of Youth Sports (a private organization) states that about 60 million children between the ages of 6-18 participate.²⁹ The federal government reports that as of 2017, 58% of children aged 6-17 participated in sport.³⁰ An Aspen Institute survey showed that the average child participating dedicated nearly 12 hours per week to sport, with some children spending up to 60 hours per week.³¹ Youth sport is estimated to be a \$15-19 billion industry.³²

Although there is no government agency or overall policy to direct youth sport, the federal government for decades has strongly endorsed participation. In 1953, President Eisenhower created the first President's Council on Youth Fitness to address youth physical conditioning.³³ President Johnson continued this effort, encouraging fitness through participation in sport.³⁴ Subsequent administrations established a "Presidential Sports Award" to spur children to participate in fitness activities, issued Executive Orders that seek to encourage participation in youth sport,³⁵ and provided grant funding for the National Youth Sports Program.³⁶ Members of Congress have introduced countless bills and resolutions to recognize the benefits of youth sport³⁷ and provide grant funding for youth sport programs as part of, for instance, the war on drugs³⁸

27. RIDPATH, *supra* note 21, at xvi (stating that "the United States does not have a centralized national sports policy or a governmental sports ministry to provide a governance framework, as is the case in many other countries."); YOUTH SPORTS STRATEGY, *supra* note 13, at 46 (stating that "many countries around the world have a robust interest in sports participation and have ministries of sport or federally funded national organizations that support the country's sports system.").

28. RIDPATH, *supra* note 21, at xvi.

29. The National Council for Youth Sports states that it is a fee-based membership association that is "comprised of many of the Who's Who in the youth sports industry nationwide." It goes on to state that there are "60 million boys and girls registered in organized youth sports programs." <https://perma.cc/7D49-GLQ2>. Other organizations also rely on this figure: *Intensive Participation in a Single Sport: Good or Bad for Kids?*, HOSPITAL FOR SPECIAL SURGERY, <https://perma.cc/U345-CBNE>.

30. YOUTH SPORTS STRATEGY, *supra* note 13, at 35.

31. ASPEN INSTITUTE PROJECT PLAY, *Survey: Kids Quit Most Sports by Age 11* (Aug. 1, 2019), <https://perma.cc/WC34-KTAZ> [hereinafter *Kids Quit*].

32. YOUTH SPORTS STRATEGY, *supra* note 13, at 21; ASPEN INSTITUTE PROJECT PLAY, *Kids Quit*, *supra* note 31; Laura Newberry, *Kids are Losing Interest in Organized Sports. Why That Matters*, L.A. TIMES (Dec. 6, 2021), <https://perma.cc/J645-JEVC> (calling youth sport a "\$19 billion industry").

33. Dionne L. Koller, *Putting Public Law into Private Sport*, 43 PEPP. L. REV. 681, 701 (2016) [hereinafter *Public Law*].

34. *Id.* (explaining that President Johnson "changed the name to the President's Council on Physical Fitness and Sports" to encourage sports participation).

35. *Id.*

36. The program was a public-private partnership that sought to benefit children through sports participation who were deemed "at-risk" and "economically disadvantaged." 143 Cong. Rec. H 4892 (July 8, 1997). The federal government eliminated the program in 2006.

37. *E.g.*, 2017 H.R. Res. 435; 2017 S. Res. 227; 2007 H.R. Res. 442; 2015 H.R. 2932.

38. 134 Cong. Rec. E 3262 (Oct. 6, 1988); 1990 H.R. 4711, [https://plus.lexis.com/api/document/collection/statutes-legislation/id/3SJ4-HGW0-000H-204D-00000-00?cite=134 Cong Rec E 3262&context=1530671](https://plus.lexis.com/api/document/collection/statutes-legislation/id/3SJ4-HGW0-000H-204D-00000-00?cite=134%20Cong%20Rec%20E%203262&context=1530671)

and as a strategy to assist “low income youth.”³⁹ Congress has recognized “National Youth Sports Week,”⁴⁰ “Youth Sports Safety Month,”⁴¹ and the contributions of adults who are involved in youth sport.⁴² More recently, members of Congress have introduced bills to provide tax incentives to enroll children in sport.⁴³ There is even a so-called “Congressional Caucus on Youth Sports.”⁴⁴ As part of the effort to stimulate participation, the federal government states that it collects data, promotes participation “through public figures,” and provides some grant funding.⁴⁵

The government’s most recent initiative to promote youth sport is the National Youth Sports Strategy (NYSS) released by the Department of Health and Human Services in 2019.⁴⁶ The NYSS states that the government’s goal is to increase “youth engagement” in sport in areas with lower rates of participation⁴⁷ and influence the “U.S. youth sports culture” so that ultimately all children will “have the opportunity” and “motivation” to participate.⁴⁸ Thus, it is said that one of the key problems in youth sport is that not enough children are engaged in it. In all research, participation rates are lower for girls, racial and ethnic minorities, children from “lower income households,” children with disabilities, and children who identify as lesbian, gay, or bisexual.⁴⁹ The NYSS states that 76% of children from socio-economically privileged households participate in sports, while only 41% of those from “households at less than 100% of the poverty threshold” do.⁵⁰

One of the primary reasons cited by the federal government to encourage sport participation is that consistent exercise provides “indisputable” health benefits.⁵¹ The follow-up to the NYSS, the President’s Council on Sports, Fitness & Nutrition Science Board Report on Youth Sports, states that youth sport provides “distinct societal benefits” and is “one of the most powerful

39. H.R. 4480 (2010).

40. H.R. Res. 442 (2007).

41. 158 Cong. Rec. E 671 (April 26, 2012).

42. 155 Cong. Rec. E 1930 (July 24, 2009).

43. H.R. 7562 (2020); H.R. 6912 (2020).

44. NATIONAL COUNCIL OF YOUTH SPORTS, *Congressional Caucus on Youth Sports*, <https://perma.cc/63PT-ZJU4>.

45. YOUTH SPORTS STRATEGY, *supra* note 13, at 29.

46. YOUTH SPORTS STRATEGY, *supra* note 13.

47. *Id.* at 3.

48. *Id.*

49. *Id.* at 35.

50. *Id.* (also explaining that “only 45 percent of youth from households with less than a high school education participated, compared to 73 percent of youth from households with a college degree or higher”).

51. *Id.* at 22; EITZEN, *supra* note 10, at 87-88 (stating that “the health benefits of exercise are the motive for requiring physical education and sports programs in schools, youth sports, community adult recreation” and that the “positive effects of physical exercise cannot be denied.”); PRESIDENT’S COUNCIL ON SPORTS, FITNESS & NUTRITION SCIENCE BOARD BENEFITS OF YOUTH SPORT FACT SHEET (Sept. 17, 2020) <https://perma.cc/D765-JBV5>.

ways to promote health habits for a lifetime.”⁵² The NYSS lists numerous additional gains from sport participation ranging from increased “confidence” and “self-esteem” to lower risk of suicide and “improved life skills.”⁵³ Additionally, the NYSS states that sport participation by adolescents can bolster mental health, reduce “youth violence and crime” and help “develop social and interpersonal skills” as well as provide “cognitive and academic benefits.”⁵⁴ The Centers for Disease Control and Prevention also promote youth sport as part of the “Active People, Healthy Nation” public health initiative,⁵⁵ and the Government Accountability Office issued a report specifically touting the benefits of physical activity and youth sport in curbing childhood obesity, among other short and long-term gains.⁵⁶ Additional government reports and initiatives trumpet youth sport as providing numerous benefits to children,⁵⁷ and government officials also have cited the benefits of sport to explain the importance of Title IX enforcement and girls’ participation in sport.⁵⁸

Researchers have identified the primary issues in youth sport as lack of access in the first instance, and lack of retention for children who do participate. The NYSS notes that there are significant “barriers to entry” that prevent children from participating in sport,⁵⁹ including lack of access to safe play spaces, lack of transportation, cost, and “lack of interest or knowledge”⁶⁰ of the benefits. Retention is also an issue, as most children who participate in sport quit.⁶¹ The biggest factor, according to surveys, is

52. PRESIDENT’S COUNCIL ON SPORTS, FITNESS & NUTRITION SCIENCE BOARD, PCSFN SCIENCE BOARD REPORT ON YOUTH SPORTS (Sept. 17, 2020) [hereinafter SCIENCE BOARD REPORT], <https://perma.cc/8MNE-XG9S>.

53. YOUTH SPORTS STRATEGY, *supra* note 13, at 49.

54. *Id.* at 49-50.

55. CENTERS FOR DISEASE CONTROL AND PREVENTION, *Active People, Healthy Nation*, <https://perma.cc/PG6U-KZH2>.

56. UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, K-12 EDUCATION: SCHOOL-BASED PHYSICAL EDUCATION AND SPORTS PROGRAMS 4-5 (Feb. 2012), <https://perma.cc/F524-HZ8R>. The report cited health, academic, personal, and social benefits, stating that “research indicates that increased physical activity in general . . . and sports participation in particular, yields a number of important benefits for elementary and secondary students.” *Id.* at 4.

57. Toben F. Nelson, *Sport and the Childhood Obesity Epidemic*, in Messner & Musto, *supra* note 19, at 82; U.S. GOVERNMENT ACCOUNTABILITY OFFICE, K-12 EDUCATION: HIGH SCHOOL SPORTS ACCESS AND PARTICIPATION I (Sept. 14, 2017), <https://perma.cc/7SND-XJPJ> (stating that “[p]articipation in organized sports is associated with many benefits, such as positive health outcomes, improved academic achievement, and increased self-esteem.”).

58. Dionne L. Koller, *How the Expressive Power of Title IX Dilutes Its Promise*, 3 HARV. J. SPORTS ENT. L. 103, 114 (2012) citing *Amateur Sports Act: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce, and Tourism of the S. Comm. on Commerce, Science, and Transp.*, 104th Cong. 12 (1995) (statement of Norma Cantú, Assistant Secretary, Office for Civil Rights, Department of Education) (“[G]irls who participate in sport are three times more likely to graduate from high school, 80 percent less likely to have an unwanted pregnancy, and 92 percent less likely to use drugs”).

59. YOUTH SPORTS STRATEGY, *supra* note 13, at 54.

60. *Id.*

61. ASPEN INSTITUTE PROJECT PLAY, *Kids Quit*, *supra* note 31. Other surveys report that nearly 70 percent of children quit by age 13. Julianna W. Miner, *Why 70 Percent of Kids Quit Sports by Age*

“lack of fun”;⁶² other factors include long-term participation costs, “stress and burnout,” “overuse injuries,” and increasingly competitive environments as children progress.⁶³ The government has responded with the NYSS’s “Plan of Action”⁶⁴ that includes strategies to “[k]eep youth in sports,” including urging “adults” to “encourage” children to “keep trying and keep playing.”⁶⁵

Criticism of youth sport is not new. For as long as the government has promoted participation, critics have registered concerns about the conduct of youth sport programs.⁶⁶ Scholars and sports medicine specialists have stated that youth sport injuries are a “major public health challenge,”⁶⁷ with overuse injuries a “particular concern.”⁶⁸ Researchers explain that most “youth sport programs” are institutionalized, encourage “specialization,” favor those who coaches believe are the most talented athletes, and exclude those who do not immediately contribute to winning.⁶⁹ This phenomenon is often referred to as the “professionalization” of youth sport, and it has three primary characteristics: an emphasis on winning and identifying talent, specializing in one sport at a young age, and training year-round.⁷⁰

Some of these effects are attributed to the fact that there is little systematic training for youth sport coaches. Research from the Aspen Institute found that for sports played by children ages 6-12, fewer than half of all coaches are trained in basic first aid and CPR.⁷¹ Only about one third are trained in injury prevention, concussion management, physical conditioning, sports skills and strategies, and athlete motivation.⁷² Sport scholars state that the

13. WASH. POST (June 1, 2016), <https://perma.cc/KQX9-MUNW>.

62. EITZEN, *supra* note 10, at 121.

63. YOUTH SPORTS STRATEGY, *supra* note 13, at 55-56.

64. *Id.* at 13.

65. *Id.* at 54; SCIENCE BOARD REPORT, *supra* note 52, at 7 (listing “strategies” to increase accessibility to youth sports).

66. MARK HYMAN, UNTIL IT HURTS 6-14 (2009).

67. Phoebe Friesen, Bethany Saul, Lisa Kearns, Kathleen Bachynski & Arthur Caplan, *Overuse Injuries in Youth Sports: Legal and Social Responsibility*, 28 J.L. ASPECTS SPORT 151 (2018); EITZEN, *supra*, note 10, at 90.

68. Friesen et al., *supra* note 67, at 151. Medical groups such as the American Orthopaedic Society for Sports Medicine have adopted campaigns to generate awareness of overuse injuries in youth sport. AMERICAN ORTHOPAEDIC SOCIETY FOR SPORTS MEDICINE, *AOSSM and NCYS team up to STOP Sports Injuries* (Feb. 28, 2022), <https://perma.cc/GK8C-MJ2H>.

69. Jean Coté, Colleen Coakley & Mark Bruner, *Children’s Talent Development in Sport: Effectiveness or Efficiency? in INCLUSION AND EXCLUSION THROUGH YOUTH SPORT*, *supra* note 18, at 182-83.

70. Daniel Gould, *The Professionalization of Youth Sport: It’s Time to Act!*, 19 CLINICAL J. SPORTS MED. 81 (2009); Martin Camiré & Fernando Santos, *Promoting Positive Youth Development and Life Skills in Youth Sport: Challenges and Opportunities Amidst Increased Professionalization*, 5 J. SPORT PEDAGOGY & RSCH. 27, 28 (2019); Charles A. Popkin, Ahmad F. Bayomy, Christopher S. Ahmad, *Early Sport Specialization*, 27 J. AM. ACAD. ORTHOPAEDIC SURGEONS 995 (2019).

71. Aspen Institute, *State of Play 2020*, *supra* note 26.

72. *Id.* (concluding that “[w]hile parents see sports participation as an opportunity to improve their children’s health, most youth sports coaches are not adequately prepared to meet these expectations.”).

“adults who control” youth sport programs generally show little interest in training and learning coaching techniques because of the pervasive view that participation alone leads to positive results.⁷³

To support the goals of greater participation and retention in youth sport, numerous organizations have called for reform.⁷⁴ As the Aspen Institute’s Sport and Society program concluded, the United States has “a de facto youth sports system that is dysfunctional at best, broken at worst.”⁷⁵ If we identified U.S. youth sport through the prevailing discourse, then, we might say that it is an important part of a healthy childhood and all children should participate. From the view of the millions of children who quit or do not ever seek to play, we might simply identify it as not “fun.”⁷⁶

B. The Law and Policy Background

Youth sport operates within a law and policy environment that has important background assumptions, so also essential to identifying youth sport is understanding how those assumptions work to support the current approach. The traditional view of U.S. sport is that it is a matter of individual choice and not public policy.⁷⁷ As explained above, there is no particular U.S. policy for youth sport beyond the notion that children should play. Thus, in addition to being called “dysfunctional,” youth sport in the U.S. is sometimes described as the “Wild West,”⁷⁸ a term that implies an environment of few rules, organization, or government intervention.⁷⁹

It is certainly true that there is relatively little regulation of youth sport, including, as stated above, training for those who coach. And the epidemic level of injury and efforts to curb bad parental behavior⁸⁰ suggest youth

73. Jay Coakley, *Positive Youth Development Through Sport: Myths, Beliefs, and Realities*, in POSITIVE YOUTH DEVELOPMENT THROUGH SPORT 27 (Nicholas L. Holt ed., 2016) [hereinafter *Positive Youth Development*]; MELANIE LANG & MIKE HARTILL, SAFEGUARDING, CHILD PROTECTION AND ABUSE IN SPORT 2(2015) (describing youth sport as resistant to change and “slower than other institutions to adopt social reforms for child welfare.”).

74. E.g., PLAY Sports Coalition, *Now is the Time for Systemic Change to Youth Sports* (Sept. 25, 2021), <https://perma.cc/G7D8-MHWX>; Nat’l Council on Youth Sports, *STOP Sports Injuries*, <https://perma.cc/K86P-KGAD>; Aspen Institute, *Project Play*, <https://perma.cc/4PK4-75YH>.

75. Aspen Institute, *State of Play 2020*, *supra* note 26 (also concluding that “it’s an up-or-out model . . . that structurally pushes aside kids from low-income homes, late bloomers, and other disadvantaged populations.”).

76. SCIENCE BOARD REPORT, *supra* note 52, at 11.

77. Koller, *Public Law*, *supra* note 33, at 688 (citing MARTIN BARRY VINOKUR, MORE THAN A GAME: SPORTS AND POLITICS 34 (1988) stating that “in ‘liberal capitalist society’ sport is considered ‘the concern of the individual.’”).

78. Koller, *Public Law*, *supra* note 33, at 687 (quoting Bruce Kelley and Carl Carchia, “Hey Data, Data—Swing!” ESPN THE MAGAZINE (July 11, 2013) (describing the lack of thorough data to understand American youth sports).

79. See OVERMAN, *supra* note 24, at 8 (stating that “a degree of ambiguity and lack of clarity surround the core constructs inherent in youth sports. There appears to be no coherent vision of what youth sports should be.”).

80. E.g., N.J.S.A. § 5:17-1 (stating that “an athletic code of conduct” may be established by youth sport organizations that permit a person attending a “youth sports event” to be removed if the person “engages in verbal or physical threats or abuse” or “initiates a fight or scuffle.”); 105 ILCS § 5/24-24

sport is an environment that needs taming. Upon closer examination, however, it is apparent that youth sport might not be as wild as it is assumed. It is the product of law and policy choices—including the choice *not* to regulate—that provide the “legal permissions”⁸¹ under which U.S youth sport operates. Specifically, the law of sport and the law of the child together create an environment in which the identity of youth sport is left to the private sector to define.

1. *The Privatization of Amateur Sport*

Sport scholars have explained that organized youth sport emerged to help children become “productive adults in rapidly expanding capitalist economies.”⁸² Programs initially were for boys and grew substantially during the 1950s and 1960s.⁸³ As explained above, the federal government took little interest in funding or regulating children’s sport,⁸⁴ though it consistently encouraged participation. The growth of youth sport led to greater privatization,⁸⁵ something at least one scholar called an “alarming trend.”⁸⁶ This affects publicly available resources for youth sport, as the decline in public programs and increase in private sport providers has meant local governments are now just “brokers” of public property for private sector youth sport sponsors.⁸⁷ Thus, today, most youth sport programs are

(authorizing schools to promulgate spectator codes of conduct for athletic events).

81. DAVID KENNEDY, *A WORLD OF STRUGGLE: HOW POWER, LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY* 70 (2018); Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 15 L. STUD. F. 327, 333 (1991).

82. COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 110.

83. *Id.* at 110. See also Dennis Gildea, *Youth Sports*, in *THE ROUTLEDGE HISTORY OF AMERICAN SPORT* 82 (Linda J. Borish, David K. Wiggins & Gerald R. Gems eds., 2017) (stating that “[i]n 1952, highly organized competitive sports were defined as “any athletic activity, which involves a considerable amount of the leisure time of the youngster in formalized practice, which encourages extensive attendance by adult spectators, which is limited to the outstanding players, and which involves the selection of winners on a state, regional, or national basis.”).

84. YOUTH SPORTS STRATEGY, *supra* note 13, at 27.

85. COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 112-13; Gildea, *supra* note 83, at 91 (explaining that “as the twenty-first century dawned . . . youth sports organizations were becoming increasingly privatized and costly for participants.”); Joshua Newman & Kyle Bunds, *Special Issue Foreword: On the Political Economy of Amateur Athletics*, 2 J. AMATEUR SPORT 1, 8 (2016)(stating that “sport is now a deeply privatized and commercialized feature of most societies.”).

86. COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 114 (stating that “[c]ommercial sport providers also have entered the youth sport scene in growing numbers as public programs have declined,” and that private programs “provide few opportunities for children from low-income households.”). See also OVERMAN, *supra* note 24, at 6 (citing the “privatization of youth sports” and stating that “private community-level organizations . . . have stepped in to fill the gap left by the diminished public sector.”).

87. COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 114; MATTHEW ATENCIO, BECKY BEAL, E. MISSY WRIGHT & ZANEAN MCCLAIN, *MOVING BOARDERS: SKATEBOARDING AND THE CHANGING LANDSCAPE OF URBAN YOUTH SPORTS* 30 (2018) (explaining that “[g]overnment entities, including parks-and-recreation departments, are often reduced to simply issuing permits to private organizations; as such, these government agencies largely function as gatekeepers to public property instead of directly funding and running their own youth-sports operations.”).

operated by private, not government, entities,⁸⁸ something commonly referred to as a “pay-to-play model.”⁸⁹

Of course, not all youth sport opportunities are private. Interscholastic sports programs (the majority of which are through public schools) serve about eight million adolescents.⁹⁰ However, these programs increasingly require students who hope to participate to come to high school with athletic skills. At least one scholar has stated that a “serious” problem with high school sports is that they operate like “big-time intercollegiate programs,” emphasizing winning and talent.⁹¹ Public high school programs often seek the most skilled performers, so that sport researchers describe interscholastic sport as “selective” and “highly competitive.”⁹² Accordingly, although publicly supported opportunities exist within most high schools, the competitive nature of those programs means that adolescents who hope to make the team in high school often must start in private youth sport programs as children.

A privatized system for amateur sport overall (including youth sport) was not the subject of sports law and policy until 1978, when Congress enacted what is now known as the Ted Stevens Olympic and Amateur Sports Act.⁹³ The statute resulted from concerns that the United States was underperforming in elite, international competition. President Ford established a Commission to study and propose solutions to what was framed as the “problem” of relatively weak U.S. showings in major athletic events, including the Olympics.⁹⁴ The Commission found that the U.S. was “in severe trouble” in that our amateur sport system did not demonstrate that the U.S. was “a major power” in international sport.⁹⁵ The Commission recommended that Congress create a single entity responsible for coordinating Olympic and amateur athletics in the U.S. (though it specifically excluded education-based sports programs, so that the private National Collegiate Athletic Association could continue regulating intercollegiate sports). Significantly, the Commission made it “clear that it did not want the Federal Government running amateur athletics.”⁹⁶

Instead, the Commission made recommendations for what was intended

88. COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 112-14.

89. YOUTH SPORTS STRATEGY, *supra* note 13, at 21.

90. NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS, *2018-2019 High School Athletics Participation Survey* 54 <https://perma.cc/G8BH-4FYD>.

91. COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 440.

92. RIDPATH, *supra* note 21, at 33; Newman & Bunds, *supra* note 85, at 10 (stating that “most opportunities for individuals in public schools are for those who compete in highly competitive sports activities.”).

93. 36 U.S.C. § 220501 et seq.

94. PRESIDENT’S COMMISSION ON OLYMPIC SPORTS, FIRST REPORT TO THE PRESIDENT at xi.

95. *Id.* at 2.

96. Dionne Koller, *Amateur Regulation and the Unmoored United States Olympic and Paralympic Committee*, 9 WAKE FOREST L. REV. ONLINE, 88, 90 (2019) [hereinafter *Amateur Regulation*].

to be a uniquely American approach to U.S. amateur sport that was a manifestation of the “Cold War mentality” of the time.⁹⁷ The Commission stated that its goal was to stimulate “‘individual athletic achievement’ and Olympic success through the free market and not federal regulation.”⁹⁸ As the Commission stated in its report, the United States needed to “rely on its greatest strength, free enterprise,” to produce a successful amateur sports system.⁹⁹ Congress responded by chartering the modern version of what is now known as the United States Olympic and Paralympic Committee (USOPC) as a non-profit, private patriotic corporation.¹⁰⁰ The USOPC operates as a “quasi-governmental” entity, one with important public purposes that is nevertheless “subject to limited judicial intervention and Congressional oversight”¹⁰¹ because it is a private corporation.

Through the Olympic and Amateur Sports Act, Congress tasked the USOPC with developing athletes for Olympic and international competition and increasing participation in “grassroots” youth sport.¹⁰² For instance, the statute states that the purposes of the USOPC are “to establish national goals for amateur athletic activities”;¹⁰³ “to promote and encourage physical fitness and public participation” in sports;¹⁰⁴ to “assist . . . in the development of amateur athletic programs” and “foster the development of amateur athletic facilities.”¹⁰⁵ The legislative history of the statute reinforces the intent of Congress at the time that the USOPC would have responsibility for developing youth sport.¹⁰⁶

To achieve its purposes, the statute provided that the USOPC would recognize private “National Governing Bodies” (NGBs) for each sport, and these entities also were given the obligation of developing youth participation.¹⁰⁷ The USOPC is, by design, unique within the worldwide Olympic Movement in that it receives no government support.¹⁰⁸ Instead, to fund its ambitious mission, Congress gave the USOPC the “exclusive right” to license the Olympic marks.¹⁰⁹ Without a steady source of

97. Dionne L. Koller, *A Twenty-First-Century Olympic and Amateur Sports Act*, 20 VAND. J. ENT. & TECH. L. 1027, 1046 (2018) [hereinafter *Twenty-First-Century*].

98. Koller, *Public Law*, *supra* note 33, at 689 (citing PRESIDENT’S COMM’N ON OLYMPIC SPORTS, FINAL REPORT OF THE PRESIDENT’S COMM’N ON OLYMPIC SPORTS 1975-1977 1 (1977)).

99. Koller, *Twenty-First-Century*, *supra* note 97, at 1046 (quoting the Report of the President’s Commission on Olympic Sports).

100. Koller, *Amateur Regulation*, *supra* note 96, at 90-91.

101. *Id.* at 89.

102. *Id.* at 90.

103. 36 U.S.C. § 220503(2).

104. 36 U.S.C. § 220503(6).

105. 36 U.S.C. § 220503(9).

106. Koller, *Twenty-First-Century*, *supra* note 97, at 1047-48.

107. *Id.* at 1049-50.

108. RIDPATH, *supra* note 21, at 27 (stating that the USOPC “is the only privately funded Olympic Committee in the world.”).

109. 36 U.S.C. § 220506(a).

government funding, however, the USOPC, with the apparent approval of Congress, has in practice limited its mission to developing elite, Olympic talent, and has done relatively little to support youth sport, deferring instead to private youth sport providers.¹¹⁰

States also choose not to regulate, or provide little regulation of, youth sport, except where policies promote participation.¹¹¹ For instance, all states and the District of Columbia have, at the urging of the National Football League, enacted statutes to generate awareness of the risks of youth sport concussions and require children to be removed from play if it appears they have suffered a concussive injury.¹¹² The statutes have been criticized, however, for being more about supporting the game of football than protecting children, as they include no enforcement mechanism and often provide immunity.¹¹³ Other state initiatives include statutes that promulgate codes of conduct for spectators during youth sporting events,¹¹⁴ exempt children from labor laws so they may officiate youth sports,¹¹⁵ and promote awareness of certain adverse health conditions (such as sudden cardiac arrest or heat stroke) that may occur during youth sports.¹¹⁶ Most recently, states have enacted statutes related to sports betting that forbid gambling on youth sports¹¹⁷ and that seek to study whether state proceeds from sports betting should be used to support youth sport.¹¹⁸

Accordingly, with little federal or state regulation, the market drives the content and conduct of U.S. youth sport. As the next part explains, the privatized model for U.S. youth sport relies on the legal “permission”¹¹⁹ provided by the strong support for parental authority coupled with few rights for children—especially those who are athletes.

2. Parental Authority Under U.S. Law

In addition to the law of sport, the legal permissions for the current youth

110. Koller, *Amateur Regulation*, *supra* note 96, at 98-99.

111. *E.g.*, Washington State’s “Sports Mentoring Program” that seeks to “provide opportunities for underserved youth to join sports teams.” Wa. St. § 43.15.100; California’s Governor’s Advisory Council on Physical Fitness and Mental Well-Being, <https://perma.cc/6C6F-DXBU>.

112. Koller, *Public Law*, *supra* note 33, at 708-719.

113. *Id.* at 717-18; Diekmann et al., *supra* note 14, at 1 (stating that “[i]n less than 10 years, all 50 states adopted a youth sports concussion statute—and each law mandates concussion education for coaches and/or student-athletes. This expansive, expensive intervention was designed to reduce concussion incidence and improve concussion care. But based on a review of 54 peer-reviewed studies, we argue that concussion education has not, and likely will not, produce the desired public health outcomes.”).

114. N.J. St. § 5:17-1. *See* Jessie Van Berkel, *Minnesota Legislators Consider \$1,000 Fine on Unruly Youth Sports Attendees*, STAR TRIBUNE (Mar. 22, 2022), <https://perma.cc/5P8N-BGXU>.

115. Koller, *Public Law*, *supra* note 33, at 703.

116. MD. CODE ANN., EDUC. § 7-436 (2014); OH. REV. CODE ANN. § 3313.5310.

117. VA. A.L.S. § 58.1-4039 (Mar. 25, 2021).

118. OH. REV. CODE ANN. § 3772.28(6)(A)(1).

119. KENNEDY, *supra* note 81, at 70 (explaining the “legal entitlements and permissions that depend on the powers and forbearances of the state.”).

sport system depend on the law of the family, particularly as it defines parental authority. U.S. law gives parents “broad legal authority and discretion” to control a child’s upbringing,¹²⁰ and the Supreme Court has long recognized that parents have a Constitutionally protected interest in shaping their children’s lives.¹²¹ For instance, in *Troxel v. Granville*, the Supreme Court’s plurality opinion stated that “the interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental rights and liberty interests.”¹²² The Court further stated that “there is a presumption that fit parents act in the best interests of their children.”¹²³ Similarly, in *Parham v. J.R.*, the Court stated that

[T]he law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.¹²⁴

The Court has emphasized that “the realm of the family” is “private,” and the state may not interfere or “question the ability” of parents “to make the best decisions” concerning a child’s upbringing unless the parent is deemed unfit.¹²⁵ Thus, Anne Dailey and Laura Rosenbury state that, while the law has evolved so that children are not their parents’ property, “judges, policymakers, and scholars . . . generally embrace parental rights as the appropriate starting point for protecting children’s interests.”¹²⁶

The law’s endorsement of parental authority has covered issues from education¹²⁷ to religion.¹²⁸ This authority certainly extends to sports, and consistent with government messaging, parents often see youth sport as being in a child’s best interests.¹²⁹ After Congress enacted Title IX in 1972,

120. SAMUEL M. DAVIS, ELIZABETH S. SCOTT, LOIS A. WEITHORN, & WALTER WADLINGTON, *CHILDREN IN THE LEGAL SYSTEM* 1 (6th ed. 2020); Kristin Henning, *The Fourth Amendment Rights of Children at Home: When Parental Authority Goes Too Far*, 53 WM. & MARY L. REV. 55, 73 (2011).

121. *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (stating that “it is cardinal with us that the custody, care and nurture of the child reside first in the parents.”); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

122. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (also stating that given the extensive precedent “it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental rights of parents to make decisions concerning the care, custody, and control of their children.”).

123. *Id.* at 68.

124. *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (the Court also explaining that “our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children.”).

125. *Troxel*, 530 U.S. at 68-69; Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1459-60 (stating that “of course, when parents fail to fulfill their caregiving duties, they may forfeit their rights . . . But if parents minimally fulfill their duties, the state protects their relationships with their children and their childrearing choices.”).

126. Dailey & Rosenbury, *supra* note 125, at 1460.

127. *Meyer*, 262 U.S. at 390.

128. *Pierce*, 268 U.S. at 510; *Yoder*, 406 U.S. at 205.

129. At least one state makes parental authority over the decision to enter a child in football

larger numbers of girls began participating, and during the 1970s and 1980s organized sport in the United States became “an accepted part of the process of growing up.”¹³⁰ Sociologists explain that organized youth sport grew with changing understandings and approaches to raising children, including the notion that being a “good parent” includes placing children in adult-led activities where children can be properly supervised and kept “out of trouble.”¹³¹ Youth sport programs, in the view of parents, are therefore part of “their control over their children.”¹³² Thus, scholars attribute the evolution of the “family and childhood” as a primary reason for the popularity of organized youth sport.¹³³

Parents consequently have wide authority over their children’s engagement with sport. As Carrington and Andrews state, “[f]or the most part we are introduced to certain sports (and not others) at a young age and encouraged to play (or not) by significant others such as parents and teachers and coaches.”¹³⁴ Parents then ultimately decide whether their child will participate and if so, what sport their child will participate in, and parents provide the funding, transportation, and other logistical support.¹³⁵ In addition to enrolling their children, parents have control over issues raised by a child’s participation in sport. Parents can, for instance, consent not just to necessary medical treatment for sports injuries, but treatment designed to enhance sport performance.¹³⁶ Parents can (and do) decide to “redshirt” their child—delaying the start of kindergarten or repeating eighth grade to delay entering high school—to get an advantage in sports.¹³⁷ Parents have the authority to switch schools, or remove a child from school altogether, and home school, to support a child’s sport training.¹³⁸ In addition, in most states, parents have the right to waive tort claims on behalf of their children who participate in sport.¹³⁹ Courts often uphold such

statutorily explicit, as the California Youth Football Act states that “[t]he decision to play youth football ultimately rests with the parents, after their thoughtful consideration of the risks and benefits, as to whether participation in youth football is in their child’s best interest.” CAL. HEALTH & SAFETY CODE § 124240(14)(2020).

130. COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 111.

131. *Id.* at 111-12.

132. *Id.* at 134.

133. *Id.* at 112; OVERMAN, *supra* note 24, at 5 (stating that “family and community dynamics drive participation in organized sports” and that parents use sport to supervise and “socialize” their children).

134. Carrington & Andrews, *supra* note 4, at 9.

135. Popkin et al., *supra* note 70, at 996 (stating that research shows parents are the most important factor in children initially participating in sport).

136. Friesen, et al., *supra* note 67, at 155.

137. Sima Bernstein and Louis Z. Kern, *Parents Are Holding Kids Back in School to Make Them More Competitive Athletes*, PARENTS (Jan. 3, 2020), <https://perma.cc/79H7-B47H>.

138. Patrick Cohn, *The Advantages and Disadvantages of Homeschooling Young Athletes*, KIDS SPORTS PSYCHOLOGY (July 2, 2019), <https://perma.cc/MCD3-G92J>.

139. Alfred C. Yen & Matthew Gregas, *Liability Waivers and Participation Rates in Youth Sports: An Empirical Investigation*, 10 ARIZ. ST. SPORTS & ENT. L.J. 1, 4 (2020) (stating that “most states enforce sports liability waivers signed by adults.”). See, e.g., C.R.S.A § 13-22-107 (“it is the

waivers, stating that it is necessary as a policy matter to ensure youth sport opportunities will be provided,¹⁴⁰ as courts believe that “negligence claims pose grave risks to the viability of youth sports.”¹⁴¹

Thus, as Dailey and Rosenbury point out, although “the modern trend” is to recognize in some instances children’s autonomy interests, the law’s assumption that “children [are] dependent beings in need of adult supervision and control” has not changed.¹⁴²

3. Children’s Rights Under U.S. Law

Also part of the permission given to the private sector to define youth sport is the policy choice to provide children, and especially children who are athletes, with limited rights. Indeed, when it comes to children and sport, having few rights can be considered “part of the game.”

There are several reasons courts and scholars recognize children as having “special status” in the law, including the assumption that due to immaturity, children lack the capacity to make decisions in their best interests, that children are vulnerable and subject to coercion and improper influences, and that greater rights for children would undermine the authority of parents.¹⁴³

The Supreme Court has noted children’s particular vulnerability to coercion in the context of sport.¹⁴⁴ In *Brentwood Academy*, the Tennessee high school athletic association, which the Court previously held was a state actor,¹⁴⁵ sanctioned a member high school for violating association rules against recruiting players.¹⁴⁶ The basis for the violation was that the school’s football coach sent a letter about spring practices to incoming

public policy of this state that . . . children . . . should have the maximum opportunity to participate in sporting . . . activities; entities providing these essential activities . . . need a measure of protection against lawsuits, and without the measure of protection these entities may be unwilling or unable to provide the activities; It is the intent of the general assembly to encourage the affordability and availability of youth activities in this state by permitting a parent of a child to release a prospective negligence claim of the child.”)

140. Yen & Gregas, *supra* note 139, at 2 (explaining that many courts enforce liability waivers by reasoning that it ultimately serves children’s interest by ensuring that sports opportunities will be provided).

141. *Id.* at 7. Yen and Gregas, however, conducted a study that tested this proposition and the underlying belief that enforcement of liability waivers ultimately will increase sports opportunities for children, and concluded that the “major argument given by courts for enforcing youth sports releases lacks empirical support.” *Id.* at 4. Yen and Gregas further stated that their study found “no statistically significant relationship between enforceability of youth sports releases and participation rates.” *Id.* at 24.

142. Dailey & Rosenbury, *supra* note 125, at 1462.

143. DAVIS ET AL., *supra* note 120, at 129; *Bellotti v. Baird*, 443 U.S. 622, 633 (1979) (stating that “[w]e have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.”).

144. *Tenn. Secondary Sch. Athletic Ass’n v. Brentwood Acad.*, 551 U.S. 291, 298 (2007).

145. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288 (2001).

