ACTIVIST BUSINESS ETHICS
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ACKNOWLEDGEMENTS

Following the publication of my book ‘Business Ethics – The Ethical Revolution of Minority Shareholders’, this new book enlarges the theoretical scope of activist business ethics. I am convinced that business ethics in its present form is not sufficient to overcome the reluctance of a large number of companies and owners to adopt ethics in their business. A more activist and militant approach is needed, and this book tries to find the origin of such an activist ethics in religion, philosophy, psychology, democracy and international contexts.

As the traditional safeguards of the interests of the stakeholders, namely the press, the law, the boards of directors, etc, are not sufficient, activist business ethics has to be enhanced by the personification of stakeholders, the predominance of the values and ethics of the CEOs and a change in the attitude of society toward ethics. In my previous book new vehicles for the safeguard of interests of minority shareholders and stakeholders were examined, namely the Internet, Transparency, Whistle-Blowers, Activist Associations and Ethical Funds.

However, we have seen in the case studies of the first book that even those new vehicles are not sufficient in many cases and my new book presents two future vehicles that do not exist yet – the Supervision Board and the Institute of Ethics. These vehicles are empowered by executive tools and can cope effectively with the existing institutions, which are controlled mainly by majority shareholders.

In view of the pertinence of the book’s subject, many friends and colleagues have assisted me with their advice and support, and I would like to mention especially Henri-Claude de Bettignies, Henk Van Luijk, Meir Tamari, Jacques Levy, Francis Desforges, Genevieve Ferone, Jan Pieter Krahnen, James Weber, Samuel Holtzman, Jean-Philippe Deschamps, Andrew Pendleton, Anke Martini, Ishak Saporta, Gad Proper, Amnon Rimon, Shahar Dabach, Rachel Zeiler, Dietmar Fuchs and Nira Cory.

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Last but not least, my greatest thanks are to my wife Ruthy, and my children, Joseph, Amir and Shirly, who are the inspiration for all my academic books and novels. Ethics begins at home, and I am grateful to my family for sharing this long Odyssey with me.
Jacques Cory is a businessman with a background in Economics and Business Administration (MBA from Insead, France) who has encountered many cases of despoiling stakeholders and minority shareholders in his long international career in top-level positions in the high-tech industry and in mergers and acquisitions.

Cory decided to write a thesis and two books on this subject in a frank and open manner, in order to bring the subject to the forefront of the public’s interest. His first book ‘Business Ethics: The Ethical Revolution of Minority Shareholders’ was published by Kluwer Academic Publishers in March 2001. ‘Activist Business Ethics’ is his second book.

He is a member of the Board of Directors of Transparency International Israel and a member of The Society for Business Ethics, and is very active in the Israeli business ethics community. Cory lectures at universities, companies and ethical organizations throughout the world on business ethics with a special emphasis on minority shareholders. Cory is also the author of the novel on ethics called ‘Beware of Greeks’ Presents’, published in March 2001 in Israel by Bimat Kedem Publishers.
INTRODUCTION

“The truth can wait, for it lives a long life”
(Arthur Schopenhauer, German philosopher, 1788-1860)

The philosopher Schopenhauer believed in the eventual triumph of truth, despite the disappointments engendered by his indifferent contemporaries. Two centuries later, we live in a time of accelerated changes, and we do not have the long life to wait for the truth. Activist business ethics, business ethics with a more activist militant approach, is needed in order to remedy the wrongdoing committed to the stakeholders and minority shareholders. This will be achieved by cooperation between ethical businessmen and businesswomen, activist academics and associations of stakeholders and minority shareholders.

We should treat others as we would want them to treat us, not through interest, but by conviction. Yet this principle is not the guideline of many companies in the modern business world, although most of religions and philosophers have preconized it in the last 3,000 years. How could we convince or compel modern business to apply this principle and is it essential to the success of economy? In order to answer these questions this book examines the evolution of activist business ethics in business, democracies, Christianity, Judaism, Islam, Buddhism and other religions, as well as in philosophy, psychology and psychoanalysis. The book examines international aspects, the personification of stakeholders, the predominance of values and ethics for CEOs and the inefficient safeguards of the stakeholders’ interests. The book presents new vehicles for the safeguard of those interests and future activist vehicles, such as the Supervision Board and the Institute of Ethics.

