

GETTING BUSINESS OFF STEROIDS

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Introduction

The present tome heralds a “new capitalism” with a “human face.” The “old” has lavished society with wealth and prosperity beyond the wildest dreams of a Smith or a Marx, but at a cost many fear is not sustainably affordable.² This chapter proposes a simple *decision-making tool* in the form of *three questions* upon which to construct a political economy grounded in the nobler part of a human person—beyond fear and greed, while cognizant of them. This task is crucial for ultimately it is the activity of persons (i.e., *personal action*) taken collectively which engenders, bolsters and foments sustainable prosperity on the one hand or social calamity on the other. It analogizes problems in business to problems in sport, specifically the use of performance-enhancing drugs in Major League Baseball, and argues that corrupt human activity is rooted in (1) a *personal* selection of inapposite *ends*, (2) the consequent misidentification of *values* and (3) the embrace of misidentified values resulting in (4) potentially destructive, *personal character* habits. It is important to study social phenomena from the perspective of what occurs in an individual person because, as the scholastics following the classics taught, *agere sequitur esse*: “doing follows being,” or what you *do* comes from who you *are*. Problematic actions such as cooking the books, shredding documents in anticipation of litigation or taking steroids proceed from bad habits (vicious character) in otherwise normal people. Recent problems in business and sport—*personal* first, *social* derivatively—are manifested as “cheating” and “fraud,” which are grounded in a pursuit of *victory* and the choice of values (or *goods*)

proper to it to the neglect of *excellence* and its goods. “Steroids” are simply the preferred mode of cheating in contemporary sports and serve as a metaphor for problems in the world of business.

The Recent Past

Is there a more famous chieftain in the pantheon of fallen idols than Ken Lay of Enron? Lay transformed a sleepy natural gas pipeline company, El Paso Natural Gas, into a cutting-edge energy trader and “new economy” miracle: “the world’s leading integrated electricity and natural gas company.” He eventually handed over the reins of Enron to Harvard MBA Jeff Skilling, the man behind the “crooked E’s” mark-to-market (read, “hypothetical”) accounting, a key ingredient of Enron’s “success,” however illusory (McLean & Elkind, 2003). Lay, Skilling and chief lieutenant CFO Andy Fastow were hailed as visionaries earlier this decade for unleashing creativity and innovation in ways theretofore unknown in the energy business, or nearly any business. Each man scaled the pinnacles of success and enjoyed media accolades, lavish compensation and the power of a pulpit reserved for *winner*s and *leader*s of companies whose common stock beguiles Wall Street. In 2001 the company, then the 7th largest firm in the United States, dissolved in a mist of fraudulent accounting and obfuscatory transactions utilizing special purpose entities (SPE’s). Once Enron’s true financial position came to light, Fastow, the architect of the fraud, was convicted under the securities laws and sentenced to five years in a federal penitentiary, a lenient sentence granted in return for his cooperation with the prosecutions of Lay and Skilling. Both men were convicted in May of 2006. Juror Wendy Vaughan commenting afterwards said “I wanted very badly to believe what they were saying... There were places in the testimony I felt their character was questionable” (Emshwiller, 2006).

Skilling is presently seeking to overturn his 24-year sentence on appeal.³ Ken Lay died of an apparent heart attack in July of 2006 while on an Aspen, Colorado respite before filing an appeal. He was 64 years old.

Enron's collapse was followed shortly by the discovery of an \$11 billion accounting fraud at telecom giant WorldCom involving rank violations of generally accepted accounting principles (GAAP). The company inflated earnings by capitalizing line costs, an operating expense, thereby illicitly spreading costs into future periods and minimizing their impact on current results. Its bankruptcy in 2002 surpassed Enron's as the largest evisceration of shareholder value in history up to that time.⁴ Both company's auditor, the legendary accounting firm of Arthur Andersen, collapsed shortly thereafter under the weight of a criminal indictment by the U.S. Department of Justice (DOJ) and the avalanche of client defections that followed. Its partner in charge of the Enron audit, David Duncan, ordered and supervised the destruction of audit papers and sensitive documents in response to subtle hints by Nancy Temple, an Andersen lawyer. At trial, Duncan was described by fellow partner Ben Neuhausen as an auditor who stretched accounting rules "to excess" (Teather, 2002). Nevertheless, he was Andersen's lead auditor for the firm's 5th largest client. In the years preceding its untimely demise, Andersen was fined by the Securities and Exchange Commission (SEC) for accounting irregularities at clients Sunbeam and Waste Management, and was implicated in lawsuits involving yet other clients including Qwest Communications and Global Crossing (Brewster, 2003). Apparently, in its rush to replace consulting business lost in a messy divorce with Andersen Consulting (now Accenture), and to embrace a practice labeled "billing our brains out" by Andersen ethicist Barbara Ley Toffler (Ley Toffler, 2003), the firm

achieved “results” at the expense of its reputation, integrity and, ultimately, existence.

In December of that same year, ten of the world’s leading investment banks including Goldman Sachs, Merrill Lynch and Morgan Stanley were forced to settle with then New York State Attorney General Elliot Spitzer, the SEC and a host of other regulators for producing dishonestly flattering research in exchange for lucrative underwriting business and fees from issuers.⁵ \$400 million of the unprecedented \$1.4 billion settlement was borne by the firm of Salomon Smith Barney whose star Telecom analyst, Jack Grubman, was later derided as the Pied Piper of Wall Street. In his heyday Grubman was cautioned about his friendly relationships with CEO’s of the companies he researched, but responded that “what used to be a conflict is now a synergy” (Editor, 2002). He boasted of his friendship with WorldCom Executive Chairman Bernie Ebbers and even bragged about attending Ebbers’ wedding in March 1999 (Smith & Solomon, 2002).⁶ For his part in the scandal Grubman was barred from the securities industry for life. As a postscript to the affair, in November 2004 a federal court approved a \$2.58 billion settlement between Citigroup (Salomon’s parent company) and plaintiffs who alleged, *inter alia*, that Grubman inflated the value of WorldCom stock by knowingly producing inaccurate research (Pacelle, 2004).

