13

THE INEFFICIENT EXISTING SAFEGUARDS OF THE STAKEHOLDERS' INTERESTS

"Que el mundo fue y sera una porqueria, ya lo se…
(En el quiniento seis y en el dos mil tambien.)
Que siempre ha habido chorros, maquiavelos y estafaos,
Contentos y amargaos, valores y duble…
Pero que el siglo veinte es un despliegue
De maldad insolente, ya no hay quien lo niegue.
Vivimos revolcaos en un merengue
Y en un mismos lodo todos manoseaos…

Hoy resulta que es lo mismo ser derecho que traidor…!
Ignorante, sabio o chorro, generoso o estafador!…
Todo es igual. Nada es mejor.
Lo mismo un burro que un gran profesor.
No hay aplazaos ni escalafon,
Los inmorales nos han igualao.
Si uno vive en la impostura y otro roba en su ambicion,
Da lo mismo que si es cura,
Colchonero, rey de bastos, caradura o polizon…"

(Enrique Santos Discepolo, Tango, Cambalache/The Junk Shop)

"The world was and will be a filthy place, I know it…
(It was in 506 as it will be in the year 2000.)
As there have always been diabolical villains and crooks,
The contented and the disgruntled, honorable men and swindlers…
Because the twentieth century is a display
Of insolent wickedness, nobody can deny it.
We live wallowed in debauchery
All floundering in the same mud…

Nowadays there is no difference in being honest or a traitor…!
Ignorant, wise, tramp, generous or crook.
All is the same. No-one is better.
No difference, dolts as great professors.
No putting it off, no getting on with it either;
We are on the same footing with the corrupt.
Some men may be living out a lie, others are ripping off everyone;
We are all in the same boat; the priest,
The mattress-maker, the card-shark, the cheeky, the good-for-nothing..."

This chapter is a summary of the three chapters dealing with this topic in the book 'Business Ethics - The Ethical Revolution of Minority Shareholders', namely: The Inefficient Safeguards of the Minority Shareholders, The Attitude of Society, The Excessive Privileges of the Majority Shareholders. The author of the two books found it appropriate to include this summary in the book 'Activist Business Ethics' because of the relevance of these chapters and the prevailing situation to the need of adopting activist business ethics.

Discepolo has summarized in his shivering poetry what many of us believe is the present hopeless situation where the mighty rulers of the modern economy abuse the rights of the small stakeholders and shareholders. While presuming that the judges are incorruptible, we have to admit that individual, weak, minority shareholders, who do not have the time, means, and the assistance of the best lawyers, do not have much opportunity to win a case against the tycoons of finance. In paraphrasing the title of the film 'The Untouchables', which tells the story of how Al Capone was sent to jail by untouchable government agents, who could not be corrupted, we notice how the norms have evolved nowadays and how the large companies are now untouchables, as the minority shareholders cannot touch them or undermine their power if they have to confront them in court.

The purpose of this book is to render the unethical businessmen 'untouchables' in the religious sense of the word, like the caste in India, so that nobody would approach them, associate with them, or pay any attention to them. This attitude would be in contradiction to the present veneration that they enjoy from many of their colleagues. The unethical businessmen will be ostracized and apprehended by their Achilles' heel, which is the importance that they give to their image in society. Universities will refuse their donations. They will receive no more honorary doctorates or Legion of Honor. Impossible to imprison them due to their power, they should be treated socially as Mafia outcasts.

All that is legal is not necessarily ethical, and all that is unethical is not necessarily illegal. It could be legal to pour toxic materials into a river, but this is certainly unethical and harmful. Laws can change, but ethics is much more immutable. "Even more, laws themselves must be governed by moral criteria, which gives rise to the classic distinction between just and unjust laws. Thus, a law that violates a person's dignity (sanctioning slavery, for example) is not just and therefore cannot be accepted and observed... a just law... must be observed, not for merely practical reasons (to avoid punishment, for example) but also for moral reasons: there is an ethical

obligation to observe it." (Harvey, Business Ethics, A European Approach, Argandona, Business, law and regulation: ethical issues, p. 128-129) We should educate people to behave ethically exactly as we educate them to obey the laws. Aristotle has said that in order to know how to conduct we have to observe a just person. This maxim is somehow difficult to observe in the modern business world, but we can nevertheless compare ourselves to businessmen, who are relatively ethical.