146. *Brentwood Acad.*, 551 U.S. at 294.

eight grade students who had committed to the school, but not yet enrolled. The school challenged the sanction, claiming its communication was protected by the First Amendment. The Court rejected the school's argument, and in doing so noted that the purpose of the association's rule was, among other things, to protect middle school students from "exploitation."¹⁴⁷ The Court stated that "the dangers of undue influence and overreaching that exist when a lawyer chases an ambulance are also present when a high school coach contacts an eighth grader."¹⁴⁸

Accordingly, many rights enjoyed by adults are limited or denied to children.¹⁴⁹ The Supreme Court has stated that although children can claim protection under the Constitution, their status is "unique," so that the Constitution should "be applied with sensitivity and flexibility to the special needs of parents and children."¹⁵⁰ Martha Minow has noted the "ambivalence"¹⁵¹ of courts and policy makers to the notion of children's rights, and Dailey and Rosenbury explain that in the United States, meaningful children's rights reform remains unrealized because of the law's adherence to what they term the "authorities framework," whereby children are subject to the authority of parents or the state, with only qualified claims to rights.¹⁵² Dailey and Rosenbury state that "one need not master the field of children and law to recognize that our legal system denies children basic personal, social, and political rights."¹⁵³

Similarly, the legal system provides limited rights for athletes, especially those who are children. Athletes are highly regulated within sports. Sports are institutionalized, with rules establishing criteria for eligibility,¹⁵⁴ the rules of the game and conduct of competitions,¹⁵⁵ and in many contexts the

147. *Id.* at 296.

148. *Id.* at 298. The Court went on to state that "we need no empirical data to credit TSSAA's commonsense conclusion that hard-sell tactics directed at middle school students could lead to exploitation." *Id.* at 300.

149. DAVIS ET AL., *supra* note 120, at 129.

150. *Bellotti v. Baird*, 443 U.S. 622, 633-34 (1979).

151. Martha Minow, *What Ever Happened to Children's Rights?*, 80 MINN. L. REV. 267, 278 (1995).

152. Dailey & Rosenbury, *supra* note 125, at 1460-61 (stating that the persistence of the "authorities framework" meant that "by the mid-1990s, most scholars in the United States had abandoned their children's rights projects.").

153. *Id.* at 1462.

154. *E.g.*, OKLA. SECONDARY SCH. ACTIVITIES ASS'N, *2021-2022 Rules Manual*, <https://perma.cc/6AQ4-4BW7> (detailing eligibility rules); MASS. INTERSCHOLASTIC ATHLETICS ASS'N HANDBOOK (explaining eligibility rules) <https://perma.cc/7PGA-NPMX>; INT'L SKATING UNION CONST. AND GEN. REGUL. 2021, <https://perma.cc/9PNZ-FXY6> (establishing, along with other "special regulations and technical rules," the eligibility rules for figure skating); NCAA GUIDE FOR THE COLLEGE-BOUND STUDENT-ATHLETE 2021-2022, <https://perma.cc/99E5-JMP7> (explaining the eligibility rules for incoming students who seek to participate in sports).

155. *E.g.*, FED'N INTERNATIONALE DE GYMNASTIQUE, *Rules*, <https://perma.cc/8SYC-68X7> (outlining, among other things, technical regulations and judges' rules for competition); NAT'L FED'N OF STATE HIGH SCH. ASS'NS, *Football Rules Changes 2022*, <https://perma.cc/AZH8-CYZZ> (explaining high school football rules and updates).

range of acceptable athlete behavior even when they are not participating.¹⁵⁶ Courts usually defer to sports regulators to determine eligibility and the conditions of participation, and athletes are generally limited to claims that a sports regulator, such as the relevant sport NGB, has failed to follow its own rules.¹⁵⁷ Additionally, the USOPC, NCAA, and sport NGBs are private, not state actors, and therefore not subject to Constitutional restraint.¹⁵⁸ The Olympic and Amateur Sports Act also explicitly provides that it creates no right of action,¹⁵⁹ and state law claims based on athlete eligibility or related to athlete participation are pre-empted.¹⁶⁰ Instead, disputes are resolved through arbitration in the Court of Arbitration for Sport, a private arbitral body.¹⁶¹

In the context of high school sports, public school students and those governed by public high school athletic associations may bring claims for violation of their constitutional rights.¹⁶² For instance, in *Mahanoy v. B.L.*, the Supreme Court held that a high school cheerleader had a First Amendment right to post “vulgar” criticism of the program on social media, outside school hours.¹⁶³ The Court, however, suggested that the outcome might have been different if the speech had impacted “team morale” or “cohesion.”¹⁶⁴ Moreover, while public schools and athletic associations are “state actors” such that the Constitution applies to their actions, courts routinely hold that participating in high school sports is a privilege and not a right,¹⁶⁵ and important interests in regulating sports frequently outweigh athletes’ claims.¹⁶⁶

156. See Frank D. LoMonte, *Fouling the First Amendment: Why Colleges Can't and Shouldn't Control Student Athletes' Speech on Social Media*, 9 BUS. & TECH. L.J. 1 (2014) (explaining college sports programs’ limits, and some outright bans, on athlete social media use); OLYMPIC CHARTER, Rule 50.2 (explaining that to protect “the neutrality of sport at the Olympic Games and the neutrality of the Olympic Games themselves” there is a ban on any “demonstration or political, religious, or racial propaganda” in any area of the Olympic Games).

157. See, e.g., *Tiffany v. Ariz. Intersch. Athletic Ass’n* 726 P.2d 231 (Ariz. App. 1986); *Harding v. U.S. Figure Skating Ass’n*, 851 F.Supp. 1476 (D.Or. 1994); *Bloom v. Nat’l Coll. Athletic Ass’n*, 93 P.3d 621 (Colo. App. 2004).

158. E.g., *S.F. Arts & Athletics v. U.S. Olympic Comm.*, 483 U.S. 522 (1987); *Nat’l Coll. Athletic Ass’n v. Tarkanian*, 488 U.S. 179 (1988).

159. 36 U.S.C. § 220505(b)(9) (stating that “neither this paragraph nor any other provision of this chapter shall create a private right of action”).

160. E.g., *Sanderson v. U.S. Ctr. for SafeSport*, 2021 WL 3206322 *3 (July 29, 2021).

161. CT. ARB. FOR SPORT, *History of the CAS*, <https://perma.cc/VWW5-ZG9L>.

162. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288 (2001).

163. 141 S. Ct. 2038 (2021).

164. *Id.* at 2048.

165. E.g., *Menard v. La. High Sch. Athletic Ass’n*, 30 So.3d 790 (La.App. 1 Cir. 2009); *Taylor v. Enumclaw Sch. Dist.*, 133 P.3d 492, 497 (Wash. App. Div. 2006); *Mancuso v. Mass. Intersch. Athletic Ass’n*, 900 N.E. 2d 518, 527-28 (Mass.2009); *Johansen v. La. High Sch. Athletic Ass’n*, 916 So.2d 1081 (La.App. 1 Cir. 2005); *Ind. H.S. Athletic Ass’n v. Carlberg*, 694, N.E.2d 222, 228 (Ind. 1997); *Letendre v. Mo. State High Sch. Activities Ass’n*, 86 S.W. 3d 63, 67 (Mo.App. E.D. 2002); *Tiffany v. Ariz. Intersch. Ass’n*, 726 P.2d 231, 234 (Ariz. App. 1986); *Brands v. Sheldon Cmty. Sch.*, 671 F.Supp. 627, 631 (N.D. Iowa 1987).

166. E.g., *Tenn. Secondary Sch. Athletic Ass’n v. Brentwood Acad.*, 551 U.S. 291 (2007); *Lowery v. Euverard*, 497 F.3d 584 (6th Cir. 2007) (rejecting athlete’s First Amendment challenge to

For instance, in Fourth Amendment cases, a child's status as an athlete can diminish a claim to Constitutional protection. In *Vernonia School Dist. v. Acton*,¹⁶⁷ the Supreme Court held that a school district's suspicionless drug testing policy, aimed at athletes, did not violate the Fourth Amendment. The Court stated that athletes have a lesser expectation of privacy because they "suit up" in locker rooms which afford no individual privacy and because joining a sports team means athletes "voluntarily subject themselves" to a higher "degree of regulation" than non-athlete students.¹⁶⁸ Also important to the Court was that, in its view, athletes are school "role model[s]."¹⁶⁹ The Court stated that students who participate in sports "have reason to expect intrusions upon normal rights and privileges, including privacy."¹⁷⁰

Although students' Constitutional claims frequently fail, civil rights statutes can be a source of rights for athletes, including youth athletes. Title IX, which requires gender equity in education-based sports programs, had a transformative effect on sports by requiring institutions to provide sports opportunities for women and girls.¹⁷¹ More recently, Title IX is being invoked to protect the rights of transgender individuals to participate in education-based sports programs.¹⁷² The Americans with Disabilities Act and the Rehabilitation Act are also important sources of rights for athletes with disabilities. For instance, in *PGA Tour v. Martin*, the Supreme Court held that the Americans with Disabilities Act applied to an athlete participating in a privately administered professional sports tournament.¹⁷³ Similarly, the Rehabilitation Act prohibits discrimination on the basis of disability in education-based sports programs,¹⁷⁴ though courts will defer to the institution to determine whether the athlete is in fact "otherwise qualified" and eligible to participate.¹⁷⁵

In addition to courts deeming sport participation a privilege and not a right, another reason frequently cited for providing athletes with relatively few rights is to ensure sports opportunities will be provided and to

dismissal from football team for speaking out against coach, and stating that "there is a difference between the way a school relates to the student body at large, and to students who voluntarily 'go out' for athletic teams," and that "[r]estrictions that would be inappropriate for the student body at large may be appropriate in the context of voluntary athletic programs" because, among other things, the "conflict between a player and the coach can shake 'the very foundation of team chemistry.'"); *Wildman v. Marshalltown Sch. Dist.*, 249 F.3d 768 (8th Cir. 2001) (court rejected athlete's First Amendment claim, citing coaches' "reasonable" need for "respect.").

167. 515 U.S. 655 (1995).

168. *Id.* at 657.

169. *Id.* at 663.

170. *Id.* at 657.

171. Brian L. Porto, *Unfinished Business: The Continuing Struggle for Equal Opportunity in College Sports on the Eve of Title IX's Fiftieth Anniversary*, 32 MARQ. SPORTS L. REV. 259 (2021).

172. B.P.J. v. West Virginia State Bd. of Educ., No. 2:21-cv-00316 (D. W.Va. June 17, 2021).

173. *PGA Tour v. Martin*, 532 U.S. 661 (2001).

174. *Knapp v. Northwestern Univ.*, 101 F.3d 473 (7th Cir. 1996).

175. *Id.*

encourage participation. For instance, courts considering tort claims asserted by athletes against a co-participant frequently hold that a party may recover only where an athlete shows that the co-participant engaged in intentional or reckless conduct. The purpose behind this rule was articulated by the Illinois Appellate court in *Nabozny v. Barnhill*, which stated that the court “believes that the law should not place unreasonable burdens on the free and vigorous participation in sports by our youth.”¹⁷⁶ Similarly, the Indiana Supreme Court in *Megenity v. Dunn* stated that “[s]ince athletic activity is to be encouraged . . . a sports participant commits no breach by engaging in conduct” that is within the norm for the sport.¹⁷⁷

Notably, this rule is not adjusted for children participating in youth sport even where an injury results from “extreme misconduct.”¹⁷⁸ In *Borella v. Renfro*, the Massachusetts Appeals court refused to impose liability for conduct that rendered the minor athlete unconscious and with permanent injuries. The dissent pointed out that the decision “strips children who play competitive sports of the protections against reckless violence to which they are entitled,”¹⁷⁹ and that the majority rule could lead not only to more serious injuries in youth sport, but also to parents not allowing their children to play.¹⁸⁰ In at least 19 states, children who are athletes also have limited rights to recover in tort because of immunity statutes that insulate volunteer coaches and youth sport programs from liability except for cases of willful or wanton conduct.¹⁸¹ More than half of all states provide immunity for the handling of sport concussions.¹⁸²

With a deliberate policy to assign control over amateur sports, including youth sport, to the private sector, and little regulation or policy direction, the identity of youth sport in the United States is determined by the market. Parents are important partners in this transaction, as strong legal protection for their authority coupled with few rights for children and athletes means youth sport largely occurs within a legally insulated, private sphere. As

176. 334 N.E.2d 258, 260 (Ill. App. 1975).

177. *Megenity v. Dunn*, 68 N.E.3d 1080, 1084 (Ind. 2017). *See also* *Kabella v. Bouschelle*, 672 P. 2d 290, 294 (N.M. App. 1983) (stating that “vigorous and active participation in sporting events should not be chilled by the threat of litigation.”).

178. *Borella v. Renfro*, 137 N.E.3d 431 (Mass. App. Ct. 2019).

179. *Id.* at 444.

180. *Id.*

181. *See, e.g.*, R.I. Gen. L. § 9-1-48 (“no person who, without compensation and as a volunteer, renders services . . . in a youth sports program organized and conducted by or under the auspices of a nonprofit corporation . . . shall be liable to any person for any civil damages . . . unless the acts or omissions of the person were committed in a willful, wanton, or reckless disregard for the safety of the participants. It shall be insufficient to impose liability upon any such person to establish only that the conduct of the person fell below ordinary standards of care.”); ALA. CODE 1975 § 6-5-344; 16 DEL. CODE § 6836; GA. CODE ANN. § 51-1-20.1; IL.C.S. § 80/1; K.S.A. § 60-3601. The federal government also limits liability for volunteers of non-profit activities generally, including youth sports, and state laws are preempted except to the extent they give greater protections. 42 U.S.C. § 14503 (2018).

182. Paul Anderson, *How Concussion Legislation is Failing Young Athletes*, ATHLETIC BUSINESS (Apr. 20, 2020), <https://perma.cc/QWB6-EM8X>.

explained below, this structure for U.S. youth sport is one that is shaped by the politics of our particular historical moment.

C. *The Critical Theory Account*

To fully identify U.S. youth sport, we must also understand the background political conditions in which it operates. Critical theorists have explained that much of our thinking about sport is based on what has been referred to as the “great sport myth,” which includes the underlying assumption that sport is inherently “pure” and “good” and that these values “are necessarily passed on to all who engage in it or are sports fans.”¹⁸³ Feminist theorists also have described how “deeper historical forces,”¹⁸⁴ emphasizing values such as “privatization”¹⁸⁵ and individual responsibility, produced significant societal change.¹⁸⁶ This change affected sport, as by the mid-twentieth century sport, including youth sport, was swept up in capitalist expansion.¹⁸⁷ Sport historians argue that our knowledge of sport should therefore be put in this greater context, rather than simply accepted as “objective” truth.¹⁸⁸ Thus, while the predominant discourse encourages participation in youth sport¹⁸⁹ and stresses its importance to individual health and a good childhood, it is important to explore how these understandings fit within the broader political landscape, and critical theory is useful to this end.

To appreciate this perspective, we must set aside the oft-held view that sport is apolitical, as in the United States it is commonly assumed that “sport and politics should not mix.”¹⁹⁰ The notion that sport is somehow above or

183. Jay Coakley, *Assessing the Sociology of Sport: On Cultural Sensibilities and the Great Sport Myth*, 50 INT’L REV. SOCIO. SPORT 402, 403 (2015) [hereinafter *Great Sport Myth*]. Coakley explains that sport’s relationship to politics helps perpetuate the belief that sport is inherently, and in all forms, good, and this assumption makes critical research and scholarship on sport difficult. *Id.* at 405 (explaining that “the pervasiveness of the [Great Sport Myth] and the way it is strategically nurtured by self-interested political and economic elites constitutes a significant challenge to the sociology of sport,” and that “there remains a need for us to publicly disrupt [Great Sports Myth]-based assumptions underlying policymaking, . . . much sports science research, and everyday discussions about sports in society.”).

184. NANCY FRASER, FORTUNES OF FEMINISM: FROM STATE-MANAGED CAPITALISM TO NEO-LIBERAL CRISIS 217 (2013).

185. *Id.* at 218.

186. *Id.* at 219.

187. ROBERTS, *supra* note 17, at 59. *See also*, ATENCIO et al., *supra* note 87, at 29 (stating that “[w]e are indeed living in a new, different era in which youth sports are greatly shaped by the broader societal trend . . . [that] involves the degradation of state regulation and the consequent prioritization of private-sector control and values”).

188. Booth, *supra* note 16, at 36; ROBERTS, *supra* note 17, at 131 (stating that “Foucault insists that all the discourses associated with different leisure activities be interrogated more rigorously.”).

189. *See* ROBERTS, *supra* note 17, at 121 (explaining Foucault’s theory that “discourses simultaneously impose limits on what can be thought, expressed and understood by others. It is the discourses we have acquired that allow us to think that sport might benefit our health and strengthen a nation’s prestige and identity.”).

190. Daniel A. Grano & Michael L. Butterworth, *Rhetoric, Sport, and the Political*, in SPORT, RHETORIC, AND POLITICAL STRUGGLE 1 (Daniel A. Grano & Michael L. Butterworth eds., 2019); *see*

separate from politics, however, is at best more wishful thinking than fact, as sport at all levels is “already political.”¹⁹¹ For this reason, sport is frequently called “paradoxical”¹⁹² in that it can be simultaneously an individual experience while also intersecting with larger political and cultural forces.¹⁹³ Consequently, in describing the philosophical debates over the meaning of sport, Robert Simon explains that externalists view sport as “mirror[ing], reflect[ing], or reforc[ing] the values found in the wider society.”¹⁹⁴ This is true of youth sport.

Thus, we often speak of youth sport as an experience that helps “build character” and that teaches other socially useful values.¹⁹⁵ Some scholars emphasize sport’s use for the “performance and production” of patriarchy and masculinity,¹⁹⁶ so that the professionalization of sport, including for children and adolescents, is a means of solidifying male privilege and “masculine identity.”¹⁹⁷ Other scholars explain that the emphasis on youth sport is part of societal discourses that construct our views of the body and health.¹⁹⁸ One of the most forceful critiques of sport, and the one that has

David L. Andrews, *supra* note 14, at 228 (stating that sport “has transformed into a domain most evocative of the late capitalist condition, yet one whose multidimensional relationality . . . is regularly overlooked by the consuming masses.”).

191. Grano & Butterworth, *supra* note 190, at 1 (emphasis omitted).

192. Ian McDonald, *One-Dimensional Sport: Revolutionary Marxism and the Critique of Sport*, in *MARXISM, CULTURAL STUDIES AND SPORT*, *supra* note 14, at 44; EITZEN, *supra* note 10, at 1-2 (explaining the “duality” of sport and that “sport is fair; sport is foul”).

193. Carrington & Andrews, *supra* note 4, at 10; McDonald, *supra* note 193, at 44 (citing the “inherently political nature of sport”).

194. Robert L. Simon, *Internalism and Internal Values in Sport*, 27 *J. PHIL. SPORT*, 1 (2000); Peter Donnelly & Michael Atkinson, *Where History Meets Biography: Towards a Public Sociology of Sport*, in *PLAYING FOR CHANGE: THE CONTINUING STRUGGLE FOR SPORT AND RECREATION* 375 (stating that “sociologists of sport have developed a more and more sophisticated understanding of the ways in which sport is involved in reproducing social relations.”).