In retrospect, the Dotcom crash of 2000-2002⁷ revealed the great bull market of the ‘90’s’ soft underbelly of misstated financials, compromised research, valueless IPO’s and over-inflated stock prices. It also ushered in a period of financial turmoil, cathartic reform and recriminations over an era of fraud, pump-and-dump schemes and discredited leaders. Society, the economy and business (writ large) have labored these past few years to put the debacle behind them.⁸ In the end, the scandal eviscerated billions of dollars in market capitalization,

shattered countless illusions, threw tens of thousands of employees out of work while menacing their retirements, and imposed punitive legislation on all commercial enterprise in the guise of Sarbanes-Oxley (2002), an Act widely credited with leading the United States' decline from preeminence in global capital markets.⁹ Quite evidently a repeat of recent events is something that business, the economy and society can ill afford to experience, and desperately seek to avoid.

The purpose here is not to indict business, which is the engine of advancement in humanity's quest for material prosperity and self-determination, or to single out any companies or "players" for derision. Rather it is to learn from history lest we be condemned to repeat it, and to underscore a point. In the search for analyst-pleasing financial performance, riches, glory, adulation, fame and the kind of immortality that dominance in business confers, too many market actors cut too many corners in the pursuit of achievements that would ensure receipt of these prizes. In the process they endangered all of us by putting the cart before the horse through valuing the *goods* of financial success above and beyond their regard for the professional excellence necessary, but insufficient, to achieve victory in the marketplace. The mass phenomenon of cheating and fraud among executives and market professionals in turn suggests that in the search for magazine covers, option compensation, levitating stock prices and market supremacy—in a word, "success"—"America, Inc." turned a blind eye to the embrace of skewed values by its protagonists. In the process it succumbed to a culture of fraud and restatements. The result is that its most worthwhile accomplishments—producing wealth, generating employment, expanding the circle of productivity and exchange, lifting standards of living—go overlooked, underappreciated and unremarked while its integrity (as opposed to its appeal) as a human activity is questioned.

Parallel History

Something similar happened in the world of American sport that sheds light on this phenomenon in business, namely the crisis besetting Major League Baseball regarding steroid use among players (Wilson & Schmidt, 2007; Levin, 2008).¹⁰ The recently released Mitchell report—issued pursuant to baseball commissioner Bud Selig’s request for an investigation in 2006, and authored by former US Senator George Mitchell of Maine—named 89 professional baseball players for their use of performance enhancing drugs including some of the sport’s greatest (Staff, 2007). Most notorious among those implicated was baseball’s newly crowned *home run* king, Barry Bonds. He pursued the career record under a cloud of suspicion after experiencing an eyebrow-raising growth spurt and age-defying power surge relatively late in an already glorious career.¹¹ In 2007, Bonds claimed baseball’s preeminent statistic by breaking the *career record* of 755 home runs held by Hall of Fame outfielder, Hank Aaron.¹² In 2001, Bonds broke Mark McGwire’s *single-season record* of 70 home runs, which stood for only three years.¹³ McGwire’s 1998 chase of Roger Maris’s record 61 home runs (set in 1961) with Dominican slugger Sammy Sosa in hot pursuit captivated the nation’s attention¹⁴ and resuscitated fan interest in baseball, which had drowned in a sea of resentment after a player’s strike cancelled the 1994 season (Kaplan & Stone, 1998). The adulation that both men received, culminating in their joint naming as Sports Illustrated magazine’s “Sportsman of the Year” in the “easiest selection in our history” (Smith, 1998), is credited with provoking the luminescent yet overshadowed Bonds to *begin* using steroids (Kroichick, 2006).

A reporter covering 1998’s chase of history noticed a bottle of Androstenedione (“Andro”), a performance enhancing drug, in

McGwire's locker.¹⁵ This unsettling revelation focused attention on modern ballplayers' unusual size and power, and raised the uncomfortable suspicion that their accomplishments in this most statistics-conscious of sports might lack integrity. The worst fears were "confirmed" by the salacious memoirs of one-time superstar and self-confessed "juicer," Jose Canseco, the first player in history to hit 40 home runs and steal 40 bases in a single season (Canseco, 2005). Steroids, he said, were "as prevalent in...the late 1980s and 1990s as a cup of coffee" (Sheinin, 2005). The controversy surrounding his unrepentant confession and tawdry allegations, coupled with the surfeit of home runs orbiting Major League stadiums, spurred Congress to convoke hearings on steroids use in baseball. It subpoenaed McGwire and Sosa, both implicated in Canseco's tell-all, to testify in 2005 before the House Government Reform Committee (Staff, 2005). The hearing, entitled "Restoring Faith In America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use," was marked by culpable evasions (McGwire: "I'm not here to discuss the past... I'm here to be positive about this subject") and crafty denials (Sosa: [I have not] "broken the laws of the United States or the laws of the Dominican Republic") (Sheinin, 2005). In consequence, McGwire, a player with Hall of Fame credentials, has been denied entry into that august body his first two years of eligibility (AP, 2007). In 2003, Barry Bonds was called to appear before a federal grand jury impaneled to investigate activities at the Bay Area Laboratory Co-operative (BALCO), a veritable steroids dispensary, where he testified under oath to never knowingly having taken performance-enhancing drugs (Bloom, 2008). A subsequent expose of BALCO and its clientele focused on Bonds' alleged use of human growth hormone (a substance not banned by baseball at the time) and cast serious doubts on the veracity of his testimony (Fainaru-Wada & Williams,