"Ethics is above law and is also the source of the power of the law to oblige morally. Laws are not something sacred, as Latin culture sometimes pretends: they are no more (and no less) than an instrument at the service of the common good of society. They are not an obstacle that must be knocked down, jumped over or bypassed. They should be respected as a condition for the proper functioning of society, and even as a condition for personal freedom. (This notwithstanding, it must be recognized that in practice many laws may be defective or even immoral, and therefore not compelling.)" (Harvey, Business Ethics, A European Approach, Argandona, Business, law and regulation: ethical issues, p.130) This is the reason why in the polemic between legality and ethics in business, the ethical considerations should be predominant, because ethics is above the law, it is almost universal and immutable, while laws are conjunctural, national and often unjust.

One of the most acute dilemmas of managers is the dilemma between cases, which a priori seem equally ethical, but from different angles. Not the dilemmas between just and unjust situations, as in this case the choice is obvious, although it is not so simple for many businessmen. But the dilemma between two just positions is much more intricate, as it is incrusted in our basic values. "Four such dilemmas are so common to our experience that they stand as models, patterns, or paradigms. They are: Truth versus loyalty, Individual versus community. Short-term versus long-term. Justice versus mercy." (Kidder, How Good People Make Tough Choices, p.18) Kidder and many other authors on ethics prefer ultimately truth to loyalty, as it is better to divulge cases that are not ethical than to remain loyal toward a management that is not ethical.

The author gives examples of loyalty toward Hitler, Mao, Stalin, Sadam Hussein, or even Richard Nixon, which caused great damages to humanity, but we should also mention the fate of those who preferred truth over loyalty and who ended up in suffering atrociously. Between the individual and community he prefers community, although he mentions that if he were a Soviet citizen he would perhaps prefer the individual. Between short-term and long-term he prefers long-term, as we see how the financial scandals of the '80s, which were based on immediate gains in the short-term, were detrimental to society. And if he would have to choose between justice and mercy, Kidder would have opted for mercy, which signifies for him

compassion and love. As he can imagine a world so full of love that there would be no need for justice, but he cannot imagine a world so full of justice that we would not need any more love.

The issue of double standards is emphasized in this book in the most acerbic manner, because in order to conduct ourselves ethically we should apply our ethics first of all toward the weak, the poor, the strangers, the stakeholders and minority shareholders, who do not have in most cases the possibility to confront the mighty majority shareholders in court. Clemency toward the mighty at the expense of the weak is the height of hypocrisy, and unfortunately this is what is practiced in many cases where the mighty and rich are brought to justice. If a poor thief steals a few hundred dollars he is sentenced to jail for many years, but if an Israeli financial tycoon is found guilty of manipulating the price of the shares of his bank, causing the Israeli minority shareholders and the state of Israel billions of dollars in losses, he is not even sent to jail.

The ancient maxim, which says 'if it ain't illegal, it must be ethical', is completely erroneous, as the difference between ethics and law is as the difference between the enforceable and the unenforceable. "Law is a kind of condensation of ethics into codification: It reflects areas of moral agreement so broad that the society comes together and says, 'This ethical behavior shall be mandated.' But Moulton's distinctions also make something else clear: When ethics collapse, the law rushes in to fill the void. Why? Because regulation is essential to sustain any kind of human experience involving two or more people. The choice is not, 'Will society be regulated or unregulated?' The choice is only between unenforceable self-regulation and enforceable legal regulation… Surely a powerful indicator of ethical decay is the glut of new laws – and new lawyers – spilling onto the market each year." (Kidder, How Good People Make Tough Choices, p.68-69)

History is full of examples of how kingdoms, which were lacking ethics, have collapsed, and how regimes that were governed by so-called very humane laws and an exemplary constitution which were not implemented, as in the case of the Soviet Union, have also collapsed. The economic anarchy which prevailed in Italy in the '80s is another example of how the lack of obedience to the law, or even more to ethics, could be harmful to the economic progress.