Activist ethics in business should be established in the forefront of business as a countermeasure to the crumbling of moral values. The cost of the lack of ethics and the contractual costs are much higher than the cost of ethics in business, as trust becomes more and more rare. Many businessmen perceive business as a poker game, in which cheating is condoned or even encouraged. But business is much more serious; businessmen spend most of their creative life at work; the jobs of millions of persons are at stake as well as the welfare of the world’s economy. In spite of the difficulties, ethical conduct is favorable to business, as shown in numerous cases from ethical companies such as IBM, Johnson & Johnson, Levi-Strauss and others. Unlike many of
their contemporaries, these companies are not amoral and their mission is not mainly to maximize their profits without infringing the law. Between unethical conduct and an unlawful act there is only one step, and this step is very easy to cross, especially if the environment is favorable. The end does not justify the means and ethics should be on an equal basis with profitability.

The democratic evolution of companies is not self-evident. After experiencing a multitude of cases where an absolute power of the companies’ executives has caused astronomic losses, quasi-democratic modes of operations were adopted. It is quite far from the democracy that should be practiced in the business world, which is still mainly autocratic, but much closer than it was 100, 50 or even 10 years ago. Still, there is a contradiction between what is perceived as the basic moral principles of companies and the practice in modern business. Those principles are honesty, acting in good faith and in an equitable and just manner without betraying the trust of the stakeholders and by treating them as equals, practicing reciprocity, avoiding the exploitation of others, and acting from your own free will without forcing your will on your partners. But the practice in many cases is that the heroes of the business world are ‘the smart guys’, the ‘street fighters’, and the prevailing maxims are ‘catch as you can’ and ‘we cannot argue with success’.

In the last 10 years there was an effervescence of Protestant Christian ethics in the U.S. business world, in order to counterbalance the immoral norms of the 80s and 90s. In parallel, there are many authors who try to prove that the ethical norms in business, according to Catholic, Jewish, Moslem, Buddhist or other religions, are the norms that should be applied in order to return to the religious ethical sources. This book will study activist business ethics developed in the main religions as well as by some of the most famous philosophers from Aristotle to modern times. A profound reading on activist business ethics throughout the centuries may prove that there are no major differences between the different ethical versions and ultimately the business world knows exactly what should be done when one advocates adhesion to ethical norms that are in many ways universal.

In Protestant morals, word of honor is sacred, a handshake is worth more than a contract, and integrity is the most precious human commodity. If a person was honest, God rewarded him, and if one was dishonest, God punished him. An immoral conduct was the cause of a profound sense of culpability. But in large bureaucratic organizations, it is no longer possible to link directly the actions with morals. In the Jewish religion the financial system is based on an absolute trust of governmental and other institutions, as without trust money has no worth, being only a piece of paper. It perhaps explains why the words ‘In God We Trust’ appear on the U.S. dollar bill. The culmination of Judeo-Christian business ethics is that if we invest only in ourselves we lose
everything when we die, but if we invest in others - if the ‘stakeholders’ become an integral part of our existence - we could survive after our death.

Many theories have been proposed in order to prove that there could be a difference in the ethical norms in different countries. It is evident that there are various nuances in the practice of business ethics in all the countries of the world, but there are no major differences in the ethical concepts in the world. In the same manner that it was possible to establish universal human rights of the UN, that democratic principles are universal, and that ecological norms are known throughout the world, even if they are not applied universally, it is possible to define universal norms of ethics in business and particularly of ethics in the relations between companies and stakeholders.

Heraclitus said that everything changes ‘panta rhei’ and on the other hand Mme. Angot said ‘plus ca change plus c’est la meme chose’, the more things change the more they stay the same. Who should we believe? Is there an evolution in morals toward a more ethical world, or will the righteous be compensated only after they die, as in this world only the sharks prosper? The answer is in the proportion of the application of morals. There is a clear-cut evolution toward a better world. It is maybe a candid perception, that was common also in Europe between the two world wars, and everybody knows what happened subsequently. But it is preferable to hope that the world has arrived at the conclusion, after experiencing everything, that the best way to prosper economically is to conduct ourselves ethically and democratically.

