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THE INEFFICIENT SAFEGUARDS OF THE MINORITY SHAREHOLDERS

"Selon que vous serez puissant ou miserable,
Les jugements de Cour vous rendront blanc ou noir."
According to your mighty or miserable position,
The judgment of court will render you white or black.
(La Fontaine, Fables, Livre septieme, Fable I)

There has been no major improvement, unfortunately, since the times of La Fontaine's fables until today. 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. Their donations will be refused by universities. 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 was 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 ofjustice that we would not need any more love.

One of the most well-known cases that illustrates those conflicts is the controversial case of Shylock, the Jew of Venice, who insisted on preferring justice over mercy, by getting the pound of flesh that he asked for as a collateral. This is the case of an individual who feels persecuted by the community and wants to avenge himself. This is the case of a person who knows that if he is satisfied in the short term he is going to lose in the long term. This is the case of the businessman who has his own truth, which is opposed to the loyalty that he owes to the Duke of Venice. And Shylock exposes his point of view in the well-known dialogue with Salarino:

"I am a Jew. Hath not a Jew eyes? hath not a Jew hands, organs, dimensions, senses, affections, passions? fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer, as a Christian is? If you prick us, do we not bleed? if you tickle us do we not laugh? if you poison us, do we not die? and if you wrong us, shall we not revenge?"
(Shakespeare, The Merchant of Venice, Act III, Scene I, p. 203-4)

Shakespeare unties the drama in a manner that favors ethics as being stronger than law, morals being stronger than a given promise. But Shakespeare's ethics is quite equivocal, as it is applied against a Jew, who is treated by the Duke as a stranger. Would the same ethics be implemented if the situation was opposite, and Shylock was a poor Jew who owed money to Antonio, the Merchant of Venice, a Christian originating from an ancient Venetian family? Would we ask Antonio to conduct himself ethically toward a poor Jew in order to prove Christian mercy toward him? The issue of double standards is emphasized here 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, and in the cases of this book toward the minority shareholders, who do not have in most cases the possibility to confront the mighty majority shareholders in court.

True ethics is revealed only when you do not have a sympathizing Duke of Venice and a collaborating population on your side... 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.

However, we should inlay in golden characters the speech of Portia, who appears at the court disguised as a jurist doctor, and hang it on the walls of all the board rooms in modern companies to be applied for stakeholders and minority shareholders.

"But mercy is above this sceptred sway,
It is enthroned in the hearts of kings,
It is an attribute to God himself,
And earthly power doth then show likest God's
When mercy seasons justice. Therefore, Jew,
Though justice be thy plea, consider this,
That in the course of justice none of us
Should see salvation: we do pray for mercy,
And that same prayer doth teach us all to render
The deeds of mercy."
(Shakespeare, The Merchant of Venice, Act IV, Scene I, p. 211)

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 emigrate 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? We will analyze later on in the empirical part the class-actions and see how, effectively, it is almost impossible for a shareholder to win a case against the mighty companies.

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, in France in particular,

as it permits in many cases, especially in the commerce courts – tribunal de commerce, to transgress the rights of the minority shareholders as will be examined in the case of the French company.

The campaigns against arbitrary decisions of the commerce courts conducted by such important persons such as Mme. Neuville, President of ADAM, the association for the protection of the minority shareholders, will undoubtedly have a positive result. This reform will probably not assist the minority shareholders of the French company, which were wronged in one of the cases of this book by their company and were fined with hundreds of thousands francs by the commerce court, but it will assist the minority shareholders of the year 2000 and beyond. Until then, the shareholders could still resort to the appeal court, Cour d'appel and then the supreme court, Cour de cassation, a procedure which is nevertheless very long and costly.

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. The empirical research of this book will prove in the case studies how all these panaceas without exception proved to be inadequate at the moment of truth. 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 minority shareholders.

Zola describes in a magnificent way the panacea of the board of directors in his famous book 'L'Argent', The Money. One would think that Zola had participated in hundreds of board meetings in recent days in the US, Israel or France. Only a genius writer like Zola can remain immortal and stay modern, even after more than 100 years. "Saccard avait acheve de mettre la main sur tous les membres du conseil, en les achetant simplement, pour la plupart. Grace a lui, le marquis de Bohain, compromis dans une histoire de pot-de-vin frisant l'escroquerie, pris la main au fond du sac, avait pu etouffer le scandale, en desinteressant la compagnie volee; et il etait devenu ainsi son humble creature, sans cesser de porter haut la tete, fleur de noblesse, le plus bel ornement du conseil. Huret, de meme, depuis que Rougon l'avait chasse, apres le vol de la depeche annoncant la cession de la Venetie, s'etait donne tout entier a la fortune de l'Universelle, la representant au Corps legislatif, pechant pour elle dans les eaux fangeuses de la politique, gardant la plus grosse part de ses effrontes maquignonnages, qui pouvaient, un beau matin, le jeter a Mazas.