195. *Id.* (noting that “sport has long been identified as an important source of values in the popular culture . . . and its alleged role in character building . . . has frequently been stressed.”). Indeed, American political leaders invoke sport as important to American society for this reason. Douglas E. Abrams, *The State of Concussion: Protecting Athletes Through Advances in Law, Public Health, and Science*, 10 *J. BUS. & TECH. L.* 1, 13 (2015) (quoting President Barack Obama stating that “[s]port is . . . fundamental to who we are as Americans” and “[w]e’re competitive. We’re driven. And sports teach us about teamwork and . . . what it takes to succeed not just on the field but in life.”).

196. Jeffrey Montez de Oca, *Paradox of Privilege: Sport, Masculinities, and the Commodified Body*, in *A COMPANION TO SPORT*, *supra* note 3, at 149.

197. *Id.* at 157.

198. See Emma Rich & John Evans, *Physical Culture, Pedagogies of Health, and the Gendered Body*, in *A COMPANION TO SPORT*, *supra* note 3, at 179-180; Michael L. Silk & David L. Andrews, *Sport and the Neoliberal Conjuncture: Complicating the Consensus*, in *SPORT AND NEOLIBERALISM* 8 (David L. Andrews & Michael L. Silk eds., 2012) (explaining that a “variety of traditionally public health issues and concerns have become incorporated in the reach of the private sector.”). Sport is advanced as a solution for numerous children’s issues, from lack of physical fitness to crime. Caroline Fusco, *Governing Play*, in *SPORT AND NEOLIBERALISM*, at 145. Fusco goes on to explain how children are often the target of neo-liberal health-based discourses of individual responsibility, with the “seemingly benevolent” messages to participate in sport and stay physically active a key part of the message. *Id.* at 149. In this account, initiatives such as the NYSS and the President’s Physical Fitness Award are part of the state’s attempt to “ideologize the young,” with childhood obesity recast as a failure of the individual to, among other things, participate in sport. Toby Miller, *Michel Foucault and the Critique of Sport*, in *MARXISM, CULTURAL STUDIES AND SPORT*, *supra* note 14, at 188.

particular relevance here, is that sport reflects and contributes to broader societal manifestations of neoliberalism.¹⁹⁹

This includes sport directed to children. In addition to the fact that, as discussed above, U.S. youth sport is now primarily privatized, Claudio Colagouri and other critical theorists provide an explanation for the professionalization elements of our current approach. Colagouri argues that in capitalist society, sport can be a potent “cultural expression of agonism,”²⁰⁰ which emphasizes winning and the belief that competition produces ideal, just, legitimate outcomes.²⁰¹ Critical theorists further state that this thinking pervades youth sport. They emphasize that sport is particularly effective in teaching children the values of agonism, because sport “is a *major* institution” that is tied to, among other things, notions of a good upbringing.²⁰² Thus, for sport in the U.S. and many Western, capitalist societies, critical theorists point out that “the social and moral aspects of play” are de-emphasized, while the elements of talent development, skill, and competing to win are amplified.²⁰³

The politically contingent nature of our approach is underscored when we consider the conversations around youth sport that are occurring outside the

199. Silk & Andrews, *supra* note 198, at 15 (explaining that “neoliberal sporting cultures” are connected to larger political structures that “perpetuate” societal inequalities). In this view, sport is said to facilitate “an economy of affect through which power, privilege, politics, and position are (re)produced.” *Id.* at 5; Simon, *supra* note 194, at 1. See also Alan G. Ingham, *The Sportification Process: A Biographical Analysis Framed by the Work of Marx, Weber, Durkheim and Freud*, in *SPORT AND MODERN SOCIAL THEORISTS* 14 (Richard Giulianotti ed., 2004) (explaining that capitalism “became so naturalized that it influenced production in other spheres (such as sport) and became hegemonic.”); EITZEN, *supra* note 10, at 125-26 (stating that sport is a form of “ideological control”). Claudio Colagouri argues that sport helps achieve hegemony by fostering societal buy-in “to the dominant project of power.” CLAUDIO COLAGUORI, *AGON CULTURE: COMPETITION, CONFLICT, AND THE PROBLEM OF DOMINATION* 22 (2012).

200. COLAGOURI, *supra* note 199, at 29. Colagouri also states that “competitive sport helps develop the cultural meanings of agonism as transcendence and natural,” *id.* at 3, and that sport “operate[s] as forms of knowledge” that establish “winner-loser outcomes as part of the natural order of society,” in that sport “reminds the viewer that the oh-so-necessary competition produces winners and losers and that’s just the way it is.” *Id.* at 5. See, Anouk Be’langer, *The Urban Sport Spectacle: Towards a Critical Political Economy of Sports*, in *MARXISM, CULTURAL STUDIES AND SPORT*, *supra* note 14, at 63 (stating that sport is a “politicized cultural form.”); Silk & Andrews, *supra* note 198, at 5.

201. COLAGUORI, *supra* note 199, at vii. Colagouri further argues that agonism is “the *primary organizing principle* of the global capitalist order,” *id.* at ix (emphasis in original), and that culture has become “the new frontier of hegemonic power in late capitalism.” *Id.* at 15.

202. *Id.* at 25; Coakley, *Positive Youth Development*, *supra* note 73 at 24 (stating that “as neoliberal ideology was increasingly manifested in the political, economic, cultural, and social spheres of society, there also was an emphasis on intervening in the lives of young people to make them personally responsible and keeping them out of trouble at the same time.”). Scholars have explained that sport’s ability to condition children to accept agonistic values and the dominant political discourse as natural, or “the way the world is,” is heightened because sport is not just associated with childhood; children’s sports opportunities are provided in schools. RIDPATH, *supra* note 21, at 33 (stating that “[w]hile sports competitiveness is important in almost any culture, it is often amplified in the United States because sports within the education system form a separate social sphere.”).

203. Richard Giulianotti, *Sport and Social Theorists—A Plurality of Perspectives*, in *SPORT AND MODERN SOCIAL THEORISTS*, *supra* note 199, at 7. Participating in sport to compete and win, and not, for instance, for play or fitness, is a hallmark of U.S. sport. EITZEN, *supra* note 10, at 5.

U.S. Here, policymakers largely have not targeted youth sport for reform.²⁰⁴ Outside the U.S., however, youth sport reform is often seen as part of the broader children's rights movement that draws from the U.N. Convention on the Rights of the Child (UNCRC).²⁰⁵ The U.S. is one of the only countries in the world not to ratify the UNCRC due to, among other things, concerns that it would undermine parents' rights.²⁰⁶ Relevant to sport, the Convention provides that children have the right "to engage in play and recreational activities appropriate to the age of the child."²⁰⁷ This right has been affirmed by UNICEF, which endorsed children's rights to participate in sport and to do so free from harm.²⁰⁸ UNICEF also published, based on the UNCRC, a set of sports "principles" intended to reaffirm that while "play is a child's right," sport for children must be conducted in a way that does not harm.²⁰⁹ Based on these rights and principles, there is a significant discussion outside the U.S. regarding the structure and conduct of youth sport programs²¹⁰ that has had little policy impact here.

204. One exception was the effort in a few states to legislate limits on or outright ban tackle football for children in response to the issue of concussions in sports. UNIV. BUFFALO SCH. L. SPORTS & ENT. F., *Series: Legislation Banning Youth Tackle Football*, <https://perma.cc/97MC-FJQY>. Only California enacted a statute, the California Youth Football Act, which affirmed the importance of the game but limited youth football programs' ability to conduct full contact practices and required coaches to be certified in proper tackling, blocking and concussion management. CAL. HEALTH & SAFETY CODE § 124241 (2020). It might also be suggested that the recent response to athlete sexual abuse is an exception. However, these reforms were directed to amateur sport generally, not youth sport. In addition, they have not sought to reform the conduct of youth sport, but instead take a narrower approach, focusing on education and mandatory reporting requirements and dispute resolution. *See, e.g.*, Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, Pub. L. No. 115-126, 132 Stat. 318 (Feb. 14, 2018); Donna A. Lopiano and Connee Zotos, *Athlete Welfare and Protection Policy Development in the USA*, in SAFEGUARDING, CHILD PROTECTION AND ABUSE IN SPORT, *supra* note 73, at 104 (explaining that the policy response to abuse in sport "remains reactive rather than proactive.").

205. For instance, the Council of Europe and European Union have launched a Child Safeguarding in Sport initiative. COUNCIL OF EUROPE & EUROPEAN UNION, *Child Safeguarding in Sport*, <https://perma.cc/KC9U-L79Z>. France regulates sport training centers and requires a written contract between the training centers, parents, and schools to specify the child's maximum weekly number of hours devoted to training and competing. PAULO DAVID, HUMAN RIGHTS IN YOUTH SPORT 145-47 (2005). In 2007, Norway created, and then in 2015 updated, a Children's Rights in Sport document to guide how youth sport is provided. *Children's Rights in Sport*, Adopted by the Norwegian Olympic and Paralympic Comm. & Confederation of Sports (2015) [hereinafter, *Children's Rights Norway*], <https://perma.cc/94X8-76TE>; Japan's Committee for UNICEF initiated the *Children's Rights in Sports Principles* that are based on the U.N. Convention on the Rights of the Child. UNICEF, *Children's Rights in Sport Principles* (2018), <https://perma.cc/5JR3-SQSU>.

206. Howard Davidson, *Does the U.N. Convention on the Rights of the Child Make a Difference?*, 22 MICH. ST. INT'L L. REV. 497, 504-05 (2014); Minow, *supra* note 151, at 267 (stating that it was predicted there would be political resistance to signing the convention because some argued it "could weaken parental authority.").

207. U.N. Convention on the Rights of the Child, Sept. 2, 1990, art. 31, ¶ 1.

208. UNITED NATIONS CHILDREN'S FUND, *Protecting Children from Violence in Sport*, July 2010 at vii (stating that "UNICEF has long recognized that there is great value in children's sport and play, and has been a consistent proponent of these activities.").

209. UNITED NATIONS CHILDREN'S FUND, *Children's Rights in Sport Principles*, Nov. 2018 at ii.

210. *E.g.*, CENTRE FOR SPORT AND HUMAN RIGHTS, <https://perma.cc/64LB-GN7U> (explaining the group's work "with all actors in sport" to support children's rights); DAVID, *supra* note 205; Inger Eliasson, *The Gap Between Formalised Children's Rights and Children's Real Lives in Sport*, 52 INT'L REV. SOC. SPORT 470 (2017); LANG & HARTILL, *supra* note 73; DANIEL RHIND AND FRANK OWUSU-SEKYERE, INTERNATIONAL SAFEGUARDS FOR CHILDREN IN SPORT (2018).

Norway provides a useful example, as the Norwegian model significantly limits the very things the U.S. youth sport model emphasizes.²¹¹ Norway's approach is led by the government's Ministry of Culture, and is based on cultivating an environment emphasizing "health and regular exercise," not competition.²¹² Drawing on the UNCRC, Norway adopted a set of principles to govern youth sport.²¹³ The principles are centered on children's needs, give children the right to choose how much they train and compete, and give them the right to train and compete in activities that correspond with their age and level of development.²¹⁴ Safety is the number one priority, as Norway provides that children have the right to participate in sports activities "without any inappropriate pressure or exploitation."²¹⁵ Norway specifies by children's age a plan for development, and competition and travel teams are limited before age 12.²¹⁶ Sports opportunities must be open to all,²¹⁷ and youth sport clubs must designate an individual who is responsible for implementing the rights.²¹⁸ With generous government funding, nearly every child is able to participate.²¹⁹ This model has not diminished (and indeed some consider it a reason for) the country's success in international sports competition, as Norway regularly tops the medal count at the Winter Olympics.²²⁰

Seen in its fuller political context, then, the professionalization approach of the U.S. youth sport model is plainly not an objective necessity.²²¹ This understanding allows us to move beyond the common assumptions that the particular U.S. youth sport model necessarily benefits children and that conducting sport in this way is in fact *required* to engender the benefits of participation.²²² These views reflect what critical theorists call the "taken-

211. Tom Farrey, *Does Norway Have the Answer to Excesses in Youth Sports?*, N.Y. TIMES (Apr. 28, 2019), <https://perma.cc/2JLL-XMWW>; *Children's Rights Norway*, *supra*, note 205; Duru, *supra* note 13, at 44 (explaining the Norwegian youth sport model).

212. Matthew Futterman, *It's Norway's Games Again. What's Its Secret?*, N.Y. TIMES (Feb. 18, 2022), <https://perma.cc/6P6G-4X28>.

213. Jan Emil Ellingsen & Anne G. Danielsen, *Norwegian Children's Rights in Sport and Coaches' Understanding of Talent*, 25 INT'L J. CHILD. RTS. 412 (2017).

214. *Children's Rights Norway*, *supra* note 205, at 5.

215. *Id.*

216. *Id.* at 9.

217. *Id.*

218. *Id.* at 10.

219. Futterman, *supra* note 212; *Children's Rights Norway*, *supra* note 205, at 3 (stating that 8 out of 10 children participate in sports).

220. Futterman, *supra* note 212 (explaining that Norway has "doubled down on its commitments under its Children's Rights in Sports document" that includes an emphasis on "participation and socialization rather than hard-core competition."). Of course, a youth sport model need not produce Olympic champions to be considered effective.

221. Carrington & Andrews, *supra* note 4, at 9 (stating that "Western definitions of sport tend to assume that *competition* is axiomatic but this may be to unduly privilege a particular concept of sport.") (emphasis in original); see Gould, *supra* note 70, at 82 (explaining the incorrect assumption of most youth sport parents and coaches that one cannot develop as an athlete in "an enjoyable, fun-filled atmosphere").

222. See, Coakley, *Positive Youth Development*, *supra* note 73, at 27 (stating that there is a "near

for-granted” belief “in most Western societies”²²³ that engaging in sport always leads to positive outcomes for children, and such beliefs permeate documents like the NYSS.²²⁴ In this way, the prevailing “truth”²²⁵ about U.S. youth sport—that it’s a positive experience in which all children should take part—obscures the reality that American society demands athletic supply, and it “helps if the object cooperates.”²²⁶ With this in mind, we can best appreciate the full range of distributional effects the current model generates.

II. THE MODEL’S SURPLUS AND DISTRIBUTIVE EFFECTS

Sports philosophers have explained that “[g]ames are made by us and for us.”²²⁷ A critical part of identifying U.S. youth sport then is determining what, and who, we are using these games for. Asking that question might appear unnecessary, as the answer likely seems intuitive—all of us, to varying degrees, are steeped in the discourses of sport.²²⁸ However, youth sport’s familiarity to us may prevent our full perception of its true characteristics, as one scholar has stated that sport is such a common fixture of American life that we may not fully appreciate the “moral issues to which it gives rise.”²²⁹ Moreover, David Kennedy explains that proponents of certain societal arrangements may “obscure the distributional significance of what they seek by emphasizing the benefits that will accrue to all mankind When claims are framed this way, it is easy to overlook” the distributional consequences.²³⁰ Thus, our deeply familiar relationship with

universal belief that sport participation automatically produces positive development outcomes for participants. As a result, the adults who control programs and teams have not felt that specific intervention strategies or new pedagogies were needed to achieve developmental goals.”); Donnelly & Atkinson, *supra* note 194, at 374 (stating that “[t]he list of claims deriving from the notion of ‘sport for good’ is extensive, but research results regarding the use of sport to achieve these social goals are often equivocal and inconclusive”); Peter A. Harmer, *Injury Research in Pediatric and Adolescent Sports*, in *INJURY IN PEDIATRIC AND ADOLESCENT SPORTS* 234 (D. Caine & L. Purcell eds., 2015) (stating that “it is clear that the very nature of competitive sport entails potential harm that threatens to undermine the value of participation.”).

223. Coakley, *Positive Youth Development*, *supra* note 73, at 21.

224. For example, in endorsing youth sport participation, the NYSS does not cite evidence for the U.S. model specifically, but instead seems to conflate youth sport with exercise. The report states that “the health benefits of regular physical activity, including sports, are indisputable.” *YOUTH SPORTS STRATEGY*, *supra* note 13, at 22.

225. See, MacKinnon, *supra* note 15, at 537-38 (discussing “aperspectivity” as a “strategy of male hegemony” as men “create the world from their point of view, which then becomes the truth to be described.”) (emphasis in original).

226. *Id.* at 540.

227. Scott Kretchmar, *Formalism and Sport*, in *ROUTLEDGE HANDBOOK OF THE PHILOSOPHY OF SPORT* 19 (Mike McNamee & William J. Morgan eds., 2017).

228. MacDonald et al., *supra* note 18, at 9 (stating that “[t]he discourses of sport, often articulating assumptions about sport’s inherent worthiness, permeate contemporary societies such that it is nearly impossible to sit outside the circulation of these discourses.”).

229. Nicholas Dixon, *Sport, Parental Autonomy, and Children’s Rights to an Open Future*, 34 *J. PHIL. SPORT* 147 (2007).

230. KENNEDY, *supra* note 81, at 58-59 (also explaining that “for people with projects, there will

sport might prevent us from identifying all that it is.²³¹

Though commonly thought to be just another private family issue about which parents are trusted to act in the best interests of their children, nearly everyone—high schools, colleges and universities, the U.S. Olympic movement, professional leagues, state and local governments, parents, and anyone who is a sports fan—has a stake in whether children take up sport. A closer look therefore reveals that U.S. youth sport is a performance-focused pipeline, not play, and it is a model with significant distributional consequences.

A. *The Youth Sport Surplus*

To understand the distributional effects of the U.S. youth sport model, we must first understand what “surplus”²³² the model produces.²³³ Of course, there is no surplus of youth sport *opportunities*. There is, however, a surplus generated by the current model in the Marxist sense—a value produced by the children who participate.²³⁴

The notion of surplus in sport is a familiar one. At the professional level, the surplus is a subject of negotiation between team owners and unionized athletes as part of the collective bargaining process.²³⁵ At the intercollegiate level, we are currently experiencing a movement to identify and re-allocate the considerable surplus generated by revenue-sport athletes that traditionally has been distributed to schools, coaches, and administrators.²³⁶ But the concept of a surplus has not been as visible in youth sport. The usual

be winners and losers.”). See also JANET HALLEY, PRABHA KOTISWARAN, RACHEL REBOUCHE & HILA SHAMIR, GOVERNANCE FEMINISM: AN INTRODUCTION 255 (“envisioning people with projects makes it easier to stay attentive when players in struggle identify costs and benefits in surprising ways.”). At least one social theorist has stated with respect to sport that “we must become suspicious of claims that everyone will be a winner and there will be no losers in any leisure project.” ROBERTS, *supra* note 17, at 15.

231. See HALLEY ET AL., *supra* note 230, at 254 (explaining that under a Holmesian, legal realist approach, to determine what the law is one must first separate it from “the hazy filter of its moral justification” so that it can be seen “not for its vaunted merits but *as what it does*.”) (emphasis in original).

