"Because That's Where the Money Is": A Theory of Corporate Legal Compliance

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William Bradford

Introduction

Upon his capture in 1934, legendary bank robber Willie Sutton was asked by FBI agents, “Why do you rob banks, Willie?” Sutton, believing the question rhetorical, replied, dryly, “Because that’s where the money is.” In other words, Sutton understood the question to be why he robbed banks rather than homes, or gas stations, or church offering plates. Had he understood the query as intended—i.e., what was it about Willie Sutton the impelled Willie Sutton to crime when most others, struggling to survive the Great Depression, were not?—Sutton could not have offered as pithy a response. This Article poses a similar question—“Why do you rob corporations?”—to ten chief executive officers (“CEOs”) recently ensnared in circumstances analogous to Sutton’s in the hope of generating answers more valid to the explanation, prediction, and suppression of corporate crime than “because that’s where the money is.”

In the last dozen years, scandals involving insider trading, accounting fraud, fictional business entities, bribery, lavish perquisites, and outright theft destroyed over $1 trillion in shareholder value, eliminated millions of jobs, and felled corporate giants such as Enron, WorldCom, and Countrywide. Outrage at these breaches of the public trust, which some liken to a corporate 9/11, prompted prosecutors to imprison many executives and Congress to impose yet stricter obligations upon public firms and the individuals who run them. The Sarbanes-Oxley Act (“SOX”), enacted in 2002, enhances civil and criminal penalties for a wide array of corporate misdeeds and imposes duties of transparency, honesty, and accountability upon key firm personnel. Each CEO and chief financial officer (“CFO”) must certify the truthfulness of each financial report on pain of perjury, and must disclose on a “rapid and current basis

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1 Two Catholic priests were charged with stealing $8 million from the collection plates of St. Vincent Ferrer Catholic Church in Delray Beach, Florida, on December 29, 2006. Police allege the money, taken over the course of decades, was used to finance homes, gambling junkets, a pub, and girlfriends. See Count the Cash, SUN-SENTINEL (Ft. Laud.), Dec. 30, 2006, at 2F.

2 Insider trading occurs when a manager or employee buys or sells stock based on significant information not available to the public. 15 U.S.C. Section 78j(b), 78ff (2004). 18 U.S.C. Section 2, 3551 (2004), 17 C.F.R. 240.10b-5 (2006). See MARIAN BURK WOOD, BUSINESS ETHICS IN UNCERTAIN TIMES 52-53 (2004) (“Legitimate special purpose entities[SPEs]” are used to finance research-and-development ventures and other business activities that need not be reported on the balance sheet. However, Enron and other companies apparently used [SPEs] as a way to boost earnings.”).

3 See, e.g., John Clifton Bogle, Somebody’s Gotta Keep an Eye on These Geniuses, in ROBERT GANDOSSY & JEFFREY SONNENFELD, EDS., LEADERSHIP AND GOVERNANCE FROM THE INSIDE OUT (2004) (reporting that former General Electric CEO Jack Welch awarded himself retirement benefits that included a New York City apartment with daily flower and wine deliveries, unlimited use of company jet, and a salary of $734,000 per month).

5 See Intro., in Gandossy & Sonnenfeld, supra note 4, at xiv (detailing various corporate illegalities).


such additional information . . . [as] is necessary or useful for the protection of investors and in the public interest.” In-house counsel are now required to report to their CEO and Board of Directors any evidence of a material violation of any SEC law or regulation as well as any breach of a fiduciary duty to shareholders, and public accounting firms must certify the accuracy of financial reports.8

Although SOX is now associated in the public mind with a sordid parade of handcuffed executives “perp walking” their way to prison, in years to come SOX may be better remembered as the machine that privatized public corporations. As much as a quarter of every dollar a public firm earns is consumed complying with a panoply of laws and regulations. In the first decade since its passage SOX compliance has cost firms $4 trillion, capital has flown from riskier firms, mergers and acquisitions have been deterred, and firms have privatized rather than comply.9 Executives and boards report that SOX has increased the compliance burden five fold.10 While some hail SOX as a significant weapon in the battle against corporate crime, others believe its price for reducing managerial malfeasance is far too dear.11

Many post-“Enron Era” firms tout their compliance management programs [“CMPs”], which typically consist of written codes of ethics,12 new lines for chief compliance officers, systems for protecting whistleblowers, and mandated employee training,13 as proof against future criminality. For their part, government regulators have encouraged this trend, reducing liability upon violations of laws for firms that implement CMPs.14 Still, many commentators skeptically view CMPs as symbolic attempts to pose firms as corporate good citizens and reduce regulatory oversight without real behavioral transformation. Indeed, many of the more egregious offenders had implemented CMPs and earned favorable independent governance ratings even as the tangled webs of their misdeeds were unraveling.15

Other reform proposals, including changes to incentive structures, enhanced balance sheet transparency, ethics classes, more independent boards of directors,16 and protections for whistleblowers

8  Id. at Section 302, 309, 404(b).
11  BUTLER & RIBSTEIN, supra note 13, at 26.
15  Robert Gandossy & Jeffrey Sonnenfeld, I See Nothing, I Hear Nothing, in Gandossy & Sonnenfeld, supra note 4, at 15-18 (2004); Sherron S. Watkins, Twenty-First Century Corporate Governance, id. at 35 (“Most governance graders ranked many of the recent scandal-plagued companies in the top category for corporate governance procedures.”).
16  See Marcel Kahan & Edward Rock, Embattled CEOs, 88 TEX L. REV. 987 (2010) (evaluating more independent boards of directors as limitations on the power of CEOs).
have been hastened into the breech, yet corporate crime endures.\textsuperscript{17} Perhaps it should come as scant surprise: over the centuries, commentators have complained that “laws are like spider webs, which may catch small flies but let the wasps and hornets break through.” Inducing compliance\textsuperscript{18} with the legal regimes they craft has long been the thorniest problem facing legal architects:

The mere existence of a rule, a law, a moral standard, a social norm, or any other behavioral prescription does not guarantee that those subject to it will actually comply with it. It is evident that various forms of noncompliant behavior are common in most social systems. Even those who acknowledge the authoritativeness and generally favor the existence of specific behavioral prescriptions frequently find it advantageous to violate them in practice.\textsuperscript{19}

Indeed, noncompliance—so as it goes undetected—can be profitable. Corporate executives must make innumerable compliance decisions daily, and they experience tremendous financial incentives and pressures to cheat.\textsuperscript{20} Managers feeling short-term pressure to produce results are in the perfect position to cook the books, and internal and external audits, boards of directors, and government regulators, no matter how diligent, cannot hope to amass enough timely information to identify and address every incidence of noncompliance.\textsuperscript{21} Executives of U.S. firms operating overseas feel pressure to violate U.S. law and pay bribes lest they lose business to non-U.S. rivals who, under the laws of their states of incorporation, are not prohibited from doing so.\textsuperscript{22} One would be naïve to believe that SOX or any other legislation could relieve these pressures. Indeed, one might conclude that corporate criminality is eternal, and that recent exemplars are remarkable only insofar as one beholds their magnitude.\textsuperscript{23}

Still, noncompliance is an ethical cancer that shakes public faith in the integrity of the free market, imposes negative externalities upon stakeholders, and fosters corruption. As recent experience demonstrates, in the long run noncompliance drives away investment and destroys noncompliant firms. Noncompliance may even have negative macroeconomic consequences: if sustained domestic growth

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\begin{footnotesize}
\begin{enumerate}
\item “Compliance” refers to adherence to and conformance by relevant actors with the procedural and substantive prescriptions and proscriptions of the behavioral regime established by the state in respect to a particular issue-area. See ORAN R. YOUNG, COMPLIANCE AND PUBLIC AUTHORITY 3 (1979). The questions of whether individuals should observe moral obligations beyond legal requirements, or whether breaches of law are acceptable on efficiency or civil disobedience grounds, are beyond the scope of this Article. For a discussion of these questions, see Daniel T. Ostas, 41 AM. BUS. L. J. 559 (2004).
\item YOUNG, supra note 19, at 1.
\item See WOOD, supra note 1, at 58 (citing a confidential survey of CFOs 17 percent of whom reported that their CEOs had successfully exerted pressure upon them to misrepresent financial results, in violation of GAAP, during the previous five years).
\item See Kenneth R. Andrews, Ethics in Practice, in HARVARD BUSINESS REVIEW ON CORPORATE ETHICS 73 (2003) (“Under pressures to get ahead, the individual . . . is tempted to pursue advancement at the expense of others, to cut corners, to seek to win at all cost, to make things seem better than they are—to take advantage . . . of a myopic evaluation of performance.”).
\item See Saul W. Gellerman, Why Good Managers Make Bad Ethical Choices, in Gandossy & Sonnenfeld, supra note 2, at 79 (stating that 2/3 of U.S. firms have engaged in illegal behavior in the past decade).
\item See, e.g., JAMES SUROWIECKI, BEST BUSINESS CRIME WRITING OF THE YEAR xi (2002).
\end{enumerate}
\end{footnotesize}
requires prudence and temperance, qualities in short supply at Enron, WorldCom, and other disgraced corporations, then noncompliance augurs ill for the national politico-economic future. Simply put, noncompliance is bad for business, for the firm, and for the nation.

Yet as injurious as noncompliance is, and despite all the measures instituted to combat it, the phenomenon is ubiquitous. Studies suggest that at least two-thirds of public firms have engaged in serious illegal conduct in the past decade. Is law simply epiphenomenal to firm behavior? Is illegality part of the business of business? Or can a well-designed legal regime, buttressed by CPMs and other instrumentalities, induce a degree of corporate compliance sufficient to protect the integrity of the market and the state? Why, and under what conditions, will firms comply with the legal regimes governing corporate conduct, particularly when rules run contrary to parochial interests? These are among the most pressing questions, and enhancement of compliance is one of the most important tasks, in the realm of public governance. Unfortunately, however, in subjecting these questions to empirical analysis, and in redesigning legal regimes to enhance compliance, epistemological and methodological problems abound.

First, a paucity of empirical studies testing general propositions regarding relationships between legal rules and firm behaviors hampers investigation. Although all social science theories are “indirect, presumptive, [and] obliquely and incompletely corroborated at best[,]” the very few existing studies of firm compliance are insufficiently rigorous and too under-specified to offer deep insights. The field is a young, largely descriptive discipline that has treated the firm itself as the level of analysis; few testable hypotheses or nomothetic propositions are offered in the literature. As such, compliance with the legal regime governing public firms remains a largely idiopathic phenomenon.

Second, compliance is not typically an “on-off switch,” and a particular issue-area within a broader regime may present no clear demarcation between legal and illegal behavior. Compliance may be a matter of interpretation, negotiation, and contestation between firms, regulators, and prosecutors. Therefore, any theory must operationalize compliance by specifying objective criteria for rendering a determination of the obligations created by complex and ambiguous sources of law. Moreover, firm misconduct occurs clandestinely, and firms have incentives to self-report better compliance records than

\[24\] Robert W. Lane, Vigorous Competition, Cardinal Virtues, and Value Creation, in Gandossy & Sonnenfeld, supra note 2 at 79.
\[25\] Gellerman, supra note 23, at 79.
they in fact earn.\textsuperscript{29} Investigators must therefore pre-establish protocols to guide interpretation of partial or unintentional compliance and give direction when reliable information is not readily available.

Perhaps even more crucially, the study and regulation of firms \textit{per se} as agents of compliance may be misguided. In truth, firms are abstractions that exist only in the legal, and not the natural, sense, and as such utterly lack decisional capacity.\textsuperscript{30} Firms do not decide whether to comply with law; people, specifically, officers who exercise decisional authority on their behalf, do.\textsuperscript{31} Thus, any theory that would explain or predict firm compliance must account for the individual level of analysis. However, most corporate legal compliance research minimizes the salience of personality.\textsuperscript{32}

Accordingly, Part I will survey and critique existing theories of corporate legal compliance [“CLC”]. Part II will develop an alternative theory that traces associations between personalities of CEOs and firm compliance with (or violation of) obligations arising under corporate law. Part III will survey historical data to test heuristically the proffered theory and offer explanations and predictions of firm behaviors regarding CLC. Part IV, followed by a Conclusion, will summarize the associative relationships between CEO personalities and CLC, anticipate criticisms, and suggest future research to build upon evidence that evaluation and selection of CEOs on the basis of CLC propensities is an important constituent of corporate strategy that bears on firm survivability and prosperity as well as on the orderly and legitimate function of the political economy.

\textit{I. Existing CLC Theories: A Survey and A Critique}


\textsuperscript{30} Under U.S. law, corporations are considered “persons” within the meaning of the Constitution and are entitled to many of the rights and privileges of personhood. \textit{See Santa Clara County v. Southern Pac. R.R. Co.}, 118 U.S. 394 (1886) (U.S. Sup. Ct.). At the same time, however, the common law has evolved an important distinction between “natural” personhood—a condition describing human beings—and “legal,” or “artificial,” personhood—the status of corporate or other business entities that exist solely as the artificial creations of the state and are not living, conscious entities.

\textsuperscript{31} The argument that only individuals make decisions and that moral and legal obligations cannot be charged to institutions such as firms stands in stark contrast with the view that ethical and legal decisions can be ascribed to firms because “identifiable decision making centers,” such as boards of directors and strategic planning committees, “ponder, keep minutes, develop history, and . . . have responsibility to set policy and make decisions on behalf of the organization.” For a detailed discussion of both paradigms, see generally WILLIAM W. MAY, \textit{BUSINESS ETHICS AND THE LAW: BEYOND COMPLIANCE} (1991).

CLC theories can be organized into four schools: deterrence theory, reputation theory, legitimacy theory, and normative theory.  

A. Deterrence Theory

1. Description

Although no universally accepted definition of rationality has been propounded, deterrence theory [“DT”], a species of rational choice theory, converges around a core set of assumptions and premises: (1) individuals pursue material self-interests by the means they calculate most likely to attain objectives at the lowest costs; (2) individuals search for information, evaluate outcomes and probabilities, and make purposive choices as to means, but not as to ends—welfare maximization is the predetermined preference; (3) although individuals are not perfect processors of information, they possess the analytic capacity to choose and do in practice choose the alternative most likely to enhance their welfare; (4) neither norms nor any other idiosyncratic elements of personality account for individual behaviors; rather, behavioral regularities labeled as “norms” are the result of individuals pursuing self-interests; and (5) firms act as unitary actors through the decisions of key individuals, specifically CEOs (and to a lesser extent CFOs and members of boards), and firm actions are the product of the decisions of these key individuals who alone have the authority, or at least the power, to commit the firm. Firm decisions are thus egoistic choices undertaken to advance the material self-interest of these key individuals. Because rational pursuit of self-interest is the explanandum of individual behavior, law is theoretically significant only insofar as it alters the relative costs of particular means: legal rules alter the payoff structure of various strategies and decisions, and decisions about compliance and the consequent

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33 Based on the premise and related assumptions that human decisionmaking in regard to legal compliance is largely independent of the particular subject matter of legal regimes and is rooted in the personal psychological constructs of the decisionmakers, legal compliance decisions can be hypothesized and tested across a range of issue-areas using similar methodology and contrasting a proposed theory with extant theories. Accordingly, the theoretical model developed and tested in the present Article parallels a psychological model of decisionmaking in regard to compliance with the law of war developed by the Author. See William Bradford, In the Minds of Men: A Theory of Compliance with the Laws of War, , 37 ARIZ. ST. L.J. 1244 (2005).

34 See Amartya Sen, Rational Fools, in SCIENTIFIC MODELS AND MAN (H. Harris ed., 1979) at 1, 5. For a general discussion of the origins of rational choice theory, along with an examination of theoretical divisions within rational choice scholarship that continue to bifurcate the theoretical plain, see HERBERT SIMON, MODELS OF MAN (1957).


36 See ERIC A. POSNER, LAW AND SOCIAL NORMS 46 (rejecting causal significance of the “cauldron of instincts, passions, and deeply ingrained cultural attitudes” in explaining behavior). For RCT scholars, parsimony and investigability override efforts to build norms into their enterprise, and nonrational sources of preference and motivation are considered “just not well enough understood by psychologists to support a theory of social norms, and repeated but puzzled acknowledgments of their importance would muddy the exposition of the argument without providing any offsetting benefits.” Id.

37 See KRISTEN RENWICK MONROE, ED., CONTEMPORARY EMPIRICAL POLITICAL THEORY 284 (1997) (describing the RCT position that behavior is independent of norms and that the proclivity to engage in norm-neutral patterns of individual wealth maximization “constitutes a universal, even a defining, characteristic of humanity.”). “Thin” versions of RCT, which ignore values, symbols, and normative practices central to theories of social ontology, predominate in legal literature.

38 YOUNG, supra note 19, at 18.
decisions of government regulators in response are evaluated by rational decisionmakers on materialist, rather than normative, grounds. Firms will not comply altruistically, yet noncompliance may be costly if the state imposes civil or criminal sanctions. In essence, if legal architects craft a formula that converges firm interests with regime rules and ensures that violations are punished by the imposition of costs that exceed the gains of violation, an effective regime can be sustained. DT thus explains compliance with legal rules in starkly instrumental terms: if compliance is the decision strategy most likely to yield the greatest benefit to a firm, that firm will comply; conversely, if violation is the strategy most conducive to maximizing firm welfare, a firm will violate the law even if the state is certain to apply sanctions. Norms do not command compliance; material self-interest does. In sum, DT contends that a well-designed and -specified legal regime that publicizes clear rules, enhances monitoring, and swiftly and surely punishes violations with sufficiently costly criminal sanctions will reap firm compliance.

2. Critique

In practice, deterrence alone has proven insufficiently costly to motivate compliance. Numerous provisions of civil and criminal law have specified sanctions against individual and corporate violators since the dawn of the republic, yet violations persist. Proponents of SOX and other corporate regulatory regimes might argue that more intrusive regulations and still stiffer penalties are necessary to effectuate deterrence, yet even the most committed DT theorists concede that there will always be those who cannot be dissuaded by even the near-certainty of detection and punishment. Even the most extreme punishment the state can impose—death—is insufficient to prevent murder, and the far less stringent sanctions meted out to corporate lawbreakers—fines and brief periods of imprisonment—are perceived by miscreants as simply the cost of noncompliance. Further, deterrence has differential impacts: big firms absorb the cost of noncompliance as a business expense, but small firms are driven out of existence.

Furthermore, threats only deter illegality to the extent that would-be violators perceive and are sensitive to a risk of detection, prosecution, and conviction. The decline of shareholder activism and the rise of mutual funds as primary owners of public firms have laid additional burdens upon government regulators and boards of directors, and both have insufficient resources to prevent more than a fraction of corporate noncompliance. Moreover, the administration of justice in practice is suffused with politics, and powerful firms successfully deploy political pressure to prevent strict enforcement of legal regimes. Power and politics affect the efficacy of deterrence in yet another dimension. The likelihood of detection, prosecution, and conviction is inversely correlated with the level of the office held by the wrongdoer:

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39 POSNER, supra note 35, at 8.
40 See Gandossy & Sonnenfeld, supra note 2, at xviii “Throughout the scandals of the last three decades, there was no absence of regulation with clear purpose, no lack of accounting rules with over intentions, no lack of corporate codes of conduct, no lack of board member financial literacy, and no shortage of many of the other governance remedies that abound as panaceas . . . [F]irms . . . were filled with professionals who knew they saw wrongdoing, but failed to act.”).
41 Watkins, supra note 16, at 33.
CEOs and CFOs, the individuals recognized by SOX as most responsible for compliance decisions, are at the same time the individuals most likely to successfully avoid punishment for their noncompliance.  

Finally, decisional pathologies produce substantial deviations from DT predictions: smart individuals make systematic errors in judgment, such as the decisions that imploded corporate giants in the late 1990s and 2000s or those that led Husseinist Iraq to invade Kuwait and Imperial Japan to bomb Pearl Harbor. The world is home not only to
\textit{homo economicus}\ but to idiosyncratics, altruists, fools, and madmen. In sum, deterrence is too expensive for the state yet too cheap for firms.\footnote{See Christine Parker, \textit{The “Compliance” Trap: The Moral Message in Responsive Regulatory Enforcement}, 40 L. \& SOC’Y REV. 592, 592 (2006). The “small fry” phenomenon, whereby prosecutors are able to convict the lesser conspirators but cannot capture and imprison the master architects of the conspiracy, has long been a criticism of international criminal tribunals.} Even if the “perfect” legal regime could be conceived it would be mitigated by politics, and DT is too ontologically primitive to explain or predict CLC except at the margins of corporate illegality.

\section*{B. Reputation Theory}

\addcontentsline{toc}{section}{B. Reputation Theory}

\subsection*{1. Description}

For adherents of reputation theory [“RT”], reputation matters. Organizations, and the individuals who populate them, wish to claim the respect of their peers and avoid their reprobation,\footnote{See B. Douglas Bernheim, \textit{A Theory of Conformity}, 102 J. POL. ECON. 841, 841-44 (1994) (arguing that individuals conform “because they recognize that even small departures from the norm will seriously impair their popularity.”). For a discussion of the role of social norms as they relate to law, see generally ROBERT ELLICKSON, ORDER WITHOUT LAW (1991).} and thus considerations of reputational effects restrain self-interested illegal behavior.\footnote{See Tom R. Tyler, \textit{Compliance with International Property Laws: A Psychological Perspective}, 29 N.Y.U.J. INT’L L. \& POL. 219, 222 (1997) (describing objective risks of detection, apprehension, and prosecution as very low in re: almost all crimes).} Individuals tend to observe legal obligations widely deemed legitimate, even if the choice to comply is costlier in material terms than noncompliance, because the reputational harm self-inflicted by a violation is costlier still.\footnote{See Beth A. Simmons, \textit{Compliance with International Agreements}, 1998 ANN. REV. POL. SCI 75, 83 (hypothesizing that the mere existence of a legally binding rule alters decisionmaking by imposing reputational costs on decisions not to comply).} Although it concedes that deterrence looms large over firm decisionmaking, RT holds that deterrent effects are significant determinants of firm behavior only when leveraged by reputational considerations.\footnote{See Tyler, \textit{supra} note 42, at 225 (noting importance of peer groups in fostering compliance with legal norms).}  

While RT concedes that some firms, desirous primarily of the reputational gains that accrue upon creating CMPs and signaling their commitment to compliance, may prove unwilling to meet their obligations in practice, it maintains that most firms will comply with legal regimes even when rules conflict with short-term self-interests because their reputation for compliance is more valuable in the long

\footnotetext[42]{Christine Parker, \textit{The “Compliance” Trap: The Moral Message in Responsive Regulatory Enforcement}, 40 L. \& SOC’Y REV. 592, 592 (2006). The “small fry” phenomenon, whereby prosecutors are able to convict the lesser conspirators but cannot capture and imprison the master architects of the conspiracy, has long been a criticism of international criminal tribunals.}


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\footnotetext[47]{Parker, \textit{supra} note 41, at 602. Reputation theory is relatively new to the field of corporate governance. See, e.g., Kevin T. Jackson, \textit{Global Corporate Governance: Soft Law and Reputational Accountability}, 35 BROOKLYN J. INT’L L. 41 (2010) (theorizing that “reputational accountability,” as distinct from legal sanction, plays an important role in securing firms’ compliance with not only formal legal rules but also with transnational “soft law” regulations).}
run than short-run gains from illegality. Normative considerations are not expressly integrated into RT; compliance results from external calculations, rather than internal motivations. In a real sense, compliance, viewed through the RT lens, is herd behavior secured through peer pressure.

2. Critique

In practice, reputational penalties are as difficult to measure as they are to impose, and regulators have had only mixed success in employing publicity and social sanctions to transform firm behavior. Moreover, although a reputation for honesty, integrity, and corporate good citizenship is valuable in material and non-material terms, when the potential gains for violating the law are calculated to be greater than the reputational costs likely to be imposed in the uncertain future event the violation is detected, reputational concerns shrink. For shameless firms that steeply discount reputational considerations, no reputational penalty can possibly leverage the threat of deterrence. For artful firms, violations of law will be occasions to justify or explain away seeming acts of noncompliance as somehow either faithful to the spirit (if not the letter) of the rule in question or as having occasioned only de minimis harm. In short, RT likely assumes too much about the importance of reputation and offers little explanatory or predictive power beyond DT.

C. Legitimacy Theory

1. Description

Legitimacy theory [“LT”] posits that the more legitimate a legal regime, the more likely the subject of regulation will be to afford it compliance. In turn, LT defines legitimacy as “a property of a rule . . . which itself exerts a pull toward compliance . . . because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process[.]” Although some LT theorists suggest that compliance is more multivariate, hinging in part on the likelihood that violations will be detected and punished and in part on the views of relevant peer

49 One RT theorist addresses normative considerations obliquely. See Parker, supra note 41, at 595 (suggesting that effective legal regimes leverage deterrence with reputational considerations while “build[ing] a moral commitment to compliance[,]”). Nonetheless, norms are not central to RT, nor do RT theorists suggest that compliance results from normative calculus.
50 POSNER, supra note 35, at 41.
51 See Parker, supra note 41, at 610 (describing lessons learned from Australian regulators applying RT against cartels).
52 Proof of this lies in the fact that the vast majority of firms have instituted codes of ethics formally abjuring illegality and committing employees to comply with all laws, rules, and regulations as a matter of principle. See supra pp. 2-3.
54 THOMAS M. FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS 24 (1995). Legitimacy is distinct from morality inasmuch as commitment to obey law on moral grounds implies that the substantive content of the law is perceived as inherently just, whereas a commitment to compliance on the ground that the regime is legitimate, while it need not exclude moral considerations, rests upon the narrower procedural conclusion that “the authority enforcing the law has the right to dictate behavior.” TOM R. TYLER, WHY PEOPLE OBEY THE LAW 3 (1990).
groups. LT regards compliance as primarily a function of legitimacy and not reputation or threat of sanction: those regimes perceived to be created and administered fairly reap compliance. So long as the regulatory process is legitimate, regulatory subjects are generally willing to accept the rules it yields.

Further, if compliance is a function of legitimacy, LT theory would predict that the degree to which any given firm complies with legal obligations is in turn a function of the degree to which that firm deems corporate law generally, or the particular subregime specifically, to have been derived through fair procedures. LT theory assesses whether the rules in question are perceived within the firm in question to be substantively just—i.e., connected to principles of reason, justice, or other first principles. A general perception that a legal regime is substantively just is a necessary, albeit perhaps insufficient, precondition for compliance. Finally, as understandings of the meanings of rules converge through practice over time, LT predicts that the legitimacy of, and compliance with, CLC should increase incrementally.

2. Critique

Public firms devote significant resources to ensuring that their interests are represented throughout the process of legislative and administrative rulemaking. Although firms do not directly craft the legal regime that regulates their conduct, they can fairly be said to be in partnership with Congress and regulatory agencies. Moreover, firms that perceive particular laws or rules to be illegitimate can and do lobby regulators—often successfully—to implement a form of “soft” enforcement that dilutes their content and limits their influence on firm behavior. Furthermore, the U.S. political and legal system, although imperfect, offers great opportunities to achieve procedural and substantive justice, particularly to wealthy litigants. If firms or their officers should be subjected to civil or criminal enforcement action, they possess the resources to sway the interpretation and application of laws and rules in the courts to their advantage or, at least, to the point where the equality of arms principle is satisfied.

Thus, because firms are active participants throughout the process of legislation, interpretation, and adjudication of the regulatory regime, and because they can match resources and skill in any legal contest with their regulators, LT predicts that most firms should perceive CLC as legitimate and that compliance should be very high, particularly for the most powerful firms whose influence is ostensibly the greatest. Empirically, however, compliance is the exception rather than the rule, and some of the most egregious violators have been powerful firms with vast sources of political and social capital. In other words, noncompliant firms have implicitly judged the rules and the process of their creation to be legitimate and proceeded to violate them anyway. Moreover, LT is underspecified: it offers no causal

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55 Keohane, supra note 34, at 491-93.
56 TYLER, supra note 53, at 31.
57 Parker, supra note 41, at 607.
59 Parker, supra note 41, at 502.
bridge between the norms of procedural fairness it identifies as essential to CLC legitimacy and their
effects upon decisionmakers, and thus it has not offered testable explanatory or predictive hypotheses.

D. Normative Theory

Normative theory [“NT”] is woven from two dominant strains: constructivism and
organizational-cultural theory [“OCT”]. Both commit to five primary principles: (1) sources of non-legal
obligation, including religious, moral, and psychological considerations, exert theoretically significant
causal effects on individual and firm behaviors that are not reducible to utilitarian calculations of costs
and benefits;\(^60\) (2) even in a world without “law,” individuals and firms would engage in norm-governed
behaviors;\(^61\) (3) firms will accept legal obligations not solely to advance material self-interests; (4)
individuals and firms are motivated to obey obligations even when compliance counters material self-
interests;\(^62\) and (5) compliance with law reflects, to a measurable degree, commitments to norms.

1. Constructivism

a. description

Constructivism posits the following: (1) despite their express commitment to enhancing
shareholder value, firms are not solely material creatures but instead are also ideational entities
continuously reconstituted by the socially-generated values, morals, and ideas of the individuals and
groups who participate in their formation and direction;\(^63\) (2) normative scripts of key individuals and
groups are principally responsible for constructing firms and investing them with preferences; (3) the
constructive process is reciprocal and dynamic: the normative structure of the firm is instilled in those
who participate in its formation and direction;\(^64\) (4) normative scripts are constructed both internally and
externally, and preferences are flexible: individuals and groups inside and outside the firm, through

\(^{60}\) See TYLER, supra note 53, at 3.

\(^{61}\) See MARTHA FINNEMORE, DEFINING NATIONAL INTERESTS IN INTERNATIONAL SOCIETY 87 (1996)
(“[P]rincipled concerns, morality, and individual action” are as important to understanding individual motivation as “rational”
considerations); ROGER FISHER, IMPROVING COMPLIANCE WITH INTERNATIONAL LAW 143 (1981) (identifying
religious beliefs, “family, schools, [and] cultural attitudes” regarding justice as primary determinants of interests and behaviors in
accounts of legal compliance); TYLER, supra note 62, at 23 (holding that “other bases for securing compliance with law: social
relations (friends, family, peers) and normative values” exceed the importance of formal legal rules); id. at 21 (“Citizens have
been found to obey the law when the probability of punishment for noncompliance is almost nil and to break laws in cases
involving substantial risks.”); JOHN ELSTER, THE CEMENT OF SOCIETY 100 (1989) (norms have a “grip on the mind.”).

\(^{62}\) See Martii Koskenniemi, The Pull of the Mainstream, 88 MICH. L. REV. 1946 (1990) (theorizing that non-legal
sources of normative prescription regarding “what is right and good for human life” that precede attempts at positive legal
regulation are more effective in securing compliance with behavioral objectives); YOUNG, supra note 19, at 23 (noting that
“inner pressures” to comply with the law can overwhelm short-term self interest in violating the law). In normativist accounts,
norms are “part of [an] internal motive system and guide [individuals’] behavior even in the absence of external authority.” M.
Hoffman, Moral Internalization: Current Theory and Research, in ADVANCES IN EXPERIMENTAL SOCIAL
PSYCHOLOGY (L. Nerkowitz ed., 1977). Self-interest and the threat of sanctions are “subordinate to the power of norms: If
people view compliance with the law as appropriate because of their attitudes about how they should behave, they will . . . feel
personally committed to obeying the law, irrespective of whether they risk punishment for breaking the law.” TYLER, supra
note 53, at 3

\(^{63}\) See Alexander Wendt, Collective Identity Formation and the International State, 88 AM. POL. SCI. REV. 384, 384-85
(1994).

\(^{64}\) See generally PETER J. KATZENSTEIN, ED., THE CULTURE OF NATIONAL SECURITY (1996).
patterns of “persuasion, socialization, and pressure[,]” influence the normative perceptions and business agendas of individuals and groups within the firm, and *vice versa*;\(^{65}\) (5) legal rules *qua rules* do not independently generate compliance pull: laws are, in effect, restatements of social values and norms,” and individuals and firms conform their conduct not to the formal content of rules but to a set of internalized norms that may or may not be reflected in formal legal regimes;\(^{66}\) and (6) to a large extent, compliance is a function of the congruence between operative norms and legal rules. Constructivism, in short, is vitally concerned with the question of “who we are and what we want to become as a [firm].”\(^{67}\)

For constructivists, non-legal sources of behavioral prescription and proscription exert theoretically more direct influence upon individuals than do legal sources, and compliance is the end result of a process of norm inculcation that over time reconstructs individual identities to embrace and reflect the normative content of the legal regime. Compliance is, in short, a function of the congruence between the operative norms that motivate individual decision makers and the rules that constitute the legal regime. Firms and their managers are “constructed” by, or conditioned to adhere to, a philosophy of governance prescribing and proscribing certain behavior as part of their professional socialization in business schools, law schools, and in practice. So long as the norms animating the legal regime correspond with and tap into the preferences of decision makers—i.e., norms are properly inculcated—and so long as these norms are faithfully incorporated in the formal rules of law that govern firm behavior—i.e., laws are properly engineered—constructivism predicts a high rate of compliance even where noncompliance is a materially rational business strategy.

b. critique

By offering more insight into the pathways whereby norms alter preferences and give rise to formal legal regimes, constructivism generates some testable hypotheses. However, constructivism is grossly underspecified: no account is offered for the process whereby norms are encultured and linked with individual decisions, and constructivists simply offer a loose explanation that relies on the workings of academia and international civil society as *deus ex machina*.\(^{68}\) Worse, constructivism rests upon a contestable assumption regarding human and firm nature: it tacitly assume that the norms that come to predominate in the construction of preferences will motivate a transformation from greed toward greater legal compliance. Throughout history, destructive ideologies and the lust for power and wealth have proven at least as likely to proliferate, and it is plausible that preferences favoring the self-interested

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\(^{65}\) See MARGARET F. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS 214 (1998).

\(^{66}\) See generally H.L.A. HART, THE CONCEPT OF LAW (2nd ed. 1994) (stressing that compliance with law requires an internal attitudinal commitment that in turn requires that rules be consistent with normative principles).

\(^{67}\) Seymour M. Hersh, *Manhunt*, NEW YORKER, Dec, 23, 2002, at 73.

\(^{68}\) See Goodman & Jinks, *supra* note 47, at 42 (examining this deficiency in constructivism).
maximization of power and wealth may emerge, diffuse, and magnify the compliance problem.\(^{69}\)
Moreover, not all individuals are amenable to construction; some actively resist socialization.\(^{70}\)

2. Organizational-Cultural Theory

   a. description

Organizational-cultural theory ["OCT"] disaggregates the firm, treats the senior decisionmaking team as the primary level of analysis, and accounts for firm decisions by analyzing the idiosyncratic organizational culture\(^ {71}\) in which firm actions are debated and advocated. OCT posits that a common core of beliefs and values arises over time and specifies a code that dictates how a social group reacts to external stimuli and organizes internal affairs; norms, rather than interests, develop this organizational culture.\(^ {72}\) Each member is socialized through participation in his nomos\(^ {73}\) and comes to internalize and espouse the organizational culture, and, most importantly, to conform his conduct to its expectations.\(^ {74}\) Compliance preferences are neither predetermined nor dictated by rules but are created by the organizational cultures of senior decisionmaking teams.\(^ {75}\)

OCT variables define the preferences of these senior decisionmaking teams and shape how their members view themselves, perceive the world, formulate strategy, and execute plans on behalf of their firms. Senior decisionmaking teams of major firms possess tremendous economic power, vast business expertise, and long institutional memories, and are therefore extremely influential in imposing their organizational-cultural stamp upon the actions of their firms and their employees. If a firm’s organizational culture embraces and celebrates compliance with law as a cardinal objective and a superordinate value, it should follow that this cultural preference will direct the firm to substantial legal compliance. If the organizational culture developed and nurtured by senior management instills the understanding that the cutting of corners, the bending of rules to the breaking point, or even the deliberate

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\(^{70}\) See LEROY N. RIESELBACH & GEORGE I. BALCH, PSYCHOLOGY AND POLITICS 6 (1968) (describing the individual as a “distinct, autonomous person whose behavior, while influenced by cultural and social situations[,] will reflect the kind of individual he is . . . [H]e is by no means a helpless pawn, pushed and pulled by cultural and social forces.”).

\(^{71}\) See JEFFREY LEGRO, COOPERATION UNDER FIRE 4 (2000) (defining “organizational culture” as the hierarchy of beliefs that characterize the formal institutional structure of a given social group, profession, firm, or bureaucracy).

\(^{72}\) For a general discussion of OCT, pitched as “global governance” theory and committed to the notion that networks of global governance, including bureaucracies, courts, regulatory agencies, legislatures, and corporations, are crucial to the evolution of normative legal architecture, see ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2004).


\(^{74}\) See LEGRO, supra note 70, at 23 (explaining that OCT “predict[s] that [behavior] will reflect and reaffirm [the] internal beliefs and customs of a social group). When members fail to behave in accordance with the expectations of the organizational cultures of their groups, the groups “reward and punish their members, either by withholding or conferring signs of group status and respect[,]”). Pro-social normative pressure conforms behavior and is “similar to the influence of personal morality.” Id.

\(^{75}\) For an empirical examination of some of the sources of informal social norms, including religiosity and ethnic and linguistic homogeneity, postulated to be associated with variance in governance across firms, see Andriy Boytsun, Marc Deloof, & Paul Matthysyns, Social Norms, Social Cohesion, and Corporate Governance, 19 CORP. GOVERNANCE 41 (2011).
violation of law is condoned or even required of its employees, it stands to reason that such a firm cannot help but serve sheer material gain as its cultural imperative. In essence, the acts and omissions of senior executives establish behavioral expectations for the firm. Widespread tolerance for and tacit approval of illegal and unethical conduct creates an organizational hostility to compliance, while the promotion of respect for and adherence to rules and regulations encultures an organizational pull toward compliance.

b. critique

It is difficult a priori to assess the organizational culture of a firm from the vantage point of an outsider. Few firms do not publicly champion themselves as committed to the loftiest ethical principles in their CMPs. Many highlight their involvement in “corporate social responsibility” activities as proof that, although they may be chartered to enhance shareholder value, they have not eschewed a nobler purpose that calls them to conduct business in a manner responsive to the needs of all stakeholders (and, by implication, scrupulously consistent with the law). No firm overtly claims an organizational culture bent on rapine, pillage, and plunder; quite the contrary, most firms are cognizant that whatever their practices they must project the image of the responsible, concerned, ethical corporate citizen as a defensive shield.

Even if one sets firms’ own public relations efforts aside, it is not always possible to glimpse organizational culture. Reputations can be considered as secondary sources of organizational culture, but even reputational evidence can be incomplete or misleading. Some firms, such as Arthur Anderson, had for decades maintained glowing reputations for their honesty and integrity as external auditors, yet the collapse of Enron revealed a firm that knew, or should have known, that its organizational culture of laxness and client collaboration was perpetuating fraud and criminality.\(^{76}\)

To be sure, OCT offers a coherent explanation for firm compliance with rules congruent with an organizational culture narrowly defined by its mission to maximize wealth for shareholders and managers. If the corporate legal regime broadly permits conduct that serves this mission, firms will comply. If, however, regime rules imposes behavioral regulations that run counter to the commands of organizational culture, firms will bend the rules or, if the rules must be broken to advance organizational-cultural imperatives, deny the violation, discount the scope of the violation, dispute the clarity and wisdom of the rule, and mitigate the seriousness of the breach. Although compliance may be instrumentally useful, organizational culture trumps compliance for compliance’s sake.

Further, OCT offers stable predictions as to whether firms will engage in conduct that is lawful and yet contrary to organizational-cultural dictates. Selling tobacco products, firearms, alcohol, motorcycles, or other potentially dangerous products is legal, and yet only those firms with strong organizational-cultural commitments to remaining in these industries will muster the resources needed to

\(^{76}\) For a discussion of Arthur Andersen scandal, see BARBARA LEY TOFFLER & JENNIFER REINGOLD, FINAL ACCOUNTING: AMBITION, GREED, AND THE FALL OF ARTHUR ANDERSON (2003).
defend their products in political and judicial fora. Firms without the organizational-cultural commitments of Smith & Wesson, Philip Morris, Bacardi, and Harley-Davidson have exited or declined to enter these industries. Again, for OCT, predicting the compliance of any given firm with law is a matter of determining the degree of congruence between the formal rules of the legal regime and the behavioral dictates of the firm’s organizational culture: compliance correlates directly with congruence.

As potent as it may be, however, OCT cannot explain why a firm with an organizational culture that genuinely places great value upon legal compliance could commit widespread and serial violations of law without incorporating variables endogenous to the senior decisionmaking team. Specifically, some individuals and groups may simply be resistant to socialization within an organizational culture and thus impervious to the influence of its norms. In short, to explain and predict CLC it is not enough simply to gauge the goodness of fit of the formal legal rules to the organizational culture the rules are meant to govern; rather, the causes and effects of organizational culture must themselves be problematized.

E. Analysis

Notwithstanding their individual merits, existing theories of CLC are hobbled by structural biases that obscure the fundamental importance of human agency. Adherents of ET characterize individuals as mere rational calculators of the relationship between firm- and self-interests and compliance, while theorists of all other stripes treat them as, to greater or lesser degree, mere captives of rules embedded in regimes, institutions, and patterned cultural imperatives. Although firms have historically been the objects of analysis in academia and in the media, questions regarding CLC are ultimately directed to the question of responsibility for decisions, and neither states, nor legislatures, nor regulatory agencies, nor firms, nor senior decisionmaking teams have the ultimate capacity to elect compliance or noncompliance.77 The sole entities with the capacity to exercise choice are individuals, and only those individuals with the authority and power to commit the firm are directly relevant to the study of CLC.78 People, and not abstractions such as organizations, cultures, or firms, decide whether or not to comply with law. Even if individual preferences, attitudes, or values are derived from these entities, the primary determinants of behavior are individual-level variables that may account for much of the systematic variance in compliance as between decisionmakers. If so—if failures of compliance are often due to indiscipline, ignorance, and avarice—a robust theory of human agency is essential to any theory of CLC.

This is not to suggest that other levels of analysis are theoretical blind alleys. Decisions about CLC invoke questions of strategy, and strategy is no more just a question of personality than it is merely a question of costs, benefits, and probabilities. The political, legal, and economic constraints of the

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77 See YOUNG, supra note 19, at 4 (insisting that all entities other than individuals behave in accordance “with the dictates of some genuine actor and need not be dealt with separately in any study of compliance).
78 Id. at 41 (“[The] special feature of the compliance problem for collective entities is the question of who is ultimately responsible for violations[,]” and “the actions of individuals . . . determine the external behavior of collective entities.”).
international political economy, the cultural attributes of the society in which the individual makes decisions, the dyadic relations between firms and their competitors and between firms and consumers, and the manner in which organizational machinery conditions and shapes individual preferences all exert causal influences on individual decisions with regard to CLC, and each of these levels of analysis must be investigated, operationalized, and integrated into a theoretical model if its full explanatory and predictive potential is to be realized. The objective of long-term research programs should be to build bridges between various levels and not to force a choice between them. The complexity of the phenomenon resists reductionism, and it is likely that the threat of punishment, reputational concerns, questions of legitimacy, and normative commitments are all causally linked to CLC decisionmaking.

Nevertheless, theoretical relationships must be established at the most specific level of analysis at which investigation is possible. Because no existing theory accords significant weight to the role of the individual decisionmaker, explanations suffer accordingly. If individual-level variables were not investigable, or if the results of experiments at the individual level of analysis could not be generalized, failures to incorporate these variables into CLC theories would be defensible. If, however, the tendency to give short shrift to the role of personality results from a lack of methodological capacity, or, worse, the unwillingness to invest the labor to acquire it, the sacrifice of explanatory capacity to convenience and parsimony is more troubling. It is inadequate to simply speculate as to the existence and importance of individual-level variables that are causally related to firm compliance with law or to assume, because they are difficult to observe and measure, their irrelevancy.

American corporate history of the twenty-first century is inexplicable without reference to Skilling, Ebbers, and Madoff because people—not firms—are the ultimate locus of decisionmaking.

For a discussion of the various “levels of analysis” that scholars have created as conceptual categories to organize the study of social phenomena, see M.A. EAST, WHY NATIONS ACT 164 (1987).

See DAVID O. SEARS, LEONIE HUDDY, & ROBERT JERVIS, EDS., OXFORD HANDBOOK OF POLITICAL PSYCHOLOGY 253 (2003) (stressing that individual-level variables do not provide a logically complete explanation of state behavior); R.B. FARRELL, APPROACHES TO CONTEMPORARY AND INTERNATIONAL POLITICS 43 (1959) (stating that each level of analysis must be accorded a measure of potency in developing a theory).


See STEPHEN P. ROBBINS & TIMOTHY A. JUDGE, ORGANIZATIONAL BEHAVIOR (12th Ed. 2007) (acknowledging that “[t]here hasn’t been much research and personality and decision making” in the business academy because “most researchers who conduct decisionmaking research aren’t trained to investigate personality.”). A recent descriptive study attempts to associate “bargaining” with individual-level variables. Hans van Ees, Jonas Gabrielson, & Morton Huse, Toward a Behavioral Theory of Boards and Corporate Governance, 18 CORP. GOVERNANCE 307 (2009). Another study suggests that eleven “derailers—deeply ingrained personality traits that affect . . . leadership style and actions,” including arrogance, melodrama, volatility, excessive caution, habitual distrust, aloofness, mischievousness, eccentricity, passive resistance, perfectionism, and eagerness to please—makes leaders susceptible to decisional errors. DAVID L. DOTLICH & PETER C. CAIRO, WHY CEOs FAIL (2003). An awareness that individual-level variables are essential to explanations and predictions of decisionmaking regarding corporate governance is dawning. See, e.g., William Judge, The Multiple Levels of Analysis Involved with Corporate Governance Studies, 19 CORP. GOVERNANCE 1 (2011) (stating that “[c]orporate governance mechanisms do not operate at a single level of analysis” and research into other levels of analysis is required).

See FAREED ZAKARIA, FROM WEALTH TO POWER 14 (1998) (decrying the scholarly tendency to discount individual-level inputs into decisions on the grounds that they are difficult to observe and evaluate).
Personality matters, and decisions about CLC “begin[] in the minds of men” and women. While the proposition that individual decisionmakers are indispensable to the explanation of their decisions might be intuitively obvious, it is one thing to sense that personality is crucial, but quite another to specify how, when, and above all why it is so. A viable theory of CLC must offer accurate descriptions of compliance decisions, a parsimonious explanation of those decisions, and reliable predictions. Accordingly, Part II elaborates a positive pretheory that treats firm decisions regarding CLC as dependent variables determined by individual compliance decisions that in turn are explained by drawing individual-level independent variables within the chain of causation.

