An Ethical Route to Stanley Park
A Private Property Reflection on Investment in Professional Football Clubs

Daniel Blackshields
Department of Economics,
University College, Cork,
Ireland
Email: d.blackshields@ucc.ie
Phone: +021 4903515

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Abstract

This paper explores the ethical basis of investment choices for professional football clubs using Liverpool Football Club (LFC) as a case study. It asserts that investment in the club ought to be considered on the basis of an ethical transfer of property rights. It concludes that certain options reportedly offered to LFC could be deemed inherently unethical as they may involve a coercion of private property. This has potentially serious implications for the relative stability and predictability of the outcomes of such investment.

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I. Introduction

The commercial climate for professional football in England is in a growing state of crisis. Wage bill increases, (particularly since the Bosman ruling), have left some clubs on the verge of collapse and most clubs do not have anything resembling financial stability.[1] However, the popularity of football continues to grow and diversify in customer base, driven most recently by the interests of media institutions. In the early 20th century, owners of clubs tended to be local enthusiasts seeking prestige or investing as a form of benevolence. Today ownership appears on a continuum from private owners to institutional and multi-national investors.[2] The motives of today's investors are unclear, but two broad motives, profit/equity maximisation and prestige/benevolence enhancement can be identified. Irrespective, attracting investment has become a crucial aim for club owners and directors. Some investment appears controversial, mostly due to the perceived dilution of the 'Corinthian' spirit of the game and its historical social and cultural roots. However, from an economic point of view, such investment, if appropriate, is a reasonable option for clubs in an attempt to protect and grow their 'assets'. This paper explores the appropriateness of the investment options reportedly available to Liverpool Football Club and Athletic Grounds PLC (LFC from here) in May and June 2004 using a framework of the casual links between opportunity cost, interpersonal exchange, property rights, and ethical decision-making. While some of these options were later withdrawn, the merits of this paper lies in the interpretative power an analysis of investment options through the moral conventions of the institution of property rights can bring to the decision making process of club owners and directors. As business interest in football continues to grow,[3] it is certain that other clubs will find themselves in a similar position to LFC and thus, exploring this case may enhance the framework guiding the decision-making of other professional football clubs

This paper asserts that in so far as LFC is identified as the corporate form of business institution the decision to accept investment in the club ought to be considered on the basis of an ethical transfer of property rights. It concludes that certain of the investment options reportedly offered to LFC could be

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[1] *Deloitte and Touc*he survey of football club finances assert that while clubs in general have had a 26% increase in revenue in 2000/2001, only 28% of clubs in the Premiership made a profit. 65% of clubs reported being 'quite' or 'very' concerned about the levels of debt in their club. A total of 71% indicated that they found it 'quite' or 'very' difficult to maintain solvency (see FRGC, 2003, chap 4 for more).

[2] Football clubs are now listed on the Stock Exchange under *'Leisure, Entertainment and Hotels'*.

[3] Consider for instance Roman Abramovich who purchased Chelsea for £140m, Malcom Galzer who owns 18.25% and JP McManus and John Magnier who own 29% on Manchester United.

deemed *inherently* unethical as they involve a coercion of private property rights. As a consequence, the opportunity costs of such options would *ex ante* be inaccurate and should be discounted accordingly. This assertion is made on the basis that the United Kingdom claims to be a ‘free society’[4] and that there are necessary links between a ‘free society’ and a ‘free market process’.[5] As business institutions can be described as evolving in the spontaneous order of the market process the moral validity of any action by a business ought to derive from the moral conventions of the market process. In this process actions ought to be made within that permissible by the institution of private property rights.

To present this argument part II proposes an investment choice set for LFC based on reports of investment options made in May and June 2004. Part III set outs the relationship that exists between ethics and exchange in the market process. Part IV sets out how we can trace the actions of business institutions including the corporation to that of the voluntary association of individuals based on contract. We assert that it is crucial for the stability and predictability of such contracts that exchanging parties have knowledge of what constitutes validly owned property being used to enact the contracts. Part V discusses how government action (specifically taxation collection and distribution) can be described as a violation of private property rights. Having set out the theoretical framework, part VI explains how professional football clubs can be described as a corporate form of business institution and hence subject to our theoretical analysis. Part VII critiques some of the objections to certain of the investment options offered to LFC and sets out an critique in terms of the strict obligations towards the protection of private property rights by corporations in a market process.

II. Liverpool Football Club’s *Ex Ante* Investment Choice Set

An action is a conscious attempt by an actor to replace a perceived less satisfactory condition with one perceived will be more satisfactory. Satisfaction is primarily psychic in the individual and derived as an increase in profit/equity for an individual/business institution.[6] The decision to act involves a cost

[4] Our presupposition is that the derivation of ‘free society’ relates not only to the narrow ‘political freedom’ where “people enjoy liberties insomuch as and insofar as they are neither confined as prisoners nor constrained by formidable threats” (Flew, 1989, p. 70), but also the broader derivation ‘free will’ that is “ [Man] could do or could have done other than we do do or did do.” (ibid, p.73)

[5] For a classic statement on the necessary links between a ‘free society’ and a ‘free market process’ see Friedrich Hayek’s *Road to Serfdom*.

[6] Whilst conventionally we describe individuals has profit maximisers the wisdom of the Stock Exchange would suggest that individuals are more accurately described as ‘equity-maximisers’ This may entail decisions that are not profit-maximising in the ‘short-term’ as decisions are made with the long term growth in mind. We will later have cause to question the ‘maximising’ assumption.

to the actor in the use of perceived means to achieve a perceived end. All actions take place in a world of asymmetric knowledge between the *ex ante* expectation and *ex post* evaluation of the action. We evaluate choice in terms of opportunity cost. The opportunity cost of a decision represents the value of opportunities foregone as a result of the decision made. An actor's prospective opportunity of taking the less preferred course of action becomes the prospective cost of taking the more preferred course of action (Buchanan, 1969). Block, Carden and Carson (2004) analyse opportunity cost as follows:

i) An actor acts on the expectation that his relative payoff will be increased by the action. An actor expects to benefit ex ante from action A rather than actions B…Z

ii) An actor evaluates the decision to act on the basis of the absolute payoff and a guess about the relative payoff from engaging in action A. The actor assesses whether action A has improved his satisfaction ex post (absolute gain) and attempts to discern whether the payoff is in excess of the payoff that would have accrued had he engaged in actions B…Z (relative gain).

Prior to the moment of decision by the relevant actor(s) in LFC we suggest the following investment choice set was available:

I) Accept the investment offer of £56.5m in exchange for a 30% share in the club, commercial rights to Liverpool merchandise in Thailand, seats (reported as two) on LFC's Board of Directors and the setting up of a football academy in Bangkok as proposed by the Thai Prime Minister Thaksin Shinawatra[7]

This offer must be broken into four possibilities:[8]

[7] There appears to be discrepancies as to the exact figure, SKY Sports and Liverpool FC Online report the bid at £65m. The actual figure is not crucial as it is the *form* of the bid that we concentrate on.

8 We are justified in this proposed separation as there is confusion as to what the Thai bid consisted in. There was a suggestion that part of the funds would be public funds. This had been denied by the Deputy Prime Minister of Commerce in Thailand "I…want to assure you that the money comes from the Prime Minister himself –not from public funds". However, Thai government spokesman Jakrapob Penkir is reported as stating that: "[W]e will buy it in the name of Thailand. We want the Thai people to be part of the purchase. The Thai government is the one that negotiated the deal, not Thaksin, and most of the money will come from public funds." Shinawatra met with LFC's chief executive Rick Parry on the 11th May and the negotiations were done on behalf of the Thai Government. The Thai PM commenting on the matter stated: "Let's wait until Thailand buys the team before going into details whether we will spend Thai's money or the private sector's". As late as June 5th it was reported that Jakrapob Penkir stated on the 4th June that it was still 'government policy' to buy into Liverpool (Fifield, 12th May, 2004).

Ia) The proposed investment consists entirely of the private funds of the Prime Minister and a consortium of unidentified private concerns

Or,

Ib) The proposed investment consists entirely of public funds being used by the Prime Minister and a consortium of unidentified private concerns

Or,

Ic) The purposed investment consists in part of private funds of the Prime Minister and the private consortium and in part of public funds being used by the Prime Minister and a consortium of unidentified private concerns

Or,

Id) The purposed investment consists of a one-off lottery aiming to generate 140m Euro, ½ allocated to a Sports Authority of Thailand created State enterprise investment company through which the Thai public would be able to buy 49% of the shares, the rest owned by the Thai government.