Should we obey immoral laws? The Nuremberg tribunal has categorically decided – no! But where is the limit between disobedience and anarchy? The English, who judged at those trials, were confronting at the same time the disobedience to the laws of the British Empire from the same Jews who were the victims of the Nazis and wanted to immigrate to Israel. The British arrested thousands of illegal immigrants who returned to their homeland after having survived the Holocaust, and sent them back to Europe or imprisoned

them in concentration camps in Cyprus until 1948. The Americans had racist laws enforced until the '70s and only the Civil Rights Movement, headed by Martin Luther King, succeeded in shaking the American conscience and changing the laws and the implementation of the laws.

The companies are ready to invest considerable amounts in trials, which are much larger than the damages they would have to pay to the minority shareholders or the government institutions. GE preferred to pay $30 million in direct and indirect costs during a trial in which the government sued them for the amount of $10 million in damages for price fixing. Ultimately, the company was acquitted, and those who most benefited from the trial were the lawyers, while the shareholders, the government and other stakeholders lost. And this is the case of a trial against the American government. How can we ask from a poor individual shareholder to finance such astronomical sums, while the company will opt almost always to prefer the trial where it feels strong in comparison to the shareholders?

According to Monks, the decision of companies to obey or disobey the law is simply a profit and loss decision. The company checks if the cost of infringement of the law actualized by the probability to be discovered, brought to justice, and punished (there is almost no risk to be imprisoned), is equal to the cost of obedience to the law. If the cost is inferior, the company will prefer to infringe the law. This is why it is imperative that at the head of each company should stand an ethical CEO, with impeccable integrity and ethics, who will not just calculate impersonal feasibility studies on the benefits of obeying the law. We could try to make audits on the adherence to laws, augment the damages paid by companies, and so on, but the companies, with their infinite funds, their masses of lawyers and experts, and their immeasurable patience will win almost inevitably in court against the government, the stakeholders and the minority shareholders. They feel themselves stronger than all those organizations and individuals, and the only way to beat them is to change their attitude de profundis.

The Jewish religion teaches us that a just person builds a fence around the law, as the ethical man has to observe the ethical norms, which are much wider than the law. On the other hand, the modern lawyers seek loopholes in the law and try to reduce the implementation of the law to a minimum, which is in complete contradiction to Jewish law. It is therefore, practically impossible to rely only on the law, which many influential companies and lawyers try to reduce to a minimum, and we have to adhere to the ethical rules which are much wider than the law.

An extremely important aspect, which prevents the minority shareholders in most of the cases to resort to the law, is the time elapsing between the wrongdoing and the decision of the court. Besides the resources that the

shareholder lacks, the risk that he incurs, and the loss of health, this excessively long time makes a trial almost prohibitive. In 1990 Kuwait was invaded by Iraq. The country was looted, thousands of citizens were murdered or mistreated, many others fled the country. A country that was once one of the richest in the world was completely ruined. The United States, which decided to intervene, did so only six months after the invasion, while it was practically too late. We say that time is of the essence, and time is an essential factor in international relations as it is also with the rights of minority shareholders. Even if the law can assist ultimately the minority shareholders, if it occurs many years after they lost their money, it is too late to remedy effectively the wrongdoing.

Of all the maxims that differentiate law from ethics, the most salient is probably caveat emptor, which means that the buyer should always beware. Everything is therefore permitted to the seller if it is legal, and it is the buyer of the product or of the stock who should beware not to be wronged. The author of this book maintains that if it is impossible to rely upon the ethics of the seller, it is preferable to abstain from buying the product or the stock, even if it is a bargain, as it is preferable to pay a higher price to an ethical seller than a lower price to an unethical one. The reason is that if you have to beware of the quality, the delivery, the service and so on, the effective price of the unethical seller is much higher than the effective price of the ethical seller.