232. *Id.* at 256 (describing “surplus” as asking “what gain in human welfare—quantifiable like profits or nonquantifiable like pleasure or prestige—does a given struggle produce?”).

233. *Id.* (stating that “this analysis starts by identifying not the injury . . . in a given setting but the *surplus* it generates.”) (emphasis in original).

234. *Id.* (stating that “Marxist economic theory posits that market exchanges produce a *surplus*—value over and above the bare costs of production—that can be appropriated by players with superior social power.”) (emphasis in original).

235. E.g., *Collective Bargaining Agreement*, MAJOR LEAGUE BASEBALL & MAJOR LEAGUE BASEBALL PLAYERS ASS’N, <https://perma.cc/B6ND-HSE7>; *Collective Bargaining Agreement*, NAT’L BASKETBALL ASS’N & NAT’L BASKETBALL PLAYERS ASS’N, <https://perma.cc/57PP-WC9M>; *Collective Bargaining Agreement*, Nat’l Football League & Nat’l Football League Players Ass’n, <https://perma.cc/6MRA-87LS>.

236. See, e.g., Alston v. Nat’l Collegiate Athletic Ass’n, 141 S.Ct. 2141 (2021); Ramogi Huma & Ellen J. Staurowsky, *How the NCAA’s Empire Robs Predominantly Black Athletes of Billions in Generational Wealth*, NAT’L COLLEGE PLAYERS ASS’N (2020), <https://perma.cc/5WEJ-FZ42>; NAT’L LAB. REL. BD., *Opinion Letter* (Sept. 29, 2021), <https://perma.cc/K7Y2-8WTZ>.

narrative is that the adults involved in youth sport are providing a service. In this view, sport providers, coaches, and parents are part of an important undertaking for the benefit of children.

The Marxist notion of surplus value generated by youth sport also runs counter to classic liberal assumptions about the way children become involved in sport. It is assumed that participation is a matter of individual choice, made in the privacy of one's family, and completed through rational market transactions to enroll the child in a sports program. Indeed, the NYSS positions the "individual"²³⁷ at the very center of the "Framework for Understanding Youth Sports Participation" and states that key to getting more children to participate is increasing children's and parents' "awareness" and "knowledge" of the benefits of sport.²³⁸ Once informed, the thinking goes, children and parents will choose youth sport participation. Under this assumption, there is no surplus appropriation—the benefits of sport are for the child and stay with the child. The youth sport transaction then is not only fair, but benevolent.²³⁹

To understand the youth sport surplus, we must therefore move past liberal assumptions of privacy, family, and what counts as "work." Feminist legal theorists provide substantial insight into this issue, as they have long established that work performed within the home, traditionally by women, "was not conceived of as work."²⁴⁰ Such labor was considered private, domestic "altruism."²⁴¹ Scholars also asserted that failing to credit or compensate women for their domestic labor, which was essential to maintaining the prevailing political order, was a defining feature of "capitalist patriarchal economy."²⁴² This arrangement concealed the fact that women were generating substantial "socially necessary production."²⁴³

Like women's domestic work, so too are children who participate in sport

237. YOUTH SPORTS STRATEGY, *supra* note 13, at 60.

238. *Id.* at 61-63.

239. See, HALLEY ET AL., *supra* note 230, at 256 (stating that "[l]iberal and neoliberal economic theory—both based on neoclassical economics—assumes that free market exchanges motivated by individual preferences and unhampered by transaction costs leave all players better off" and that "[l]iberal and neoliberal economic theory starts with an assumption that the distributions of the market are fair.").

240. Zillah Eisenstein, *Constructing a Theory of Capitalist Patriarchy and Socialist Feminism*, 25 CRITICAL SOCIOLOGY 196, 209 (1999); Orly Lobel, *Class and Care: The Role of Private Intermediaries in the In-Home Care Industry in the U.S. and Israel*, 24 HARV. WOMEN'S L.J. 89 (2001); Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER, RACE & JUST., 6-8 (1999) (stating that that domestic work was not considered "real work"); Reva B. Siegal, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073, 1088 (1994) (explaining women's "uncompensated labor" in the home).

241. ROBIN WEST, CARING FOR JUSTICE 111 (1997) (arguing that "the harms that might be done women by virtue of their greater engagement in household tasks—their intimate altruism—are cast into a sort of definitional oblivion" because it is not identified as labor.).

242. Eisenstein, *supra* note 240, at 210.

243. *Id.*

a significant source of societally “necessary production”²⁴⁴ that occurs in what is traditionally considered a private sphere. Children’s participation in sport serves a continuing need, at the intercollegiate, professional, and Olympic levels, for high-performing athletes. Even high school sport has become a local spectacle where winning, fans, and for many programs, commercial appeal are the goal.²⁴⁵ To be able to perform at the levels necessary to entertain and win, an athlete must begin training during childhood. The decision whether to participate in sport is therefore not one that has only individual health consequences—it has societal consequences.²⁴⁶ By delivering a future supply of talent for higher levels of sport, then, “youth sport is the foundation of sport in society.”²⁴⁷

Youth sport also can be a site of production in that it acts to satisfy adults’ emotional needs, primarily those of parents.²⁴⁸ As a result, by training for the future and satisfying parents’, coaches’ and fans’ emotional needs for sport performance in the here and now, the U.S. youth sport model has commodified children’s sport experience. The market has answered the call.²⁴⁹

With this in mind, we are positioned to understand the way the current U.S. youth sport model produces a surplus. Key to this effort is describing the difference between “play” and “sport.” Philosophers have had much to say about the phenomenon of play,²⁵⁰ and I do not intend here to capture it all. Instead, this discussion seeks to establish play and sport as different (though often related)²⁵¹ experiences, and sport, unlike play, as an activity

244. *Id.*

245. Beth A. Cianfrone et al., *Identifying Key Market Demand Factors Associated with High School Basketball Tournaments*, 24 *SPORTS MARKETING Q.*, 91 (2015) (stating that “[i]n the US, interest in high school sporting events is at an all-time high” as demonstrated by, among other things, game attendance and media coverage of high school sports events. The authors state that the increased commercial appeal of high school sport has “led to an arms race of sorts, similar to college programs,” as well as more emphasis on “winning”).

246. Ingham, *supra* note 199, at 18 (stating that for the sports industry to exist, “structures have to be developed which insure its continued reproduction through the production of athletic labour power with high levels of skill.”); Messner & Musto, *supra* note 19, at 5 (stating that “the kids who play and watch sports today supply the demographic buoyancy for the future of sport.”).

247. Dagkas & Armour, *INCLUSION AND EXCLUSION THROUGH YOUTH SPORT*, *supra* note 18, at xv.

248. Nathan Kalman-Lamb, *Athletic Labor and Social Reproduction*, 43 *J. SPORT & SOC. ISSUES*, 515, 522 (2019) (explaining that athletes’ physical labor in playing has an “emotional consequence for fans”). Kalman-Lamb also states that youth sports “produces meaning and rejuvenation” for parents. *Id.* at 527; HYMAN, *supra* note 66, at ix-x.

249. SCIENCE BOARD REPORT, *supra* note 52, at 11 (stating that “as the extrinsic rewards linked to youth sports success have increased . . . the market has responded”).

250. Randolph Feezel, *A Pluralist Conception of Play*, in *THE PHILOSOPHY OF PLAY* 11 (Emily Ryall, Wendy Russell & Malcolm MacLean eds., 2013) (explaining that “the philosophical and scientific literature on play is extensive, and the approaches to the study, description and explanation of play are diverse.”); Henning Eichberg, *PLAY IN PHILOSOPHY AND SOCIAL THOUGHT* 160-61 (Signe Hojbjerg Larsen ed., 2019) (arguing that classic definitions of play are “stiff” and overly rational); see Carrington & Andrews, *supra* note 4, at 9-10 (explaining that “the lines between what is merely ‘play’ . . . and what constitutes a sport” are not always “clear-cut”).

251. Feezel, *supra* note 250, at 29 (describing sport as “in the neighbourhood of play”).

that can be deployed not just for the enjoyment of the participant, but for the benefit of others.

Play and sport are ontologically distinct.²⁵² With play, the motivation to engage in it and the benefits of engaging in it remain with the individual. Social theorists define play as “a voluntary, expressive activity which is uncertain and unproductive; characterized by spontaneity . . . which focuses on process rather than product, and which can be initiated and terminated at will.”²⁵³ Philosophers have further explained that the voluntary nature of play means that play on demand “is no longer play.”²⁵⁴ Play, then, is fundamentally “an autotelic activity . . . pursued for predominantly intrinsic reasons.”²⁵⁵ In contrast with work, play generates “a use-value,” or enjoyment, only for the individual playing, and this use value is consumed by the individual playing at the time of play so that no surplus is created.²⁵⁶ Philosopher Johan Huizinga states that in this way, play “is in fact freedom.”²⁵⁷

Sport, including youth sport, certainly has “play-like elements”²⁵⁸ where, for instance, an athlete creatively executes an unexpected physical maneuver in the course of a game. However, the freedom of play that may exist in some aspects of sport is limited by the rules and framework within which organized sport takes place.²⁵⁹ In play, the rules may be made up as the activity unfolds, while in sport “the rules are given to us.”²⁶⁰ Thus, philosopher Bernard Suits explains that “not all sports are play.”²⁶¹ With structure and regulation, sport can instead become a “commodity,”²⁶² as those who control the rulemaking and governance of what is deemed a sport can distribute it for consumption.²⁶³

Political economy scholars have documented the way that capitalist impulses have “transformed” sport.²⁶⁴ Sport is a “triple commodity”²⁶⁵ in

252. Carrington & Andrews, *supra* note 4, at 9.

253. John W. Loy & W. Robert Morford, *The Agon Motif Redux. A Study of the Contest Element in Sport*, 82 *PHYSICAL CULTURE & SPORT* 10, 12 (2019).

254. Johan Huizinga, *The Nature of Play*, in *PHILOSOPHIC INQUIRY IN SPORT*, at 5 (William J. Morgan & Klaus v. Meier eds., 1995).

255. Klaus Meier, *Triad Trickery: Playing with Sports and Games*, in *PHILOSOPHIC INQUIRY IN SPORT*, *supra* note 254, at 32.

256. Ingham, *supra* note 199, at 15.

257. Huizinga, *supra* note 254, at 5.

258. Carrington & Andrews, *supra* note 4, at 10.

259. *Id.* at 10.

260. *Id.* at 9.

261. Bernard Suits, *Tricky Triad: Games, Play, and Sport*, in *PHILOSOPHIC INQUIRY IN SPORT*, *supra* note 254, at 21-22.

262. Hardy, *supra* note 2, at 343-44.

263. *Id.* at 344-45 (explaining that “rulemakers create a special product—the game form—that may exist as a commodity” and that “game forms are usually played in a situation that involves more than simple, expressive use-value for the players.”).

264. Kimberly S. Schimmel, *Sport and International Political Economy: An Introduction*, in *THE POLITICAL ECONOMY OF SPORT I* (John Nauright & Kimberly Schimmel eds., 2005).

265. Hardy, *supra* note 2, at 344.

that the game itself can be sold as a product, so that participants pay fees to access the sanctioned versions of a game and access coaching to develop their skills.²⁶⁶ There is also the sport product that can provide value to fans, through the athletes' performance.²⁶⁷ Finally, there are the goods and services that are necessary to participate in and support the game.²⁶⁸ Consequently, sport theorists explain that sport "exemplifies the exploitation of the labor process," even if it also in some respects operates to provide individual enjoyment.²⁶⁹

It is the emphasis on performance and winning—meeting externally imposed goals—that Suits states contributes to the conversion of play to sport. Games are infused with elements such as competition, performing for spectators, and keeping score.²⁷⁰ Suits therefore distinguishes sport where there is a "compulsion" to win as an activity that "turns a game that could be play into something that is not play."²⁷¹ Winning requires skill, and skill requires training. Thus, the "toil" of training to develop skill helps distinguish "sport from games and play."²⁷²

Skill-building, performing, and playing to win are also important to generate benefits—beyond those generated for the person engaging in sport—that flow to others. This aspect of sport produces what scholars call "surplus-values" for the actors, including sport regulators, coaches, administrators, and spectators, who control and consume the games.²⁷³ In this way, converting play from "use-value production" that solely benefits players into sport results in "surplus-value production"²⁷⁴ that generates gains for others. Thus, although play results in creating enjoyment only for the individual who is playing, sport, in contrast, is an activity that also gives rise to value for others, and this value increases "the more we commit ourselves to the athletic role/identity."²⁷⁵

The distinction between sport and play is particularly relevant to understanding youth sport and the surplus the U.S. model for youth sport produces. Play is considered "important" in child development,²⁷⁶ and

266. *Id.* at 345.

267. *Id.* at 344-45.

268. *Id.* at 346.

269. Carrington & Andrews, *supra* note 4, at 6 (quoting Toby Miller).

270. Ronald McKinney, *Toward a Post-Post-Modern Philosophy of Play*, 64 PHIL. TODAY 159, 161 (2020).

271. Suits, *supra* note 261, at 21-22.

272. Ingham, *supra* note 199, at 18.

273. *Id.*

274. *Id.* at 29 (explaining the difference between play and work as "human *being*" and "self as human *doing*"). Indeed, the difference between "play" and sport is currently being experienced with the transformation of break dancing, surfing, and skateboarding into Olympic sports, with at least some who participate in these activities noting the changes it will mean, especially with respect to the toll on their bodies from needing to "train." Rick Maese, *How Breakdancing Made the Leap From 80s Pop Culture to the Olympic Stage*, WASH. POST (Feb. 9, 2021), <https://perma.cc/7JLW-8WTE>.

275. Ingham, *supra* note 199, at 17.

276. Coté et al., *supra* note 69, at 180. Play is considered so important that it is asserted to be a

physical play can provide children with numerous benefits.²⁷⁷ Researchers have explained, however, that in the 1980s, parents pivoted from urging children to play to instead emphasize “scheduling . . . in achievement activities,”²⁷⁸ including youth sport. Youth sport has been described as “adult-centered play”²⁷⁹ that works as “an exchange between the individual child, . . . fellow athletes, coaches, spectators, and parents.”²⁸⁰ In the hands of adults, critics have stated that play has been “reengineer[ed]” into our current youth sport model,²⁸¹ with the consequence, as explained above, that U.S. youth sport is now “professionalized.”²⁸² As one scholar stated with respect to youth sport:

There’s the game of baseball and then there’s the sport of baseball. Children play the game on their own initiative . . . no adults are required . . . Organized sports, on the other hand, oblige youngsters to attend scheduled practices and competitive events under the supervision of adults. These activities incorporate formal rules and procedures. The competitive emphasis necessitates focused and protracted training directed by coaches.²⁸³

In sum, as stated by sports scholar Stanley Eitzen, in “adult-organized” youth sport, “play is transformed into work.”²⁸⁴

Relatedly, sport also differs from play because it is often performed for fans, and in this transaction becomes a “a site of social reproduction.”²⁸⁵

child’s “right” in the UNCRC. *See supra* note 207.

277. Coté et al., *supra* note 180, at 180.

278. Travis E. Dorsch, et al., *A History of Parent Involvement in Organized Youth Sport: A Scoping Review*, SPORT, EXERCISE & PERFORMANCE PSYCH. 1, 5 (June 3, 2021).

279. EITZEN, *supra* note 10, at 113; *see* OVERMAN, *supra* note 24, at 2 (distinguishing the “game” of baseball from the “sport” of baseball by the presence of adults who direct and supervise the activity with formal rules and procedures).

280. OVERMAN, *supra* note 24, at 7.

281. HYMAN, *supra* note 66, at 114; LANG & HARTILL, *supra* note 73, at 1 (stating that “[c]ritics suggest that competitive pressures engendered by adult supervision have robbed youth sport of its play and socialization values.”).

282. HYMAN, *supra* note 66, at xii; Gould, *supra* note 70, at 82 (stating that the “single biggest problem” in youth sport is the adoption of a “professional” model). *See also* Messner & Musto, *supra* note 19, at 8 (stating that “researchers have begun to explore how commercial sport organizations and sports media have at times routinized, rationalized, and commercialized kid-created street sports.”); Ingham, *supra* note 199, at 17; Popkin et al., *supra* note 70, at 996 (explaining that adults involved in youth sport frequently believe that sport specialization is better than simple “play”).

283. OVERMAN, *supra* note 24, at 2.

284. EITZEN, *supra* note 10, at 121. *See* Abrams, *The Challenge in Youth Sports*, *supra* note 9, at 265-66 (describing some youth travel teams as having “grueling” schedules that would “exhaust adult professionals” and that “youngsters before puberty are often treated as commodities.”); Dennis Caine & Laura Purcell, *The Exceptionality of the Young Athlete*, in INJURY IN PEDIATRIC & ADOLESCENT SPORTS, *supra* note 222, at 3 (stating that it is “not uncommon . . . for children as young as six to play organized sports and travel with select teams to compete against other teams”); Newman & Bunds, *supra* note 85, at 8 (describing the “hyper-commodification of youth sports”). *See also* Hardy, *supra* note 2, at 359 (urging sports historians to consider whether the commodification of sport has “strangulat[ed] sport as play.”); The University of Kansas School of Education & Human Sciences Blog, *The Commercialization of Youth Sports*, <https://perma.cc/3QB2-3PH2>.

285. Kalman-Lamb, *supra* note 248, at 518.

This process takes place because, as one social theorist explains, the physical labor of athletes “has an emotional consequence for fans”²⁸⁶ so that an athlete’s labor also helps fans satisfy their own psychological “needs.”²⁸⁷ While most true with professional, Olympic, and revenue-generating intercollegiate sport, this effect is also present in youth sport, with children performing for adults, including parents, who are heavily invested in child-athletes’ success.²⁸⁸

The youth sport surplus therefore can be conceptualized as occurring across a continuum, with play on one end and professional sport on the other. Moving across the continuum, the amount of surplus generated grows as the amount of effort children dedicate to their participation goes farther beyond play and deeper into the professionalized youth sport experience. As I explain below, this is a phenomenon with extensive distributive effects.

B. The Distributional Consequences

Uncovering the current model’s propensity to generate a surplus moves us to the final step for identifying U.S. youth sport, which is outlining the distributional consequences. Understanding who benefits from youth sport also helps explain why, despite the well-known, long-documented issues, the model is resistant to change.²⁸⁹

Youth sport exists within the broader social “struggle.”²⁹⁰ Looking at youth sport narrowly, as an individual choice and matter of concern primarily for children and their families, the possible distributional effects seem limited. However, understanding the bigger picture, that youth sport is the foundation of the overall U.S. sport enterprise—high school, college, professional, and Olympic—it is clear that a wide range of actors, from the youth sport industry to parents, derive benefits from the current model for engaging children in sport.²⁹¹

286. *Id.* at 522 (emphasis in original).