II. Toward a Theory of CLC

A. Personality Theory

The century-old field of personality theory (“PT”) posits the individual as not merely causally significant but central to explanations and predictions of the “external,” or “other-directed,” behavior of collective entities. Individuals are not prisoners of fell circumstances but rather are capable of exerting positive influence on the world. Although variables drawn from other levels of analysis factor into explanations of the behavior of the sociolegal abstractions called firms, because individual corporate elites, and not firms, develop and implement the policies that shape the business universe, PT regards all firm behavior as the consequence of the complex interaction of psychological phenomena in the minds of the individuals responsible for those behaviors. Thus, viewed through the prism of PT the psychology of individual decisionmakers is the orienting focus for the study of CLC. Because the psychologies of decisionmakers have decisional correlates, and because each individual is endowed with a unique personal psychology, PT dictates a research agenda that explains how “who” the decisionmaker is translates into decisions s/he has made and will make.

84 “Personality” is the unique and systematic pattern of cognitive, affective, and behavioral functioning that each individual manifests in response to a range stimuli. JERROLD M. POST, THE PSYCHOLOGICAL MEASUREMENT OF POLITICAL LEADERS 69 (2003). Individual personality is as unique as a fingerprint and remarkably stable over time. Id.


86 See Raymond Birt, Personality and Foreign Policy: The Case of Stalin, 14 POL. PSYCH. 607, 608-09 (1987) (elaborating the “actor indispensability thesis” that unless the same decision would be made by anyone the role of personality is important in explaining a decision); see also Nani L. Ranken, Corporations as Persons: Objections to Goodpaster’s “Principle of Moral Projection,” in MICHAEL BOYLAN, ED., BUSINESS ETHICS 52, 54 (2001) (maintaining that “corporate character will stem from the character of persons who occupy relevant positions[,]”); Douglas Litowitz, Are Corporations Evil?, 58 U. MIAMI L. REV. 811, 813 (2004) (querying whether corporate scandals are the product of a few “bad apples”).

87 A “positive” theory is distinct from a normative theory in that it attempts to state what is, and not what ought to be, and thus is falsifiable. See JAMES N. ROSENAU: COMPARING FOREIGN POLICIES 17 (1972). A positive theory includes a specification of constructs or concepts, a set of hypotheses, and criteria for explanation of behavior.

88 The earliest personality theorization was conducted in the early 20th century by famed Viennese psychiatrist Sigmund Freud. See HAROLD LASWELL, PSYCOPATHOLOGY AND POLITICS 75-76 (1930).

89 See PATRICK J. McGOWAN & HOWARD B. SHAPIRO, THE COMPARATIVE STUDY OF FOREIGN POLICY 53 (1971) (“The individual, far from being a mechanism manipulated by forces[,] is a significant independent factor in decisionmaking[,]”).

90 PT assumes that through decisionmaking “individuals contribute to the situations they encounter” and “modify the situation[s.]” DAVID MAGNUSSON, PERSONALITY AT THE CROSSROADS 20 (1977).
Thus, the personality theorist must (1) model the causal relationship between relevant psychological variables and relevant decisions and outcomes and account for variance across a broad range of decisionmakers, (2) assess the relative potency of variables from other levels of analysis in terms of their contribution to decisional latitude or constraint, and (3) integrate these variables into the theory.

1. General Premises and Assumptions

“Personality” refers to the “all aspects of an individual *qua* individual” that influence his behavior. Within PT, each individual is an aggregate of a unique complex of constructs that drive a constant process of selection from among decisional alternatives. Choices are made to satisfy internal motivational, evaluative, or attitudinal dispositions and preferences and to preserve desirable aspects or alter undesirable aspects of the environment as understood through the unique frame of reference supplied by the decisionmaker’s personality, and it is this personality that dictates the substance and process of these choices and yields behavioral and consequential effects. Although PT regards decisions as deliberate and conscious, it emphatically does not presume rationality. In making decisions, individuals are obligated to perform a series of complex tasks, including the search for information, the ordering of preferences, the development of alternatives, and the making of choices, and most are incapable of absorbing sufficient information and undertaking adequate evaluation to reach decisions that consistently maximize their welfare, or that of their shareholders. The human mind is a limited instrument, and under conditions of uncertainty and complexity individuals simplify the decisionmaking process to avoid cognitive overload and reach closure. As former Secretary of State Henry Kissinger explains,

> During fast-moving events those at the center of decisions are overwhelmed by floods of reports compounded by conjecture, knowledge, hope, and worry. These must be sieved through their own preconceptions. Only rarely does a coherent picture emerge; in a sense coherence must be imposed on events by the decisionmaker.[95]

To lighten their burdens, decisionmakers unconsciously resort to heuristics that conserve mental resources by creating shortcuts to judgments. These various mechanisms—beliefs, images, values, experiences, motivations, attitudes, perceptions, operational codes, and traits—represent the basic constituents of personality and function as the primary determinants of decisions. Identifying the relevant

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92 See SEARS ET AL., supra note 79, at 21 (postulating that every decisional alternative is “associated with a set of beliefs about the outcomes that are potentially associated with each alternative” and are “idi syncratic to every decisionmaker.”).
93 See JAMES N. ROSENAU, INTERNATIONAL POLITICS AND FOREIGN POLICY 195 (1961) (describing decisions as “more or less deliberate and conscious choices” but refraining from characterizing decisionmaking as a rational process); JOHN D. STEINBRUNER, CYBERNETIC THEORY OF DECISION: NEW DIMENSIONS OF POLITICAL ANALYSIS 138 (1973) (contending that decisions made under conditions of complexity and uncertainty cannot be explained by rational choice theory).
94 See YAACOV Y.I VERTZBERGER, THE WORLD IN THEIR MINDS: INFORMATION, COGNITION, AND PERCEPTION IN FOREIGN POLICY 21 (1990) (noting that the inability to process information opens decisionmakers to the prospect of “bias and error” that yield “particularly serious consequences”).
95 ERIC SINGER & VALERIE HUDSON, EDS., POLITICAL PSYCHOLOGY AND FOREIGN POLICY 96 (1992).
96 VERTZBERGER, supra note 93, at 113.
set of mechanisms, or constructs, operative in the decisionmaking context affords insight into the explanation and prediction of behavior.\textsuperscript{97} Establishing the process whereby these constructs influence decisional tasks permits the generation of testable propositions and development of a theory.\textsuperscript{98} To explain and predict behavior thus requires tracing behavioral referents to specific personality constructs.

2. Personality Constructs

a. beliefs

“Beliefs” are internalized scripts about the nature of reality and about expected or preferred future outcomes\textsuperscript{99} that create a set of cognitive predispositions that shape the manner in which incoming information is processed and interpreted.\textsuperscript{100} Individuals acquire a systematic tendency to see what they expect to see on the basis of the content of beliefs they acquire early in life.\textsuperscript{101} Beliefs exert great influence upon the individual’s interpretation of events, and thus the individual’s identification of when there is a need or opportunity for making a choice, the individual’s choice and use of information, the individual’s definition of what constitutes realistic alternative courses of action, and what values are considered in a choice between alternatives. Beliefs “influence the actor’s definition of both the objectives and alternative courses of action available to his opponent, and the actor’s perception of the likely consequences of his own and his opponent’s actions.”\textsuperscript{102}

Individuals are systematically more receptive to information that is consistent with their beliefs than to information that contradicts them, and decisionmakers are prone to selectively process information so as to support their belief systems,\textsuperscript{103} particularly under conditions of situational complexity, informational uncertainty, a lack of historical guidance, time pressure, and attendant stress.\textsuperscript{104} Decisionmakers seek information and then structure reality in a manner consistent with their beliefs, and in so doing selectively ignore or fail to integrate necessary information, building bias into their decisionmaking.\textsuperscript{105} When confronted with repeated inconsistencies between belief systems and the empirical world, individuals, to avoid cognitive dissonance, must either modify their beliefs or disconfirm the validity of inconsistent information. However, so powerful are beliefs in dictating perceptions and

\begin{itemize}
  \item \textsuperscript{97} POST, supra note 83, at 77-78.
  \item \textsuperscript{98} See LAWRENCE S. FALKOWSKI, PSYCHOLOGICAL MODELS IN INTERNATIONAL POLITICS 10 (1979) (describing this phase of theorization as “process-tracing”).
  \item \textsuperscript{99} Beliefs are essentially statements about relationships between cause and effect. See DANIEL HERADSTVEIT, THE ARAB-ISRAELI CONFLICT: PSYCHOLOGICAL OBSTACLES TO PEACE 20 (1979) (“If a man perceives some relationship between two things or between some thing and a characteristic of it, he is said to hold a belief.”).
  \item \textsuperscript{100} SEARS ET AL., supra note 79, at 264.
  \item \textsuperscript{101} See JERVIS, supra note 79, at 281 (tracing beliefs and perceptions to early first-hand experiences).
  \item \textsuperscript{102} DANIEL HERADSTVEIT, THE ARAB-ISRAELI CONFLICT: PSYCHOLOGICAL OBSTACLES TO PEACE 11 (1979).
  \item \textsuperscript{103} SEARS ET AL., supra note 79, at 264.
  \item \textsuperscript{104} CHARLES F. HERMAN, CHARLES W. KEGLEY, & JAMES N. ROSENAU, EDS., NEW DIRECTIONS IN THE STUDY OF FOREIGN POLICY 206-07 (1990).
  \item \textsuperscript{105} See generally R. NISBETT & L. ROSS, HUMAN INFERENCE: STRATEGIES AND SHORTCOMINGS OF SOCIAL JUDGMENT (1980) (describing processes whereby decisionmakers simplify, but distort, reality).
\end{itemize}
decisions that individuals tend to resist adaptation and structure their interactions with other actors in a manner consistent with the content of their beliefs regardless of contrary empirical evidence.\footnote{106}

In other words, beliefs are remarkably stable conceptual anchors that resist reality, and variance in the constellations of beliefs that constitute personalities explains, in some measure, variance in decisional propensities. Beliefs are hierarchically organized around a small set of master beliefs,\footnote{107} and the most central, stable, consistent, and theoretically relevant beliefs are those concerning the fundamental nature of humanity (good or evil), the nature of the world (conflictual or cooperative, malleable or predestined, predictable or unpredictable), the value of human life, and the role of chance.\footnote{108}

b. images

“Images” are the accumulated understandings about himself and the world an individual organizes into an affective and evaluative structure to simplify his decisionmaking.\footnote{109} Although images may reflect empirical reality, they are subjective: individuals “respon[d] not only to the ‘objective’ characteristics of a situation, but also to the meaning the situation has for [the]m.”\footnote{110}

Perhaps the most relevant image is the stereotype, defined as

a simplistic, unsophisticated belief about an individual or group that can be used to determine the proper way to think about individuals or groups and to enable decisionmakers to fit a broad range of events into well-defined, narrow categories, allowing speed and economy of mental effort . . . and justifi[cation of] particular patterns of behavior and thinking[.].\footnote{111}

Stereotypical images artificially rationalize decisions by attributing admirable qualities to allies and venality to opponents, thus introducing bias and increasing the likelihood of decisional failure.\footnote{112} Patterns of behavior directed toward a given individual or entity are congruent with images held by the decisionmaker about the individual or entity: a positive image corresponds with friendly, cooperative behavior, whereas a negative image corresponds with hostile, conflictual behavior.\footnote{113}

c. values

“Values” are normative statements about behaviors, objects, and situations that are situated along a continuum, superimposed upon information, and used to evaluate information.\footnote{114}
d. attitudes

“Attitudes,” defined as ideational formations having affective and cognitive dimensions that create a disposition for a particular pattern of behavior toward categories of objects and social situations,115 are, like values, intimately connected to images and beliefs. Individuals tend to discard information incongruent with their attitudes and to search for information that supports attitudinal proclivities, particularly predispositions to feel or act positively or negatively toward peers.116

e. traits

“Traits” are the public and observable consistencies of style that form first perceptions, as well as the adjectives and adverbs of everyday language used to describe an individual. Energy level, self-confidence, communication style, organizational capacity, impulsivity, sociability, emotional expressiveness, intelligence, and sensitivity117 are stable behavioral dispositions that exert latent influence upon individual choices and behaviors.118

f. motives

“Motives” are latent dispositions that direct decisionmakers to define situations, make evaluative judgments, mobilize energy and resources, and selectively pursue end states in the empirical world.119 Needs for power, achievement, and affiliation are among the most theoretically important motives.120

g. summary

Whether PT scholars incorporate beliefs, images, values, attitudes, traits, motives, or other attributes in their models, each term references a mechanism operant in the mind of an individual faced with uncertainty and time constraints which filters, orders, simplifies, and explains the decisional universe while facilitating identification, evaluation, and selection of alternatives. For simplicity and clarity, the term “personality construct” references each of these elements of personality individually and collectively.

3. Measuring Personality

Problems with data access hamper development and testing of PT models of decisionmaking. An attempt to specify the manner in which personality translates into CLC decisions requires opening the black box of the firm to ascertain precisely what senior decisionmakers think, say, and do during decisionmaking, yet this is possible only in very small measure, and even then only post-hoc. Moreover, firms tend to zealously guard corporate secrets—particularly when facing legal exposure—and what data does leak into media, public trials, memoirs, biographies, and other secondary sources tends to be less

115 Id. at 127-28.
117 POST, supra note 83, at 31 (indexing relevant traits).
118 MAGNUSSON, supra note 89, at 13.
119 JAMES N. ROSENAU, COMPARING FOREIGN POLICIES 248 (1972).
120 See, e.g., Ole Holsti, The Political Psychology of International Politics, 10 POL. PSYCH. 495, 497-98 (1989).
than completely reliable. Similarly, assessments of the link between personality and CLC decisionmaking which rely on literature reviews, insider interviews, and biographies are subject to validity problems due to temporal and spatial distance from the subject, deception, faulty interview designs, and human fallibility. For these reasons, available data may not perfectly reveal the true beliefs, images, values, traits, or motives of decisionmakers, and may thus fail to offer an unimpeachable accounting of their personalities.

Establishing the role of personality in decisionmaking requires a measurement protocol. Direct measurement is possible through interviews, direct observation, and formal testing. Unless decisionmakers submit to psychometric testing, personality must be inferred from behavior. The “psychobiographical approach” establishes an a priori measurement protocol and gathers all possible sources, including letters, speeches, interviews, documents, newspapers, autobiographies, anecdotal evidence, and direct observation, to generate an explicit, valid, and reliable assessment of personality. Psychobiographers engage in an iterative process of data collection, aggregation, and testing, comparing sources to judge reliability and validity. Psychobiographical data are used to “score” decisionmakers on personality constructs hypothesized to give rise to variance in the decisions or outcomes under analysis, with the ultimate objective the explanation of how particular combinations of personality constructs, or “personality profiles,” cause specific decisions and consequent outcomes.

4. Conditionality and Contingency: Other Levels of Analysis

The relationship between personality and firm behavior is one of contingency: assertions of causality are couched by PT theorists as true only in some cases and under certain conditions, and caution must be exercised in generalizing from their findings. Individuals are constrained and influenced by

121 SINGER & HUDSON, supra note 94, at 220.
123 FALKOWSKI, supra note 97, at 8.
124 “Anamnesis,” a form of psychoanalysis, is a process whereby the life course of the individual is reconstructed to understand how particular experiences shaped core beliefs, attitudes, and images and influence decisionmaking. POST, supra note 91, at 80.
125 See MARGARET G. HERMANN, ASSESSING LEADERSHIP STYLE: A TRAIT ANALYSIS (1999) (labeling content analysis of interviews the “Personality Assessment at a Distance” approach).
127 See JEANNE N. KNUTSON, ED., HANDBOOK OF POLITICAL PSYCHOLOGY 307-18 (1973) (describing the psychobiographical approach to personality assessment). Most psychobiographers draw heavily upon books written by authors who knew and had protracted contact with their subjects, and validity is high since these authors typically interview hundreds of people who knew the decisionmakers from the very beginning of their lives and from divergent vantage points. VALENTY & FELDMAN, supra note 80, at 107. Although authors may disagree in some of the particulars, the zone of disagreement is generally limited, and intercoder reliability is high. Id.
128 See POST, supra note 83, at 13-14 (describing psychobiography as the description of non-rational behavior, the explanation of that behavior in terms of personality, and the tracing of the development of personality through the life of the decisionmaker).
129 KNUTSON, supra note 126, at 29.
political, economic, and social realities, as well as by the culture of relevant constituencies and by public opinion. No firm, *ergo* no decisionmaker, is omnipotent. Still, the influence of exogenous constraints upon CLC decisionmaking is bounded. The role occupied by the individual is relevant to assessing the weight attributable to personality in PT. The closer the individual is to the apex of the corporate hierarchy the more s/he is invested with the decisional autonomy in selecting goals, committing resources, and ordering firm actions. The most senior decisionmakers [“SDs”]—CEOs, CFOs, and CLOs—are invested with the greatest quantum of power relative to other employees, and, as decisional freedom increases, exogenous constraints diminish.

Furthermore, situational context is crucial, and constraints ebb with the nature of the impetus toward decisionmaking, and with the issue-area in question. During situations of heightened ambiguity, instability, and uncertainty, PT accords far greater causal weight to personality than to other variables, and an absence of precedent, increased time constraints, and increased emotional stress further diminish the theoretical significance of other factors. Responsibility follows power, and SDs, upon whom ultimate responsibility devolves, tend to rely less upon external sources of guidance when their firm is subject to external threat or opportunity. Because the role of corporate constituencies and the influence of public opinion contracts during conditions of ambiguity and uncertainty, and because determinations of whether to comply with ambiguous laws that hamper the immediate pursuit of material self-interest and specify serious civil and criminal sanctions for their violation implicate the highest of stakes and trigger great stress, the salience of exogenous constraints is at a nadir and the role of the personality of the SDs in the chain of causation resulting in firm behaviors is at a zenith in the issue-area of CLC.

While the relationship between personality and decisionmaking may be contingent and conditional, it is positive, and firm behaviors, including CLC, reflect the personality of the SDs at the helm. Although PT does not advance the naïve view of decisions as merely the projection of personalities, neither does it accept the equally simplistic view that personalities have no effect. If PT concedes that personality-based theories are often supplemental to, rather than replacements for, more

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130 Even if they do not exercise ultimate decisional authority, CFOs and CLOs are the “financial conscience” and legal guarantors of firms. Their selections are among the most important decisions CEOs undertake, and their subsequent acts or omissions—unless overridden—are implicitly ratified by their CEOs and play a large part in determining and implementing CLC strategies.

131 *See* MAGNUSSON, *supra* note 89, at 333 (“[Personality] can determine behavior . . . most strongly when the situation is ambiguously structured . . . so that people are uncertain about how to categorize it, have to structure it in their own terms, and have no clear expectations about the behaviors most likely to be appropriate[,]”).

132 *See, e.g.*, JOAN OFFERMAN-ZUCKERBERG, ED., POLITICS AND PSYCHOLOGY 141 (stating that personality constructs “are most apt to be important in times of crisis, real or perceived, when leaders are under a great deal of stress.”).
general explanations, it nevertheless insists that under delimited circumstances the personality of SDs contributes in a causally significant measure to policy choices, including decisions regarding CLC.

B. A Pretheory of CLC

1. Introduction

Although a diverse theoretical array can be subsumed within the rubric of PT, all treat empirical behavior(s) as the *explanandum*—the thing(s) to be explained—and one or more personality constructs as the *explanans*—the explanatory variables. In other words, firm behaviors are dependent variables (DVs) that are the end result of a chain of causation running through the personality of the individual(s) who set(s) the course the firm will follow, and the personality constructs that constitute this unique personality are independent variables (IVs). A brief review of the historical record suggests that a model which allows for psychobiographical measurement of several policy-relevant personality constructs may enable enriched explanations of compliance decisions while retaining parsimony. In developing an integrated theoretical model, efforts will be made to enumerate and define the personality constructs operant in the personalities of CEOs responsible, via the selection of CLC decisions, for particular outcomes; next, a set of preliminary hypotheses based upon associative linkages between personality constructs and outcomes shall be offered and heuristically tested.

2. Independent Variables: Personality Constructs

The proposed pretheory of CLC hypothesizes that the presence or absence of four constructs in the personalities of CEOs are responsible for firm compliance with or violation of the legal regimes governing corporate behavior; these personality constructs, which serve as IVs, are “militarism,” “anomism,” “hostility,” and “adventureism.”

a. militarism

“Militarism” is a global construct consisting of ten subconstructs that tap a set of intercorrelated beliefs, values, images, and attitudes. The militarist is more likely to consider forceful or anti-social alternatives than his nonmilitarist counterpart, more prone to escalate conflictual situations, and more likely to lead the firm to violate the law in pursuit of his objective(s). Nationalism and a favorable attitude toward power have been identified as the subconstructs most predictive of the level of conflict

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133 In constructing any theory of complex processes, particularly those involving human agency, it is inevitable that a degree of reductionism will be employed. Nonetheless, PT maintains that if personality alone can explain much of the variance in decisionmaking and firm behavior, then a predominant focus on personality cannot be readily dismissed as reductionist.

134 See KNUTSON, supra note 126, at 29 (surveying theories).

135 SINGER & HUDSON, supra note 94, at 248-49.

136 The pretheory of CLC builds upon work in the field of compliance with the laws of war—a phenomenon to which business is often likened. See William Bradford, “In the Minds of Men”: A Theory of Compliance with the Law of War, 39 ARIZ. ST. L.J. 1244 (2005).

and cooperation associated with decisionmakers;\textsuperscript{138} nonetheless, all ten subconstructs that typify the militarist, specifically nationalism, a favorable attitude toward power, aggression, authoritarianism, competitiveness, dogmatism, introversion, isolationism, ambitiousness, and low self-esteem, are incorporated in the theoretical model. The ideal-typic\textsuperscript{139} militarist scores high, indicating the presence of the subconstruct in his or her personality profile to an extent significantly greater than the average person, on each subconstruct. “Militarism” does not imply that a decisionmaker who embodies these traits is enamored of or has served in the military, nor does it necessarily imply that s/he believes that imposing military solutions on problems is always desirable; rather, it is simply an apt and descriptive term for the global personality construct that captures the aforementioned dimensions of personality.

i. subconstructs of militarism

“Nationalism” is a belief that one’s nation is superior to and more honorable than other nations by virtue of its superior culture, tradition, race, ethnic composition, philosophy of government, or other characteristic(s),\textsuperscript{140} as well as the motivation to “develop, protect, maintain, or refine” this culture, tradition, race, or philosophy.\textsuperscript{141} Nationalists are more prone to defend fellow nationals in word and in deed, and more likely than non-nationalists to serve in the armed forces of their state of nationality.\textsuperscript{142} On the other hand, nationalists are less able to make subtle distinctions and gradations than are nonnationalists.\textsuperscript{143} Nationalism is positively intercorrelated with militarism, authoritarianism, dogmatism, isolationism, and a favorable attitude toward power.\textsuperscript{144} The behavioral outputs of nationalists tend to be more conflictual than those associated with their non-nationalist counterparts,\textsuperscript{145} and these effects are heightened in the context of cultural dissimilarities between the nationalist and the target of the behavior.

“Favorable attitude toward power” [“FAP”] is a composite subconstruct which refers to the beliefs held by the individual in the desirability and utility of possessing and employing force or coercion in controlling others or in the pursuit of objectives.\textsuperscript{146} Throughout history, [decisionmakers] who attain legendary status often tend to be those who have conquered other nations, won major wars, forcibly transformed their societies, and imposed their own beliefs on their subjects[;]\textsuperscript{147} decisionmakers seeking

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{138} FALKOWSKI, supra note 97, at 44.
\item \textsuperscript{139} “Ideal types” are theoretical constructs that model selected aspects of the empirical world and permit comparative assessment of the extent to which those aspects exist in a particular, real case. See Max Weber, “Objectivity” in Social Science and Social Policy, in THE METHODOLOGY OF THE SOCIAL SCIENCES 49 (Edward A. Shils & Henry A Finch trans. & eds, 1949).
\item \textsuperscript{140} Paul C. Stern, Why do People Sacrifice for their Nations?, 16 POL. PSYCH. 217, 217 (1995).
\item \textsuperscript{141} VAMIK VOLKAN, THE NEED TO HAVE ENEMIES AND ALLIES 88, 94-95 (1988).
\item \textsuperscript{142} H. Denker, D. Malova, & S. Hoogendorn, Nationalism and Its Explanations, 24 POL. PSYCH. 345, 350 (2003).
\item \textsuperscript{143} Winter et al, supra note 107, at 31.
\item \textsuperscript{144} See Denker et al, supra note 141, at 380 (identifying the correlates of nationalism).
\item \textsuperscript{145} EAST, supra note 78, at 65.
\item \textsuperscript{146} See Watkins, supra note 16, at 32 (opining that individuals seek to be CEOs to accumulate power and influence).
\item \textsuperscript{147} A. LUDWIG, KING OF THE MOUNTAIN: THE NATURE OF POLITICAL LEADERSHIP 3-4 (2002).
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This status tend to have positive attitudes toward the military, nuclear weapons, war, and control over others—i.e., the instrumentalities that achieve status. \footnote{DENNIS J.D. SANDOLE, CAPTURING THE COMPLEXITY OF CONFLICT 24 (1999).} FAP is positively intercorrelated with competitiveness, authoritarianism, aggression, isolationism, ambitiousness, and distrust. \footnote{See Holsti, supra note 119, at 497 (identifying correlates of FAP).} The militarist believes that power, rather than reason, is essential to preserving order. \footnote{KNUTSON, supra note 126, at 285.}

“Aggression” is the trait that directs an individual to engage in self-assertive, self protective, domineering, hostile, and/or violent interactions with others. \footnote{MAGNUSSON, supra note 89, at 165. The philosophy that “business is combat,” known as the “Attila the Hun school of leadership,” is favored by many male CEOs. \textit{Id}. at 166 (indicating that individuals react aggressively when they believe their low self-esteem is being challenged).} Aggression is positively intercorrelated with FAP, isolationism, and low self-esteem. \footnote{Id. at 166 (indicating that individuals react aggressively when they believe their low self-esteem is being challenged).}

“Authoritarianism” is the belief that unquestioning obedience to authority is superior to individual freedom of judgment and that the credibility of information is a function of the authority of its source rather than of its factual reliability. \footnote{VERTZBERGER, supra note 93, at 172.} Authoritarians rigidly adhere to conventional values, look for and condemn violators of social tradition as a threat, and are preoccupied with hierarchies and social cohesion. \footnote{See T. ADORNO, E. FRENKEL-BRUNSWICK, & D.J. LEVINSON, THE AUTHORITARIAN PERSONALITY (1950).} Authoritarianism is positively intercorrelated with isolationism and nationalism. \footnote{See generally Daniel J. Levinson, Authoritarian Personality and Foreign Policy, 1 J. CONFL. RES. 37 (1987).}

“Competitiveness” is the drive to struggle against others for satisfaction of wants and needs. \footnote{Joseph Badaracco, Jr., We Don’t Need Another Hero, Harvard Business Review on Corporate Ethics, at 1-12 (2003).}

“Dogmatism” is the degree to which an individual cannot identify or use linkages between concepts, employ dimensionality in descriptions of stimuli, utilize many rules in integrating components into a coherent whole, tolerate contrary beliefs, objectively evaluate contrary ideas, analyze contingencies, adapt to ambiguity, generate alternatives, assimilate contradictory external cues, perceive shades of grey as opposed to thinking in “black and white,” and think abstractly. \footnote{See MILTON ROKEACH, THE OPEN AND CLOSED MIND: INVESTIGATIONS INTO THE NATURE OF BELIEF SYSTEMS AND PERSONALITY SYSTEMS 62 (1960). In contrast to the dogmatist, the flexible decisionmaker rejects black and white tests of ethical principles in favor of compromise solutions that satisfy all stakeholders. \textit{Id}. at 10-12. Moreover, dogmatists are often perfectionists, whereas nondogmatists recognize that the perfect can be the enemy of the good, generating stress and anxiety and decreasing productivity. DOTLICH & CAIRO, supra note 81, at 116-17.} Dogmatism positively correlates with aggression, high self-esteem, authoritarianism, and competitiveness. \footnote{CHARLES F. HERMAN, INTERNATIONAL CRISES: INSIGHTS FROM BEHAVIORAL RESEARCH 353, 417 (1972).}
Introverts are less vulnerable to social pressure but less resistant to assimilating external cues than are extroverts. Introversion positively intercorrelates with aggression and FAP. “Isolationism” is the negative value attached to establishing, maintaining, and restoring relationships with others. Isolationists lack a predisposition to seek approval and to limit the type or degree of conflict; they do not develop emotional relationships and become overly self-reliant. Isolationism positively intercorrelates with FAP, aggression, competitiveness, and low self-esteem. “Ambitiousness” is the value attached to personal accomplishment, and ambitious individuals are predisposed to strive for success in tasks involving leadership and the demonstration of intelligence. Ambitiousness is positively intercorrelated with aggressiveness, competitiveness, and risk propensity. “Low self-esteem” is the absence of a belief in one’s own capability, inherent worth, and entitlement to respect and admiration; individuals with low self-esteem are not self-confident, patient, receptive to external cues, or likely to perceive themselves as competent and well-regarded by peers, but are more prone to violent behavior than those with high self-esteem, and more likely to suppress constructive conflict. Low self-esteem is positively intercorrelated with aggression.

ii. militarism: summary

The ideal-typic militarist is a nationalist with prior military service who views the use of power favorably, is an aggressive competitor and keenly ambitious, and is authoritarian and dogmatic yet introverted, isolated, and beset with low self-esteem. While the pure ideal-typic militarist may exist only in theory, militarists score high, indicating the presence of the subconstruct in his or her personality profile to an extent significantly greater than the average person, on a majority of the subconstructs.

b. Anomism

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159 VERTZBERGER, supra note 93, at 173.
160 SINGER & HUDSON, supra note 94, at 92.
162 DOTLICH & CAIRO, supra note 81, at 64-65.
163 SINGER & HUDSON, supra note 94, at 92.
166 MAGNUSSON, supra note 89, at 412.
167 SANDOLE, supra note 147, at 24-25. Ambition may be correlated with the propensity for corporate criminality. See Gandossy & Sonnenfeld, supra note 2, at xvii (observing that the “current crop of corporate criminals is largely populated by upwardly mobile strivers[].”).
168 VALENTY & FELDMAN, supra note 80, at 73.
169 SANDOLE, supra note 147, at 181.
170 See DOTLICH & CAIRO, supra note 81, at 128-30 (describing an overabundance of an “eagerness to please” as a flaw that promotes indecisiveness, bad behavior in subordinates, and groupthink.).
171 SINGER & HUDSON, supra note 94, at 91.
“Anomism” consists of five subconstructs—disregard for law, disregard for legal authorities, amoralism, ignorance of law, and ignorance of corporate law—that tap a set of intercorrelated beliefs, values, images, and attitudes regarding the rule of law. The anomist has little regard for law or legal authorities, lacks moral or ethical qualms about violating law, and knows little of the substance of law generally and less about corporate law. In brief, the anomist is a serial and unrepentant lawbreaker who holds dear no superordinant moral principles. The ideal-typic anomist scores high on each subconstruct.

i. Disregard for Law

Although “[e]veryone breaks the law sometimes, and some people break it often[,]”\(^{172}\) for many individuals law is an object of reverence\(^{173}\) and obedience a quasireligious duty.\(^{174}\) Many, and perhaps most, people quite simply believe that law must be obeyed for the simple reason that it is law.\(^{175}\) The anomist, in contrast, accords no independent normative value to legal obligations and regards legal obedience in purely instrumental terms: if obeying the law suits his self-interest, he does so, but if obedience thwarts the pursuit of his ends, law is but another objective impediment that must be overcome or negotiated away.\(^{176}\) Disregard for law is negatively correlated with educational attainment.\(^{177}\)

ii. Disregard for Legal Authorities

Regard and respect for legal authority is widely diffused across demographic, cultural, and geographic domains.\(^{178}\) Most people accord legal authorities, including the police and the judiciary, the presumption of integrity, competence, and legitimacy, and as a consequence cooperate and comply with

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\(^{172}\) TYLER, supra note 53, at 3.

\(^{173}\) See ROBERT DALLEK, THE AMERICAN STYLE OF FOREIGN POLICY: CULTURAL POLITICS AND FOREIGN AFFAIRS xi (indicating that part of the “American style” of governance is a reverence for the rule of law).

\(^{174}\) For a great majority across demographic and geographical boundaries, law-following is a decided preference. See Kenneth G. Dau-Schmidt, An Economic Analysis of the Criminal Law as a Preference-Shaping Policy, 1990 DUKE L.J. 1 (1990).

\(^{175}\) See G.R. Boynton, S.C. Patterson, & R. Hedlund, The Structure of Public Support for Legislative Institutions, 12 MIDWEST J. POL. SCI. 163 (1968) (reporting that over 70% of respondents agree with the statement that law “must always be obeyed”); H.R. Rodgers & E. Lewis, Political Support and Compliance Attitudes, 2 AM. POL. Q. 61 (1974) (demonstrating strong and widespread tendency toward obedience to legal rules); TYLER, supra note 53, at 44-45 (reporting that almost all respondents surveyed indicated that it is “very wrong” to break the law under almost all circumstances, including where the substantive obligations are contrary to personal conceptions of morality or justice).

\(^{176}\) See ABRAM CHAYES & ANTONIA CHAYES, THE NEW SOVEREIGNTY 117 (1995) (recognizing that for some individuals law has no normative value); see also DOTLICH & CAIRO, supra note 81, at 78-80 (describing as “mischievousness” the impulse that drives some individuals “to break the rules, to test the limits” and otherwise to violate laws and norms reflexively without consideration of consequences and often without doing so to achieve specific goals).

\(^{177}\) See TYLER, supra note 53, at 47 (reporting that older respondents are more likely to view law as inherently worthy of respect than younger respondents and that level of education is inversely correlated to respect for law).

\(^{178}\) See, e.g., DANIEL GOLDHAGEN, HITLER’S WILLING EXECUTIONERS: ORDINARY GERMANS AND THE HOLOCAUST (1997) (suggesting the willingness of the German population to implement the Holocaust is a function of the deeply-rooted German attitude favoring compliance with and respect for authority).
them in their official capacities. By contrast, anomists treat legal authorities as inherently unworthy of respect or obedience and as constraints to be factored into calculations of how best to pursue self-interest.

iii. Amoralism

“Amoralism” refers to an absence of absolutism exercised in the evaluation and judgment of character, conduct, ethics, and values. Its converse, moralism, can be, but is not necessarily, religiously motivated. Several scholars suggest that moral judgments are more consequential than the perceived certainty or threat of punishment with respect to legal compliance. As Tyler explains,

[P]eople d[o] not simply act in pursuit of gains. Rather, their own personal sense of right and wrong influence[s] their behavior. Most people give little or no consideration to the possible gains and losses associated with illegal behavior. Instead, they simply engage in the behavior that they think is morally right. Although morality can undermine compliance where the specific rules in question are perceived as morally illegitimate, most people regard compliance as a moral duty and consider non-compliance morally unjustifiable. Moreover, many consider the moral evil occasioned by noncompliance to be greater than the evil of obeying a law with which they disagree. The ideal-typic anomist, however, accords no moral virtue to compliance and is agnostic, and thus amoral, regarding right and wrong.

iv. Ignorance of Law

“Ignorance of law” is the absence of formal legal education—not the absence of knowledge of illegality. Those with legal training may be more likely to regard legal obligations as significant in relation to other commitments. Although legal training “does not assure that [decisionmakers trained in the law] will cast their votes for law observance, . . . some knowledge of the law, some appreciation of its significance, and some attitudes and habits of respect for the law find a place in the process of decision.” Moreover, although most decisionmakers may know little about law, the more a decisionmaker understands legal obligations the more likely s/he will be to comply with them.

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179 See TYLER, supra note 53, at 38-39, 45 (reporting that most respondents surveyed respect, feel proud of, and believe in the honesty and integrity of law enforcement officers and believe that legal authorities should be obeyed and respected even if they believe legal authorities to have been incorrect in their judgments about specific controversies).
181 See IRVING JANIS & LEON MANN, DECISION MAKING: A PSYCHOLOGICAL ANALYSIS OF CONFLICT, CHOICE, AND COMMITMENT 28 (1977) (describing use by many decisionmakers of a “simple moral precept” to make decisions); TYLER, supra note 53, at 38-39 (reporting that most people consider violation of law to be morally wrong). The special category of evil legal systems, and the discussion of moral duties within them, is beyond the scope of this Article.
182 The anomist is differentiable from the flexible moral thinker, who knows when to “exercise imagination, discipline, flexibility, and restraint in complex ethical situations in order to solve problems without breaking the law”—a process termed “bending, but not breaking, the law.” Badaracco, supra note 154, at 5-10. The anomist, in contrast, is numb to any compliance pull.
183 See Steven Ratner, supra note 154, at 662-65 (suggesting the degree of legal training is significant to prioritization of legal obligations relative to other non-legal obligations).
184 Many CEOs, responding to corporate scandals in the 1980s and 1990s, disclaimed knowledge of illegalities. See, e.g., Gandossy & Sonnenfeld, supra note 2, at xii. “Ignorance of law,” however, can be the cause of “ignorance of illegality,” although the separate but deeply important question of whether knowledge of illegality may be legally attributed to a CEO who does not discharge a duty of care in supervision, training, or in any other way is beyond the scope of the present Article.
v. Ignorance of Corporate Law

“Ignorance of corporate law” refers to the absence of training in the legal regime governing corporations.\(^{188}\) As with “ignorance of law,” knowledge of corporate law is a determinant of CLC: the less a decisionmaker knows about corporate law the less likely s/he is to comply with the regime.

vi. summary, operationalization, and intercorrelations

While the pure ideal-typic anomist may exist only in theory, s/he is ignorant of the law, regards compliance with legal rules and authorities in purely instrumental terms, and complies only where it serves self-interests: morality does not factor into the analysis.

c. Hostility

“Hostility” consists of nine subconstructs—distrust, narcissism, cynicism, misanthropy, ethnocentrism, hostility, Machiavellianism, lack of empathy, and selfishness—that tap a set of intercorrelated beliefs, values, images, and attitudes regarding human relationships. The ideal-typic hostile scores high, indicating the presence of the subconstruct in his or her personality profile to an extent significantly greater than the average person, on each subconstruct.

i. Distrust

“Distrust” refers to a belief in the inherent lack of goodness in human beings; individuals with a high degree of distrust have misgivings about the intentions and activities of others and are wary of other actors.\(^{189}\) Individuals with a high degree of distrust are more likely than those who are less distrusting, or more idealistic,\(^{190}\) to overperceive, and overreact, to threats.\(^{191}\) The most distrustful decisionmakers can be termed “paranoid,” defined as intensely suspicious of others, convinced that others are scheming to cause them harm or impose their will, and prone to see enemies in everyone despite contradictory evidence.\(^{192}\) Paranoids resort unnecessarily to forceful measures in response to perceived threats.\(^{193}\) Distrust intercorrelates with cynicism and hostility.

\(^{186}\) See MICHAEL BYERS & GEORG NOLTE, UNITED STATES HEGEMONY AND THE FOUNDATION OF INTERNATIONAL LAW 104 (2003) (ascribing ignorance of law to most decisionmakers).

\(^{187}\) See Christopher Joyner, Dissecting the Lawfulness of United States Foreign Policy: Classroom Debates as Pedagogical Devices, 9 ILSA J. INT’L L. & COMP. L. 331, 334 (2003) (“If . . . decision-makers know what the law is, then they can fashion [decisions] to conform to the expectations of . . . government[]”).

\(^{188}\) See infra at pp. (defining the “corporate legal regime”). In operationalizing ignorance of the law, decisionmakers who do not have a degree in law will be judged to be ignorant of the law save for in unusual circumstances.

\(^{189}\) STEINBRUNER, supra note 92, at 47.

\(^{190}\) See George, supra note 106, at 202 (characterizing individuals who are trusting of others and believe in a “fundamental harmony of interests among peoples and nations” as “idealists”); see also JOHN C. FARRELL & ASA P. SMITH, EDS., IMAGE AND REALITY IN WORLD POLITICS 16 (19767) (dividing decisionmakers into those who believe in the “inherent good faith” of others and those convinced of the “inherent bad faith” of humanity).

\(^{191}\) See Michele G. Alexander, Marilynn B. Brewer, & Richard K. Hermann, Images and Affect: A Functional Analysis of Out-Group Stereotypes, 77 J. PERS. SOC. PSYCH. 78, 80 (1999); see also DOTLICH & CAIRO, supra note 81, at 52-53 (identifying distrust as a “derailer” that causes failures to form team cohesion, encourages others to “watch their backs” rather than strive for excellence, creates unwarranted suspicion about others' motives, and encourages illegal activity to defeat rivals).

\(^{192}\) JERROLD POST, POLITICAL PARANOIA: PSYCHOPOLITICS OF HATRED 7-12 (defining the paranoid personality).
ii. Narcissism

“Narcissism” is the belief that one is endowed with great power, physical appeal, and the right to exploit and dominate others. Narcissists crave attention and constant reassurance and need to be perceived as powerful, appealing, and worthy of love and admiration. Narcissists are preoccupied with pathologically grandiose fantasies of wealth and fame, devoid of conscience or remorse, envious, spiteful, greedy, vindictive, and willing to use force to achieve goals. Malignant narcissists, or “antisocial personalities,” are often reckless, sadistic, suicidal, and prone to depression. Narcissists are self-absorbed and not possessed of deeply-held beliefs about the external world: their images of others are flexible, and other actors are of value to the narcissist only to the extent that they enhance his self-interest or present him in a good light. For the narcissist, what is good for him is good for his firm and his nation, and decisions are reducible to considerations of how results advance his concept of self. Because they are detached from reality to the extent of their self-absorption, narcissists are systematically inclined to overestimate their capabilities and underestimate external constraints. Narcissism positively intercorrelates with dogmatism, isolationism, and disrespect of law and legal authorities.

iii. Cynicism

“Cynicism” is the belief that others are self-interested, insincere, and motivated primarily by material considerations, and the corresponding negative general image of humanity. Cynics expect the worst of others, and consequently are more likely to perceive threats than are individuals who view others as inherently cooperative, sincere, and motivated by ideals.

iv. Misanthropy

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194 See VERTZBERGER, supra note 93, at 174 (defining the narcissistic personality).
195 LASSWELL, supra note 83, at 262.
196 POST, supra note 83, at 83-84.
198 POST, supra note 191, at 87. Famous historical narcissists include Josef Stalin and Adolf Hitler, both of whom portrayed themselves as the auteurs of new political-economic orders. See Betty Glad, Why Tyrants Go Too Far: Malignant Narcissism and Absolute Power, 23 POL. PSYCH. 1, 5 (2002). Empirical evidence suggests that CEO narcissism is at the root of corporate governance failures. See Manfred F.R. Kets de Vries & Katharina Balazs, Greed, Vanity, and the Grandiosity of the CEO Character, in Gandossy & Sonnenfeld, supra note 2, at 53 (“Behind all the hoopla concerning corporate governance, we are really faced with the problem of excessive narcissistic behavior by people at the top, a pattern that is endemic in modern-day society, where the Me Generation increasingly focuses on the achievement of personal gratification and self-fulfillment[].”).
199 Id. at 33-34; see also DOTLICH & CAIRO, supra note 81, at 2-12 (describing “arrogance” and “melodrama” as dimensions of narcissism that arise from an “inflated sense of self-worth” and the need for attention that defeats an individual's capacity to recognize personal limitations in decisionmaking).
200 POST, supra note 83, at 85 (dogmatism); LIVESEY, supra note 203, at 117 (isolationism, respect for law and authorities).
202 HERMANN, supra note 124, at 339.
“Misanthropy” is a generalized dislike, and even hatred, of human beings. Simply put, misanthropes are antisocial, do not seek or enjoy the company of others, and actively seek to avoid or, in the alternative, to cause harm to other persons.

v. Ethnocentrism

“Ethnocentrism” is the belief that one’s ethnic, racial, or cultural group is superior to others and the attitude that association with persons of one’s ethnic, racial, or cultural group is preferable to association with other groups. Whether ethnocentrism has biological determinants or is socially constructed is uncertain. Ethnocentrics project their preference for members of their own groups outward, and the degree of their cooperation and positive interaction with others is, to some extent, determined by the degree of ethnic similarity. Accordingly, justification for hostility is readily available to the ethnocentric who identifies dissimilarities between his own group and the target of his decisionmaking and attributes hostile intent on this basis; greater vigilance is required to protect against this threat. Taken to extremes, ethnocentrism creates a culture of fear that rationalizes infliction of harm on out-groups, and positively intercorrelates with aggression, distrust and selfishness.

vi. Hostility

“Hostility” is the perception that others hold highly negative images of, and have strongly negative intentions toward, one’s self or group. Hostility is, in some sense, an assessment of the degree of distrust operant in the calculus of external actors. The greater the perception of hostility, the less likely a decisionmaker will be to recognize disconfirming information and the more likely s/he will be to perceive external actors as aggressive, to escalate threats, and to meet perceived aggression with force. Although heightened perceptions of hostility may correspond to empirical realities, most individuals can distinguish “immediate and genuinely hostile out-groups” without “detecting hostility

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203 See WILLIAM GRAHAM SUMNER, FOLKWAYS 12-13 (describing egocentrism as an in-group tendency to “nourish its own pride and vanity, boast [i]tself superior, exalt[ i]tself divinities, and look[ i]tself contempt on outsiders.”).

204 For a discussion of ongoing research, see E.J. Gil-White, Are Ethnic Groups Biological “Species” to the Human Brain?: Essentialism in Our Cognition of Some Social Categories, 42 CURR. ANTHRO. 515 (2001).

205 CHITTICK, supra note 112, at 52.

206 See VOLKAN, supra note 140, at 119-21 (describing the process whereby ethnic or cultural difference is translated into enemy status in the minds of ethnocentrics); SEARS ET AL., supra note 79, at 585 (“Symbolic threats arise from intergroup differences[,]”). For the ethnocentric CEO, the perception that shareholders or regulators are “out groups” can create the perception of threat and the need to defend against, or defeat, the threat.