2007). Victor Conte, the laboratory's founder and president who ultimately served four months in prison and four under house arrest for his role in the scandal was fond of articulating what might be considered the catchphrase of the steroids era: "Cheat or lose."¹⁶ Bonds, arguably the greatest ballplayer of all time, currently faces perjury charges relating to his grand jury testimony. His contract with his long-time team, the San Francisco Giants expired after the 2007 season and was not renewed. No other team picked him up for the 2008 season though he expressed a strong desire to continue playing and appeared capable of doing so at a very high level.¹⁷ Adding insult to injury, Marc Ecko, the owner of the record-breaking home run ball (#756) had it branded with a laser-cut asterisk before donating it to the Baseball Hall of Fame in Cooperstown, New York for display (Curry, 2008).¹⁸ Congress has now punctuated the "steroids era" of the game with an exclamation point by referring the 2008 testimony of superstar Roger Clemens before the House Committee on Oversight and Government Reform to the FBI for investigation. It is exploring whether sufficient evidence exists that the most dominant pitcher of his era and a player with Hall-of-Fame credentials to rival Bonds' committed perjury by denying (emphatically) and disputing (vigorously) charges leveled against him in the Mitchell Report.

Again, the purpose here is not to indict baseball or single out specific athletes, teams or sports,¹⁹ but to learn from history lest we be condemned to repeat it and to underscore a point so as to draw an analogy between problems in sport and business. In the search for records, riches, glory, adulation, fame and the kind of immortality that sporting achievements confer, something went wrong. Too many players and teams cut too many corners in the pursuit of accomplishments that would ensure receipt of these prizes. Those that engaged in cheating put the cart before the horse by *valuing*, in actions, the *goods* of victory over those of

spirited athletic competition and the personal excellence necessary, but insufficient, to ensure winning. The alleged mass phenomenon of steroids use among ballplayers suggests in turn that Major League Baseball (incidentally, a very large business) was itself complicit in the deceit. In the quest to achieve fan interest, gate receipts, advertising revenue, consumer fealty and network deals, “America’s Pastime, Inc.” turned a blind eye to the embrace of skewed values by its protagonists. In the process it succumbed to a culture of steroids, cheating, and fraud. The result is that its most hallowed records stand tarnished, indeed branded, its greatest players stand accused and face a potential loss of liberty, and the very integrity (as opposed to appeal) of the game is questioned.

The Problem: Aiming at the Wrong Target

While professional baseball is “big business” and corrupt competition in the sport is thus a species of business ethics gone awry the point is that in the case of both business and baseball, some protagonists (too many for comfort) were inclined to grasp at prizes by hook or by crook that are intended to honor and reward honest achievement. That is, they valued honor, glory, riches, fame and the like, which they could only attain through professional excellence or by cheating, and proved willing to cheat rather than restrain their desires or reorient their values. The result has been scandal, taint, downfall and social disturbance. It would be irrational for companies or teams to encourage the development of such unhealthy and self-defeating tendencies in protagonists. Yet that is precisely what they incentivize via extravagant compensation for executives and players alike. The 1980s came to be known as the “Decade of Greed” for illicit trafficking in, and profiting from, privileged information by investment bankers, arbitrageurs and sundry financial

professionals personified by Dennis Levine, Ivan Boesky and Michael Milkin (Stewart, 1991; Bruck, 1988). This past decade has compounded treachery with deceit and constitutes at its worst an “Era of Fraud” for the pump-and-dump schemes of corporate chieftains, hoodwinked auditors and starry-eyed analysts personified by Ken Lay, David Duncan and Jack Grubman (Torres, 2005). Former Chairman of the SEC, Arthur Levitt, warned in 1998 of the dangerous “game of nods and winks” in which erstwhile market fiduciaries conspired to satisfy consensus earnings estimates thereby placing “integrity in financial reporting...under stress” (Levitt, 1998). In baseball, the universally decried use of performance enhancing drugs is merely the *exterior*, empirical manifestation of an *interior* predilection rooted in a non-empirical yet real phenomenon, deformed *character*. Embedded within the personally unchecked will and passions of both business practitioners and athletes, the problem is “cheating,” which in the first instance is a personal inclination or disposition to win at *any* cost including, that of excellence, honesty, sociability and the like. Cheating and fraud signify competition gone awry by way of personal defects in competitors. Only after the problem manifests itself in restated financials or inflated home run totals does the resulting outcry provoke *structural* change and the imposition of *external* controls such as legislation or drug testing. Yet, to be truly effective in getting business off steroids (or baseball off fraud), correctives must address the *interior*, hidden problem rather than the exterior, observable ones. A lens through which to view the problem from that perspective is needed.