287. *Id.* at 518. Kalman-Lamb goes on to assert that sport is important to capitalism because athletes create value not just as laborers in their sport, but as performers of their sport, so that they “produce the capacity for value by affectively reproducing the labor power of others.” *Id.* at 527.

288. *Id.* at 527; Indeed, at least one sports medicine researcher refers to U.S. youth sport as an “elite entertainment model.” Gould, *supra* note 70, at 81.

289. As sports scholar Jay Coakley states, the “prospects for change in organized youth sports programs are inhibited by the vested interests of many adults in programs as they are currently organized.” COAKLEY, *SPORT IN SOCIETY*, *supra* note 10, at 135.

290. David Kennedy argues that focusing on “struggle rather than system” produces a clearer distributional picture. KENNEDY, *supra* note 81, at 59. Similarly, Carrington and Andrews state with respect to sport specifically that “scholars of sport need to situate the ‘study of play, games, and sports in the context of understanding the historical struggle over the control of rules and resources in social life and the ways in which this struggle relates to structured limits and possibilities.” Carrington & Andrews, *supra* note 4, at 10.

291. See, KENNEDY, *supra* note 81, at 58 (explaining the concept of “people with projects”); Coakley, *Great Sport Myth*, *supra* note 183, at 403 (stating that “powerful people” encourage and “prey on” the belief that sport is inherently good “as they use the [Great Sport Myth] to camouflage personal interests related to projects in which sport is presented as a tool for solving problems and contributing to individual . . . development.”).

To reveal the full distribution of the surplus generated by children's participation in the U.S. youth sport model, then, I describe below how it benefits or burdens the relevant actors and I suggest how each actor might fare if a different youth sport model were adopted. To this end, I imagine a youth sport model that is positioned at the "play" end of the surplus continuum. This model, which I call "sport as play," would de-emphasize the elements of our professionalized youth sport approach. "Sport as play" would instead be child, not adult, centered, and would emphasize two things that we know benefits in the first instance children themselves: physical fitness and fun.²⁹² Outlining the winners and losers under the current model and envisioning a different approach therefore most thoroughly illuminates what U.S. youth sport is and who it is for.

1. Youth Sport Industry.

The distribution of costs and benefits in the current youth sport model is extensive, and the most obvious, immediate beneficiary of this arrangement is the youth sport industry. The current model generates an estimated \$15-19 billion in revenue to those who sponsor youth sport programs and provide affiliated services, like travel teams and specialty coaching, and the corporations who manufacture youth sport related goods and services.²⁹³ Moreover, in addition to the industry as a whole, particular benefits of the current model certainly flow to individual actors, such as coaches and team doctors, who enjoy not only any financial rewards from their work in service of youth sport, but also the emotional satisfaction and prestige that an affiliation with youth sport may provide.²⁹⁴

All of this is not without any benefit to the children who participate. As noted above, research establishes that physical exercise provides

292. Research shows that fitness and fun with friends, and not playing to win, are the primary motivations for children to participate in sport. Gretchen Kerr & Ashley Stirling, *Putting the Child Back in Children's Sport*, in *ETHICS IN YOUTH SPORT* 27 (Stephen Harvey & Richard L. Light eds., 2013). However, youth sport is often said to produce benefits beyond just fitness and fun. I am using these two, and calling it "sport as play," as a baseline because not only are these the values preferred by children, but by definition, these values produce benefits that accrue primarily to the child. In addition, while other values such as fair play and rule following can be developed through sport, researchers have found that this heavily depends on the youth sport provider delivering the experience in a "developmentally appropriate manner," and when it is not, youth sport can instead cause harm. *Id.* In addition, researchers have questioned the narrative that youth sport always leads to positive character development. As Coakley states, "to say that positive personal attributes have been created" by participation in youth sport "is naïve until longitudinal research tells us otherwise." Coakley, *Positive Youth Development*, *supra* note 73, at 29. Coakley goes on to state that to the adults that control youth sport programs, simply participating leads to "good character and good choices" without regard to program pedagogy. *Id.* at 27.

293. YOUTH SPORTS STRATEGY, *supra* note 13, at 3; Newberry, *supra* note 32 (calling youth sport a "\$19 billion industry").

294. Indeed, the power of a coach, including at the youth level, was recently the subject of a Supreme Court amicus brief. This power supports the notion that coaches likely derive some additional benefit from their affiliation with sport, beyond whatever payment they may receive. Brief of Former Professional Football Players Obafemi D. Ayanbadejo, Sr. et al. as Amici Curiae in Support of Respondent, Joseph A. Kennedy v. Bremerton Sch. Dist., No. 21-418 (Sup. Ct. Apr. 1, 2022) at 7-18.

“indisputable” health benefits.²⁹⁵ And, certainly anything a child deems “fun” by definition provides them with pleasure. It is likely that within the current model, children get the benefit of exercise and some measure of enjoyment, at least initially.

However, as children continue in youth sport, they also likely move across the surplus continuum, becoming subject to increased professionalization. This is when early sport specialization, overtraining, and an emphasis on winning become more predominant. This is also when teams become more selective, narrowing opportunity and giving children the incentive to quit, or perhaps leaving them no choice.²⁹⁶ For the youth sport industry, a model that goes beyond play then is literally putting children’s bodies to work for profit. In the language of liberal economic theory, this is a fair exchange, with parents and caregivers paying for what they understand to be the benefits of sport participation delivered to children as part of the transaction. This account is also consistent with legal assumptions about the role of parents, who have wide discretion to make choices about their child’s upbringing as they are assumed to act in their children’s best interests.

A change to a “sport as play” model would therefore have significant consequences for the youth sport industry. A “sport as play” model would have less training, less emphasis on skill development, and fewer competitions, and this would undoubtedly generate less revenue. It might also generate less of an emotional and status benefit for coaches and individuals who assist with teams. On the other hand, a model that produces more enjoyment could mean that more children participate, and more participate for a longer period of time. The question is whether the initial gatekeepers for children in sport, parents and caregivers, would pay for an experience that does not deliver the type of measurable results the current model provides. Re-tooling the current youth sport model would therefore be risky for the youth sport industry, while more of the same seems to amount to more revenue and more personal satisfaction for the adults who make the games happen.

2. *Society at Large.*

The distributional consequences of the current model go far beyond the

295. YOUTH SPORT STRATEGY, *supra* note 13, at 22, stating that the health benefits of physical activity are “indisputable.”

296. Mark Rerick, *Making Cuts on Athletic Teams—The Necessary Evil*, NAT’L FED. STATE HIGH SCH. ASS’N. (Oct. 28, 2015), <https://perma.cc/9P2Z-BX3Q> (explaining the need to cut athletes at the high school level because, “[a]s much as we’d like to base our entire program in just meeting our three department goals (having fun, learning how to compete, and learning the sport), the reality of an athletic department is that all of our stakeholders – athletes, coaches, parents, public – still expect us to be able to compete with the intent to win games. The average John Q. Public doesn’t call me because he thinks our teams aren’t having enough fun. That means that we need to get our athletes as good as we can get them, put our best athletes on a team together, and coach the heck out of them.”).

youth sport industry. At the most abstract level, one can argue that society as a whole benefits greatly from the present approach. Nearly two-thirds of Americans identify themselves as sports “fans.”²⁹⁷ Society’s sports fans enjoy consuming sport performances at all levels, and elite, Olympic Movement competition also gives fans and policymakers the added benefit of national prestige. Due to inevitable injuries, burnout and other reasons for attrition, generating a large number of skilled athletes, more than there are higher-level opportunities for, helps ensure a steady supply of talent. Children participating in the current youth sport model therefore create value for adults and society generally by participating in the pipeline that supplies athletes for higher levels of sport.²⁹⁸ Youth sport in this way is the ground-level factory producing the goods²⁹⁹ that facilitate sport consumption. Thus, all sports fans reap a benefit from a youth sport model that is professionalized so that it develops and determines the most skilled and therefore commercially successful athletes (and has those athletes performing for fans along the way). By producing a supply of talent for higher levels of sport, then, the current youth sport model is operating as intended.³⁰⁰

While the “more is more” analysis is arguably true for the youth sport industry and sports fans, the overall societal picture may not always be positive. Envisioning a change to a “sport as play” model reveals the costs. First, in contrast to the current model, a “sport as play” model might attract and keep more participants. Assuming research on youth physical fitness is correct, there could be (as documents such as the NYSS state) an aggregate benefit from greater participation in terms of short and long-term societal health outcomes. In addition, a model that generates greater sport participation might mean that society gets the benefit of the emergence of a unique athletic talent that would otherwise not have been discovered. Consequently, the current model’s barriers to participation, and the fact that so many children quit by adolescence, supports an argument that society is harmed by the present approach.

Second, the current system likely has significant opportunity costs that a “sport as play” model might eliminate. In *The Winner-Take-All Society*, economists Robert Frank and Philip Cook explain that “perhaps the most important single task facing any economy is to assign each of its workers to

297. GALLUP POLL: SPORTS, <https://perma.cc/6FHF-J2DS> (citing 2015 survey data).

298. Kalman-Lamb, *supra* note 248, at 527.

299. See Ingham, *supra* note 199, at 18 (stating that “[i]n joining the sport feeder system, we begin learning to labour.”); DAVID, *supra* note 205, at 144 (stating that “[m]odern sport needs a continual succession of attractive entertainers capable of exciting supporters and TV viewers alike with their skill and outstanding results.”).

300. Ingham, *supra* note 199, at 18 (stating that “the sports feeder system is instrumentally rational.”). Ingham goes on to state that the societal commitment to excel at the professional and Olympic levels of sport means we engineer “our own . . . exploitation” by developing ourselves, or our children, as athletic supply. *Id.*

the job in which his or her talents add the greatest value.”³⁰¹ With relatively few elite sport opportunities, there may actually be too many children participating in youth sport in the current, professionalized model—many would be better off focusing on art, music, or some other hobby that could benefit themselves and society.³⁰² If youth sport is viewed as part of the larger “winner-take-all” market for sport,³⁰³ then, children *not* playing could produce a societal benefit. While the NYSS and similar discourses problematize children who do not participate,³⁰⁴ too few elite athletic positions means that many of the children who devote time in the current youth sport model would do better focusing on something else. In this analysis, laboring in youth sport beyond the level of “sport as play” harms society because we lose the benefit of, say, another great pianist.

3. Education-Based Sports Programs.

The consequences of our current youth sport model can be further explored based on sports context. The U.S. relies heavily on developing athletes by embedding sports programs in schools—primarily high schools, colleges, and universities.³⁰⁵ Both interscholastic and intercollegiate sport benefit from the professionalized U.S. youth sport model because it creates a buyers’ market, enabling programs to be selective. Teams can be filled with skilled athletes who provide the greatest chance of winning, or at least producing a high-value athletic contest, and this generates fan interest, school and community pride, and for some programs, substantial revenue.³⁰⁶ Importantly, this analysis is not just limited to revenue-generating sports (usually football and men’s and women’s basketball, but increasingly other sports as well).³⁰⁷ Even sports that do not attract television audiences or large numbers of fans are valued for being

301. ROBERT H. FRANK & PHILIP J. COOK, *THE WINNER-TAKE-ALL SOCIETY* 102 (1995).

302. *Id.* (stating that “society’s total income would be higher if fewer people competed in these markets and chose other occupations instead.”).

303. *Id.* at 29 (stating that athletics is a “quintessential winner-take-all” market). Frank and Cook explain that “winner-take-all” markets are those where a small number of very top performers get a disproportionate share of the available reward, which has the “negative consequence” of “lur[ing] some of our most talented citizens into socially unproductive . . . tasks.” *Id.* at 4. For instance, in the context of sport, Frank and Cook note that “Olympic gold medalists go on to receive millions in endorsements while the runners-up are quickly forgotten—even when the performance gap is almost too small to measure.” *Id.* at 17.

304. MacDonald et al., *supra* note 18, at 21 (explaining that the “biopolitical discourse of the ‘goodness’ of sport is sufficiently pervasive (and persuasive) to ensure that those who are not included (through choice or alienation) are positioned as a ‘problem.’”).

305. RIDPATH, *supra* note 21, at 67-68.

306. See SENATOR CHRIS MURPHY, *MADNESS, INC.: HOW EVERYONE IS GETTING RICH OFF COLLEGE SPORTS—EXCEPT THE PLAYERS* (Mar. 28, 2019) (stating that the Department of Education documented that college sports programs earned \$14 billion in total revenue in 2018).

307. Jo Craven McGinty, *March Madness is a Moneymaker. Most Schools Still Operate in Red*, WALL ST. J. (Mar. 12, 2021), <https://perma.cc/6SYJ-JJJZ>; Cork Gaines, *The Average College Football Team Makes More Money Than the Next 25 College Sports Combined*, BUS. INSIDER (Oct. 20, 2016), <https://perma.cc/FXD6-CZK6>.

successful, so that attracting skilled athletes is often a primary objective.³⁰⁸

Yet as with the analysis of society generally, in the education-based sports context the current professionalized youth sport model presents some potential costs as well, as more skilled athletes may not always be beneficial. Our current youth sport approach produces more talent than there are higher-level opportunities to support. Children compete for athletic scholarships and positions on high school and college teams, and if they are not successful, resign themselves to disappointment. However, if the NYSS goal were actually realized—instead of little more than half of all children playing sports, *all* would—there would likely be a demand on the system that our education-based sports programs could not meet. More athletes who could credibly claim a place on a high school team, when there are already not enough opportunities, may lead to political pressure to recalibrate programs that have largely been left to administrators to construct. Public education-based sports programs are primarily state-supported.³⁰⁹ Substantially larger numbers of disappointed children (and their parents) may prompt political pressure to reform education-based sports programs to increase opportunities for all individuals who have the ability to participate. Indeed, the cutbacks to many intercollegiate sports programs in response to the COVID-19 pandemic gave a glimpse of what might be possible. When so-called “non-revenue” sports such as swimming and track and field were, at some schools, slated for cancellation to reallocate greater resources to football programs, the backlash was swift, and schools were forced to reverse course.³¹⁰

Again, considering a change to a “sport as play” model reveals what’s at stake. A “sport as play” approach would de-emphasize early specialization and training, and could very likely shrink the pool of players who are ready to perform at a highly skilled level on high school and maybe even college teams. It could also mean many adults are out of a job, at least in high school sports. High school sports are serious business, with complex rules, and entities, such as state high school athletic associations, employing numerous administrators, to implement them.³¹¹ A “sport as play” model for youth

308. For instance, college programs at all levels compete against each other for an award called the Learfield Directors’ Cup, which is given every year by the National Association of Collegiate Directors of Athletics and USA Today to recognize college programs for excellence based on their overall programs’ results in NCAA championship competition. NACDA, *Division 1 Learfield Directors’ Cup Standings* (Jan. 13, 2022), <https://perma.cc/5TVF-6P5L>.

309. See Grace Chen, *Hello Budget Cuts, Goodbye Sports: The Threat to Athletics*, PUB. SCH. REV. (Oct. 8, 2020), <https://perma.cc/7NG7-NFG8>.

310. Glynn A. Hill & Molly Hensley-Clancy, *Stanford Says it Won’t Cut Sports After Lawsuits & Pressure From Athletes*, WASH. POST (May 18, 2021), <https://perma.cc/83SB-9ZMD>; *Schools that Cut Women’s Sports Teams During the Pandemic Face Lawsuits Over Equality*, NAT’L PUB. RADIO (June 10, 2021), <https://perma.cc/W987-36FK>.

311. See NAT’L FED’N OF STATE HIGH SCH. ASS’NS (providing rule books and other resources to operate “sanctioned” high school sports programs), <https://perma.cc/4GZV-7ZQAQ>; MARYLAND PUB. SECONDARY SCH. ATHLETIC ASS’N, (stating that “the MPSSAA President, MPSSAA staff along with

sport might generate pressure at the high school level for less competitive, more inclusive programs, and unlike the current approach, a “sport as play” model that de-emphasized competition in high school sports would almost certainly require fewer rules to ensure, among other things, “competitive balance,”³¹² and overall less administrative infrastructure, to make the games happen.

4. *Professional Sports Leagues.*

Professional sports also benefit from the current youth sport model. Baseball, basketball, hockey and soccer are all sports with strong youth participation,³¹³ and professional sports leagues certainly reap at least some of the benefits of the talent produced.³¹⁴ Emerging professional sports, such as lacrosse, benefit as well.³¹⁵ Football’s benefit, however, is not as clear. While many children play football, youth sport leagues are arguably less important than schools, especially colleges and universities, in developing talent. Because football heavily depends on factors such as the player’s physical size, private youth participation, at a young age, is not as crucial. Moreover, concern over sports concussions, particularly in football, have caused many to suggest delayed entry into the game, at least the tackle version.³¹⁶ The other sports, however, rely heavily on skill developed as a child, as do emerging professional leagues. For these entities, the current youth sport model is delivering the necessary talent.

On the other hand, established professional sports are already highly popular and lucrative. While a wider pool of participants in youth sport might yield a few more superstar talents, there are now enough of them to

the Board of Control and Executive Council carries out the philosophy and purposes of the association, including making interscholastic athletics part of the entire educational program”), <https://perma.cc/W67K-9QK7>.

312. The *Brentwood* case illustrates this well. At issue there were the Tennessee High School Athletics Association’s rules prohibiting certain types of recruiting activities. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n.*, 531 U.S. 288, 293 (2001).

313. NAT’L FED’N OF STATE HIGH SCHOOL ASS’NS, *2018-19 Participation Survey*, <https://perma.cc/4GZV-7ZQA> (listing baseball, basketball, soccer among the “ten most popular” sports for boys); USA Hockey Membership Statistics show steady growth in the game over the last twenty years, with hundreds of thousands of children participating. USA HOCKEY, *Membership Statistics*, <https://perma.cc/LN9W-XL6X>.

314. Indeed, one commentator explained the connection between youth sport and professional baseball (and a recent labor dispute that threatened the start of the season) by stating that “[g]iven the professionalization of youth sports over the last few decades, the fact that college athletes still can’t get paid for playing, and the fact that even the most promising baseball players spend a few years in the minor leagues . . . a baseball player could have put decades of uncompensated labor into a major league career in the hope of winning one big contract to make it all worth it.” Dara Lind, *The Nerdiest Article You’ll Read About the Baseball Lockout*, VOX (Mar. 8, 2022), <https://perma.cc/2SRP-64WA>.

315. See Austin Carmody, *Does Lacrosse Have a Pro League? (What You Need to Know)*, LACROSSE PACK, <https://perma.cc/64AX-H4QY> (explaining that “as young athletes have begun to flock” to lacrosse, it has supported the emergence of several professional leagues for men and women).