Nevertheless, there is some evolution in this respect, and the tendency today in many cases is to make the seller beware and advise the buyer of potential defects of the products. This occurs mainly if there is a law requiring it like in the pharmaceutical industry or in the case of McPherson v. Buick in 1916. But do we need to disclose everything to the public? “We need to ask, ‘Why in the case of physicians and therapists, as well as for other professionals such as attorneys, clergy, and journalists, is confidentiality so well protected in the law?’.... The duty to warn is limited in these relationships precisely because it is important to protect privacy and fairness, on the one hand, and encourage people to utilize professional help, on the other hand. Thus society forgoes certain benefits that might be derived from disclosure in order to protect other interests.” (May, Business Ethics and the Law, p. 19-20)

Ethical thinking and character bring about the ethical conduct, which is different from legal conduct, as the law defines what is permitted and prohibited, while ethics defines what should be done. If the law in the 21st century will be driven by ethics as maintained by certain specialists, it is needed to make a thorough reform in the legal system.

Monks describes in his outstanding book ‘The Emperor’s Nightingale’ the seven panaceas that are supposed to safeguard the corporate accountability. Those panaceas are really not effective cures, although they give a false sense

of comfort that is more dangerous than the total lack of cure. The first panacea is the CEO philosopher-king, who is supposed to distribute evenly the goods of the company amongst the stakeholders. Unfortunately, the CEOs today exercise near-monarchic power, and they are free to advance their own personal interests in compensation, even to the point of harming the interests of shareholders. “Institutional Shareholder Services (ISS) found that, in 1992, the top 15 individuals in each company received 97 percent of the stock options issued to all employees. Business Week wrote for all to read that ‘the 200 largest corporations set aside nearly 10 percent of their stock for top executives’, adding that ‘in almost all cases, moreover, it’s the superstar CEO who takes the lion’s share of these stock rewards.” (Monks, The Emperor’s Nightingale, p.62) The second panacea says that if a state and/or federal charter sets proper limits, then the corporation can serve the common good. This chart is effectively very weak and is practically non-existing in multinationals.

The third panacea is the independent directors. Those directors are nominated by independent committees and are elected by the shareholders, but in most cases they are effectively appointed by the CEOs of the companies. “Yet true independence – as well as true nominations and elections – remains elusive. How can an individual selected for a well-paying and prestigious job, notwithstanding his or her compliance with the most exhaustive legal criteria of ‘independence’, be expected to stand in judgment of those who accorded him this favor in the interest of an amorphous group of owners? Only men and women of the highest character can do this, but the best solutions cannot depend on character alone… Directors are not ‘nominated’, they are selected by the incumbent directors (however independent) and the chief executive officer. Shareholders do not ‘vote’, whether or not they mark a slate card; only those named on the company proxy will be elected. Ultimately, independence is a matter of personal character… the search of such a director requires that we be modern-day Diogenes, lamp in hand. This is not acceptable. We cannot have a system that depends on the luck of stumbling across an occasional honest man.” (Monks, The Emperor’s Nightingale, p.53-4)

The fourth panacea is the Board of Directors, well-structured boards, that rank high as a favored solution to governance problems. Monk believes that even corporations with perfectly independent directors and perfectly structured boards can remain insensitive to the needs of the public. The fifth panacea is independent experts. “The experience with ‘experts’, however is disheartening. The tendency to generate opinions satisfactory to present and prospective customers is strong. ‘Fairness’ opinions – whether of the prospective value of Time Warner stock, or in the leveraged buyouts that were the source of the Kluge, Heyman, and many other fortunes – have turned out

to be wrong, not by percentages but by orders of magnitude." (Monks, The Emperor's Nightingale, p.55)

The sixth panacea is the free press. The most acute problem of this panacea is the large percentage of the press' revenues that derive from advertising, which may impair the impartiality of the press in regard to companies that finance huge advertising budgets. Furthermore, Westinghouse has recently acquired CBS, Disney owns ABC, GE owns NBC, Time Warner owns Fortune and McGraw-Hill owns Business Week. The situation is similar in France and Israel. It is true that there is no protocol of the sages of the media, but it is difficult to expect critics on an unethical company from a newspaper which is owned by a public company and which can be subjected to retaliation in the future with juicy stories on the owners of the newspaper, written by another newspaper which is owned by a competitor company.