In *Whose Justice? Which Rationality?* (1988), moral philosopher Alasdair MacIntyre suggests an interpretive device that can be of great service to this project. In it he proposes that *citizens* of a *polis*—think “employees of a company,” “players on a team,” “market participants

within a capitalist political economy,” “professional athletes” or even “members of a global village”—might alternatively be directed (and historically have been) towards one of two *ends*, which ultimately explain human activity: *victory* on one hand, or *excellence* on the other.²⁰ In the final analysis, either *victory* or *excellence* might serve to answer questions regarding the *rationality* of human action such as why a person acts as he does, or regarding the *morality* of human action such as why she *ought* to act in this way or that.²¹ The rationality and morality of human acts are necessarily anchored in one end or the other. The steroids controversy in Major League Baseball merely dramatizes in a popular forum the consequences of prioritizing victory over excellence. It clarifies the problem and makes it more visible and accessible than does the collapse of a world-class business such as Enron or Andersen. At bottom, contemporary crises in business and baseball are cut from the same cloth: cheating, which begins in the personal misidentification of ends. To solve the problem practitioners must be encouraged to refocus on the end of excellence.

To posit the ends of victory and excellence as alternatives to one another is not to suggest they are mutually exclusive. As we know, victory is often the (just) reward for excellence, and excellence often conduces towards victory. Mediocrity is rarely rewarded with victory in a competitive setting, and the excellent are rarely drubbed in competition. But to win does not always mean to be excellent, and vice-versa. The ends conflict when the excellent professional nevertheless loses due to bad luck, an official’s error, political acumen and chicanery, deceit and treachery, or a host of reasons besides the greater excellence of another. When Enron’s Andy Fastow created and managed SPEs effectively to keep Enron’s debt off its balance sheet and deceive capital markets, regulators, investors, lenders, analysts, reporters and others as to its true

financial condition, the ends of victory and excellence collided. He appeared to achieve victory as a CFO, but in retrospect only jimmy-rigged a short cut to its trappings, e.g., wealth, fame, glory, prestige—prizes intended for those who achieve excellence. In reality he excelled at cooking the books and duping gullible investment bankers into funding his “Raptors.” Enron, his *polis*, is to be faulted for incentivizing him towards the end of victory to the neglect of excellence.

Orientation towards either end (or purpose) directs professionals to the appreciation and choice of *values*, or *goods* proper to it. As stated, a company effects this attraction by offering incentives to which the hearts and minds of employees adhere. These are what employees and officers, players and coaches learn to desire, strive for and love. They motivate the choice of an action as a *means* to the end. A person aiming at victory will choose action geared towards what MacIntyre calls “*goods of cooperative effectiveness*” such as wealth and riches, power, status and honor, prestige and glory. And a *polis* ordered towards victory and conquest will motivate citizens towards these values. A person aiming at excellence will rather choose action geared towards “*goods of excellence*” such as knowledge for its own sake, life and health, aesthetic appreciation, friendship and sociability. And a company or team driven towards excellence will motivate its employees’ or players’ action towards such values. In the case of either victory or excellence, the intelligibility of an action chosen is conferred by the end aimed at and goods valued. Note that a *polis* will not achieve excellence by motivating citizens towards goods of cooperative effectiveness such as stock options, lavish bonuses or incentive clauses written into contracts.

Repeated motivation towards values and action aimed at victory or excellence builds habits, or *virtues* in the person so choosing. These personal qualities (habitual dispositions, cultivated inclinations) direct a

person's choice to the attainment of goods through action. The end selected, goods chosen and actions taken as means towards the end consequentially develop corresponding virtues in a person. In some cases the virtue required and developed to guide action towards victory or excellence will coincide, as in the case of *resoluteness*. That virtue is necessary to achieve either end by guiding action towards the attainment of either's proper goods. Moreover, the end of excellence can only be sustained in a *polis*, which cannot subsist without wealth, power and other goods of cooperative effectiveness. Consequently, a polis or person aiming for excellence cannot achieve it without cultivating some modicum of virtue in "citizens" disposed towards victory and the goods of cooperative effectiveness. The implication of this for a company, which cannot survive without *some* level of profitability, is that its pursuit of excellence obliges *some* orientation of human action towards victory; its people must value wealth, status, power and prestige to *some* minimal extent. Nevertheless, the qualities or virtues necessary to achieve excellence will not always coincide with those necessary to achieve victory. And a quality constituting a virtue in the light of one end may not be a virtue in light of the other.

For example, action directed towards either victory or excellence will build the virtue of *justice*, or fairness. But justice for the person aiming at excellence is a habitual disposition to act in a way that gives each person his or her due. External rules are fair to the extent that they make it possible to reward those who merit it. The virtue of justice has value independent of the rules, however, and is their measure. Alternatively, justice to the person who aims at victory will consist of no more than a fixed disposition to abide by agreed-upon rules, which reflect no intrinsic value. That negotiated rules will vary according to the relative strength of the ones bargaining and hence reflect the will of the

powerful is of no concern to such a person. The implicit conclusion for one aiming at victory, therefore, is “might makes right,” as was explicitly argued against Socrates by Thrasymachus in Plato’s *Republic* (1960): “I proclaim that justice is nothing else than the interest of the stronger.” (Plato, 1960). For the one aiming at excellence, just rules always bind because to violate them is to commit injustice, which first and foremost harms the violator. Hence Socrates’ argument against Polus in Plato’s *Gorgias* (1960): “[T]he greatest of all misfortunes is to do wrong... [I]f I had to choose one or the other I would rather suffer wrong than do wrong.” We need not fear such a person’s falsifying a financial statement or research report, or enhancing performance with steroids because she will police herself. She would personally lose her orientation towards excellence by cheating, and would forfeit the goods of knowledge, friendship, sociability and the like that she prizes. Being showered with goods of cooperative effectiveness for tainted achievements would afford scant recompense. Not so for one aiming at victory, who is bound by rules only to the extent that he fears getting caught breaching them. Such a person will engage in *strategic compliance* and conduct a probability-weighted cost-benefit analysis to determine whether or not to abide by the rules (Elias & Dees, 1997), and consider himself *rational* in the bargain. As long as one is not caught breaching the rules, to be unjust harms only cheated competitors. One does not lose one’s way and set oneself against desired goods by cheating; to the contrary, doing so brings one closer to their possession. Evidently, we all need to fear such a person because she will not police herself. As economists teach, opportunism drives up agency costs,²² and a person who will not, or cannot, control herself gladly resorts to opportunism. MacIntyre’s theory (Aristotelian virtue ethics, generally) fleshes out the internal workings of opportunism: action pursuant to the guidance of justice in one whose end is victory, and who

