

Doomsday Depression
2020
Major Banks, Major Multinationals, Major Pension Funds

\$ Trillions

Subprime Mortgage Crisis & Economic Recession
2007-2010
Lehman, Bear Stearns, AIG, Fannie, Freddie, Madoff, Fuld, Kerviel

Corporate Scandals
2001-2003
Enron, WorldCom, Arthur Andersen, Tyco, Parmalat, Vivendi, Lay, Skilling, Ebbers

Dot-Com Bubble Burst
1995-2001
Corning, AOL, Cisco, Nortel

Nick Leeson, Barings

Junk-Bond Market Collapse
1985-1990
Drexel, Milken, Boesky

\$ Billions

**BUSINESS ETHICS FOR A
SUSTAINABLE SOCIETY**

**CONQUERING THE CORPORATE
FRANKENSTEIN**

JACQUES CORY

To my mother, Pauline Simon Cory, who was my ethical inspiration since my early childhood. In her kindness, grace, wisdom and common sense, she gave me a model which I have followed ever since.

REVIEWS ON THE INTERNATIONAL AND HEBREW VERSIONS OF THE BOOK

"The book has anticipated the economic events and history reveals Cory's intellectual sagacity. The book is drawing well the landscape in which those successive crises did occur and makes clear how each time we find the same causes that additional regulatory efforts did not fix. I also like the cases Cory presents - not only making excellent use of Zola. The book mixes different styles: a factual information, comments by others along with Cory's own comments, and personal remarks about Cory and his behavior. It gives to the book a personal touch to strengthen the thesis it defends and brings weight to the 36 "commandments" Cory develops and justifies. The book is the wisdom of a man of experience and of conviction who has translated his successful business career into a pedagogical package for the benefit of the young generation. It is a "casebook" of an original nature that blends business experience with a solid creed in the dysfunction of the current neo-liberal system and illustrates his conviction with real cases (or historical examples) making his message easier to understand and to transfer." Henri-Claude de Bettignies, Professor at INSEAD (France and Singapore), Stanford (US) and CEIBS (China), February 2009

"The book has a wise premise, brilliantly fulfilled. It's a potential best seller. It will be a classic." Alexandra Reed Lajoux (CKO National Association of Corporate Directors, author of the McGraw Hill M&A Series), August 2008

Chosen as "the book of the month – the recommendation of the library", by the Israeli CPA Review "Roeh Haheshbon" in October 2008

"In spite of its length and seriousness, Cory's book is fascinating. Wall Street's earthquake in the last week fully validated the premises of the book. After reading the book, you understand better how business is conducted and capital accumulated, who wrongs you and how is it done. Cory's book is unique due to its multifaceted case studies and analysis of ethical dilemmas in masterpieces. For him, ethics is not a theoretical issue, it is emotional and one has to feel it deep inside in order to be ethical. Cory suggests conducting ethical screening for executives, with integrity tests based on case studies and dilemma simulation. At the book launching in ZOA House in Tel Aviv, Cory proved to be an outstandingly gifted orator." Globes (Israeli equivalent to the Wall Street Journal) - G Magazine pp. 25-30, September 18, 2008

"It is not only a book that is well-written but a profound book, wise and mature, positive in its perception of business ethics and social responsibility and it does not hesitate to attack and criticize unethical behavior. The book is brilliant, witty and enlightening, sometimes even provocative, and with captivating examples of case studies and analyses of literature, history and economics in business, it illustrates the different concepts and themes to the reader in a fluent, accessible and compelling language." Zeev Nahari, Deputy Chief Executive Officer, Chief Financial Officer, Head of Finance and Accounting Division, of the largest Israeli Bank, Bank Leumi, August 2008

"The book is well structured, it is very clear, it can be read by people who are not specially experts in the subject; it is really interesting." Meir Heth, Professor at the College of Management Israel, former Chairman of the Israeli Stock Exchange, Bank Leumi - the largest Israeli Bank, and Teva Pharmaceutical, September 2008

"The book is very relevant due to the current events in the world; it has an original approach, it highlights the issues of business ethics with acute pungency."

Joshua Sobol, a leading Israeli playwright with international fame, September 2008

"In my opinion, the book can be a basic book on the instruction of business ethics. Its main advantage is in the presentation of the subjects in a way that can attract the attention of those that the ethical implications are not an integral part of their day to day work. The variety of case studies in the book can be used not only for teaching at universities but also in instruction in business organizations. It will enable one to challenge the common thought on the objectives of economic organizations in society in general. Ideally, this knowledge and discussion may bring about a change in the way that junior & senior managers operate in business and society." Itzhak Saporta (reviewer), Tel Aviv University, August 2006

"I have no doubt that the subject is very "hot" and that the book will become a text book because of its subject and its presentation. It is essential that as many businessmen, executives (also middle management), academics and politicians as possible read it." Mickey Sharan, CEO of Mamgorot Dagon, a large Israeli corporation, September 2008

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I would like to thank my colleagues at the University of Haifa, who had confidence in my teaching capabilities, and offered me to lecture in MA, MBA and BA programs, faithful to the University's mission of social responsibility: Aharon Ben Zeev, Yossi Ben Artzi, Yehuda Hayut, Ilan Meshulam, Eran Vigoda-Gadot, Aharon Cohen, Zohar Segev, Menahem Mor, Onn Winckler, Irit Keinan, Shlomo Harel, Vered Dana Tron, Debbie Mishor, Tova Golan, and especially Ido Landau. I would like to thank as well my colleagues at the University of Tel Aviv, Itzhak Saporta and Ran Lachman, as well as at Magnes of the Hebrew University of Jerusalem, Hai Tsabar and Isashar Una. Special thanks also to my colleagues at Insead in Fontainebleau and Singapore, who gave me the opportunity to teach an elective course in Business Ethics, and who were the first to invite me to lecture in an academic institution even before I received my PhD.