The most important characteristic of a businessman has to be his moral integrity, especially in fiduciary positions such as CEO, vice president, or investment banker and analyst, positions that are responsible for financing tens or hundreds of millions dollars. It is imperative to broaden the humanist education in the universities, including an ethics course. The astronomical sums of remuneration to top-level businessmen are at the base of corruption. Unfortunately, there are not enough businessmen who cannot be corrupted in any case. For most of the others, it is only a relative question, as corruption and ethical deviation vary from case to case and do not have to be flagrant in each case. If executives are obliged to behave unethically, they prefer it to be toward weaker groups who cannot retaliate, and the individual stakeholders and minority shareholders are amongst the weakest groups.

The greatest danger for stakeholders and minority shareholders consists in the holy alliance between the executives of the companies and the majority shareholders who appoint and remunerate them. Those executives involve themselves in the quarry, by receiving shares and warrants of the companies in very advantageous terms that enable them to get rich with almost no risks.
This book includes also a summary of the chapters on activist business ethics from a book by the same author called ‘Business Ethics - The Ethical Revolution of the Minority Shareholders’. The traditional safeguards of the rights of minority shareholders have often failed in their duty, and those shareholders have remained practically without any protection against the arbitrariness of the companies and majority shareholders. The law, the SEC, society, boards of directors, independent directors, auditors, analysts, underwriters and the press have remained in many cases worthless panaceas. Nevertheless, in the Ethics of 2000 new vehicles have been developed for the protection of minority shareholders, mainly the Internet, transparency, activist associations and ethical funds. Those vehicles give the shareholders at least the chance to understand the pattern and methods that are utilized to wrong them and give them a viable alternative for investment in ethical funds.

The new vehicles will prevent minority shareholders from using the Armageddon weapon, by ceasing to invest in the stock exchange and causing the collapse of the system that discriminates against them. The preconditions for the ethical revolution of minority shareholders do exist, but they are insufficient as other conditions are needed to be met, such as the ostracizing of unethical managers by society, appointment of ethical CEOs to head the companies, and above all giving an equal weight to financial and operational performance (the hardware), as well as to ethics and integrity (the software).

One reason for the ‘clean’ conscience of the managers of the companies, who despoil the rights of the individual stakeholders and minority shareholders, is the lack of personification of those groups. It is much easier to commit a wrongdoing toward somebody who you do not know and do not appreciate, especially if you are convinced that you are right.

The executives and majority shareholders who commit unethical and unlawful acts are not ostracized by society. On the contrary, very often, they are admired and envied by their colleagues who would have behaved similarly if they only had the opportunity. They are treated as ‘smart guys’ who take advantage of the good opportunities that they encounter. Man is before everything a social animal and it is imperative that businessmen who are unethical be treated as outcasts, banned by society and despised by their peers.

In recent years a revolution has occurred in the publication of data on the Internet. Most of the quoted companies have a site on the Internet and stock talk groups, comprised mainly of minority shareholders, where information and misinformation is shared between the shareholders who have access to the Internet. It is pure democracy, as in the agora of Athens, where all citizens had the right to participate. Information about future wrongdoing to minority
shareholders can be divulged in advance and one has only to read it and sell his shares, while there is still time.

The full transparency of companies, via the Internet and ethical reports, could safeguard ethics, even if it is achieved through the assistance of whistle-blowers. Transparency compels every employee to adopt an ethical conduct, as his conduct could be published on the Internet and in the press or scrutinized by activist associations, so that his family, friends and community would learn of his conduct.

The implementation of ethics is assisted by the ethical funds. These funds were established primarily in the U.S., but are also very influential in Canada, the Netherlands and the U.K. in the last 10 years. They comprise investments of more than two trillion dollars in the U.S. and have succeeded in obtaining financial results above the average of the U.S. stock exchange, while keeping very strict ethical screening. The minority shareholders will have to collaborate with those funds and buy only shares of ethical companies.

Ethical investing is screened to reflect ethical, environmental, social, political, or moral values. It examines the social records of companies in local community affairs, labor, minority and gender relations, military and nuclear production, product quality, approach to customers, suppliers and shareholders, and avoidance of sales of tobacco, alcohol, pornography or gambling products.