pursues goods of cooperative effectiveness without concern for merit or just deserts. For such a person, to *have* these goods is the proof of “deserving” them. Let the principal beware. He incentivizes an orientation to conquest at his own peril. Virtue is a control system—personal, *interior* control—that reduces agency costs to society. Conversely, a lack of virtue *increases* such costs. Consider the case of much-heralded Bernie Ebbers, who led WorldCom to a position of preeminence in the Telecom industry through a series of mergers and acquisitions. No less than 85% of his net worth consisted of company stock, which he used to collateralize \$400 million in loans. Had he aimed at excellence, he would have liquidated stock and other assets to reduce personal debt when a sharp downturn hit the industry and the stock in consequence. In brief, he would have suffered the downturn and acted to avert or ameliorate it for the company’s sake, cautioning and protecting shareholders as fiduciary duties required of him. Rather, he acted to retain the goods of wealth, power and fame, and perhaps to garner more of them, demanding that CFO Scott Sullivan “hit our numbers” during the downturn: a command the CFO interpreted as a mandate to cook the books. Sullivan’s alleged pleas to quit lying to Wall Street were rebuffed with comments such as “We can’t lower our guidance. We just announced new guidance... Now you get to work on it” (Young, Latour & Pulliam, 2005). Such is the posture of one aiming at victory, not excellence. And constituents expecting justice from company executives in the form of honest reporting in accordance with GAAP hoped in vain.

Other virtues such as *self-control* and *courage* are also necessary to guide action towards the goods germane to either end. To one aiming at excellence, self-control requires the transformation of desires, aversions and dispositions so that he may better judge, and move towards the goods of excellence. By contrast, one aimed at victory views self-control as the

“virtue which overcomes frustration by oneself in one’s pursuit of one’s own satisfaction, just as [fairness] is the virtue which overcomes frustration by others” (MacIntyre, 1988:40). Courage for the person aiming at either excellence or victory will include *endurance* and the ability to *confront harms and dangers*. But the person seeking victory risks danger only for the sake of power, honor or glory. Conversely, the seeker of excellence will risk danger for the sake of another person, group, institution or practice aside from personal benefit simply because that entity is the bearer of some great good. The case of Cynthia Cooper, VP of internal auditing at WorldCom, is instructive. Though primarily an operational auditor who monitored performance of WorldCom units and ensured proper spending controls, she turned her attention to financial auditing when a subordinate stumbled onto \$500 million of undocumented expenses. Within a month the figure had ballooned to \$3.8 billion, enough to approach the external auditors from Arthur Andersen, who brushed her off. She was warned away from her sleuthing activities by none other than Scott Sullivan himself, her boss, whom she nevertheless defied at great peril to herself, and successfully confronted at the Board of Directors. The lavishly praised Sullivan risked danger for the sake of maintaining power, wealth and glory whereas Cooper risked it for the integrity of the company’s financial reports. Sullivan controlled his employees, even ordering them to make questionable transfers of reserves and fraudulent entries in the books in order to carry out the fraud (Pulliam, 2002), whereas Cooper controlled her fears and overcame her aversion to wreaking havoc for her company and its thousands of employees by exposing the mammoth fraud. There was a greater good than expedience to which she doggedly adhered. Were it not for her courage, perseverance and self-control the accounting misdeeds at WorldCom might have remained hidden, buried in goodwill at the next

consolidated merger. One might even say with justice that the “human face” of the “new capitalism” is hers.

Getting Business Off “Steroids”

This analysis suggests that no amount of legislation, regulation, testing, external controls or internal controls, even those signed off on by executives and attested to by outside auditors, will rid the marketplace (or stadium) of cheating, unless businessmen and -women develop *interior* control, or *good character*. The ultimate solution for problems in business or sport is for people to control themselves; such is the domain of ethics. WorldCom will inexorably be followed into the abyss by Lehman Brothers and whoever follows them for want of individual director’s, executive’s, manager’s and employee’s prudent judgment, justice, courage and self control. The problem fundamentally lies in a prevalent orientation of business practitioners (and athletes) towards the end of victory to the neglect of excellence, despite much palaver to the contrary. As a matter of philosophical anthropology along Aristotelian lines, in order to achieve ends, decision-makers choose values, or goods, which become motives for action. In order that personal action be directed to the attainment of the goods desired, decision-makers need and acquire virtues, which are developed by the interior “act” of choosing. Developing virtues is a matter of the things valued in a choice of action ordered to an end. These virtues become guides to action, which conduce towards the end. Through virtue-guided action, then, each and every person becomes an agent conducting towards sustainable prosperity on the one hand (Socratic excellence), or social turmoil on the other (Thrasymachan conquest). Moreover, the place to address the problems discussed in this chapter is at the level of virtue formation, in the realm of personhood. The manner to address it is to influence the selection of the

end towards *excellence*. This can best be done by addressing the choice that precedes human action (Simon, 1976) and informing it as to the preeminent value of goods of excellence: for example, knowledge for its own sake, life and health, aesthetic appreciation, friendship and sociability. People who value these goods first and foremost are less likely to cheat and precipitate social calamity. And because a company (and every *polis*) needs profit to survive, the cultivation of a *moderate* appreciation for goods of cooperative effectiveness is also obligatory: for example, wealth and riches, power, status and honor, prestige and glory. Given recent events in the worlds of business and sport, however, notice is served that an excessive preoccupation with these goods underlies the problem of cheating and its social manifestations discussed throughout.