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FOREWORD – THE STRUCTURE OF THE BOOK

The issues of Corporate Governance and Social Responsibility, Business Ethics and Sustainability are relevant today more than ever. The US, Scandinavia, Switzerland, the Netherlands, Great Britain, France, Germany, Canada, Singapore, Australia, New Zealand are the most ethical countries in the world, with a legislation and enforcement designed to combat corruption, with Ethical Funds amounting to trillions of dollars, with activist associations safeguarding the rights of stakeholders and environment, with universities establishing institutions of ethics and teaching business ethics.

There is still a large number of unethical corporations, small, medium-sized and mega multinationals, which wrong blatantly the rights of stakeholders - employees, customers, suppliers, creditors, communities, ecology and governments - having in mind only one goal: maximizing valuation for the controlling shareholders at the expense of all other stakeholders. Those corporations alleviate sometimes their conscience with large contributions to social, ecological and educational organizations, calling it sustainability, social responsibility and even business ethics and appearing in many publications as the champions of business ethics. But business ethics is a holistic concept: you cannot become an ethical company by contributing millions to operas and theaters while selling products causing the death of millions, by donating millions to universities while laying off thousands of employees and increasing the salaries of executives to tens of millions, by publicizing yourself as a green multinational while ruining the environment in the countries where you operate and collaborating with murderous regimes.

Thousands of books have been published in the last ten years about business ethics, sustainability, corporate governance and social responsibility. Most of

them are based on theoretical issues and are written by philosophy professors who specialize in business ethics. Those books have contributed remarkably to the conferring of business ethics to the students and to management of companies and organizations. Yet, I have experienced, as an international business executive and consultant and even more as a lecturer at universities and companies, that there is a strong need to learn business ethics with different approaches - group dynamics, role playing, case studies and analyzing films, plays and novels about business ethics, corporate governance and social responsibility. There are excellent books with case studies, such as "Business Ethics, policies and persons" by Goodpaster, Nash and de Bettignies, but they are few, and there are almost no books on the analysis of films, plays or novels. However, the students are enthusiastic and give the best feedback on courses with group dynamics assignments, personifying the roles of the protagonists in cases which are based on personal business experience, and of classical and modern heroes of masterpieces such as: All My Sons, The Merchant of Venice, Rhinoceros, The Visit, The Great Gatsby, Jean de Florette, An Enemy of the People, as well as documentaries or films based on true events such as: Wall Street, Erin Brockovich, The Insider, Rogue Trader, Enron - The Crooked E, Barbarians at the Gate, Damaged Care, and so on.

In parallel to an international career in business, where I have encountered hundreds of ethical dilemmas, I have started to research ethical issues related to sales, finance, the stock exchange, organizational behavior, whistleblowers, insider information, independent directors, operations, M&A, and so on, focusing on ethics to minority shareholders. To my surprise, I have discovered that no academic books have ever been written on minority shareholders although they are hundreds of millions losing hundreds of billions in schemes and wrongdoing by unethical corporations. I have written two books on this subject published by Springer/Kluwer - "Business Ethics: The Ethical Revolution of Minority Shareholders" (2001), focusing on several cases in the US, France and Israel, and "Activist Business Ethics" (2001) with the theoretical aspects of activist ethics including a practical roadmap on how to enhance business ethics, based on my

large business experience. The books were purchased mainly by the largest universities and by some companies and law firms and a soft cover edition of both of them was published in 2004. Some of the theoretical issues addressed in my first books are referred also in this book and put in a modern context. My ethical novel "Beware of Greeks' Presents", a modern Odyssey of an ethical businessman, was published in Israel in 2001 and was adapted to the theater in Hebrew and in French.

After obtaining my PhD (cum laude) at CNAM, France, one of the largest European Universities (subject of the doctoral dissertation in French "Business Ethics and the Minority Shareholders"), I teach in the last few years, mainly at the University of Haifa, Israel, whose central mission is social responsibility, and have taught a business ethics course at Insead, one of the leading business schools in the world, and courses at the Technion and other academic institutes. The thirty courses that I have devised on Business Ethics, Corporate Governance, Social Responsibility, NGOs, Globalization, Sustainability, Mergers and Acquisitions, Leadership and Integrity, Business Administration and so on, in English, French and Hebrew, are based on group dynamics and role playing of cases, films, plays and novels, as well as theoretical studies. The theoretical chapters are based on the modern business ethics literature and my research, while the cases are based on my experience as written for my courses on the different facets of business ethics. Furthermore, the students understand far better ethical dilemmas while personifying Gordon Gekko, Erin Brockovich, Dr. Jeffrey Wigand, Dr. Thomas Stockman, Shylock, Karla Zakanassian, Beranger, Ken Lay, Cesar Soubeyran, Gatsby, Nick Leeson, Ross Johnson or Linda Peeno, than by studying the classical theories on Ethics by Aristotle, Bentham and Kant. My book "Selected Issues in Business Ethics and Social Responsibility", published by Magnes, the Hebrew University of Jerusalem, in Israel in 2008, is based mainly on those courses. It is the first academic book of its kind to be published in Israel. I have adapted this book to the international market, updated it, putting it into the context

of The Economic Whirl and added many chapters on globalization, sustainability, social responsibility, corporate governance and ethics.

The book comprises concepts and themes, 20 new case studies, that have received a favorable response from executives in multinationals and students in executive MBA, MA and BA courses, and an analysis of 50 films, documentaries, novels and plays, more than half of them based on famous cases, such as the Ford Pinto, Barings Bank, RJR Nabisco, Dr. Jeffrey Wigand and the Tobacco Industry, Ben & Jerry's, McLibel, Linda Peeno and Medicare, Enron, Woburn contamination case, Erin Brockovich, Karen Silkwood, models of multinationals, documentaries on sustainability and analysis of books on globalization. The book is designed for universities, organizations, companies and the general public interested in learning new and original facets of business ethics.

The book is divided into seven main parts:

- Introductory part, including this Foreword, an Introduction on Profitability and Business Ethics, The Context and the Waves of the Economic Whirl with my Credo on the Challenges of Business and Ethics in the Economic World towards 2020 and its 36 Principles, Inefficient and Efficient Ways Attempting to Overcome the Economic Whirl, the Theoretical Foundation of Business Ethics from Aristotle to Nowadays, Jerome Kerviel, Ethical Strategic Planning and Screening, The Institute of Ethics, Presenting Efficient Vehicles Enhancing Business Ethics Awareness, and finally – Business Ethics from the Prophet Amos and the Bible to Professor Joseph Stiglitz.