In the last decade of the 20th century we witnessed in the U.S. and France, but not in Israel, effervescence in social and other activism of shareholders, and in many cases they have succeeded in changing the initiatives of very large companies, especially in the United States. But, ultimately, those organizations, the ethical funds, transparency and Internet, have not yet succeeded to change drastically the attitude of companies to stakeholders and minority shareholders. New vehicles that do not exist yet are needed.

This book proposes to establish a new organization - the Board of Supervision or Supervision Board - where the shareholders who control the Board of Directors would be able to elect a maximum of 50 percent of its members, even if they hold almost all the shares, while the other members of the Board of Supervision will be elected by the other shareholders and by the national Institute of Ethics. The Supervision Board may hire and fire the CEO of the company and decide what remuneration, bonuses, shares and warrants he will get. In this manner, the CEO will have allegiance to all the shareholders and will have only one target: to succeed in his mission without taking into consideration the divergence of interests between shareholders.
The members of the Board of Supervision will be elected by adjusted voting, as an affirmative action against the absolute rule of the shareholders who control the Board of Directors. If those shareholders hold 40 percent of the shares, they will be able to get only 20 percent of the members of the Board of Supervision. If the other shareholders present at the shareholders’ meeting hold 10 percent of the shares (as the shareholders are scattered and do not attend or send their proxies), they will be able to elect 10 percent of the members of the Board of Supervision. The other 70 percent will be elected by the National Institute of Ethics.

The Institute of Ethics will be financed by a fee on each transaction in the national stock exchange. The members of the Institute, who must have an impeccable ethical reputation, will be elected by the national courts, and will not be active businessmen or hold shares in companies. This Institute will also give an ethical rating of companies, as the creditworthiness rating of companies ranking from AAA to CCC. The companies will not be obliged to obey the rules of the Institute of Ethics, but by abstaining they will not get an ethical rating and investors will refrain from investing in those companies.

Activist business ethics, assisted by the new vehicles required to impose it, is essential to the survival of modern economy in the 21st century. It is our duty to inculcate the businessmen with ethics principles, to eradicate the false maxims that business is a game and its heroes are ‘street fighters’, and to ensure that practice would concur with the business ethics’ principles toward stakeholders and minority shareholders.
2 ACTIVIST ETHICS IN BUSINESS

“This is the land of the great big dogs, you don’t love a man here, you eat him! That’s the principle; the only one we live by.”
(Miller, All My Sons, Act Three)

The essence of the deontological position is the notion that actions are morally just when they conform to a principle or a duty in question. The term deontological is derived from the Greek deon, signifying a duty. The deontology claims that the moral statute of an action should not be judged by its consequences, as the utilitarians advocate, but by its intention, as the consequences cannot be predicted. Therefore, we should treat others as we would want them to treat us, not through interest, but by conviction. The moderate deontologists, such as Etzioni, take the consequences in secondary consideration, bringing them closer to the modern utilitarians, who take intentions in secondary consideration.

Ethics is the science of morals, the set of moral conceptions of a person. It includes usually the standards of practice or the categories of conduct that are acceptable or not to a group with common interests, in order to achieve those interests. Morals deal with customs, admitted conduct rules, which are practiced in a society. Morals emanate values instilled by families, communities and religious organizations. They are based on what people understand as acts of conscience, ‘con and science’, or ‘knowing with’, as the individual conscience is a manifestation of the influence of a group’s conscience. People think that certain acts are justified or not in comparison to the customs of their group, family, religion, or community. “Si l’on croit les philologues avertis, le mot éthique proviendrait de deux termes grecs, Ethos et Itos. Le premier désignerait le ‘comportement juste’, le second signifierait la ‘tenue de l’âme’. Vertu intérieure et attitude extérieure apparaissent ainsi comme liées. La définition même de l’éthique attire notre attention sur une nécessaire cohérence. Elle est un appel a une unité de vie. L’exemplarité est au cœur de l’éthique. Elle pourrait se définir comme l’éthique incarnée, l’éthique en mouvement.” (Dherse, L’Ethique ou le Chaos, p.362) “If we believe the renowned philologists, the word ethics comes from two Greek terms, Ethos and Itos. The first one means ‘just behavior’, the second one means ‘status of mind’. The interior virtue and the exterior attitude appear therefore as linked. The definition of ethics draws our attention on a necessary
coherence. It is an appeal to a unity of life. The exemplarity is at the core of ethics. It could be defined as ethics incarnated, ethics in movement.”