The seventh panacea is multiple external constraints, such as the economic constraints of competition and law, the impact of the tax and regulatory schemes, and the constraining influence of social values on corporate decision making. Adam Smith has recommended to rely on the invisible hand that will arrange everything. It is the same blessed hand that brought the worst recession ever in 1929, all the economic crises, stock exchange scandals, inefficiencies in the legal and governmental system, the reliance on the SEC that will solve everything and so on. All those 'cures' are only panaceas, which cannot cure the wrongdoing to minority shareholders. Only new organisms can cure the illnesses of the existing system, as all the other cures have proved to be in most cases worthless panaceas for safeguarding the interests of stakeholders and minority shareholders.

Minority shareholders themselves have today a distribution that varies significantly from the past. The institutional shareholders have, according to Monks, 47.4 percent of the capital of the American corporations, $4.35 trillion in 1996, 57 percent of the capital of the 1,000 largest companies, and half of this capital or 30 percent of the whole capital is held by public funds or pension funds. "In mutual funds (more formally known as investment companies), the 'independent directors' are chosen under the provisions of the federal Investment Company Act of 1940. They are paid extremely well for services that basically consist of deciding whether to ratify the investment management contract (with a firm whose principals invited them to serve as directors), and they almost invariably vote to do so. In other words, mutual fund trustees are paid so much too much for doing so little that they are unlikely to disturb their sponsors." (Monks, The Emperor's Nightingale, p.148) The fiduciaries of the funds must not be nominated and paid by the companies that they are supposed to control.

A basic factor in the need of the preponderance of ethics over the law is the ignorance of many shareholders of basic terms in the prospectus of companies, which are for them like Chinese. The law and the SEC regulations maintain that if all the important issues are disclosed in the prospectus - the companies have performed legally, even if the most important issues are disclosed in such a way that it is almost impossible to notice or understand them. Furthermore, even according to GAAP's rules, a company can attribute 'extraordinary' costs, due to a restructuring or purchase of a company, whose main assets are intangible, as costs which are treated separately in the financial statements, and which analysts do not take usually into consideration in the valuation of the company. This gives the possibility to companies and to those who control them to do whatever they like in the financial statements and in the prospectuses, while strictly obeying the regulations of the SEC and of GAAP.

Minority shareholders, and especially small investors, who do not understand anything in these intricacies, buy the shares at inflated prices at the stock exchange or at a shares' offering, and often the shares subsequently collapse, while the company has not committed any illegal act. The SEC has decided to change its rules and asks now from the companies to publish a prospectus in a comprehensible language to the average stockholder, and in parallel the rules of the financial reports on the extraordinary costs are being revised. Those changes are done due to the fact that according to Compustat for the US industrial companies, the value of the tangible assets amounted to 62 percent of the market value in 1982, while in 1992 it amounted only to 38 percent!

As far as the author of this book could analyze, most of the public companies traded in the stock exchanges of the US, France and Israel, are controlled by groups of shareholders who own less than 50 percent of the shares of the companies. If the minority shareholders who are effectively the majority would be conscious of their power, and if the boards would be elected only in proportion to the ownership while the remainder of the members would be elected by activist associations, this could revolutionize the modern business world, safeguard the rights of minority shareholders, and prevent the abuse of the shareholders by oligarchies backed by the executives of the companies.

The 'proletariat' of the shareholders, who are not organized, are too often abused, and the time is appropriate for them to get organized directly or through the activist associations, in order to exert their legitimate power and preserve their rights. There is no reason whatsoever that the last vestige of oligarchies, the business world, would remain immune to the democratic evolutions and revolutions that prevail nowadays throughout most of the countries of the world.

The evolution toward participation in the control of companies by minority shareholders is in progress, although very slow, but nevertheless we could notice a tendency, which is reinforced every day. "The California Public Employees Retirement System, the New York State Common Retirement Fund, and the Connecticut State Treasurer's Office have jointly pressured several dozen firms to put a majority of outside directors on their boards' nominating committees... In the future, major shareholders will include employees as well as institutional investors... we may even witness a general restructuring in corporate ownership, one that induces managers to shift their allegiance from the wealthy to the less advantaged: Pension funds and other institutional investors already account for approximately 40 percent of the shares traded, with 10 percent of the nation's households commanding most of the rest... the demand for a global managerial ethics will become increasingly urgent. American managers will have to compete not only on the basis of technique but of democratic values as well." (Kaufman, Managers vs. Owners, p. 196-8)

The class actions are very limited in their scope, rewards and efficiency. They are time consuming, and some people even alleged that they benefit mostly the lawyers that handle the cases. Still, until more efficient vehicles are devised, many shareholders resort to class actions.