- Six parts, on the main topics of business ethics, each of them including concepts and themes, case studies and analysis of films on those topics:

I. Leadership, Integrity and Whistleblowers

The ethical climate in corporations is set primarily by the CEO and the Board of Directors. An ethical leadership of the executives and whistleblowers who divulge wrongdoing are the best guarantee for the ethical conduct of the company. This part comprises cases on ethical leadership, management and whistleblowers in the various departments of the organization and professional integrity, and the analysis of plays as "All My Sons", "Death of a Salesman", "An Enemy of the People", "Glengarry Glen Ross" and films as "Executive Suite", "F.I.S.T." and Ben & Jerry's model of leadership.

II. Ethics in Corporate Governance, the Stock Exchange & Banking

The most renowned cases on ethical dilemmas are in corporate governance, the stock exchange and banking. This part includes a detailed survey on the main issues, as well as the 36 laws on wrongdoing to minority shareholders, that were validated by the Enron scandal. It reviews cases on insider information, corporate governance, integrity of directors and independent directors, the stock exchange, banking; and an analysis of films - Wall Street on the scandals of the eighties, Rogue Trader on the collapse of Barings Bank, Barbarians at the Gate on leverage buyouts and RJR Nabisco, hostile takeovers, wrongdoing to minority shareholders, etc.

III. Ethics, Corruption, Wrongdoing and Stakeholders

The lack of ethics brings about corruption and wrongdoing to stakeholders. Corporations afflicted with corruption cannot survive in the long run, as the corruption contaminates the business world and the foundations of society. This part examines the motives of ethical and unethical conduct, of corruption and wrongdoing, with cases on wrongdoing to stakeholders in mergers, corruption in sales, bribe in government tenders, analysis of films on the victims of corruption - Jean de Florette, corruption in Medicare - Damaged Care, corruption in State administration - Marie: a True Story, wrongdoing of stakeholders in mega corporations - Class Action and the Ford Pinto case, corruption and bribery in

government – Revizor, and The Threepenny Opera on business, government and crime.

IV. Trust, Transparency and Fairness

Trust, transparency and fairness complement ethics. The business world invests every year tens of billions in legal and contractual expenses that most of them could be saved if there was trust, transparency and fairness. Transparency is the best guarantee of ethics as wrongdoing is performed in darkness, far away from the public knowledge. The market cannot be efficient if the employees are not sure that they will receive their salaries, the suppliers will receive their money on time and the customers will buy reliable products. Trust based on religious principles, conscience or Aristotle's Ethics can be a good foundation for business ethics. This part comprises cases on transparency, ethics in IPOs and financial reports, fairness in bridging in mergers, trust dilemmas in joint ventures, the worthwhileness of trust, analyses of films on Enron, transparency in the media - The Insider - about Dr. Jeffrey Wigand and the tobacco industry, law, fairness and ethics - The Merchant of Venice, The Great Gatsby on wealth, fairness and ethics, Emile Zola the ultimate ethicist, and others.

V. Sustainability, Social Responsibility & Activism: Integration of Social, Human, Environmental and Business Goals

The Business world is an integral part of the community, society, environment and state. The maximization of profits is not the only criterion and corporations have to take into consideration social, human and environmental goals with their business goals. The principles of Sustainability, CSR - Corporate Social Responsibility - and Business Ethics are often intermingled and dependent on activism of persons, NGOs and organizations. This part comprises cases on social responsibility, directors in NGOs, sexual harassment, equal opportunity, analysis of films on ethical activism - Erin Brockovich, conformism in society - Rhinoceros, CSR in community - It's a Wonderful Life, Ecology - A Civil Action, education and society - Topaze, sustainability documentaries such as Al Gore's

An Inconvenient Truth, Who Killed the Electric Car?, biodynamic farming, genetically engineered food, Paul Hawken, as well as social responsibility of modern tycoons - Warren Buffett.

VI. International Business Ethics and Globalization

Those who negate business ethics employ very often the argument that there are no universal principles of business ethics and that ethics in Russia is completely different than in the US, Italian ethics vary from British, and so on. Many ethicists maintain the opposite view that ethics is universal, based on the UN Declaration of Human Rights, the Golden Rule which is common to most of religions, and ethical considerations in globalization. This part comprises cases on perception of ethics in international business, international purchasing, business ethics in international M&A, cultural, ethical and mentality gaps in international business, and analysis of films such as *The Visit* in its European and African versions, labor rights in the global context - *The Take*, ethical dilemmas of multinationals and stakeholders – McDonald's and McLibel, globalization models of Nike and other multinationals and Michael Moore's film *The Big One*, globalization and human rights, the books *No Logo* by Naomi Klein, *The Corporation* by Joel Bakan and *The World is Flat* by Thomas Friedman, which give an excellent insight on the different aspects of globalization.

- The Bibliography includes all the books and articles read in order to write this book as well as a unique list of works on films, plays, novels and documentaries on business dilemmas which were seen and read for preparing the analysis of works.

The cases and films are international and comprise ethical dilemmas in the US, Great Britain, France, India, Africa, the Far East, Israel, Latin America, Germany, etc. Some of us prefer to ignore unethical conduct, others prefer to join the wrongdoers in the plunder, but I have preferred to teach and write books on business ethics, in an unorthodox way which may be the most orthodox after all,

as it is based on religion and philosophy but is translated to modern methods with cases, films and plays.

INTRODUCTION – PROFITABILITY AND BUSINESS ETHICS

"There are seven things that will destroy us: Wealth without Work, Pleasure without Conscience, Knowledge without Character, Religion without Sacrifice, Politics without Principle, Science without Humanity, Business without Ethics."