II) Accept the investment offer of £73m (underwritten share rights of £61m and a share offer to fans of £12m) by Steve Morgan for a seat on the Board.[9]

III) Accept the investment offer to buy a 30% stake in Liverpool for £67m in return for the rights to merchandise LFC products in Asia by a Thai business consortium headed by the Chairman of GMM Grammy Paiboon Damrongchaitham.[10]

IV) Reject the above investment options

This investment choice set is a pragmatic conceit as an actor's choice set is subjective and hence the opportunity cost of any choice is unobservable to others (Buchanan, 1969, p. 15). The opportunity cost of a decision is based on the decision-maker's anticipation as to the prospective outcome of the decision. This has implications for what the outside analyst can assert with certainty as; i) the cost is borne exclusively by the decision maker; ii) the cost is subjective and hence cannot be measured by anyone else and; iii) the cost will never be realised because of the fact of choice itself – that which is given up cannot be enjoyed (ibid, p. 14-5). Block, Carden and Carson extend this to suggest that while

[9] Morgan is a Jersey-based businessman and currently third largest shareholder in LFC (5% stake)

an actor can evaluate his own *absolute payoffs*; as action takes place in a world of uncertainty the actor cannot assert unequivocally that the *relative payoff* of engaging in a specific action is greater than that of another action that could have been engaged in as there is no knowledge of the states of the world that do not occur (2004, p.6). The implication of this is that the *ex post* evaluation of an action can never unequivocally assert that utility has been maximised. Nevertheless, an actor can evaluate the absolute gain of an action through an increase in happiness or derived from an increase in profits/equity. Acknowledging this, our assessment of the investment choice set shows the *objective* ethical basis upon which subjective opportunity cost decisions ought to be made and how decisions can *inherently* fail this objective ethical test. It does not argue how LFC's absolute or relative utility will be maximised by an investment option as such analysis is wishful thinking (Block, Carden and Carson, 2004; Pasour, 1978). To accomplish this the next three sections sets out the theoretical framework guiding our analysis.

III. Ethics and Exchange

Man acting alone is called autarchic exchange. The actor gives up *something* to achieve a perceived end. Man discovered that by exchanging with other actors, individual utility could be enhanced more than when acting alone. Adam Smith and most notably recently Hayek expanded this analysis demonstrating the relative success of interpersonal exchange through the spontaneous order of the market process. Hayek asserts that it is more efficient, (in terms of an increase in utility), for parties to exchange with others they have no knowledge of. This is provided all actors in the market process can refer to the abstract knowledge gained from the ability to economically calculate the yield of a specific decision.[11]

In world of scarcity and uncertainty private property rights are the defining characteristics of the market process (Mahoney, 2002, p.2). We can define property (consisting in full liberal ownership) as

> "Ownership comprises the right to possess, the right to use, the right to manage, the right to the income of the thing, the right to the capital, the right to security, the rights or incidents of transmissibility and absence of term, the prohibition of harmful use,

[10] It was reported that option III would take the form of private investors *being encouraged* to take over the negotiations with LFC from the Thai government. Strictly therefore option III is not in the same decision timeframe as option I. We include this option as it appears to derive from option I.
[11] Readers are referred to a lucid introduction to the intellectual history of spontaneous order by Barry (1982).

liability to execution, and the incident of residuarity" (Honoré, A.M. 1961 cited in Carter, 1989, p. 5).

Private property rights inform all parties as to who is entitled to use specific means and who is excluded from this use. This institution encourages peaceful exchange among individuals and the efficient use of resources.[12] The crucial element for private property rights is that they are well defined and well secured. By being so, actors can use and control their property as they deem suitable provided they do not hinder any other individual's ability to use and control their property as they see fit.[13] Actors can be assured that if an exchange is *ex post* deemed (absolutely) positive they would acquire the full benefits of the successful choice. Concomitantly, they are solely responsible for any *ex post* error in the use of their property (absolute losses).

The economic theory of exchange is 'beautifully simple' though incomplete (Cucerai, 2003, p. 1). Interpersonal exchange requires the condition that there is a double inequality between the exchanging parties. However, this condition (whilst necessary) only suffices as the basis of exchange if both parties consider one another as *homo agens*. Consider individual A who owns resource *x* and who wants resource *z* and individual B who owns *z* and wants *x.* A double inequality exists. However, consider further the attitude that A may have towards B. Conceivably, A need not recognise B as a *homo agens.* If so, then any exchange forthcoming would be a form of autarchic exchange. There is an opportunity cost to A of acquiring *z* but it is in the form of: 'What must *I* give up to obtain *z*.' Here, the only value scale of relevance is A's. On the other hand, if A's attitude towards B is that of a recognition of B as *homo agens*, then the form of the opportunity cost for A acquiring *z* is: 'What must *I* give up to obtain *z from B*.' The difference is clear. In the first scenario, B is a resource to be exploited by A. In the second scenario, B is recognised as a resource owner with his own value scale that must be taken into account by A. Any exchange in the latter would be persuasive not aggressive in nature. Such recognition is the basis of social existence, as it requires that individuals take into account the expectations of others in forming their own expectations. In an interpersonal free exchange both parties recognise each other as agents (ibid, p. 2). To recognise 'the other' as an agent is a fundamental ethical decision.[14] The market process, grounded in a respect for well-defined and well-protected

[12] See (Mises, 1996; Menger, 1976; Hayek, 1973) for a representative analysis of the importance of private property rights to the market process.

[13] There is extensive literature on the relative merits of the various theories on the origins of property rights. It is beyond the scope of this article to enter this debate. We refer the reader to a concise discussion on the same by Carter (1989).

[14] Cucerai argues that the recognition of the 'other' as an agent is fundamental to all of the main ethical theories though these ethical theories leave unanswered the question of *who* counts as an agent? (2003). See Graham (2004) for a modern introduction to theories of ethics.

private property rights is the ethical basis for action as this process *by its nature* implies that exchanging parties recognise one another as *homo agens*.

An implication of this ethical condition of exchange is while it may not be possible to assert unequivocally that an actor's utility has been maximised by a particular decision, it is possible to examine whether a potential decision is in error *ex ante.* The error would be *inherent* in the action if the condition of a mutual recognition of the exchanging parties as *homo agens*, reflected in the acknowledgement of the 'other' as a property owner, were not met. The consequences of this derivation of the market process are profound. Consider individual A who steals money from individual B, then invests this money in an idea of individual C.[15] Suppose the latter shows an increase in profits which are identified as completely, or in part, due to the investment by A. It is illegitimate for C to announce that absolute utility has increased. All or part of the gains made is based on a misallocation of property from B to C through the action of A. A has acted as if B is not a *homo agens* and has coerced B's property. B is entitled to restitution from C for that part of the absolute gain caused by the stolen money as the right to control property and either include or exclude someone else from using that property is the essence of being a property owner. Furthermore, C, though not the actor directly engaged in the appropriation of B's property, is unable to object to the demands for restitution as C was not entitled to use the property of B (see Mahoney, 2002, p.4). Consequently, any reported absolute gain by C is unstable on two grounds:

i) *The action by A leading to the reported absolute gain for C should not have morally taken place. It is contrary to the rules governing the institution of private property*

And;

ii) The aggrieved party B is entitled to restitution of the property stolen from him by A which could preclude individual C from engaging in future investment or at the extremes, lead to bankruptcy (see ibid for more).

In a market process the legitimate transfer of property rights tends to occur through contract. The contract itself is a relation between the parties that includes legally enforceable obligations. Contracts are an agreement between parties to exchange promises or performance. The obligation to do or give something can be seen as a transfer of title to property from one exchanging party to another (Kinsella,

[15] Example adopted from Mahoney (2002).

2003). Provided there is an interpersonal free exchange of property it is possible for both parties to correctly assess the *ex post* absolute gains and losses of the contract and to make appropriate decisions as to future actions. On the other hand, if the exchange is not free it is impossible to genuinely assess that there are gains as such gains as there might be are *inherently* unstable. A crucial aspect of opportunity cost is missing when it does not properly deal with 'the other's' existence as a *homo agens*. If a contract is or if it is discovered that a previous contract (said to have resulted in the acquisition of the means to enact the current contract) is in breach of the rules of interpersonal free exchange, then the contract is *inherently* unethical. This is regardless of its meritorious appearance in the past decision time frame or whether the aggrieved party(s) discover the appropriation. The obligations of the contract are not enforceable. Strictly, it is not properly defined as a contract at all. As pointed out by Mahoney, any investment made with the proceeds of an action that is illegitimate is itself made on the basis of a false opportunity cost assessment and hence can be seen as a misallocation of property now and unethical. (2002, p. 6). A correct opportunity cost assessment needs a correct representation of the property available. The representation of property available when all or some of that property can, in its lineage, be traced back to a coerced exchange is incorrect (see ibid). Crucially, the correct opportunity cost assessment cannot derive from the competitive prices of the market process *alone.* Vital knowledge is hidden from such prices, namely the knowledge of what constitutes validly owned property and hence what actions are justified (ibid, p. 7). [16]

IV. Business Institutions and the Ethics of Exchange

Most actions in the market process occur through or between business institutions.[17] One such business institution, the corporation, is described as the greatest achievement of Anglo-American capitalism (Barry, 2003, p. 2).[18] Whilst acknowledging this, the corporation has been treated ambiguously even by those described as free market economists.[19] It appears that the

> "…realm of the corporation, with its diversified activities and 'planning like' behaviour, seems far removed from *catallactics*, that spontaneous activity in which decentralised individuals co-ordinate their activities…" (Barry, 1998, p. 37 *fn 1. excluded*).

[16] It can be further noted that if an exchange or subsequent exchanges take place as described the market process is *not* in operation as the defining characteristic of the market process is the voluntary exchange of justly owned property.
[17] 'Business institution' is a generic term used by the author to denote all forms of the firm from sole ownership to conglomerated multinationals.
[18] There are other forms of capitalism but this appears the closest to a free market in a free society.