207 POST, supra note 83, at 200.

208 See, e.g., SANDOLE, supra note 147, at 111 (linking ethnocentrism and aggression against out-groups).

209 OFFERMAN-ZUCKERBERG, supra note 131, at 277 (aggression); POST, supra note 83, at 200 (distrust).

210 SEARS ET AL., supra note 79, at 161 (identifying the opposite of ethnocentrism as “altruism”).

211 FARRELL & SMITH, supra note 189, at 16.

212 FALKOWSKI, supra note 97, at 295.

213 See SEARS ET AL., supra note 87, at 265 (theorizing that high levels of hostility correlate with the presumption of the “inherent bad faith” and aggressiveness of other actors and the tendency to cast outsiders as “enemies”).

214 See POST & ROBINS, supra note 191, at 26 (explaining that some individuals “lack the basic social skill of reacting to a provocation by either ignoring it or meeting the level of provocation” and instead “meet hostility with greater hostility”).
Clinically hostile individuals, however, are caught in a “siege mentality” that persists independently of reason. Hostility is intercorrelated with distrust, aggression, and patriotism.

vii. Machiavellianism

“Machiavellianism” is a set of values that denies the relevance of morality and embraces deception, stealth, and manipulation in the pursuit and maintenance of power. The Machiavellian is “completely ruthless,” devious, and utterly amoral; neither norms nor laws stand in his way.

Machiavellianism positively intercorrelates with hostility, ethnocentrism, narcissism, distrust, amoralism, selfishness, and lack of empathy.

viii. Lack of Empathy

Empathy is the trait defined as the “projection of one’s own personality into the personality of another in order to understand him better” and the “ability to share in another’s emotions or feelings.” Empathy disposes an individual to seek out the views, interests, and values of others, ameliorate self-interest, and consider the consequences of his decisions for others. “Lack of empathy” is the incapacity to form accurate perceptions and judgments of others and inflexibility in adapting to incoming stimuli; individuals who lack empathy are more likely to disregard the concerns and interests of others. Lack of empathy positively intercorrelates with aggression, distrust, and hostility.

ix. Selfishness

Altruism is the value placed upon aiding others despite risks and costs and without expectation of external reward. The paradigmatic example is the self-sacrifice of the soldier who saves his comrades from certain death by throwing himself upon a grenade in their midst, absorbing the blow but ensuring his

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215 Id. at 57.
216 See McGowan & Shapiro, supra note 88, at 53-60 (postulating correlation between hostility and violence).
219 Glad, supra note 197, at 33. “Passive resistance” can be regarded as a constituent of Machiavellianism to the extent that it directs individuals who possess this trait to engage in the “unconscious duplicity” of creating the illusion of commitment to a group or team while simultaneously “working the system to fulfill their own agendas” and “disguising the contradiction between their public and private personas.” Dötlích & Cairo, supra note 81, at 104-05.
220 See RAYMOND ARON, POLITICS AND HISTORY (M.B. Conant trans. 1995) (defining Machiavellianism as the sacrifice of morality to expedience).
221 WEBSTER’S NEW WORLD DICTIONARY 458 (2nd College Ed. 1984).
222 SEARS ET AL., supra note 79, at 266.
223 A lack of empathy is a common characteristic of criminals. See Gandossy & Sonnenfeld, in Gandossy & Sonnenfeld, supra note 2, at 1 (writing that if there was any fear of detection or punishment [in the minds of corporate wrongdoers], “it was trumped by their desire to boost their own personal fortunes, with absolutely no regard for others.”).
224 VOLKAN, supra 140, at 121. Some personality theorists describe a lack of empathy as part of the “melodramatic” personality in which an individual is the “center of the universe” and believes that others' points of view, interests, and needs can be discounted. See Dötlích & Cairo, supra note 81, at 14-20.
225 ELMS, supra note 115, at 130.
own demise.227 “Selfishness” is the antithesis of altruism and positively intercorrelates with lack of empathy, low self-esteem, ethnocentrism, and authoritarianism.228

xi. Hostility: Summary and Operationalization

The ideal-typic hostile is a self-absorbed, delusional, amoral individual who is deeply distrustful and suspicious of others and sees threats lurking everywhere. S/he bears an animus toward humanity that is mitigated only in regard to persons of his or her own group, and s/he is prepared to do anything and everything to defeat the omnipresent threats posed by outgroups about whom s/he knows and cares little.

d. Adventurism

“Adventurism” consists of seven subconstructs—risk tolerance, internal locus of control, impulsivity, anxiety, optimism, stress, and maleness—that tap intercorrelated beliefs, values, images, attitudes, and traits regarding tolerance of uncertainty. The ideal-typic adventurist scores high, indicating the presence in his personality profile to an extent significantly greater than average on each subconstruct.

i. Tolerance of Risk

Uncertainty, or risk, is an immutable characteristic of the universe, and individuals vary in their tolerance for it.229 Several theories posit that certain individuals are cognitively disposed to greater tolerance of risk than are others and that high-stakes decision problems in particular are most likely to promote risk-taking behaviors.230 “Tolerance of risk” is a measurement of the degree to which an individual will routinely choose courses of action that, while they may offer the prospect of gains, carry with them significant possibilities of injury, damage, or loss. Risk-tolerant individuals are more likely to take chances and expose themselves and their firms to danger than are risk-averse individuals, who seek the decision that satisfies minimal policy objectives with the least possibility for loss.231 The most risk-tolerant individuals forgo easy gains in pursuit of quixotic objectives.232 Tolerance of risk is positively intercorrelated with impulsivity and internal locus of control.233

ii. Internal Locus of Control


228 OFFERMAN-ZUCKERBERG, supra note 131, at 291-96 (empathy, self-esteem); SEARS ET AL., supra note 79, at 161 (ethnocentrism, authoritarianism).


230 Id. at 368-69.

231 See Harvard Business Review on Corporate Ethics 63 (2003) (indicating a positive correlation between tolerance for risk and illegal behavior). In contrast, some theorists postulate that an overabundance of caution can lead to decisional failures when it induces procrastination, overanalysis, anxiety, and increased stress. See, e.g., DOTLICH & CAIRO, supra note 81, at 40-50.

232 SEARS ET AL., supra note 79.

“Internal locus of control” is the belief that one can exert positive influence over the world to bring about a future favorable result. For individuals whose locus of control is external, the belief that their destiny is preordained leads to decisional paralysis. Individuals with an internal locus of control attribute causality of their behavior to themselves (Will) rather than the external world (Fate) and are more likely to challenge environmental constraints and less likely to remain passive or compromise.

iii. Impulsivity

“Impulsivity” is the trait characterized by the inability to self-modulate sensory input, inhibit sensation-seeking behavior, or consider the consequences of actions. Impulsives frequently make suboptimal decisions because they do not allow themselves time to think clearly and deliberately, seek advice, or employ moral reasoning. Impulsivity is negatively intercorrelated with introversion.

iv. Anxiety

“Anxiety” is the trait that makes an individual particularly prone to evaluate stimuli as dangerous and to experience concomitant feelings of worry, distress, and panic. Anxious individuals are more likely than non-anxious individuals to perceive and react to threats and to have greater difficulty in relaxing.

v. Optimism

“Optimism” is the belief that the future will produce preferred outcomes and that it is prudent to expect the best of people and events. Optimists are disposed to underestimate risk and overestimate their capabilities. Optimism positively intercorrelates with tolerance of risk and internal locus of control.

vi. Stress

“Stress” is the aggregate response produced in unconscious adaptation to environmental stimuli. Individuals vary in their perceptions of stress and in their ability to preserve cognitive functioning as stressors mount, yet all experience degradation in their ability to generate alternatives and choose optimal courses of action under threats to core values and interests. The more pronounced the stress, the less likely the decisionmaker is to generate alternatives and the more likely s/he is to elect high-risk options.

vii. Male Sex

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234 MAGNUSSON, supra note 89, at 186-88 (contrasting internal and external locus of control and associated beliefs).
237 See Badaracco, supra note 155, at 1-3. Impulsivity is sometimes labeled “volatility” in the literature and is described as a general unpredictability or incapacity to self-regulate that creates disequilibrium in others and thereby diminishes the value of the teams a volatile individual assembles and leads. DOTLICH & CAIRO, supra note 81, at 28-35.
238 MAGNUSSON, supra note 89, at 132.
240 ROBERT WOHLSTETTER.
241 FALKOWSKI, supra note 97, at 103.
243 McDERMOTT, supra note 232, at 4.
Some aspects of personality may be sex-specific. Although sex-role differences may be socially constructed rather than biologically determined by testosterone, men are more likely to be competitive, aggressive, ethnocentric, Machiavellian, distrustful, ambitious, and lack empathy.

viii. Summary and Operationalization: Adventurism

The ideal-typic adventurist is an impulsive gambler so optimistic he can assert his will that he risks all for the sheer thrill of pursuing victory no matter how small or unlikely. He resolves tremendous anxiety and stress by trusting blindly and, in effect, rolling the dice.

3. Dependent Variables: Decisions and Outcomes Regarding CLC
   a. Introduction: Corporate Law and Major Subregimes

   The current pretheory of CLC regards the presence or absence of the personality constructs of militarism, anomism, hostility, and adventurism in the personalities of CEOs as IVs that determine firm compliance with corporate law. The theory treats these decisions and the resulting consequences as DVs.

   “Corporate law” is a complex amalgam of federal and State laws, rules crafted by regulatory agencies, and judicial and agency opinions interpreting and applying these sources to the governance of firms. Various substantive subregimes specify obligations in issue-areas ranging from the formation and dissolution of commercial entities; contracts; rights and duties of shareholders, managers, and boards of directors; mergers and acquisitions; free competition and trade; securities and public reporting of information; taxation; employment; industrial espionage; and environmental protection. Seven fundamental sub-regimes of corporate law serve as the foundation for the study of CLC:
   (a) financial accounting and reporting;
   (b) securities regulations
   (c) market behavior;
   (d) corrupt practices;
   (e) labor law;
   (f) environmental protection and social responsibility; and
   (g) cooperation with regulatory authorities in implementation and enforcement.

   b. Dependent Variables (“DVs”)

   Fifteen DVs are organized around and tap compliance with the seven legal subregimes:

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245 CHRISTOPHER M. BYRON, TESTOSTERONE, INC.: TALES O F CEOs GONE WILD 135 (2002) (observing male CEOs with poor records of CLC); OFFERMAN-ZUCKERBERG, supra note 131, at 384 (suggesting women may be, by virtue of a biologically determined function as “givers of life,” more invested in nurturing offspring, more committed to preserving peace to protect those offspring, and thus more likely to “help bring about human harmony on earth”)

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(1) whether the firm violates financial regulations through fraudulent accounting practices, such as the creation of fictional business entities, failing to record material transactions, stating fictitious or fraudulent earnings, delaying or prepaying invoices to meet budgetary goals, booking operating expenses as capital expenses, intentional misclassification of transactions as to accounts, departments, or periods to misrepresent earnings, treating stock options or other liabilities as undisclosed or off-balance sheet entries or footnotes rather than as expenses, misstating option vesting dates to artificially inflate value, or any other false, artificial, or intentionally misleading statements of a firm’s financial condition [hereinafter “violate financial regulations”]; (subregime a);

(2) whether the firm engages in misconduct by undisclosed insider trading in the firm’s securities or in other firms’ securities, by permitting trading by firm employees in puts and calls of the firm’s stock or short sales of the firm’s stock, or by illegally disclosing confidential information about movement in the price of the firm’s shares [hereinafter “violate securities regulations”]; (subregime b)

246 The Generally Accepted Accounting Principles [“GAAP”] prescribe detailed rules and regulations to which public corporations must adhere in the recording and reporting of financial information. See http://www.fasab.gov/currenttext.html. Despite the comprehensive regulatory regime imposed by GAAP, managers have considerable latitude in the financial assumptions and accounting decisions they make. A former SEC Chairman called this “the gray area between legitimacy and outright fraud.” GAAP requires companies to depreciate the cost of a piece of equipment over its useful life, for example, but allows companies to decide what lifetime estimates to use—and to change depreciation schedules when they believe they have more accurate estimates. An airline’s decision to spread the cost of a multimillion dollar jet over a longer schedule means lower expenses during each year, leading to higher net income during those years. This is but one way companies manage their financial reporting through special handling of expenses and revenues. This Article does not consider good-faith interpretations of GAAP subsequently determined by regulators to be violations of financial regulations; only manifestly unlawful attempts to deliberately and materially deceive investors and regulators are treated as violations of law, specifically 15 U.S.C. Section 78, 18 U.S.C. Sections 2 and 1351 et seq., and C.F.R. 240.13b2-2. For a discussion of ethical issues in accounting, see Mary Beth Armstrong, Ethical Issues in Accounting, in THE BLACKWELL GUIDE TO BUSINESS ETHICS (Norman E. Bowie, ed., 2002), 145-64.

247 See WOOD, supra note 1, at 52-53 (“Legitimate special purpose entities are used to finance research-and-development ventures and other business activities that need not be reported on the balance sheet. However, Enron and other companies apparently used special-purpose entities as a way to boost earnings.”).

248 See id. at 50 (stating that nearly 20% of earnings misstatements from 1995 to 1999 involved entirely fictitious transactions); see also id. at 35 (reporting that 17% of CEOs exerted pressure to have financial results misrepresented in violation of GAAP over the past 5 years and that 5% had themselves done so). Numerous improper financial accounting practices designed to mislead investors have been identified by the SEC, including reporting merchandise on consignment as sales, booking revenue on purchases for which customers are not required to pay, boosting sales by weakening credit standards without allowing for more bad debts or returns, booking rebates from suppliers as revenue when these funds are linked to future required purchases, and booking proceeds from a loan or an investment as revenue. See U.S. Securities and Exchange Commission, Selected Accounting and Auditing Enforcement Releases, available at http://www.sec.gov/divisions/enforce/fractions.shtml.

249 The “matching principle” requires income earned and costs incurred to be recorded in the same period. See Federal Accounting Standards Board, Generally Accepted Accounting Principles, SFFAS 31—Accounting for Fiduciary Activities, available at http://www.fasab.gov/pdffiles/sffas_31.pdf.

250 Operating expenses are short-term expenses related to daily operations which, according to GAAP, are to be deducted from current income. Id. Capital expenses are major expenses such as purchases of machinery and buildings or product development costs which can be depreciated over a longer period and thus do not have as significant an impact on current income. Id. SOX provides heightened penalties for this deceptive practice. See SOX, supra note 7, at Section 409. For a comprehensive discussion of ethical and legal issues that attend financial regulation, see Ronald F. Duska & James J. Clarke, Ethical Issues in Financial Services, in BLACKWELL GUIDE TO BUSINESS ETHICS (Norman E. Bowie, ed. 2002), at 206-224.


(3) whether the firm lavishes senior managers with compensation, bonuses, or perquisites that are indefensible in reference to the market and unsupported by sound business judgment253 [hereinafter “inflate compensation”] (subregime a);

(4) whether the firm engages in competition in violation of antitrust laws, including collusion with other firms to allocate territories or markets or customers or to fix price or production levels to drive competitors from the market,254 acquiring trade secrets or other privileged information through deceit or misrepresentation or in any other way constitutive of industrial espionage,255 dumping,256 rigging of bids, or in any other way manipulating the free market [hereinafter “manipulate the market”] (subregime b);

(5) whether the firm engages in corrupt business practices by accepting or offering cash, services, or gifts of greater than nominal value to customers, suppliers, or government officials in order to influence business decisions [hereinafter “engage in bribery”] (subregime c);

(6) whether the firm allows corporate funds, facilities, or employee services to be used to support political candidates or parties in violation of state or federal law, or requires employees to make personal contributions to political candidates or PACs as a condition of employment [hereinafter “buy political influence”]; (subregime d)258

(7) whether the firm is in breach of Federal, State, or local employment laws, including the Civil Rights Acts, the Age Discrimination in Employment Act, ERISA, NLRA, human rights provisions, and whistleblowing statutes designed to protect employees who report noncompliance259 [hereinafter “violate labor law”] (subregime e);

(8) whether the firm is deliberately noncompliant in its adherence to domestic and international laws and regulations governing environmental protection260 [hereinafter “violate environmental standards”] (subregime f);

253 The “business judgment rule” creates a strong presumption in favor of a corporation’s board of directors against liability for breach of duties of care, loyalty, and good faith to the shareholders. See, e.g., Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984).

254 See 15 U.S.C. Section 1 (2000) (providing that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . . is declared to be illegal”).


256 See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, vol. 6 (1994), 33 I.L.M. 1125 (1994) (prohibiting introduction of a product into a market at a price less than its market value in order to drive out local producers).


258 Political contributions from employees are not presumptively unlawful, but must be made in compliance with applicable State and federal laws. For example, under Federal law, executive branch employees are allowed to make political contributions to presidential re-election campaigns. See 18 U.S.C. Section 603 (1993). However, the presumption here is that the most elite rule breakers are also those most likely to cultivate the rich and the powerful, and in particular those who make and interpret the laws, and that they will do so in disregard of any laws governing such contributions.

259 See, e.g., Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (1964), at Title VII (prohibiting discrimination in employment on the basis of race, color, sex, religion, or national origin) (codified at 42 U.S.C. Section 2000e et seq.); Age Discrimination in Employment Act, Pub. L. No. 90-202, 81 Stat. 602 (Dec. 15, 1967), codified at 29 U.S.C. Section 621-634 (1967) (prohibiting discrimination against persons 40 years of age or older in employment); Employee Retirement Income Security Act, 29 U.S.C. Sections 1001-1191(c) (protecting employees in the security of their retirement income); National Labor Relations Act, 29 U.S.C. Sections 151-169 (1935) (guaranteeing the right to some employees to unionize to increase bargaining power, and imposing the duty on certain employers to negotiate in good faith over the terms and conditions of employment). Other legal provisions in the broader corporate legal regime are invoked by the DV “violate employee rights,” but these are the provisions most often violated by employers. For a comprehensive discussion of legal and ethical issues in human resources, see Daryl Koehn, Ethical Issues in Human Resources, in BLACKWELL GUIDE TO BUSINESS ETHICS (Norman A. Bowie ed. 2002), at 225-43.

260 Environmental law is system of complex and interlocking statutes, caselaw, treaties, regulations, and administrative policies aimed toward the protection of the natural environment against despoilment by human activities. It is too broad to describe in depth. For operationalization in this Article, “violate environmental standards” means the firm has, more than the national average of firms of similar size, industry, and market capitalization, been successfully sued civilly or criminally in regard by either private parties, the States, or the federal government in regard to substantive or procedural violations of laws or regulations that protect against environmental harm real or potential. A ready example of such a violation might be Exxon and the litigation over oil spillage from its Valdez supertanker. See Baker et al. v. Exxon Mobil Corp., No. 04-35182, CV-89-00095-HRH (9th Cir. 2007) (upholding punitive damages against Exxon for the grounding of the Exxon Valdez tanker) (citing In re The
(9) whether the firm resists regulatory authorities in the implementation and enforcement of corporate law by failing to (i) enact, implement, and train employees in a robust and comprehensive CMP; (ii) employ a dedicated corporate legal compliance officer with substantial independent oversight authority, (iii) subject senior management to the same obligations as other employees; (iv) enable confidential reporting of illegality by protecting whistleblowers; (v) retain, rather than destroy, business records if litigation, investigation, or audit is pending or imminent, and (vi) make reasonable efforts to provide accurate and complete information to auditors and regulatory agencies in connection with government investigations [hereinafter “obstruct justice”] (subregime g);

(10) whether, prior to discovery of substantial and systematic violations of law, the firm or its CEO have a reputation with key stakeholders—employees, investors, lenders, customers, vendors, local communities, and regulators—for unethical or unlawful business practices [hereinafter “earn bad reputation”] (subregimes a-g);

(11) whether, as a result of having engaged in any of the practices outlined in (1)-(9) supra the firm has had to restate earnings [hereinafter “restate earnings”] (subregimes a-g);

(12) whether, as a result of having engaged in any of the illegal practices outlined in (1)-(10) supra the firm or its CEO are subpoenaed to testify before Congress [hereinafter “subpoenaed by Congress”] (subregimes a-g);

(13) whether, as a result of having engaged in any illegal practice outlined in (1)-(10) supra the firm or its CEO have been subjected to civil or criminal penalties [hereinafter “incur legal penalty”] (subregimes a-g);

(14) whether, as a result of having engaged in any of the illegal practices outlined in (1)-(10) supra the firm has had to declare bankruptcy or has otherwise been liquidated [hereinafter “suffer legal death”] (subregimes a-g);

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Simply drafting a code, without subsequent implementation, can actually enhance the penalties to which a firm is subject for violations of corporate law. See 2006 U.S. Federal Sentencing Guideline Manual, Ch. 7, Section B2.1 (adjusting sentence based on degree of CMP implementation), at http://www.ussc.gov/2006guid/TABCON06.htm.

The acid test of a CMP is whether those at the top are as obliged as those at the bottom of the firm hierarchy. In dysfunctional firms, “[p]owerful people who are driven to turn their domains into empires begin to feel that they are above the rules, that what applies to ordinary people does not apply to them, and they can use their power to suppress criticism and force their will on others, whether employees, customers, suppliers, or external watchdogs.” Rosabeth Moss Kanter, How Leaders Restore Confidence, in Gandossy & Sonnenfeld, supra note 2, at 41. In such firms, illegality committed by senior management has a corrosive effect on the organization: “[i]mperial CEOs[,] . . . lacking self-scrutiny, accountability, dialogue, and dissent . . . create circumstances in which the people below them feel so desperate to please the domineering boss that they cut corners, hide information, and make deals with the devil.” Id.

Because firms often retaliate against those who report legal violations, the act of reporting such violations, known as whistleblowing, requires tremendous courage. See WOOD, supra note 1, at 63 (noting that “[u]nder the intense pressure, whistleblowers sometimes lose their nerve, their family and friends, their professional standing, and even their health[,]”). For information about existing laws that protect whistleblowers, see http://employeeissues.com/whistleblower_laws.htm.

The dependent variable “obstruct justice” contemplates situations where firms resist enforcement or commit perjury by providing false information to government regulators and investigators involved in examining the firm’s compliance, principally with securities and financial regulations. See 18 U.S.C. Section 1503 (criminalizing the obstruction of justice); 18 U.S.C. Section 1621 (criminalizing the knowing misrepresentation of a material fact when under a duty to disclose the truth).

A reputation for ethical business practices is difficult to operationalize and assess, yet certain firms are widely regarded as having earned such a reputation. Johnson & Johnson, makers of Tylenol, voluntarily recalled the product in 1982 after reports of deaths linked to tampered bottles because firm managers believe it was ethically necessary and that “more is expected of us than other companies.” In contrast, tobacco firms have earned bad reputations for marketing to children and for obstructing justice by destroying internal evidence probative in meeting plaintiffs’ burden of proof that smoking causes cancer as a matter of law. See Shankar Vedantam, Big Tobacco Accused of Destroying Evidence, WASH. POST, Dec. 7, 2001. The subject of corporate reputation and its value to business is considerably more complex than presented herein; for an in-depth discussion, see Christopher W. Morros, What is this Thing Called Reputation?, 9 BUS. ETHICS, Q. 87 (1999).

A Congressional subpoena is a formal order from Congress requiring a named person to appear before it to testify on matters within the jurisdiction of the federal legislature, including the governance of public firms engaged in interstate commerce and compliance with applicable federal statutes. Its origin is in the legislative power to discharge its duties under Article I of the U.S. Constitution. Quinn v. United States, 349 U.S. 156, 161 (1955). Persons summoned testify after having sworn an oath of truthfulness, and if found to have violated this oath can be subjected to penalties including fines and imprisonment. Failure to appear can result in contempt of Congress, punishable by one year in prison and $1000 fine. 2 U.S.C. § 192.
whether, after being detected and penalized for wrongdoing, the CEO expresses the belief s/he did nothing wrong, justifies decisions, blames others, declines to express remorse or make apologies, and neglects to offer restitution [hereinafter “deny wrongdoing and blame others”] subregimes a-g).

b. operationalization

Many of the statutes, rules, and regulations that together constitute the corpus of the corporate legal regime are sufficiently complex and susceptible to interpretation that the legality or illegality of any particular business decision may be difficult, even for trained legal counsel, to discern. Simply put, a gray area between what is clearly permitted and what is manifestly unlawful complicates the operationalization of the lawfulness of business practices and decisions, particularly at the margins. Consequently, although corporate legal questions and CMPs can be anticipated and constructed a priori and in the abstract, CLC—as the subject of theory and of enforcement action—is almost invariably appraised in light of, and following, specific applications in practice. Moreover, many firm decisions are shielded from external scrutiny and thus emerge as subjects for academic or prosecutorial investigation only after they are framed by self-interested parties as either lawful or unlawful. Operationalizing particular CLC decisions requires subjective judgments and interpretations, and it can be difficult to adjudge a particular CLC decision as illegal ipso facto, such as proffering a gift of relatively modest material value to a long-term customer in a culture that embraces gift-giving as constitutive of its business identity. On the other hand, certain CLC decisions—the statement of earnings from a non-existent business entity or the shredding of documents to obstruct justice—are manifestly unlawful. Most cases fall between these polar extremes and must be judged casuistically. Subject to these caveats, it is nevertheless feasible to establish associative linkages between personality profiles and CLC outcomes. Accordingly, each DV will be dichotomized and scored as either “yes” for the presence of the outcome or “no” for its absence with rationales given for scoring decisions.

c. preliminary hypotheses and associative linkages

Linkages between IVs and DVs proposed at this juncture as preliminary hypotheses [“PHs”] are established by positing that the more each and every IV finds expression in the personality of a given decisionmaker, the more likely will be the occurrence of each DV. In other words, the more militaristic the decisionmaker, the more likely s/he will be to manipulate or misrepresent the financial performance of his/her firm, and the more likely to violate securities regulations, accept inflated compensation, and so on for each DV. The same relationship holds for each IV: thus, the more anomistic, hostile, and adventurist the decisionmaker, the more likely s/he will be to reject compliance with law as measured by each of the fifteen DVs. These sixty hypothesized relationships are expressed in the following form, e.g., “1. The more militaristic the CEO the more likely s/he will be to violate financial regulations.”

III. Personality and CLC: Heuristic Testing of the Theory
A. Data

The nature of the inquiry is such that there is bias in favor of CEOs whose decisionmaking resulted in violations of CLC. Scandal, and not successful governance, sells. We know much less about firms that have better compliance records than did Enron, WorldCom, and other certified corporate miscreants. However, at this stage of theory development it is infeasible to attempt to do more than sample some of the most accessible data, which necessitates a focus upon corporate scandals and the individual decisionmakers who initiated them. While recognizing that the universe of firms and CEOs is much broader than what is possible to examine in this phase, and that conclusions must remain contingent and tentative pending further research, this study employs heuristic testing which relies upon analysis of available psychobiographical data concerning prominent CEOs who made verifiable decisions with regard to CLC. Availability of data restricts analysis to ten CEOs and the ten firms they managed.

1. Enron

   a. CEO Jeffrey Skilling

      i. IVs: scores on personality constructs

         a. militarism

   Although shyness, loneliness, and poor self-esteem remain from an emotionally “tortured” childhood, Jeffrey Skilling (“JS”) is an “incandescently brilliant” person who acted out his grand ambition to “change the world” as CEO of Enron. For JS, deregulation of the natural gas industry was a superior philosophy of government and markets that required him to institute “brutal competition” inside and outside Enron to “make the world a fairer place.” To achieve what was at least as much an ideological crusade as a business goal required merely the application of brains: for JS, the world has a right and wrong answer to every question, and intelligence leads ineluctably to the proper solution.

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267 The universe of corporate wrongdoers is not “fully excavated”: the future will likely reveal that firms and CEOs regarded today as good corporate citizens are in fact guilty of serious legal violations. PRINS, supra note 17, at 21.
268 Although Kenneth Lay was “Enron’s founding father,” Lay ceded his role as de facto CEO to JS as early as 1997, and those familiar with the corporate history of Enron, and in particular its failure to comply with its legal obligations, insist that “[m]ore than anyone else, Skilling . . . personified the Enron scandal.” McLEAN & ELKIND, supra note 6, at xix. Clearly, Andy Fastow—JS’s choice as CFO—bears much responsibility as well, as does Lay. However, because of the remarkable similarity in personality profiles, because ultimate accountability during the relevant period rests on JS, and because at this stage of theory development it is necessary to be modest in reach, JS alone is the decisionmaker subject here to personality analysis.
269 See id. at 105 (describing JS as a “nerd” insecure about his body image and appearance).
270 Id. at 28, 29.
271 See LOREN FOX, ENRON: THE RISE AND FALL 35 (2003) (reporting that JS “wanted to see himself recognized by his peers as someone . . . who had changed the world.”).
272 McLEAN & ELKIND, supra note 6, at 216.
273 Id. at 58.
However, colleagues, noting JS’s ambition and zeal, were quick to identify his very enlarged self-confidence, saying privately that he was “[s]ometimes wrong, but never in doubt.”

His intelligence, coupled with enormous risk propensity, fostered arrogance and compromised creative dissent:

[Skilling] used his brainpower not just to persuade but to intimidate . . . [He] had dangerous blind spots. His management skills were appalling, in large part because he didn’t really understand people. He expected people to behave according to the imperatives of pure intellectual logic, but of course nobody does that . . . Skilling also had a tendency to oversimplify, and he largely disregarded—indeed, he had an active distaste for—the messy details involved in executing a plan. What thrilled Skilling, always, was the intellectual purity of an idea, not the translation of that idea into reality . . . Over time his arrogance hardened, and he became so sure that he was the smartest person in the room that anyone who disagreed with him was summarily dismissed as just not bright enough to “get it.”

Moreover, although JS publicly presented himself as an ideological purist committed to deregulation and to creating a “well-oiled machine that generated steadily growing profits[,]” the difference between this and the Enron JS actually built and managed was vast:

It is utterly beyond question that in reshaping Enron[,] Skilling turned it into a place where financial deception became almost inevitable. In no small part, that’s because there were so many other kinds of deception taking place. Skilling created a freewheeling culture that he touted as innovative—but didn’t rein in the excesses that came with it. He preached the gospel of intellectual capital, claiming that it was critically important to give smart people the resources and freedom to let creativity flourish, but looked the other way when this became a license for wastefulness and self-indulgence. He bragged about Enron’s sophisticated controls but undermined them at every turn. He was openly scornful of steady, asset-based businesses that grew slowly but generated cash—then swept them away to make room for a series of ever-bigger, ever-riskier bets that brought in almost no cash at all. Worst of all, Skilling created impossible expectations and unbearable internal pressures by holding Enron out to Wall Street as something that it simply wasn’t.

Whether out of cynicism or blindness, JS still clings to his idealized notion of Enron.

Furthermore, although JS was intensely loyal to his inner circle of subordinates, rewarding them with enormous cash and other perquisites, he did not foster loyalty or cooperation. Teamwork was disdained, as were friendships, and rewards were granted solely on the basis of individual performance. JS deliberately set employees against each other and promoted internal conflict in the belief that disharmony and ruthless competition fostered innovation and productivity. In his relations with peers, and in particular his rival Rebecca Mark, JS demonstrated the same tendencies, fighting a
“guerrilla war” and employing devious tactics to undermine her and gain at her expense but distancing himself from others when not battling them for power and status. JS was aloof and uncomfortable, preferring his inner circle or even solitary trips to bars over the ceremonial aspects of life as a CEO.

Although Enron “did strive for diversity” and welcome employees without regard to race, religion, or other protected statuses, it was widely known as a “boys’ club” under JS, where men earned more than female peers who performed the same jobs as well, and where sexual harassment was tolerated, even encouraged. JS’s Enron was a “hard place for a woman to work. It was like a boys’ locker room.” Nothing in the literature addresses whether JS was a nationalist, yet his ideological and dogmatic commitment to deregulation and competition, favorable attitude toward the use of power, aggressive tactics in dealing with peers, authoritarian style of management, hypercompetitive and ambitious approach to business, and his natural introversion, isolationism, and low self-esteem result in a score of high on all but one of the subconstructs of militarism. JS is thus scored a militarist.

b. anomism

For JS, law and rules were something to manipulate, and the Enron culture he established encouraged an employee to play by his own rules. According to a former trader,

We all did it. We talked about it openly. It was the school yard we lived in. The energy markets were new, immature, unsupervised. We took pride in getting around the rules. It was a game.

For JS, law was something to be finessed if possible or outright ignored if necessary, and the successful violation of the rules was a matter of personal pride. Indeed, it was a fundamental constituent of Enron culture to be hostile to authority. Moreover, JS personally introduced the concept of mark-to-market accounting, a violation of existing laws, to facilitate earnings growth, and the massive accounting fraud perpetrated by Enron actually stirred his pride:

[Interpreting the [GAAP] . . . has always been more art than science, reliant in no small part on the good faith of those applying them in everyday situations. For very smart people who saw the rules as something to be gotten around, well, it wasn’t all that hard to do—in fact, some former Enron employees argue that the rules themselves provided a road map. And Enron, which prided itself on employing only the very smartest people, took that view further than any company that’s ever...]

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282 Id. at 110.
283 SWARTZ, supra note 279, at 223.
284 FOX, supra note 270, at 87. Enron’s commitment to diversity was likely motivated less by a sense of moral or legal obligation than by a profit motive: at Enron, “diversity was . . . a product of the emphasis on results. Enron cared only about performance, so it didn’t matter if an employee had a nose ring or green hair, or was homosexual.” Id.
285 See id. at 93 (“Despite the company’s attempts to hire a mix of men and women, Enron had within it a boys’ club typical of trading rooms that reveled in rowdy times involving members of the opposite sex and strippers. Not surprisingly, sexual hi-jinks resulted in rumored sexual harassment complaints from some female employees.”). Pictures of female employees were posted on a “hottie board” and women who complained found threatening notes on their cars. SWARTZ, supra note 288, at 79.
286 McLEAN & ELKIND, supra note 6, at 123.
287 Id. at 275.
288 SWARTZ, supra note 279, at 274.
289 McLEAN & ELKIND, supra note 6, at 39 (noting that JS urged mark-to-market accounting on Enron in order to show profits even before the underlying assets had been sold and before their costs had been recognized).
existed. “We tried to aggressively use the literature to our advantage,” admits a former Enron accountant. “All the rules create all these opportunities. We got to where we did because we exploited all that weakness.”

Here’s how another former employee describes the process: “Say you have a dog, but you need to create a duck on the financial statements. Fortunately, there are specific accounting rules for what constitutes a duck: yellow feet, white covering, orange beak. So you take the dog and paint its feet yellow and its fur white and you paste an orange plastic beak on its nose, and then you say to your accountants, ‘This is a duck! Don’t you agree that it’s a duck?’ And the accountants say, ‘Yes, according to the rules, this is a duck.’ Everybody knows that it’s a dog, not a duck, but that doesn’t matter, because you’ve met the rules for calling it a duck.” And there was the ultimate problem. With Enron’s financial team working feverishly to exploit the rules, there was no one willing to say that the duck was still a dog. Because they could come up with plausible rationales for why a given structure was still technically valid, they believed they were on the right side of the law. They were, in fact, proud of what they were doing.290

JS is hostile to authority as evidenced by his “harshly libertarian view of business and markets” and his belief that markets, and not laws backed by government authority, were the only legitimate forms of social and moral regulation.291 Moreover, JS was “remarkably disdainful” of Enron policies, believing himself above and beyond regulation. Under JS, “We had the authority to do anything and everything we wanted to do,” recalls one [JS employee]. “We thumbed our noses at any personnel policies that the rest of Enron had.”292 JS, in effect, wanted not only to deregulate the gas market; he wanted to “deregulate himself and his people from the rest of the company.”293 Furthermore, JS values little but money. Harvard classmates recall him expressing willingness to manufacture a product that might harm consumers on the sole ground that it was profitable, and fellow Enron employees recall JS saying on occasion, “I’ve thought about this a lot, and all that matters is money . . . This touchy-feel stuff isn’t as important as cash.”294 Finally, JS's lack of formal legal training did not aid his unsuccessful criminal defense.

Thus, JS scores high on all subconstructs of anomism and is scored an anomist.

c. hostility

To JS, potential rivals lurked in the halls of Enron, and he had to be on guard to protect his position against rivals if he was to continue “doing the Lord’s work” in creating a new kind of energy company.295 JS believes he is a special intellect tasked to do special work, and he has no patience for those whom he believes are his intellectual inferiors. He believes that human motivation is triggered strictly by material considerations, and he is disinterested in others unless they are instrumental in advancing his interests.296 JS is not ethnocentric—he dislikes most people regardless of their race,

290 McLEAN & ELKIND, supra note 6, at 185.
291 See SWARTZ, supra note 279, at 37 (describing JS as “hostile to the established order”).
292 McLEAN & ELKIND, supra note 6, at 57.
293 SWARTZ, supra note 279, at 59.
294 Id. at 43, 55.
295 Id. at 71.
296 See id. at 55 (JS . . . ‘used to say that he liked to hire ‘guys with spikes.’ By this, he meant that if an executive had a singular narrow talent—a spike—Skilling was willing to bring him into Enron and lavish him with money, no matter what his
religion, or ethnicity—yet he tends toward sexism, and he is decidedly hostile: in a conference call with analysts in 2000, when pressed for information by an analyst who suggested that Enron was “the only financial institution that cannot produce a balance sheet or cash-flow with their earnings,” JS lashed out and called the analyst an “asshole,” a position from which he did not retreat even when implored to. Finally, when Enron began to implode, JS sold vast shares of stock, all the while falsely assuring shareholders of the financial soundness of Enron. JS has expressed no concern that reliance on his deceptive assurances cost thousands of shareholders their life-savings. In sum, JS scores high on all subconstructs of hostility save for ethnocentrism, and thus is scored a hostile decisionmaker.

d. adventurism

For JS, “should” and “would” are “pretty much the same,” and he believes that he can accomplish objectives through force of will, no matter how risky or unlikely these objectives. Perhaps the most obvious personality characteristic of JS, evident even as a child, is his appetite for large risks:

For all his analytical abilities, he was a gambler at heart and had been from an early age. He always assumed that he could beat the odds. That was Skilling’s most dangerous blind spot of all.

Although at Enron JS claimed to have created a sophisticated risk management unit that allowed Enron to safely and profitably assume more risk than other firms, in fact the unit and its leadership simply pressured deal makers to set “absurdly optimistic assumptions for the complex models that spat out the likelihood of various outcome for a transaction.” In practice, these deals often lost money, and JS simply quit and dashed into other deals that promised excitement, believing that this time he could will risk away. Each year, JS would run NCAA betting pools of over $100,000 which he claimed to be part of an “intellectual exercise designed to teach young traders about risk and reward.”

Risk-seeking behavior did not come without a price: by 2001, many observers believed JS had become depressed and mentally unstable. When an employee almost struck his car in the Enron parking lot, JS gave him the finger, an act completely outside the parameters of what is expected from the CEO of one of the nation’s largest companies; others report spotting him sprawled across numerous seedy bars in

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297 When the COO position opened in 1997 and it appeared that Rebecca Mark might be awarded the job, JS threatened Kenneth Lay that “if that bitch [Rebecca Mark] gets it, I’m outta here.” Id. at 355.
298 Id. at 325-26.
299 JS, a natural misanthrope, “liked to say that he never wanted to be in any business where the customer had to like him.” SWARTZ, supra note 279, at 107.
300 See FOX, supra note 270, at 300.
301 SWARZ, supra note 279, at 27.
302 FOX, supra note 270, at 33 (noting JS performed dangerous stunts as a child and chose dangerous recreation as an adult).
303 Id. at 28-29.
304 Id. at 116.
305 Id. at 215.
bad parts of Houston, drunk. During this period of time, JS was wildly optimistic that the increasingly perilous position of the firm would improve, yet he was privately so anxious he could not sleep, and on more than one occasion he stated that he “hated” his job and was thinking of retirement.

To summarize, JS is a highly risk tolerant, impulsive, anxious man whose overly-optimistic belief in his capacity to manage risk caused him to make poor decisions under great stress. He thus scores as an adventurist on each subconstruct of adventurism.

e. summary of independent variables: Jeffrey Skilling

JS is scored as a militaristic, anomistic, hostile, and adventuristic decisionmaker.

ii. DVs: CLC and Enron

By the late 1990s, Enron had become one of the world’s leading energy companies, with a market capitalization of nearly $74 billion, yet it rose to prominence through systematic illegality perpetrated at the very highest levels of the firm. The “free-for-all” culture established by JS contributed to his decisions, as charged and proven by indictment and conviction, to commit, authorize, or approve illegal accounting measures, creation of special purpose entities designed to hide debt and inflate earnings, fraudulent inflation of the price of the firm’s stock and other acts of securities fraud, money laundering, and other financial and securities crimes. As CEO, JS oversaw the manipulation of energy markets in California by Enron traders who were taught to use the firm’s near-absolute control over information to “force” vulnerable markets and generate monopoly prices on energy contracts. Foreign

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306 Id. at 338.
307 SWARTZ, supra note 270, at 13.
308 Id. at 272.
309 McLEAN & ELKIND, supra note 6, at 338.
310 Enron created over 2800 SPEs to hide its financial conduct from investors and from the SEC. PRINS, supra note 17, at 153.
311 Gandossy & Sonnenfeld, in Gandossy & Sonnenfeld, supra note 2, at xv.
313 FERC found in 2000 that Enron had imposed “unjust and unreasonable” interference with the market in California and that there was ‘clear evidence of market manipulation” on the part of Enron, increasing the price of power and resulting in rolling blackouts. McLEAN AND ELKIND, supra note 6, at 276. In 2000, Enron paid a fine and agreed not to “engage in substantially the same conduct” as it had previously, including market manipulation in California energy. Id. at 269.
governments were bribed to facilitate deals, and politicians and parties were very generously endowed, even by contemporary standards, in order to curry favor.

Moreover, rather than discipline executives whose legal transgressions violated the Enron CMP, JS lavished them with grossly excessive compensation and perquisites, including millions of shares of stock and options. In 2000, even as the financial health of the firm declined precipitously, the top 200 Enron executives earned an average base salary of $720,000, and twenty-six earned over $10 million each. JS’s Enron was not nearly so gracious to all employees: the firm had a decided preference for young over old, and each year the fifteen percent it deemed least productive were terminated. Those who remained were subjected to a vulgar environment in which sexual harassment was common. Worse, whistleblowers with the temerity to alert top management to illegality within the firm were not protected: Sherron Watkins, a senior manager whose efforts to expose violations of law earned her public acclaim for her courage, was subjected to an internal investigation, and Enron’s external legal counsel suggested that one possible response to her claims might be to termination in order to silence and discredit her.

Under JS, Enron was strongly and ideologically resistant to cooperation with regulatory authorities. Although Enron developed a robust and holistic code of ethics to which the firm ostensibly expected all its employees to adhere, JS developed a culture of noncompliance in which employees were rewarded, albeit indirectly, in proportion to their violations of that very code. Employees received no specific training beyond the occasional public platitudes in favor of ethical conduct offered by senior executives, and the firm’s own in-house legal department was at worst a co-conspirator and at best a grossly negligent party. All employees profited from lawbreaking, but senior management hatched the conspiracy and claimed the greatest rewards from noncompliance.

As evidence of its legal violations mounted and its stock price plummeted in 2000, investment banks became concerned about the “reputational risk” involved in “aid[ing and] a bet[ting] Enron income st[atement] manipulation” through the use of SPEs and rumors of the impending implosion of the firm began to circulate. Although JS ordered the restatement of the firm’s earnings in an attempt to mitigate

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314 Gandossy & Sonnenfeld, supra note 2, at xiv.
315 SWARTZ, supra note 279, at 225 (reporting that Enron donated $300,000 to the inauguration of President George W. Bush in 2000 and that this was but a small fraction of the contributions to politicians and parties made as a matter of course).
316 McLEAN & ELKIND, supra note 6, at 240.
317 See supra at note and accompanying text.
318 SWARTZ, supra note 279, at 291. But see McLEAN & ELKIND, supra note 6, at 354 (noting, however, that when asked what Enron could do with Watkins, Vinson, the firm’s external legal counsel, advised that the best strategy would be to retain her and not treat her adversely as to do so would increase the risk of regulatory investigation).
319 See SWARTZ, supra note 279, at 14 (stating the its rampant noncompliance has rendered the firm’s name “Enron” into “shorthand for the excesses of American business and American culture at the end of the twentieth century.”).
320 McLEAN & ELKIND, supra note 6, at 208.
the loss of investor confidence and to forestall regulatory investigation, once Enron’s noncompliance could no longer be concealed and litigation was impending the firm ordered Arthur Andersen, its external auditor, to destroy incriminating business records. However, in short order Enron could no longer service its debt, and the firm filed bankruptcy on December 2, 2001. Enron executives, including JS, were subpoenaed by Congress, sued by shareholders and employees, and prosecuted.

Upon resigning, JS denied any responsibility for the death of Enron, stating instead the following:

I deserve a break. If people come back and write the history of Enron Corporation, they’ll look at my tenure as CEO. It was not great for the stock price. I wish it wasn’t that way. It is what it is. I think what I would ask, and I would hope people would look at, is what earnings did.

In a 2001 interview, JS continued to withhold contrition, adding that “[i]n the last two months, I’ve gone through everything in my mind that was done when I was here that could have been related to this . . . After much soul searching, . . . I would not have done anything different.” In his Congressional testimony, JS claimed that as he was not an accountant he could not have known that Enron had violated GAAP by using its own stock to generate a gain and avoid a loss on its income statement, and that the failure of Enron was simply a liquidity problem similar to that which caused bank failures in the 1930s:

Enron’s failure was due to a class run on the bank, a liquidity crisis spurred by a lack of confidence in the company. At the time of Enron’s collapse, the company was solvent, and the company was highly profitable, but apparently not liquid enough. At the time I left the company, I fervently believed that Enron would continue to be successful in the future. I did not believe that the company was in any imminent financial peril.

In 2006, JS began serving a 24-year sentence for conspiracy, accounting and securities fraud, and insider trading. Enron exists only as a legal fiction in order to pay creditors a portion of their claims, and yet JS continues to admit no fault, insisting that “they killed a great company.”

2. WorldCom

a. CEO Bernie Ebbers
   i. IVs: scores on personality constructs
      a. militarism

WorldCom founder and CEO Bernard Ebbers [“BE”] is a hypercompetitive former athlete who hails from humble origins in rural Canada yet managed to leverage his work ethic and ambition to build

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321 See SWARTZ, supra note 279, at 330 (reporting that Enron filed an 8K restatement of earnings in 2001).
322 McLEAN & ELKIND, supra note 6, at 381.
325 McLEAN & ELKIND, supra note 6, at 350.
327 SWARTZ, supra note 279, at 351.
328 McLEAN & ELKIND, supra note 6, at 419.
329 AMY JETER, DISCONNECTED 61-62 (2004) (“In competition, he is fierce and . . . he’ll cut your heart out.”).
one of the world’s largest and most profitable telecommunications firms. While not of an academic or formal disposition, and despite a tendency toward shyness, BE cultivated a congenial public persona who motivated his employees to want to work hard for him in spite of the seemingly decentralized environment he inspired. As a result, employees and outsiders alike all wanted to be an “FOB—a friend of Bernie.” BE embraced one and all, with friendship and with money, and WorldCom’s color-blind generosity extended far and wide across Mississippi.