Mahatma Gandhi

Many businessmen believe that a company can either be profitable or ethical but that it can't be both at the same time. If a company has to compromise on one of those issues, it prefers to do so on ethics, as the success of a company and its management is primarily based on its profitability and not on its ethics. An unethical company is not penalized for its unethical conduct, if it does not infringe any law, and the same is true for its executives who continue to receive their high salaries, stock options and benefits, as long as they maximize profitability, even at the expense of ethics. We should examine the oxymoron stated by Milton Friedman, that the objective of a company is only to maximize profits and that a company should not have any objectives of social responsibility. Where are we maximizing our behavior in our lives? Do we maximize our eating, drinking, vacations, or even return on investment? Each maximization has a price tag: eating excessively results in bulimia, drinking too much results in drunkenness, too long vacations degenerate, while a very high return on investment has a tradeoff with risk or brings too many competitors. Aristotle preconized more than two thousand years ago that we should find moderation in everything we do, the golden mean, as excessiveness ultimately corrupts. His precepts were true then as they are true today. One should find the right balance between the hardware of business: production, sales, profitability and valuation, and the software of

business: ethics, quality, integrity and humaneness. Only thus is it possible to find the perfect harmony that will ensure the long term prosperity of the company and its stakeholders.

There are 12 outstanding principles and basic conditions that are the prerequisites for an ethical and profitable company:

1. Ethics, Profitability and the Interests of the Stakeholders

Everybody believes that a prerequisite for a viable and prosperous company is profitability. A company that is not profitable will not be able to survive in the long run and we should do our best in order to be profitable. Profitability is like the oxygen that we breathe; it is a precondition for our living. However, nobody decides where to live exclusively on the basis of the amount of oxygen that exists in his neighborhood. Or paraphrasing Moliere in his play "L'avare" – we should be profitable (eat) in order to live but we should not live in order to be profitable (eat). The quality of life of every human being, like the quality of life of every company, has other parameters as well, primarily the safeguarding of the interests of the stakeholders of the company and fair conduct toward them: the employees, customers, suppliers, creditors and so on. The company has, therefore, to obey the Golden Rule: "Don't do unto others what you wouldn't want done to you". This issue will be further emphasized, as it is a key element in ethical thinking.

2. Financial Integrity and Strength

Financial creativity can ruin companies, as we have seen in many cases in recent years, such as Enron, Barings Bank and others. In order to survive in the long run a company has to be financially moderate, with a balanced leverage, sufficient equity, low indebtedness, a positive cash flow, integrity of the financial management, even if it is at the expense of maximum profitability, growth and valuation. A prerequisite of survival is security, for the individual, the corporation

and the nation. As a nation spends a large part of its GNP for defense, so a company has to ensure its security and cannot jeopardize its existence with financial creativity, transferring profits to affiliated companies, taking loans through related companies, reporting expenses in next year's financial statements, actualizing forecasted profits for the next ten years in this year's income statement, reporting R&D expenses as assets, and so on. Sometimes the auditors cooperate with the reckless executives; often the SEC or even the public look benevolently on such conduct, but a company that acts carelessly in its finances will not subsist in the long run.

3. Enforcement by an Authoritative and Democratic Management

Many believe that an authoritative and democratic management is an oxymoron, but the most successful and prosperous companies prove that it is feasible. Management has to be authoritative in a company as in a nation; it is impossible to manage in a flabby way, where everyone does whatever he wants, nobody is accountable, directives are not implemented, instructions are not enforced, and the whole company is managed like a fraternity. Therefore, a company has to be managed in an authoritative way, obeying management directives, enforcing the company policy and decisions. Nevertheless, enforcement has to be carried on graciously, not through a dictatorial management, and to take the inputs of lower level management and employees into consideration. Most of the modern business books preconize such methods of management, but unfortunately many companies are managed by brutal bosses, or in an anarchical manner; few companies are managed by an authoritative and democratic management. This mode of management can even be seen as a prerequisite for an ethical company, as it combines the best methods.

4. Quality and Excellence

The company in the third millennium perceives quality and excellence as prerequisites of success, but in many cases this is only a slogan or a panacea. How is it possible to solve the dilemma of improving quality while obtaining a profitability which is lower than the maximal one? What is the value of quality and to what extent should it be enhanced, even if it is not needed? Standards are set by the Standards Institutions, the customers' specifications set what is required and those who abide by the standards and the specs should encounter no problems. However, unethical companies that want to maximize profits at all costs do not abide by those rules, deliver products that do not comply with the specs, sometimes even endangering human lives. Maximization of profits is always at the expense of something else; you deliver lower quality products to your customers, you pay lower than average salaries to your employees, you postpone payments to your suppliers, you reschedule the installments of your loans, you evade paying taxes, you externalize your ecological expenses, and of course, you do not meet the standards and excellence required by an ethical company. An ethical company should, therefore, find the right balance between profitability, quality and excellence, while safeguarding the interests of all its stakeholders.

5. Truthful and Transparent Reporting

The Sarbanes-Oxley Act is supposed to improve the truthfulness and transparency of reporting of American companies and companies that are traded in the US. Many companies have reluctantly decided to abide by the new rules, even if they find them somewhat "draconic". Others invest huge amounts of money in order to find ways of circumventing the act without breaking the law. However, the obvious way should be to act ethically and give true and transparent reports as companies are bound by law to do. It is by far the simplest and cheapest way to cope with the Act, as it is ultimately more efficient to be ethical in the long run. Those who have a clean conscience should not be afraid of transparency. Opaque reporting is a sign of unethical conduct, as we have seen at Enron, Barings,

WorldCom and many others. Reporting should also be comprehensible to minority shareholders in financial statements, prospectuses, special reports and so on. It is recommended that companies should add ethical, social responsibility and ecological reports to their annual reports. Fraudulent reports are beneficial only to unethical executives, assisted by lawyers and auditors who operate in contradiction to their professional ethics, which require truthful and transparent reporting.