316. Des Bieler, *Brett Favre Warns Parents Not to Play Tackle Football Before the Age of 14*, WASH. POST, (Aug. 17, 2021), <https://perma.cc/RFU4-R6E3> (explaining the view of the Concussion Legacy Foundation and others).

satisfy consumer demand so that more participation might not yield any additional marginal benefit in terms of player talent. Moreover, the current model has the potential to harm professional sports if it serves to turn children off as sports fans. Thus, if children's experience in sport is negative (and, as stated above, research shows that for many it is), it might not serve to develop these children as future consumers of professional sport. This would pose a significant cost to professional leagues.

From this perspective, imagining a change to a "sport as play" model reveals a downside to our current approach. A model that emphasizes enjoyment of sport might benefit professional sports leagues in the long term by instilling a childhood love for games that translates into increased adult consumption of professional sport. Moreover, while it is possible that a "sport as play" model would produce fewer elite athletes, the Norway example demonstrates that this is not necessarily the case. Since there are, already, too few professional sport opportunities given the number of intercollegiate athletes who would claim them,³¹⁷ the "sport as play" model might produce greater gains for professional leagues in developing both athletic talent and future sports fans.

5. United States Olympic Movement.

Similarly, the U.S. Olympic movement also undoubtedly reaps benefits from the current youth sport model. Olympic sports, at least during the Olympic Games, are a matter of national interest and pride. Scholars have explained the phenomenon of "sportive nationalism," whereby nations use international sports performance as a symbol of national prestige.³¹⁸ As evidenced by the President's Commission report, U.S. policymakers, and presumably the American public, are committed to being at the top of Olympic medal counts, and the U.S. youth sport model is delivering results.

As explained above, the USOPC is specifically charged with developing grassroots youth sport and producing strong showings in elite international athletic competition, including the Olympic Games. The USOPC's portfolio has become so expansive, however, that developing grassroots sport has been left to other private sector actors,³¹⁹ and the USOPC has reaped the benefits. Enough children are currently pursuing sport that the U.S. now routinely dominates, or is at least highly competitive in, many

317. NAT'L COLL. ATHLETIC ASS'N, *Estimated Probability of Competing in Professional Athletics* (2020) <https://perma.cc/S5W5-TUW5> (explaining that the likelihood of an intercollegiate athlete advancing to the professional level is "very low").

318. Alan Bairner, *Sportive Nationalism and Nationalist Politics: A Comparative Analysis of Scotland, the Republic of Ireland, and Sweden*, 20 J. SPORT & SOC. ISSUES 314 (1996).

319. Koller, *Amateur Regulation*, *supra* note 96, at 98 (explaining that USOPC officials have testified before Congress to explain that they cannot meet the mandate to both support youth sport and develop high-performance athletes for elite competition).

high-profile Olympic sports such as swimming and track and field.³²⁰ In fact, the only sports where the U.S. has not won any Olympic medals are badminton, table tennis, and team handball.³²¹ The U.S. also routinely tops overall medal counts at the Summer and Winter Olympic Games.³²² Unlike the international sports performances of the 1970s, which prompted a public policy response, today's youth sport model feeds a high-performance pipeline that has brought substantial national prestige.³²³

Here again, however, hypothesizing a change to a "sport as play" model reveals additional costs to the current approach. First, while it may be risky to make such a switch, at least for medal counts, it need not be. The Norwegian example, again, provides support for the notion that a different model would have no effect on elite athletic performances. More importantly, however, a "sport as play" model might produce important benefits. There are 50 sport NGBs currently under the USOPC's umbrella.³²⁴ For many of these sports, as explained above, the talent level is deep. For sports in which the U.S. does not field medal-winning teams, such as team handball and table tennis, there is room for improvement. From the perspective then of lesser-known Olympic sports, the market-based youth sport model fails to deliver much of any benefit. The model does not seek to grow interest in little-known sports, but only responds to the demand for what is already popular. The cost of this approach goes beyond the concrete cost to the USOPC and NGBs that struggle to field competitive elite teams in lesser-known sports. There is also a cost to society in that children's options for a sport that best matches their interests and abilities are limited. From this perspective, a different youth sport model that not only promotes wider participation, but offers a larger selection of sports, could produce benefits greater than the current approach.

6. *Future Elite Athletes.*

As an extension of the benefits to sports sponsors and regulators, future elite athletes, whether intercollegiate, Olympic, or professional, also benefit from the current youth sport model. Excellence is a "relational concept."³²⁵ To find the best athlete, there must be others to compete against, and the

320. Tom Weir, *Breaking Down USA's 1,000 Summer Olympic Gold Medals*, BLEACHER REP. (Aug. 13, 2016), <https://perma.cc/7SGK-LFZD>.

321. *Id.*

322. UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE, *Quad Report: 2016*.

323. See NBC Sports, *US Olympic Medal Records: A History of Our Country's Biggest Wins* (July 27, 2021), <https://perma.cc/J58X-CVG4> (noting the United States' "global domination" at the Olympics, as judged by medal counts).

324. TEAM USA, *About the U.S. Olympic and Paralympic Committee*, <https://perma.cc/5T4J-LEZU>.

325. Scott Brewer, *Summing Up So Far, Looking Forward: What is a Jurisprudence of Excellence?*, The Jurisprudence of Excellence Discussion Notes, 5 (Nov. 9, 2021) (on file with author).

others must be “worthy” competition.³²⁶ Thus, a Michael Phelps or Simone Biles does not emerge as a talent standing alone. It is the elite athlete’s talent as distinguished from that of others that makes an athlete truly impressive and enables him or her to rise in the hierarchy of sport. From this perspective, the aggregate surplus generated by the pipeline not only benefits those who sponsor higher levels of sport, it benefits those who seek higher levels of sport.³²⁷

The benefits for future elite athletes are clear when we imagine a change from the current youth sport model to a “sport as play” approach. The Norwegian example, again, shows that even when competition and travel, elements that are part of the professionalized youth sport model, are delayed, Olympic winners still emerge. However, if the “sport as play” model, because of its lower cost and inclusiveness, resulted in a larger pool of talented athletes, such a model may be less desirable for future elite athletes than the current system. While Michael Phelps and Simone Biles might in fact be unique talents that would emerge no matter how many others they competed against, for most athletes, the talent difference is small. There are many talented athletes. For an athlete seeking a college scholarship or to make a national or Olympic team, then, the most desirable pool of competitors would be one that provides “worthy” competition, so that the winner can truly distinguish him or herself and claim the prestige of being the best, but not one athlete more. In this respect, the current model with barriers to fuller participation is working.

7. State and Local Governments.

Less obvious but significant beneficiaries of the current U.S. youth sport model are the state and local governments that have captured part of the revenue the model generates. Emphasizing competition and winning inevitably leads youth sport teams to venture beyond their own neighborhoods, so travel is one of the costliest features of our professionalized youth sport model.³²⁸ Not surprisingly, this brings benefits to cities and towns that host competitions and tournaments.

Scholars have characterized “sports tourism,” which is travel related to children’s sport, as “an emerging market” that represents “at least 10 percent of the national leisure travel market.”³²⁹ States have capitalized on this by enacting statutes aimed at attracting this type of travel,³³⁰ including

326. Hatab, *supra* note 1, at 103-04 (stating that athletic opponents must be “worthy and capable contestants if victory is to have significance” and that an athlete “only want[s] to defeat an opponent who is capable of defeating” them).

327. *Id.* at 101 (describing competition as “a shared activity for the fostering of high achievement.”).

328. ASPEN INSTITUTE PROJECT PLAY, *Kids Quit*, *supra* note 31.

329. OVERMAN, *supra* note 24, at 42.

330. For instance, the State of Maryland has a program to bring more youth sports events to the

by building large tax-supported stadiums and undertaking other facilities development projects designed to host youth sport tournaments and competitions.³³¹ Illinois well illustrates the trend. The recently enacted “Commission on Amateur Sports Act,” provides that a state commission will be formed to ensure the “promotion, development, expansion, hosting, and fostering of amateur sports . . . events and tournaments.”³³² The commission is charged with creating “business opportunities” and “economic development” relating to “amateur sports,” and as part of this goal, it is tasked with holding “workshops, training, and conferences” to “increase youth participation in” sport and “support[ing] and encourag[ing] the development of sports tourism.”³³³

Litigation over these projects highlights the benefits for a locality. In *Long v. Napolitano*, the court rejected a challenge to Arizona’s “Tourism and Sports Authority” which directed public revenue to sports facilities, including those for youth sport. The court stated that “construction and improvement of youth and amateur sports facilities in Maricopa County, with its international airport, and numerous hotels and restaurants, would enable it to compete with similarly populated communities for large-scale youth sports tournaments that draw thousands of visitors.”³³⁴ Similarly, the court in *Town of Sterlington v. East Ouachita Rec. Dist.* rejected a challenge brought by parents, whose children played in a local Louisiana recreation league, to a sports tourism initiative that would use tax revenue to support development to attract sports tournaments, particularly in youth baseball and softball.³³⁵ The parents were concerned that hosting “travel ball” tournaments would displace the recreation league’s use of the facilities.³³⁶ The court reviewed the “tremendous” economic benefits from sports tourism, including the fact that “a single large tournament will generate at least \$500,000 for Northeast Louisiana,” and held that using tax revenue to improve facilities and host travel league tournaments was sufficiently within the state’s power under the relevant statute.³³⁷

In addition to the financial benefits flowing to state and local governments through the current youth sport model, one could argue that there is also a social benefit. Researchers state that the current approach can promote “social cohesion” by bringing communities together for “cooperative and competitive social bonding activities.”³³⁸ While this may

state and “attract sports fans” and “tourists.” MD. CODE § 10-612.1; IOWA CODE ANN. § 15E.321 (promoting “youth sports” and “sports tourism.”).

331. See OVERMAN, *supra* note 24, at 43.

332. ILL. A.L.S. § 511 (Aug. 20, 2021).

333. *Id.*

334. 53 P. 3d 172, 181 (Ariz. App. Div 1 2002).

335. 215 So.3d 381 (La. App. 2 Cir. 2017).

336. *Id.* at 388.

337. *Id.*

338. Amy Chan Hyung Kim et al., *Social Geographies at Play: Mapping the Spatial Politics of*

certainly be true, it may also be that the U.S. youth sport model does at least as much social harm as good. Litigation over sports tourism demonstrates that while attracting youth sport to a community for tournaments can increase revenue, it may also displace local, recreational sports programs. Moreover, while social “bonding” might take place during youth sport tournaments, there are also countless reports of harmful behavior, including violence, among those in attendance.³³⁹ In addition, while sport may bring communities together, it is often not building relationships among different socio-economic groups, as researchers state that “many sports leagues and teams . . . continue to act as informal segregating institutions.”³⁴⁰

Imagining a shift to a “sport as play” approach illuminates what is at stake for the communities that are banking on a payday from the current youth sport model. De-emphasizing performance and competition would undoubtedly mean that there would be many fewer families traveling for the purpose of their children’s sport, as well as spectators appearing to watch competitions. Sport tourism and the revenue it generates would be significantly reduced. Yet despite the obvious losses, envisioning a change to a “sport as play” model points up more hidden costs to the current approach. Emphasizing travel for youth sport takes people (and their recreational spending) out of their communities. A change to a “sport as play” model that de-emphasizes competition and relies on local resources might therefore strengthen community ties and shift political efforts to building better local recreational spaces, not to attract large numbers of out-of-state sports visitors, but to serve residents every day.

8. *Parents.*

The surplus generated by the U.S. youth sport model also benefits parents, though the picture is more complex than for other actors. Research on what the psychological community calls “sport parenting”³⁴¹ finds that it is “an intricate and dynamic social experience” with a wide range of

Community-Based Youth Sports Participation, J. AMATEUR SPORT 41 (Special Issue, 2016).

339. Bill Pennington, *Parents Behaving Badly: A Youth Sports Crisis Caught on Video*, N.Y. TIMES (July 18, 2019), <https://perma.cc/7BU3-L4NL> (explaining the “verbal and occasional physical abuse” directed towards referees in youth sports, and that “nearly 20 states have increased the penalties for assaulting a sports official by making it a discrete, independent category of the crime”); Meredith Deliso, *Over 20 Incidents Involving Guns at Youth Sporting Events in Recent Weeks*, *Gun Safety Group Finds*, ABC NEWS (Sept. 30, 2021), <https://perma.cc/GQJ2-N7FT>. Violence and harmful behavior among parents at youth sport events prompted at least one state to adopt a statute permitting youth sports organizations to adopt conduct codes that allow spectators to be removed in the event of bad behavior. N.J.S.A. § 5:17-1. See also Dianna K. Fiore, *Parental Rage and Violence in Youth Sports: How Can We Prevent “Soccer Moms” and “Hockey Dads” from Interfering in Youth Sports and Causing Games to End in Fistfights Rather than Handshakes*, 10 VILL. SPORTS & ENT. L.J. 103 (2003); Abrams, *The Challenge in Youth Sports*, *supra* note 9, at 258-59 (describing the phenomenon of “youth sports rage” and “adult youth sports violence”); Duru, *supra* note 13, at 38 (citing “spectator incivility” as a problem in youth sport).

340. Kim, et al., *supra* note 338, at 46.

341. Dorsch et al., *supra* note 278, at 5.

“factors and variables” so that researchers ultimately deem sport parenting a “nuanced phenomenon.”³⁴² Parents are central to their children’s participation in sport,³⁴³ and at the most basic level, then, one might argue that when parents put their children into sport, they must believe that they and their child will benefit. Indeed, research shows that the vast majority of all parents believe that youth sport participation is good for children.³⁴⁴ The benefits to parents, then, of youth sport participation could range from the emotional satisfaction of believing they are a “good” parent,³⁴⁵ to the relief of knowing their children are supervised. These benefits may be particularly enhanced for fathers, as researchers have concluded that youth sport is “an important context for men to do the ‘identity work’ of being involved with, and emotionally connected to, their children.”³⁴⁶

Yet at this most basic level, parents also shoulder numerous burdens. Youth sport is costly and can significantly impact family life by requiring driving to practices, travel to games, and overall disruption to schedules and routines. There is at least some evidence that these burdens are shouldered most frequently by mothers, who often take primary responsibility for transporting children to practices and providing other logistical support—clean uniforms, food, and schedule coordination—that is required to keep a child in sport.³⁴⁷ As one scholar has stated, the “lives of middle-class mothers revolve around their children’s sports commitments.”³⁴⁸ Fathers, too, may experience youth sport as a burden due to cost and, given that the majority of youth sports coaches are men (often fathers), an expectation that they provide time and energy to shepherd a team.

Beyond this logistical level, however, youth sport participation also provides many benefits for families as a whole. Youth sport can facilitate a connection between parents and their children, both through time spent together and in sharing healthy levels of pride and pleasure in the child’s participation. Through these experiences, parents can develop deeper bonds with their children and within their communities by making new, and enhancing existing, social connections. In addition, research shows that middle-class parents use youth sport “to acquire ‘competitive kid capital’”

342. *Id.* at 13.

343. Kim, et al., *supra* note 338, at 44; Dorsch, et al., *supra* note 278, at 5 (stating that “parents who were more interested in sport tended to encourage their children to participate in sport.”).

344. Messner & Musto, *supra* note 19, at 12.

345. Coakley, *Positive Youth Development*, *supra* note 73, at 25 (explaining that “the shift to neo-liberal cultural orientations” changed what it meant to be considered a “good parent,” so that “parental moral worth came to be linked with parents’ efforts to enlist their children in visible, achievement-oriented, and culturally valued activities” such as youth sport.).

346. Dorsch et al., *supra* note 278, at 9.

347. OVERMAN, *supra* note 24, at 50 (stating that “[a]lthough fathers are more likely to initiate the child’s involvement in sport, it’s the mothers who provide most of the long-term support and commitment required for the child’s continued participation.”).

348. *Id.*

that parents believe will privilege their children in the future.³⁴⁹ African-American parents often believe that sport can provide an important “way out” and path to a better life for their sons.³⁵⁰ We might therefore conclude that the surplus generated by children’s participation in youth sport is kept “in house” and shared mutually throughout the family.

For parents acting within the normal range of investment in their children’s sport participation, then, the benefits and burdens might be considered roughly equal. The positive shared experiences and joy for the child’s accomplishments are balanced against the burdens of cost, time, and family disruption.

However, the potential for children’s participation under the current professionalized youth sport model to become surplus appropriation by parents is great. Because of their authority over their children, parents have considerable influence over the extent of children’s engagement with sport. If a surplus is generated when children’s play becomes work, parents are complicit in this exchange. This occurs when parents enjoy a payoff from their children’s participation that goes beyond sharing the child’s successes and spending time together.

For both parents, research shows that investment in a child’s success as an athlete is not uncommon,³⁵¹ and parents often exert pressure.³⁵² A key feature of the current youth sport model is competition, and this very often entails children “perform[ing]” for spectators, including their parents.³⁵³ Psychologists, policymakers, sports scholars and even casual observers understand that at youth sport events, “the adults in the audience lose their sense of distance” and become so involved in the game that they often, and often problematically, “share in its action and outcome vicariously.”³⁵⁴ There is then a kind of conflict of interest presented for families with a child participating in the current model for youth sport, as “in a culture that values achievement, organized sports offer an indicator of children’s accomplishments while play doesn’t.”³⁵⁵

The psychiatric community has studied this phenomenon and the use of children to fulfill parents’ goals.³⁵⁶ There is of course “normal pride”³⁵⁷ that all parents experience when their children participate in activities like youth sport, and parents may enter their children in sport with healthy levels of detachment. However, researchers state that parents may become

349. Messner & Musto, *supra* note 19, at 12.

350. EITZEN, *supra* note 10, at 204-205.

351. Friesen et al., *supra* note 67, at 153.

352. *Id.* at 154.

353. OVERMAN, *supra* note 24, at 29.

354. *Id.*

355. *Id.* at 7.

356. Ian R. Tofler et al., *The Achievement by Proxy Spectrum in Youth Sports*, 7 SPORT PSYCHIATRY 803, 804 (1998).

357. *Id.* at 807.

emotionally “socialized within youth sport,”³⁵⁸ so that their normal level of detachment can quite easily slip into what is known as “achievement by proxy,” whereby a child is placed in a situation that gratifies an adult’s “needs or ambitions.”³⁵⁹ The adult/parent is therefore motivated not just by the benefit to the child, but by the (often unconscious) drive to secure for themselves the “collateral benefits” to be gained by the child’s participation.³⁶⁰ This occurs on a spectrum, ranging from benign parental pride, altruism, and sacrifice to situations where parents “construct conditions” that serve to exert pressure and communicate to the child that she must “perform.”³⁶¹ Importantly, children often do not resist, as they “collude with their parents’ and coaches’ goals.”³⁶² Researchers have noted that children can therefore easily become “objectified” in that parents lose the ability to distinguish their own needs and goals from those of their child.³⁶³ At its most extreme, this objectification can even become outright abuse and exploitation, where the child becomes “an adult’s meal ticket.”³⁶⁴

Research shows that the conflict of interest between parents and their children who participate in sport is exacerbated in that most parents *believe* they are acting within normal levels of parental engagement, but their own emotional needs lead them to rationalize problematic emotional involvement tied to their child’s participation.³⁶⁵ For instance, one leading sports medicine physician describes the way parents bring their athletic children to him seeking treatment to facilitate continued play, even when it is apparent the child needs rest or to discontinue sport completely.³⁶⁶ He notes that “parents markedly underestimate their child’s risks for playing a specific sport. They have no idea that there could be the possibility of a catastrophic injury.”³⁶⁷ Research also shows that parents’ and children’s experiences of youth sport often do not align. For instance, while children may feel pressure, fatigue, or disinterest in traveling to compete in youth sport tournaments, parents often “treat these trips as family vacations.”³⁶⁸ Researchers have also documented that family conflict may occur when parents’ and children’s perceptions of the child’s ability do not match.³⁶⁹

The foregoing suggests that parents could, therefore, be one of the biggest

358. Dorsch et al., *supra* note 278, at 9.

359. Tofler, et al., *supra* note 356, at 808.

360. *Id.*

361. *Id.* at 809.