The companies are under no obligation to conduct themselves ethically according to Friedman, and according to other authors they should behave ethically if they want to be profitable in the long run and increase their valorization. But the author of this book believes that companies should behave ethically and be profitable in parallel, and even if ethics diminishes the profitability of the company, they should still behave ethically. There are therefore two parameters with an equal weight, or two poles that should guide companies – ethics and profitability. Under no circumstance should we behave in a flagrant, unethical manner, even if in an extreme case the company ceases to exist. A good CEO has to ensure that his company should be profitable and ethical at the same time. From the moment that a CEO admits that the end justifies the means and in order to rescue the company he should behave in an unethical way, all the executives receive a license to conduct themselves in the same manner. All companies are threatened in one way or another: by competition, adverse economic conditions, lack of resources etc., and every excuse is valid and sufficient in order to behave unethically, as ‘a la guerre comme a la guerre’ – ‘everything is allowed in war’, ‘business is like a jungle where only the strong ones survive’, etc., etc.

Ethics should be established in the forefront of business because of the crumbling of moral values. The cost of the lack of ethics is much higher than the cost of ethics in business. The contractual costs get higher and higher, as trust, which is at the basis of business, becomes more and more rare. All businessmen prefer to negotiate with colleagues who behave ethically, but how many of them arrive at the conclusion that ethics cannot be unilateral? Nothing can substitute for an ethical threshold, which is at the base of modern business in the long run. But is business ethics contingent with religion, culture or the nation? What are the common lines of the ethical norms and what are the differing ones? Can we define international ethics, bearing in mind that the world is shrinking and becoming a global village, that we witness an information explosion, and that there is an evolution trend in all domains?

Are those hypotheses true or are we victims of wishful thinking? In the diamond world, where Jewish businessmen are predominant, business transactions were often concluded with a handshake and the words ‘Mazal oubracha’ (in Hebrew: luck and blessing), as business in this domain, which is mostly international and discreet, cannot be concluded contractually and is based uniquely on the basis of absolute trust. Diamond merchants who transgressed the norms of trust were ostracized and could not continue to work in this field. But nowadays, we witness more and more cases where the
trust is betrayed and the merchants ask themselves how to continue making business after the crumbling of the norms.

The ideal could be that like the diamond merchants, ethics and trust would become the lingua franca of the modern business world, the international language that all the ‘gentlemen’, ‘knights’ and ‘Freemasons’ of ethics would speak in the same manner. Many lawyers would become unemployed, but business could be conducted in a much more efficient way with substantially reduced costs.

“The goal of ethics education is not character building; but rather, like all college course work, they attempt to share knowledge, build skills, and develop minds. A course in business ethics is a useful tool to assist students when as managers they face a decision with a major ethical component attached to it... Perhaps business ethics can be best described as a not so simple method by which people can come to know what is right from what is wrong and go on and do what is right in the business arena. It simply suggests what Mark Twain once said: ‘Always do right. This will gratify some people, and astonish the rest.” (Madsen, Essentials of Business Ethics, p.7)

Ethics in companies has as a source the mission of the corporate, which is translated in more detailed responsibilities toward the stakeholders - the clients, employees, shareholders, suppliers, creditors, community, nation, or even the world. Those responsibilities are themselves detailed in procedures and in practice. According to Drucker, the ultimate responsibility of the directors of the companies is above all not to harm – primum non nocere. Based on this principle, an employee who learns that his employer has the intention of committing an illegal or immoral action that can harm the stakeholders of the company has the duty to disclose it to the public, the police or the SEC. But in this case, he is always treated as a whistle-blower, and he is liable to very severe retaliation, sanctions in his work, in society, and sometimes he risks also his life.