6. Aggressive and Creative Marketing

In a world that has limited wars to a minimum, the business world has become the outlet for aggression. "Street fighter" is a compliment for an aggressive businessman, but it is, however, recommended to limit the aggression to marketing instead of finance and human relations. Only in marketing should businessmen set free their native aggression and creativity, as we live in a very competitive market and the meek do not survive. A company can be ethical in its advertising and its conduct toward competitors while employing war-like tactics of cunning. Should a company abide by the rule of "let the buyer beware" or "giving full disclosure of all the products' deficiencies"? Does it have to emphasize its strengths as well as its weaknesses in the same manner? If you are transparent in marketing, should you light up your problems with a torch or show how your products are better than those of your competitors? In negotiations should you tell the whole truth or just not lie? A prerequisite to the success of a company is growth and obtaining a large market share. It is very difficult to find companies that can achieve that by being completely ethical. It is almost impossible to find companies or businessmen who are 100% ethical, and if you have to give leeway to your aggressions and cunning, it could be that it is preferable to do so in marketing rather than in finance, as the competitors are strong enough to care for their own interests and it is questionable if stakeholders in the company, such as the community or government, are.

7. The Humaneness of Management

The most important resource of a company is its employees and management. A company with the best products, with the most advanced technology, with the most revolutionary know-how, cannot survive without dedicated, excellent, motivated and honest employees, who see their company as their second home, who are loyal and give their utmost to the organization. In order to achieve this goal management has to be humane; there should be no sexual, racial, religious, or age discrimination, there shouldn't be too wide gaps in the level of salaries, there should be almost no temporary workers without social benefits and no wrongdoing done to employees. Many unethical companies achieve maximum profitability by paying minimal salaries, no social benefits, widely employing temporary workers, banning unions, adopting brutal methods to enforce discipline, with constant threats of layoffs, while keeping the huge salaries of top management untouched. Those companies can increase profitability in the short run, but cannot be profitable in the long run, as employees contribute most in a supportive environment. The basic quality of managers, doctors, teachers and civil servants who interact with people should be humaneness, and as a doctor with despicable conduct towards his patients is a bad doctor, even if he is very proficient, so is a brutal boss who enjoys rendering the lives of his subordinates miserable a bad manager and he will not succeed in his job in the long run.

8. Social Responsibility

In the last few years there is a confusion of terminology between business ethics, social responsibility and sustainability. The best specialists deal with those issues and many see their terms as encompassing all the others. Social Responsibility, in its strict terminology, is the care of the community, society and the interests of the weaker segments of society. There could be a contradiction between business ethics and social responsibility, as the Mafia can contribute millions to society while obtaining the funds for their donations in the most unethical manner.

Tobacco companies contribute millions to cultural activities but do they become ethical because of that? Companies that wrong minority shareholders in millions of dollars can donate part of those sums to a business school or even found a Center for Business Ethics. Social Responsibility is undoubtedly one of the pillars of Business Ethics, but it does not replace it. It is preferable that a company should not wrong its stakeholders: employees, customers, creditors and suppliers, while not contributing anything to social responsibility and the community, than to have a company that wrongs all its stakeholders and donates part of those unethical profits to the community. The community will be far better off if a company behaves ethically without giving any donations, as the community is comprised of the stakeholders of the company: the employees, the suppliers and the customers. Unethical companies wrong their stakeholders usually ten times more than the amounts that they donate to the community, so society has a much larger deficit incurred as a result of unethical conduct than the benefit it derives from social responsibility. The Robber Barons who wronged their employees, customers and suppliers donated only a fragment of what they have earned unethically to society. A company is perceived as very ethical if it donates one percent of its profits (not of its income...) to society. We are far more interested on how the company obtained the remaining 99% of its profits. The same token applies with sustainable companies who contribute to ecology while wronging their stakeholders. An unethical company which is socially responsible or sustainable is an oxymoron; it is sheer hypocrisy and eyewash!

9. Environment

One of the most common ways to maximize profitability is by externalizing expenses from the company to the government or the community. Those expenses, which the company does not incur although it causes them, are called externalities. Thus, if a company dumps its toxic waste into a river, into the air, the sea or the soil, it does not incur the cost it causes to ecology, which is incurred to the community or the government if they want to remediate the harm.

Nowadays, there is quite extensive legislation on the preservation of the environment in the US, countries in Europe, Canada, Australia, and so on. However, the enforcement of those laws is not easy and unethical mega-corporations try very hard to evade them, as it is much cheaper to externalize the expenses to the community, thus maximizing profits. In many cases those companies contribute funds to unethical politicians, who assist them in evading the laws. The Government cannot allocate the funds to fight against those corporations, and NGOs, communities and individuals find it even harder. Thus, the main approach should be ethical, by abstaining from investing in companies that harm the environment and investing in ecological funds. The harm to the environment ultimately affects all of us, if not in this generation then in the next one. Cancer and many other illnesses result from those wrongdoings, as all of us breathe the same air and are affected by global warming. We are, after all, every one of us, part of the same life chain.

10. Ethical Infrastructure

An ethical company or an ethical individual cannot survive in a corrupt environment. The whole infrastructure should be ethical in order to facilitate the ethical conduct of a company. If society does not condemn wrongdoing and glorifies unethical conduct, there is no incentive to managers to behave ethically, as we are social-minded and most of us cannot live in a society where we are ostracized. In the past, religion was the watchdog of morals and of ethics, although there were too many cases of abuse. Today, society should condemn ethical criminals instead of condemning whistleblowers who try to remedy their wrongdoing. A total change of attitude is needed in order to glorify and reward whistleblowers. Those who wrong their stakeholders should be banned from society, as should bankrupts who manage to salvage all their wealth by externalizing the bankruptcy to their creditors, employees and suppliers. Nowadays, the wrongdoers are treated by society as “smart guys”, who con their creditors, who con the government while evading paying taxes by “tax-planning”,

which may be legal but is unethical. If it is possible to bribe judges and policemen, buy pardons and fix tenders, no ethical codes could prevent one from committing those crimes, as the prerequisite of the implementation of the ethical codes is that the managers and employees, as well as the society, should be ethical. Unethical companies, such as Enron, crumble in the same way that corrupt societies, such as the Soviet Union, crumbled. The infrastructure of the society, local administration, police, judicial system, politics and government will ultimately become ethical when the situation becomes unbearable, when corruption finally distorts the whole economy, as only ethical economies and nations can prosper in the long run. The same rule applies to the business environment. No ethical Don Quixote can remain ethical when all his colleagues are unethical; therefore education on ethical conduct is a prerequisite for a profitable and ethical company. In the same manner that a transportation, sewage and energy infrastructure is formed, so an ethical infrastructure for the survival of society has to be formed.