Despite his public image, however, BE had a strong need to accumulate and use power, and WorldCom was not nearly the unstructured, unsupervised environment it appeared. “Power was the drug of choice for [BE],” and his constant deal-making kept him supplied with control over the telecommunications industry. With his taste for power came a tendency to authoritarianism. WorldCom was a hierarchical organization, and employees did the bidding of the boss. One former employee compares WorldCom culture under BE to her experience with that of a competitor as follows:

MI was much more open and willing to take chances, to let people propose an idea and move forward with it, or as we used to call it, the Catholic way of doing business—do something and then ask for forgiveness later—but at WorldCom, it was not that way . . . If the idea didn’t come down from the top or one of the favored people, it didn’t happen. Thinking was not encouraged.

Nothing suggests BE was aggressive, dogmatic, or low in self-esteem, and his social adroitness indicates he has overcome childhood introversion. Even after his resignation from WorldCom he remained engaged in the civic life of Mississippi rather than slipping into isolation as have many fallen CEOs. BE thus scores high on only four subconstructs of militarism and is scored a nonmilitarist.

b. anomism

BE came from a devoutly religious family, and as WorldCom CEO liked to preach that “doing the morally right thing happens to be good economics.” He opened every WorldCom meeting with a prayer, worshipped at area churches, and publicly testified on many occasions to his deep Christian faith. Despite these affirmations of commitment to a moral code as the foundation for his life and work, however, BE spent many nights drinking and often attended board meetings under the influence, and he took his marriage vows rather lightly, engaging in numerous and publicized extramarital affairs.
BE extended a general pattern of nonconforming behavior to his and his firm’s relationship to law. BE had no legal training and no specific knowledge of corporate law, but neither would have attenuated his willingness to permit employees, particularly his accounting and financial teams, to blur legal lines to serve his material objectives. As a WorldCom insider recalls, BE tacitly approved noncompliance as a “remedy” to unfavorable business information: “When everything was going well, which it did for a very long time, Bernie was happy . . . When it didn’t, Bernie didn’t want to hear about it.”

When the Justice Department intervened to block the proposed WorldCom-Sprint merger, BE’s vicious lambasting of FCC Chairman William Kennard and the Assistant Attorney General earned him no favors, and when the SEC and other agencies later focused their attention on corporate illegality at WorldCom, BE’s disregard for legal authorities manifested yet again in harsh public commentary.

In sum, although it is difficult to score him high on amoralism, BE scores high on disregard for law and legal authorities, ignorance of law, and ignorance of corporate law, and thus is scored an anomist.

c. hostility

BE is a study in contrasts, and quite possibly in the duality of personality. Beneath the easygoing, God-fearing cowboy facade, he is a deeply moody and distrusting person who demands extreme loyalty from his employees and flies into fits of rage if he does not receive that loyalty or is otherwise denied his desires. He fired executives who sold WorldCom stock, whatever their motivations, yet he would go out of his way to help troubled but loyal employees. Although he presented himself as a simple man who didn’t “put on airs” to impress others, he hobnobbed with celebrities and grew jealous of fellow executives who earned accolades or friends in high places, believing they were scheming against him. He had many “friends” yet kept an enemies list to remember petty slights than required redress, and “was always somewhat confrontational, and in-your-face, compared to most . . . in the Deep South.” Although not ethnocentric or racist—he is comfortable

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340 JETER, supra note 328, at 94.
341 Id. at 120-24.
342 See id. at 92 (“At least a dozen people who dealt closely with Ebbers mentioned that he seemed to have a dual personality.”).
343 Id. at 3.
344 Id. at 40, 104. BE treated others according to their status on a “pecking order” measured in instrumental terms by how useful they were or could be to him and WorldCom. Id. at 92.
345 See id. at 46 (recounting an episode when BE was mistaken for a “fax salesman” due to his unassuming manner and dress).
346 Id. at 98.
347 Id. at 60-62.
with blacks and Hispanics and spent time living on an Indian reservation—he imagined enemies where none existed, and enjoyed using power to intimidate those who were not useful to him.

Moreover, although BE fancied himself a “master puppeteer” in total control of a corporate giant, he vastly overestimated his ability to run WorldCom; as one observer notes,

BE took great risks in starting WorldCom, and he never missed an opportunity to buy an asset, whether hindsight determined that decision to be sound or not. His business character is best described as wildly optimistic and impulsive, and this combination led WorldCom to wealth and then into bankruptcy.

In the words of U.S. Bankruptcy Court examiner Dick Thornburgh,

Few companies in the annals of American business have grown so large and so fast in such an intensely competitive marketplace. WorldCom did not achieve its growth by following a predefined strategic plan, but rather by opportunistic and rapid acquisitions of other companies. The unrelenting pace of these acquisitions caused the company constantly to redefine itself and its focus. The company’s unceasing growth and metamorphosis made integration of its newly acquired operations, systems and personnel much more difficult.

In essence, BE was overly optimistic about his ability to exert positive control external events, and his optimism and preference for risk simply lacked an objective foundation in business reality. This overconfidence, coupled with impulsivity that even in his late fifties reportedly impelled him to engage in fistfights in bars, led him and his firm astray. Although the available evidence does not compel the

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348 Id. at 8-10; see also id. at 92 (‘‘[BE] wasn’t prejudiced against race, religion, or anything like that,’ said a former employee. ‘It simply depended on how important you were to his agenda.’’).
349 See, e.g., id. at 61 (reporting that when a colleague mentioned a favorable article about BE written by a Newsweek reporter, “before I even finished the sentence, Ebbers cut me off. He said, ‘Never met the son-of-a-bitch in my life.’”).
350 Id. at 98.
351 Id. at 36.
352 Id. at 161.
353 Id. at 202.
354 JETER, supra note 328, at 27.
355 Id. at 147.
conclusion that BE made decisions during periods of heightened anxiety, at the very least BE scores high on every other subconstruct of adventurism and thus is scored an adventurist.

e. summary of independent variables: Bernard Ebbers

BE is a nonmilitaristic, anomistic, hostile, and adventuristic decisionmaker.

ii. DVs: CLC and WorldCom

Prior to its demise in bankruptcy in 2002, WorldCom was the largest U.S. long distance telephonic service provider and the world’s largest Internet carrier, providing a ten-year annual rate of return on equity of fifty-three percent and enjoying a reputation as a friendly, clean, good employer and neighbor. BE denied unwarranted perquisites to WorldCom executives and further restricted perquisites after the failed merger with Sprint. Although WorldCom, a major contributor to both political parties and to candidates for the Public Service Commission charged with its regulation, forestalled official scrutiny for over a decade, a planned merger with Sprint, blocked by the Justice Department Antitrust Division on the claim that the merger would “undermine the competitive gains achieved since the department challenged AT&T’s monopoly of the telecommunications industry 25 years ago[,]” opened the doors to a more thorough examination of WorldCom’s legal compliance.

With WorldCom stock price falling on the news of the failed merger, a chastened BE stated as follows:

We recognize that we, as a company, have let you down. I have let myself down. We certainly don’t look at this as the best day of our life. [The attempt to acquire Sprint] ended up a mistake—and I am certainly accountable for that mistake . . . I’m sure with the recent performance of this stock, people have a legitimate right to ask if I have a right to lead this company.

If the statement implied contrition on the part of a firm caught attempting to manipulate the market by achieving monopolistic power, BE’s and WorldCom’s subsequent strategies belied this conclusion. BE began borrowing what would amount to more than $408 million from WorldCom to avoid selling his personal shares to meet margin calls—a decision that upon disclosure would lead to his resignation—and, lacking sufficient cash reserves, WorldCom began to engage in a series of fraudulent accounting and securities-related practices, including double bookings of revenue, failure to report over $600 million in uncollectible accounts receivables, delayed payments to vendors, recording of capital expenses where operating expenses were required by law, and deliberate understatement of costs—all

357 WorldCom declared bankruptcy under Chapter 11 on July 21, 2002.

358 JETER, supra note 328, at xx, 70.

359 See id. at 51 (writing that executive perquisites were contrary to BE’s philosophy of governance which stressed cost-cutting to support the stock price); id. at 96-97, 127 (reporting that after the failed Sprint merger BE eliminated perquisites such as first-class airplane seats, limousine service, 4-star hotels, and high per diems).

360 WorldCom—in its corporate capacity—was convicted of a felony for illegal contributions to the Public Service Commission in 1995). Id. at 57. There is no information to suggest that WorldCom engaged in direct bribery.


362 JETER, supra note 328, at 182.

363 See id. at 127; this practice is now prohibited under SOX. See supra at pp. 1-2.
designed to illegally boost earnings and profits to compensate for the loss of the benefit of the merger. In 2002 the SEC, Justice Department, and the Mississippi Attorney General began investigating and eventually uncovered the world’s largest accounting and securities scandal. Although WorldCom hastened to restate and reduce past earnings by $7.8 billion,\footnote{JETER, supra note 328, at 203.} it was too late to stem the investigative tide. The House Financial Services Committee issued subpoenas to top executives, including BE, even as the financial collapse of the firm destroyed the retirement plans of thousands of employees and investors.

WorldCom’s reputation—sterling prior to its slide into bankruptcy—suffered damage, leading some to brand it “WorldCon,” yet many held the view that it was a time to “circle the wagons, because Bernie’s a local guy.”\footnote{Id. at 176.} During congressional testimony, BE disclaimed any knowledge of or responsibility for illegality at WorldCom with the following statement:

> When all of the activities at WorldCom are fully aired and when I get the opportunity . . . to explain my actions in a setting that will not compromise my ability to defend myself in the legal proceedings arising out of the recent events, I believe that no one will conclude that I engaged in any criminal or fraudulent conduct during my tenure at WorldCom.\footnote{Id. at 183.}

Indeed, many industry experts, analysts, and observers supported BE’s contention that he had been a “hands-off” CEO who lacked knowledge of the illegality that transpired at WorldCom.\footnote{Id. at 190.}

However, as the government succeeded in wrangling plea bargains and convictions against top WorldCom executives on charges of conspiracy to boost earnings reports by hiding operating expenses, securities fraud, and filing false statements, the myth of BE as wildly successful but out-of-the-loop corporate cheerleader crumbled, and BE was convicted in March 2005 of securities fraud, conspiracy, and filing false documents with the SEC.\footnote{U.S. v. Bernard Ebbers, Indictment, at http://www.usdoj.gov/usao/nys/pressreleases/March04/ebbersindict2pr.pdf; see also http://money.cnn.com/2005/03/15/news/newsmakers/ebbers/ (reporting his conviction).} He continues to deny any wrongdoing.

3. **ImClone Systems**

   a. CEO Sam Waksal

      i. IVs: scores on personality constructs

         a. militarism

      Although CEO Sam Waksal [“SW”] possesses a powerful and creative mind that inspired him into an academic medical career before his turn to business, he is a “nebbish—a nerd—whose desperation to be part of the fast crowd” was so apparent that it became a running joke.\footnote{ALEX PRUD’HOMME, THE CELL GAME 156 (2004).} His poor self-esteem magnified his ambition to the point that he “is prepared to do whatever it takes, at whatever cost, to
become a ‘player.’” To wit, he has always felt the need to “improve on the facts” by telling “half-truths or untruths;” out of self-consciousness over his status as the child of immigrants, he told neighborhood playmates that he had an older brother at the U.S. Naval Academy in order to appear more “middle-American.”

The sense that he lacked status, and the burning drive to achieve admiration and respect, have motivated SW’s behavior since childhood.

The need to match the accomplishments of his father, who escaped Nazi death camps and spent World War II as a resistance fighter, triggered strong ambition and competitiveness; in SW’s own words,

My father is such an incredible hero. I feel there is nothing I could ever do that could match the things he did. My parents’ experience affects me every single day of my life. It drives me. When you grow up in a home where the parents survived a very terrible ordeal in world history, and a lot of other people didn’t, then you look at the world from day one in a very different way . . . I look at the world that way, too—in making sure one builds and creates. It’s a driving force.

This drive—which SW tasked very pointedly toward the reaping of a vast fortune—unleashed an authoritarian form of leadership. At ImClone, employees knew to “play by his rules or else,” and employees who remained with the firm were those who toed the line and not necessarily those who exhibited the greatest technical prowess.

A volcanic temper coexists uneasily with abundant personal charm and extroversion that, when SW deployed them to convince investors to back his work, was particularly persuasive. The limited literature does not support the finding that SW was a nationalist or a dogmatist, nor is he introverted or isolationist, but SW is a competitive, aggressive, authoritarian figure with low self-esteem who manipulates facts and uses power to control others in the service of his ambitions. SW thus scores high on six of ten subconstructs of militarism and is scored as a militarist.

b. anomism

SW, the classic scofflaw, was “raised to believe that the normal rules did not apply to [him]”:

“His parents gave Sam a sense of urgency about life,” an old friend observed. “Their survival had been so miraculous that they had a different sense of how to live. The rules of society didn’t really apply.”

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370 Id.
371 Id. at 26, 156 His desire to seem more “American” cannot be conflated with “nationalism” as it manifest a desire to belong but is lacking any other markers for nationalism. See supra pp. . The same is true of his pride in his Jewish heritage. Id. at 352.
372 See id. at 65 (“Others say that while attaining wealth was certainly important to Sam, it was only one part of his larger objective . . . The primary motivator for Sam . . . was status.”); see also id. at 323 (“Sam . . . was hideously superficial . . . He wanted to be one of the boys so badly . . . People would joke about it—‘the nerd trying to be fast.”).
373 Id. at 27.
374 See id. at 65 (“Money—the craving of it, the acquiring and spending of it, the constant pressure of it—would be the elemental force that impelled Sam Waksal, and would ultimately prove his undoing”).
375 Id. at 54.
376 Id. at 358.
377 See id. at xvi (reporting that SW persuasiveness convinced world-famous oncologists to join ImClone’s drug development).
378 Id. at 26-27.
Despite his pride in his Jewish heritage, the morality and ethics of Judaism escaped him, and a sense of personal entitlement so strong it relieved him from the obligations that bound lesser people has manifested in SW’s life.  

His dissertation was reportedly written by his mistress—also his graduate assistant—with whom he began consorting the first year of his marriage. He actively seeks out opportunities to challenge public legal authority, perhaps to fulfill a neurochemical need for conflict.

Once . . . he had been stopped from entering Egypt from Israel because he didn’t have the proper visa. But with a gale of protest and sweet talk he managed to wear down the guards and make his way across the border—an achievement he was especially proud of, an office mate recalled, because he had used his quick mind and quick tongue to “get away” with something forbidden.

SW’s recurring refusal to respect legal rules and authorities and a deficient moral foundation has caused him lifelong pain; a mistress used the phrase “Tall Poppy Syndrome” to explain the pattern:

Sam is his own, special, unique human being . . . He doesn’t sit back and wait, he plows straight through things. He breaks norms. And society always bashes down people who break rules. People love to hate him, and always have. Like the tall poppy that stands above the rest, they always want to mow Sammy down.

SW has no specialized training in law and is a deeply amoral person who lacks respect for law and for legal authorities. He scores high on all subconstructs of anomism and is scored as an anomist.

c. hostility

SW did not trust others, nor did they trust him. He told lies “so well, and so often, he actually started to believe them himself,” his college roommate recalls. SW inflated his GPA, proclaimed the results of experiments he never completed, and made unfulfilled promises to help others:

To gain social favor, [SW would] promise to help friends or sorority girls with their term papers or class notes; sometimes he’d do what he promised, but often he wouldn’t. He didn’t seem to understand, or care, about the anguish it caused people who had counted on him. “He became known as a flake and a liar,” said [his college roommate]. “A ‘star-fucker’—always trying to be near the [pretty] people. In the end he wasn’t a very popular guy. He burned through people.”

This “burn[ing] through people” as well as SW’s public proclamations that he would “win the Nobel Prize” and that the grand purpose behind ImClone was to “make the world better” and that those who interfered with him were “allow[ing] evil to win,” are typical behaviors of narcissists and Machiavellians, as are SW’s arrogance, abrasiveness, and rudeness. Moreover, narcissism is evident in

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379 See id. at 342 (noting that SW’s college roommate, Marcus Engleman, states that “[t]he stuff [SW] did was so not Jewish . . . He missed the part that could have saved him.”).
380 Id. at 30-31.
381 Id. at 28 (“He loves to pull a rabbit out of a hat. He needs that adrenaline rush.”) (citing a friend of SW).
382 Id.
383 Id. at 31.
384 Id. at 29.
385 Id. at 37.
386 Id. at 29.
387 Id. at 23-24, 157.
SW’s statement in a 2002 interview that he believed he “was the most honest CEO that ever lived . . . [and that consequently] I could glibly do something illegal and rationalize it.”

SW’s cynicism and, to a lesser extent, misanthropy, is evident in his appeal to his sentencing judge for leniency on the grounds that he had demonstrated good citizenship over the years through his charitable contributions and had always shown “empathy for the underdog.” The judge, while noting that SW had indeed donated nearly $750,000 to charity in the preceding three years, noted further in sentencing SW to the maximum term in prison that SW’s contributions totaled less than ½ of one percent of his total income over the period of $132 million and that much of his ill-gotten gains had certainly been expropriated from underdog investors. Certainly, the argument could be made that SW had labored hard over the decades to help, rather than harm, humanity, yet a former ImClone senior manager dispenses with this, stating that SW was motivated solely by selfish greed devoid of any empathic impulse for the victims of the cancer he pretended to care about curing:

I don’t think Sam gave a hoot what the company did. He didn’t give a hoot about making “great scientific advances,” or “saving people’s lives” . . . You know what Sam’s goal was? To build a company, with himself as CEO, and get rich. Period.

Thus, SW scores high on all nine subconstructs of hostility and is thus scored as a hostile decisionmaker.

d. adventurism

SW was an “ideas man,” and a quick, rather than deep, thinker. His impulsivity would lead him to “make messes” that his dutiful younger brother would clean up. He was a “notorious spendthrift” and “always in financial trouble,” and his impulsivity and indiscipline invited financial pain:

Sam would show up for class late and there’d be no parking places left, so he’d just leave his car sitting in the middle of the street; he accumulated so many tickets he set a new OSU record and the police hauled him in. But “his father always bailed him out,” said [his roommate]. He never worked. Never had discipline. It’s really ironic—he’s parents tried to give him this great life, and they unwittingly created a monster.

SW was also wildly optimistic. Although his grades were far below Ivy League expectations, his college roommate recalls,

“He applied to only one medical school—Harvard. I warned him he didn’t have the grades, and he ought to look around more. But I think he’d convinced himself he’d get in.”

Not only was SW not accepted by Harvard Medical School, but in his subsequent academic career he established a pattern of promising paradigm-rattling results only to fail—often dramatically—to deliver.

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388 Id. at 352.
389 Id. at 347.
390 Id. at 350.
391 Id. at 65.
392 Id. at 22.
393 Id. at 26.
394 Id. at 29.
395 Id.
SW continued, despite contrary evidence, to believe he could impose his will upon the world, and as his true capacities were always less, there has been a disjuncture between his planning and his delivery.\textsuperscript{396}

To make matters worse, SW was a risk-taker: he had a string of extramarital liaisons with lab technicians; he raced motorcycles; he falsified data;\textsuperscript{397} and he started a biotechnology company despite the great probability of failure that the industry often presents to private start-ups. For SW, the only path to reward was through risk, and because he sought the greatest possible rewards, he took the greatest risks. Nonetheless, risk was something that did not present a great deal of stress or cause SW anxiety: he, after all, was SW, and the normal rules—and the normal probabilities—did not apply.\textsuperscript{398}

In sum, SW is a risk-tolerant, impulsive, optimistic decisionmaker who believed that despite his risky and impulsive decisions he would achieve the wealth and fame he coveted. Thus, he scores high on five of seven subconstructs of adventurism and is scored an adventurist.

e. summary of IVs: Sam Waksal

Sam Waksal is a militaristic, anomistic, hostile, and adventuristic decisionmaker.

ii. DVs: CLC and ImClone

In the late 1990s, ImClone, having failed to make good on SW’s outlandish promises, was in financial and reputational decline, yet SW continued to travel first-class, use limousines, and frequent the best hotels and restaurants as perquisites.\textsuperscript{399} Favored ImClone employees enjoyed open bars and restaurants at firm expense, but employees who did not enjoy a close relationship with the CEO and his inner circle were bullied, and sexism and xenophobia were a distinct part of firm culture.\textsuperscript{400}

Somehow, ImClone not only survived but by mid-2001 had become the “undisputed star of biotech,” armed with a license to produce and market the biological equivalent of smart bombs against cancer. Erbitux was expected to be worth $1 billion in annual profit if one could believe SW, who promised investors that the cancer drug was a “miracle compound” that will “save the lives of thousands of dying cancer patients, . . . change the very nature of science[,] . . . [and] bring you not only gold but glory[!]”\textsuperscript{401} All that remained was to acquire the approval of the Food and Drug Administration [“FDA”], and SW promised investors that the FDA had placed Erbitux on the “fast-track” to approval.

However, SW’s claims about the efficacy of Erbitux and its regulatory status were wildly exaggerated. The precursor drug, C225, had been successful in only 20% of test cancer patients, and major pharmaceutical firms were leery of SW’s claims. According to a former ImClone employee,

\textsuperscript{396} \emph{Id.} at 34.
\textsuperscript{397} \emph{Id.} at 35.
\textsuperscript{398} \emph{Id.} at 50.
\textsuperscript{399} \emph{Id.} at 52, 89.
\textsuperscript{400} See \emph{id.} at 55-56 (writing that employees who didn’t speak perfect English were bullied, cronies who bullied others were protected, female employees were not treated on a par with male employees, and crude sexual jokes were tolerated).
\textsuperscript{401} \emph{Id.} at xv.
It was all lies. I felt something important had been betrayed... I asked myself: What am I doing here?... Some people at ImClone thought I was crazy to feel that way. They’d say, “What’s the big deal that the science wasn’t right?”... The science didn’t matter there. What mattered was how fast Sam... could make a buck.  

When ImClone refused to make C225 available through a broad compassionate-use program—a humanitarian method of helping suffering patients while generating additional data that requires only a brief pro forma FDA examination for approval—some observers took pause. Bristol Meyers Squibb (“BMS”), however, banking on SW’s promises, negotiated a tender offer of $70/share that granted marketing rights to BMS and earned SW nearly $130 million. Although some BMS executives were concerned that the valuable asset was actually C225 and not ImClone, the BMS audit of ImClone’s data was executed with too large measure of good faith, likely the product of SW’s charm.

Immediately after the BMS-ImClone deal to market the C225 derivative drug known as “Erbitux,” ImClone made risk-free “sweetheart” loans to SW to allow him to purchase additional shares of ImClone at market price for sale at the tender price. Wall Street questioned the timing and propriety of the deal, suggesting there was “something questionable about these guys cashing out before we even know if this drug is going to get approved.” Wall Street jitters caused BMS to look more closely at ImClone’s clinical data, and BMS discovered fundamental flaws—including omitted negative data, fudged efficacy statistics, and an inadequate sample size—that would, when discovered by the FDA, make approval for general use highly unlikely. ImClone and SW began losing credibility, and the FDA asked ImClone’s regulatory affairs executives to withdraw the application or amend its data.

However, SW chose to believe that the FDA would approve Erbitux despite the flawed data because “the alternative was unimaginable.” Predictably, the FDA issued a Refusal to File letter—a statement received in response to only four percent of applications, generally because the applications are “scientifically incomplete” and “filled with deficiencies”—on December 27, 2001. When news of the “RTF” letter leaked, SW lashed out at the FDA and attempted to convince investors that data problems would be easily remedied, but investors concluded that ImClone was systemically flawed, that SW had intentionally misled them into believing that Erbitux had been “green-lighted,” and that nothing now

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402 Id. at 71, 107.
403 Id. at 107.
404 Id. at 115-38. At least one BMS scientist discovered problems with the ImClone data that ought to have caused BMS to reconsider its deal with SW. See id. at 139 (“It was said within BMS that at least one prominent Bristol scientist raised a red flag after the audit of ImClone’s clinical trial data and plainly stated ‘there’s a problem here’ but her objections were squashed... [BMS] executives... didn’t want to hear any bad news. They just wanted to make the deal happen.”).
405 Id. at 159.
406 Id. at 161.
407 Id. at 171.
408 Id. at 173.
409 Id. at 182.
410 See id. at 197 (noting that SW blamed FDA for not adhering to its charter).
would prevent its disapproval by the FDA.\textsuperscript{411} What investors did not know is that on December 26, 2001, SW, anticipating the RTF letter and owing $65 million on margin secured by ImClone stock, sold his ImClone shares and advised family and friends\textsuperscript{412} to do the same before news became public.\textsuperscript{413} Although SW knew the SEC monitors stock trades by corporate insiders,

he didn’t stop to think about what he was doing; he was just acting. For years he had shuffled money offshore, or through an account he had secretly established in [his daughter’s] name—he’d forged her signature—and he figured it would all work out in the wash. He was doing good for humanity; his drug was about to change cancer medicine. So what if he cut a few corners?\textsuperscript{414}

In short order, the House Committee on Energy and Commerce issued a letter indicated that an investigation of ImClone and SW over issues arising from clinical trials of Erbitux had begun on January 18, 2002.\textsuperscript{415} On January 24, 2002, the SEC launched its own investigation “to determine whether there have been any violations of the federal security laws[,]”\textsuperscript{416} and the next day the Justice Department announced an investigation to determine whether ImClone misled investors. The Subcommittee subpoenaed SW, who during the course of its investigation asserted his Fifth Amendment right against self-incrimination and offered only the following through counsel: “Dr. Waksal firmly believes that any allegations against him are unfounded and that he did nothing improper.”\textsuperscript{417}

Although it is doubtful that had SW been a more generous contributor to politicians he might have avoided congressional ire, SW gave a total of only $160,000 over the years in political contributions and thus had few, if any, powerful friends in Congress.\textsuperscript{418} Rep. Billy Tauzin (D.-La.) was clearly not one, and he offered a much more critical version of the events surrounding Erbitux:

It appears . . . that ImClone as so excited by preliminary response rates in very sick colon cancer patients, it tried to take a mediocre clinical trial and gussy it up . . . But when it came to crunch time to get FDA approval, the failure of ImClone’s key executives to ensure the quality of its clinical trials collided with the hype. And, all the while, ImClone’s insiders were lining their own pockets with millions, as ImClone’s publicly traded stock soared on false, public promises!\textsuperscript{419}

Various investigations revealed that SW had illegally failed to report fifty trades of ImClone from 1992-2002, destroyed documents, and made false statements to Congress. He was forced out as CEO in

\textsuperscript{411} Id. at 187.
\textsuperscript{412} See id. at xviii (reporting that as a result of SW’s call to her, Martha Stewart executed the sale of all 3,928 shares of her ImClone stock for $228,000, earning her a profit of $64,000.). Martha Stewart was later found guilty of making false statements to SEC officials investigating her insider trading. See U.S. v. Martha Stewart and Peter Bacanovic, Superseding Indictment, S1 03 CR. 717 (MGC), available at http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/mstewart/usmspb10504sind.pdf
\textsuperscript{413} PRUD’HOMME, supra note 368, at xv (writing that on December 27, 2001, SW told his daughter and father to sell over $9.5 million in ImClone stock, describing the transaction to his Merrill Lynch broker as “urgent” and “imperative”).
\textsuperscript{414} Id. at xvii.
\textsuperscript{415} Id. at 207-08.
\textsuperscript{416} Id. at 210.
\textsuperscript{417} Id. at 234, 249.
\textsuperscript{418} See id. at 287 (reporting that SW donated a total of $160,000 to Democratic politicians and $10,000 to Republicans).
\textsuperscript{419} Id. at 243.
May 2002, and on June 12 was arrested by the FBI on a charge of insider trading.\textsuperscript{420} In August 2002 SW was indicted for destruction of evidence, perjury, obstruction of justice, bank fraud, filing a false SEC report, and financial fraud;\textsuperscript{421} he pled guilty to six of thirteen charges in October 2002 and is incarcerated. He has apologized, accepted blame, and expressed remorse for betraying investors.\textsuperscript{422} ImClone remains in operation, and the FDA has approved Erbitux for treating head and neck cancer.

4. AIG

a. CEO Hank Greenberg

i. IVs: scores on personality constructs

a. militarism

At seventeen, Maurice “Hank” Greenberg [“HG”] lied about his age to join the U.S. Army, and on D-Day, June 6, 1944, he landed with his Ranger battalion on Omaha Beach. The next spring his unit battled the Nazis to liberate the Dachau extermination camp.\textsuperscript{423} HG is “notoriously short-tempered and impatient”\textsuperscript{424} and aggressive,\textsuperscript{424} and at the American International Group [“AIG”], the insurance firm he served as CEO for thirty-seven years, a “cult of Greenberg” arose from his “force of personality” and “fierce determination to get his way.”\textsuperscript{425} HG is a demanding and explosive man, and an “archetypal autocrat, one who knew every detail of [AIG]’s operations and, incredible as it seems, persisted in trying to micromanage the business even as it grew to nearly $100 billion in revenues.”\textsuperscript{426} As AIG CEO HG was a driven man, determined to defeat competitors and lead AIG to preeminence in the global insurance industry. When presented with obstacles by foreign governments he drew upon extensive connections in Washington to “threaten trade sanctions, cut off aid, and take whatever other dire actions it could find.”\textsuperscript{427} HG had great self-confidence as AIG CEO, but has a chip on his shoulder and has low self-esteem consequent to not having been accepted by “the WASP establishment” or “upper-class Jewish circles.”\textsuperscript{428} He is neither an introvert nor isolationist, and although his leadership of AIG was oriented solely towards profitability no evidence suggests dogmatism. However, HG is a nationalistic, competitive, ambitious, aggressive, authoritarian figure with a favorable attitude toward power, and thus scores high on seven of ten subconstructs of militarism. Thus, HG is scored as a militarist.

b. anomism

\textsuperscript{420} Id. at 224, 242.
\textsuperscript{422} PRUD’HOMME, \textit{supra} note 368, at 349.
\textsuperscript{423} RON SHELP, \textit{FALLEN GIANT: THE AMAZING STORY OF HANK GREENBERG AND AIG} 95 (2006).
\textsuperscript{424} Id. at 4, 9.
\textsuperscript{425} Id. at 33.
\textsuperscript{426} Id. at 5.
\textsuperscript{427} HG is an extrovert who enjoys affiliations, and through AIG’s worldwide business portfolio he developed relationships and friendships with business and political leaders around the world. \textit{Id.} at 125-26.
\textsuperscript{428} \textit{Id.} at 130.
After World War II, HG earned a law degree and served in Korea as a JAG prosecutor and defense counsel, and in the course of his training and practice was exposed broadly to an array of legal regimes, including corporate law.\textsuperscript{429} Despite his significant legal training, however, HG, perhaps as a consequence of AIG’s “intense political involvement, and of having to live in a world defined by myriad rules,”\textsuperscript{430} developed cynicism with regard to law. According to a biographer,

\ldots AIG shaped the rules to its interests; when not, it bent them to its purposes. On occasion, it flouted the rules. In many cases, it operated as close to the edge as it had to in order to achieve its business goals. Given that mind-set, it hardly is surprising that [HG] may have pushed the envelope on finite insurance contracts or stretched accounting principles to report the earnings he wanted. If someone did object, the company could defend, rationalize, or explain away just about any action. Greenberg would make his stock reply to just about every criticism (“You just don’t understand insurance”), and then the lawyers and lobbyists would make the problem go away.\textsuperscript{431} Indeed, over the years, HG taught his executives to “approach government and regulatory problems in the same aggressive way they attack business issues in general[,]” \textit{i.e.}, to “persuade, cajole, or, if necessary, intimidate officials at all levels anywhere in the world.”\textsuperscript{432}

Still, although he did not adhere as scrupulously to the letter of the law as regulators believed necessary, it is perhaps easier to cast HG as a director of creative, albeit self-interested, legal interpretation than it is to brand him a scofflaw disrespectful of law and legal authorities. That this is so is particularly apparent when one compares HG’s stewardship to that of other CEOs:

[HG’s] actions were nothing like those of the other boardroom bad guys, who tried to fool investors by grossly distorting their numbers. Instead, if Greenberg did anything, he was simply injecting a little Botox into the balance sheet and fine-tuning the earnings reports to maintain the kind of image he found so supremely important. Not so long ago, that kind of earnings “management” rarely brought more than a modest reprimand. The rules changed after Enron, of course, but Hank must have assumed that the changes, like so many other regulatory annoyances, weren’t really relevant, or if they did apply to him, he could bluff his way through them as he had so often in the past.\textsuperscript{433}

Thus, while it may be fair to conclude that HG scores high on amoralism, and perhaps on disregard for legal authorities, it is less clear that he should be regarded as disrespectful of law, and HG is a trained lawyer. HG thus scores high on two of five subconstructs of anomism and is scored as a non-anomist.

d. hostility

HG was a celebrity CEO at a firm where the standing joke was that “AIG” was an acronym for “All Is Greenberg.”\textsuperscript{434} He is selfish and a master manipulator with a “Jekyll and Hyde” personality,\textsuperscript{435} and he has a misanthrope’s touch for making others feel ill at ease:

\textsuperscript{429} Id. at 95-96.  
\textsuperscript{430} Id. at 10.  
\textsuperscript{431} Id.  
\textsuperscript{432} Id. at 114.  
\textsuperscript{433} Id. at 12-13.  
\textsuperscript{434} Id. at 1, 111.  
\textsuperscript{435} Id. at 131-32.
The bottom line is inevitably that when you are with Hank, you are on edge. Even in a room full of people where you are across the room talking to others, you can never quite forget he is there. The force of his personality and the fear people have of him is always present. Actually, it is quite remarkable. While it is mainly employees who are scared or at least tense, it can also be directors, clients, officials or casual acquaintances. Hank is too smart and observant of other people not to be aware of it. Whether he could change his personality enough to put others more at ease, I do not know. Whether he would want to, well, that I doubt.\footnote{Id. at 133.}

Under HG, executives joked that while they liked to hold AIG stock they would never own a policy. AIG’s underwriting philosophy was, very simply, to charge high premiums and pay as few claims as possible—a theory and practice very profitable to shareholders but unfavorable to customers.\footnote{Id. at 5.} Other stakeholders were subordinated to shareholders as well. Employees were afraid of HG and his appalling temper, and few felt empowered to venture their own opinions;\footnote{Id. at 33.} furthermore, while AIG had a long history of hiring, training, and promoting local nationals to managerial positions,\footnote{Id. at 30.} there is simply not a history of significant black participation in the company. A retired senior personnel executive told me that in his experience insurance had never been one of the industries where African-Americans saw opportunities. And clearly in AIG there was not an aggressive policy of recruiting them.\footnote{Id. at 109.}

Only after HG resigned did AIG seriously begin to promote diversity in hiring to U.S.-based positions. Although it is difficult on the basis of available information to conclude that HG is generally distrustful or ethnocentric—particularly in light of his deep passion for China and its people and his friendships across the globe—\footnote{Id. at 142.}—there is reason to believe that he lacks the capacity or the desire to express an empathic understanding of and appreciation for other people. In sum, HG scores high on seven of nine subconstructs of hostility and thus is scored as a hostile decisionmaker.

d. adventurism

Insurance is the applied study and management of risk, and the ultimate financial risks—loan defaults and policy claims—cannot be perfectly predicted. HG gets bored easily and likes to take risks, believing—usually quite correctly—that he can beat the odds.\footnote{Id. at 146.} He calmly seeks and achieves unfair advantage by rationally evaluating risk, and although he has a temper it is one that he controls and manipulates to suit his purposes.\footnote{Id. at 142.} He manages stress well and is described by many as unflappable. HG thus scores high on only three of seven subconstructs of adventurism—risk tolerance, internal locus of control, and maleness—and thus is scored as a nonadventuristic decisionmaker.

e. summary of IVs: Hank Greenberg

HG is a militaristic, non-anomistic, hostile, and non-adventuristic decisionmaker.
ii. DVs: CLC and AIG

Under HG’s leadership, AIG grew to become the 9th largest firm on the Forbes 500 list and the largest insurer in the world. In his thirty-seven years as CEO of a global business, HG developed a “highly evolved culture of . . . exploitation” that rested on cultivating relationships with political leaders and regulators and, ostensibly, leveraging those relationships to gain favors for AIG.443 While the ultimate leverage might well have been bribery, and although U.S. firms operating overseas “have no choice but to adapt to the customs of the countries where they operate[,]”444 available data suggests that no allegation of political corruption has been made against AIG. Rather, AIG was successful under HG, according to an AIG HR executive, because it “rewards success, rewards profit, ignores background, creed, nationality, and puts up with a lot of individual idiosyncrasies as long as you produce.”445 Although AIG rewarded performers with salary and perquisites,446 these were limited by HG’s frugality. HG lives modestly, although he enjoys a daily massage and comfortable travel arrangements,447 and one of the greatest employee incentives might have been the loyalty HG exercised in their time of need: in the event of employee abduction or arrest, “[n]o stone was left unturned, and money was never an object” in securing their release and safe return.448 Although profits were his lodestar, for HG the security and safety of his employees, if not their enrichment, was his “first priority.”449

However, despite all its political capital and its concern for its employees, cracks in the AIG armor began to appear in 2003, when AIG was forced to pay $10 million as sanction for refusing to cooperate, under subpoena, with authorities investigating accounting fraud involving illegal exchanges of cash with Brightpoint, a cellphone manufacturer.450 In 2004, New York Attorney General Eliot Spitzer brought bid rigging charges against AIG and a number of executives, accusing the firm of issuing artificially high bids on one piece of business in order to cause its award to another insurer only to have the other insurer reciprocate the benefit on future business. Four AIG executives pled guilty, and although no evidence implicated him, HG found a prime place on Spitzer’s investigative agenda.451 The year 2004 brought more bad news when it was revealed that AIG had been forming SPEs to absorb $762 million in non-performing assets and create a healthier balance sheet than the firm had earned.452 At the 11th hour in the summer of 2004 HG rejected an agreement with the Justice Department and SEC that

443 Id. at 9.
444 Id. at 126.
445 Id. at 34.
446 Id. at 109.
447 Id. at 134.
448 Id. at 81.
449 Id. at 116.
450 Id. at 162-64.
451 Id. at 162.
452 Id. at 163-64.
would have settled the case, and issued press releases decrying these agencies’ investigations as unwarranted and unethical. However, when in October 2004 the Board of Directors learned that HG’s gambit had failed to dissuade federal investigators and had instead increased the price of the settlement from $20 million to $126 million, it called for his resignation, which he tendered in 2005.453

On February 14, 2005, AIG received subpoenas in an SEC accounting fraud investigation, and on February 15, two AIG executives negotiated guilty pleas.454 In March, Spitzer subpoenaed AIG documents involving manipulation of financial transactions to falsely add $500 million to AIG’s reserves while using Caribbean subsidiaries as SPEs to keep debt off AIG’s balance sheet and understate the leverage of its operations as well as the magnitude of the risks it had insured.455 When Spitzer discovered that AIG executives were planning to move documents out of U.S. jurisdiction, he threatened obstruction of justice charges.456 In March 2005, AIG fired executives who planned to invoke the Fifth Amendment right against self-incrimination before the SEC, which invocation HG made on April 12. On March 30 AIG announced accounting errors stretching back fourteen years, and on May 2 it restated earnings for the period 2000-2004.457 On May 26, 2005, Spitzer, alleging AIG executives had routinely engaged in financial and securities fraud from the mid-1980s on,458 substituted civil for criminal charges against AIG and top executives, including HG. More than $2.7 billion in income was removed from AIG’s books after improper accounting entries were reversed,459

HG denied the merits of all civil charges against him,460 although in 2008 he settled shareholder claims for $115 million461 and in 2009 accepted a $15 million fine in exchange for dismissal of SEC litigation.462 Still, although he maintains his freedom, his reputation has been damaged, and “few executives have fallen so far so fast[.].”463 AIG has fared even worse, although arguably because the firm took risks against which HG repeatedly issued warnings.464

453 Id. at ix.
454 Id. at 170.
455 Id. at 2.
456 Id. at 166.
457 Id. at 170-74.
458 Id.
459 Id. at 12.
460 Id. at 175.
463 SHELP, supra note 422, at 2.
464 AIG suffered near-death in Fall 2008 when the collapse of housing, stock, and labor markets led to the failure of its mortgage-backed securities and -insurance lines-of-business. Interestingly, HG had warned years earlier that AIG Financial Products Division was assuming too much risk through these “credit default swaps,” but AIG did not stop selling them until summer 2007. On September 15, 2008, with AIG nearing bankruptcy, the U.S. government issued an $85 billion loan and took 79.9% ownership on the ground that AIG was “too big to fail.” Within a year AIG received $85 billion more in taxpayer funds and yet it still saw fit to pay senior executives $450 million in bonuses. New AIG CEO Edward Liddy responded to widespred
5. HealthSouth

a. CEO Richard Scrushy

i. IVs: scores on personality constructs

a. militarism

Richard Scrushy [“RS”] is a self-described “good old boy” from Alabama who began adulthood as a high-school dropout bricklayer living in a trailer with his pregnant girlfriend. He was a loner who had few friends and participated in few school activities, but motivated by the addition to his family and the desire for a better life RS returned to school to earn a certificate in respiratory therapy. Friends and co-workers describe him as a man with an abundance of energy and “chutzpah,” and when new federal legislation passed Congress in 1983, changing the system of Medicare and Medicaid billing and resulting in greatly reduced profits to hospitals, RS formed a company which became HealthSouth. By 2001, HealthSouth was the largest national operator of rehabilitation facilities and outpatient surgery centers, treating more than 100,000 patients per day and producing annual revenue of $4.3 billion.

As CEO, RS’s monumental ambitions were set toward creating the “biggest provider of surgery in the world,” and to accomplish this a good old boy from Alabama morphed into an autocrat. HealthSouth surgeons were told that to make the business “lean,” all their purchasing and recordkeeping would be performed by headquarters, and HealthSouth would require conformity in all surgical supplies, even if this meant that surgeons would use unfamiliar equipment—a condition that enhances risk to patients. RS was a “consummate micromanager” who ruled lower-status employees with an equally iron-first: his rules dictated everything from artwork—approved company posters and a portrait of Richard Scrushy in every waiting room—to mandating that Coca-Cola be the only beverage allowed in the facility—and requiring that all financial records be relocated from facilities to firm headquarters.

Although he made passing attempts to elicit feedback from employees and involve them in decisionmaking, RS’s micromanagement took bizarre twists reminiscent of Captain Queeg:

While he was lying in bed one night, Scrushy decided that he must come up with a plan to ensure that all HealthSouth facilities were pristine. He put together a 50-point checklist (25 points on

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outrage by noting that AIG had contractual obligations to pay these bonuses. As of April 2011, AIG has repaid the U.S. Treasury all but $25 billion. For a discussion of the subsequent AIG scandals, see ANDREW SPENCER: TOWER OF THIEVES 234-36 (2009).

BYRON, supra note 244, at 315.

Id.

Id. at 3.


Id. at vi.

JEFFREY L. RODENGEN, THE STORY OF HEALTHSOUTH 51 (2002) (referencing meetings where RS allowed employees to tell others what they did the previous week and what they hoped to accomplish in the coming week).

In the 1951 Pulitzer Prize-winning novel by Herman Wouk entitled The Caine Mutiny, an idiosyncratic martinet named Philip Francis Queeg captains a World War II minesweeper into a mutiny after his desperate sailors rebel against his nonsensical make-work projects and strange ravings.
each page so that it would be easy to read) and called in his top people. “We’re going to design 50
points,” Scrushy told them. “And it’s going to start with picking up trash in the parking lot.” . . .
Scrushy called it a “pristine audit” and hired an outside firm, Ernst and Young, to make
unannounced visits to evaluate facilities from the patient’s perspective . . . The auditors measured
everything, from the cleanliness of and neatness of the parking lots, restrooms, carpets, walls, and
equipment to the attitudes of the receptionists and the taste of the food. If the auditors found
anything amiss, they reported to HealthSouth, and the company required that the facility
immediately correct the problem.\footnote{472}

Apologists for RS reminded observers that HealthSouth was fortunate to have a “person driving this
company who, to this day, outworks people with his intensity and schedule,” and RS reassured
shareholders by telling them that HealthSouth was not merely interested in becoming profitable or simply
“America’s best-performing healthcare company” but rather was driven to “become the nation’s best-
performing company of any kind. Period.”\footnote{473}

Nothing in the available literature describes RS as a nationalist, and he is neither aggressive nor
beset with low self-esteem nor isolationist, but he is plainly a natural introvert who sees the world in
black and white and an authoritarian who relishes using power to bend employees and rivals to his
whims. As such, RS scores high on six of ten subconstructs of militarism and is thus scored a militarist.

\textbf{b. anomism}

RS is a relatively uneducated man; he lacks formal legal training, even if he clearly knew he was
engaged in illegal conduct: at his trial on financial and securities charges, the Justice Department alleged
that RS told other co-conspirators, “Ever get caught, you’re on your own.”\footnote{474} The data suggest RS is an
amoral person motivated by money and power and not by superordinate norms or principles. In response
to employee concerns that a business strategy RS had proposed—adjusting HealthSouth’s financial
statements in light of earnings shortfalls—would not pass legal muster, RS “simply said, ‘Fix it.’”\footnote{475}

When dealing with legal authorities, his response was identical. To build a private rehabilitation
facility in New Mexico required the approval of a State board, and when a board member asked RS
whether HealthSouth had ever built such a facility before, RS, who had only recently applied for a
certificate of need to convert a nursing home into a rehabilitation hospital, stated, “Sort of. We’ve got
one in South Carolina.” RS’s falsehood did not escape the attention of the board member, who
announced that the HealthSouth gambit was “the biggest smoke-and-mirror presentation I’ve ever heard,
but you know what? I’m going to vote for these guys because I like them.”\footnote{476} In another instance, RS
spent political capital to allow HealthSouth to bypass State certificate-of-need laws and begin uncertified
operations. In sum, RS lies without qualms to regulatory authorities, even if he does so charmingly.