The origin of the abuse of minority shareholders comes mainly from the greed of some of the majority shareholders, who in some cases has no limit. Those majority shareholders believe that they can do anything, risk more and more, since they find themselves unpunished, while remaining within the very large margins of the law. The minority shareholders who are wronged do not learn the lesson and continue to invest in companies that are conducted in an unethical manner. This is why it is needed to examine in depth the legal protection of those minority shareholders and its efficiency, in order to verify if the law suffices for their protection, or if the minority shareholders need an ethical protection, which has a much wider scope.

Members of society have a tendency to overlook events that do not concern them directly, and it is against this indifference that one has to fight, as an immoral ambiance has a tendency to penetrate to all domains thus affecting all members of society. One is always a client, or a minority shareholder, or a supplier, or at least a member of society, who is affected by ecological crimes or others. An immoral ambiance will make all of us victims, exactly like a totalitarian regime turns ultimately against the majority of its citizens.

Peters and Waterman reinforce the importance of the moral element in our life by affirming: "We desperately need meaning in our lives and will sacrifice a great deal to institutions that will provide meaning for us." (Peters and Waterman, In Search of Excellence, p. 56) And they continue: "an effective

leader must be the master of two ends of the spectrum: ideas at the highest level of abstraction and actions at the most mundane level of details." (same, p. 287) And thus, like Don Quixote, the leader has to possess a vision: "Attention to ideas – pathfinding and soaring visions – would seem to suggest rare, imposing men writing on stone tablets." (same, p.287)

If the majority of businessmen maintain that you cannot argue with success and that everything is permitted to obtain this success, there could still exist a minority that maintains that the absolute value is ethics and it is despicable to succeed by despoiling the rights of minority shareholders, stakeholders and, ultimately, everybody. The author of this book believes that this minority is probably right. They will ridicule us as they have done to Don Quixote, they will fight us as they have done to The Enemy of the People, but finally, the truth of the minority will be perceived as self-evident, as democracy, as Human Rights, as equality of mankind, black, yellow or white, men and women, Christians, Moslems or Jews, Americans, French, British, Dutch or Israelis.

Guido Corbetta, in one of the rare articles on the ethical questions in the relations between companies and shareholders divides the most common forms of ownership of medium-sized and large companies in four categories:
"1. Family-based capitalism: ownership is concentrated in the hands of one or a few families, which are frequently related to one another. Sometimes one or more members of the family is directly involved in running the company... This form of ownership is particularly common in Italy, but there are large family businesses practically everywhere.
2. Financial capitalism: ownership is concentrated in the hands of one or just a few private and public financial institutions which, through a system of cross-holdings, control companies and intervene in their management... Ownership also implies powers to appoint management and steer corporate strategy... This form of ownership (with some slight differences) prevails in Germany, Japan and some other countries like Holland and Switzerland; it is rapidly becoming more common in France too.
3. Managerial capitalism: ownership is shared among numerous stockholders, none of whom exercises any significant control over the activity of the managers who run the companies. The management of these companies therefore becomes a kind of self-regenerating structure... It is particularly important in the Anglo-American business world.
4. State capitalism: through central and peripheral agencies or corporations set up ad hoc (as in the case of, for instance, IRI and ENI in Italy), the state has direct control over the companies. The existence of this form of capitalism clearly stems from a certain view of state intervention in the economy. In Italy, France and Spain there are major groups belonging to this category...

In cases of family-based capitalism and financial capitalism, for example, boards of directors are appointed by the majority shareholder or by a coalition of shareholders who are often themselves members of the boards, which appear to be the real organs of corporate governance. In cases of managerial capitalism, board members are instead 'co-opted' by the management itself. Save a few noteworthy exceptions, the choice falls on people whose most important characteristic appears to be their willingness to endorse without question whatever proposals the top managers who are also board members may submit. The Board of Directors thus eventually loses its role as collective organ of corporate governance and often becomes a false front used to give greater authority to decisions made by others."
(Harvey, Business Ethics, A European Approach, Corbetta, Shareholders, p.89-90)