The corporation is deemed an artifice of political authority without which the corporation would not exist.[20] It is an artificial entity enabled to act independently of its owners. It can sue and be sued, has limited liability and permanency beyond the individuals that may operate within it at any particular time. Such ‘privileges’ can be used against private individuals that they themselves do not have recourse to. This ‘privilege’ is deemed awarded by political authority and as such is exogenous to the market process. Hence, it is asserted that the corporation must earn this ‘socially awarded privilege’. As a consequence the corporation is deemed subject to duties over and above that required of private individuals in the market process.[21] This is what Hessen calls the concession theory of the corporation (1979).[22]

Hessen rejects that the corporation is not possible *sans* political gift, citing that the genesis and development of the corporation can at all times be traced back to the “*voluntary association [of individuals] based exclusively on contract”* (ibid, p. 43 *my emphasis*). As with language and money the corporation formed as a response by self-interested individuals to radical uncertainty. The corporation provides *relative predictability* and *stability* of contractual obligations between parties (Lewin, 1998, p. 500 *my emphasis*). As with all social institutions the corporation (via long term contractual obligations) can limit the scope of the choices available to us “ …enhancing our ability to coordinate our behaviour by making the behaviour more predictable” (Horowitz, 1999, p. 3). It is a crucial element of the communicative rationality of the market process.[23] In other words, the corporation in conjunction with all other social institutions creates the web of meaning necessary for human action.

If it is possible to trace the genesis and development of the corporation in this manner (what Hessen calls the inherence theory of the corporation), then ‘entity status’ and ‘limited liability’ of the corporation are irrelevant in terms of their impact on the ethicality of the actions of a corporation. The corporation is (or at least can been seen) as derived from the exchange of individuals within the spontaneous order of the market process. True, the corporate form is now recognised by political authority, however so is the money we use. This fact does not prove that private money has not nor

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[19] Even Adam Smith was troubled by the notion of joint-stock companies.
[20] See for instance, Dahl (1973).
[21] See Barry (2003, 1998) and Hessen (1979) for a more detailed discussion of the theory of the corporation.
[22] See Evan and Freeman (1993) and French (1984) for a representative selection of this train of thought on the corporate form of business institution.
[23] See Horowitz (1999) for a discussion on the importance of social institutions for the creation of meaning and Lewin (1998) for a discussion on the vital role of the firm as an institution that creates meaning for action.

could not exist without political authority[24] nor does it prove that corporations did not or could not develop through individuals' attempts to cope with radical ignorance (Hessen, 1979). The fact that there are limited liability clauses in many corporations is merely an indication that self-interested individuals have agreed to pool their resources in this manner. This is a contractual possibility open to all and open to all to reject. The success of the corporation thus far consists in an adherence to 'natural liberty' and the moral validity of the corporation (and any actions there form) derives from the moral conventions that are a feature of societies based on 'natural liberty' (Barry, 1998, p. 48). As developed early in this essay, these moral conventions are a respect for well-defined and well-protected property rights. Such rules have evolved spontaneously within the market process and not external to it.

There are a number of consequences of this argument. Firstly, as there is a strict obligation to respect the private property rights of others, any action that denies or destroys the property rights of a corporation is actually destroying individual's property and subject to restitution by the rules of justice. Secondly, whilst there may be other moral duties outside that of the recognition of private property rights, they are supererogatory in nature that is desirable but not compelling. Indeed adherence to such supererogatory duties may distract attention from the compelling conventional morals of the market process (see Barry 2004 for more). Thirdly, any obligations that the corporation owes to others outside of the corporation must be a function of the decisions of the owners of that corporation as private persons and those whom have fiduciary duties to the owners (Barry, 2003, p. 25).

Contracts entered into by a corporation are, as with that of private individuals, subject to the rules guiding the legitimate transfer of private property. This argument is not weakened by the obvious difference between pure market contracts that the corporation may enact with those outside the corporation and contracts within corporations. The former tend to be specific and multilateral, the latter bilateral and non-specific (Coase, 1937). Crucial however is the fact that there is at all times the freedom to leave the contract.[25] It is still subject to analysis via the transfer of private property rights. The *stability* and *relative predictability* of contracts is reliant on whether the basis of the contracts is interpersonal free exchange. If it is discovered that the transfer of property rights is not legitimate this would negate one of the merits of the corporate form as a means of co-ordinating action as such a contract (derived or otherwise) is *unstable* and will not lend itself to predictability. It is therefore

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[24] See Menger's analysis on the origin of money (1999). See Davidson and Rees-Mogg on possible future private forms of money (1997.

[25] See Alchian and Demsetz's argument that a firm has no fiat over employees (1972).

crucially important for the corporation to acquire, prior to the agreement of a contract, knowledge of what constitutes the validly owned property to be used in enacting the obligations of the contract.

V. Governmental Action and the Ethics of Exchange

Government action in the affairs of Man is almost exclusively resourced by taxation. Historically this has been a part of 'human society' since the Feudal age where the monarchy 'owned' everything within a particular geographical boundary and individuals had to pay a rent to the monarch for the use of the resources of the land. The legitimacy of taxation achieved intellectual acceptance with Auguste Comte. He asserts that

> "[w]e are born under a load of obligations of every kind, to our predecessors, to our successors, to our contemporaries. After our birth these obligations increase or accumulate, for it is some time before we can return any service . . . This ["to live for others"], the definitive formula of human morality, gives a direct sanction exclusively to our instincts of benevolence, the common source of happiness and duty. [Man must serve] Humanity, whose we are entirely" (Cathechisme Positiviste (1957), cited in Machan, 2004.)

This gave rise to the idea that the resources we 'own' are not ours by right but by privilege of political authority and that Man is obliged to pay for such privilege. This 'privilege' tends to be paid for via a levy from the populace, taxation. As pointed out by Machan, Locke countered this, stressing that Man comes into this world free. Locke's argument is that Man is distinguished from other species by virtue of his rational faculties. Due to this distinction, Man is not merely a physical agent but a *moral* agent. As such, Man is a free agent with control over his life, liberty and property. Furthermore, there is no hierarchy of individuals, "…that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions" (Locke (1690) 1980, S.6), " [a]nd that all men may be restrained from invading others rights, and from doing hurt to one another…" (ibid, S.7). This was a major force behind the development of the 'free society'.[26] In a free society where Man owns his own property,

[26] We acknowledge that one of the key defenders of a 'free society' Hayek would not necessarily agree with Lockean natural rights and would argue for a 'free society' based on a form of utilitarianism. See Dorn (1981) for how the case for a free society is greater strengthened by the natural rights approach and how Hayek's approach eventually led him to move a more government interventionist model for society.

taxation must be seen as extortion.[27] Taxation by its very nature involves coercion.[28] In terms of the means of appropriation, government action always requires 'invasions of the borders' of property rights involving coercive means to collect tax.

One of the consequences of collecting tax from individuals is it forces individuals to act in a manner differently from what they would have if there were no such coercion. By doing so such government action reduces the possibility of efficient action by individuals. As stated previously well-defined and well-protected property rights encourage individuals to use their means in a manner that they believe will give them the best possibility of increasing their absolute utility. The development of a well-defined and well-protected property rights system does not guarantee success. However, economists have proposed that the market process is the most efficient system and anything that promotes a dilution of this system is promoting inefficiency (see Hayek, 1988, 1973, 1968; Mises, 1996, 1991, 1990). In a genuine market process economic calculation can take place and actors can make legitimate assessments as to the success of an action *ex post*. Where prices are distorted via taxation, such calculation is hampered. The same distortion of the efficient properties of the market occurs when a government spends tax money. Here it is a consumer of scarce resources (direct by the government's own consumption or indirect through subsidising individuals/firms). It may well be that firm A upon which subsidies (acquired via taxation of firm B) are granted achieves profitable status, but the unseen consequence of this is that firm B now does not have the same investment money available to them.[29] Furthermore, incentives are reduced as the expectation of coercive appropriation may eventually lead to a situation where the opportunity cost of an action by an individual is greater than non-action.[30] Even those on whom the burden of tax does not fall may lose out. In a free society where people are at liberty to produce as they see fit, other individuals who do not, nor could not, produce benefit. If coercive intervention hampers, distorts or reduces individuals' incentive to produce as they see fit, then the third party who would have consumed what was produced but cannot do so they also lose out. Taxation will never leave the market the same as it was prior to its levy. Due to these distortion effects, contrary to some opinion, a neutral tax to quote Rothbard 'must always be a chimera.' (1962).[31]

[27] See the author's dialogue on private property rights and government action (2004)
[28] This is something accepted even by those in favour of government intervention.
[29] See Bastiat *What is Seen and Not Seen 1850*
[30] See Bradley (2003) for a discussion on both market and governmental learning which perhaps redefines the early notion for Hayek and Mises that 'non-action' is the evitable outcome of the interventionist process. More accurately there is a 'tipping point' of intervention after which the logical outcome is non-action.
[31] There is one exception to this, where government revenue is derived from gifts.

Beyond these efficiency effects of taxation, if taxation is considered an invasion of private property rights, the use of an individual's property by government may be uninvited. Such use results in a transfer of rights from the wrongdoer to the victim for the purpose of a restitution and/or punishment (Kinsella, 1997). Hence taxation not only severs the connection between expenditure and evaluation in an action (Block, Carden, Carson, 2004), it *inherently* illegitimatises the action. The logical outcome of this governmental process is a degeneration of the market process in terms of the efficiency and the morality of an action. This is not to deny that government action per se ought not occur. Whilst coercive in nature, governmental action may have a role in protecting private property rights. The true role (if any) of government is a much-debated aspect of libertarian and market process thought. It falls into the 'minimal but indispensable' role in the protection of private property rights preferred by Locke, Smith and Mises to the anarcho-capitalist opinion of Rothbard, Long and Kinsella who see no role for government. For the former, if the government is to engage in action it must have the means to do so. As the government is interventionist and not productive in nature, the means must be acquired through gift or levy on the revenues of productive individuals. In the main, the means necessary may be collected through the coerced levy of the taxation system. It is still coercion but perhaps necessary. Kinsella et al would deny that any coercion is necessary. In this paper we concern ourselves with the redistribution of taxation for purposes beyond the protection of property rights.