\footnotetext{472}{RODENGREN, supra note 503, at 96-97.}
\footnotetext{473}{Id. at 51}
\footnotetext{474}{CAST, supra note 467, at 182.}
\footnotetext{475}{Id. at 23.}
\footnotetext{476}{Id. at 29.}
RS is an amoral decisionmaker with no legal training who evinces disregard for law and for legal authorities. He scores high on all five subconstructs and is thus scored an anomist.

c. hostility

Although RS had a close relationship with the Birmingham black community, and while he claimed to read every patient’s letter personally to provide the best possible service, in reality RS viewed HealthSouth customers and employees as “the little people.” Willingness to create public perceptions deeply at odds with reality typifies RS, and this cynical approach to people and business did not escape all observers: Aaron Beam, recruited by RS to his management team in the early years of HealthSouth, reports that after his interview with RS “I went home and told my wife that I just interviewed with the biggest con artist I ever met or the most brilliant young man I ever met.”

RS is very clearly a narcissist who wildly pontificated to investors that HealthSouth would “get to where Coke is quicker than they did,” and claimed to have “visions” at night when he would “close [his] eyes, and . . . see more HealthSouth facilities than I could count, with people and patients walking in and out and being treated . . . a sort of . . . spiritual thing.” Fortune magazine recognized at least a part of his grandiosity, dubbing RS “The Insatiable King Richard” for his opulence and his “seemingly paranoid behavior that would alternately alarm and annoy many who worked at headquarters.” By the 1990s, RS traveled in a chauffeured armored BMW complete with bodyguards and began building “vacation mansions” in Florida and Alabama. Employees began to suspect—correctly—that RS had bugged their phone lines to ensure that nothing was being said against their “King.”

In fact, a sense that HealthSouth’s financial house was not in order began to worry investors in the early 1990s, when analysts suggested HealthSouth was too highly leveraged as a result of its aggressive acquisitions policy. RS’s protestations to the contrary, coupled with increasingly cozy relationships with political cronies—Board Member Governor Richard Celeste of Ohio was chosen by President Bill Clinton to serve as his congressional health care lobbyist, and RS was part of House Speaker Newt Gingrich’s Corporate Kitchen Cabinet, which developed an alternative to the Clinton

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477 Id. at 206.
478 RODENGREN, supra note 469, at 41.
479 CAST, supra note 467, at 44.
480 RODENGREN, supra note 469, at 22.
481 CAST, supra note 467, at 55, 89.
482 Id. at 14, 24.
483 Id. at 29.
484 Section 37 of the 2003 federal indictment against RS charged as follows: “Richard Scrushy would and did seek to control his co-conspirators, HealthSouth employees and Board of Directors by (a) threats, (b) intimidation, and (c) taking various steps to monitor the activity of said persons, including obtaining and reading their emails, placing them under surveillance, and installing equipment that permitted him to eavesdrop on electronic and telephonic communications.” See United States v. Richard M. Scrushy, Case No. CR-03-BE-0530-S (N.D. Ala. 2005), Indictment, Oct. 3, 2005.
485 RODENGREN, supra note 469, at 56.
health plan—assured investors for a time. However, when HealthSouth shares fell on discovery of a train of illegalities, rather than concede problems RS stated that the shares were worth “north of $20” to assure investors only to sell $70 million of his own shares to “diversify” before the price dipped to $7.487

Although nothing suggests that he is an ethnocentrist, and despite his public professions of concern for the wellbeing of people, his actions reveal that RS is a deeply distrustful, narcissistic, cynical, Machiavellian, and hostile misanthrope who lacks empathy and is committed to personal aggrandizement. Thus, he scores high on eight of nine subconstructs of hostility and is scored a hostile decisionmaker.

d. adventurism

RS had enough business acumen to recognize opportunity in the transformation of the federal Medicare reimbursement regime, and as a risk-taking entrepreneur he capitalized upon an absence of outpatient rehabilitation options.488 Still, RS is not highly risk tolerant: he thinks and studies before acting,489 and was as cautious in hiring as he was in acquiring new businesses490 Although he might be considered high in optimism, he must also then be adjudged low in stress and high in internal locus of control, for, in his words, “I always knew it would work . . . Some people thought I was crazy, but some in the business knew I wasn’t.”491 In summary, RS is a deliberate if optimistic decisionmaker with an internal locus of control who is neither particularly anxious nor stressed during decisionmaking. Moreover, his does not have a particularly high risk propensity. He thus scores as high on only three of seven subconstructs of adventurism and is thus scored as a non-adventurist.

e. summary of IVs: Richard Scrushy

Richard Scrushy is a militarist and anomist who is hostile but not adventuristic.

ii. DVs: CLC and HealthSouth

The first handwriting on the proverbial wall suggesting that RS and HealthSouth were manipulating financial data was scrawled in 1998, one year after RS collected $111 million in salary,

486 Id. at 65, 76. In the 2002 foreword to the book The Story of Health South, Senator Orrin Hatch lauded RS as “way ahead of us on [the subject of rehabilitation for disabled people]” and pronounced him “a man who truly cares about people . . . [who] has spent a lifetime trying to bring better healthcare to this country.”” Id., supra note , at vii. When Senator Hatch was reminded of his earlier statement, he offered only this: “Yeah, there were some people at HealthSouth who did some rotten things. I just don’t think he was one of them.” CAST, supra note 467, at 224.

487 Id. at 137.

488 RODENGREN, supra note 469, id. at 19.

489 See id. at 41 (“I’ve learned a lot by watching what companies did wrong and why they failed. I’ve seen some of the major mistakes CEOs have made in their business strategies, the way they ran their operations, and the way they financed their companies. Some of them did some dumb things . . . We didn’t make the mistakes others made.”) (quoting RS).

490 See id. at 41 (“If I can’t find the person I’m looking for, I won’t hire anybody. I just won’t do it. I’ll wait as long as I have to.”) (quoting RS); id. at 40 (“I like what they do. They’ve learned not to grow too fast. They do a little bit at a time. They’re not free spenders and they’ve probably had a lot of proposals [for more expansions] that they’ve turned down. I like to see people working with strict parameters like that.”) (quoting Gary Partridge, analyst at Sterne, Agee & Leach).

491 Id. at 51.
when HealthSouth restated earnings for the first time.\textsuperscript{492} Articles critical of HealthSouth and RS appeared, and in 2001 RS found his firm defending and ultimately paying a large sum to settle a civil suit brought by the Justice Department alleging violation of Medicare regulations governing patient billing for the services of physical therapists.\textsuperscript{493} Undaunted, RS accepted a $6.5 million bonus in 2002 and exercised stock options worth $56 million even as earnings per share dropped 28%.\textsuperscript{494}

However, the undoing of RS came in 2003, when the SEC began investigating whether HealthSouth had illegally delayed disclosing to the public the negative financial effects of new Medicaid and Medicare billing regulations on its financial statements.\textsuperscript{495} An FBI raid on corporate headquarters led to formal charges on March 19, alleging that HealthSouth had artificially inflated $2.7 billion in profits over a 5-year period through fraudulent accounting.\textsuperscript{496} Ten top HealthSouth officers, caught internally referencing fraudulent accounting and financial manipulations as “pixie dust” and filling “the hole,” pled guilty to fraud, and HealthSouth stock was delisted and devalued.\textsuperscript{497} Nevertheless, RS held his legal ground and became the first corporate executive to be tried under SOX.\textsuperscript{498} RS, denying any legal knowledge of changes to Medicare regulations and denying any knowledge that he or other executives had committed any illegal acts, pled not guilty to conspiracy to commit mail fraud, wire fraud, securities fraud, money laundering, aiding and abetting, false SOX certification, and false statements to the SEC.

In other words, RS rested his fate on the “blame the other guy” defense: he had not ordered anything illegal, and did not have actual knowledge that others had done anything illegal, and thus, although he was CEO, he did not bear legal responsibility for the actions of others. RS leveled blame for the fall of HealthSouth at the feet of auditors, his own CFO, and the corporate compliance committee, and, in a surprise verdict, was acquitted on April 19, 2005, when jurors determined that there was a “lack of substantial evidence and witness credibility,” as well as insufficient criminal intent, to convict.\textsuperscript{499}

RS, fired from HealthSouth, remains a party in civil litigation brought by shareholders and regulatory agencies.\textsuperscript{500} HealthSouth remains in operation under a new executive team.

6. Sunbeam

a. CEO Albert Dunlap
   i. IVs: scores on personality constructs
      a. militarism

\textsuperscript{492} CAST, supra note 467, at 41, 45.
\textsuperscript{493} See id. at 85 (reporting that RS authorized HealthSouth to pay $325 million in fines to settle the suit).
\textsuperscript{494} Id. at 92.
\textsuperscript{495} The new regulations trigged an earnings shortfall of more than $175 million. Id. at 110.
\textsuperscript{496} Id. at 24.
\textsuperscript{497} Id. at vi, 71, 171. Only one HealthSouth executive received prison time—a total of five months. Id. at 171.
\textsuperscript{498} CAST, supra note 467, at vi.
\textsuperscript{499} Id. at 188-89, 219.
\textsuperscript{500} For the most updated information about the litigation, see http://www.richardmscrushy.com.
Albert Dunlap [“AD”], former CEO of Sunbeam, was a quiet, lonely child who grew up poor in Hoboken, New Jersey. He had few friends, and spent his time playing alone in his room.\textsuperscript{501} For AD, his self-described unhappy childhood could only be overcome by “brute struggle of which he was uniquely capable[,]” and this lesson left AD, a/k/a “Chainsaw Al,” an angry man, “defiant and raging at all that came his way.”\textsuperscript{502} Anger became entrenched as AD’s dominant emotion and aggression his default behavioral style at an early age. As a business acquaintance recalls.

He was the most unpleasant, personally repulsive businessman I ever met in my life. Every conversation began in a normal tone of voice and ended with the man yelling, red-faced and furious, at whoever was standing in front of him. It was unbelievable.\textsuperscript{503}

At West Point and in his brief Army career, AD maintained his rage and a record of academic underachievement,\textsuperscript{504} and he carried both forward into a first marriage which ended in divorce from his wife, Gwyn, on grounds of extreme cruelty. During the brief relationship he would “erupt in tantrums and storm about the apartment inspecting the furniture for fingerprints[,]” and even during periods of “normalcy” AD related to his family more as commander than as husband and father.\textsuperscript{505} The worst is revealed in the petition for divorce, which AD did not contest. That document notes that AD denied Gwyn food and maternity clothes, brandished a Bowie knife at her while indicating his interest in discovering the taste of human flesh, threatened her with his collection of guns, and expressed his hope that she would die so that he might collect her insurance death benefit.\textsuperscript{506}

AD’s aggressive authoritarianism and his delight in the abuse of power found expression in the workplace as well. His shift superintendent “enjoyed snarling at his subordinates[,]” a behavior that AD found endearing and deemed worthy of emulation.\textsuperscript{507} Throughout his career, AD inspired fear and loathing in his subordinates\textsuperscript{508} and strong dislike in his colleagues, and few doubted that he would abstain from any action necessary to achieve his ambitions. Naturally, AD’s personality made it difficult to develop personal affiliations, but AD seems never to have formed them even within his immediate family. He liked to insult his wife’s parents and thought it fun to give the middle finger to her mother at church services.\textsuperscript{509} When each of his parents died, he chose not to attend their funerals, and in his

\textsuperscript{501} BYRON, supra note 244, at 20.
\textsuperscript{502} Id. at 18.
\textsuperscript{503} Id. at 18.
\textsuperscript{504} See id at 23 (reporting that AD graduated near the bottom of his class at West Point).
\textsuperscript{505} Id. at 67, 73.
\textsuperscript{506} Id. at 24-26.
\textsuperscript{507} Id. at 69.
\textsuperscript{508} JOHN A. BYRNE, CHAINSAW: THE NOTORIOUS CAREER OF AL DUNLAP IN THE ERA OF PROFIT AT ANY PRICE 3 (2003).
\textsuperscript{509} BYRON, supra note 244, at 26.
autobiography neither merit more than a few lines.\textsuperscript{510} It would be a stretch to conclude from the available information that AD had any genuine friends.

AD scores high on all ten subconstructs of militarism and thus is scored as a militarist.

b. anomism

AD is a breaker of rules, norms, and principles \textit{par excellence}. Even though his wealth and status gained him membership to prestigious clubs, no one would play tennis with him because he “cheated so outrageously—and got so abusive of opponents who questioned him.”\textsuperscript{511} Upholding even the most trivial and symbolic of social norms, such as keeping Christmas gifts secret until Christmas, were too much to expect of AD as his wife discovered when she returned early from a trip to find him carefully rewrapping presents he had unwrapped earlier.\textsuperscript{512} More strenuous legal obligations stood no chance: no sooner did AD join the Nitec Paper Corporation in 1974 than he conspired with his supervisor to establish secret offshore accounts in Switzerland and Bermuda to bank profits from various illegal transactions, labeling them as “consulting fees.”\textsuperscript{513} Similarly, from the moment he joined Sunbeam he treated his position of trust as an opportunity to violate almost the entire canon of corporate law governing finance and securities in order to raid the wealth of its investors. In short, AD is the archetypal anomist—disrespectful of law and legal authorities, formally untrained in law, and devoid of moral strictures.

c. hostility

Even in his youth, AD was a “hostile and arrogant” jock with an “ego the size of the United States,” and as he entered adulthood AD remained “oblivious to how he was viewed by those all around him.”\textsuperscript{514} Those who knew him in business, such as a supplier for Nitec, describe the selfish man even more colorfully in terms that suggest narcissistic personality disorder:

Frankly, he was a world-class asshole. He’d stiff you for months on bills then get abusive the second you asked for payment. He was just the worst. There must have been something wrong with him.\textsuperscript{515}

To AD, people were simply tools to suit his purposes. He married his second wife only when told by his boss that he would go farther in business if he did so, and even then AD pressured her to marry before December 31\textsuperscript{514} in order to reap a tax deduction; having accomplished his objectives, AS divorced her in less than a year.\textsuperscript{516} His disregard and even dislike for fellow men was general and transparent: he was an equal opportunity misanthrope, using and abusing people without regard to race, religion,
Throughout his business career, AD managed to inspire the loathing of virtually all his subordinates, and when Nitec’s VPs, desperate to rid themselves of him, threatened mass resignation if he were not fired, AD saw opportunity. Aware of his supervisor’s implication in illegal banking activities and other corporate fraud, AD leveraged that information to negotiate an overly generous severance package. When Nitec internal auditors soon discovered “massive falsifications and fraudulent accounting entries on the company’s books” the board refused to issue the severance check, and AD’s suit for breach of contract settled years later for $50,000.  

AD is disinterested in and actively hostile to others. When he became CEO at Scott Paper and fired half the employees, a television interviewer inquired as to whether it gave him pause to have to do what she believed was a distasteful task. AD brushed aside the suggestion: Pointing to the rising price of Scott’s stock, he declared, “I created $6.5 billion of value. And for that I received less than 2 percent.” Then basking in his newly found fame as the CEO of the moment, he added, “There are only a handful of superstar executives. You’ve got to compare them with the other superstars. You can’t compare them with the worker on the floor.” Naturally, CEO AD included himself in this elite group who needn’t concern themselves with lesser men. AD thus scores high on all nine subconstructs and is scored a hostile decisionmaker.

d. adventurism

AD has a penchant for diving into things before testing the waters, and he brought this impulsivity to bear on the turnaround of ailing companies, itself a risky enterprise. Rather than take his time to analyze, evaluate, decide, plan, and then execute, AD simply cut lines of business, fired employees, reduced capacity, and shrunk costs, and for this he earned the nickname/epithet, “Chainsaw Al.” He is “quick, glib, and boast[s] the attention span of a gnat,” and considerations of risk seem not to register with him. His cocksure certainty that all he touches with turn to gold belies a sense of optimism and an internal locus of control that are not always supported by reason and economic reality. His personal demeanor suggests that stress and anxiety are frequent, if not constant, companions that goad him to rage when criticized for his tactics or otherwise challenged. AD thus scores high on all five subconstructs of adventurism and is scored an adventuristic decisionmaker.

e. summary of IVs: Al Dunlap

Al Dunlap is a militaristic anist who is hostile and adventuristic.

ii. DVs: CLC and Sunbeam

When AD was hired as CEO of Sunbeam in July 1996, the share price had fallen from $20 to $12, and in hopes of a quick turnaround the board offered him the overly generous compensation package

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517  See id. at 275 (suggesting that AD was no ethnocentrist, even if he “shunned the language of political correctness,” because he simply hated everyone equally).
518  Id. at 77.
519  Id. at 205.
520  BYRNE, supra note 507, at 9.
of $1 million in salary, 50,000 shares of stock, 750,000 in-the-money options, and perquisites that included a full-time bodyguard and chauffeur.\textsuperscript{521} Predictably, “Chainsaw Al” fired half the employees (including the COO), closed two-thirds of the warehouses, eliminated most of the factories, and scrapped eighty-seven percent of the product line. In response, Sunbeam’s share price rose to $30 by April 1997.\textsuperscript{522}

However, “an increasingly fishy smell had begun to emanate from Sunbeam’s financial reports[,]” suggesting, as later proven, that the turnaround had come at the price of a conspiracy to defraud shareholders.\textsuperscript{523} Although profits were growing dramatically, little cash worked its way to the financial statements because Sunbeam had achieved its results by forcing distributors to accept deliveries of goods, even when previously shipped goods had not sold, and then recording unsold shipments as revenue—an illegal practice known as “channel stuffing.”\textsuperscript{524} Thus, although recorded revenue was robust, actual revenue was nil, and accounts receivable were growing at a rate of five hundred percent. Sunbeam “appeared to be experiencing a dramatic surge in profitability, but it was actually going broke[.].”\textsuperscript{525}

In March 1998, Sunbeam’s purchase of a competitor, Coleman, earned AD a revised contract of $2 million annual salary, $15 million in Sunbeam stock, and $44 million in options.\textsuperscript{526} Within days of the merger, however, AD’s ruse collapsed. On March 19, Sunbeam issued a press statement describing “changes in inventory management” to remedy its failure to meet first-quarter earnings expectations and announcing a potential restatement of past earnings,\textsuperscript{527} and investors began dumping shares. Shareholders filed lawsuits in late April, alleging fraudulent accounting of earnings and artificial inflation of the stock price, which sent the share price into a downward spiral. The SEC initiated civil proceedings against Sunbeam and AD, alleging that he “was the guiding presence at Sunbeam” when the firm committed fraud to exaggerate its earnings from 1996 to 1998 and that he created “[a] false picture of a rapid turnaround in Sunbeam’s financial performance.”\textsuperscript{528} On May 11, 1998, AD tried unsuccessfully to explain to analysts that the stock would rebound, and, when asked by a PaineWebber analyst if he would return his bonus, grew furious and threatened to “come after” the questioner.\textsuperscript{529} Following an emergency meeting of the Board of Directors, in which AD alleged a shareholder conspiracy to drive down the price

\textsuperscript{521} BYRON, supra note 244, at 256-57.
\textsuperscript{522} Id. at 257-60.
\textsuperscript{523} Id. at 267.
\textsuperscript{524} Id. at 267-68.
\textsuperscript{525} Id. at 268-69.
\textsuperscript{526} Id. at 296.
\textsuperscript{527} Id. at 297.
\textsuperscript{529} BYRON, supra note 244, at 298.
of Sunbeam in order to take over the company, the Board fired AD on June 15, 1998 and surrendered control to AD rival and major Sunbeam investor, Ron Perelman, to avoid civil suit. In February 2001, its equity gone, Sunbeam declared bankruptcy.

The firm emerged in 2002 and now operates as a private firm under the name American Household. AD agreed to pay $15 million to settle shareholder suits in August 2002, and in September agreed to pay an additional $500,000 to settle SEC litigation. No settlement required AD to admit any wrongdoing, although he agreed to be barred from working as an executive at a public company.

7. Tyco

a. CEO Dennis Kozlowski
   i. IVs: scores on personality constructs
      a. militarism

In his youth, Dennis Kozlowski [“DK”] was just another “face in the crowd . . ., an easygoing, average Joe—not much more than a kid with ho-hum grades and a smile when he could make somebody laugh . . . Many didn’t remember him at all.” Despite his obscurity he yearned for acceptance and adulation, which he gained to some extent by playing guitar in a band, the Hi-Tones, and by playing football and basketball in high school, the latter well enough to earn a scholarship to Seton Hall.

It is unclear how he spent his immediate post-undergraduate years—a resume gap attests to service with Air America flying helicopters in Cambodia, according to DK, although no official records exist. He began his Tyco career as an assistant controller, moving up the ranks to become CEO in 1992. However, attaining the top position at Tyco did not release DK from the insecurity of childhood poverty in Newark, New Jersey. Perhaps there is some ground for it: DK is described as “[c]rude, tasteless, and unencumbered by the graciousness and sense of style that a more cultured upbringing might have provided.” Moreover, he is dull and uncharismatic, so much so that his large cash donations to charities earned him nothing more than a string of polite “thank you” letters.

DK resolved not to let his humble upbringing impede his social climb, and where facts were in the way he attempted to climb over them, albeit clumsily. Tyco press releases claimed that he was born in tony Maplewood and that he had earned an MBA when in fact he only took a few evening courses.

530 Id. at 299.
531 Id. at 300.
533 BYRON, supra note 244, at 31-32.
534 Id. at 33.
535 Id. at 80.
536 Id. at 305.
537 Id. at 308.
538 Id. at 310.
539 Id. at 80.
and in describing his newly-found riches DK referenced his wine collection in terms of the number of bottles rather than by the quality of their vintage. Yet even these measures could not make him popular or quench his desperate “obsession” with becoming like General Electric CEO Jack Welch, whom he viewed as a “member of the Establishment” that had denied him admittance. His undoing resulted from increasingly conspicuous consumption that could no longer be hidden from investors and regulators.

Nothing in the relatively sparse literature suggests that DK was a nationalist or held a favorable attitude toward power, and available sources do not make note of unusual aggression or dogmatism. His leadership style was unremarkable. He is a competitive striver who despite social awkwardness seeks out the company and approval of others, and it is apparent that he has low self-esteem. Thus, DK scores high on only three subconstructs of militarism—competitiveness, ambitiousness, and low self-esteem.

b. anomism

Although DK earned a bachelor’s degree in accounting and began his professional career as an auditor, he has no formal legal training. He does not demonstrate adherence to strong moral code either in his public or his private life: while Tyco CEO, DK began affairs with a series of women—some of whom were his subordinates—and appeared with them publicly to humiliate his wife. Although his extravagant abuse of authority for personal gain resulted in a long litany of criminal and civil charges—evidencing a disregard for law—it is difficult, in light of his conduct subsequent to arrest, to judge whether DK was similarly disdainful of legal authorities. He may have simply been a very adult and very wealthy version of the proverbial kid caught with his hand in a cookie jar. In sum, DK scores high on all five subconstructs of anomism save one—disrespect for legal authorities—and is thus scored an anomist.

c. hostility

In addition to infidelity, which suggests narcissism, a lack of empathy, and a Machiavellian touch, DK found other forums to express the dark side of his personality. After a promotion, he sponsored a dinner for Tyco executives to announce the firing of the man he judged the worst warehouse manager that year. If there is no evidence of misanthropy per se, DK absorbed some ethnocentrism when, as a boy, he and his anti-Semitic father frequented Polish American organizations where “gripping among the men about how the blacks were taking over Newark” dominated the discourse. Further, DK is numb to the externalities of his personality; to wit, he often walked about Tyco headquarters, eating

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540 See id. at 27 (noting that upon DK’s arrest, “few business reporters had yet even heard of the company he ran, Tyco International, and fewer still had heard of his name[.]”); id. at 309 (noting DK’s obsession with Welch)..  
541 Id. at 78.  
542 Id. at 207.  
543 Id..  
544 Id. at 306.  
545 Id. at 31.
pizza, oblivious to the fact that “grease and cheese [were] splattering onto the carpets as he passed.”

Thus, DK scores high on six of nine subconstructs of hostility and is scored as a hostile decisionmaker.

d. adventurism

Tyco appointed DK for his reputation as a cost-cutter but underestimated the degree of risk he would accept on behalf of the firm. He achieved early successes not because of, but in spite of, himself. He did no research and simply relied on intuition, wishful thinking, and an overinflated perception of his judgment, leaping to conclude deals with little real forethought. DK saw few deals he didn’t like, and his reaction time was so quick that normal oversight procedures stood little chance. As a top advisor recalls,

There were times when deals were flowing through at a rate of two and even three a week and the board just wasn’t able to keep up. A lot of times they’d have to vote on them before any due diligence was even done. Sometimes things would get so frantic that there wouldn’t even be time for an actual meeting of the board, and the vote would have to take place via conference calls.

There is no evidence that DK experienced anxiety in his decisionmaking; to the contrary, his optimism and impulsivity were so great that there was simply little time to be anxious. DK thus scores high on all subconstructs of adventurism save anxiety and is scored an adventurist.

e. summary of IVs: Dennis Kozlowski

DK is a non-militaristic decisionmaker who is anomistic, hostile, and adventuristic.

ii. DVs: CLC and Tyco

Tyco is the leading manufacturer of electronic industrial components, medical devices, and security systems. No later than 1995, DK began to raid Tyco to achieve an extravagant lifestyle that included the purchase of properties in Florida, Massachusetts, and New York, the collection of art masterpieces, jewels, and yachts, the throwing of lavish parties, and the donation of large sums to charities. Much of the wealth extracted from Tyco came pre-approved by the firm, albeit with the firm as co-conspirator: through the Key Employee Loan Program [“KELP”], DK received a zero-interest real estate loan of $19 million which Tyco forgave the next year as a “special bonus” while paying him an additional $13 million to pay real estate taxes—and neither the loan nor the cash were disclosed, as required by law, as executive compensation. All told, DK received at least $270 million such payments gratis through KELP, and total equity looted by DK reached approximately $600 million by 2002.

Ironically, what proved DK’s undoing was not his defrauding of Tyco investors but his decision to use company headquarters, rather than his home address, to drop ship art purchased with $13 million in Tyco funds for his Fifth Avenue apartment. Manhattan District Attorney Robert Morgenthau opened a tax fraud investigation, and in May 2002 DK was arrested and charged with evading $1 million in New

546  Id. at 308.
547  Id. at 301.
548  Gandossy & Sonnenfeld, supra note 2, at 5-6.
549  BYRON, supra note 244, at 63-64, 330.
York sales tax, securities fraud, and larceny. In turn, Tyco filed a $600 million fraud suit against DK.

At his criminal trial, DK conceded that his compensation package was “almost embarrassingly big” but denied having committed any crimes. Nevertheless, DK was convicted on all charges in June 2005, including twenty-two counts of grand larceny for accepting $150 million in unauthorized bonuses. He is now serving a sentence of eight years’ imprisonment. In the civil action he was found liable and ordered to reimburse $400 million to shareholders. Tyco remains in operation under new management.

8. Halliburton

a. CEO Dick Cheney
   i. IVs: scores on personality constructs
      a. militarism

Since boyhood, Dick Cheney [“DS”] has pursued “activities that allowed him either to be alone or to excel.” After earning scholarships in football and baseball to attend Yale University, DC eventually abandoned his doctoral studies in political science for the hypercompetitive world of politics, first as a staffer to Donald Rumsfeld and then as a member of Congress, Secretary of Defense, and ultimately vice president. With the exception of a desultory period when he flunked out of Yale and labored as a “lineman for the county,” DC has led a public life characterized by a driving ambition to acquire power and authority and great skill in wielding both. He instinctively believes that every problem is a threat to be attacked after an analysis of objectives, resources, and constraints, and “dr[ives] policy the way commanders are taught to drive operations in the field, calculating the ‘mission, enemy, troops, terrain and time available.’” As a congressman, DC “never saw a defense program [he] didn't like,” including arming the Contras and deploying the Strategic Defense Initiative. Although he believed himself too uncharismatic to win the presidency, as vice president DC structured his office to maximize power by requiring that he personally vet and “tee up” every decision for President George W.

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550 Id. at 330.
554 PRINS, supra note 17, at 167.
555 HAYES, supra note 551, at 28-38.
556 BARTON GELLMAN, ANGLER: THE CHENEY VICE PRESIDENCY 34 (2008) (DC is “pretty damn good at accumulating power, extraordinarily effective and adept at exercising power.”) (quoting James A. Baker).
557 Id. at 67.
558 PRATAP CHATERJEE, HALLIBURTON'S ARMY 37 (2009). Similarly, as Vice President, DC led the Administration's successful effort to overcome objections from liberal Republican senators and block the International Criminal Court and Anti-Ballistic Missile treaties. GELLMAN, supra note , at 63-64.
560 Id. at 103.
Bush.\footnote{HAYES, supra note 551, at 302-315. Foremost among such decisions was DC's decision to assume command in the temporary absence of President Bush in the hours after the attacks of 9/11 and order U.S. military forces to shoot down hijacked civilian aircraft that might be employed by terrorists as guided missiles. GELLMAN, supra note , at 119, 129-30.} Further, by creating special task forces and imposing a culture of secrecy, DC battled successfully to enlarge presidential authority and restore power to the executive branch that he believed had been usurped by Congress and the judiciary.\footnote{See id. at 82-83 (describing DC's view of executive power as Hamiltonian in that it is “absolute within its constitutional sphere” and “supreme outside that sphere.”).}

Interestingly, however, although he has lived in the public arena, and despite his tremendous success in exploiting a Washington insider's access to the “corridors of power,” DC is an “unrelentingly secretive” introvert who is uncomfortable in the spotlight, possesses much “anti-charisma,” and prefers to be either alone with his thoughts and books or the “silent strength behind a benefactor.”\footnote{See, e.g., BRIODY, supra note 552, at 194 (reporting that colleagues describe DC as “low key,” “bland,” and “calming”).} Although he is witty and skilled in developing and maintaining relationships when they facilitate political objectives,\footnote{See, e.g., BRIODY, supra note 552, at 194.} DC is simply “not a very social person.”\footnote{Id. at 193.} This may be due to DC's dogmatism: while he declaims the popular tendency to create rigid dichotomies in regard to policy choices,\footnote{GELLMAN, supra note 555, at 68. See also id. at 79 (noting that unlike most politicians DC did not engage in the “give-and-take” of traditional legislative horsetrading on tax policy, even when it cost the Republican Party control of the Senate in 2007).} and although there is a distinction between adherence to principles and rigid ideology, DC “seldom indulge[s] in ambivalence[,]” and would rather lose than sacrifice principle to political expedience.\footnote{DUBOSE & BERNSTEIN, supra note 558, at 48-49 (describing DC as “calculating” in the development of relationships).} DC has either friends or enemies—there is no middle ground. When the State Department took contrary positions he described it as an “al Qaeda cell[,]” and foreign governments were either with or against the U.S. in the War on Terror.\footnote{BRIODY, supra note 552, at 218, 194, 197.} When events disconfirm his theories, DC remains “unyielding and unbending” and anchored to his “set of beliefs.”\footnote{GELLMAN, supra note , at 383 (quoting former President George W. Bush).} Moreover, according to a colleague, DC “doesn't believe in negotiations. He's completely rigid, states his position, and concedes nothing.”\footnote{GELLMAN, supra note 555, at 68. See also id. at 79 (noting that unlike most politicians DC did not engage in the “give-and-take” of traditional legislative horsetrading on tax policy, even when it cost the Republican Party control of the Senate in 2007).} 

Although DC never expresses anger publicly and is widely known for his calming, cool, and collected presence,\footnote{See, e.g., BRIODY, supra note 552, at 194.} he may suffer from low self-esteem. Despite his universally recognized intellectual capacity, after he flunked out of Yale for the second time he quickly accrued two DUI arrests, and he spent several years without direction or purpose working a blue-collar job and failing to complete graduate school.\footnote{Id. at 171, 225.} He was discouraged him from seeking the presidency by his lack of charisma, and...
although his long record of service throughout the Cold War, the Gulf War, and the War on Terror
testifies that he is a nationalist who believes in American Exceptionalism, he secured five deferments to
avoid Vietnam on the ground that he “had other priorities in the 1960s than military service.”

Although he is not an aggressive person, DC is an ideologue as well as a competitive,
nationalistic authoritarian and introvert who holds a favorable attitude toward the use of power to achieve
security and exert influence in the world on his own behalf and on behalf of the U.S. Despite his
influence over people and events he is an isolated individual with a measure of low self-esteem.
Accordingly, DC scores high on nine of ten subconstructs of militarism and is thus scored a militarist.

b. anomism

Although DC was involved in church activities as a youth, as an adult he is largely secular, and in
public life has “resolutely avoided discussions of faith.” As a young adult, DC was disciplined at Yale
University for alcohol-related offenses and for disrupting campus activities, and he was arrested twice for
driving under the influence. He secured deferments to avoid Vietnam service, but only by gaming the
draft rules and enrolling in a community college to preserve his ineligibility. Although DC has no
formal legal training and, like many Westerners, is deeply skeptical of regulation and of Congress, he is
profoundly aware that law is a ubiquitous and powerful instrument. While CEO of Halliburton, DC
sharply differentiated legal compliance from ethical behavior and directed his subordinates and legal team
to adhere scrupulously to the former while ignoring the latter. Upon discovering in 2000 that the
Twelfth Amendment to the U.S. Constitution prohibits the election of a president and a vice president
domiciled in the same state, DC took a day trip from his primary residence in Texas to register to vote in
Jackson Hole, Wyoming, where he maintained a vacation home; to do legal battle in Florida during the
2000 vote recounts, he and the apparent president-elect traveled on Halliburton corporate jets.

Moreover, when DC concludes that law poses obstacles, he evinces the capacity to reinterpret,
modify, and even violate the rules at issue. When a reporter threatened to leak classified information
regarding U.S. submarine espionage against the Soviet Union, DC, then Chief of Staff to President Gerald
Ford, suggested authorizing a burglary to retrieve information from the reporter's home. While vice
president, DC understood instinctively that the exercise of power would depend upon the capacity to

573 HAYES, supra note 551, at 44 (quoting DC).
574 GELLMAN, supra note 555, at 52.
575 See CHATTERJEE, supra note 557, at 31 (describing DC's administrative troubles at Yale); BRIODY, supra note , at
193 (discussing DC's DUI arrests).
576 HAYES, supra note 551, at 43-45.
577 GELLMAN, supra note 555, at 38 (describing DC's hostility to regulation; id. at 82-83 (noting DC's distrust of
Congress).
578 See BRIODY, supra note 552, at 210 (citing an interview with the CEO of a Halliburton subsidiary).
579 GELLMAN, supra note 555, at 17.
580 DUBOSE & BERNSTEIN, supra note 558, at 34-35.
frame legal issues. Within minutes after the World Trade Center and the Pentagon were attacked on 9/11, DC requested his legal counsel to draft “extraordinary powers” to be wielded by the White House in the coming War on Terror.\textsuperscript{581} DC approved and authorized a new legal framework drafted by subordinates that founded and justified a series of controversial steps, including the Authorization for the Use of Force, “enhanced interrogation” of detainees, the USA PATRIOT Act, and the claim of broad executive powers to violate treaties and domestic law.\textsuperscript{582} DC directed the head of the National Security Agency to “forget about the law” when responding to a query as to what else, besides spying on U.S. citizens under the “Terrorist Surveillance Program,” could be done, and he directed the executive branch to keep much of this new legal regime secret from the legislative and judicial branches.\textsuperscript{583} In sum, DC is an amoral decisionmaker with no legal training whose conduct evinces disregard for law and legal authorities despite his deep intellectual capacity to acquire legal knowledge and to shape the creation, interpretation, and application of law.\textsuperscript{584} He scores high on all subconstructs of anomism and is scored an anomist.

c. hostility

To DC, the world is “an inherently dangerous place . . . populated by four-year-olds with automatic weapons.”\textsuperscript{585} He is distrustful of others and believes little without independent verification.\textsuperscript{586} His exploitation of the rules regarding the draft to avoid military service, and his doubts about the sincerity and trustworthiness of not only Soviet President Mikhail Gorbachev’s glasnost agenda but also of liberal Republicans in Congress suggests a strong thread of cynicism.\textsuperscript{587} Nothing in the literature suggests DC is ethnocentric;\textsuperscript{588} on the contrary, he is hostile without regard to group or affiliation and is openly contemptuous of public opinion.\textsuperscript{589} For DC, the world consists solely of friends and enemies: sticks are more useful than carrots, hard power is better than soft power, and war is central to human existence.\textsuperscript{590} Moreover, particularly as his cardiac health has degenerated, DC’s longstanding distrust and introversion may have trended toward misanthropy.\textsuperscript{591} DC is a vindictive, unempathetic person who

\begin{itemize}
\item \textsuperscript{581} GELLMAN, supra note 555, at 129-30.
\item \textsuperscript{582} See id. at 132-38, 140-143 (detailing DC’s development of new legal regimes for the War on Terror).
\item \textsuperscript{583} Id. at 142.
\item \textsuperscript{584} By all accounts, DC is “intimidatingly smart.” DUBOSE & BERNSTEIN, supra note 558, at 95.
\item \textsuperscript{585} Id. at 52.
\item \textsuperscript{586} GELLMAN, supra note 555, at 9.
\item \textsuperscript{587} See HAYES, supra note 551, at 201-03 (Gorbachev); GELLMAN, supra note 555, at 63-65 (Senate Republicans).
\item \textsuperscript{588} Although DC opposed sanctions against apartheid-era South Africa, he did so on economic, rather than racial, grounds. Id. at 270. Moreover, although he opposes affirmative action he selected General Colin Powell ahead of over one hundred other officers to be his Chairman of the Joint Chiefs of Staff because he believed Powell to be the most talented option. DUBOSE & BERNSTEIN, supra note 558, at 92 (discussing DC’s hiring of Powell).
\item \textsuperscript{589} GELLMAN, supra note 555, at 390 (suggesting that for DC public scorn is a “virtue”).
\item \textsuperscript{590} Id. at 161, 250.
\item \textsuperscript{591} See DUBOSE & BERNSTEIN, supra note 558, at 149 (suggesting that DC’s numerous cardiac events may have altered his personality and rendered him more hostile and less social).
\end{itemize}
keeps a “blacklist,” uses power to settle petty scores with political opponents, and fires employees who hold competing views or who present him with conclusions that are incompatible with his worldview.

DC is neither selfish—he gratefully embraces the role of the loyal sidekick to his political benefactors and extends that loyalty to a cadre of subordinate cronies—nor is he a narcissist or a misanthrope—he is famously “low-key,” self-deprecating, and quietly competent, and get alongs well with others when it suits him. However, DC is the archetypal Machiavellian for whom politics is the continuation of war by other means, and all means are permissible. He is a nakedly amoral hypocrite who resorts to deceit, media manipulation and smear campaigns, stealth and misdirection, and “the dark side” to prevail over opposition yet rails against others who use the same strategy.

In sum, DC scores high on five of nine subconstructs of hostility and is thus scored as hostile.

d. adventurism

DC is a “worrier” who plans extensively to guard against the worst possible outcome of every decision. He is cautious, emotionally reserved, and disfavors surprises. His cardiac illness suggests that he internalizes significant stress when forced to make exigent decisions such as the order, in the absence of President George W. Bush, to authorize U.S. military aircraft to destroy hijacked civilian aircraft to prevent their use as guided missiles on 9/11. Still, despite his pragmatism, DC is possessed of enough optimism to believe he is able to change the world by taking risks and exerting his relentless

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592 Id. at x.
593 See CHATTERJEE, supra note 557, at 37 (reporting that, as Secretary of Defense, DC cut defense programs located in the districts of prominent Democrats to harm their electoral futures).
594 See DUBOSE & BERNSTEIN, supra note 558, at 211 (reporting that DC fired CIA intelligence briefers seriatim until he found those who would confirm his views on the situation in Iraq prior to U.S.-led intervention in 2003).
595 See CHATTERJEE, supra note 557, at 31-34 (detailing Donald Rumsfeld’s and Gerald Ford’s patronage of DC, and DC’s subordination of his own interests to theirs); BRIODY, supra note 552, at 212 (describing DC’s extensive development of, reliance upon, and rewards to a network of friends and loyalists).
596 GELLMAN, supra note 555, at 2.
597 See id. at 219-20 (reporting that, when leaving a 2002 briefing from DC on intelligence suggesting that Iraq possessed WMD, House Majority Leader Dick Armey felt a “very deep sadness about my relationship with [DC]” because he “deserved better from Cheney than to be bullshitted by him.”).
598 When Joseph Wilson, the husband of CIA clandestine officer Valerie Plame, published an op-ed disputing DC’s claim that Iraq had been attempting to acquire uranium from Niger, DC allegedly advised his Chief of Staff, Scooter Libby, to leak the fact of Plame’s covert status to the media to pressure Wilson and then successfully resisted congressional demands for the transcript of his FBI interview regarding the matter, wherein he was questioned as to whether, as widely believed, he was the source of the illegal leak. See id. at 364-65 (chronicling the Plame/Libby scandal).
599 In a staff meeting immediately after 9/11, DC stated that the U.S. “will have to work . . . the dark side” and that “[a] lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available . . . [and] any means at our disposal . . . to achieve our objectives.” Id. at 160.
600 BRIODY, supra note 552, at 194, 272; see also GELLMAN, supra note 555, at 19 (noting that in DC’s experience “you usually end up with the least worst option.”) (quoting DC).
601 Id. at 17, 95. DC never gets angry and is “not the hugging kind” according to GWB. Id. at 328.
602 Id. at 86.
603 See id. at 119-20 (chronicling and analyzing DC’s actions and orders on 9/11).
will, to include, most significantly, the “constructive destabilization” of Middle East regimes such as Iraq. Thus, DC scores high on six of seven subconstructs of adventurism and is scored an adventurist.

e. Summary of IVs: Dick Cheney

Dick Cheney is a militaristic anomist who is hostile and adventuristic.

ii. DVs: CLC and Halliburton

Although he had no private-sector managerial experience, DC was hired as CEO of Halliburton [“H”], an oil services company, in August 1995 to leverage the extensive influence he developed in Congress and as Secretary of Defense from 1989 to 1993. During his tenure at H, D spent “countless days on the road, using his contacts to court key business players around the world, especially in the Middle East[,]” expanding government contracting, and doubling revenues in five years. DC’s retirement in August 2000 with a $20 milliom severance package was framed as that of a “triumphant CEO, a self-reliant insider-turned-outsider who competently and ethically grew his company while increasing shareholder value[.]” However, closer examination supports an inference that luck and spin kept a messy legacy quiet long enough for DC to return to politics. In addition to fraud, commentators allege political cronyism and collusion with officials beholden to DC in the steerage of government contracts to H, although proof of it is “a little like trying to build a murder case without the murder weapon.” By 2003 H was the primary U.S. Army contractor—up from 19th—and the no-bid process whereby H secured contracts—LOGCAP—had been implemented by DC as Secretary of Defense in 1993. LOGCAP, a monopoly that pays a guaranteed profit for construction, food service, sanitation, laundry, postal, energy, prison, and other services to the U.S. government, was created to enhance military logistical capability and efficiency by shifting these function to one civilian contractor. From inception, LOGCAP has been controversial: DC’s Department of Defense awarded it to H, the very

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604  Id. at 242, 252.
605  See DUBOSE & BERNSTEIN, supra note 558, at 106-08 (describing H as devastated by declining 1980s oil prices and reporting that DC was hired in the hope that his “Rolodex” would reinvigorate H). Still, despite DC’s contacts, his lack of private sector experience was so remarkable that the price of H fell on news of his appointment. BRIODY, supra note 552, at 191-92.
606  PRINS, supra note 17, at 167.
607  BRIODY, supra note 552, at 204.
608  DUBOSE & BERNSTEIN, supra note 552, at 104-05.
609  During DC’s tenure, H engaged in systematic inflation of project costs, use of substandard materials, overstaffing, excess production, and other acts of waste, fraud, and abuse for which it entered into settlements with the Justice Department subsequent to DC’s departure. See CHATERJEE, supra note 557. By 2004, H was under investigation by the Department of Defense, the SEC, Justice, and the GAO for acts and omissions during DC’s tenure. BRIODY, supra note 552, at 234.
610  See, e.g., DUBOSE & BERNSTEIN, supra note 558, at 152-64.
611  BRIODY, supra note 552, at 224.
612  DUBOSE & BERNSTEIN, supra note 558, at 153. While Secretary of Defense, DC asked H to develop a classified report on how a single private firm could develop logistical capabilities in the even of military overstretch. Id.
613  CHATERJEE, supra note 557, at xvi (chronicling the shift to civilian logistical support and the creation of LOGCAP); BRIODY, supra note 552, at 184-188, 198-206 (detailing the creation, award, and controversies of LOGCAP).
company it asked to draft the proposal, and as a “cost-plus” contract it is a de facto blank check making H the “government quartermaster.” Whereas H lost money before LOGCAP, from 1995-2000 H earned $2 billion for LOGCAP in Bosnia and Kosovo.

More serious are allegations that DC exploited his office to steer a LOGCAP contract to restore Iraqi oil production, awarded to H prior to the 2003 U.S. intervention. That the close relationship between H and DOD benefited DC, and that neither DC nor H are fully forthcoming about the extent and timing of these benefits, fuels speculation that the 2003 invasion was motivated by financial self-dealing. The dubious constitutionality of DC’s secretive Energy Policy Development Group [“EPDG”] formed to achieve environmental deregulation and removal of sanctions against oil producing nations, the revelation that EDPG began studying maps of Iraqi oil fields in 2001, and H’s retaliation against whistleblowers reinforced a perception of a scofflaw firm marshaling influence to spark an unprovoked “war for oil.” During DC’s tenure, H suffered other scandals, including violating sanctions, bribery, violation of labor laws, and accounting fraud. In respect to these misdeeds, DC claims ignorance.