Following Perez-Lopez (1991, 1993) I propose three questions to guide choice, to inform it as to the broad spectrum of goods ordered in a manner conducive to sustainable prosperity.²³ These questions have the effect of focusing the will on the goods of both excellence and cooperative effectiveness.²⁴

1. If I act in the following way, will this “action plan” accomplish my immediate objective?

Note that this question directs the decision-maker to consideration of the “bottom line,” which is a necessary but insufficient consideration for achieving excellence. Through the artful solution of immediate problems one is directed to solvency if not wealth, and advancement if not glory. Through the accomplishment of successive objectives one moves towards the goods of cooperative effectiveness. Andy Fastow, Scott Sullivan and their respective bosses tended to this question with

great solicitude. Their failure was in not following it up, and checking the answer, by asking the following two questions.

2. Will accomplishing my immediate objective this way make me (and by extension, make my organization) more *knowledgeable* and adept at accomplishing objectives of this type in the future (in a word, more “*competent*”)?

Professionalism and competence are their own rewards, though possessing these traits goes a long way towards ensuring the achievement of the goods of cooperative effectiveness. Nevertheless, the development of expertise moves a problem solver towards goods of excellence such as knowledge for its own sake and the appreciation of work well done. Note that with each fraudulent entry, Sullivan was capacitated with no additional expertise in his function with which to honestly solve WorldCom’s future problems. He’d solved the immediate ones, but in a way that did not prepare him to address the company’s true needs. The result was five consecutive quarters of fraudulent entries and illicitly transferred reserves. By neglecting to ask whether the path he’d embarked on would habituate him to cheating rather than one which would prepare and enable him to solve tomorrow’s problems, he continued down a path that led to his own destruction (and others’) as well as his company’s.

3. Will accomplishing my immediate objective this way increase *cooperation* around me (and by extension, in my organization) and make me (and it) easier to *trust*?

Trust is the glue that binds all social actors, as Bear Stearns discovered when its store of it evaporated in March 2008, precipitating its overnight collapse and disappearance. Barry Bonds learned the same lesson when baseball passed him over despite his oft-verbalized wish to continue playing in 2008. Tending to one's own trustworthiness habituates a person to consideration of others, such as the fans who cheer athletic feats, or the investors who rely on honest research. Such a person develops virtues that guide action towards goods of excellence, for example friendship and sociability. A person who acts so as to be trustworthy, or professionally competent, is not apt to act opportunistically. Decisions, choice, made along the lines of all three questions cultivate a person's *motivational structure*—her capacity to experience motivation at multiple levels of value, or good, and act upon it—and build virtues to guide action towards the ends of excellence first, and victory to the extent necessary for survival and vitality (Torres, 2001). The implication is that decision-making is a three-dimensional task that shapes virtues in the person in three ways—those necessary for achievement now, those necessary to learn one's task well (roughly, *arte*, or *techne* in Aristotelian terms), and those necessary to flourish in society with others (roughly *moral virtue*).

This chapter has reviewed a number of recent scandals and crises in business and assigned the blame for them to an errant, obsessive, myopic and ultimately self-destructive orientation of a few key decision-makers towards the end of victory. In consequence, they were habituated to values that lured them to their downfalls or disgrace. Ironically, the actors highlighted were all praised for their professional virtue and lionized as exemplars for all to emulate. Today their stories serve rather as cautionary tales. The three questions proposed are offered in the belief that they will rectify the problem identified and orient decision-makers

towards flourishing lives and, consequently, society towards sustainable prosperity. In conclusion, they are offered in the hope that they will be adopted as rules of thumb by professional businessmen and –women, as well as by practitioners of the “national pastime,” so that we can clear the field of “steroids” and reduce the clutter of “umpires” and let the players play ball.

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² The crisis presently engulfing Wall Street, the financial sector and, indeed, the world’s credit and capital markets is moving faster than can be captured by the present chapter. The analysis, descriptions and prescriptions contained herein nevertheless apply equally to them. At bottom, the present credit crisis threatening to plunge the global economy into a prolonged, severe recession and perhaps depression is the result of imprudent, reckless leveraging of home mortgages by purchasers who couldn’t afford them, lending institutions that issued them without performing due diligence, investment bankers that trached and sold them without ascertaining the true risk or even value of the products they were creating, and investors who jumped into them without thinking about what they were buying.

³ His appeal was argued in April 2008.

⁴ In September 2008, it was dwarfed by investment bank Lehman Brothers’ declaration of bankruptcy. That institution, begun in 1844, bet heavily and recklessly in the subprime mortgage market. It also acquired excessively leveraged properties for its own portfolio, which totaled \$88 billion as compared to shareholder equity of \$22.5 billion (Jamieson, 2008). At minimum, the leaders at Lehman can be faulted for losing their heads and making extremely imprudent bets that they couldn’t afford to lose. The day following Lehman’s bankruptcy, the government stepped in to prevent an even larger one, that of insurance giant and Dow Jones 30 Industrial component AIG, which compounded those same faults and added others.