To summarise, interpersonal free exchange demands the mutual recognition of the exchanging parties as *homo agens*. This mutual recognition can consist in the contract form. Business institutions including corporations can be said to be governed by the rules of interpersonal free exchange as the genesis and development of business institutions consists in the actions of individuals. Agreeing a contract depends on the expectation of relative payoff *ex ante* the contract and the evaluation of a contract depends on an assessment of the absolute payoff and a guess as to the relative payoff from the contract *ex post*. There is always uncertainty as to the relative payoff of a contract. However, it can be discovered *ex ante* that the opportunity cost assessments driving the actor's expectations and evaluation of a contract are inherently in error if the moral conventions of the institution of private property rights are breached. Such a contract ought to be deemed a misallocation of property rights. Any contract agreed having as its basis the coerced property of a third party is unethical. Furthermore any contract between a government and a private concern or between two private concerns having as its basis a redistribution of taxation income also consists in an appropriation of third party private property rights and is unethical. Such contracts are unstable in terms of their appropriateness as a means communicative rationality in a free society.

Part VII uses this interpretative framework to analyse LFC reported investment options. In the next part we show how LFC is a legitimate institution for consideration by such a framework.

VI. The Football Club Considered as the Corporate Form of Business Institution

We have argued that the features of the corporate form can be understood by contract theory. We have further seen that for this analysis to stand, the association of individuals forming the corporation must be voluntary in nature. Individuals forming and continuing the corporate form and acting through the corporation must do so on the basis of interpersonal free exchange. The discussion thus far has been tailored to the 'conventional' business institution. The question must address as to whether professional football clubs can be analysed in the same manner. There has been much discussion as to what type of institution professional football clubs are. Some of the more recent analysis has condemned the 'commercialisation' of football, stressing that football clubs do not and should not fall under the ambit of 'traditional' business institutions' and instead are properly described as 'social and cultural' institutions. In 1999 the Football Task Force reinforced this impression stressing how "football is different from other industries because it is fundamentally about the community and not the individual, about a sense of shared emotional ownership" (p. 37–46). In this regard there is much emphasis on football's working class roots, and 'fan equity' and how 'millionaire' fans will destroy the tradition of the game.[32] While there are unquestionably aspects of the 'football industry' that set it apart in relation to other industries, much of the attempted de-emphasis of the 'business of football' is misplaced. For the purposes of this paper we focus on 'the consumption' of football, and football clubs owners' reasons for ownership.

A reason for the contention that football clubs are seen as cultural and social institutions as opposed to business institutions is the rejection of the analysis that the fan 'consumes' a product in the traditional economic sense. It is suggested that while fans may be customers, football is an emotional investment by the fan and this is (according to this viewpoint) highly unusual in the context of the typical consumer and producer interaction. For Hamil this makes the relationship between the club and the fan unexplainable using free-market economics (1999). He suggests that the organisation of consumption as explained by economics is about commodification. He suggests that 'fan equity' is difficult to commodify on a sustained basis, as the football club is a vehicle for a 'shared solidarity' with those who support the team and that this distinguishes football from 'conventional marketplaces' and hence

should be analysed differently. However this is based on a number of fundamental misunderstandings. The emphasis that the football fan's 'consumption' is supposedly distinguishable from other forms of consumption seems to be made on the basis that Economics has something to say about the ends and the reasons for the ends desired by individuals. It does not. Economics is a science of means, not ends and as such as little to say about what is perceived to increase an individual's 'happiness' (whether it is purely egotistical or includes some form of altruism or solidarity). The economic analysis of Man's actions takes the end as a 'given'. What is pertinent is the means used to achieve these ends.[33] The market process is merely an instrument that has spontaneously evolved to achieve Man's desired ends in a world of scarcity. The theory of the spontaneous order does not depend on the 'egotistical' behaviour of Man. Whether behaviour is egotistical or otherwise, a pertinent question that Economics addresses for a 'free society' is whether the achievement of the end is on the basis of interpersonal free exchange or otherwise. The ideal instrument for interpersonal free exchange can be said to be the market process where individuals have freedom of action and association. Hence the argument can be made that consumption decisions in professional football falls under the remit of our analysis. Furthermore, the emphasis on the 'shared solidarity' and importance of 'community not individual' as a reason for rejecting 'conventional free market economics' seems to be based on the inaccurate assumption that Economics deals with Man as atomistic. True, market process economists tend to approach their subject through methodological individualism however they are not naively reductionist. If we may quote Madison at length when he discusses Hayek's use of methodological individualism

> "Hayek's individualism must be understood epistemologically and not metaphysically…which maintains, not that the individual exists prior to the social or that the social can be "reduced" to the individual, but that an understanding of social orders, how they are constituted and how they function, can be achieved by viewing them in the light of the activities of myriad individual agents, as, so to speak, the "in which" and "by which" individuals are able to exist as individuals" (Madison, 1990, p.48 cited in Horowitz, 1999, p. 3).

It is crucial to note that market process economists do not reject notions of 'community' and 'shared solidarity' but see that all action derives initially from individual plans and intentions, the consequences of which may indeed be something that is not reducible to such plans.

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[32] Readers are directed to *A Game of Two Halves? The Business of Football* Hamil, Michie, and Oughton (eds) (1999) as representative of this new literature.

[33] Refer to (Mises, 1996, p. 13-22) for an in-depth discussion on the economic analysis of action.

For our purposes the most important attempt to distinguish football clubs from that of ‘conventional’ business is the discussion on an owner’s reasons for investing in a football club and indeed on the ownership of football clubs per se. Unquestionably the conventional idea that the owners of firms seek to profit maximise can be strained. Historically, local ‘well-to-do’ benefactors owned football clubs. These individuals tended to invest in clubs not to seek profit or equity but prestige, power or perhaps benevolence. Today, there is an apparent tension between those wealthy individuals and institutions that may invest in clubs for a monetary gain and those individuals (in particular fans) who own part of a club for prestige or benevolent reasons. Certainly it may be unusual in the context of a discussion on the market process and firms therein, to see owners as both profit (equity) seekers and prestige/benevolence seekers, however, it is easily located within our analysis. What is key is to distinguish between two economic functions: *Consumer* and *Producer*. In so much as individuals (or institutions) invest in a football club in the expectation of an increase in their profit/equity, we can analyse them under the *genus* ‘Producer’. As producers they are investing in a football club as an instrument of acquiring the means to consume at a later date. In so much as individuals (or institutions) invest in football clubs in the expectation of an increase in prestige etc, we can analyse under the *genus* ‘Consumer’. As consumers they are investing to directly acquire prestige/benevolence from doing so. For them the investment is a direct means of consumption, for the former, it is an indirect means of consumption. Bearing these distinctions in mind, our analysis is not affected as the question that we pose is about the ethical means of achieving and assessing that consumption (direct or indirect). As Wilcke points out about the rights of business institutions

> “…a business enterprise, regardless of legal form, has the same rights …as the individuals who comprise it…. Doing good in the sense of giving their wealth away is exactly what gives many people the self-satisfaction they crave” (1999, p. 22).

Some owners will be ‘consumers’, some ‘producers’. The same owner may embody both functions. Irrespective, the individual (or institution) must use their own or rightfully acquired property to achieve their objectives. Given this it seems feasible to assert that football clubs can still be analysed through the moral conventions of the institution of private property rights.

The next question to address is what form of business institution the football club is. Again this has been subject to recent controversy. Most professional football clubs in the United Kingdom are PLCs. They have been limited companies since the advent of the English Football Association’s Rule 34, which specifically restricted the size of dividend payments to a legal minimum and specified that no club should have directors on salaries. This had the Bastiatian consequence of many club owners

seeking to limit their exposure should, as was felt possible, football as a venture, fail. The FA did not enforce Rule 34 against such clubs. It also had the consequence that football became unattractive to business investors and the mis-management of clubs by the mid 1980s had lead to antiquated stadia, declining spectator base and tragically, stadium disasters. However, with the increased participation in football by the media, football became an attractive financial (and prestigious) investment option for private and institutional investors and a number of clubs floated on the stock exchange. It is clear from this that football clubs have those elements that make them identifiable as a corporate form of institution even allowing that some of these investors are investing in football clubs not for financial reasons but more psyche reasons. Indeed, as such, football clubs have come under the same attack as 'conventional' corporations. They are deemed creatures of political authority with rights above and beyond that afforded to individuals (particularly fans) and hence are not subject to the same rights and duties as individuals, but those deemed fit by 'society' through its conduit 'political authority'. We have already discussed the illegitimacy of such attacks.

The most interesting attack on the corporate governance of football clubs is that the club's decision-making (in company law the ultimate right of owners) should be broadened to those who, along with shareholders, have an interest in the club. The argument is that club ownership has become centralised around a group of 'elite' shareholders (in particular institutional investors). Under company law, club directors would breach their fiduciary duty to act in a manner that is not in accordance with the wishes of these 'elite' shareholders.[34] Against this, Michie and Ramalingham assert that more than shareholders have a legitimate stake in a football club (1999). For instance, a report into the economic impact of professional football on Merseyside suggests that LFC and Everton FC have a number of stakeholders. These include; the clubs, the supporters of the clubs, the city council, the Mersey Partnership, the businesses who trade with the clubs and the businesses in Liverpool that benefit from football clubs. Michie and Ramalingham suggest that as it stands company law by recognising the fiduciary duty of the directors of clubs to the shareholders are indicating that some stakeholders (namely those outside the ownership of LFC and Everton FC from our example above) are more equal than others. They recommend that this should be changed, by a change in company law if necessary. Directors should have a fiduciary role (in Michie and Ramalingham's case) to the supporters of a club.