11. Ethical Tycoons

In order to discern which companies are ethical we have to examine who their executives are and take them as an example. Warren Buffett is a typical example of an ethical tycoon who has succeeded to be almost the richest man in the world by combining, in a remarkable manner ethical conduct with very high profitability. However, he is soon to give up most of his wealth to community, thus achieving social responsibility as well. Buffett believes that excessive wealth that was originated in society should go back to society, not 10% or 1%, but most of it, as he has shown. Not by legislation as in ultra-socialist countries, not by nationalization as in communist countries, but in a humane capitalistic regime, setting a voluntary example for every businessman. This is an inspiring example in an environment that has become less and less ethical, in a society where most of the wealth belongs to very few tycoons. We need to follow the example of ethical businessmen such as Buffett and to condemn the unethical conduct of the

Lays and Skillings, in order to prove that being profitable and ethical is not an oxymoron. We should ostracize tycoons who made their fortunes by bribing corrupt politicians in order to receive privatized assets at a minimal price, by wronging minority shareholders, by stealing from pension funds and by manipulating the price of shares. We should glorify the ethical businessmen, with impeccable reputations and records of fair conduct to stakeholders, in order to induce managers to work in their companies and be proud of it, to convince customers to buy their products, services or funds, to influence banks to lend them money, as they should be set as an example for all of us.

12. A Holistic Business and Ethical Strategy

Each one of those principles is viable and a prerequisite for an ethical and profitable company. However, the precondition for their implementation is the orchestration of all of them in unison. Only a company that implements all the principles would/should prosper in the long run. It is obvious that nowadays there are many companies that do not comply with any of the principles, with the exception of marketing aggressiveness. Nevertheless, they prosper in the short run and sometimes even in the long run. Enron prospered for many years and was set as an example in the best business schools. Companies that were founded by the Robber Barons exist even today. But we can decide if unethical companies prevail. We can decide not to work for them, not to lend them money, not to buy their products and not to sell them ours. We have the power as employees, with our unions and pension funds, as customers who can be organized, as minority shareholders who can obtain control of their companies, as communities who can forbid unethical companies to operate in their towns, as bankers who can decide not to lend them money. Recent history has proven how we can organize ourselves in such a way as to make ethical conduct prevail, thus safeguarding the interests of the stakeholders. It was the Labor Unions who forced unethical companies to pay fair wages to their employees. The Greens have forced mega-corporations to preserve the environment. Activist associations have changed

resolutions which were unfair to the minority shareholders. Ethical countries have managed to eradicate bribery and corruption; ethical communities ostracize unethical corporations. We should exercise our power with a holistic approach, assisted by the Institutes of Ethics, the Supervision Boards, and the Ethical Funds, to find the ethical companies and invest only in them. We should trust only ethical companies and businessmen and ostracize the others. It is not a utopian dream; it is feasible if we are properly organized, if we train management to be ethical, if we prove that we can be both profitable and ethical. We can achieve this goal in the foreseeable future to the benefit of society and individuals who want to survive in a sustainable environment.

The analysis of the 12 abovementioned principles brings us to the definition of an ethical company. An ethical company, as defined by me and many other ethicists, is a company that conducts itself fairly towards all its stakeholders and maintains the principle of “don’t do unto others what you wouldn’t want done to you”. An ethical company pays its suppliers and employees on time. It is easy to ascertain this in the financial reports and by reading the complaints of employees and suppliers in the blogs on the company. An ethical company allows its employees to unionize, prohibits any discrimination and harassment based on race, sex, religion or age, gives the same salary for the same job to men and women, employs a minimum of temporary workers, prohibits nepotism and gives social benefits to its employees. An ethical company has a maximal ratio of 30:1 between the highest paid employee and the lowest paid, as defined by many ethical funds as one of the criteria of ethics, and does not lay off thousands of employees while increasing the salaries of its top management.

An ethical company does not pollute the environment, water, air and soil, even if the law does not prohibit it explicitly or the law is not enforced. There are very clear criteria of pollution as defined by voluntary organizations: Green NGOs and international bodies. An ethical company, its controlling shareholders and executives, do not devise tax planning in order to totally evade paying taxes, even

if they find a legal way to do so. This does not apply of course to legitimate plans of zero taxation for a limited period of time in order to induce industries to settle in a country or a development zone. However, it does apply to discrimination between the taxes paid by strong organizations and tycoons as compared to other companies and individuals. All the tax shelters, the trusts and the creative ways devised by sophisticated lawyers and auditors transgress the Kantian categorical imperative, the Formula of Universal Law: "I ought never to act except in such a way that I could also will that my maxim should become a universal law." Because, if everybody evades paying taxes, as unethical mega-corporations and tycoons do, the nation will collapse, nobody will pay taxes and the country will not have the funds for defense and education. Those unethical bodies externalize the costs of financing the nation to others, those with a lower income and smaller companies, which contradicts the essence of business ethics and discriminates against the weakest parts of society. The strongest companies and tycoons should pay the highest taxes and give back to the nation and society part of what they have enabled them to gain. A common excuse of robber barons from the 19th century until today is that they don't want to pay taxes to the government, that it is corrupt and inefficient and they prefer to donate funds directly to society much more efficiently. This excuse is totally unacceptable, because of the Kantian principles of universality and equality. However, it is obvious that large corporations and tycoons will effectively pay a slightly lower percentage than the average citizen because they are much more influential, have better tax advisors, and so on. This is understandable if not justified, but there is a great difference between paying 20% taxes, instead of the normal 25%, and not paying taxes at all. Tycoons and multinationals have a moral obligation to set an example and should not be too greedy, as we have seen in the Enron case, the backdating scandals, and so on.