On September 25th, the government siezed the nation’s largest thrift institution, Washington Mutual. With its \$307 billion in assets, WaMu’s failure eclipsed Continental Illinois’ 1984 collapse (\$40 billion in assets) as the largest banking bust in history (Sidel, Enrich & Fitzpatrick, 2008).

⁵ The settlement was formalized in April 2003.

⁶ Ebbers was convicted of conspiracy and securities fraud in March 2005 and sentenced to 25 years in prison. He was 63 years old. The conviction and sentence were upheld in July 2006. The Supreme Court turned down Ebber’s appeal without comment in May 2007. CFO Scott Sullivan, the architect of the WorldCom fraud pled guilty in 2004 to manipulating earnings and received a lenient five year sentence for cooperating with federal prosecutors in the Ebbers trial.

⁷Between March 11, 2000 and October 9, 2002 the Nasdaq Composite Index dropped from 5046.86 to 1114.11, a collapse of 78%.

⁸ To little or no avail, as the events between March and September 2008--the period between Bear Stearns' meltdown and Washington Mutual's-- indicate.

⁹ In November 2006, the independent Committee on Capital Markets Regulation, a "bipartisan and diverse group of 22 experts from the investor community, business, finance, law, accounting and academia" found significant erosion in the US's traditionally dominant position in global capital markets, and that regulation and litigation are keeping foreign issuers and investors out of the public market. The Committee recommended a number of correctives, specifically an adjustment in the implementation of Section 404 of Sarbanes Oxley. In a follow-up report dated December 4, 2007 entitled "The Competitive Position of the U.S. Public Equity Market," it concluded that "[b]y almost any meaningful measure, the competitiveness of the U.S. public equity market has significantly deteriorated in recent years. From 2006 to 2007, most measures either continued to decline or failed to substantially improve." The Committee renewed its call for action on the regulatory reduction front.

¹⁰The problem, to be certain, is not one exclusive to baseball players. For instance, Olympic track and field champion Marion Jones was recently stripped of five medals won at the 2000 Summer Olympics in Sydney, and sentenced to six months in prison, *inter alia*, for lying to federal prosecutors about her use of performance enhancing drugs (Associated Press, 2008). Floyd Landis, winner of the 2006 Tour de France, was stripped of his championship, the first winner in the roughly 100-year history of the Tour to suffer that ignominy. He was dismissed from his riding team and suspended from competition for two years because of drug tests showing that he used performance enhancing drugs during a critical stage of the 2006 event (Macur, 2007).

Nor is the problem one exclusive to U.S. athletes. Johann "Juanito" Muhlegg, the German born speed skater turned Spanish Olympian was disqualified from a race in which he'd won a gold medal and expelled from the 2002 Olympics in Salt Lake City for blood doping (Ziegler, 2003). He was banned from competition for two years, and later stripped of two other gold medals won at the same Olympics. Ironically, Muhlegg was unavailable to receive a call of congratulations from King Juan Carlos of Spain for winning his second gold medal because he was being tested at that moment for drug use. The King sent a telegram that read: "This is a very important victory for Spanish sports" (Staff, 2002). Rather, it proved to be Spain's greatest sporting humiliation. Canadian sprinter Ben Johnson forfeited a gold medal won at the 1988 Olympics in Seoul after testing positive for steroids. He'd won a greatly anticipated showdown with Carl Lewis of the United States, a burst for the ages in which Johnson actually had time to turn around and look at Lewis before stretching for the tape. Following a two year ban for that infraction, Johnson returned to international competition only to test positive again and be banned for life (Kram, 1998). Argentine soccer legend Diego Maradona was removed from the 1994 World Cup after testing positive for five variants of ephedrine, a substance banned by the sport (Verhovek, 1994).

¹¹ Bonds was named *The Sporting New's* Baseball Player of the Decade in 1999 for winning three Most Valuable Player (MVP) awards, eight Gold Gloves and ranking in the top three players in home runs, runs batted in (RBI's), slugging percentage and walks in the '90's. In 1998, the season of America's infatuation with the "long ball" (see the discussion of McWire and Sosa, *infra*) he became the first player in major league history to hit 400 home runs and steal 400 bases in a career.

Though not apposite to the issue of his stature before allegedly beginning steroids use, Bonds became MLB's only 500-500 career player in 2003, and won four more MVP awards between 2001 and 2004. Altogether in his career, he won the award an unprecedented seven times, finished second in balloting twice and in the top five players 12 times.

¹² The record had stood since 1974 when Aaron broke the legendary Babe Ruth's record of 714 career homers (Donovan, 2007).

¹³ Bonds finished the season with 73. His career total stands at 762.

¹⁴ Maris and teammate Mickey Mantle's pursuit of Babe Ruth's record 60 home runs (set in 1927) nearly 40 years earlier was celebrated in the movie "61*." Maris's feat was accomplished in a 162-game season, while Ruth's was achieved in a 154-game season (though Ruth had more at bats, and hence opportunities than Maris in their respective record setting seasons). Baseball's commissioner Ford Frick determined that Maris's record should be marked in the books with an asterisk to denote his supposed advantage. It effectively deprecated and marginalized Maris's feat as being unfairly accomplished, and tainted the record with a patina of stigma. The asterisk was eventually removed from the record books, but not until after Maris's death. History has been kinder to Maris than were his contemporaries in the New York media, and Frick's act rather than Maris's record has come to bear the mark of injustice.

¹⁵ Andro was a substance banned by professional football, college basketball, the Olympics and professional tennis at the time, but not by professional baseball (Bianchi, 2004). It has subsequently been banned in baseball as well.