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614 See FAR; 1 C.F.R. 48.
615 DUBOSE & BERNSTEIN, supra note 558, at 160.
616 BRIODY, supra note 552, at 198.
617 See id. at 221 (alleging violation of federal law in the award of the Restore Iraqi Oil contract); DUBOSE & BERNSTEIN, supra note 558, at 158-60 (analyzing adverse actions taken against government officials who protested legal violations in the bid and award process). Whether DC participated in the award of contracts to H, ordered or permitted his staff to do so, or otherwise knew or should have known is contested. See id. at 153 (discussing unsuccessful discovery in litigation). DC claims he “never went near the Defense Department” while VP and never lobbied on behalf of H. Id. at 152-53 (quoting a 2004 interview). The Defense Department defends the award on “national security” grounds. Critics suggest that bid and award meetings conducted after the secret award to H were a “sham” and that DC’s claim of ignorance is incredible. See id. at 158-60.
618 Although DC claimed to have severed all financial ties to H after resigning in 2000, H made six-figure payments to DC from 2000 to 2005, and DC cashed in stock options over this period to earn over $18.5 million—interests that, according to the Congressional Research Service, constituted a “continued financial interest” and a “potential conflict.” CHATERJEE, supra note 557, at 49. As late as 2006, DC retained stock options in H worth $4 million. DUBOSE & BERNSTEIN, supra note 558, at 105.
619 See, e.g., CHATERJEE, supra note 557, at 28 (reporting this allegation); BRIODY, supra note 552, at 231.
620 See DUBOSE & BERNSTEIN, supra note 558, at 7-11 (discussing the creation of and controversies surrounding the operation of the EDG). Among the members of the EDPG was Ken Lay, former CEO of Enron. Id. at 3.
621 See FBI Interviews Whistleblower; Walker v. Cheney.
622 Although DC was a vocal opponent of unilateral U.S. trade sanctions on the ground that they hindered U.S. competition with foreign firms, he claimed to have a “firm policy” against violations. DUBOSE & BERNSTEIN, supra note 558, at 17; 111-12; see also id. at 115 (reporting H helped found a lobbying group, “USA Engage,” to fight sanctions); id. at 116 (noting that DC obieded for a waiver from application of the Iran Libya Sanctions Act of 1996). However, while DC was CEO H created fictitious foreign subsidiaries out of glorified post office boxes and used these entities to trade illegally with Libya, Iran, Burma, and Iraq. See CHATERJEE, supra note 557, at 45-46. In 1997, H settled with the Commerce Department over charges it had violated the U.S. Export Administration Act fifteen times in transactions with Iran. When it was revealed in 2000 that H had done over $70 million in business with Iraq between 1997-2000, DC pled ignorance. DUBOSE & BERNSTEIN, supra note 558, at 117.
Moreover, it might fairly be said that a culture of corruption established during DC’s tenure persisted after his departure: since 2000, dozens of H employees have been charged for crimes involving official duties, abuse of foreign migrant laborers has embarrassed the Department of Defense, and federal agencies and Congress have launched investigations. Under the pressure of these scandals, the share price of H—$49 when DC resigned in 2000—plunged to $15 by 2002, and H has labored to “extricat[e] itself from its former CEO's mismanagement.” In 2007, H relocated to Dubai—a no-tax jurisdiction with looser regulatory standards—although it remains incorporated in the U.S. and continues to engage in extensive government contracting through LOGCAP in Iraq and Afghanistan.

9. Bernard L. Madoff Investment Securities

a. CEO Bernard Madoff

i. IVs: scores on personality constructs

a. militarism

Bernard L. Madoff [“BM”] was born in New York City to middle-class children of Eastern European Jews in 1938, and is universally recalled by childhood contemporaries as a physically unremarkable, introverted individual disinterested in current events. Although he participated in extracurricular activities, including swimming, basketball, playground monitoring, and lifeguarding, BM was and remains a loner. BM is quiet, distant, and aloof; he did not enjoy meeting people, and avoided

114. By 2006, the investigations had stalled, and although by its own admission H had violated the FCPA, no evidence implicated DC beyond the “should have known” standard. Id. at 112.

624 A Labor Department investigation revealed that during DC’s tenure H charged some costs of senior executive pension and bonus plans to its workers' pension fund and failed to pay pensions owed to employees. CHATERJEE, supra note 557, at 50.

625 While DC was CEO, H—in concert with its accounting firm, Arthur Andersen—changed its accounting practices in violation of GAAP to postpone revealing losses on overbudget construction projects and artificially inflate after-tax profits, and failed to inform stockholders. The SEC opened an investigation in July 2002, and H restated earnings and settled twenty-nine shareholder lawsuits over financial violations in June 2003. BRIODY, supra note 552, at 213. Among the practices questioned were the creation of fifty-eight SPEs during DC's tenure. Id. at 227. In 2004 the SEC fined H $7.5 million and imposed fines on H executives; no action was taken against DC. DUBOSE & BERNSTEIN, supra note 558, at 118.

626 See BRIODY, supra note 552, at 288 (questioning whether, although DC was a “hands-off manager,” DC can credibly claim to have not had knowledge of any of the misconduct that occurred during his tenure at H).

627 CHATERJEE, supra note 557, at xv.

628 In 2006, based in part on H's misdeeds, General George Casey issued an order, “Prevention of Trafficking in Persons in MFI-I,” ordering contractors and other persons and entities within Department of Defense jurisdiction to cease deceptive hiring practices, charging excessive fees to foreign workers, and permitting substandard living conditions and wages. See supra at notes . In 2004, Congress issued subpoenas to investigate the relationship between the UN Oil for Food Program, H, waste and fraud in LOGCAP, and the Bush-Cheney decision to intervene in Iraq in 2003.

629 Following the invasion of Iraq in 2003, H stock soared to $66/share, but has since returned to $44/share—more than $5/share less than when DC departed in 2000. See Halliburton Watch, at http://www.halliburtonwatch.org/news/stock_troop2.html (postulating that H's share price is dependent in part upon the involvement and success of U.S. forces in conflicts abroad).

630 DUBOSE & BERNSTEIN, supra note 558, at 105-06.

631 ANDREW KIRTZMAN, BETRAYAL 16 (2010).

632 Id. at 14-15.

633 JERRY OPPENHEIMER, supra note , at 48.

634 See id. at 31-32.
social events. He is an intensely secretive person who keeps his own counsel and did not display the trappings of his wealth to make or keep friends; on the contrary, he grew “cranky” when obligated to socialize, and did so solely to achieve business objectives. His introversion and isolationism may be a function of low self-esteem: he was considered “dull” by schoolmates and experienced rejection by the opposite sex due to his lack of intellect and relative poverty.

The foregoing may account for a high degree of ambition: BM discovered that his road to happiness was paved with cash. As a youth, he ran a lucrative sprinkler business and was “the image of a driven young man” who “radiated an entrepreneur's spirit.” Through long, hard hours doing manual labor and trading stocks in struggling firms he discovered a gift for making money, and in his cultural milieu this conferred a sense of status and a belief that he could “be one of them, the big shot, the Jewish prince who could dole out favors and advice, . . . a great power in the Jewish world of his fathers.”

BM enlisted in the U.S. Army Reserve in 1960 primarily to avoid the draft rather than out of a sense of patriotic duty or nationalistic beliefs. He then attended the University of Alabama and Hofstra University on swimming and Army ROTC scholarships. College classmates described an “assured, authoritarian” demeanor and noted that BM had few friends. Nothing in the literature suggests he has any ideological commitments or other aspects of dogmatism. In sum, BM scores high on seven of ten subconstructs of militarism and is thus scored as a militarist.

b. anomism

Prior to his arrest in 2009, BM had no criminal background whatsoever, although he was a suspected cheat of the golf course, a confirmed cheat in his marriage, and a frequent sexual harasser of his female employees. An ingrained disregard for law and legal authorities may have been

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636 Id. at 89-90.
637 Id. at 118.
638 KIRTZMAN, supra note 631, at 60.
639 See ERIN ARVEDLUND, TOO GOOD TO BE TRUE 19 (2010) (describing BM's social networking as as undertaking designed to safeguard his business).
640 KIRTZMAN, supra note 631, at 20.
641 See OPPENHEIMER, supra note 633, at 140 (indicating that BM experienced embarrassment as a child because his family's economic circumstances would not permit him to wear “trendy” clothes).
642 KIRTZMAN, supra note 631, at 15.
643 Id. at 26-27, 39, 74.
644 Id. at 36. BM later exaggerated a medical condition to acquire a medical discharge and avoid additional service as was his obligation, reinforcing the impression that he is not especially patriotic. See infra at p. .
645 See id. at 30, 36.
646 OPPENHEIMER, supra note 633, at 58.
647 KIRTZMAN, supra note 631, at 9.
648 See OPPENHEIMER, supra note 633, at 92 (reporting that BM reported golf scores than never varied below 80 or above 89—returns from the links that mirrored his fictitious market returns and raised skepticism).
649 BM was a serial adulterer during his marriage to Ruth, often meeting women—including prostitutes—for trysts at his office, and paid “hush money” to prevent disclosure. Id. at 62, 185; KIRTZMAN, supra note 631, at 111-12.
650 BM made “sophomoric sexual comments” and worse to female employees, and was so inappropriate with several of them that he paid cash severances to avoid lawsuits. OPPENHEIMER, supra note 633, at 111-12.
bequeathed by his parents, who ran illegal stock trading operations out of the family home and may have elicited BM's participation in this venture. BM enjoyed pretending to be a “wise Jewish elder” but he is a self-confirmed “lox and bagels” Jew who did not attend synagogue, celebrate religious rituals, or otherwise participate in his faith. BM does have some legal training—he attended law school for one year, primarily to earn a draft deferment, only to drop out and form his business. However, he has no specific training in corporate law, and the extent of his knowledge of the field appears to have been confined to a group of pliant lawyers on retainer with whom he shared little information about his business. BM thus scores high on four of five subconstructs of anomism and is scored as an anomist.

c. Hostility

As a youth, BM was a “happy-go-lucky guy[,]” and some friends report that even in adulthood BM had a “great sense of humor,” was “very considerate” and personable and shared freely of his wealth. Others suggest BM is more emotionally complex and variable and that “in his inner sanctum, he can be gregarious, coarse, generous, gentle, rude, and sometimes vicious.” With his employees, he vacillated between paying off their mortgages and honeymoons, throwing elaborate office parties, and otherwise treating them as valued members of a team with making crude sexual jokes, hurling insults, and degrading them. With potential clients, he was “so rude, he was a bastard[,]” perhaps out a natural proclivity, or perhaps to maintain the air of phony exclusivity essential to his business. With his social equals, BM deliberately fostered the impression that he was a “God [and] . . . [t]hat [he] was special, so unique[,]” and he boasted often that he was the “most powerful man on Wall Street.” Whether BM is suffering from narcissistic personality disorder or other psychopathology as some surmise is unknown,

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651 KIRTZMAN, supra note 631, at 9. The SEC closed down the operation in 1963. Id. at 35. Commentators have referred to BM's boyhood home as an “ethically and morally bankrupt household” where BM's “values, principles, behavior, sense of right and wrong, ideals, and standards were established.”). OPPENHEIMER, supra note 633, at 29.
652 KIRTZMAN, supra note 631, at 96-97.
653 OPPENHEIMER, supra note 633, at 64-66.
654 See KIRTZMAN, supra note 631, at 66 (describing the relationship between BM and his Wall Street attorneys).
655 Id. at 24.
656 DEBORAH STROBER & GERALD STROBER, CATASTROPHE 72 (2009) (describing BM as “loved and respected.”).
657 OPPENHEIMER, supra note 633, at 210. Others note that although BM made charitable donations he was disinterested in philanthropy. See, e.g., KIRTZMAN, supra note 631, at 58 (stating BM was unenthused about the “charity circuit”).
658 Id. at 110.
659 See id. at 104-109 (describing the bipolarity of BM's treatment of his employees).
660 ARVEDLUND, supra note 638, at 159 (speculating on why BM behaved as he did with potential clients).
661 KIRTZMAN, supra note 631, at 96 (quoting Nobel laureate Elie Wiesel, an acquaintance and client of BM).
662 OPPENHEIMER, supra note 633, at 18.
but most believe that a latent misanthropy and deep absence of empathy surfaced in his personality, producing some “inner need to screw the system in a grand way that no one had ever done before.”

Given the nature of his criminal enterprise, it is unsurprising that BM made a practice of hiring only those he deemed insufficiently smart to be able to discover the workings of his Ponzi scheme. In addition to his lack of trust, BM exhibits elevated cynicism, narcissism, and Machiavellianism. Even as he was running the largest Ponzi scheme in history, BM boasted on his website that his clients “know that Bernard Madoff has a personal interest in maintaining an unblemished record of value, fair dealing, and high ethical standards that has always been the firm's hallmark.” After dropping out of law school, the U.S. Army ordered him to report for active duty to fulfill his ROTC scholarship obligation, and BM, realizing he would be sent to Vietnam, “suddenly suffered a medical malady” in the form of an ulcer, which led to a medical discharge. Deception is a life-long trait: in grade school BM gave a report on a nonexistent book to avoid punishment for failing to execute the assignment, and as an adult he spun a “rags-to-riches” story out of whole cloth, claiming to have grown up poor on the Lower East Side rather than middle-class in Laurelton. He is an “incredibly shrewd man in understanding human psychology and human greed” and manipulates others to serve his narcissistic ego. There is, however, no evidence that BM is ethnocentric. BM thus scores high on nine subconstructs of hostility and is scored as hostile.

d. Adventurism

BM is not impulsive but he suffers from obsessive-compulsive disorder and is manic about the appearances, cleanliness, and order. He is an optimist with an internal locus of control who has long believed it possible to structure the world to create happiness by acquiring its primary determinant: money. As a schoolboy he manifested a “devil-may-care” attitude and “didn't take anything overly seriously[,]” and later in life he demonstrated “no anxiety, guilt, or remorse” in connection with his swindles even when SEC investigators probed his operations in 2004. However, BM has an

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663 Id. at 81-82 (quoting a long-term friend of BM); KIRTZMAN, supra note 631, at 74 (“[BM], who grew up feeling inferior, may well have looked on [his victims] . . . as societies of judgmental Jews he wanted to impress—or get his revenge on.”).
664 See OPPENHEIMER, supra note 633, at 117 (“You could have a great job at Madoff . . . if you were a semimoron, because . . . you didn't ask too many questions.”).
665 Id. at 3.
666 Id. at 64-66.
667 Id. at 22-23.
668 STROBER & STROBER, supra note 655, at 80-83 (discussing diagnoses by experts in personality disorders who believe BM suffers from narcissistic personality disorder, fractured ego, and other maladies).
669 KIRTZMAN, supra note 631, at 117. Doors left ajar, window blinds not properly aligned, and colors other than black and gray were all triggers for BM's OCD. OPPENHEIMER, supra note 633, at 125.
670 KIRTZMAN, supra note 631, at 28 (stating that for BM “money [is] his key to happiness.”).
671 OPPENHEIMER, supra note 633, at 41.
672 KIRTZMAN, supra note 631, at 8.
673 See id. at 148 (describing BM as without “nervousness or . . . remorse” when duping the SEC investigators attempting to ascertain the legality of his operations in 2004).
abnormally large appetite for risk, as illustrated by his decades-long criminal enterprise and by an anecdote from his college years which describes him joyriding down icy side streets, just missing parked cars, solely for a thrill not shared by his passengers. See id. at 33 (noting BM's unusual “appetite for risk, and his apparent belief that he was impervious to its consequences”).

Attendant to this is elevated stress: despite his optimism BM “always had a sense of worry about him,” and he has persistent facial tics. OPPENHEIMER, supra note 633, at 147.

BM thus scores high on five of seven subconstructs of adventurism and is scored an adventuristic decisionmaker. KIRTZMAN, supra note 631, at 37.

Summary of IVs: Bernard Madoff

Bernard Madoff is a militaristic anomist who is hostile and adventuristic.

ii. DVs: CLC and BLMIS

Until his arrest in 2009, BM and his financial services firm Bernard L. Madoff Investment Securities [“BLMIS”] were relative unknowns beyond Wall Street. When BM dropped out of law school in 1960 he created BLMIS, which was then a one-man boutique firm specializing in trading penny stocks. KIRTZMAN, supra note 631, at 37.

With seed money and Jewish community contacts provided by his father-in-law, BM grew BLMIS rapidly by promising investors supra-normal market returns of eighteen percent, and this was to be the template for all of [BM's] future [business]: friends and family were guaranteed a certain return on their money annually, and, pleased and grateful, they were converted into an instant sales force . . . They came with indubitable references and glowing reports about the young [BM].

Claiming to use a sophisticated “spit-strike conversion strategy”—a hybrid stock and options hedging approach that produced consistent returns based on equal parts science and timing—BM lured wealthy investors from Jewish social networks with promises of guaranteed money. See id. at 73-74 (describing BM's investors as a “highly networked” group of wealthy Jews who trusted BM as a fellow “member of the tribe” and an “extended family member” with “shared responsibility to look out for [them].”).

However, BM delivered remarkable returns over the next four-plus decades—even during bear markets—only because he wasn't really trading. BLMIS was partitioned to create a legitimate brokerage business that at its peak traded ten percent of the total shares on the NYSE and, more importantly, created a cover for a separate, secretive, and illegal “investment advisory” business that pretended to invest through a London trading office but in fact did not. BM received cash deposits from investors in brokerage

674 See id. at 33 (noting BM's unusual “appetite for risk, and his apparent belief that he was impervious to its consequences”).
675 Id. at 61.
676 OPPENHEIMER, supra note 633, at 147.
677 KIRTZMAN, supra note 631, at 37.
678 Id. at 45.
679 See id. at 66 (describing BM's claims about his investment strategy). A hedge fund is a complicated arrangement that functions by making bets on securities an investor believes will increase in price while at the same time making other bets—“options” to purchase or sell shares—on securities the investor believes will decrease in price. These “longs” and “shorts” offset and return a reasonable but stable yield to the investor over time, and a portfolio of such bets earns a profit.
680 See id. at 73-74 (describing BM's investors as a “highly networked” group of wealthy Jews who trusted BM as a fellow “member of the tribe” and an “extended family member” with “shared responsibility to look out for [them].”).
681 ARVEDLUND, supra note 638, at 70.
682 The “investment advisory” business was illegal because it was not registered as a separate entity from the brokerage as required by SEC regulations, and thus BM kept its existence secret from all but a very few. KIRTZMAN, supra note 631, at 146.
683 Id. at 176.
accounts and deposited the cash in his personal JPMorgan Chase bank account. BLMIS employees created a fictitious paper trail to support the appearance that the investment advisory fund was functioning lawfully and to deceive SEC auditors. In reality, BLMIS was the biggest private sector Ponzi scheme ever, paying earlier investors with the contributions of more recent rubes but skimming enough from the take to generate immense personal wealth. BM easily fooled regulatory authorities during numerous audits and investigations, and new investors, if they suspected insider trading, were unwilling to ask why the goose laid golden eggs. The scheme had “an unbelievable performance record . . . [with] no resemblance to any other investment manager's track record throughout recorded human history[,]” yet so long as more money entered BLMIS than was being withdrawn the ruse endured.

However, in 2008, a perfect storm of housing, manufacturing, credit, stock, and employment markets collapses triggered a liquidity crisis that drove many investment advisory fund investors to withdraw and spooked prospective new investors into remaining liquid and not investing. When, in December 2008, BM failed to stem the flood of demands for withdrawal of as much as $65 billion due, he wrote checks to family members, friends, and employees for the last $300 million in his account, confessed his crime to his sons, and was arrested by the FBI for what was soon determined to be the biggest fraud in financial history. As a result of the collapse and bankruptcy of BLMIS, over five thousand investors lost money, including luminaries in many fields; some individuals, charities, and

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In addition to individuals lured into his scheme through family, friendship, and social networks, other investors included “feeder funds”—“financial octopi” that, in effect, were co-conspirators with BLMIS and worked as sales agents to draw and pool investment capital. For a discussion of the role of these feeder funds, see id. at 44; 88-94. See id. at 171, 181. (describing how BLMIS covered its tracks to deceive auditors).

Private audits of the investment advisory business were strictly prohibited on “trade secrets” grounds, and SEC investigators were undermanned, underfunded, and undertrained in the architecture and operations of hedge funds to be able to discern illegality. KIRTZMAN, supra note 631, at 99, 135. Moreover, BM, as one of the founders of the NASDAQ exchange, had generated competition with the NYSE and was thus perceived by the SEC as having interests in alignment with its own. See ARVEDLUND, supra note 638, at 33, 77, (explaining reasons for SEC failures to detect BM's illegal operations); KIRTZMAN, supra note 631, at 63 (suggesting that BM's status as a NASDAQ founder blinded investigators). An SEC investigation concluded in November 2007 with no enforcement after BM committed perjury and denied allegations of fraudulent trades; BM reported later that he was “amazed” at the youth and inexperience of SEC regulators. Id. at 185.

Some commentators attribute some blame to some investors, contending that they were either willfully ignorant, greedy, too arrogant to admit ignorance, or lazy. See, e.g., ARVEDLUND, supra note 638, at 96, 104-05 (examining investors' motives and reasons for failing to suspect illegality involved in their unusually good investment returns); KIRTZMAN, supra note 631, at 51-52, 108 (“[A] lot of people . . . cast aside all suspicions and all doubt and all fear, and they let greed overrule all else.”) (quoting Harry Markopolos, a trading rival of BLMIS and an expert financial mathematician who concluded as early as 1999 that BM was running a Ponzi scheme and attempted, unsuccessfully, for years to convince the SEC of this); id. at 78-85. For an examination of BM's Ponzi scheme and an account of how and why the SEC failed to detect it despite a decade of warning, see HARRY MARKOPOLOS, NO ONE WOULD LISTEN: A TRUE FINANCIAL THRILLER (2010). ARVEDLUND, supra note 638, at 165 (opining that the BLMIS scheme might have continued indefinitely but for the crash).

See KIRTZMAN, supra note 631, at 214-21 (chronicling the causes of and important events in the Wall Street “meltdown” that ultimately imploded BLMIS); see also OPPENHEIMER, supra note 633, at 1 (same). KIRTZMAN, supra note 631, at 224-236 (chronicling the final days of BLMIS).
financial firms were completely wiped out. In March 2009 BM pled guilty to eleven felonies and refused a plea bargain that would have required him to implicate others. He was sentenced on June 29, 2009, to 150 years’ imprisonment. The only other individual yet charged is an in-house BLMIS accountant who filed fraudulent certified financial statements. All investors, including feeder fund managers, claim to have known nothing of the scheme. BM has steadfastly refused to account for the missing funds and is expected to die in prison.

10. Countrywide Mortgage/Financial

a. CEO Angelo Mozilo

   i. IVs: scores on personality constructs

      a. Militarism

      Angelo Mozilo [“AM”], the son of Italian immigrants, is an “aggressive, short, ballsy, street-smart New Yorker” acutely aware that he is “not a product of privileged Ivy League education and polish” and that “Harvard types would look down on him when he was a young man in New York trying to make his way.” At twelve he “began a career as a “feisty, charismatic, gifted salesman” behind the counter of his father’s butcher shop, earned a degree in business at New York University while working full-time as a mortgage lender, and extended a reputation as a “tough guy” in 1968 when he founded Countrywide Mortgage (later “Countrywide Financial” [“C”]). The “bad boy of the mortgage industry” is a fierce competitor with a “winner-take-all” philosophy toward life and business, and has always been determined to realize his ambition to be a “major player—one way or another.” He is a meritocrat who gloats over victories and describes business as a “battle.”

      AM is a control-obsessed perfectionist who secured his corporate headquarters “like a top-secret [military] base” with “guards at every checkpoint” and insisted that his employees be “wholesome, honest, hardworking, . . . the best of America,” yet overt expressions of nationalism conflicted with C’s culture, and requests from patriotic employees for time off in recognition of Memorial Day and

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693 Id. at 7-8, 244.
694 It is widely believed that BM is shielding family members and other close associates by refusing cooperation. See, e.g., ARVEDLUND, supra note 638, at 268-277.
695 KIRTMAN, supra note 631, at 260.
696 ARVEDLUND, supra note 638, at 277.
698 Id. at 140.
700 Id. AM “couldn't accept being second or third” and sought “dominance” over his competitors. MICHAEL W. HUDSON, THE MONSTER 212 (2010).
701 MICHAELSON, supra note 696, at 182.
702 Condon, supra note 698.
703 MICHAELSON, supra note 696, at 70-71. The “mechanisms of Countrywide processes, procedures, checking and rechecking, and attention to perfect, verifiable detail had to be on a par with or exceeding that of NASA.” Id. at 111.
Independence Day were rejected. AM was on a “mission to help Americans achieve the dream of home ownership,” and left no one else any “strength, position, [or] power to change [C’s] entire company mission, culture, and reason for being.” When employees would arrive late for meetings, they would find the door locked, and experienced pressure to sign a loyalty oath and wear a green armband signifying their devotion to C. To the external world, C was an extension of AM and his personality—a “wonderful, helpful neighbor”—but for employees their role was to put noses to grindstones and execute AM’s mission. Despite his competitiveness, aggression, ambition, favorable attitude toward power, and dogmatism, AM is a “warm, slick, reassuring” character with high self-esteem who holds seats on boards of directors, boards of trustees, charitable and fraternal organizations, and industry advisory groups. Still, AM scores high on six of ten subconstructs and is scored as a militaristic decisionmaker.

b. Anomism

Nothing in the literature suggests AM should be scored high on the amoralism subconstruct, and AM has no formal legal training. No evidence indicates that AM has demonstrated systematic disregard for law or legal authorities. C may have contracted with unscrupulous real estate appraisers and developed business models that skirted laws and regulations, including offering “sweetheart deals” to influential friends of AM, but prior to its collapse C had a corporate compliance culture that required employees to “bend[ over backward to make sure that every [act] was accurate, truthful, legal, and thoroughly vetted through the byzantine rules and regulationa among the 50 states.” Moreover, [C] had at its center a culture of ethics . . . Every meeting, every report, every lunchroom poster really pounded it into our brains that we should always be doing the honest, right thing for our customers, for our shareholders, for our values.” Presumably, the corporate culture reflects AM’s personal views on law and compliance; accordingly, AM is scored low on all five subconstructs of anomism and thus is scored as a non-anomistic decisionmaker.

c. Hostility

AM is a self-confessed vulgar “son of a bitch” who is volatile emotionally and holds grudges. He blames rivals for price wars he starts himself, regards opponents as “enemies,” and cultivates a

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704 Id. at 97, 121, 234.
705 Id. at 23, 54.
706 Id. at 59, 262.
707 To drive his employees, AM “mixed equal parts pride and fear. Some recall him checking slips from the company garage to see who was cutting out early. Employees took the stairs rather than waste time waiting for an elevator.” Condon, supra note 698.
708 MICHAELSON, supra note 696, at 140.
709 Condon, supra note 698.
710 See MICHAELSON, supra note 696, at 324 (suggesting C may have committed minor ethical violations under AM’s tenure but finding nothing attributable directly to AM).
711 Id. at 193.
712 Id. at 192.
713 Condon, supra note 698.
714 Id.
corporate culture where attacking the “stupidity or sloppiness” of employees is a sport. The “Rommel of the mortgage business” is an intensely distrustful, cynical employer who made C “Orwellian in its monitoring of employees and steadfast determination to push every worker to the grindstone all day, every day.” Moreover, he is a narcissist who hogs the spotlight and attributes perceived deficiencies in others to “stupidity,” “ego,” or unworthiness, and has made a perpetual tan, french cuffs, and gold Rolls Royces his signature style. His lack of empathy has been occasion for embarrassment: when in 2008 a homeowner in need of a loan modification wrote requesting assistance and AM discovered that the letter was in part based on a template provided by a homeowners' advocacy website, AM sent the following note that was soon distributed worldwide:

This is unbelievable. Most of these letters now have the same wording. Obviously they are being counseled by some other person or by the internet. Disgusting. As the mortgage crisis deepened, rather than “being empathetic to the national disaster hitting millions of homes all across the country,” AM led C in an “spastic fit of rage” and developed a “Protect Our House” campaign to “defend the virtues of [C], lash out at any detractors, and make it personal.”

The foregoing contrasts with AM’s apparent absence of elevated levels of misanthropy, ethnocentrism, and selfishness: the corporate mission of C is expressly to advance the American Dream for everyone, “especially . . . the underprivileged in our country, through access and opportunity in the mortgage and housing systems[,]” and AM took great pride in lowering barriers to home ownership for minority and lower-income borrowers. Moreover, he is “extremely loyal to his people.” Still, AM scores high on six of nine constructs of hostility and thus is scored as a hostile decisionmaker.

d. adventurism

When his father rejected his idea to modify the family butcher shop to compete with the supermarkets that developed in the 1950s, only to see the business fail and his father die of cardiac stress, AM vowed to “never shrink from risk” again. Accordingly, he gambled throughout the life of C, alternating its business model to compete on price and market directly to borrowers, expanding as interest rates fell and competitors became risk-averse, and creating ever-more risky loan products. An examination of AM’s decisionmaking suggests that he although he believes he has the power to succeed

715 See HUDSON, supra note 699, at 212 (reporting that AM reported information about rival firms to New York State Attorney General Eliot Spitzer in an attempt to destroy them); id. at 108.
716 MICHAELSON, supra note 696, at 60.
717 Condon, supra note 698.
718 MICHAELSON, supra note 696, at 275.
719 Id. at 259-60.
720 Id. at 96, 126.
722 Condon, supra note 698.
723 Id.
through the application of judgment and hard work, he acknowledges an inability to dictate events: before
the collapse of C, AM claimed the credit-rating agencies' requirement that C hold more capital than banks
limited its growth and profitability. Moreover, no evidence suggests AM is impulsive: his moves in the
markets were planned, and under his leadership C developed a conservative, slow-moving culture that
vetted decisions carefully. Furthermore, while AM is “intensely optimistic” and does not appear to
experience elevated anxiety or stress, his “let the chips fall where they may” attitude—predicated upon a
belief that, despite hardships, events will ultimately redound to his benefit—evidences some fatalism.

In sum, AM scores high on three subconstructs of adventurism and is scored as a nonadventurist.

e. Summary of IVs: Angelo Mozilo

Angelo Mozilo is a militaristic non-anomist who is hostile but not adventuristic.

ii. DVs: CLC and Countrywide

AM created C in the late 1960s and by 2004, with C then the largest home loan lender in the U.S.,
was widely regarded as the “father of . . . the modern mortgage business.” However, in an effort to
expand market share and make homeownership available to borrowers whose credit scores suggested they
were greater risks, C began marketing “exotic” subprime loan products, including a “Pay Option
Adjustable Rate Mortgage” (“POARM”). The POARM—lawful then—allowed a borrower to purchase a
home and select from a set of monthly payment options that included a negative amortization payment of
an amount less than interest and principal otherwise due; the assumption was that the value of the home
would continue to appreciate and, as the borrower’s income grew, the borrower would either refinance
before the loan re-set to a higher interest rate or begin to make payments that decreased loan principal.

At least one senior executive questioned whether the assumption of constant future home value
appreciation was valid, and noted that if not “half the country could be upside down on these loans,” but
more senior C officials believed the “risk [wa]s offset by the opportunity for market share and revenue
gain” and that if C did not make the loans its competitors would. When C initiated the POARM
program, the dissenting executive pronounced, prophetically, that he had “just witnessed the beginning of
the end of [C] and maybe the entire U.S. economy.”

By 2006, interest rates ticked upward, loan applications slowed, and layoffs began across the
mortgage industry. In the 2006 Annual Report, AM claimed C was a “strong, viable financial company”

724 See id. (quoting AM as stating that the credit-rating agencies placed a “governor on my engine”).
725 Id. at 102, 111.
726 MICHAELSON, supra note 696, at 102, 111.
727 Id. at 102, 111.
728 Id. at 271. Even when the real estate market wash crashing in 2006, AM insisted that he saw “early signs of
stabilization” and that 2008 would be a “hell of a year.” HUDSON, supra note 699, at 270.
729 MICHAELSON, supra note 696, at 258.
730 Id. at 21, 204-05 (outlining the reasons C extended POARM loans despite the risks).
731 Id. at 23.
and that he “continue[d] to be bullish in the long-term prospects” of the firm despite challenges in the “shrinking mortgage market.”\textsuperscript{732} In August 2007, with home values in free-fall, borrowers unable to refinance as a result of unfavorable loan-to-value ratios, and foreclosure rates climbing, C, unwilling to admit that a structural transformation was in effect and determined to compete with Ameriquest Mortgage,\textsuperscript{733} began drawing on its $11 billion credit line to maintain operations.\textsuperscript{734} Bank of America—long interested in acquiring C—took a $2 billion equity stake with an option to buy if C were ever for sale.\textsuperscript{735} AM explored the creation of a “loan recall” program to achieve a soft landing, but Freddie Mac and Fannie Mae regulations blocked such an approach; by the end of that year, with C's credit line exhausted, Bank of America exercised its option and purchased C for $4 billion in January 2008.\textsuperscript{736}

Some suggest AM was unfairly vilified because he was the face of the subprime mortgage crisis, and that all he and C were guilty of was assuming too much risk and failing to adapt—an indictment that can be leveled at borrowers as well.\textsuperscript{737} However, as C was collapsing in 2007, AM sold $129 million of his shares in C while publicly touting the stock and using shareholder funds to repurchase stock to support the share price. During the scrutiny that followed, it was discovered that C had extended “sweetheart” financing, including discounted rates and fees, to influential politicians, including members of the House and Senate Banking and Budget Committees and a former CEO of Fannie Mae—all individuals who exercised regulatory authority over C. AM was subpoenaed by and berated before Congressional committees,\textsuperscript{738} and shareholders, state pension funds, and owners of mortgage-backed securities filed suits alleging serial violations of SEC, Fannie Mae, and Freddie Mac regulations.\textsuperscript{739} With housing values down by thirty percent in many areas of the country, state and municipal revenues have diminished, leading to budget deficits that in turn sparked political unrest across the Midwest. On June 4, 2009, the SEC charged AM with insider trading and securities fraud,\textsuperscript{740} and on October 15, 2010, the parties reached a settlement in which AM agreed to pay $67.5 million and accept a lifetime ban from serving with any public company,\textsuperscript{741} thereby avoiding a civil trial that might have developed evidence, along with


\textsuperscript{733} See HUDSON, supra note 699, at 280 (reporting that industry experts' belief C would have survived if AM “hadn't become fixated on competing with Ameriquest.”).

\textsuperscript{734} MICHAELSON, supra note 696, at 257-259.

\textsuperscript{735} Id. at 259.

\textsuperscript{736} Id. at 267-272.

\textsuperscript{737} Id. at 186, 307-08 (arguing that AM and C were not solely responsible for C's collapse and that borrowers are also responsible for having overleveraged themselves to purchase homes they could not really afford).

\textsuperscript{738} See MUOLO & PADILLA, supra note 720, at 270-73 (describing hearing before the House Oversight Committee on “CEO Pay and the Mortgage Crisis” in January 2008).

\textsuperscript{739} See, e.g., Luber v. Countrywide Home Loans Inc., 533 F.3d 1032 (2007) (alleging that C “omitted and misstated the credit worthiness of the underlying mortgage borrowers” thereby greatly underrepresenting the risk of the investment to plaintiffs); Brill v. Countrywide Home Loans Inc., 427 F.3d 446 (7th Cir. 2005).

\textsuperscript{740} See U.S. Securities and Exchange Commission v. Angelo Mozilo, .

\textsuperscript{741} The Director of the SEC Division of Enforcement stated as follows: “[AM's] record penalty is the fitting outcome for a corporate executive who deliberately disregarded his duties to investors[,]” Id.
an ongoing FBI investigation, to support criminal charges. However, this fine is a small fraction of the
more than $600 million of AM’s net worth, and C reimbursed AM $20 million pursuant to an
indemnification clause in AM's employment contract. AM rejects responsibility and instead “blame[s]
everyone from al-Qaeda to the ratings agencies” for the bursting of the real estate bubble and the collapse
of C.

B. Analysis

1. Methodological Considerations and Limitations

The ultimate objective in the field of CLC is the specification and testing of a theory with
explanatory and predictive power. Theoretical testing requires analysis of available data, but as the
complexity of the phenomenon under investigation increases availability of data decreases. Some
phenomena, such as CLC, are so rare or so difficult to observe that there are insufficient cases to support
the testing of general propositions with traditional quantitative analysis. Indeed, the data universe
available is limited, at first blush, to an “n” of almost surely fewer than thirty cases of corporate scandal.

Moreover, phenomena that are causally linked to human agency and social processes are so
complex and so rooted in specific contexts that quantitative methods often obscure nuances, rendering
barren descriptions and weak explanations. Although there is pressure to transform contextually-sensitive
social phenomena, including the study of legal compliance, into empirical questions “answerable” with
statistics, and although statistical analysis does afford a rigorous assessment of patterns of covariation
across a wide range of cases, statistical analysis does not regard cases holistically but treats them as
aggregates of a limited number of variables and generalizes from identifiable patterns of variance in
samples of relevant cases. By drawing a small number of independent variables from their natural
contexts and relegating all others to theoretical irrelevance, variable-oriented statistical analysis
marginalizes the role of human agency in the chain of causation. A fundamental canon in science is that
the research question, rather than methodological preferences, should drive experimental design. When,
as with CLC, few cases exist and the hypothesized chain of causation involves human agency, the
“comparative method” best fosters the rigorous development and testing of theory.

2. The Comparative Method

742 In February 2011, the U.S. dropped a criminal investigation into the facts at issue in the civil settlement between SEC
and AM. MUOLO & PADILLA, supra note 720, at 256.

743 See TYLER, supra note 53, at 58 (describing limitations on multivariate statistical modeling legal compliance).

methods).

745 The structural limitations of variable-oriented analysis are such, for reasons beyond the scope of this Article, that it
cannot exhaust the entire range of IVs and must instead select a limited number for statistical analysis. See id. at 59, 62-70.
The comparative method is case-oriented and relies upon comprehensive historical research to identify causal factors while simultaneously comparing each case as a holistic entity to every other case. Researchers compare and contrast combinations of causal factors in one case with different combinations in another and, through systematic “eyeballing,” identify patterns of similarity and difference in the distribution of outcomes associated with various combinations. Comparativists then identify which of the possible causal factors is constant across all cases of a particular outcome and thereby denote degrees of isomorphism. While the comparative method does not prove causation, it creates a point of departure for experimental research. As formalized here, the comparative method treats each personality construct as a causal factor/independent variable and each outcome as a dependent variable.

3. Formalization: Qualitative Comparative Analysis

It is a scientific axiom that events do not simply happen but instead occur only under certain precisely delimited conditions. Formal methods, including laboratory experimentation, led researchers to find that combustion requires the presence of oxygen, that microbes were responsible for infectious disease, and that an absence of Vitamin C caused scurvy. Similarly, Qualitative Comparative Analysis [“QCA”] rests upon this axiom and proceeds from the premise that, short of formal experimentation, which is nearly impossible in the social sciences, formal logic, particularly induction, is required to determine necessary and sufficient causal factors of outcomes.

a. causal factors and outcomes

QCA, an analytical methodology developed to investigate social science questions grounded in human agency, permits the investigator of a particular DV, or “outcome,” to identify, through interpretation of all existing historical cases of the outcome, a broad number, “n”, of probable IVs, or “causal factors.” In QCA, these causal factors are measured dichotomously across the universe of cases. Each case is examined for the presence or absence of the causal factor; its presence is indicated by a capital letter, e.g., “A,” and its absence is indicated by a lower-case letter “a.” The theoretical number of combinations of causal factors is thus $2^n$ where “n” is the number of independent variables.

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747 The term “causal factor” is a misnomer, since although it is possible to establish associative relationships between variables through QCA it is impossible to prove causation. An associative relationship is a statement that the presence of an IV tends to occur in connection with the presence of a DV; it does not mean that the DV is caused by the IV, although a causal inference may be drawn. Proof of causation requires controlled experimentation to prove that the IV, rather than some intervening variable, causes the DV to occur and that the association is not simply one of covariance. See David Freedman, From Association to Causation: Some Remarks on the History of Statistics, Technical Report No. 521 (Jan. 2002), available at http://statwww.berkeley.edu/~census/521.pdf. E.g., although smoking is associated with increased rates of lung cancer and can be proven experimentally to cause lung cancer, alcohol consumption does not cause increased rates of lung cancer, although smoking and alcohol consumption are associated (smokers drink more than nonsmokers). Still, alcohol consumption is associated with lung cancer although it does not cause increased rates of lung cancer: association does not imply causation.

748 Boolean algebra [“BA”] mandates dichotomous scoring of constructs. An interval scale would enable more precise measurements of the dimensions of each decisionmaker on each personality construct. See, e.g., FELDMAN & VALENTY, supra note 80, at 24 (scoring decisionmakers from 1.0 to –1.0 on personality constructs). However, doing so would render the resulting analysis too complex for BA techniques.
b. necessary and sufficient conditionality

Each of the $2^n$ cases is placed in a “truth table” matrix that associates particular outcomes with particular combinations of causal factors that manifested in actual historical cases. Where cells in the truth table are unfilled due to an absence of the particular combination in the historical record, experimental research augments history and exhausts all possible combinations of causal factors.\(^{749}\) While it is asking too much to expect QCA to yield completely generalizable laws on the basis of very few cases, it nonetheless specifies relationships of necessity and sufficiency between causal factors and outcomes that hold across the universe of extant cases. A “necessary” causal factor is one that always precedes a given outcome/effect and in the absence of which the outcome/event cannot occur. A “sufficient” causal factor is a factor in the presence of which a given outcome/effect must occur.\(^{750}\)

c. prime implicants

QCA employs Boolean algebra (“BA”), a mathematical system that represents logical operations in algebraic form,\(^{751}\) to reduce several different combinations of causal factors productive of the same outcome(s) to “prime implicants.”\(^{752}\) In formal logic terms, an “implication” is formed when two statements are combined by placing the word “if” before the first and “then” between them, e.g., “If I drink this glass of water, then my thirst will be quenched.” In an implication, the component statement between the words “If” and “then” is known as the “antecedent;” the statement which follows the word “then” is known as the “consequent.” An implication asserts that its antecedent implies its consequent; thus, if the statement “I drink this glass of water” is true, it is also true that “my thirst will be quenched.” Implication does not suggest that it is impossible to satisfy thirst in any other manner, nor does implication imply that there may not be other outcomes attendant to drinking the glass of water: beer may satisfy my thirst, or the water may be poisoned, and thus although it quenches thirst it may also produce death. However, the essential meaning of implication is the relationship asserted between antecedent and consequent: if the antecedent is true, the consequent is also true.

A “prime implicant” is a special implicant in which the antecedent is the minimum combination of causal factors which together are either 1) sufficient to cause a particular outcome or 2) necessary to cause a particular outcome across the universe of cases, and the consequent is that outcome. For any

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\(^{749}\) See J.J.M.M. RUTTEN ET AL., MATHEMATICAL TECHNIQUES FOR ANALYZING CONCURRENT AND PROBABILISTIC SYSTEMS 97-100 (discussing Boolean analysis of probabilistic statements and data organization).

\(^{750}\) See GLEN SATTY ET AL., COMPUTING AND LOGIC MATHEMATICS AND LANGUAGE 129-30 (1988) (discussing principles of necessity and sufficiency). For example, to produce the outcome of starting an automobile it is a necessary causal factor for the gas tank to contain gasoline, but it is not a sufficient causal factor: one may not have keys, the battery may be discharged, or the engine may be damaged. On the other hand, in order to achieve the desired outcome of preventing the automobile from starting it is a sufficient causal factor to simply either empty the gas tank, lose the keys, or discharge the battery.

\(^{751}\) See generally GEORGE BOOLE, MATHEMATICAL THEORIES OF LOGIC AND PROBABILITIES (1854).

\(^{752}\) RAGIN, supra note 744, at 59.
given outcome \( y \) for which there is a prime implicant \( x \), if \( x \) is a true statement of existing causal factors then either 1) \( y \) must occur as a result of the existence of \( x \) or 2) \( x \) is a prerequisite for the production of \( y \). A prime implicant can be identified by surveying the universe of cases in which a given outcome is expressed and eliminating each of the “\( n \)” causal constructs for which there is more than one possible value from the causal construct combinations associated with that outcome. Taken together, those constructs that remain in every case in which the outcome occurs constitute the prime implicant.

d. probabilities: hypothetical analysis

When the historical record fails to exhaust all possible combinations of causal factors it is impossible to specify necessary and sufficient causality. QCA then analyzes preliminary hypotheses regarding relationships between causal factors and outcomes to derive probabilistic statements to inform experimental research. Consider the phenomenon of “successful social revolution,” which has occurred three times. In all three cases the causal factor of “collapsing monarchy” was present, but in only two—the Russian Revolution of 1917 and the Chinese Revolution of 1949—was “charismatic leadership” present. In the third—the French Revolution of 1789—it was absent. Accordingly, while “collapsing monarchy” is a necessary condition for social revolution, “charismatic leadership” is not. However, the preliminary hypothesis, “The stronger and more charismatic the leader of the revolutionary element, the more successful the resulting social revolution,” is affirmed by 2 of 3, or 66.7%, of cases, as is the probabilistic statement, “A successful social revolution will be led by a strong and charismatic leader.”

4. QCA Applied to the Association of Personality Constructs and CLC Outcomes

a. personality constructs as causal factors

Four personality constructs, each of which is a causal factor and an IV, are labeled as follows:

(1) militarism: A (presence of construct/factor) or a (absence of construct/ factor);
(2) anomism: B (presence of construct/factor) or b (absence of construct/factor);
(3) hostility: C (presence of construct/factor) or c (absence of construct/factor);
(4) adventurism: D (presence of construct/factor) or d (absence of construct/factor).