We have dealt at length throughout this book on the differences between the different types of shareholders, especially the majority or controlling shareholders who are called in Corbetta's article the 'governor' shareholders and the minority or small shareholders who are called in Corbetta's article the 'investor' shareholders. The characteristics of both categories are summarized as follows:
"We define our shareholder as a 'governor' when:
- the percentage share of capital stock owned is high;
- development of the firm is substantially dependent on the economic resources made available by the shareholder and, likewise, the economic fortunes of the shareholder depend significantly on the firm's profitability;
- the shareholder exercises his or her power to intervene in decision-making processes by appointing the firm's management, steering corporate strategy and monitoring and appraising the management's performance;
- any decision to sell the shareholding is limited by sentimental reasons, in the case of family businesses, or by complex strategic assessments which may occasionally even have implications for national equilibrium (as was recently the case with operations conducted in Germany and France).

We define the shareholder as an 'investor' when:
- the (percentage) share of capital stock owned is small, often a fraction of a percentage point;
- the link between the development and profitability of the firm and the fortunes of the shareholder is not very close: the company gathers its resources from a very large number of shareholders, each of whom makes only a limited contribution to the firm's needs; likewise, the income of each individual shareholder does not come from the dividends distributed by the firm;
- there is little likelihood that shareholders' opinions about management appointments and corporate strategy will influence decisions. On a practical

level a ‘shareholders’ democracy’ – i.e. effective control over management by numerous small shareholders – is not feasible;
- the decision to sell the shareholding is taken only on the basis of assessments of returns. ‘Abandoning’ is often preferable to ‘expressing dissent’ and, even more so, to ‘remaining bound’.”
(Harvey, Business Ethics, A European Approach, Corbetta, Shareholders, p.92)

The management of management-controlled companies is reluctant to hand over many of their autonomy to the shareholders. This increases the possibility of anti-company behavior on the part of the managers, who are concerned only with getting the maximum personal gain even when this puts the very survival of the company in jeopardy. Corbetta concludes that the governor-shareholder is not morally justified in using the company for his own ends, not even considering that his own compensation is secondary to that of other stakeholders. This article summarizes in a very efficient way all the analysis of the struggle for power and the different sets of interests between the majority and minority shareholders, and emphasizes the risks that the small shareholders incur from not controlling in fact the companies, thus enabling the majority shareholders to misuse their power and to wrong the other shareholders.

The author of this book is convinced that the present state of affairs regarding minority shareholders in France, Israel and the United States is to their detriment, in all the possible contexts. In family-owned companies, they cannot influence the decisions which are taken by the ‘Grandes Families’, the richest families, and which favor uniquely those families and rarely the other shareholders. The members of the family are elected to the key managerial positions in the companies, even if they are incompetent, the families do all that is necessary to keep their effective control over the companies, even if it is to the detriment of those companies. As the families have many ramifications to their investments, they can cause the collapse of the price of the shares in one company and enable another company to buy it for an extremely low price.

The ‘governors’ are convinced that if they are strongly involved with the companies, they control it and they supply it with funds, they have the right to do whatever they want with ‘their’ companies, and the minority shareholders are treated like speculators, who are not interested in the well-being of the companies but rather in a quick return on their investment. Even if this is true in certain cases, this does not decrease the rights of the minority shareholders, who are in many cases interested in the fate of the company no less than its governors. The cases of the managerial companies are even more dangerous for minority shareholders as the directors jeopardize the company itself in order to increase their personal benefits.

The democracy of the shareholders is completely utopic, the shareholders can shout, protest, be indignant, criticize or threaten on the Internet or in the shareholders' meetings, yet their influence is in most cases nil in all categories of the companies. This is the reason why they have to obtain new rights, even if they do not request it yet. In many cases the minority shareholders collaborate unknowingly with the majority shareholders in order to despoil their own rights. They have the opportunity to participate in shareholders' meetings, which are in many instances a ridiculous circus, manipulated very skillfully by the majority shareholders, who are assisted by the management of the companies.