There are also theories like those of Albert Carr advocating that: “… business is indeed a game; the rules of legality and the goal of profit are its sole ethical guideline. Thus, if one is to win at the ‘game of business’, one must have a ‘game player’s attitude’, which means being able to divorce one’s private morality from one’s sense of right and wrong on the ‘playing field’ of business.” (Madsen, Essentials of Business Ethics, Carr, Is Business Bluffing Ethical?, p.63) According to Carr, we could find many analogies between business and poker. We cannot pretend to play poker with the ethical principles of the church. In poker it is legitimate to bluff, even to a friend, if you are not holding a good hand.
But the hypothesis that business is analogous to poker, thus justifying cheating in business and unethical conduct, is according to the author of this book completely erroneous, as in the same manner we could argue that marriage is like poker, friendship is like poker, and even the writing of this book is like poker. It is true that in poker bluffing is allowed, that is all. And even that, only if this is the prevalent norm amongst the players. But from the moment that all businessmen do not agree that it is legitimate to bluff, or rather to cheat, it should be forbidden to do so, as it means playing a game with different rules for every one of the players. It is like a husband saying that it is permitted to betray his wife, while his wife believes that it is forbidden to do so. As business, poker, marriage and the academic world operate in different dimensions it is impossible to make analogies from one dimension to the other. In one point we can agree with Carr when he attacks the businessmen who say that it pays to be ethical and in the long run we have more to lose by antagonizing our stakeholders. Ethics cannot be perceived as an item in the balance sheet of the company; we should not conduct ourselves ethically because it is worthwhile to do so, exactly as one should not be a good Christian simply in order to get to paradise. One should be moral by conviction, exactly as one should be good, generous, just, and a good Christian by conviction, and not in order to get to heaven or gain an additional profit margin of 2 percent.

Carr’s worst mistake is treating business as a game. Extensive experience in business brings inevitably to the conclusion that business is much more serious and should not be treated as a game. Businessmen spend more than 50 percent of their creative time in business; the jobs of millions of persons are at stake; we could even say that it is a life and death issue for the economy and welfare of a multitude of persons, and to treat business as a game is identical to treating war as a game. We should not be willing to win in business at any cost, exactly as the Allied Forces did not win the war by committing atrocities like the Nazis. The modern world, that was reborn out of the ashes of World War II, cannot admit that everything is allowed in business as in politics. The same principles that prevailed with the Allies, and that prevail in the UN, should prevail also in business, as ethics and morality are indivisible and should be applied to all domains of life.

From the moment that we perceive business as a game, we legitimize the mentality of Las Vegas, we transform the robber barons into heroes, and the croupiers become the modern priests. Until we reach a status where ‘rien ne va plus’, as we have reached in the last 10 years in many investment banks in the U.S. and in many business aspects in France, Great Britain and Israel. But the robber barons of the 19th century have at least built railroads, industries and oil fields, while their modern homologues have left us with junk bonds! “No place have standards dropped more vertiginously than in the investment banking trade that is presiding over this restructuring. While other areas of
business are in most respects no more ethical than ever, wrongdoing in this central arena makes a crisis of business ethics seem in full swing. And with investment banking now largely manned by the young, is the erosion of ethics here an early warning of imminent trouble elsewhere in business as this generation rises to power? Insider trading is investment banking’s most widely publicized sin.” (Madsen, Essential of Business Ethics, Magnet, The Decline and Fall of Business Ethics, p. 136,137)

The number of companies that do not behave ethically is surprising. “Between 1970 and 1980, 11 percent of the largest American firms were convicted of lawlessness, including bribery, criminal fraud, illegal campaign contributions, tax evasion, or price-fixing. Well-known companies with four or more convictions included Braniff International, Gulf Oil, and Ashland Oil. Firms with at least two convictions included Allied, American Airlines, Bethlehem Steel, Diamond International, Firestone, Goodyear, International Paper, National Distillers, Northrop, Occidental Petroleum, Pepsico, Phillips Petroleum, R.J. Reynolds, Schlitz, Seagram, Tenneco, and United Brands. The recent Union Carbide disaster in Bhopal is well-known, as is the E.F. Hutton fiasco, the General Dynamics fraud, and of course, the Wall Street scandals involving Ivan Boesky, David Levine, and Michael Milken... Unethical behavior in business more often than not is a systematic matter. To a large degree it is the behavior of generally decent people who normally would not think of doing anything illegal or immoral. But they get backed into doing something unethical by the systems and practices of their own firms and industries. Unethical behavior in business generally arises when business firms fail to pay explicitly attention to the ethical risks that are created by their own systems and practices.” (Madsen, Essentials of Business Ethics, Velasquez, Corporate Ethics: Losing it, Having it, Getting it, p. 229)