Personality construct scores for each CEO are aggregated to create personality profiles for all ten historical cases of corporate scandal. As there are four dichotomized IVs, there are \( 2^4 \), or sixteen, possible personality profiles. The presence of each outcome/DV in a case is scored as “1,” while its absence is scored “0.” Table I associates the presence/absence of each outcome with each personality profile:

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753 See generally THEDA SKOCPOL, STATES AND SOCIAL REVOLUTIONS (1979) (identifying and analyzing the French (1789), Russian (1917), and Chinese (1949) revolutions as the sole instances of genuine social revolution in history).
b. prime implicants of CLC outcomes

No outcome is associated with a single personality profile across all ten cases, thus it is not possible to identify a prime implicant for any outcome. Although several outcomes are associated with the presence or absence of personality construct(s) across several cases, including in every case in which a particular outcome is expressed (for example, “violate financial regulations” occurred in seven of ten cases, and in all seven occurrences the CEO scored “C” for the presence of the hostility construct), for none is the presence of a given personality construct associated with each case wherein the outcome occurs while the absence of that personality construct is associated with each case wherein the outcome does not occur (for example, in the three cases where no violation of financial regulations occurred the CEO scored “C” for present and not “c” for absent on the hostility construct). Hypothetically, a single personality profile could serve as a prime implicant in all ten historical cases across the range of 2^4, or sixteen, possible personality profiles. However, in the ten cases, only four personality profiles—ABCD, aBCD, AbCd, ABCd—have been associated with corporate scandal. Where history has not exhausted all possible combinations of causal factors and prevents specification of necessary and sufficient causality, QCA directs the investigator to perform hypothetical analysis to derive probabilistic statements.
c. hypothetical analysis

<table>
<thead>
<tr>
<th>TABLE II: PRELIMINARY HYPOTHESES</th>
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<tbody>
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No Preliminary Hypothesis ("PH") is affirmed by all or none of the ten historical cases of corporate scandal. Nonetheless, if there were no relationship between any personality construct and any outcome, chance predicts that each PH would be affirmed by fifty percent of cases and rejected by fifty
percent of cases.\textsuperscript{754} To affirm a particular PH, an arbitrary determination is made that it must be supported by at least seventy percent of cases in which the outcome is expressed;\textsuperscript{755} to reject a particular PH, and to affirm the null hypothesis expressing the inverse relationship of causal factor and outcome, it must be affirmed by thirty percent or fewer of the cases in which the outcome is expressed.\textsuperscript{756} This requirement establishes a sufficiently significant improvement over chance such that a measure of confidence can be placed in those PHs affirmed or rejected. As Table II illustrates, of sixty PHs, twenty-five are affirmed by seventy percent (7 of 10) or greater of cases and nine are affirmed by thirty percent (3 of 10) or fewer: reformulated hypotheses, stated as working postulates [“WPs”] that reflect the threshold strength and direction of the association between personality construct and outcome, are offered in Table III:

TABLE III: WORKING POSTULATES

<table>
<thead>
<tr>
<th>WP #</th>
<th>(hypothesis #)</th>
<th>Statement</th>
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<tr>
<td>WP #1</td>
<td>(hypothesis #1): The more militaristic the CEO the more likely his/her firm will violate financial regulations.</td>
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<td>WP #2</td>
<td>(hypothesis #4): The more militaristic the CEO the less likely his/her firm will be to manipulate the market.</td>
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<td>WP #3</td>
<td>(hypothesis #7): The more militaristic the CEO the more likely his/her firm will violate employee rights.</td>
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<td>(hypothesis #8): The more militaristic the CEO the less likely his/her firm will violate environmental standards.</td>
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<td>WP #5</td>
<td>(hypothesis #9): The more militaristic the CEO the more likely his/her firm will resist enforcement.</td>
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<td>WP #6</td>
<td>(hypothesis #10): The more militaristic the CEO the more likely she/he and his/her firm will earn reputations as bad corporate citizens.</td>
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<td>WP #7</td>
<td>(hypothesis #12): The more militaristic the CEO the more likely she/he will to be subpoenaed by Congress.</td>
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<td>WP #8</td>
<td>(hypothesis #13): The more militaristic the CEO, the more likely she/he and his/her firm will be to incur legal penalty.</td>
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<td>WP #9</td>
<td>(hypothesis #17): The more anomic the CEO the more likely his/her firm will violate securities regulations.</td>
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<td>WP #10</td>
<td>(hypothesis #18): The more anomic the CEO the more likely his/her firm will inflate executive compensation.</td>
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<td>WP #11</td>
<td>(hypothesis #20): The more anomic the CEO the less likely his/her firm will engage in bribery.</td>
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<td>WP #12</td>
<td>(hypothesis #22): The more anomic the CEO the more likely his/her firm will violate employee rights.</td>
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<td>WP #13</td>
<td>(hypothesis #23): The more anomic the CEO the less likely his/her firm will violate environmental standards.</td>
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<td>WP #14</td>
<td>(hypothesis #24): The more anomic the CEO, the more likely she/he and his/her firm will be to resist enforcement.</td>
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<td>WP #15</td>
<td>(hypothesis #27): The more anomic the CEO the more likely she/he will be subpoenaed by Congress.</td>
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<td>WP #16</td>
<td>(hypothesis #28): The more anomic the CEO the more likely she/he and his/her firm will be to incur legal penalties.</td>
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<td>WP #17</td>
<td>(hypothesis #30): The more anomic the CEO the more likely she/he will deny wrongdoing and blame others.</td>
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<td>WP #18</td>
<td>(hypothesis #31): The more hostile the CEO the more likely his/her firm will be to violate financial regulations.</td>
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<td>WP #19</td>
<td>(hypothesis #32): The more hostile the CEO the more likely his/her firm will be to violate securities regulations.</td>
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<td>WP #20</td>
<td>(hypothesis #34): The more hostile the CEO the less likely his/her firm will be to resist enforcement.</td>
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<td>WP #21</td>
<td>(hypothesis #35): The more hostile the CEO the less likely his/her firm will engage in bribery.</td>
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<td>WP #22</td>
<td>(hypothesis #38): The more hostile the CEO the less likely his/her firm will violate environmental standards.</td>
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<td>WP #23</td>
<td>(hypothesis #39): The more hostile the CEO the more likely his/her firm will resist enforcement.</td>
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<td>WP #24</td>
<td>(hypothesis #42): The more hostile the CEO the more likely his/her firm will restate earnings.</td>
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<td>WP #25</td>
<td>(hypothesis #43): The more hostile the CEO, the more likely she/he and his/her firm will be to incur legal penalty.</td>
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<td>WP #26</td>
<td>(hypothesis #45): The more hostile the CEO the more likely she/he will deny wrongdoing and blame others.</td>
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<td>WP #27</td>
<td>(hypothesis #47): The more adventurist the CEO the more likely his/her firm will violate securities regulations.</td>
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<td>WP #28</td>
<td>(hypothesis #48): The more adventurist the CEO the more likely his/her firm will inflate executive compensation.</td>
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<td>WP #29</td>
<td>(hypothesis #52): The more adventurist the CEO, the more likely she/he and his/her firm will be to violate employee rights.</td>
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<td>WP #30</td>
<td>(hypothesis #54): The more adventurist the CEO the less likely she/he and his/her firm will be to resist enforcement.</td>
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<td>WP #31</td>
<td>(hypothesis #57): The more adventurist the CEO the more likely she/he will be subpoenaed by Congress.</td>
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<tr>
<td>WP #32</td>
<td>(hypothesis #58): The more adventurist the CEO the more likely she/he and his/her firm will incur legal penalties.</td>
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<tr>
<td>WP #33</td>
<td>(hypothesis #59): The more adventurist the CEO the more likely she/he and his/her firm will suffer legal death.</td>
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\textsuperscript{754} See C.M. GRINSTEAD & J.L. SNELL, INTRODUCTION TO PROBABILITY (1999) (discussing probability theory).
\textsuperscript{755} On some DVs the outcome is expressed in only a single case, i.e., violation of environmental standards. Thus, rather than establish a specific number of cases in which the hypothesized relationship must obtain, a percentage is used in recognition of the fact that fewer than seven cases are available in regard to this DV.

\textsuperscript{756} Suppose the hypothesis “The more sunny the day is the more people on this beach will experience sunburn” is determined to be true in only 1 of 10, or 10%, of cases (perhaps because on the only sunny day only Bahamians were on the beach and never burned, while only Norwegians visited on the nine cloudy days yet still managed to suffer burns). The alternate hypothesis, “The more cloudy the day is the more people on this beach will experience sunburn” is accepted as true in 9 of 10, or 90%, of cases.
i. militarism and CLC

WP 1 confirms the intuition that a CEO who is fixed upon achieving wealth, power, and status to the detriment of other ends, including the discharge of responsibilities to shareholders and stakeholders, and who is willing to use any and all means to achieve these ends will violate financial regulations if rules stand in the way. Similarly, as WP 3 suggests, it stands to reason that such a person so motivated will run roughshod over the legally-protected rights and interests of employees. Moreover, as WP 5 suggests, a firm led by a militaristic CEO should not be expected to cooperate with regulators in the prevention, investigation, or adjudication of violations of law. As slaves to ends not realizable save by the violation of law, militaristic CEOs must devote considerable energy to concealing their crimes. Nonetheless, as violations mount, detection is inevitable in the long run, and WP 6 predicts that along the path the odds that the illegal conduct of firms, or at least some aspects of it, will “leak” into the community and earn them and their CEOs reputations as scofflaws increases in direct proportion to the frequency of their lawbreaking which, in turn, is a function of CEO militarism. Finally, it stands to reason, as WPs 7 and 8 suggest, that firms with militaristic CEOs will be more likely to commit legal violations that spur Congress to subpoena them to testify, and that investigations will, in turn, result in legal penalties.

In contrast, it is counterintuitive that a militaristic CEO is unlikely to pay or accept bribes in exchange for business favors, as WP 2 indicates. One might expect the lust for power, wealth, and status to extinguish all sentiment for rule-following if the illicit expenditure of “other people’s money” is all that is required to open the gates to lucrative new markets. Perhaps the militaristic CEO is adamantly opposed on philosophical grounds and views payments to foreign governments as a categorical wrong rather than as simply an unpleasant necessity of doing business in parts of the world that, although it is technically illegal, is nonetheless understood to be part of a firm’s fixed costs and generally ignored by regulators. Perhaps the payment of bribery is the cement that creates and maintains a bond between firm and government as strategic “partners,” and CEOs who are introverted and isolationistic do not value and seek out such partnerships; more research is necessary. Similarly, WP 4, which suggests that militaristic CEOs are likely to be better environmental defenders than their nonmilitaritic peers, is likely an artifact of the small number of cases and the fact that few if any of the cases studied include the sort of enterprises—mining, manufacturing, etc.—against which most of the existing environmental legal regime is directed.

ii. anomism and CLC

Anomistic CEOs—ignorant and even disdainful of law and legal authorities and bereft of an internal moral code—will instinctively regard legal and moral restrictions on their conduct in purely instrumental terms. As WPs 9, 10, and 12 suggest, little if any independent weight will be accorded to securities laws, customary expectations regarding executive compensation, or employment law in their CLC decisionmaking, and behaviors will be guided largely or even solely by other considerations. WPs
15 and 16 indicate that anomistic CEOs assume greater legal risk and therefore incur greater legal exposure, to include formal investigation by Congress, author of the laws they violate; with this exposure comes the increased likelihood of prosecution, and with prosecution, conviction. Given their disrespect for law and legal authorities, anomistic CEOs, as WP 14 suggests, are more likely to resist cooperation with legal investigations. Finally, it is consistent with the general description of anomism that, as WP 17 anticipates, the anomistic CEO, who knows and cares little about the legal regime s/he is accused of violating and, perhaps more importantly, has never felt impressed by any sense of legal obligation as CEO, will deny any knowledge of or responsibility for his/her wrongdoing and seek to attribute any such responsibility to other parties. Although there is likely a general human tendency, regardless of personality profile, to deny responsibility for one’s mistakes, this tendency is strongest in the anomistic CEO, who does not believe in the law, and, if in fact the law exists, is sure s/he is above it.

WP 11, however, is counterintuitive. An anomistic CEO is precisely the sort expected to engage in bribery notwithstanding any legal prohibitions to the contrary, and this finding is difficult to explain unless one notes that only a small number of cases are available for study and that the practice may largely be limited to international firms doing business overseas. Similarly, the finding in WP 13—that an anomistic CEO is less likely to engage a firm in violation of environmental law is difficult to explain and may be driven in part by the limited number of cases and the lack of representation in the sample by extractive and manufacturing firms that engage in operations with potential environmental impacts.

iii. hostility and CLC

It stands to reason, as WPs 18 and 19 postulate, that self-absorbed, delusional, amoral CEOs who distrust and dislike humanity would treat “lesser” people around them as tools for grabbing wealth and power in contravention of financial and securities laws. Hostility may warp CEO judgments and yield decisions they and their stakeholders will ultimately regret. It also should follow, as WPs 23 and 25 anticipate, that such selfish and hostile personalities subordinate firm interests to their own and resist enforcement—i.e., internal and external audits, investigations, and all other modalities designed to conform their conduct with legal obligations—in desperate and ultimately futile attempts to stave off detection and punishment. WP 24 recognizes that boards of directors will eventually be presented with evidence of the noncompliance of hostile CEOs and be obligated—by threat of investor suits and regulatory investigations—to restate earnings. Finally, as WP 26 indicates, when confronted with evidence of their wrongdoing, hostile CEOs are psychological predisposed to preserve delusions of perfection and nobility, deny wrongdoing, and blame the “little people” who have failed them.

The finding in WP 20, that hostile CEOs are unlikely to engage in market manipulation, is almost certainly an artifact of the very few cases of corporate scandal available to study. Of the ten cases, only five firms—Enron, WorldCom, AIG, Halliburton, and Countrywide—possessed the kind of market clout
that could conceivably be brought to bear to disturb the efficient operation of markets, and the majority of these firms did so. Had more firms with market power and hostile CEOs been available for inclusion in the study, intuition suggests that the direction of this relationship would be reversed. WP 21 is similarly counterintuitive: we would expect that the more hostile a CEO the more, rather than the less, likely s/he would be to look upon bribery as nothing more than necessary business expense paid to achieve greater gains, particularly as against those others who proved unwilling to pay. It is difficult at this stage of theory development to specify why this may be so: it may be that hostility is no absolute bar to the exercise of prudent discretion, or that parties seeking bribes are more cautious in their dealings with CEOs they recognize as hostile and tend to refrain from conduct in which they suspect their would-be co-conspirators would later implicate them. Because the analysis of the ten cases of corporate corruption yield only three instances of bribery, it is premature to claim much strength for the associative relationship implied by WP 21. The same must be said for WP 22: investigation of the ten cases reveals only a single attempt to violate environmental laws, and the prediction that the more hostile the CEO the less likely his/her firm will violate environmental standards is likely the product of too little data.

iv. adventurism and CLC

WP 27 states rather plausibly that impulsive and optimistic gamblers who repose great faith in their capacity to assert their will upon events and absorb great stress are, as CEOs, compelled to undertake business strategies that afford the prospect of significant benefits—specifically, violating securities regulations—while nonetheless presenting significant risks in the form of financial and legal consequences to themselves, their firms, their shareholders, and their communities. As WPs 28 and 29 predict, seeking inflated compensation and abusing subordinate employees for selfish motives are behaviors associated with the adventuristic CEO because the payoff to the CEO is great and the potential penalties—the loss of face and the loss of human capital to the firm—seem small in comparison.

WP 32, which postulates that the more adventuristic the CEO the more likely s/he will be subpoenaed by Congress, illustrates that although risk and optimism are necessary parts of a business strategy and although some of the greatest human triumphs have been attained by the assumption of great amounts of risk—aviation and the discovery of drugs for cancer are but two—risk can also lead to business failure, and to the sort of financial and accounting shenanigans designed to shield failure from investors. WP 33 and WP 34 illustrate a strong association between adventurism and legal penalties as well as the legal death of the adventurist CEO’s firm. Apparently, not only Congress but shareholders eager to recoup losses and prosecutors motivated by visions of higher office take a dim view of CEO adventurism, or at least of unsuccessful risk-taking. WP 30, which holds that the adventuristic CEO will be likely to uphold environmental standards, is likely the product of too little data; one might expect the opposite—that a CEO gambler would roll the dice, adopt environmentally unfriendly practices, and
gamble that regulators or activists would not discover the damage. WP 31, which postulates that the adventurist CEO is less likely to resist enforcement actions, might reflect that s/he is gambling that cooperation will attenuate the intensity of scrutiny or otherwise mitigate the consequences of misconduct.

e. Outcome Maximizing Associations

Although no CLC outcome has a prime implicant, several are associated with personality profiles that share at least one personality construct score across at least 70% of associated profiles. For example, WP #1, “The more militaristic a CEO, the more likely his/her firm will be to violate financial regulations,” is supported by seven of ten, or 70%, of cases, while six of seven, or 86%, of personality profiles associated with the presence of the outcome “violate financial regulations” contain the personality construct “A,” “militaristic,” and thus reinforce WP #1. Twenty-two Outcome Maximizing Associations [“OMAs”] meet/exceed the 70% confidence level on both measures: WPs 1, 3, 5, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, 23, 24, 25, and 26.

f. Outcome Maximizing Combinations

An “Outcome Maximizing Combination” [“OMC”] can be specified for most CLC outcomes. Each OMC represents that construct or aggregation of constructs that yields the greatest probability, relative to all other constructs or profiles, that the corresponding outcome will occur. Each construct that generates an OMA for an outcome is included in the OMC for that outcome. Constructs that do not meet this threshold are excluded from OMCs, and it is assumed that these constructs have no greater influence than chance on the associated outcomes. For example, for the outcome “violate securities regulation,” three WPs—WP #9, “The more anomistic the CEO the more likely his/her firm will be to violate securities regulations,” WP #19, “The more hostile the CEO the more likely his/her firm will be to violate securities regulations,” and WP #27, “The more adventurist the CEO the more likely his/her firm will be to violate securities regulations”—are OMAs. Therefore, “anomism,” “hostility,” and “adventurism,” indicated by the score BCD, form the OMC for “violate securities regulations. However, PH #2, “The more militaristic the CEO the more likely his/her firm will be to violate securities regulations,” was supported by 60% of cases and thus did not meet the 70% threshold to be included as a WP and thus is excluded as an OMA. Consequently, neither the presence nor absence of militarism is part of the OMC for “violate securities regulations,” and this theory assumes that whether the CEO is militaristic or nonmilitaristic has no greater influence than chance on the outcome “violate securities regulations.” Table IV, Outcome Maximizing Combinations, illustrates OMCs for all fifteen CLC outcomes:

757 Cases in which the outcome is not expressed are not included in modified QCA.
758 Whether this assumption is warranted is discussed infra at pp. .
Preliminary examination reveals that each construct is associated with six OMCs, a finding that suggests that all constructs are equally associated with CLC outcomes. Yet as further analysis reveals, hostility, and to a lesser extent adventurism, may be the “master” CLC personality constructs that harness the greatest explanatory and predictive power regarding CEOs and their associations to CLC outcomes. If so, then the capacity to determine the presence or absence of hostility and adventurism in a potential CEO is a potent tool in CEO selection and retention. That anomism may yield less predictive power is counterintuitive inasmuch as one might expect this construct, which most closely taps attitudes, beliefs, and values about law and legal institutions, to offer greater insight into CEO behaviors regarding CLC. That the beliefs, attitudes, and values held by a CEO regarding law may be less salient to explaining and predicting the compliance behaviors of his firm than his degree of hostility or adventurism is remarkable.

g. Probabilistic Statements of Association

A “Probabilistic Statement of Association” [“PSA”] is a synthetic statement of the associative strength between a personality construct and a CLC outcome across a minimum of 70% of the ten historical cases in hypothetical analysis as well as across a minimum of 70% of the cases in which the outcome is actually expressed. A PSA expresses the strength of the associative relationship in terms of the probability that a given CLC outcome will occur given information about the construct or profile of the CEO who makes decisions regarding CLC. PSAs do not imply the absolute truth of the associative relationship, nor do they identify the microprocesses that “produce” outcomes. A given corporate scandal can yield outcomes divergent from explanations and predictions offered by PSAs. Nonetheless, given current constraints, PSAs help extend the reach of data analysis. The twenty-four PSAs are as follows:

1. A militaristic CEO associates with violation of financial regulations in 7 of 10 cases (70%) and 6 of 7 outcome occurrences (86%) for an average probability of .78;
2. A militaristic CEO associates with violation of employee rights in 8 of 10 cases (80%) and 6 of 6 outcome occurrences (100%) for an average probability of .90;
3. A militaristic CEO associates with resistance to legal enforcement in 7 of 10 cases (70%) and 4 of 5 outcome occurrences (80%) for an average probability of .75;
4. A militaristic CEO associates with earning a bad reputation in 7 of 10 cases (70%) and 5 of 5 outcome occurrences (100%) for an average probability of .85
5. A militaristic CEO associates with a Congressional subpoena in 7 of 10 cases (70%) and 5 of 6 outcome occurrences in 5 of 6 cases (83%) for an average probability of .77;
6. A militaristic CEO associates with legal penalties in 7 of 10 cases (70%) and 6 of 7 outcome occurrences (86%) for an average probability of .78;
7. An anomistic CEO associates with violation of securities regulations in 9 of 10 cases (90%) and 7 of 8 outcome occurrences (88%) for an average probability of .89;
8. An anomistic CEO associates with inflated executive compensation in 7 of 10 cases (70%) and 6 of 6 outcome occurrences (100%) for an average probability of .85;
9. An anomistic CEO associates with the violation of employee rights in 8 of 10 cases (80%) and 6 of 6 outcome occurrences (100%) for an average probability of .90
10. An anomistic CEO associates with resistance to legal enforcement in 7 of 10 cases (70%) and 4 of 5 outcome occurrences (80%) for an average probability of .75;
11. An anomistic CEO associates with a Congressional subpoena in 7 of 10 cases (70%) and 5 of 6 outcome occurrences (83%) for an average probability of .77;
An anomistic CEO associates with legal penalties in 7 of 10 cases (70%) and 6 of 7 outcome occurrences (86%) for an average probability of .78;

An anomistic CEO associates with denial of wrongdoing and attribution of blame in 7 of 10 cases (70%) and 6 of 7 outcome occurrences (86%) for an average probability of .78;

A hostile CEO associates with violation of financial regulations in 7 of 10 cases (70%) and 7 of 7 outcome occurrences (100%) for an average probability of .85;

A hostile CEO associates with violation of securities regulations in 7 of 10 cases (70%) and 8 of 8 outcome occurrences (100%) for an average probability of .85;

A hostile CEO associates with resistance of enforcement in 7 of 10 cases (70%) and 5 of 5 outcome occurrences (100%) for an average probability of .85;

A hostile CEO associates with restatement of earnings in 7 of 10 cases (70%) and 6 of 6 outcome occurrences (100%) for an average probability of .85;

A hostile CEO associates with denial of wrongdoing and attribution of blame in 7 of 10 cases (70%) and 7 of 7 outcome occurrences (100%) for an average probability of .85;

An adventuristic CEO associates with securities violations in 9 of 10 cases (90%) and 7 of 8 outcome occurrences (88%) for an average probability of .89;

An adventuristic CEO associates with inflated executive compensation in 7 of 10 cases (70%) and 5 of 6 outcome occurrences (83%) for an average probability of .77;

An adventuristic CEO associates with the violation of employee rights in 7 of 10 cases (70%) and 5 of 6 outcome occurrences (83%) for an average probability of .77;

An adventuristic CEO associates with a Congressional subpoena in 7 of 10 cases (70%) and 5 of 6 outcome occurrences (83%) for an average probability of .77;

An adventuristic CEO associates with legal penalties in 8 of 10 cases (80%) and 6 of 7 outcome occurrences (86%) for an average probability of .83; and

An adventuristic CEO associates with legal death in 7 of 10 cases (70%) and 4 of 4 outcome occurrences (100%) for an average probability of .85.

These twenty-four PSAs offer explanatory and predictive probabilities for eleven of fifteen DvS/outcomes; no PSAs can be deduced on the basis of existing data for four CLC outcomes at or above the 70% threshold. For example, PSAs 6, 12, and 23, taken together, suggest that the probability that legal penalties were or will be imposed upon a firm led into scandal by a militaristic, anomistic, and adventuristic CEO is 80% (the average of 78%, 78%, and 83%); put differently, the probability that a militaristic, anomistic, and adventuristic CEO has or will be more likely to make business decisions that result in legal penalties than will a nonmilitaristic, nonanomistic, and nonadventuristic CEO is 80%. The corollary also holds: the probability that legal penalties have been or will be imposed upon a firm led by a nonmilitaristic, nonanomistic, and nonadventuristic CEO into scandal is 20%.

C. Combined Theoretical Model

Coefficients of Associative Relationships [“CARs”] relax some of the rigor heretofore imposed in establishing association between personality and outcomes. CARs are measured by calculating the average of (1) the percentage of cases in hypothetical analysis supporting a particular associative relationship between a personality construct and a particular CLC outcome and (2) the percentage of QCA outcome occurrences in which the associative relationship between the construct and the outcome is expressed. For example, for the militarism subconstruct and the outcome ““violate financial regulations,” the associative relationship is supported in 70% of cases and the militarism subconstruct is present in 6 of 7, or 86%, of occurrences of the “violate financial regulations” outcome. Thus, the CAR for the relationship between militarism and “violate financial regulations” is the average of .70 and .86, or .78.
In Figure 1, “Formal Theoretical Model,” solid, single-headed arrows indicate associative relationships between personality constructs and CLC outcomes. Generally, the strengths of associative relationships are indicated by labeling each arrow with a CAR ranging from -1.00 to -.50 and .50 to 1.00. A relationship of perfect positive association is accorded a CAR of 1.00, whereas a relationship of perfect negative association is accorded a CAR of -1.00. A CAR of .5 or -.5 signifies the equivalent of chance. This measurement is analogous to the correlation coefficients used in regression analysis; however, true measurement of correlation is not feasible given the very small “n” of cases in the current study. Consequently, relationships of association are employed to much the same end. In the case of an arrow connecting a construct to a CLC outcome labeled with a positive CAR, the presence of the personality construct associates with the CLC outcome to which it is connected (the obverse of this stated relationship is also true). For an arrow labeled with a negative CAR the absence of the personality construct associates with the CLC outcome to which it is connected (again, the obverse of this relationship is also true). In the Formal Theoretical Model illustrating the present study, only those CARs with coefficients that round to greater than or equal to .65 are represented:
D. General Observations and Caveats

Perfect explanation and prediction of human decisions made in complex and dynamic situations characterized by uncertainty and stress transcend the current state of science. Attempts to predict exactly
when, where, and how future corporate scandals will erupt will prove imperfect at best. It is important to stress the limited and conditional nature of the causal significance of personality. Nevertheless, heuristic testing of the CLC pretheory has generated working postulates (WPs), probabilistic statements of association (PSAs), outcome maximizing combinations (OMCs), and coefficients of associative relationships (CARs) that taken together and burnished with artful intuition suggest several associative relationships between CEO personality constructs and CLC outcomes. These relationships, presented in narrative format, are building blocks upon which to continue development and testing of the pretheory.

1. “Ideal-Typic” CEOs and Associated CLC Outcomes

   a. ABDC: “violate financial regulations,” “violate securities regulations,” “inflate executive compensation,” “violate employee rights,” “earn a bad reputation,” “receive Congressional subpoena,” and “incur legal penalties”

   The CEO who is a militarist and is anomistic, hostile, and adventuristic—ABCD—is an authoritarian, even imperial, leader and an aggressive competitor with prior military service and low self-esteem who will view the use of power favorably both within the firm to establish hierarchies and in its business strategy to defeat rivals, and will prefer to make decisions in isolation. S/he will have little regard for law or legal authorities, will lack moral or ethical qualms about violating obligations regarding finance or securities regimes, and will know little of the substance of law generally and even less about corporate law. S/he will not trust others and will regard stakeholders—employees, investors, business partners—in solely instrumental terms: their worth to him/her will be measured simply by whether they contribute to his/her grand visions of wealth, power, and status, and failing any value s/he will express a generalized animus toward them, particularly if they are of different social groups than s/he. S/he will be an optimistic gambler whose belief that s/he can assert his/her will upon events and bend others to his/her aims will impel him/her to take risks and cut corners, and s/he will resolve the tremendous anxiety and stress that accompanies this risky behavior by trusting blindly and, in effect, rolling the dice that neither she nor her firm will be caught when committing CLC violations.

   The ABCD CEO is more likely than a CEO with any other personality profile to preside over a firm that engages in fraudulent accounting, misrepresentation of the firm's financial condition, insider trading, and other securities violations. This CEO creates a culture of lavish compensation packages for executives that are indefensible by reference to the marketplace while disregarding laws that protect other employees against discrimination, fair employment practices, violations of pension and retirement benefits, and reprisals for whistleblowing. Prior to discovery of its substantial and systematic violations of law, the firm led by this CEO will earn a bad reputation with employees, investors, lenders, customers, vendors, local communities, and regulators for unethical and unlawful practices. These external stakeholders may intuitively recognize and naturally resent the ABDC CEO's decision to discount their...
influence and interests; however, any anxiety and stress that attend the prospects of developing a bad reputation are more than offset by the ABCD CEO's optimistic hope that the profit from such a strategy more than compensates the firm for the risk entailed in “going it alone.” Moreover, when s/he fails to overcome risks that a less adventuristic CEO would not have assumed and the firm stumbles publicly, Congress may well come calling. However, this CEO will feel no independent compliance pull. His/her lack of trust in the political and legal system, coupled with the belief that Congress is “the enemy,” will place the CEO in an adversarial relationship, and s/he will likely refuse to testify on 5th Amendment grounds. Congressional committees, frustrated by the lack of voluntary compliance and by the inability to attribute business failures to the assumption of understandable risk rather than to illegality, will be compelled to subpoena him/her. This CEO’s gamble that neither s/he nor his/her firm will be detected, or if detected, prosecuted, or if prosecuted, convicted, will often be a losing bet, for this personality profile is most closely associated with the imposition of civil and criminal legal penalties.

Precisely how unbridled, aggressive ambition coupled with a lack of legal or ethical foundation and a hostile, instrumental, risk-hungry approach translates into these violations of CLC and the consequences that follow is the stuff of future research. Still, the preceding description evokes Jeffrey Skilling, Sam Waksal, Al Dunlap, Dick Cheney, and Bernie Madoff—ABCD CEOs—quite readily.

b. “manipulate markets”, “legal death”, and “deny and blame”: (A/a)BCD

The (A/a)BCD CEO may or may not be a collaborative and consultative leader and may view reason and persuasion rather than power as appropriate methods for making and implementing decisions, and may prefer to build coalitions and affiliations. His/her successes may be shared successes. However, s/he will have little regard for law or legal authorities, will lack moral or ethical qualms about violating legal obligations, and will know little of the substance of law generally and even less about corporate law. S/he will not trust others and will regard rivals and stakeholders—employees, investors, business partners—in solely instrumental terms: their worth to him/her will be measured simply by whether they contribute to his/her grand visions of wealth, power, and status, and failing any value s/he will express a generalized animus toward them, particularly if they are of different social groups than s/he. The (A/a)BCD CEO’s wildly optimistic belief that s/he can assert his/her will upon events to gain advantage over competitors will impel him/her to take great risks, and s/he will resolve the accompanying anxiety and stress by trusting blindly and, in effect, gambling that neither she nor her firm will be sanctioned by regulators.

The (A/a)BCD CEO is most likely of all the personality profiles to direct a firm to violate antitrust laws, fix prices or production levels, commit industrial espionage, and manipulate the free operation of the market. S/he is also most likely to preside over the bankruptcy or liquidation of his/her firm as a result of having engaged in practices made illegal under corporate law. Ignorance, it seems,
may spell not bliss but actually danger in a CEO, whose gambles that s/he can conspire to restrain fair trade, that his/her firm will not post losses than cannot be covered by earnings, and that the firm will remain liquid in the face of demanding creditors and unwilling debtors will prove fatal. When the firm and its leaders are subjected to legal penalties, the (A/a)BCD CEO will deny wrongdoing, withhold apologies or remorse, and blame others. As a superior creature who regards the “little people” s/he employs or who hold the firm’s shares or live as neighbors as mere objects meant to serve ends, and as someone who does not feel any compliance pull whatsoever, the (A/a)BCD CEO feels no empathy for those who suffer his/her decisions and must displace the blame upon a lesser person better suited to bear it. Although denying blame for our mistakes and casting it upon others may be a function of simply being human—few of us are able to openly admit that we are imperfect and that who we would like to be and who we are expected to be in social life are not always achieved—and while denying wrongdoing may be a rational defense that all but the clinically insane or the most honest offer to minimize attendant political and legal costs, the (A/a)BCD CEO is least likely of all personality profiles to accept any responsibility.

The present study cannot conclude that militarism has a significant associative relationship with the production of the CLC outcome “manipulate the market.” However, three CEOs led their firms to commit this CLC violation, and two—Jeffrey Skilling and Dick Cheney—are militarists. More research is necessary to establish the association. Moreover, four firms in the present study suffered legal death: Enron, WorldCom, Sunbeam, and Bernard L. Madoff Investment Securities. Each of their CEOs, save for Bernie Ebbers, is a militarist. Furthermore, two other firms led by CEOs with the personality profile (A/a)BCD, namely ImClone and Tyco, were able to escape legal death only by the astute planning of a merger partner in the case of the former and by a rapid and sound reorganization plan instituted by a new executive team and board in the case of the latter. More research is necessary to suggest whether militarism should be included in the relationship between personality and legal death.

c. engage in bribery: A(B/b)C(D/d)

The A(B/b)C(D/d) CEO is an authoritarian and nationalistic leader with prior military service who has low self-esteem and is isolated from others but has fierce ambition and competitive drive and regards the use of power as an appropriate means of achieving goals. S/he will not trust others and will regard stakeholders—employees, investors, business partners—in solely instrumental terms: their worth to him/her will be measured simply by whether they contribute to his/her grand visions of wealth, power, and status, and failing any value s/he will express a generalized animus toward them, particularly if they are of different social groups than s/he. The A(B/b)C(D/d) CEO is more likely than those with other personality profiles to direct a firm to corrupt business practices by accepting or offering cash, services, or gifts in order to influence business decisions. This CEO’s drive for power, control, and the defeat of his/her rivals, coupled with a disregard for law and legal authorities and moral sources of rules, will
convince him/her that corruption is a part of the human condition and that it is legitimate to gain advantage over competitors by unlawful means, and s/he is unlikely to experience sufficient anxiety or stress to dissuade him/her from doing so. Neither the anomism nor adventurism constructs demonstrated associations of sufficient strength for inclusion in the ideal-typic personality profile for bribery.

d. “buy political influence” and “resist enforcement”: ABC(D/d)

The ABC(D/d) CEO is an authoritarian and nationalistic leader with prior military service who has low self-esteem and is isolated from others but has fierce ambition and competitive drive and will regard power as an appropriate method of reaching decisions within the firm. She will be a self-absorbed, amoral individual who makes decisions in isolation and will not seek to build affiliations with others unless they serve his/her goal of achieving and protecting wealth, power, and status. S/he will not trust others and will regard stakeholders—employees, investors, business partners, and even politicians—in solely instrumental terms: their worth to him/her will be measured simply by whether they advance his/her grand visions of wealth, power, and status, and if they do not s/he will bear them an animus.

The ABC(D/d) CEO is more likely than CEOs with other personality profiles to allow or require corporate or employee funds, facilities, or services to be used to support political candidates or parties in violation of law. Despite his/her hostility, in the case of powerful politicians who grant patronage in the form of desirable laws, generous political oversight, and prosecutorial discretion, s/he is willing to pay for their services, and this reflects the perceived utility of the political influence purchased and the benefits accorded to his/her pursuit of wealth, power, and status rather than the intrinsic value of the relationship(s). Adventurism appears theoretically irrelevant. Five CEOs—Skilling, Ebbers, Scrushy, Greenberg, and Cheney—bought political influence; all have the construct “hostile” in their personality profiles. Perhaps the purchase of political influence is valued even by CEOs who are self-absorbed and disinterested in affiliations with others because they view the value of the relationship secured by cash as form of insurance against unfavorable legal, political, and judicial results, as a valuable enhancement to the firm’s public reputation, or as an advance payment on any potential future liabilities.

This CEO is also most likely to resist regulatory authorities in the implementation and enforcement of corporate law: for the ABC(D/d) CEO, cooperation as a rule, and cooperation with legal and regulatory authorities is anathema. Because regulators directly threaten his/her wealth, power, and status, the hostile, anomistic militarist will regard them as competitors in a zero-sum game. In five cases of corporate scandal in the present study, CEOs resisted enforcement, and all five express AC in their personality profiles. However, five other CEOs with AC as part of their personality profiles did not resist enforcement; more research is necessary to enhance the power of the associative relationships.

e. violate environmental standards: AB(C/c)D
The AB(C/c)D CEO is an authoritarian and nationalistic leader with prior military service who has low self-esteem and is isolated but has fierce ambition and competitive drive and regards the use of power as appropriate means to achieve ends. S/he is a self-absorbed, amoral individual who will not seek to build affiliations with others unless they serve his/her goal of achieving and protecting wealth, power, and status. His/her wildly optimistic belief that s/he can assert his/her will upon events to gain advantage over competitors will impel him/her to take great risks, and the AB(C/c)D CEO will be too fast to assume them and too optimistic to gauge accurately the probable outcomes of his/her decisions; the decision to violate environmental standards, which the AB(C/c)D CEO is more likely to make than any other personality profile, will be an ill-considered choice that takes into consideration neither the likely probabilities of detection nor the costs and benefits of noncompliance to the firm. In the ten cases of corporate scandal, only one CEO—Cheney, who is scored ABCD—engaged in environmental violations. Although this is consistent with the ideal-typic personality profile, more research is needed, and many more cases are required, before much confidence can be reposed in this analysis.

f. “restate earnings”: AbC(D/d)

The AbC(D/d) CEO is an authoritarian and nationalistic leader with prior military service who has low self-esteem and is isolated but has fierce ambition and competitive drive and values he use of power to achieve ends. S/he is a self-absorbed individual who will not build affiliations with others unless they serve his/her goal of achieving and protecting wealth, power, and status. S/he will not trust others and will regard employees, investors, business partners, and even politicians in solely instrumental terms: their worth to him/her will be measured simply by whether they advance his/her goals, and if they do not s/he will bear them an animus, particularly if they are of different social groups than s/he. For the AbC(D/d) CEO, however, while the business arena is for combat, law and legal authorities are important in regulating its extremes, and s/he may well be knowledgeable about law generally and corporate law specifically and governed by independent sources of moral restraint. Thus, while s/he may direct the firm to engage in corporate illegality that inflates the financial health of the firm and wins wealth, power, and status, his/her lack of anomism may attenuate the extent or severity of any legal transgressions to which the AbC(D/d) CEO commits the firm. The AbC(D/d) CEO is more likely than other CEOs to lead a firm that restates earnings during his/her tenure as a consequence of violations of various aspects of CLC. Of the ten CEOs studied, two have personality profiles that include the constructs AbC—Greenberg and Mozilo—but only one was required to restate earnings as a result of the commission of legal violations. More research and more cases are necessary to develop greater confidence in the associative relationship.

2. Personality Profiles

a. ABCD: “The Outlaw”
A CEO with the personality profile ABCD—militaristic, anomistic, hostile, and adventuristic—is a corporate disaster incarnate. “The Outlaw”\textsuperscript{759} is a human predator who will demand inflated compensation, abuse employees, violate environmental laws, buy political favors, and direct the commission of serious financial and securities violations that will trash the good name of the firm, trigger analyst inquiries, require restatements of earnings, incur the wrath of Congress and the media, destroy evidence and obstruct justice, and lead the firm down the scandalous road to falling stock prices, dwindling earnings, civil and criminal penalties, and bankruptcy and dissolution. The Outlaw will deny any wrongdoing and blame others for personal and corporate misfortunes and show no remorse for his/her actions. Although s/he may forfeit some ill-gotten gains and lose some of his/her freedom for a while, the Outlaw will become extremely wealthy in the process and may even live to ride again.

b. aBCD: “The Rustler”

The personality profile aBCD—nonmilitaristic but anomistic, hostile, and adventuristic—appears almost indistinguishable from the Outlaw at first blush, yet “the Rustler” is less aggressive, less competitive, more likely to work in groups, and less in need of stroking to boost self-esteem than his cousin. Whereas the Outlaw steals by daring daylight raids and seeks worldwide fame, the Rustler works by stealth and in the dark and prefers to be nameless and faceless as s/he grows the herd. However, the ultimate result to the firm of hiring a Rustler as CEO is similarly destructive: The Rustler will quietly violate antitrust laws, fix prices or production levels, commit industrial espionage, manipulate the free operation of the markets, and so badly mismanage the firm that it will suffer bankruptcy and dissolution. Of course, the Rustler will deny responsibility and point the finger at others for the downfall of the firm.

c. AbCd: “The Rancher”

“The Rancher”—militaristic but nonanomistic, hostile but not adventuristic—is committed to nothing more than the safety of his herd and its value at market, and he is threatened in this by Outlaws and Rustlers alike. He is ready, willing, and able to use force to protect the herd, which he and his cowboys drive hard. He lives on the open range, distrusts and dislikes cowboys and Indians he does not know, and has little to do with townspeople except at market time. If the Sheriff or his Deputy should call upon him for assistance, the “Rancher”—committed to and reliant upon the rule of law and courts as the first line-of defense of his stock—will offer his support, but he otherwise remains aloof and out of the fray. As CEO, the Rancher will generate and expend significant political and social capital, and take and

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\textsuperscript{759} The four personality profiles of the ten CEOs included in the present study are assigned names drawn from a special set of stock characters common to American Westerns that are as stylized and precisely defined as the characters of the Italian Renaissance Commedia dell’Arte or the Japanese Kabuki Theatre. The universality of the characters, themes, and conflicts is part of what makes Westerns so compelling as art and entertainment, and their use here is meant to invest the experimental profiles with meaning and color. See http://tvtropes.org/pmwiki/pmwiki.php/Main/WesternCharacters. Experimental personality profiles are assigned names from the stock character set drawn from American Westerns for the same purpose. See infra at pp. .
pay bribes, to prevent and minimize problems the firm might face. While it may have to restate earnings, the firm will not engage in any serious violations of the law under the Rancher, who will fulfill his/her mission: to shield the firm against predators and husband it to abundance.

d. ABCd: “The Mayor”

“The Mayor”—personality profile ABCd—is a vainglorious individual who abuses his/her office for personal gain without care for the townsfolk or the rule of law, and the only cause for which s/he will expend personal resources is to ensure re-election. As CEO, the Mayor will violate financial regulations, engage in bribery and buy and sell political influence, and obligate the firm to restate earnings to reflect the damage done to shareholders. When scandal erupts the Mayor will spend the significant political influence s/he has purchased to resist enforcement and avoid legal penalties, but if the firm does incur sanctions the Mayor will scapegoat underlings. Unseating the Mayor as CEO is possible; bringing the Mayor to account for misdeeds is quite another matter.

IV. Criticisms, Responses, and Directions for Future Research

Despite grounds for caution, this study has identified several associative relationships between personality and various CLC outcomes. Nonetheless, potential criticisms of the present theory are several.

A. Criticisms and Responses

1. Reductionism

Those with intellectual commitments to theories that regard other levels of analysis as more fundamental to the explanation of the behavior of firms may dismiss personality as little more than “a magic slogan to charm away the problems that [their] intellectual tools don’t handle.”760 Others, without categorically rejecting its causal significance, may take exception to the claim that personality, rather than firm, industry, or national culture, the powers and makeup of boards of directors or auditors, CMPs, the availability of comprehensive and “toothy” legal regimes, or the courage of whistleblowers, is central to explanations for firm decisions regarding CLC; for these critics, personality constructs are “noisy” variables, and the reductionism of PT will invariably be sacrificial of explanatory and predictive power.761

760 HERBERT SIMON, ADMINISTRATIVE BEHAVIOR 23 (1947).
761 Critics of individualism note the salience of organizational or national-level variables, including the structure of corporations as state-sanctioned legal entities with duties to earn short-term profits even if this conflicts with moral, environmental, or other imperatives, in determining corporate decisions. See, e.g., CAMPBELL JONES, MARTIN PARKER, & RENE TEN BOS, FOR BUSINESS ETHICS 4 (2005) (“Often it is tempting, when we see gross corporate misconduct, to explain this by pointing the finger at the person who did the wrong act. But we want to argue that individualism itself can also be a problem, particularly when it hides from view the context in which acts of misconduct take place . . . Individual action always takes place in relation to social structures, like organizations or economies, to mention just two obvious examples.”); see also SIMON, supra note 759, at 102 (“If the severe limits imposed by human psychology . . . are to be relaxed, the individual must in his decisions be subject to the influences of the organized group in which he participates.”); ANDREW CRANE & DIRK MATTEN, BUSINESS ETHICS: A EUROPEAN PERSPECTIVE 26 (2004) (noting that Europeans attribute decisions of corporate managers to state-level variables, i.e., availability and force of regulations).
Indeed, the “perfect” model of CLC might well treat firm behaviors as resulting from a combination of causes and in turn amalgamate insights and variables from all pretheories and all levels of analysis. However, such a model would be so cumbersome and so difficult to conceptualize and apply that some reductionism would be necessary to permit other researchers to engage in replication and falsification. However, neither the naïve view of CLC as the mere projection of personalities nor the belief that decisionmaking is entirely insulated from the effects of personality enjoys empirical support. If firm behaviors could be explained solely by reference to the personalities of CEOs there would be no discernible pattern of behavior at variance with predictions derived from the analysis of those personalities. The data do not support this conclusion. Moreover, personality is not epiphenomenal to CLC: although there may be some circumstances in which all CEOs facing the precise set of conditions will decide identically, decisions as to at least some of the most relevant outcomes appear to be influenced, if not determined, by personality. Because personality is causally relevant to the explanation and prediction of CLC the proposed theory is not remiss for taking personality seriously.

Research in the field of law and neuroeconomics suggests that the ultimate locus of decisionmaking is the series of neurochemical processes in the human brain that drive individuals to seek “rewards” and avoid “punishments” at least partially independently of their cognitive schema. If neural mechanisms are indeed responsible for theoretically significant aspects of human behavior, then the argument that CLC outcomes can be explained and predicted by investigation of CEO personality alone is not a convenient reductionist gambit but rather a sound conceptual and methodological commitment that will benefit from an even more micro-level analysis of the biological constituents of personality. It bears reminding yet again that firms do not make decisions; people, and especially CEOs, do.

2. Lack of Parsimony

Some may fault the present theory on the ground that it is insufficiently accessible. Personality theories are difficult to test empirically, and researchers must expend labor, time, and resources to acquire knowledge about the subjects of investigation as well as requisite training in psychobiographical research, qualitative methodology, and formal modeling. Critics, however, should concede that a theory attempting to offer relevant explanations and predictions of CLC, a phenomenon of great complexity, will be similarly complex. If parsimony, rather than explanatory and predictive power, is the measure of success, there are grounds for concern. However, if the present theory harnesses as much explanatory and predictive power as can be corralled at present, it behooves those who would fault its lack of parsimony to instead develop the research and experimental techniques that will enable collaboration in the field.

763 See SEARS ET AL., supra note 79, at 257 (explaining reasons for reluctance to explore personality-based approaches).
3. Ecologically Fallacious

Some may believe the present theory commits the ecological fallacy of presuming that associative relationships that obtain within a very small “n” of cases can be generalized to the universe of potential CEOs. Indeed, there may be another set of personality constructs that generates better explanatory and predictive power, and it is possible replication studies will score decisionmakers differently and reach contrary findings. Generalizing inductively from a very small number of cases is inherently problematic, for anomalous individual cases are more likely to drive findings than they will in larger populations. However, because the data employed herein constitutes a large representation of corporate scandals of the last decade, and nearly spans the universe of scandals about which there is detailed data, it is not a sample in the scientific sense, and thus inferences need not necessarily build upon skewed data. Moreover, the conclusions of the present study are conditional and intended to explain a very limited number of context-dependent cases of corporate scandal and serve as points of departure for further research, rather than as a final authoritative statement of the relationship between personality and CLC. Personality profiles remain unexhausted, and only future experimental research and the passage of time can remedy this defect.