An ethical company is a company treating its customers fairly, delivering what it has committed to on time, in a good quality, with a reasonable profit. Companies permanently charging exorbitant prices for their products and services benefiting

from a favorable conjuncture, a monopoly, a temporary shortage, while giving outrageous salaries to their executives and extraordinary dividends to their shareholders, may be acting lawfully but deliberately not ethically. An ethical company does not wrong its minority shareholders; the executives do not benefit from insider information in order to increase their benefits from stock options, do not manipulate the prices of shares, buying shares at low prices while knowing exclusively of imminent technological breakthroughs or mergers, or selling shares at high prices a few days before disclosing a deterioration in profitability to the public. Backdating is of course unethical illustrating the excessive greed of executives who have already received stock options at a very low valuation but who want to earn a few percents more at the expense of the minority shareholders.

An ethical company is a company that does not bribe politicians, their wives or children, directly or indirectly. If a contractor pays millions of dollars for a routine job performed by the son of a president while it would pay only a few thousand dollars for the same work performed by the son of a postman it is a bribe and is unethical, even if the law doesn't see any problem in that. If a prime minister sells a house at \$2M to a businessman who wants to obtain an important contract from him while the market price of the house is only \$1M, it is a bribe and is unethical, even if an assessor can give a valuation of \$2M, because a similar house sold by another citizen would be sold only at \$1M. Both cases may be legal but they are flagrantly unethical. The businessmen who employed the son of the president or bought the house of the prime minister may contribute millions to the community and be socially responsible, they may invest in sustainable ventures, but they are unethical.

An ethical company does not employ government officials a few months after they quit the civil service even if it is according to the law, especially if those managers were responsible for controlling the companies that hired them or were responsible for the approval of their tax assessments. It is unethical to enforce tax laws and a few months later advise the companies that you have assessed how to

circumvent those laws and evade paying taxes. The same ban should apply to purchasing officers in the armed forces who are employed after quitting service by the defense companies, to bank executives in the central bank who receive key positions in the banks they controlled, to SEC employees who are employed by the companies they controlled, and so on. If the civil servants argued that such a ban contradicts the freedom of employment, we could extend the option to work for other governmental organizations or receive a full pension to the high management in the government, but in any case they should be prohibited from working in the private sector, which they were supposed to control, as it is unethical, and could result in corruption, indirect or tacit bribery, costing the economy billions of dollars which is much more expensive than giving them pensions.

An ethical company is a company whose independent directors are really independent and are not complacent in most of the cases toward the decisions of the directors appointed by the controlling shareholders to the boards of directors. In many cases independent directors are only a panacea, as they get a very high salary for approving decisions which are often detrimental to the interests of the minority shareholders and the other stakeholders. To whom are the independent directors responsible? To the company, to those who hired them and pay them, to the controlling shareholders, to the minority shareholders, the customers or the employees? What happens to independent directors who become whistleblowers? Are they hired to other Boards or are they ostracized by the business community? What happens to independent directors of companies such as Enron or WorldCom, what are they supposed to know, should they be like the monkeys who don't hear, don't speak and don't see, should they receive their high salary without controlling anything? What should the qualifications of independent directors be, professionally and ethically? Should they be fearless warriors working for the benefit of those who don't have a voice in the company? In any case, in an ethical company independent directors should be the voice of the stakeholders, should be brave and ethical, should serve on a limited number of

Boards in order to have time to effectively control the reports, and they should be directors with integrity.

An ethical company is a company whose controlling shareholders were never bankrupt, who paid their creditors on time without rescheduling the loans. It may be legal to go bankrupt, but it is completely unethical, as the employees, the customers, the suppliers, the banks and the community lose huge amounts of money, while the controlling shareholders lose, in the worst case, their initial investments and the executives don't lose anything. As a matter of fact, in many cases the controlling shareholders have recouped their initial investment in dividends, by selling their shares before the collapse and in many other creative ways. Those who are bankrupt are never the unethical businessmen, but always the employees, the customers, the suppliers, the banks or the tax authorities. Bankrupts should be ostracized from society instead of being treated as smart guys who outsmarted everybody else. Shareholders should never invest in companies whose controlling shareholders and management have a track record of bankruptcy, as in many cases they are serial bankrupts.

The best way to make ethics in business prevail is by deciding to work only for ethical companies, to invest only in ethical companies and ethical funds, to sell only to ethical companies, to lend only to ethical companies and to give community backing only to ethical companies. The Institute of Ethics will assist us in knowing which companies are ethical, ethical funds will publish the records of their ethical investment, business books will describe which companies are ethical and which are not, and ethical companies will prove how they can maintain high standards of profitability and ethics. It is always preferable that businessmen and companies should decide to be ethical because of values or conviction, but even if they do it out of sheer interest in order to attract the best employees and investors, to get the best deals from suppliers and receive the backing of the customers and the community, that is acceptable as well. Many roads lead to Rome, provided that our Rome is the ethical Rome of Cicero and not

of Caligula. Pension Funds and funds from the public sector should invest only in ethical companies, companies should be screened for their ethical values, as should top executives, salesmen, and employees in the finance and purchasing departments. The mantra of finding leaders is passé, as Saddam Hussein was also a leader and so were Al Capone and Ken Lay. Time has come to find leaders with integrity who will follow the paths of Warren Buffett, Al Casey and Ben & Jerry. It is not enough to have ethical codes as almost all the large companies in the US have ethical codes; they should be assimilated by ethical executives with adequate ethical training. Companies should have strategic ethical planning, should publish ethical and ecological reports, should encourage whistleblowers and be as transparent as possible, above all in finance.