What are the reasons for unethical behavior in a company? Goals that are very difficult to achieve, a behavior that is motivated by incentive fees, a culture of a company or the industry that ignores ethical conduct, unreserved obedience to the superiors’ directives, short-term goals, and others. In fact, everything can lead to unethical conduct, as it is much more difficult to conduct oneself ethically in the competitive environment that prevails in the company and elsewhere. It is therefore necessary to change the culture of companies, with an ethical commitment of the management of the company and an inflexible imposition of ethical rules at all the levels of the organization. It is said that ‘crime doesn’t pay’, but much more often it is perceived in the business world that ‘ethics doesn’t pay’. “Doing what’s right is not the easiest, nor the most profitable, course of action. Ethics sometimes requires self-sacrifice, foregoing personal gains or bearing significant costs and burdens. In such difficult times, people are sustained by the ethical norms that they have cultivated and that provide them with the personal incentives and inner motivations that enable them to do what is right in spite of the costs.”
In spite of the difficulties, in many cases ethical conduct is favorable to business. The ethical conduct of IBM toward its employees results in a very high degree of motivation and loyalty. The customers of companies that are treated ethically are willing to pay a premium by buying their products at a higher price, recommending their products and remaining loyal to the firms. Hewlett-Packard has become very profitable because of its ethical conduct toward its customers. The quality of their products and their impeccable service are at the base of their high market share. Other companies that have benefited from their high ethical standards are: Borg-Warner Corporation, J.C. Penney, General Mills, Quaker Oats, Advanced Micro Devices, Chemical Bank of New York, Champion International, Levi-Strauss, Caterpillar, and others.

One of the prime examples of how a commitment to ethics pays off is Johnson & Johnson, the pharmaceutical manufacturer. When seven individuals died after consuming Tylenol capsules contaminated with poison, a massive recall of all Tylenol capsules was launched, a move that cost the company an estimated $50 million after taxes. This conduct was according to the company’s credo, which states ‘our first responsibility is to the doctors, nurses, hospitals, mothers, and all others who use our products’. Following its brave and costly ethical conduct, the company has recovered its losses, sales have reached record levels, and the firm is prospering, benefiting from the trust and confidence that its response has created. This crisis might have destroyed the company, but its ethical conduct boosted its image in the eyes of Johnson & Johnson’s millions of customers.

In the 60s and 70s the student revolution prevailed. The author of this book, then a student at INSEAD business school, had difficulty understanding in May 1968, during his frequent visits to the Sorbonne and the Odeon, what the subtle differences between the Maoists and the Trotskyites were, as all of them had absolute social and ethical convictions. But in the 80s and 90s, when the sons of the ‘revolutionary’ students grew up, the norm has become that it is right to get rich at all cost and the sooner the better. There is no longer time to participate in the Peace Corps or to spend a few years in a Hindu Ashram. If you’re not a millionaire at 26, you’ve missed your career. In Israel, many of the ‘nouveaux riches’ are young people of 25 to 35 who have founded start-ups and earned millions or even tens of millions of dollars, when their companies were acquired by American companies, or when they sold part of their shares at public offerings. For many young businessmen, Las Vegas personifies the United States instead of the Grand Canyon or Lincoln Center, thus forgetting that after the roaring 20s the world has suffered the worst depression of modern times. We return to social Darwinism, where the law of
the fittest prevails, and we forget that this ideal was at the basis of the Fascism and Nazism. ‘We cannot argue with success’ has become the leitmotiv a la mode, even if the success was obtained to the detriment of the weak - the customers, suppliers and minority shareholders.