They argue that stakeholders in a football club such as fans must become stakeowners to have more say in a club's decision making. They recommend enfranchising supporters by making them joint-owners of clubs. This is of course a more specific illustration of a broader discussion regarding

[34] This was upheld in Fulham Football Club Ltd v Cabra Estates Plc [1994] 1BCLC363.

corporate governance per se. Since Berle and Means' discussion on the separation of ownership and control in corporations (1932), theorists have discussed ways of increasing 'democratic-decision-making' of corporations on the grounds that all stakeholders are essential for the success of the corporation and that as the corporation is a creature of the state there is a public interest in the corporation which is not satisfied by the control of a minority of elite shareholders. This has become known as the 'stakeholder' theory of the corporation. Evans and Freeman, perhaps the most prominent defenders of the 'stakeholder theory of the corporation', assert that other stakeholders' claims (bar shareholders) must be honoured as "[t]he very purpose of the firm is to serve as a vehicle for stakeholder interests" (1993, p. 82).

As pointed out by Barry there are a number of difficulties with the stakeholder argument. If anyone who even has the most vague and tenuous connection to the firm has some claim on it, then one cannot say that one 'owns' a firm. The stakeholder theory eliminates a coherent idea of 'ownership' (1998, p. 75). It should be obvious that without 'ownership' not only will the incentive to enhance the value of the firm weaken[35] but crucially for our argument, *moral action* will be logically impossible. If an individual does not have what Machan calls 'a sphere of personal jurisdiction' then how can one conduct oneself virtuously? Consider the virtue of 'generosity'.[36] Suppose that there was a discussion in a football club about investing in local community initiatives. A number of problems practical and philosophical are likely to arise under the 'stakeholder' concept of the club. The basic question of 'What initiatives should we support?' becomes perhaps an interminable debate. One could answer this by suggesting a democratic vote with the initiative voted for by the majority (lets say, managers, directors and fans) being supported. There is a difficulty with this. Can we say that the club has acted with generosity in a morally significant manner if they do so by majority decision? What has the majority that voted for the successful initiative being generous with? They have expropriated that which rightfully belongs to others in the minority (shareholders).[37] This is not genuine generosity. It is theft. The property of others has been coerced. One cannot conduct oneself in a generous manner without having the appropriate means to be generous. In essence, with the 'stakeholder theory' shareholders are not considered as *homo agens* but as means to the ends of various other individuals. The fundamental condition of society of the mutual recognition of the 'other' as an agent is not met. Furthermore, that which is recognised as a supererogatory duty such as the virtue of 'generosity' is

[35] The famous Tragedy of the Commons

[36] Defined as the virtue of giving which entails giving the other person what is not his but yours, which he lacks. (Comte-Sponville, 2001, Chap 7). Interestingly he asserts that the act of generosity does not mean acting in accordance to law but doing more than the law requires – a supererogatory duty not a strict obligation.

drained of its moral significance as something valuable but lacking compelling force.[38] A coherent theory of ownership is necessary for economic and ethical decisions. Ethical questions are questions that can only be addressed when one has ethical agency, without this, ethical decisions are ineffectual.[39] Ownership is a necessary pre-requisite for moral action. When owners have the right of ultimate decision-making they can decide appropriately whether to engage in action that is purely profit making or otherwise. Of course, other stakeholders can attempt to persuade shareholders as to the merits of particular actions, but this is somewhat different from a situation recommended by 'stakeholder theorists' where individuals would be forced to act in one way or another.

Michie and Ramalingham argue that fans can be seen as rightfully owners of football clubs (1999). They suggest that the conventional market approach of take-over or the setting up of a competing entity should employees etc be unhappy with the strategic direction a firm is taking is unavailable to the football fan as the fan is 'locked-in' to supporting one club and transferring allegiance is not possible, which gives the club power over the fan. Clubs become local monopolists in a particular area where only imperfect substitutes exist. Hence, the club acquires a form of *institutional stability* given the loyalty of the fan. As a consequence of this they argue that the representation of the vulnerable fan in the decision making of the club is essential. Such representation acquires force by means of ownership. One must assume that the 'ordinary fan' could not afford to purchase shares in his club by his own means alone so the question arises as to how this 'ownership' would be enacted. Michie and Ramalingham appear to be in favour of a form of mutualisation where they agree there would have to be government support for a buy-out scheme for shares in smaller clubs. Another suggestion is that shareholders would hold shares in trust where the owner would be subject to personal obligations governing how property should be used and applied (clearly over and above the strict obligations that a private property owner already has).

What Alchian points out about employees, the same seems true for fans. They are not forced to support a particular club. From a human agency point of view, the notion of some form of psychological 'lock-in' while interesting; is not legitimate grounds to coerce the owner's to act in a manner different from their desires (although it might persuade them to act otherwise). Existing in a free society does not mean that you have a right to everything that you will. On the contrary, we all have limitations to our powers, but that is exactly what these are, limitations on our powers. We are

[37] This is not as speculative an example as it seems. Branston et al (1999) suggest rejecting the 'one share one vote' rule for a one member one vote' where member includes fans. One could see if this was ever to be enacted how the difficulties our example pose could arise.

[38] It is also drained of such significance when (as is sometimes debated) that acting in a generous or benevolent fashion is a 'good strategic' move for an individual or firm. In such a case, the action is not done for virtuous reasons.

still free even if we cannot do something that we desire. A supporter of a club may dislike aspects of the running of that club, but this does not necessarily mean that he has a right to force change in that club because he does not have the option to support another club. He is still free even if his powers are limited. Of course, market process theorists could have no objection to a shareholder that freely enters into an arrangement whereby they agreed to act in a particular fashion. Indeed, no objection could be made to shareholders that gift their shares to supporters. However, the fact remains that any attempt to coerce the ownership rights of the shareholders in clubs, whether by forcing the broadening the voting rights to other 'stakeholders' or compulsory buying out of shareholder's interests or compulsory agreement to the formation of a trust, impinges upon their rights as property owners. Furthermore, the use of any redistributed funds by government to supporters to enable them to purchase shares is doing so, as we have seen, on the basis of a misallocation of property rights, those rights of the individuals upon which burden of this redistribution falls. It is interesting that Michie and Ramalingham cite as one of the reasons that they recommend the trust or mutuals form of institution for football clubs is the apparent stability that fan loyalty brings. We have already seen that once the strict obligation to respect the private property of others is breached by coercion that the notion of *stability* of a contract and its rewards therefrom for those in breach is diminished.

We are now in a position to critique the investment options apparently available in May and June 2004 to LFC. On the basis of the argument thus far we uncover some of the potential weaknesses in the arguments of others critical of certain of the options. We set out why such objections could be seen, if enforced, as an attempt to coerce what is at most a supererogatory duty of the individuals whom own LFC. We will then critique the options on the basis of the strict obligation of a respect for private property rights.

VII. LFC's Investment Options Considered

LFC is a privately owned professional football club in the English Premiership. It is a PLC. There are currently 50,000 authorised ordinary shares, 34,823 of these are allotted, issued and fully paid-up. If the LFC Board chooses it can authorise the issue of 5,177 unallotted shares at an agreed price. The shares were trading at £4000-4500 through Blankstone Sington Stockbrokers in 2003. Currently, the three largest shareholders are David Moores (Chairman of the LFC board) 51%, Granada 9.9% and Steve Morgan 5.1%[40]

[39] See Machan (1999) for more on the links between private property and morality.
[40] Also on the Board with shares are Keith Clayton (25 shares), Rick Parry (Chief Executive) (12 shares), Noel White (223 shares) and Terry Smith (264 shares).

The club aims to move from their historical grounds at Anfield to build a new stadium in Stanley Park at an estimated cost of £85m. The hope is that this new ground's increase in capacity by 16,000 would bring in extra revenue of £12m per year between seat sales, merchandise and corporate hospitality. As it stands at full capacity (45,000) in Anfield, LFC earn £1m less than both Manchester United and Newcastle United per game. A new stadium with increased capacity is crucial if LFC is to survive as a top-flight Premiership team. Without the acceptance of any investment options, the necessary investment monies are to be borrowed. It is reported that this loan would be paid off in 15 years at a cost of £7m per annum. This payment has a knock on affect on the money available for player transfers. From the above estimation, the move to Stanley Park will only increase the 'transfer pot' by £5m per annum for the first 15 years. This in turn may have implications for the club's ability to be successful on the field of play and in their attempt to reach the financial stability level currently held by Manchester United and Chelsea. In the pre-2004-2005 season Chelsea purchased playing staff to the value of £86m, Liverpool's stands at £17m.[41] In terms of both playing and financial success, the money raised previously by Granada's purchase of shares in the club in 2002 is deemed a failure. In 2003, the club's failure to reach the Champions League at an estimated cost of £15m and then saw a 61% decline in profits and no dividends were paid. The club is anxious not to waste any investment they receive this time. It is within this context that we must explore the investment options open to Liverpool.