362. *Id.*

363. *Id.*

364. *Id.* at 810.

365. *Id.* at 809; see HYMAN, *supra* note 66, at ix (describing his own experience taking his young son outside in the winter to practice batting).

366. Andrews, *supra* note 9, at 577.

367. *Id.*

368. OVERMAN, *supra* note 24, at 42.

369. Dorsch, *supra* note 278, at 5.

losers if the current youth sport model shifted to become more “play” than sport. While parents would gain in that participation would likely be less costly and time-consuming, there would be an almost certain emotional loss. A “sport as play” model would include far fewer competitions and performances for adults, and travel for sport would be greatly reduced. For parents who get emotional satisfaction from watching their children, and who build their own social capital through the process, a model de-emphasizing performance and competition would not deliver the same payoff. While parents may adjust to such a loss, finding that their happy children produce a kind of satisfaction as well, there remains the question posed by critical theorists about the role youth sport plays in satiating adults’ emotional “need for meaning and rejuvenation.”³⁷⁰ If adults do not get their “rejuvenation” from youth sport, there presumably would be an unmet need that would have to find satisfaction somewhere else.

9. Children.

Perhaps the most difficult question is what part of youth sport is, in the language of economists, retained by the child as pleasure, or “use value.” This analysis is undoubtedly highly individualized, depending on the particular child and sports program or programs the child participates in. For the relatively small number of children who are destined to be elite athletes, it can be argued that the surplus the child’s participation created was not appropriated at all. The child who grows into an elite athlete gets to keep the satisfaction, acclaim, medals, endorsements, and prestige that this level of accomplishment brings.

In addition, for at least some children, the surplus generated by the current model is in a sense gambled for a bigger payoff—usually the hope of a college scholarship. For these children, the surplus can come with a significant upside. The additional training hours, injuries, and specialization can result in an educational investment, status, and the experiences of being a college athlete, and athletes who earn a full or partial scholarship have reduced education debt or no debt at all. For about 180,000, or 2% of all high school athletes,³⁷¹ this is the case. About 500,000 total will have the opportunity to play college sports,³⁷² and playing a sport can help with college admission.³⁷³

However, reports of athlete abuse in the American Olympic movement,

370. Kalman-Lamb, *supra* note 248, at 527.

371. NAT’L COLL. ATHLETIC ASS’N, *Recruiting Facts*, <https://perma.cc/7W53-FY87>.

372. NAT’L COLL. ATHLETIC ASS’N, *Student-Athletes*, <https://perma.cc/Z6GT-ELHZ>.

373. Saahil Desai, *College Sports are Affirmative Action for Rich White Students*, THE ATLANTIC (Oct. 23, 2018) stating that “the typical student athlete more often plays a less blockbuster sport—lacrosse, maybe, or tennis—and in many cases comes from a well-to-do family that has shelled out thousands and thousands of dollars over the years to nurture a budding athletic talent. And a majority of the time, they’re white.”).

including of elite gymnasts, swimmers, and volleyball players, among many others,³⁷⁴ undercut the notion that the child-turned-elite reaps only benefits from participation. Moreover, the children whose investment in youth sport was successfully bet on a future in college sports still may not get the full value of the surplus they did and continue to create. A considerable amount of legal literature details the literal appropriation of the value generated by college athletes, particularly in revenue-generating sports like football and basketball.³⁷⁵ Nevertheless, for the children of the pipeline who emerge athletically talented, there is at least a credible claim that the benefits primarily stay with the child, and they outweigh the burdens.

For the millions of children who participate in youth sport and do not emerge as the next great talent, assessing the benefits and burdens is perhaps even more complex. These children certainly reap at least some gains from participation even though they do not reach elite status. While the current youth sport model is not necessary to produce such benefits, it may in many cases be sufficient to confer exercise, increased physical literacy, enhanced social connection and the other benefits cited in the research in support of sport participation.³⁷⁶ Children exchange their athletic labor for the medals and trophies that can be a form of “payment” for their efforts³⁷⁷ as well as the self-satisfaction that comes with learning new skills. Thus, researchers have stated that “*playing sports* can be a very good thing.”³⁷⁸

In contrast, however, being a “highly involved *athlete*” may have considerable costs.³⁷⁹ Research has well documented the consequences of the current youth sport model. As explained above, most children quit by adolescence because it is no longer “fun.”³⁸⁰ There is a youth sport injury “epidemic,” including entirely preventable “overuse” injuries which are the

374. MAJORITY STAFF, ENERGY & COM. COMM., 115TH CONG., NASSAR AND BEYOND: A REVIEW OF THE OLYMPIC COMMUNITY’S EFFORTS TO PROTECT ATHLETES FROM SEXUAL ABUSE 11-15 (2018) (stating that there have been “widespread instances of sexual abuse within the Olympic movement” and detailing abuse in gymnastics, swimming, taekwondo, and volleyball).

375. See, e.g., Nat’l Collegiate Athletic Ass’n v. Alston, 141 S.Ct. 2141 (2021) (noting that the NCAA is a “massive business” and that “those who run this enterprise profit in a different way than the student-athletes whose activities they oversee.”); Otis B. Grant, *African American College Football Players and the Dilemma of Exploitation, Racism and Education: A Socio-Economic Analysis of Sports Law*, 24 WHITTIER L. REV. 645 (2003); David J. Berri, *Paying NCAA Athletes*, 26 MARQ. SPORTS L. REV. 479 (2016) (describing “exploitation” of college athletes); Anne Marie Lofaso, *Groomed for Exploitation! How Applying the Statutory Definition of Employee to Division IA College Football Players Disrupts the Student-Athlete Myth*, 119 W. VA. L. REV. 957 (2017).

376. Though there are many questions about the extent of the benefit to children from participating in sports, at least under the current U.S. sport model. For instance, one scholar concluded that while youth sport has the “potential” to contribute to a healthy, physically active lifestyle, the current model only generally makes a “small” contribution. Nelson, *supra* note 57, at 91. Nelson further stated that there is “insufficient evidence to conclude that sport participation” helped lower the risk of a child being overweight or obese. *Id.* at 85; Kerr & Stirling, *supra* note 292, at 27 (stating that youth sport which is not provided in a “developmentally appropriate” way can be harmful.)

377. Ingham, *supra* note 199, at 18.

378. Messner & Musto, *supra* note 19, at 13 (emphasis in original).

379. *Id.*

380. ASPEN INSTITUTE PROJECT PLAY, *Kids Quit*, *supra* note 31.

result of over-training.³⁸¹ Children experience pressure from their parents and coaches that can be so intense, they want doctors to require them to stop playing.³⁸² The youth sport culture can in some cases contribute to and normalize forms of athlete abuse.³⁸³ Time spent laboring in youth sport can also impact a child's education, or at least the hours spent focusing on education.³⁸⁴ For most children, all that is necessary to provide the benefits of sport "is that they be given the opportunity to play in recreational or competitive leagues when they show an interest in doing so."³⁸⁵ In the case of children who are not truly gifted athletes, then, early participation in competitive sports "runs the risk of *narrowing* their future options."³⁸⁶

There are also, not surprisingly, unique burdens imposed by the current model based on race, gender, and class. The surplus appropriation at the intercollegiate level primarily impacts Black male athletes.³⁸⁷ This provides a window into burdens that particularly impact Black male children who participate in youth sport. Research consistently demonstrates that participation in sport is influenced by socio-economic factors, and the pay-to-play model often means that children of color have fewer sport options than more socio-economically privileged children.³⁸⁸ This, combined with the fact that Black families often see sport participation as a pathway to a better life, means that Black boys disproportionately participate in sports such as basketball and football. Disproportionate representation in football imposes a particular burden on Black males because the risk of concussions and other physical trauma of the game mean that Black male bodies are in service of predominantly white audiences' desire to consume the product of intercollegiate and professional football.³⁸⁹ Moreover, scholars have asserted that the belief that sport can lead to a better life for Black males is largely a "myth," and some argue that sport particularly harms Black males

381. Andrews, *supra* note 9, at 577; see, Caine & Purcell, *supra* note 284, at 4 (explaining that children who are athletes are at "increased risk of injury" because of their "growth and development characteristics" and that "children are not miniature adults").

382. Andrews, *supra* note 9, at 583. See, Harmer, *supra* note 222, at 234 (stating that "the nature of modern organized sport for children and adolescents can also threaten their psychological and emotional health").

383. Emma Kavanagh et al., *Managing Abuse in Sport: An Introduction to the Special Issue* 23 *SPORT MGMT. REV.* 1 (2020); Friesen et al., *supra* note 67, at 156 (stating that some argue parents' involvement in their children's sport can rise to the level of child abuse, while others suggest child labor laws should be used to protect children from overtraining).

384. See DAVID, *supra* note 205, at 181 (stating that "[t]oday's young athletes start intensive training at an early age and are confronted with the challenge of having to succeed at school and in sport . . . some children will fail at both.>").

385. Dixon, *supra* note 229, at 153.

386. *Id.* (emphasis in original).

387. Huma & Staurowsky, *supra* note 236.

388. YOUTH SPORTS STRATEGY, *supra* note 13, at 35.

389. Alana Semuels, *The White Flight from Football*, *THE ATLANTIC* (Feb. 1, 2019), <https://perma.cc/9PHU-3W77>; Hamilton, *supra* note 14, at 172-73 (stating that "Black youth and men are overrepresented in . . . tackle football and basketball" and that this "makes them disproportionately likely to suffer the effects of injury" from concussions).

because it perpetuates narratives that “reinforce racism.”³⁹⁰

Children of color and economically disadvantaged children are also uniquely harmed by the current youth sport model because they are not only often excluded from participation, but they are also burdened by the prevailing narrative that views them as needing to be saved through sport. Sport is promoted as a solution to get them “off the streets.”³⁹¹ Researchers have stated that for socio-economically disadvantaged children, youth sport can take the form of “deficit reduction” or “social control,” aimed at fixing those who are deemed “at risk.”³⁹²

Lack of access to sport in the current model can also be a burden for girls, especially girls of color. While Title IX has transformed education-based sports programs and societal norms around women and girls’ participation in sports, the lack of robust Title IX enforcement means that girls who want to continue in sport do not get the full measure of opportunity that boys enjoy.³⁹³ Further, the relative lack of established and lucrative professional opportunities means that a girl’s participation in sport can generate many benefits for others in the here and now while leaving her with less of a payoff down the line. While opportunities in elite, Olympic movement sport are generally more equal, girls and women have suffered more of the abuse that such training environments may in some cases foster.³⁹⁴

Children with disabilities also are significantly burdened by the current youth sport model. Medical researchers have long known that children with disabilities, like their able-bodied peers, benefit from “physical activity.”³⁹⁵ Despite programs such as the Special Olympics and the Paralympic movement, however, opportunities for children with disabilities to participate in sport are in short supply.³⁹⁶ Children with disabilities are a diverse group—including those with physical, cognitive, and behavioral impairments—but opportunities for participation are limited for them all.³⁹⁷ There is both a lack of suitable programs and lack of access to those that exist.³⁹⁸ Children with disabilities are also discouraged from participating by programs that emphasize competing to win rather than “participation for the sake of fun, enjoyment, and inclusion.”³⁹⁹

390. EITZEN, *supra* note 10, at 207.

391. Messner & Musto, *supra* note 19, at 11 (stating that “sport is increasingly marked by advocacy organizations as a positive and healthy thing for ‘at-risk’ kids, as a ‘solution’ for poverty or as an alternative to gang activity.”).

392. Coakley, *Positive Youth Development*, *supra* note 73, at 26.

393. *See* Porto, *supra* note 171.

394. *See* ENERGY & COM. COMM., *supra* note 374.

395. Paul S. Carbone et al., *Promoting the Participation of Children and Adolescents with Disabilities in Sports, Recreation, and Physical Activity*, 148 PEDIATRICS 1 (Dec. 2021), <https://perma.cc/ZV9F-LQQV>.

396. *Id.* at 3.

397. *Id.* at 4.

398. *Id.* at 5.

399. *Id.*

Finally, there are also burdens imposed on children who do not participate—for whatever reasons—in youth sport. The first is the burden identified by the prevailing discourse, that lack of access to sport is a type of harm. For many children who wish to play and cannot access a sports program due to socio-economic circumstances, this is certainly true. But the prevailing discourse *itself* has the potential to produce more harm than lack of access, because it makes children the center of a societal “problem.” As nearly everyone is steeped in the sport-is-good discourse, children who do not play are, documents such as the NYSS suggest, at best an issue to be addressed, or at worst “failure[s].”⁴⁰⁰

For many, if not all, children, then, a change to a “sport as play” model could confer substantial benefits. Less emphasis on training and competition would leave children who participate in sport with more time for other activities and would certainly take less of a toll on their bodies. Children also would not experience the same psychological pressures, from parents, coaches, and others, to perform and excel. Moreover, without the excess costs associated with the current model, more children could participate. Similarly, without a focus on traditional sports that have elite or professional opportunities, a change to a “sport as play” model would sweep in children, such as those with disabilities⁴⁰¹ and those who are not currently interested in the standard sports, and give them the benefits of participation. A child-centered focus on fun, rather than “saving” or social control, also suggests that a “sport as play” model could produce benefits in that children would not be problematized through the discourse of sport.

Ultimately, however, it is difficult to fully account for the range of benefits and burdens that result from the current youth sport model because of the relative lack of research. Sports scholars have explained that entrenched assumptions about sport’s inherent “goodness” contribute to a lack of, and resistance to, critical sports research.⁴⁰² As one sports scholar stated, “we need strong and reliable scholarly research, rather than unfounded assumptions or ideology.”⁴⁰³ Thus, the assumption that sport is

400. Messner & Musto, *supra* note 19, at 8 (stating that through a conservative lens, these children are “lazy couch potatoes” or “losers” and in the liberal narrative, they are “underprivileged” and “at-risk” kids” because they are not involved in sport).

401. Carbone et al., *supra* note 395, at 12 (stating that a system that emphasized inclusion and provided developmentally appropriate opportunities would provide “substantial” benefits to children with disabilities).

402. Messner & Musto, *supra* note 19, at 1 (explaining the relative lack of research on youth sport to understand “to what extent youth sports participation is part of the problem or part of the solution when it comes to concerns about children’s health.”); Coakley, *Great Sport Myth*, *supra* note 183, at 405 (stating that the pervasive assumption that sport is inherently good “consistently undermines critical discussions and research on the culture and social organization of sports.”); Dorsch et al., *supra* note 278, at 14 (stating that there are “gaps” in the research on parental involvement in youth sports and that future research is warranted).

403. Messner & Musto, *supra* note 19, at 1. *See*, Harmer, *supra* note, at 240 (stating that “the research” on youth sport “has been hampered by lack of guidance and support from sports organizations” and that “maximizing safety in organized sport for children and adolescents” is a “piece-meal, hit and

beneficial for children, among other reasons, has meant that we have little research aimed at youth sport when viewed in the context of the millions of children who participate.⁴⁰⁴ We also have little research on children's present experiences in sport (beyond that they quit because it is no longer "fun").⁴⁰⁵ The limited research, particularly critical research, means the prevailing "youth sport is good" narrative continues to define our reality around youth sport, so that fully understanding the benefits and burdens is necessarily contingent and incomplete. It also limits the possibilities for meaningful change. It is, one might argue, a manifestation of what Martha Minow calls the ongoing "struggle to convert children from a status as objects to a status as subjects."⁴⁰⁶

III. CONCLUSION

The prevailing narrative is that youth sport is an integral part of a good childhood. Citing a long list of benefits, the government and adults, including parents, urge participation in a youth sport model that, while undoubtedly delivering some positives, also imposes significant burdens on the children who do, and do not, participate.

Exploring these distributional consequences helps identify youth sport beyond the romanticized version of our usual discourse to unmask the reality that our professionalized model for youth sport is one shaped and evangelized by those with a significant stake in the enterprise. It is a conflict of interest with consequence, as identifying youth sport has demonstrated that our current approach is much more than just play. It is a model that puts children's bodies to work generating surplus value that is appropriated by a host of actors, and it is far beyond what would be necessary for children's benefit. Because of the power imbalance between parents and children and sports regulators and athletes, the U.S. youth sport model operates to ensure the surplus continues to be generated and its appropriation solidified.

Viewed in this way, we can better appreciate how the message to participate in the current U.S. youth sport model creates a kind of epistemic injustice⁴⁰⁷ that serves to perpetuate the interests and power of a range of adult and institutional actors.⁴⁰⁸ It is a message that prevents a full understanding of what U.S. youth sport is and who it is for, and therefore limits the prospects for meaningful reform. It does not have to be this way.

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404. Messner & Musto, *supra* note 19, at 2-5.

405. *Id.* at 6-7.

406. Martha Minow, *Preface*, in *THE OXFORD HANDBOOK OF CHILDREN'S RIGHTS LAW*, at ix-x (Jonathan Todres & Shani M. King eds., 2020); LANG & HARTILL, *supra* note 73, at 1 (stating that in youth sport, children "are often viewed as miniature adults, as athletes first and children second, and as objects by the adults around them who have a stake in their success.").

407. FRICKER, *supra* note 15, at 1.

408. *Id.* at 9-11.

One sports philosopher has commented that “[t]he erosion of the play spirit in contemporary win-at-all-costs sport could be regarded as moral regress.”⁴⁰⁹ Identifying U.S. youth sport, with its full range of burdens and benefits, does not however inevitably lead to the conclusion that sport participation for children is wrong, in all instances harmful, or an activity to be avoided. It also does not require a rejection of the vibrant U.S. sport culture. To the contrary. Raising our collective consciousness by fully identifying youth sport provides a vital foundation for consequential future reform so that the real promise of youth sport may finally be realized.

409. R. Scott Kretchmar, *Why a Focus on Sporting Tests Would Reveal an Alternate Story and Raise Ethical Questions about Agon: A Commentary*, 82 *PHYSICAL CULTURE & SPORT* 53, 57 (2019).