Theories, such as those of Milton Friedman, prevail, stating that a company is amoral, and that it should only maximize its profits without infringing the law. Another distinguished professor, Theodor Levitt, has written in the Harvard Business Review that business has to fight as if it was at war; and as in a good war, it should be fought gallantly, valiantly, and especially immorally. But amoral or even immoral beliefs could lead to a conduct illustrated in the famous business case of the Ford Pinto. In 1978, three young women were burned to death when the Pinto that they drove was hit in the rear and the gas tank exploded. Ford Motor was sued for criminal homicide for the first time in its history. In 1980 the jury decided that the company was not guilty. However, the company has lost in the public opinion and paid millions of dollars as damages. It was disclosed that Ford knew that the tank was vulnerable, but when it analyzed the cost of the change it appeared that it would amount to $11 per car. They made an economic analysis, which showed that it would be less costly to pay damages for the few deaths and injuries that statistically would occur rather than to introduce the change in all the cars. As Ford behaved legally, it was impossible to convict the company, although ethically they were responsible for the deaths. This case illustrates blatantly the difference between ethics and law, as ethics maintains never to cause unjustifiable harm and do only what we would want others to do to us.

Twenty years later, an American jury decided that General Motors has to pay damages to six persons, who were severely burned in a car accident, the astronomical amount of $4.9 billion. The plaintiffs accused the company of installing the gas tank of the Chevrolet Malibu only 20 cm. from the car’s rear, causing an explosion of the tank as a result of an accident. General Motors calculated that the cost of the repair would be $8.5 per car, while costs of damages would amount to $2 per car only. From there, they came to the economic conclusion that they should not repair the cars. One of the jurors said: ‘We are only numbers for them, statistics’. The verdict is a breakthrough in the attitude of the American law toward ethical considerations, which should be adopted and put at the same level as the economical considerations. It proves how business ethics has evolved in the last 20 years, at least in the United States.

But even if we confine ourselves to examine the damages committed by infringements to the law and not to ethics, we can find that “Details of white-collar crime which costs the US at least $40 billion annually (while street crime costs are estimated at only $4 billion) are documented.” (Madsen, Essentials of Business Ethics, p.147-148) The only ones who are to be blamed
for this situation are the authorities that spend billions of dollars against street crimes and only minimal sums against white-collar crimes. If we could change the priorities of governments and invest considerable amounts against economical crimes we would be able to generate many more funds for social causes. But individual stakeholders have never financed electoral campaigns of presidents or congressmen and why should someone be interested in their fate? On the contrary, those who finance the politicians are in many cases those who commit the economic crimes against the law or ethics.

Between an unethical conduct and an unlawful act there is only one step, and this step is very easy to cross, especially if the environment is favorable and if we feel excited by the flirtation with danger. Many businessmen are convinced that while they are winning nothing could happen to them. One could imagine himself at the court of Napoleon at the eve of the Russian campaign! They start to wrong individual stakeholders; they finish by wronging all the other stakeholders. They start with millions of dollars, they continue with tens or hundreds of millions of dollars. They start with unethical acts; they finish with unlawful acts. As ethics is at the fringe of the law, from the moment that we sacrifice the outposts, the capital becomes an open city. This is the reason why it is so important to inculcate ethics in business, and those who want to safeguard legality in business have to favor the adherence to ethical norms, especially when we observe, as it will be explained at length further on, that legality ultimately does not succeed to prevent in many cases the wrongdoing to the rights of the stakeholders.

Those facts are at the foundation of this book, as the wrongdoing to the rights of shareholders has its origin in certain investment banks, its legitimization in the erroneous notion that business is like a game, where everything is permitted because ‘catch as you can’, and where the virtues of the CEOs get lost in their interests as the rivers disappear into the sea.

According to Etzioni, “The neoclassical paradigm is a utilitarian, rationalist, and individualist paradigm. It sees individuals as seeking to maximize their utility, rationally choosing the best means to serve their goals... The coming together of these individuals in the competitive marketplace, far from resulting in all-out conflict, is said to generate maximum efficiency and well-being.” (Etzioni, The Moral Dimension, p.1) But he continues: “... the approach followed here is one of codetermination: It encompasses factors that form society and personality, as well as neoclassical factors that form markets and rational decision-making... Where the neoclassical assumption is that people seek to maximize one utility (whether it is pleasure, happiness, consumption, or merely a formal notion of a unitary goal), we assume that people pursue at least two irreducible ‘utilities’, and have two sources of valuation: pleasure and morality... The neoclassical assumption that people render decisions rationally... is replaced by the assumption that people