Option 1: Accept the investment offer of £56.5m proposed by the Thai PM Thaksin Shinawatra

This was a complicated, confused and controversial offer. There was confusion as to the form that the offer was taking, whether it was public or private funds. Both options were discussed, often simultaneously. For the purposes of this paper we have separated the offers into 3 possibilities; i) an investment funded entirely by public funds, ii) an investment funded entirely by private funds and iii) an investment funded in part by public and in part by private funds. Furthermore, whilst this paper was being drafted a fourth option became known whereby the bid was to be funded by the development of a lottery offered to the Thai public. The overall bid was controversial on a number of fronts. In Britain there were ethical concerns about accepting money from the Thai government raised by Amnesty International. There were also questions as to the reasons why the Thai government would be interested in investing in the club. In Thailand there were cultural, political

[41] In July 2004.

and religious concerns about investing in a foreign sports club and in the development of a lottery system to fund the bid. The bid, (in all its reported forms), was finally withdrawn by the Thai government in July 2004. Throughout the time of the bid, the shareholders and directors at LFC remained silent as to whether they would accept this bid or not although the reports seem to indicate that the board were close to agreeing to the bid.

If we consider some of the representations made to LFC against this bid they may be best seen as attempts to persuade LFC to act in a fashion that accords with certain supererogatory duties and are not compelling in nature. Considering the human rights argument first. Amnesty International severely warned LFC from the Thai bid. A spokesperson for the organisation in May stressed that; "[b]esides looking at who invests in the club, *Liverpool as a business have a responsibility to ensure* that any relationships with clubs or suppliers which it develops in Thailand do not contribute to *human rights violations*" (Fifield, 12th May, 2004 *my emphasis*). This line of censure garnered the support of Liverpool Supporter clubs and the media. While popular in its persuasion, from the point of view of a strict adherence to the moral conventions of institution of private property rights, such a responsibility can only be seen as a supererogatory duty and not, as seems to be the emphasis, a strict obligation. We make this claim given the ambiguity surrounding the key declaration of human rights – The Universal Declaration of Human Rights (UD). In so far as human rights accord with the Lockean principle of the protection of property then there can be no complaint with the UD. The Lockean principle recognises that Man should be free from coercion. Certainly articles 3,4,5,9,10,11,12,15,16 and 17 of the UD accord with this Lockean principle and as such would be crucial for LFC to uphold (See Dun, 2001). Elsewhere in terms of the protection of private property rights, the UD document cannot be seen as forcing strict obligations on individuals. The problem arises when the UD discusses economic, cultural and social rights (articles 22 to 28). Dun's analysis shows how these rights are rights *to* scarce resources and hence the enforcement of such rights can only be achieved by coercing others to relinquish their property or to use it in a manner differently from what they would have if there were no such coercion (2001). Enforcement of such rights constitutes a clear violation of the right to control and manage one's own property without aggressive interference (ibid, p. 5). Given this problem with the argument against agreeing to the Thai bid is not that the particulars of Amnesty's claim are wrong. Amnesty have stressed that there is evidence that the Thai government has been involved in suspected murders (a clear violation of primordial property rights), but with the indiscriminate use of 'human rights' in an attempt to persuade against an action by business. By the moral conventions of the institution of private property, an individual may engage in actions that are not necessarily profit or equity maximising (in

the absolute sense) therefore perhaps upholding UD's rights such as; the rights to work, just and favourable remuneration, conditions of work and rest and leisure. However, this must be seen in its proper context in a free society as adherence to a supererogatory duty. The charge that LFC as a business *have a responsibility to ensure* that agreement to the investment by the Thai government does not contribute to human rights violations cannot in *all* circumstances be seen as a strict obligation that would *ex ante* make such a contract inherently unethical and unstable. There would have to be strict limitations to the definition of what 'human rights violations' are first.

A second argument against the bid came from Liverpool supporter's clubs who strongly rejected any investment by individuals who is not part of the 'Liverpool community'. This argument is perhaps best summarised by Lawton; "Liverpool…surely belongs to fans who, perhaps better than any of their rivals, convey the idea that a football club properly lives in the heart of its community" (May 13th 2004). The argument seems to be that the fans rightfully own LFC, thus any investment in the club must meet with their approval and the vast majority of the fans want the ownership to remain with Liverpuldians and not to be sold to foreign investors. Steve Davies of the *Liverpool Independent Supporters Club* articulates this concern, "Who is this guy [Thaskin]? What is his interest in Liverpool Football Club?….We are wary of the unknown…" (Fifield, 12th May, 2004). In terms of our analysis thus far, while emotive and perhaps persuasive, it does not create a strict obligation to reject the Thai offer by LFC's shareholders and directors. Firstly, as previously discussed LFC does not belong in any enforceable sense to the fans *qua* fans and as such the directors of LFC do not owe any fiduciary duties to the fans, only the shareholders.[42] Secondly the owners of LFC (the shareholders) cannot be coerced into acting in a manner different from what they would have in absence of the coercion. Hence, while the supporters can attempt to persuade the shareholders as to the merits or otherwise of various investment options, they cannot force them to act in a particular manner. Thirdly, it may very well be that if the directors did not accept an offer from the Thais on the basis that they are not part of the community and are unknown to them that they may in fact be acting in breach of their fiduciary duties to the shareholders. For instance, if the shareholders of Liverpool *en masse* wished to enhance their profits, and if the expectation was that the Thai investment would enhance absolute profits, then to reject the offer on the grounds that the Thais are not part of the 'Liverpool community' would be in breach of the director's fiduciary duty

[42] While shareholder and director may be the same person, in economic analysis these are two different functions that must be analysed separately. The shareholder can be analysed as the owner of the property, the director as acting as a agent for the shareholder.

to act with the shareholders' interests in mind.[43] Such analysis does not deny entirely the merits of the supporters' argument. In business terms, *reputation* and *trust* are crucial elements. It may be that a local investor has the trust of LFC over and above any deal by 'outsiders' in which case it may be prudent to reject the 'outsider's' offer, but this does not mean that prudence can be strictly enforced by non owners on owners. The decision to be prudent or otherwise must rest with the owners and those delegated to act on their behalf.

Given the above is it the case as stressed by Gleeson in the *Daily Post* that; "[y]ou cannot preach morality in the world of business, and supremacy in sports requires the sort of cash Thaksin is offering to Liverpool. He has every right to approach the club, which in turn has every right to sell him a big stake"? (May 12th, 2004). We can address Gleeson's assertion by focusing on the strict obligation that the owners and directors of LFC have as a business institution operating in the market process of a free society. The monetary calculation of the benefits of any investment bid and the assessment of its worth[44] cannot be the sole basis of the decision to accept an investment option as crucial knowledge is hidden in such calculations. In order to ensure that any expectation of gain from the investment or assessment of such gain can be deemed stable it is crucial to know *ex ante* the agreement to a transfer of property rights that the property being used in the transfer is validly owned property. Considering the Thai option in this light we can see that Glesson may be partially correct depending on what the Thai bid consisted in.

If the Thai bid consisted in money raised by the PM's private funds and that of other private investors (option Ia) then on its face there could have been no objection to the PM's right to approach the club or to the club's acceptance of the offer. It would be irrelevant that the PM may have desired to invest in the name of the Thai people or government. We have already discussed how a property owner's reasons for action are outside the remit of Economics. What would be crucial is whether he would have been using his own property and that property validly acquired from other private investors to finance the bid. In this regard it would have been important for LFC's directors to explore where the finance necessary to uphold the PM's obligations in the contract arose. This may have entailed an exploration of previous actions taken by Thaksin (and the others) that led to his ability to finance the bid. The question would have to have been asked as to whether the finance derived from interpersonal free exchanges. From the viewpoint of the market process not

[43] It would also be negating one of the benefits of the market process as well, namely the extended means of co-ordinating the actions of actors unknown to one another.
[44] For simplicity sake we assume that the owners wish to enhance profit/equity.

only would obvious coercion such as extortion, robbery etc need to be examined but also whether any of the actions leading to the current investment finance had benefited from a redistribution of taxation.[45] If it could be shown that any of the previous actions leading to the investment finance for the bid benefited in this manner then strictly, if the contract were to be agreed with LFC, it would be inherently unethical. This would have made any benefits achieved by LFC from the investment illegitimate and subject to restitution by the aggrieved parties. For LFC there would be serious consequences in terms of any future contracts they would have made if the proceeds being used for such investment derived from an illegitimate contract. The stability and predictability of such future contracts would have been in doubt. For instance should the (unethical) investment have been used to finance the building of Stanley Park, then LFC could have been faced not only with restitution claims from aggrieved parties but also the necessity to pay for the stadium from other funds which would *ceterius paribus*, probably be diverted from player transfer funds. Of course, on the other hand if the Thai investment option were financed solely by private funds (and these funds in their lineage can be assessed as legitimately owned and acquired property) then it would have adhered to the strict obligations of the moral conventions of the market process. The stability and predictability of this and any future actions derived in total or in part therefrom would have been assured. Only in this case is Gleeson correct. The transfer of property rights between LFC and the PM would have been inherently ethical.