4. Comparison to Existing Theories

The best defense of any PT-based theory of CLC is a comparison of the explanations and predictions it offers with those derived from alternative theories. If the present theory is more congruent with observable patterns of decisionmaking than existing theories, then notwithstanding its reductionism or lack of parsimony there is cause to believe that the theory that will ultimately render the most sophisticated explanations and predictions will, at the very least, incorporate personality.

a. deterrence theory (DT)

DT contends that, despite attempts to align the interests of executives and shareholders through generous compensation packages, CEOs are rational actors who pursue wealth maximization to the exclusion of all other ends, including compliance with law, unless law imposes sufficient costs upon this agenda. In short, corporate law will earn compliance only if it significantly transforms the material payoff structure of certain strategies. DT theorists suggest that by honing the instruments available to effect this transformation—in other words, by increasing the resources allotted to monitoring compliance and detecting violation, improving the probability of prosecution and conviction, and enhancing the severity of civil and criminal sanctions—CEOs will eventually feel law’s sting and be brought to heel.

However, DT concedes that unless the value of the costs imposed through the investigation, prosecution, and punishment of violations of corporate law exceed the material gains to be had through violation, rational CEOs will choose to violate the law, reap the gains from violation, and—should they be detected, prosecuted, and convicted, which will always be less than certain—count prison time served and fines paid as part of the cost of doing business. DT theorists would certainly allow that just as very
bright CEOs can err and suffer the unanticipated costs resulting from their legal transgressions, so can very bright CEOs make very accurate and precise calculations of the “price” of CLC and build it into their business strategies. In other words, the rational strategy for any CEO facing any given CLC decision may well be to always violate the law. If so, then the object of legal architects is simply to find the price point that deters all rational actors from noncompliance, at which point all CEOs would decide to comply with the law. Under DT, then, we should expect either perfect noncompliance (i.e., each corporate scandal will produce each CLC outcome) before the behavior is priced out of existence, followed by increasing compliance as the price rises (fewer corporate scandals will produce fewer CLC outcomes), and ultimately perfect compliance (no corporate scandals ever occur).

In practice, however, it is politically impossible to marshal perfect detection and pricing mechanisms. We know the names Skilling, Ebbers, and Madoff; many CEOs now scheming in obscurity are engaged in similar illegality but will never be caught. Furthermore, we have seen that the specter of twenty-four years’ imprisonment—a life sentence for a person of over fifty years of age—was not costly enough to dissuade Skilling. Given the irrationality of mankind and the history of capital punishment, it is impossible, even by through swift and sure application of the death penalty, to deter every CEO from violating corporate law. In sum, DT is too committed to the principle of human rationality to offer nuanced explanatory and predictive judgments about CLC.

b. reputation theory (RT)

Firms and their CEOs, according to RT, seek the respect of their peers, and the value of a good reputation may well be enough to offset the cost of compliance when the choice to comply, standing alone, is costlier in material terms than noncompliance. For this reason, firms, acting through their CEOs, will comply with legal regimes even when rules conflict with short-term self-interests because their reputation for compliance is more valuable in the long run than the gains from illegality. However, in practice, reputational penalties are difficult to measure and to impose. In reviewing the sordid history of American business in the late 20th and early 21st centuries, one might conclude that the best way to earn respect and admiration is to violate the law, especially when the gains to be had are of sufficient magnitude. For some individuals, it is doubtful that any reputational penalty will leverage the threat of deterrence or outweigh the gains to be reaped through corporate pillage. Intuition suggests that many would-be CEOs will happily pocket tens of millions of dollars in exchange for their good names, and for militaristic and hostile CEOs the value of forfeiting reputation may be next to zero.

RT, then, predicts that those for whom reputation has no value will never comply with the law no matter how low the costs of compliance, and that those for whom reputation is everything cannot be induced to violate the law no matter the gains from violation. For the vast majority, reputational preferences fall somewhere between those of sinners and saints, but RT theory cannot tell us where any
individual CEO locayes on the continuum. In short, RT assumes too much about the importance of reputation and confers little explanatory or predictive power.

c. legitimacy theory (LT)

LT contends that legal regimes created by a legitimate political process and administered with substantive and procedural fairness are entitled to, and reap, compliance. In other words, the degree to which any firm complies with its legal obligations is a function of the degree to which that firm deems corporate law to have been created by legitimate authority and applied fairly. The U.S. political and legal system, by this measure, is the most legitimate and fair in history. It permits large firms to purchase and bring influence to bear to become de facto partners with government in legislative and administrative rulemaking, and when firms or their officers are subjected to enforcement action they are free to use their power to shape the interpretation and application of laws to their advantage. Accordingly, LT predicts that all firms will perceive corporate law as legitimate and fair and compliance will be near-absolute.

However, history has unfolded in diametrical opposition to these predictions. Rather than champion the corporate legal regime they worked with government to create, the most powerful firms—Enron, WorldCom, Halliburton—conspired to defame and despoil it. Never did these firms or their CEOs challenge the legitimacy of corporate law: it was the facts, and not the law, over which they and prosecutors differed. If LT was correct, no corporate scandals would occur), yet based on the evidence LT would ask us to hold the contrafactual belief that, at least from the perspective of the aforementioned firms, it is perhaps the most illegitimate regime concocted since human slavery or the Nuremberg laws.

d. normative theory (NT)

Constructivism holds that CLC is a function of congruence between norms and the formal legal rules of corporate law. To take root, according to constructivists, the moral and ethical sources of behavioral prescription and proscription that support the texts of corporate law must be inculcated within the individuals charged with its observance, whether through religious training, professional socialization, or another medium. Given congruence and proper normative inculcation, constructivism predicts a high, if indeterminate, rate of compliance even where the cost of noncompliance is low and gains are greater than costs. Unfortunately, constructivism assumes without evidence that the higher-order norms of self-restraint, fiduciary responsibility, respect for equal rights, and fundamental fairness undergirding corporate law will dominate greed and material self-interest. Even if it were possible to suppress these baser aspects of human nature—which may have biological origins—constructivism does not specify how and in what social contexts other norms could be inculcated to fill the resulting vacuum. There may be a narrow temporal window through which moral and ethical education can pass on its way to the student, and most believe it closes by adolescence. Moreover, homes, schools, and religious institutions are the primary venues for this development, and on-the-job ethics training lacks a noble pedigree.
Even if the assumptions of constructivism are taken as true for sake of argument, difficult questions follow: When and in what setting could the normative evolution of any of the CEOs in the present study be influenced—more moral instruction as a toddler or in elementary education, required attendance in the house of worship of choice, more rigorous study of business ethics in MBA programs, or “moral boot camp” for newly-minted CEOs? Does not the moral universe of each individual reach maturity in early adulthood? Does it really seem plausible that, had a young Jeff Skilling, Bernie Ebbers, or Bernie Madoff been spirited away from their formative environments at age ten and subjected to a program of normative inculcation conducive to compliance with corporate law, as adults these men would not have become corporate scofflaws? Can we even be sure that any of them would, after moral and ethical training, have chosen business as a career and aspired to the lofty position of CEO? In short, constructivism presumes too much and presents no testable hypotheses regarding the mechanisms whereby norms other than self-interest are inculcated and ultimately linked with CEO decisions regarding CLC. Constructivist theorists can only observe events, bemoan the fact that there are corporate scandals, and lament that CEOs were not properly inculcated in the norms that constitute much of corporate law; it cannot, in the social science sense, explain or predict CLC.

Organizational-cultural theory [“OCT”] posits that firm preferences are neither predetermined nor dictated by legal rules but are created and shaped by the organizational cultures of senior decisionmaking teams. Groups, and not individuals, make CLC decisions, and whereas some firms will be guided by an organizational culture of compliance, others will be infected with a culture of violation. Just as there are Johnson & Johnsons, Ben & Jerry’s Ice Creams, and General Mills\(^\text{764}\) in the world, so too are there Enrons, WorldComs, and Halliburtons. Unfortunately, it is extremely difficult to gauge the organizational culture of a firm. All firms make public proclamations of high ethical standards and social virtue, and back these statements with charitable giving and other “social responsibility” programming, yet not all firms uphold these standards. Prior to its conviction for financial violations and its dissolution as an accounting firm in the U.S., Arthur Andersen boasted about its highly ethical and law-abiding culture.

Worse, OCT does not include any assumptions or postulates regarding change. The preferences and strategies of senior decisionmaking teams regarding CLC—established somewhere in the hoary past and rather resistant to change—explain and predict CLC behavior. Contrary to our intuition, OCT tells us that the past is always prologue and that the sins of the fathers will be the sins of the sons. For OCT theorists, the ImClone of Carl Icahn\(^\text{765}\) will be the ImClone of Sam Waksal, the HealthSouth of Jay Grinney is preordained to be the HealthSouth of Richard Scrushy, and the Tyco of Edward Breen is

\(^{764}\) See America’s 100 Best Corporate Citizens, Business Ethics, Apr. 25, 2003 (listing top ethical U.S. corporations).

\(^{765}\) Carl Icahn is currently the Chairman and a member of the board of ImClone. See http://www.imclone.com/bod.php
doomed to be the Tyco of Dennis Kozlowski. Yet firms recently wracked by scandal excitedly tout the replacement of their executive management teams and boards of directors not simply to put the past behind them but to reassure outsiders that, in fact, their dysfunctional organizational cultures have been jettisoned. If these firms did not blame widespread and serial violations of law on their former leadership teams but instead embraced the OCT premise that noncompliance was merely a function of deeply imbedded and largely intractable firm cultures, the boards of directors of ImClone, HealthSouth, and Tyco would have been better advised to liquidate assets and exit the marketplace—in other words, to direct the artificial persons known as ImClone, HealthSouth, and Tyco to commit “suicide.” That they did not is another argument favoring investigation of the role of personality in CLC decisionmaking.

5. Data Defects and Selection Bias

The data is not voluminous given the small number of cases. In one case a single primary source was used to develop a CEO personality profile, and the potential for bias and other errors is magnified. Moreover, psychobiographical research, always arduous, is especially so when analyzing CEOs who, although they enjoy celebrity, do not inspire nearly so much biographical work as do heads of state and entertainers. As new data becomes available it will be incorporated and results retested to ensure accuracy. Further, the cases chosen have been included specifically because the CEOs had already been mired in corporate scandal. Many other CEOs about whom as much has been written have not, and

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766 Additional corporate scandals might include Adelphia and John Rigas, Global Crossing and Gary Winnick, Qwest and Ralph Nacchio, Hewlett-Packard and Patricia Dunn, Phar-Mor and Michael Manus, New Century and Brad Morrice, Hollinger and Lord Conrad Black, Fannie Mae and Franklin Raines, Siemens and Klaus Kleinfield, Steve Jobs and Apple, Lord John Browne and BP, Bill Allen and VECO, Collins & Aikman and David Stockman, Phil Condit and Boeing, Gregory Reyes and Brocade Communications, National Public Radio and Patricia Schiller, Washington Mutual and , and McKinsey and Raj, to mention several. See, e.g., Mike Esterl & David Crawford, German Giant Siemens Faces Leadership Crisis, WSJ, Apr. 26, 2007 (reporting that the board of directors of Siemens attempted to hire a new CEO, pressuring the incumbent, Klaus Kleinfield, to announce his resignation September 30th over a widening corruption probe); Holman W. Jenkins, Jr., Waste Case, WSJ, Apr. 15, 2007 (reporting that a special investigating committee headed by former SEC chief Richard Breeden has called Lord Black, former CEO of Hollinger, the head of a “corporate kleptocracy” for allegedly stealing money from shareholders); Dionne Searcey, Nacchio Found Guilty of Insider Trading, WSJ, Apr. 19, 2007 (reporting a jury verdict of guilty on 19 of 42 counts of insider trading against former Qwest CEO Ralph Nacchio); Jonathan Kemp, New Century CEO, A Crisis Survivor, Faces Another One, WSJ, Mar. 20, 2007, at B1-2 (reporting that Brad Morrice, CEO of New Century, is under federal investigation for accounting fraud and insider stock trades); Jeffrey McCracken, Stockman May Take Another Hit, WSJ, Mar. 22, 2007, at A3 (reporting that David Stockman, former White House budget director and CEO of auto parts supplier Collins & Aikman, has been charged with improper accounting, bank fraud and misleading investors); Peter Waldman, H-P Leaks Case Fizzles in Court, WSJ, Mar. 15, 2007, at A3 (reporting a California state court dismissal of charges against former H-P CEO Patricia Dunn in exchange for community service but that the Justice Department continues to investigate); Nick Wingfield & Steve Stecklow, Ex-Finance Chief Says Jobs Misled Him on Options, WSJ, Apr. 25, at A1 (reporting that former Apple CFO Fred Anderson claims CEO Steve Jobs lied about board actions on stock-options awards); Jeffrey Sonnenfeld, The Real Scandal at BP, BUS. WK., May 14, 2007, at 98 (suggesting the ouster of former BP CEO Lord John Browne occurred in part as a result of “misdirection of corporate resources”); Jim Carlton, CEO Pleads Guilty to Bribery, WSJ, Apr. 6, 2007, at A3 (reporting that VECO CEO Bill Allen pled guilty to bribery, extortion, and conspiracy to defraud the IRS); Jane Sasseen, That’s Awfully Good Timing, BUS. WK., Apr. 30, 2007 (reporting that former E*Trade Group CEO Christos Cotsakos and EchoStar CEO Charles Ergen, along with thousands of senior executives at more than five hundred public firms, are under SEC investigation for backdating exercise of stock options); Steve Stecklow, Options Trial Could Set Path of Future Cases, WSJ, Jun. 18, 2007, at C1 (reporting commencement of federal trial of Brocade Communications CEO Gregory Reyes on charges of altering grant dates of stock options and falsifying documents). All CEOs mentioned herein are presumed innocent unless and until proven otherwise.
although this is not guarantee against their guilt the presumption runs in their favor. Studies of other CEOs, particularly those who have not been publicly linked with violations of corporate law, will be undertaken in future research to develop and refine the present theory.

C. Directions for Future Research

1. Experimental Research
   a. experimental personality profiles

      Only four distinct combinations of the four personality constructs have been identified in the personality profiles of CEOs who presided over corporate scandals: ABCD, aBCD, AbCd, and ABCd. However, these four personality constructs generate $2^4$, or sixteen, possible combinations. Twelve combinations of the four constructs exist theoretically within a sufficiently numerous population but cannot as yet be identified, analyzed, and placed in a truth table. When, as here, the historical record fails to exhaust all possible combinations of personality constructs it is impossible to specify necessary and sufficient causality in respect of any particular outcome unless the historical record can be augmented either through the passage of time and the availability of additional corporate scandals, or by the production of additional cases in an experimental setting. Data associated with experimental profiles and derived from survey and simulation research can be integrated with historical data and subjected to QCA.

   b. experimental typologies

      Experimental personality profiles, which, based on a holistic assessment of the data, are assigned typologies organized around a Wild West motif to reflect anticipated associations with CLC outcomes.

         (1) ABcD (“The Snake Oil Salesman”)

            The Snake Oil Salesman seeks and acquires significant wealth and power by exercising personal charm, sleight of hand, and an intuitive understanding of how to take calculated risks to trick the unwary without losing their confidence. Although s/he may engage in violations of environmental standards, and although his/her bad reputation may tarnish the town, the Snake Oil Salesman, relatively speaking, does little harm as CEO and will soon leave town and be forgotten before the next Snake Oil Salesman arrives.

         (2) AbcD (“The Shop Keeper”)

            The Shop Keeper, despite hard life experience which has eroded faith in law and legal authorities, has a great personal stake in the town as the source of his/her livelihood and home. S/he is a moral

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767 See LEO HINDERY, IT TAKES A CEO: IT’S TIME TO LEAD WITH INTEGRITY 2 (2005) (“[T]here are many more [CEOs] out there who are just hunkering down and hoping that their own shenanigans won’t turn into tomorrow’s headlines.”).

768 See http://articles.moneycentral.msn.com/Investing/Extra/TheWorldsBestCEOs.aspx?wa=wsignin1.0, (lauding 30 CEOs for integrity and return of value to shareholders). These CEOs might serve as a control group in future research.

769 See http://tvtropes.org/pmwiki/pmwiki.php/Main/WesternCharacters. The special set of stylized and precisely defined stock characters common to American Westerns is part of what makes Westerns so compelling as art and entertainment, and their use here is meant to invest the experimental profiles with both meaning and color.
individual who knows, likes, and trusts the townsfolk and looks for the good in everyone. The Shopkeeper will take personal risks and work with like-minded individuals and with legitimate authorities to ensure that the right business conditions can be created and maintained in the town such that all can prosper. As CEO, the worst the Shop Keeper might visit upon his/her firm is bribing public officials to facilitate business; in truth, the Shop Keeper minds the store.

(3) aBCd (“The Undertaker”)

The Undertaker is an unambitious, dull, and self-absorbed CEO who takes too much quiet pride in his/her ordinary work and earns a handsome, but not immodest, living doing so. S/he has seen too much corruption to hold much respect for law and legal authorities, and his/her moral sense is not particularly developed, yet his/her natural tendency to be patient and to avoid danger keeps the Undertaker from straying too far across legal boundaries. The Undertaker is uncomfortable around others—particularly outsiders—and sees trouble—as well, potentially, as new business—coming with every new face that passes through town. When the Undertaker CEO commits a minor transgression—e.g., buying political influence—his/her reaction is to deny fault and blame others. Despite this and other minor petty faults, the Undertaker CEO remains ensconced in office, because his/her workmanship, skills, and cautious approach ensure that s/he is always needed and available in a dangerous town.

(4) abCD (“The Pinkerton Agent”)

The Pinkerton Agent is a modest yet confident and capable CEO who, although comfortable around others in a variety of social settings, has no personal motive or agenda other than dedicated service to the mission of the firm, namely the capture of value for shareholders. The Pinkerton Agent respects law and legal authorities and uses the least force necessary to get his/her “man”, yet s/he employs deceit and ruse in bringing him in. S/he is generally cynical, misanthropic, and distrustful of others—everyone is a suspect until they are eliminated—and ruthless in protecting the firm. When necessary the Pinkerton Agent will take great risks and go to extreme measures to win. S/he experiences great stress and decisional anxiety, yet handles both because s/he is certain s/he will prevail. A Pinkerton Agent as CEO may buy political influence but will justify it as the necessary price of accomplishing the mission of capturing value for shareholders, and no legal penalties, bad reputation, or Congressional investigation will accrue to the firm. The Pinkerton Agent CEO will not otherwise engage in violations of corporate law and will dutifully perform all duties, including the honest reporting of information to stakeholders and regulators. As CEO, the Pinkerton Agent never sleeps so that shareholders are protected.

(5) ABcd (“The Sheriff”)

The Sheriff fought in the last war, and knows that guns and the will to use them are all that maintains order and preserves authority in town. S/he is quiet, reserved, and introverted, but brooks no

770 The logo of the Pinkerton Agency included the words, “we never sleep.”
nonsense, and firmly and equally enforces the law against lawbreakers whether they are wealthy or poor, locals or strangers, whites or American Indians. Although corruption in the administration of criminal justice on the frontier has destroyed a former high regard for law and legal authorities, and although the war called into question his/her faith, the Sheriff is a friendly and trustworthy servant of the town and its people. His/her calm bravery in the face of danger, coupled with a refusal to take unnecessary risks in bringing bad men to justice, have kept the town safe and the Sheriff alive. S/he takes blame and shares the credit when things go well, which they often do. As CEO, the Sheriff will ensure that worst that may befall the firm is a minor violation of environmental laws which s/he will quickly and quietly remedy.

(6) aBcD (“The Deputy”)

The Deputy is the Sheriff’s younger, less-experienced, less powerful sidekick. While he lacks the drive, ambition, and strong leadership of the Sheriff, he is more outgoing and cheerful, and could well win election once the Sheriff retires. He takes his cues from the Sheriff about most things, including attitudes toward law, legal authorities, and moral judgments, and his relationships with townspeople and strangers. However, when danger looms, the Deputy leaps into the fray to prove his bravery without thought of consequences, and his certainty that he is a fast enough draw and a sure enough shot has, more than once, nearly killed him. As CEO, the Deputy will largely emulate the Sheriff, although his risky approach may lead him to manipulate markets and assist the Sheriff in violating environmental laws if, at quick inspection, the Deputy believes these actions help to “save the town.”

(7) abcD (“The Meek Townsman”)

The Meek Townsman is thoroughly unremarkable in every way. S/he has few ambitions, hates guns and the manifestation of power by both outlaw and lawman, has no strong sense of self, and has no deep convictions about anything other than personal survival, about which s/he is anxious and stressed. S/he is law-abiding and respects the Sheriff and the Deputy, but would break the law to survive. S/he has no strong feelings about groups or individuals and is content simply to surviv day-to-day. S/he would never join a posse—s/he is meek and hates guns. Strangely, however, despite a powerful inclination toward self-preservation, when guns blaze on Main Street s/he cannot keep from craning around a barrel to watch the Sheriff and Deputy battle Outlaws and Rustlers, and s/he may eventually absorb a stray bullet. As CEO, the Meek Townsman may clumsily violate environmental standards, but just as s/he will do nothing particularly beneficial for the firm so will s/he not cause it more than trifling harm.

(8) abCd (“The Banker”)

The Banker is simply the Meek Townsman professionally positioned in the town’s financial institution with two major differences: (1) while the Meek Townsman is not suspicious of outsiders or wary against threats, the Banker instinctively distrusts those whom s/he does not know well, and until s/he determines otherwise, everyone is a threat; and (2) while the Meek Townsman is compelled to watch
the gunfights, the Banker bolts the doors and waits until the Sheriff prevails and then returns to business as usual. Simply put, the Banker hates risk. As CEO, the Banker, like the Meek Townsman, may accidentally violate environmental standards, but s/he has probably purchased indemnity insurance against this risk, and the firm will suffer little injury. The Banker may also manipulate markets to enhance the bottom line, but the disinclination to take risks will likely minimize the damage to the firm.

(9) Abcd ("The Judge")

The Judge is a Judge rather than a Sheriff primarily because s/he apprenticed to a lawyer, rather than to a sheriff, after discharge from the army. S/he is identical in nearly all respects to the Sheriff save one: the Judge reveres the law and legal institutions as objects of secular worship, and is convinced that if the Sheriff could only inculcate enough respect for the law into the scofflaws the Sheriff and his Deputy bring before him/her then the Town would have perpetual order, justice, and peace. As CEO, the Judge cleaves closely to the law and to maintaining the good order and discipline of the firm, and business is conducted in accordance with rules, norms, and principles. Should disputes arise as to whether the firm has engaged in petty bribery while the Judge is CEO, it will be resolved through legal process. The Judge will likely prevail in court, but, if s/he should not, then as CEO the Judge will readily comply with all the orders of the court, which are likely to be limited to the payment of fines and the institution of safeguards and other compliance-enhancing procedures to ensure that future violations do not occur.

(10) AbCD ("The Gambler")

The Gambler, cousin to the Outlaw, learned early that there is more wealth to be made within the law than beyond it. The Gambler is ambitious, aggressive, and always on the mark as s/he rides from town to town hunting for the suckers s/he despises but prizes. Everyone is a potential hustle for the Gambler, who trusts no one and, in turn, is trusted by no one. S/he is vigilant and well-armed against other gamblers whom s/he knows are out to cheat him/her. Although the profession requires risking money to make money and is thus filled with stress and anxiety, the Gambler thrives on the potential prospect of the big win, and although s/he sometimes loses more than s/he can afford, more often than not the Gambler takes large sums from the unsuspecting, the diletantites, and the foolish. The Gambler knows that so long as s/he plays substantially within the rules, s/he will come out ahead over time. As CEO, the Gambler thinks nothing of greasing palms to buy favors for the firm in the hope that the gains will exceed the costs paid out in cash. While the Gambler will likely return value to the shareholders, there will be periods of short term anxiety and stress that can only be relieved by bending a rule or two here or there, and should such instances of petit noncompliance be detected the firm may find itself restating earnings.

(11) aBcd ("The Doctor")

The Doctor is the Deputy’s educated older sibling who is content just to practice a lucrative profession, particularly as the Town's sole physician. The Doctor has seen too much mayoral corruption
and met too few effective sheriffs, deputies, or preachers to have any real faith that law, legal authorities, or moral values are the answers to what ails the Town. Instead, s/he reposes trust in reason, logic, and science as the tools to alleviate sickness and suffering, and is well-loved by the citizenry for the good and healing work s/he has done over the years. S/he knows too much about what can go wrong with the human body to want to take foolish risks when guns blaze in the streets, so the Doctor waits out the fight and, when the dust settles, rolls up his/her sleeves and goes to work. As CEO, the Doctor will maintain the wellbeing of the firm to the best of his/her abilities, using reason, logic, and science to support measured, deliberate decisionmaking. If the firm is charged with violation of environmental standards while the Doctor is CEO, or if the firm engages in market manipulation to achieve monopoly power or otherwise achieve advantage over rivals, it is probably because the Doctor disagrees with the scientific reasoning behind the rules and regulations in question, and the firm will weather any resulting consequences and return quickly to good health.

(12) abcd (“The Preacher”)

Eldest sibling of the Doctor and the Deputy, the Preacher shares much with the former, particularly an aversion to the use of force, a compassionate and equal embrace of all townsmen and all strangers, a selfless use of God-given talents to alleviate human suffering and advance the condition of mankind on Earth, and a preference for remaining above the fray when men battle in the streets. Yet the Preacher and the Doctor part ways on the subject of law and legal institutions: for the Preacher, God’s holy and natural law finds expression in many of the positive laws created by men and as such is worthy of—nay, demands—respect, even veneration. Legal authorities, as guardians of the law, are entitled to the same respect even as we recognize their human failings. For the Preacher, in all of our earthly works we are bound by a higher law as well as by the laws of the state, and although our reason may cause us to doubt the wisdom of our legal obligations the law nevertheless takes precedence over our own judgments. As CEO, the Preacher will create and lead a firm to an exemplary record of CLC—it is quite probable that no violations of corporate law will transpire under the Preacher’s ministry. Although other CEOs might return greater material value to their shareholders, to do so they will likely have to do things the Preacher will not abide: assume risks, or promote leadership styles, or treat stakeholders in such a manner as to compromise—in fact or in appearance only—ethical, moral, and even legal rules.

c. summary

The preceding exposition of experimental typologies associated with expected outcomes suggests that personality profiles not yet expressed in cases of corporate scandal might well yield different sets of CLC outcomes and markedly more compliant behavior than others. Although it is premature to state that firms should fire all CEOs who fit the descriptions of the Outlaw, Rustler, Rancher, or Mayor in favor of Preachers, Doctors, Bankers, Judges, and Sheriffs, personality theory may shed light on how firms should
go about recruiting and hiring CEOs so that they can best promote CLC. Further research should test the predictions regarding associations between personality and CLC outcomes, elaborate a formal theoretical model with greater explanatory and predictive power, and motivate further, more generalizable research. Two primary methods offer potentially fruitful routes to this end: survey research and simulation.

2. Survey Research

Survey research is the first step in validating the pretheory. An instrument synthesized from pre-validated social-psychological measures that determine respondents’ personality profiles will be administered to a population with specific requisite characteristics that make them suitable as research subjects. Personality profiles will be linked to respondents’ answers to questions regarding decisions about compliance with corporate law—specifically the fifteen DVs/CLC outcomes. A second administration of this instrument to CEOs of Fortune 500 firms and aspiring CEOs—either CFOs, other senior executives, and/or graduate business students—will ensure that the first administration does not capture too few respondents who might actually aspire to or achieve the position of CEO, which is to some large extent a self-selected role. Survey data will help validate the existing pretheory and generate sufficient numbers of cases of “corporate scandal” to allow for the use of “harder” methods of analysis.

3. Simulation

   a. simulation research

“Simulation” is the dynamic modeling of central features, relationships, and social features of the natural world that facilitates the observation and rigorous testing of complex processes difficult or impossible to access with other methodologies. By rendering otherwise inaccessible systems susceptible to investigation, simulation is indispensable in the linkage of historical and experimental research in the development and testing of theories. Although simulation does not allow for direct examination or incorporate all aspects of the referent system and is thus not a true experimental methodology, it has tremendous heuristic value. Variables can be readily identified and manipulated, substantive propositions of theoretical importance can be derived and tested, and data can be rapidly generated for incorporation with other data sets. Because little simulation work has been done in the field of law generally or corporate law specifically, resort to a description of the work conducted by researchers in international relations may be useful to paint a picture of the methodology in practice.

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771 Virtually all such instruments have been compiled in existing literature. See, e.g., J.P. ROBINSON, P.R. SHAVER, & L.S. WRIGHTSMAN, MEASURES OF PERSONALITY AND SOCIAL PSYCHOLOGICAL ATTITUDES (1991); RICHARD C. SWEETLAND & DANIEL J. KEYSER, EDS., TESTS: A COMPREHENSIVE REFERENCE FOR ASSESSMENTS IN PSYCHOLOGY, EDUCATION, AND BUSINESS (1983).
772 See generally HAROLD GUETZKOW, SIMULATION IN INTERNATIONAL RELATIONS (1963) (defining and discussing simulation as an experimental research heuristic and as a developmental methodology).
773 See HERMANN, supra note 124, at 167 (describing simulation as method for generating data and testing theories).
In simulations of international relations, human subject participants, selected on the basis of some discrete personality or experiential characteristics determined through psychological profiling, are assigned to national teams and placed in a setting where constraints and incentives resemble the referent world. A scenario—a detailed account of the sequence of political, economic, and legal events leading up to a specific decision point—is used to goad participants to make decisions in pursuit of their objectives. Only independent variables are prescribed through the selection of participants on the basis of psychological profiles, their assignment to specific teams, and the allocation of specific capabilities and resources to each team through the scenario. Decisions of participants in response to the scenario and to the decisions of other participants—the dependent variables—are entirely unregulated, and together with their personality profiles these decisions and their consequences constitute the experimental data.

Comparisons between the behaviors of “real world” decisionmakers and simulation participants establish confidence in this research method. While for some the leaps to the laboratory from real world settings may seem far-fetched, most scholars accept that validity is a function of the degree to which simulation research produces experimental data that is isomorphic to the referent world. Complete isomorphism is impossible—an exact one-to-one relationship would require that the simulation be as large and complex as the reality it represents—but, although it is inevitable that some features of the “real world” will be excluded, if the results of a simulation and either the informed intuitive expectation of a future event or the results of a historical event have similar structure and form, that simulation stakes a prima facie claim to validity. The more participants assume their roles and render decisions analogous to those of real-world decisionmakers the more useful simulation is as a method of theory building.

b. Project WILD WEST

PROJECT WILD WEST is a simulation of CLC decisionmaking designed to generate additional cases and complement the historical data. WILD WEST will begin with the prospect that an incipient scandal is brewing within a firm but will leave decisionmakers able to make and implement a wide array of responsive strategies such that no outcomes are predetermined. Participants will be selected on the basis of their personality profiles and other relevant criteria and assigned to roles on nine teams:

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775 See CHARLES HERMANN, CRISIS IN FOREIGN POLICY 46, 46, n.14 (1963).
776 See HARVEY DEWEERD, A CONTEXTUAL APPROACH TO SCENARIO CONSTRUCTION 3 (1973).
778 See, e.g., Dina A. Zinnes, A Comparison of Hostile Decision-Makers in Simulate and Historical Data, 18 WORLD POL. 474, 496 (1966) (finding that “simulate and historical worlds are comparable, or isomorphic[,]” in studies of decisionmaking).
779 The title derives from the theme used to assign names to the experimental typologies as well as from the “dot com” boom and bust era of the late 1990s—a time when many of the rules governing corporations were stretched, bent, and broken in pursuit of unsustainable profits. Used here, the Wild West, an American place and time in which courageous lawmen and judges sought to extend the domain of law to dangerous frontier towns where outlaws maintained competing centers of governance that enriched themselves while impoverishing civil society, is a metaphor for the contemporary struggle to achieve corporate legal compliance.
“The Firm,” “The Auditors,” “The Rival Firm,” “The SEC,” “The Justice Department,” “Congress,” “The Media” “The Shareholders,” and “The Town.” The “Firm” will be governed by a CEO who possesses one of the twelve experimental personality profiles; other teams will be assigned participants whose profiles and attributes are suited to achieving decisional isomorphism with their real-world counterparts.

Twelve simulation runs will generate experimental data that will be integrated with the historical data and subjected to QCA analysis and, where appropriate, “harder” methods. By exhausting all possible personality profiles, PROJECT WILD WEST will generate greater confidence in the validity of the resulting associative relationships between personality and CLC outcomes, enable the specification of necessity and conditionality, and permit the development of a theory that explains and predict CLC outcomes in causal terms as the product, in some important measure, of the personalities of CEOs.

4. Additional Dependent Variables and Intervening Variables

Investigation of associative relationships between personality and additional CLC outcomes will expand the scope of the present study. Moreover, future iterations of this research may reveal that the substance and process of decisions regarding CLC are in effect intervening variables to which greater theoretical significance may be attributed.

5. Quantitative Analysis

Generation of sufficient numbers of simulated cases of CLC will allow introduction of quantitative methods, including content analysis and pathways analysis, to complement QCA. Multivariate statistical analysis—principal components or best subsets regression analysis—may suggest that one or more IVs can be dropped from the theory without sacrificing explanatory power. It is equally possible that more powerful theories can be built by including additional IVs, or that the scope of the theory can be extended to additional DVs. Integration of variables drawn from other levels of analysis may aid in determining the causal significance of personality-level variables relative to inputs from the international political economy, the political and economic character of states, and the nature of organizational-cultural units.

6. Micro-Level Theorization

Ultimately, a more powerful theory requires the investigation and specification of the neural processes whereby personality is formed and translated into decisions. Neuroeconomic research drawing upon sophisticated medical technologies that highlight the neural mechanisms involved in human decisionmaking regarding legal rules suggest there may be limits on the capacity of law to alter behavior. If so, future research will require not only additional analytical methodologies but the incorporation of insights from cognitive neuroscience and further collaboration across disciplinary boundaries.780

V. Conclusions: Toward a Theory and Strategy of Corporate Legal Compliance

780 See Chorvat et al, supra note 895, at 3-12 (describing this research).
Why do CEOs rob corporations? Willie Sutton, were he alive, might look around and reply, yet again, “Because that’s where the money is.” The market value of the top twenty-five Fortune 500 firms is approximately $4 trillion. Yet times have changed since 1934. The investor class no longer keeps its cash in banks but rather holds equity in public firms. The crooked class no longer grabs its loot by brandishing weapons, informing bank tellers that “this here’s a stick-up” and shooting G-men on the way out: now it cooks the books, talks up stock before selling short, and lies to Congress. Moreover, robbery today is far bigger business than in the 1930s when a handful of career criminals like Willie Sutton became world-famous for blasting their way out of banks with $20,000 in currency. In the last fifteen years, rogue executives made away with $1 trillion in shareholder assets and killed enough jobs to employ the entire city of Philadelphia.

In response, prosecutors have claimed several celebrity CEOs as trophies and Congress, eager to assuage defrauded voters, has imposed stricter—and far more expensive—legal obligations upon public firms. Yet despite the valiant efforts of legal architects to deter corporate scofflaws, no one seriously believes that legislative package cobbled together will hand regulators the silver bullets necessary to slay the seemingly immortal criminal class. Wherever the money is, the crooks will flock.

For the same reason, CMPs, whistleblower incentive schemes, statements of new practices from overhauled boards of directors, encomiums to ethical decisionmaking, and other paraphernalia of the post-Enron “corporate ethics” era, while packed with symbolic meaning, are too often worth no more than the paper upon which they are printed or the air into which they are uttered. One need only read the twenty-odd pages of Enron’s Code of Ethics, written long before that firm slid into the abyss of scandal, to grasp this sobering truth: for many firms, “ethics” is something very much to be written down, trained in, fretted over, and then forgotten about when money calls. Managers understand (or quickly learn) that crime [often] pays, but CMPs will not pick up a check, and modification of perquisites, bolstering of the independence and power of auditors, reconfiguration of boards of directors and investment banks, and public support for shareholder activism and corporate social responsibility eat at the bottom line.

Yet if the status quo is intolerable, what then is to be done to save managerial capitalism from itself? For the foreseeable future, firms will continue to be the latter-day equivalent of banks—where the money is—for the vast American middle class. Does the temptation caused by access to a great deal of Other People’s Money invariably corrupt managers, and is law thus epiphenomenal to firm behavior?

Access to the vault is far easier to come by circa 2011 for contemporary executives with prestigious

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MBAs than it was for Depression-era crooks with Thompson submachineguns. Is the solution inherent in the content or the administration of the law itself? Is there a perfect constellation of legal regime, CMPs, and ethics instruction in business and law schools that can spontaneously induce a degree of corporate compliance sufficient to overcome the urge to simply “take the money and run”? Instead of incarcerating Jeffrey Skilling for twenty-four years, should we broadcast his public beheading on pay-per-view television from Enron Plaza in Houston, with the proceeds to be donated to Enron’s creditors? If our faith in the ability of the academy to implement a general reformation of the ethics of adult students is weak, and if our taste for the blood of white-collar criminals is as yet undeveloped, we must return to the beginning: “Why do CEOs rob corporations?” If we ask again, emphasizing the third, rather than the last, word, it may be possible to provide answers without overburdening academicians or dramatically lowering the threshold of criminal conduct above which the State will kill in the name of the People.

Some CEOs—but only some CEOs—rob corporations. They do this not only because that is where the money is but because that is who they are. Other CEOs dutifully discharge their fiduciary and civic responsibilities while enriching their employees, their investors, and the communities in which they do business for the very same reason: that is who they are. It is vexing that existing theories of CLC—deterrence theory, reputation theory, legitimacy theory, and normative theory—cannot explain or predict why any given CEO enters the robbers’ den or honestly shepherds the firm. Yet it is possible, if one learns to read the runes of personality, to divine the general path a firm will follow under the leadership of any particular CEO. Undertheorization, and not the inherent greed of mankind or the incommensurability of law and business, is truly the bane of CLC. Researchers must dedicate energies to the empirical study of the relationships between rules and behaviors if the desiderata attendant to compliance—fundamental fairness and efficiency in the operation of the markets, maximization of shareholder wealth, just compensation of the managerial class, elimination of political corruption, equality of opportunity, general promotion of respect for law, and effective legislative oversight of national commerce—are to be secured.

This program need not exclude any school-of-thought or methodology. Although human agency is crucial and individual-level variables are indispensable to explanations and predictions of CLC, the most sophisticated model will likely incorporate insights from all pre-theories and variables from multiple levels of analysis, including the nature of the international political economy, the regulatory and judicial culture of the state, dyadic interactions with other states and firms, the organizational cultures of firms, the dynamics of decision teams, and even neuroeconomic inputs. No single method, paradigm, or

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784 The phrase is borrowed from a song in which “Two young lovers with nothing better to do” rob a wealthy homeowner and “take the money and run.” Steve Miller Band, “Take the Money and Run,” Capitol Records (1976).

785 See, e.g., Rakesh Khurana & Scott A. Snook, Developing Leaders of Character: Lessons from West Point, in HARVARD BUSINESS ETHICS, at 226-28 (querying whether business schools should attempt to teach subjects such as ethics which might better be taught in homes, schools, and religious institution and whether students are even susceptible to ethical development).
discipline will enable researchers to harvest all that is knowable about CLC. Each will inform the others regardless of its pretensions, and conflicts will generate dialectics and creative synthesis.

Still, if the present account of the relationship is inchoate, the salience of personality to CLC is an existential reality. Dimensions of personality, including militarism, anomism, hostility, and adventurism, better explain CLC decisionmaking than do existing pre-theories, and an adequate explanation is a necessary condition precedent to systematic predictions and to the purposive reconfiguration of the rules of corporate law. Without an account of the linkages between rules and behaviors, any attempt to enhance CLC by altering the existing regime will succeed only by the intervention of Fortune without which any tinkering is at least as likely to degrade compliance as it is to bolster it.786

In other words, achieving substantial compliance with corporate law is not merely a matter of the conjuration and codification of proper rules and institutions, although these are vital steps. Rather, it is to the selection and training of the right people to administer, interpret, and implement the normative content animating legal rules and institutions to which all stakeholders—shareholders, regulators, concerned citizens, and academicians—must direct the bulk of their attention.787 Because much of the variation in CLC is attributable to personality, manipulation of the legal rules may well be a useless venture without simultaneous manipulation of CEO personalities, either through training788 or, more likely, by incorporating analysis of compliance propensities within the matrix of considerations governing CEO selection by boards of directors or shareholders.789 To be sure, the present theory is insufficiently developed to serve as a manifesto for a new generation of consultants eager to pressure corporate America into replacing its incumbent CEOs with as many Preachers and, if Preachers are in short supply,

786 See TIMOTHY L. FORT, ETHICS AND GOVERNANCE: BUSINESS AS MEDIATING INSTITUTION 9 (2001) (suggesting that “legal modifications to corporate governance laws, derived from the study of human nature, necessary to foster ethical business behavior” must be undertaken only in consideration of the probability that they will enhance compliance).

787 The field of “virtue ethics” suggests that managers with the proper values, motivations, desires, and attitudes—and not simply those who reason from correct principles—are most likely to do what “virtue” (where “virtue is the opposite of “vice”) requires of a good manager in given circumstances and most likely to comply with the content of a virtuous legal regime. See, e.g., R.C. SOLOMON, ETHICS AND EXCELLENCE: COOPERATION AND INTEGRITY IN BUSINESS (1992), T.V. MORRIS, IF ARISTOTLE RAN GENERAL MOTERS (1997), D. Moberg, The Big Five and Organizational Virtue, 9 BUS. ETHICS. Q. 245 (1999). Selection of leaders based on their possession of specified virtues might be a step toward enhancing compliance. See R.M. Stogdill, Personal Factors Associated With Leadership: A Survey of the Literature, 25 J. PSYCH. 35 (1948).

788 Cognitive moral development theory suggests that it is possible to transition an individual from a purely self-interested level of moral reasoning to successively higher levels and ultimately to concern for universal ethical principles through socialization. See Uwe P. Gielen, Brief Annotated Bibliography on Cognitive Moral Development Theory and Research, 20 CROSS-CULTURAL RESEARCH 226 (1986). Moral imagination theory suggests that it is possible, through training, to enhance natural propensities to “sense . . . the variety of possibilities and moral consequences of . . . decisions . . . [and] the ability to imagine a wide range of possible issues, consequences, and solutions to ethical problems in corporate decisionmaking”. Patricia Werhane, Moral Imagination and the Search for Ethical Decision-Making in Management, 1 BUS. ETHICS Q. 75 (1998).

789 See Brian D’Agostino, Self-Images of Hawks and Doves: A Control Systems Model of Militarism, 16 POL. PSYCH. 259, 282 (1999). Potential CEOs who possess personality profiles indicating they are prone to noncompliance might be subjected to simulation or other training to mitigate their decisional propensities accordingly. Whether it is possible even for willing subjects to moderate personality constructs is uncertain and requires investigation in another context.
Pinkerton Agents, Bankers, Sheriffs, or Judges, as firms can beg, borrow, or cadge. Nonetheless, firms should take seriously the personalities of those whom they consider for the position most responsible for shaping the values, decisions, and futures of the firm and its stakeholders. Hostile and adventuristic CEO applicants, and to a lesser extent those who are militaristic and anomistic, may well gut the firms that hire them, while CEOs with profiles that de-emphasize these constructs may well provide the sound and steady leadership that navigates legal shoals and stewards firms to good long-term results.

Unless and until neo-Marxists or Islamic fascists topple the state and establish industrial communes or a waqf, corporations will always be “where the money is,” and so they will always attract criminals bent on robbery. However, firms may also be fortunate enough to draw enlightened trustees who would defend and safeguard their wealth by implementing the most effective of legal strategies: specifically, contesting, within established political and legal boundaries, every creation, interpretation, and application of law that runs contrary to shareholders’ interests, but scrupulously—even monastically—adhering to the letter and spirit of authoritative determinations of legal obligation once those determinations issue. The vast majority of would-be CEOs will orient themselves on a continuum between these poles. Indeed, the world is as besieged and harried by Outlaws and Rustlers as it is blessed, protected, and healed by Priests, Pinkerton Agents, and Doctors. If firms wish to remain “where the money is” they must accept that CLC is a primary constituent of a corporate strategy that requires a firm not only to select industries and markets in which to compete and methods to develop and sustain competitive advantage but to decide whether and how it will live out the meaning of the following creed: CEOs—not firms—decide whether or not to comply with law, and their choices have profound implications for their firms, their communities, and their nations. Compliance with law is an act not merely of corporate social responsibility but of self-preservation.

For, although both are created with a theoretically infinite lifespan, neither a corporation nor a nation is guaranteed in its perpetual existence. Yugoslavia is as dead as Enron, and unitary Iraq is as much on life support as is Sunbeam. Just as rogue dictators—Slobodan Milosevic and Saddam Hussein—were the latent fissures that fractured their nations and buried their peoples under rubble, so are rogue CEOs—Jeffrey Skilling and Al Dunlap—the proximate causes of corporate legal tsunamis that extinguish firms and inundate stakeholders with debt, unemployment, and despair. It is for further research to reveal suspected parallels in personality and decisionmaking that define and explain these two sets of rogues and the misery they inflicted upon others. It is enough for now to note that the most important lesson of the last fifteen years of political economic history stands in stark relief against a backdrop of bloodshed and bankruptcy: in business, as in war, decisions about legal compliance form part

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790 In Islamic economics, the waqf is a communal trust into which properties expropriated from private owners are placed and held in trust for Islamic charitable organizations. See INDEX ISLAMICUS, available at [http://www.indexislamicus.com](http://www.indexislamicus.com).
of a strategic calculus and, if not properly considered, can pave a road to ruin. The relatively young and eclectic field of corporate strategy must open its vault to admit legal compliance to a place beside goals, competitive environment, resources, and implementation in the pantheon of critical decisional variables that define firm strategies.

Legal compliance is at the core of corporate strategy, and firms committed to survival and prosperity must mind the bitter lessons of the recent past as they sift through aspirants to their leadership. The most effective way to achieve compliance is, quite simply, “to have individuals comply with the law.” Lest the past become prologue, wise firms—no less than wise states—must, when selecting the individuals at the apex of their decisional hierarchies, treat personality seriously and delve deeper than Willie Sutton into the relationship between personality and corporate legal compliance.

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791 The comparison between business and geopolitics is apropos inasmuch as corporate strategy—a relatively young field—is built upon foundations that include the insights of military generalship. See ROBERT M. GRANT, CONTEMPORARY STRATEGY ANALYSIS 18 (5th ed. 2007).

792 Podgor, supra note 14, at 1523.