¹⁶ Naturally, the problem of cheating in sport is hardly confined to the use of performance enhancing drugs, which is merely the variant-cum-flavor of the day. For instance, in the 2002 Olympics French figure skating judge, Marie Reine Le Gougne, confessed to scoring the Russian team preferentially due to pressure from Didier Gailhaguet, the French ice sports federation president (Staff, 2002). In return, the French entrant in the upcoming ice dancing competition was expected to secure the Russian judge's vote in that event. Unfortunately for the conspirators, the Russian pair of Yelena Berezhnaya and Anton Sikharulidze committed an obvious technical error during its performance. Le Gougne's high scores denied the gold medal to the crowd-darling Canadian pair, Jamie Salé and David Pelletier, which had skated flawlessly. The resultant uproar was quelled when a second gold medal was awarded to the defrauded Canadian team. Though Le Gougne later recanted her confession and shifted the finger of blame to pressure by the Canadian committee rather than to machinations by the Russian one, she and Gailhaguet were found guilty of misconduct and banned from the sport for three years including the 2006 Olympics (Clarey, 2002).

The National Football League's (NFL's) New England Patriots—winners of Super Bowls XXXVI in 2002, XXXVIII in 2004 and XXXIX in 2005, and the team universally recognized as the game's regnant dynasty—were fined \$250,000 in 2007 and stripped of the team's coveted #1 pick in the 2008 college player draft. It violated league rules by videotaping opposing New York Jets' coaches as they flashed defensive signals during a game (Mortensen, 2007) thereby giving the Patriots an unfair and dishonest advantage. The League's statement indicated that the Patriots had long been suspected of the anti-competitive practice, and that all teams had been strongly warned not to indulge in it. Patriots' coach Bill Belichick who is known for his exceptionally thorough and successful game plans, was fined \$500,000 by the

League, the largest fine ever paid by an NFL coach. Similar to the way that Bonds, McGwire, Sosa and Clemens' feats of athletic prowess are questioned due to the taint of cheating allegations, New England was accused on the eve of Super Bowl XLII in 2008 (won by the New York Giants in an improbable upset of the undefeated and heavily favored Patriots) of having videotaped its Super Bowl XXXVI opponent (2002), then defending champion and heavily favored Saint Louis Rams, during its final "walk-through" of plays in the Superdome the night before the game (Fish, 2008). While acknowledging the Patriots' superiority that day, opposing Rams' quarterback in 2002, Kurt Warner, nevertheless commented that "anytime you have something like this go on, and you get caught doing that, it raises questions. And I think rightfully so." Regarding that actual game, Patriot's backup quarterback, Drew Bledsoe, answered that "[I]ike in other realms in the world, *in the business world*, when you get into a highly competitive environment, people are going to try and do what they can get away with. [*sic*] That is not unique to football" (emphasis added).

¹⁷ Bonds' career total of 1,996 RBI's remains only four short of the magical 2,000 mark, a milestone reached by only two players in the history of the game: Hank Aaron and Babe Ruth. Bonds ranks third on the all-time list.

¹⁸ Ecco, a fashion designer, purchased the ball for \$752,467 in an online auction. He put the question of whether the ball should be defaced in protest to a vote on the internet. The options were to brand it with an asterisk, do nothing to it, or shoot it to the moon. Almost half of the 10 million votes cast favored branding it.

¹⁹ For the record, this author is a lifelong fan of the San Francisco Giants.

²⁰ Note that MacIntyre's focus on ends, or *telos*, identifies him as a philosopher in the Aristotelian, *virtue* tradition. Indeed, his book entitled *After Virtue*, which immediately preceded *Whose Justice? Which Rationality?* in his *oeuvre* greatly contributed to the reintroduction of virtue ethics into the lexicon of academically respectable ethics.

²¹ Note that either explanation or *final cause* of personal action might also serve to explain, *mutatis mutandi*, the aggregate of such action inside a company or economic system. Hence, an answer to the question of what purpose a corporation ultimately serves might alternatively be *victory* (i.e., shareholder wealth maximization) or *excellence* (i.e., social welfare, or stakeholder wellbeing through the satisfaction of needs).

²² Such costs consist of (1) monitoring expenditures by the principal, (2) bonding expenditures by the agent and (3) the residual loss. Monitoring expenditures include "efforts on the part of the principal to 'control' the behavior of the agent through budget restrictions, compensation policies, operating rules, and so forth" (Jensen & Meckling, 1976). Bonding expenditures would include audited financial statements, explicit bonding against agent malfeasance and a limitation of the agent's decision-making powers. See, generally Romano, 1993.

²³ These questions correspond to diagnostic criteria, which address respectively (1) the accomplishment of direct "results" (the "*effectiveness*" criterion), (2) the accomplishment of learning and distinctive competencies with which to produce future effectiveness (the "*efficiency*" criterion), and (3) the accomplishment of trust necessary to sustain effectiveness and retain efficiency (the "*consistency*" criterion).

The intricacies and minutia of how and why these questions and criteria address the character problems signaled by MacIntyre and throughout this chapter can be found in Pérez-López's work itself and elsewhere (as cited in the text). The discussion in this chapter will necessarily be limited to their *usage* along with a demonstration of their plausibility and utility (in Pérez-López's preferred term, their *operationality*).

²⁴ Pérez-López's theory of management in human organizations concerns human action set in an organizational context and considers the person from the perspective of her being a "problem solver." Decisions are made to solve problems and the person is a dynamic, changing, organizational creature that continually decides in accord with one set of values or another, which has anthropological consequences for self and social consequences for the *polis*.

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