The ethicality of the other three possible forms of the Thai bid are less certain Much discussion surrounded the possibility that public funds would be used to finance the Thai bid whether in total or in part (options Ib and Ic). As we have seen little was said to deny this possibility. Many commentators in Britain and Thailand were steadfastly against the use of public funds. The tenure of these objections were first and foremost that the use of any public funds would have been a corruption of public policy in Thailand. One reflection of this opinion came from Paiboon Wattanasiritham of the Thai *National Economic and Social Advisory Council* who asserted that; “I have no reservations about purchasing Liverpool shares as long as it is done by businesspeople, with no binding effects on society and the state” (June 5th, 2004). For him and other Thai academic critics of the PM’s investment bid, the role of government is to encourage private business and not to own business itself. Indeed, law lecturers in the University of Thammasat claimed that a plan to use public funds in the manner

[45] While this paper concentrates on taxation exclusively, there is little question that the analysis could be expanded to discuss all government intervention. As pointed out by Mises (1990), intervention distorts the market process forcing actors to act in manner differently from what they would have without such intervention. Bradley (2003) has set out a detailed typology of intervention where business could have gained or lost from in contravention to the genuine market process.

suggested would be in breach of the Thai Constitution. Article 87 of the constitution prohibits the state from competing in business terms with the private sector unless there is a need to protect national security. Certainly market process theorists would have little objection to the basic tenure of this criticism.[46] However, there is a question as to how strict an obligation on the basis of 'government policy' or the 'constitutional concerns' is. With regards to appropriate government policy, a question would have to asked as to what 'encourage private business' means. If it means nothing more than the negative duty to protect private property rights of those identified as businesspeople, then our own argument sits comfortably with Mr Wattanasiritham's criticism. If however, 'encouragement' denotes anything more positive (i.e. subsidised business, exclusive contracts etc) then our argument diverges violently from Mr. Wattanasiritham. With regards to the constitutional argument, again, we do not disagree with the sentiment but would worry that a Constitution similar to the UD does not necessarily protect private property rights. Furthermore, Constitutions can be altered, by majority vote. Thaksin had told reporters that constitutional and legal difficulties would be ironed out. This again would place doubt on the ability of constitutional articles to protect the private property of those upon which the burden of the use of public funds to finance this investment would have fallen.

We believe that our argument is much less ambiguous. If the public funds are raised via a gift voluntarily offered by the Thai people there is a case for stating that an interpersonal free exchange would have been entered into by LFC and the Thai PM. The case could be made on two grounds. If the finance came from a gift with no binding promises or obligations then the finance is the PM's to do with as he so pleases (within the bounds permitted by the moral conventions of the market). This is perhaps unrealistic but nevertheless, logically possible. If the finance is made available voluntarily with the binding promise that the finance be used to invest in LFC then the investment can be justified on the grounds that the government is in some sense acting as a conduit for the wishes of a multitude of others. Basically it may be a way of reducing transaction costs on the part of the Thai investors. The role of the Thai PM etc is that of a mandatory to those that offered the investment money.[47] The PM would be entitled to any income that was part of the agreement. Unquestionably, such a role seems to stray from that of the protection of private property rights that most market process theorists would claim is the proper role for government per se. However, perhaps when we look at the issue from the perspective of the Thaksin as a private individual with his right to associate and exchange then we can see that given that as there is no coercion involved in voluntary exchange, Thaksin is perfectly within

[46] Although we would have to bear in mind that the anarcho-capitalist theorists would reject any role whatsoever for government.

his rights to invest in LFC, though saying that the investment negotiations or deal is ‘on behalf of Thailand’ or ‘the Thai government’ may be inappropriate or inaccurate. There is one possible objection to this. If it was the case that the Thai PM vis-à-vis legislation, had a monopoly as a conduit for those wishing to invest in LFC in Thailand, then the Thai people have no option but to use Thaksin’s services should they wish to invest. Here, whilst the case can be made the as people know this monopoly exists, there is little doubt that it is restrictive of choice and consequently an artificial restriction on the right to use and control private property as the legitimate owner sees fit. Further it is restrictive of the liberty of other unknown third parties to provide the same service in competition to Thaksin.

In these cases, what can we say from LFC’s perspective? Certainly, as was raised by Steve Morgan, there might be an issue should the Thai government change and any new government not be happy to act as a mandatory in this regard. Further there may be a worry about the number of investors in the club. Both of these are concerns would (one assumes) have to be factored into any opportunity cost calculation by LFC. However, from the perspective of adhering to the moral conventions of the market process, it would appear that both of these configurations of option Ib and Ic could be deemed inherently ethical and consequently for LFC legitimate investment options to consider.

The same cannot be said when the public funds being used to perform the Thai side of the deal are funds that have been acquired through the taxation of the Thai public. In this case, from the perspective of the basis of interpersonal free exchange, there is no question that the investment would be illegitimate. From LFC’s perspective, should they have accepted an investment option financed in part or in total by public funds derived from taxation then they must be aware that such a transfer of property would be inherently unethical and consequently unstable and unpredictable. Those upon which the burden of the redistributed taxation fell would have been entitled to restitution from LFC for the monies coerced from them through Thaksin and quite possibly any penalties deemed appropriate. This would make any assessment of the benefit of agreeing to the Thai deal impossible to accurately calculate and crucially, any further investment considered by LFC in total or in part due to the rewards earned from agreeing to the Thai deal would be unstable and unpredictable. The extent of this instability and unpredictably would be dependent on a number of aspects of the Thai investment and any gains *ex post*. Firstly, claims for restitution and penalties can only arise to the extent the public funds would be used. LFC would be not liable for any such claims for that part of the Thai deal

[47] We have made a distinction here between a gift and a voluntary exchange. It is conceivable that a gift

financed by private investment. Secondly, any penalties deemed appropriate (which presumably would be calculated on the basis of the benefits of the Thai investment and of any future investment made on its success by LFC) could only be calculated on an estimation of the degree to which the benefits accruing to LFC can be said to have their origin in that part of the Thai investment funded by coerced public finance.

The most recent configuration of the Thai bid was option Id. Here the proposed investment bid was to be financed by a once-off lottery. Half of the money achieved through this lottery was to be allocated to state enterprise investment company created by the Sports Authority of Thailand. 51% of the shares were to be owned by the Thai government (later changed to 49%) 49% (or 51%)[48] to be available for purchase by the Thai public. This option caused uproar in Thailand. Again a claim was made that this configuration of the bid was unconstitutional under Article 87. Furthermore, it was claimed by law lecturers in Thammasatt University that using a state body to launch the special lottery violated gambling regulations in Thailand. Such regulations prohibit the use of state income from lotteries on anything other than charitable purposes or public benefits. It was further claimed that the encouragement of gambling by the Thai government would be in contradiction to the Buddhist philosophy held in Thailand.[49] Economists in the *Independent National Economic and Social Advisory Council* in Thailand questioned the economic merits of the bid in terms of Liverpool's current financial standing and poor profit outlook. They claimed that Thaksin was using the lure of the lottery and LFC popularity to deceive the public about the merits of the investment by exploiting the Thai's susceptibility to gamble.[50]

From the perspective of the strict obligations for the respect of private property rights the idea of financing the investment via funds derived from a national lottery is an interesting case. With respect to the claims made by others against the use of lottery funds we would see a number of difficulties. As to the charge that the use of such funds may be unconstitutional we have already discussed the potential weakness of this case. Of more interest here perhaps is the charge that the use of funds for the purposes of investment in a private company is prohibited by the gambling laws of Thailand. We

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could be offered with certain binding promises and obligations as well.

[48] This change would have altered the legal nature of the investment company from a 'state enterprise' to a 'public firm'.

[49] Indeed overt government interest in the investment bid ended in July 2004 when Thaksin's former mentor Chamlong Srinmuang said it would be unconstitutional and go against Buddhist philosophy.

[50] Thaksin exacerbated this criticism claiming that the Thai people needed the lottery as they needed to be tempted.

would deny that legislation of this kind consists in strict obligations. To adhere to the moral conventions of private property is to deny any right to subject the property rights of others to any restriction bar that of the concomitant rights of others to enjoy their property rights. In this regard it is crucial to distinguish a vice, a virtue and a crime. To respect private property rights requires tolerance as to the vices of others. Provided no crime is committed against the property of others then it is within the bounds of an individual's property to use it as they please.[51] As such it is an illegitimate restriction on the property rights of the Thais to restrict the free choice over the allocation of lottery funds for whatever purpose they so please. Related to this, one must reject the idea that the use of the lottery is promoting vice and exploiting the Thais susceptibility to gamble. Firstly, the Thai government cannot restrict the rights of the Thais to use their property as they see fit (whether it is perceived as a vice or otherwise). Secondly, as discussed previously, provided there is no coercion to play the lottery, one is still free to do otherwise than they would have.

The case of the economists is also susceptible to criticism. Firstly, given our understanding of the subjectivity of opportunity cost, in no way can third parties discern with any accuracy whether an investment can be deemed profitable or otherwise. Secondly, we have already noted that individuals need not necessarily act to maximise profit or equity. Thais may invest in LFC on the grounds that it enhances their prestige etc. Thirdly, one of the benefits of the extended order of the market process is that the customer and producer do not need to know one another's reasons for the desire to exchange with one another. All is needed is a voluntary exchange between *homo agens*. Given this it is quite possible to conceive that the lottery purchasers are not interested in what the funds of the lottery are to be used for, nor is there any necessity to be. All that is needed is that they wish to play the lottery for whatever reason. There may be a case should the Thais play the lottery with the specific intention that the finance they provide will be used to invest in Liverpool. In this case, if the money is not used to invest in LFC a question can be asked as to whether a binding promise has been breached on the part of the promoters of the lottery. If so then a case against the lottery promoters may be made on the grounds that the private property of the players has been used by the promoters without legitimate entitlement (see Kinsella (2003) for more on binding promises from a Libertarian perspective).