And even if they participate in the meetings, which is very rare, they have no chance to win against the oiled machine of the owners who control the companies. Many cases illustrate those statements and show how it is possible to eliminate from the protocol touchy questions and answers to minority shareholders, how is it possible to treat as a ridiculous Cassandra troublemakers who disclose the schemes of the owners, thus even augmenting the adhesion of the other shareholders, and how ultimately the minority shareholders cooperate unknowingly or against their wishes in the schemes of the majority shareholders.

The collaboration of the victim with the aggressor is a well-known psychological fact, but the purpose of this book is to eradicate this mentality, which is too widespread, by eliminating the excessive rights of princes, dukes or majority shareholders to the detriment of the minority shareholders. The modern democratic evolution should not stop at the door of the business world. The kings do not amuse themselves anymore, as in Le Roi S'amuse of Victor Hugo, adapted to the opera Rigoletto by Piave, the tyrants have disappeared in most countries, it is high time that the 'droits du seigneur' of 'first night privileges' will disappear from the Medieval courts of the companies as they have disappeared from the court of the duke of Mantova.

Milken, the indisputable hero of the financial world of the `80s, perceived himself as above the legal and moral constraints and thought that they were good only for the 'footsoldiers' – in our case the minority shareholders, the less influential, the less creative, less aggressive, less visionary. There are therefore double standards for the footsoldiers and for the Knights, just as in the Middle Ages. This is the core of this book, how to evolve from the dark and unhealthy epoch of the Middle Ages, where a large part of the business world is still wallowing, to the Renaissance period of the years 2000, and to have the same standards for minority shareholders, as were achieved for minorities all over the civilized world, by Human Rights, the welfare society and democracy. Time is of the essence, as the situation is getting worse instead of improving.

The world economy becomes more and more concentrated in the hands of a small number of huge organizations, which control the economy, without being adequately controlled by the governments and the citizens, and least of all by the shareholders. In 1994, 1,300 companies have participated in mergers amounting to $339 billions. And today the mergers are even larger. The modern empires of companies are much more influential than the monopolies of the Carnegies and the Mellons. The profits of Wall Street in the last years of the century were stunning. The volume of the financial transactions of the `90s is 40 times higher than the productive economy of the US, while the volume of transactions of CS First Boston is higher than the GNP of the US. The SEC has not the necessary funds to control effectively those giants and the only safeguard against them is ethics.

Majority shareholders, executives and members of the Boards of Directors benefit from insider information, which is not accessible to minority shareholders. If the insiders utilize this information to buy or refrain from buying shares of the companies, they commit a despoliation of the rights of the minority shareholders. They risk nothing in buying the shares, as they know in advance that their prices will increase as a result of good financial results, a merger or a scientific discovery. On the contrary, if they sell their shares before the publication of negative financial results, they do not incur losses from the collapse of the shares' price.

"The game, then, like the manipulated market that is the outcome, is unfair – unfair to some of the players and those they represent – unfair not only because some of the players are not privy to the most important rules, but also because these 'special' rules are illegal so that they are adopted only by a few of even the privileged players." (Rae, Beyond Integrity, Werhane, The Ethics of Insider Trading, p. 518) Even worse, the insiders register their companies in Delaware, which enables them to benefit from a complete freedom of action in the governance of their companies. "Delaware, for example, has few constraints in its rules on corporate charters and hence provides much contractual freedom for shareholders. William L. Cary, former chairman of the Securities and Exchange Commission, has criticized Delaware and argued that the state is leading a 'movement towards the least common denominator' and 'winning a race for the bottom'." (Rae, Beyond Integrity, Jensen, Takeovers: Folklore and Science, p. 530)

If this is the case, does the SEC advise the shareholders of the risks that they incur when they buy shares of companies registered in Delaware? Does it try to change the corporate laws of this state?

The present state of affairs is unfortunately like in the Fables of Aesop and La Fontaine, as human nature has not changed since those ancient times. The

mighty always find reasons to abuse the rights of the weak - weird, legitimate or even moral. This is why there is a constant abuse of the rights of the weak by the powerful, and the weak have to suffer the consequences of their 'crimes', as they trouble the water of the wolves, they speak ill of them, and they have too many brothers. In order to punish their crime to want to drink in the same waters as the wolves, they almost always lose, as they are allowed to invest their money but they are prohibited from sharing the profits with the mighty.