Et le vicomte de Robin-Chagot, le vice-president, touchait cent mille francs de prime secrete pour donner sans examen les signatures, pendant les longues absences d'Hamelin; et le banquier Kolb se faisait egalement payer sa complaisance passive, en utilisant a l'etranger la puissance de la maison, qu'il allait jusqu'a compromettre, dans ses arbitrages; et Sedille lui-meme, le marchand de soie, ebranle a la suite d'une liquidation terrible, s'etait fait preter une grosse somme, qu'il n'avait pu rendre. Seul, Daigremont gardait son independence absolue vis-a-vis de Saccard; ce qui inquietait ce dernier, parfois, bien que l'aimable homme restat charmant, l'invitant a ses fetes, signant tout lui aussi sans observation, avec sa bonne grace de Parisien sceptique qui trouve que tout va bien, tant qu'il gagne." (Zola, L'Argent, p. 310-1)

"Saccard had succeeded in getting hold of all the members of the board of directors, in buying them out literally, in most of the cases. It is due to him, that the marquis de Bohain, compromised in a story of bribing equivalent to a swindle, discovered with his hand in the bag, could escape from a scandal, by compensating the robbed company; and he became subsequently his humble servant, while remaining with his head high, an aristocrat, the best ornament of the board. Huret, as well, since Rougon has dismissed him, after the theft of the wire that announced the transfer of Venetia, has committed himself fully to the success of the Universelle, representing it at the Parliament, fishing for it in the dirty waters of politics, keeping the largest part of the shameless scams, that could throw him one day to prison.

And the vicomte de Robin-Chagot, the vice-president, received a hundred thousand francs as a secret fee for signing without examination during the long absences of Hamelin; and the banker Kolb was paid also for his passive readiness to oblige, while utilizing abroad the strength of the company, which put it even in jeopardy in his arbitrations; and Sedille himself, the silk merchant, undermined by the consequences of a terrible liquidation, was lent a huge sum, that he was unable to reimburse. Only, Daigremont kept his full independence toward Saccard; which bothered the latter, sometimes, although the nice person remained charming, inviting him to his feasts, signing everything without inquiring, with his amiability of a skeptical Parisian that finds that all is well, as long as he is gaining money."

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. We shall see in the cases analysis how those fiduciaries behave in cases of abusing the rights of the minority shareholders and what is the level of their courage and integrity.

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, as we shall see in the empirical part of the book.

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! The repercussions of this state of affairs, which are extremely dangerous for minority shareholders, is examined at length in the case study of the American company in the empirical part of the book.

We have to define the legal term of minority shareholders, as it is used in this book. A minority shareholder is defined as a shareholder who does not exert control over a company. The majority shareholders almost always exert an absolute control over the company, its management, its board of directors, and so on. But there are many companies that are controlled by shareholders who own only 40 percent, 30 percent, 20 percent, or less of the shares, and whom however exert full control over the company, as the remainder of the shares are scattered among a large number of shareholders, with every one of them having a minimal percentage being unable to gather a number of shares which is similar to those of the majority shareholders. In this event, all minority shareholders who are scattered, although together they could control even 80 percent of the shares, are defined as minority shareholders, as every one of them is a minority shareholder, and they cannot assemble enough votes to act as majority shareholders.

There are also cases where there are two or three groups of shareholders, with every one of them having 10 percent or 20 percent of the shares, and who are minority shareholders. They can elect their members to the board of directors and split the control or they can make coalitions between two groups of shareholders against two others, etc. Here also, those who control the company are the 'majority' shareholders, as they have the majority of the seats in the boards of directors, even if in reality they have less than 50 percent of the shares of the company, while those who do not control the board of directors are defined as minority shareholders even if they own together the majority of the shares. In many cases, the shares are distributed among a large number of shareholders who own each a few percentages, one percent, or even less of the shares. In those cases, or if the managers own themselves a few percentages of the shares, the management of the company

manages often to get the control of the company and of the board of directors, and they can do what they wish in the company, as the shareholders are too scattered and cannot exert their power.

The definition of minority shareholders in this book will be therefore shareholders who do not exert control over the board of directors of the companies, even if together they own the majority of shares, and the majority shareholders are defined as those who control the board of directors of companies, even if effectively they own much less than the majority of the shares. The analogy between this situation and the political system of nations is clear. Companies are still at the stage of oligarchies and have not reached the status of democracies.

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)

There is a difference in the modes of operation of the stock exchanges in the world. In Great Britain, for example, the participation in the capital is much more concentrated and institutionalized than in the United States. The shares' issues are principally offered to the existing shareholders in order to permit them not to dilute their ownership. Nevertheless, the basic ethical principles of the financial markets are identical. The just transactions should be performed out of free will, it is impossible to force a shareholder to buy or exchange a share against his will. The transactions should be done for the good of both parties, it is impossible to base a transaction on the oppression of part of the shareholders, and they should be based on information, which is common to all the shareholders. Insider trading is therefore strictly prohibited as it favors only a part of the shareholders to the detriment of those who do not possess the information.

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 empirical part of the book has many references of class actions. A detailed explanation of the process of class actions is given at the end of the book.

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 which 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.

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