A stronger case against the use of lottery funds could be made as all lotteries in Thailand are subject to licence by The Government Lottery Office. This may lead to a monopoly in terms of the provision of a lottery and as a consequence promote a lack of free choice regards the use of the lottery funds. As

[51] See the author's 2004 paper for a more detailed exploration of this point.

discussed previously, this may be construed as a false and arbitrary restriction of choice and hence deemed a coercion of an individual right to use their property (both a consumer of lotteries and a perspective producer of lotteries) as they see fit.[52] Of course the argument can be made that a limitation in ones power is not the same as a restriction on their freedom, but there is little question that in a strict sense if the promotion of a lottery is subject to licence that the Thais that wish to play the lottery are not free to do other than they do.

To sum up this argument, while some free market economists regard the lottery as similar to a regressive tax[53] strictly speaking the purchase of a lottery ticket is voluntary on the part of the player. It is possible that the player is playing for its sake alone and is unaware and perhaps uninterested in the uses of the funds collected by the lottery thereafter. It may of course be the case that the player plays a specific lottery because he has been informed that the finance raised is going to fund investment in LFC. It may transpire that the funds collected are not subsequently used to fund an investment in LFC. Whether the property rights of the player have been impinged depends on how binding that promise to use the money to finance investment in LFC is. Of course, promoting a lottery appears beyond the remit of a government that merely protects private property rights. However, our argument regarding seeing Thaksin as a private person who is inappropriately or inaccurately using the term ‘government promoted lottery’ could be used as a defence for the origins of this investment bid. This case is considerably weakened if there is a licensed monopoly on promoting lotteries or on deciding who can promote lotteries. This seems to be the case in Thailand and as such is restrictive of players and other potential promoters private property rights. This case against the use of lottery funds is strengthened somewhat when we realise that the state or public body that was to be set up to manage this investment would maintain either a 51% or 49% share of the lottery funds for ‘government. Insomuch as a Thai wishes to play the lottery and is restricted in choice of lotteries it could be construed that as he is restricted in his freedom in this regard, the extent to which the funds of the lottery are expropriated by government is in breach of his property rights. In this case, the strict obligation to respect the property rights of others are not being met and therefore subject to restitution and penalty. Of course an argument could be made that there is a choice not to play the lottery and that should you play the lottery the expropriation of a certain percentage is a contractual term that the potential player is free to reject by not playing. If the latter is the case we have little to say against the use of lottery funds to invest in LFC. The strict obligation to respect the property rights of others is being met.

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[52] It also may have efficiency consequences. See Williams and Barrow for a discussion on the impact of the regulation of lotteries (1995).

[53] See Heberling (2002) for such a view.

Option 2:Accept the investment offer of £73m by Steve Morgan

This bid has perhaps been less controversial in the eyes of the fans and the media. The basic outline of the bid is that Morgan valued LFC's currently issued shares at £1750 each. Following the injection of extra capital this valuation would have risen to £2785. He had a three-stage plan, firstly a 10 to 1 split of existing shares. There would have then been a 1 to 1 rights issue that it was proposed would have introduced an extra 350,000 shares (reportedly at a price of £175 per share). It was proposed that this would have raised £61m that if there were shareholders who did not wish to invest that Morgan would have underwritten the whole issue. Finally, an issue of 10% new shares would have been aimed at purchase by fans to raise a further £12m. Again Morgan has indicated that he would have underwritten any shares not bought.

This offer had the most legitimacy in the eyes of the fans. Les Lawson Secretary of LFC official supporters club stated that "I would rather Steve Morgan put the money in because he is a Liverpool fan and red through and through" (Hookham, 12th May, 2004). Whilst this may have been the case, in terms of our distinction between strict obligations and supererogatory duties for directors and shareholders, the owners of LFC would be under no strict obligation to accept Morgan's bid on the basis of supporter acceptance.

In terms of our analysis thus far, this investment option can be assessed on the same grounds as option 1a above. In so far as Morgan's bid and his ability to satisfy his obligations under this bid are derived from his own or justly acquired private property then the bid may be inherently ethical and thus legitimate for LFC to consider.[54] As with our analysis of the reasons as to why the Thai PM wishes to invest, the same is true also of Morgan. He has claimed that his proposal "… will not only keep ownership of the club with its supporters, where it rightfully belongs…" (Fifield, 12th May, 2004). He also claimed that LFC is an English club and should stay an English club. Both of these reasons are at best supererogatory in nature for the LFC shareholders and directors to consider. We have already discussed how a property owner's reasons for action are outside the remit of Economics. If Morgan wished to gift his shares to the Liverpool fans we could have no objection. Secondly, for business

[54] We are ignoring as irrelevant for our purposes the discussion point of this bid, namely that it is part of a personal battle between the Chairman David Moores and Morgan. We will assume that both men have the best interests of the club in mind.

institutions within a market process, it is irrelevant whether the club is English owned or not (although prudence may lead to a belief that this is preferable).

What would have been crucial for LFC to consider is whether Morgan would have been using his own property and that property validly acquired to finance the bid. For LFC's board of directors they would have a strict duty to explore previous actions taken by Morgan that led to his ability to finance the bid. As with our previous analysis, If it was shown that any of the previous actions leading to the investment finance for the bid benefited from redistributed taxation then strictly, if the contract were to be agreed with LFC it would be inherently unethical. This again would have made any benefits achieved by LFC from the investment illegitimate and subject to restitution by the aggrieved parties. For LFC there would be serious consequences in terms of any future contracts they would make if the proceeds being used for such investment derived from an illegitimate contract. The stability and predictability of such future contracts would be in doubt. Of course, if Morgan's investment option were financed solely by private funds (and these funds in their lineage can be assessed as legitimately owned and acquired property) then it would have adhered to the strict obligations of the moral conventions of the market process.

Option 3:Accept the investment offer to buy a 30% stake in Liverpool for £67m by a Thai business consortium headed by the Chairman of GMM Grammy Paiboon Damrongchaitham.

This offer has its origins in the original offer by the Thai PM.[55] Damrongchaitham backed the Thai PM's bid and when this fell through as reported previously, he decided to pursue the same interest. Damrongchaitham has set up a holding company to try and buy a stake in LFC. The price he is offering is the same as that of the Thai PM's bid and he has stated that he intends to list the shares of Liverpool Thai Holding on the Thai Stock Market. In so far as Damrongchaitham's bid can be assessed under the same framework as Morgan's bid, then under the strict obligations of the protection of private property rights this is an inherently ethical bid. In so far as this is the case, the LFC directors would be in breach of their fiduciary duty not to consider this bid on the grounds that a local investor or perhaps a Liverpool fan does not make it. In terms of their strict obligations, they should only consider whether (on the assumption that the representation of the property available to Damrongchaitham to satisfy his obligations in the contract is ethical) the bid would enhance the shareholder's interest in the club.

Option 4: Reject the above investment options

One option that LFC's board could consider is to reject all three options. Clearly, certain ethical issues would dissolve if this were done. However, there is a possibility if this option was taken by the directors that it would be unethical. If we assume that the shareholders of LFC wish to enhance their profits/equity then it is possible that by rejecting all the offers that the directors would be in breach of their fiduciary duties to act in the interest of the shareholders. If it was expected that any of the above offers would increase the profit/equity of the shareholders and if the offers were rejected on other grounds then clearly a strict obligation would be breached. This option is not fanciful given the option I and III are mistrusted in part as the prospective investors are not Liverpuldians and option II has raised controversy due to the reported animosity between Morgan and the Liverpool Chairman, David Moores. The major benefit of the spontaneous order of the market process is that it aids co-operation and association between individuals who need not have knowledge of one another. To reject any offer derived from the market process for reasons that could be deemed at best supererogatory in nature, may be a breach of a strict ethical obligation.

Conclusion

In this paper we have argued that shareholders and directors of business institutions including football clubs have a strict obligation to ensure that any contracts that they may enter into are done on the basis of interpersonal free exchange where the private property rights of human agents are recognised and protected. This ought to be the crucial benchmark upon which investment bids are assessed. Whilst other issues may be of importance to football clubs such as the opinion of supporters, the nationality of the bidders etc, such issues can only be seen as supererogatory in nature for club directors who may have to decide on the acceptance or otherwise of a bid. Indeed, as with the LFC case, if the nationality of the bidder was to be the key factor in the acceptance or otherwise of investment, the directors may be in breach of their fiduciary duty to shareholders if for instance the foreign bidder's investment is expected to enhance shareholder's profits relative to other bids and the shareholders wish to enhance profit.

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[55] As of the 1st Sept this bid is ongoing. It is further reported that the LFC board has rejected a new bid by Morgan similar to his original bid.

We have strongly argued as strictly unethical the acceptance of any bid, if the satisfaction of the obligations therein are to be derived from redistributed taxation. Under our framework, such a contract would be unstable and subject to restitution by the aggrieved party(s). This would have serious implications for football clubs, particularly in the serious financial climate that clubs currently find themselves in. What may seem as superficially a financial windfall for a club could actually lead to less stability in the future, should the ethicality of such bids be challenged. In the extreme it could lead to the bankruptcy of at present financially strapped clubs. We have provided a framework of ethical action for football clubs that integrates Economics, law and Ethics. For any football club within a free society, we believe that this framework of ethical action ought to be the crucial benchmark when considering any potential investment by professional football clubs. Adherence to this framework may entail short term 'losses' for the club as bids may fail this test. However, to turn a blind eye to this framework, may be to act in a manner that is ethically suspect and may not lead to genuine stability and predictability for football clubs, something, many clubs crave.

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