In the last decades the business world has known many turnabouts that have considerably improved its operations. Some of the most influential turnabouts were: production efficiency, marketing, technology, organizational behavior, program management, human relations, consumerism, quality, excellence, ecology, democratic management, IT and so on. The next turnabout will probably be business ethics. Those who teach and practice it are perceived in many cases as Don Quixotes, idealists, ridiculous, misfits, envious of the success of the unethical executives, absent-minded professors if they come from academia, dangerous whistleblowers if they come from the business world, treacherous consiglieri if they are both professors and businessmen. But when the ridicule, defamation and battles prove useless, ethics will prevail as truth always prevails and ethical companies and executives will become the norm. Business schools will have ethics and social responsibility courses by the dozens, core courses and not electives, courses of 50-100 hours each, equal in order of magnitude to the marketing and finance courses, as ethics is at least as important as all the other topics of management.

THE CONTEXT OF THE ECONOMIC WHIRL & THE FOUNDATION OF A NEW SUSTAINABLE SOCIETY

One could never think of a more appropriate timing than today for a book on the imperative necessity of ethics and ecology in business. The Economic Whirl, deriving mainly from a lack of ethics, is likely to bring a meltdown of the world economy in the next crisis or if the causes are not eradicated, no later than by 2020. Economic downturns are part of our life and they are not new, nor are the causes of the downturns new, at least not in the last couple of hundred years – greed, excessive leverage, lack of regulation, insufficient transparency, creative accounting and finance, and maximization of profits at all cost. What is new is the scope of the Economic Whirl, starting in billions twenty years ago, reaching trillions today, and getting larger and larger at every stage, with the risk of endangering the world economy, which is \$13 trillion in the US and \$54 trillion in the world. We could apply the standard medicines, such as lowering the interest rates, but they are now almost 0, pouring money into the economy, but we've reached the maximum with trillions, and, most of all, blaming Wall Street and the neo-liberals and pitying Main Street and the individuals who are the victims. We tend to forget that we are living in democracies and that no one forced us to invest in hedge funds, in speculative financial instruments, in subprime mortgages or to vote for the neo-liberal governments.

We need to find unconventional ways to fight this whirl, to think outside the box, to adopt creative solutions, to establish a New Sustainable Society. I was in a unique position to devise original vehicles and pioneering methods to overcome the crisis as I am one of the few businessmen who are also active in academics, writing books and articles with an international scope and educating thousands of businessmen and students who share their experiences with me. I have forecasted

the Enron and other corporate scandals in my pioneering book "Business Ethics: The Ethical Revolution of Minority Shareholders", published in March 2001 at Kluwer Boston. Extraordinary as it seems, it was the first book ever written on ethics for minority shareholders and was based on my experience, research and theories on this subject. I found the rules of wrongdoing to minority shareholders that were validated a few months later at Enron. In my book "Selected Issues in Business Ethics and Social Responsibility", which was published by Magnes in July 2008, I forecasted the Economic Recession and its causes and proposed efficient vehicles on how to overcome the crisis. In this chapter of my new book I analyze the trend of enlargement of the shock waves of the Economic Whirl, starting with the Junk-Bond Market Collapse in 1985-1990, followed by the Dot-Com Bubble Burst in 1995-2001, the Corporate Scandals in 2001-2003, ending with the Subprime Mortgage Crisis and Economic Recession starting in 2007 and lasting probably until 2010, while devising pioneering methods in business ethics to stop the Economic Whirl and to establish a new sustainable society.

As a preamble to this analysis, I present my Credo on the challenges of business and ethics in the economic world towards 2020, which are partly substantiated by prominent economists such as Klaus Schwab and Joseph Stiglitz. If we adopt the principles of my new book and follow the practical ways that combine business and ethics, we might overcome future challenges, as the situation will get even worse by 2020. We are at a crossroad; the current recession might increase the unethical practices of unethical companies or change the attitude of the business world towards ethics. A new credo is needed that will present the main principles of the combination of ethics and profitability to be developed at length in this book. If the business world adopts this Credo or similar principles, it might avoid the Domsday Depression by 2020 that will inevitably follow the current recession and possibly a larger one within a few years. As we have already incurred damages in the trillions, we have a limited time available to us and we need to discuss and adopt the following 36 principles, which are in fact the

foundation of a New Sustainable Society, focusing on ethics, ecology and social responsibility:

1. Companies should see profitability as a viability precondition and not as their only reason for existence, as corporations also employ people, sell products, and contribute to society.
2. The mantra of maximization of profits should be discarded, as it necessarily causes maximization of risks and wrongdoing of stakeholders: employees, customers, community and the ecology.
3. Financial moderation should prevail, with a balanced leverage (not 30:1 as in Lehman Brothers), sufficient equity, low indebtedness, a positive cash flow, integrity of the financial management, even if it is at the expense of maximizing profitability, growth and valuation.
4. Financial reports should be accurate and transparent and instead of spending tens of millions in order to circumvent the Sarbanes-Oxley Act, companies should spend millions to be ethical.
5. Lawyers who assist companies to evade taxes "lawfully" would be unemployed, as all companies would pay the full taxes, after being convinced that it is the only way to maintain law and order, eradicate crime and to fund defense, education, health and infrastructure equitably.
6. All pension funds should cease to invest in the stock exchange, no longer risking pensions, and minority shareholders should invest only in ethical funds and ethical companies.
7. Independent directors should be really independent and should ensure the stakeholders' rights.
8. An Institute of Ethics should be established, giving ethical ratings to companies, controlling shareholders and executives, and the management should have an impeccable ethical record, preventing the collapse of AAA ethical companies due to unethical conduct.

9. The internet would become the ultimate ethical vehicle, ensuring full transparency, preventing the use of insider information and enabling open communication between all stakeholders.
10. Cooperation, equilibrium and harmony would replace the principles of cut-throat competition and street fighting, having the killer instinct and adopting war tactics.
11. Companies should not compete in adopting unbridled marketing campaigns, deceptive advertising, deceiving customers, but should compete on who gives better service and products at fair prices, without putting "stumbling blocks" before the blind subprime customers.
12. Our examples of model businessmen would be Warren Buffett, Jerry Greenfield and Paul Hawken, and not Ken Lay and the executives of Lehman Brothers, Bear Stearns and AIG.
13. Society would not judge people by the size of their wallets but by the greatness of their minds.
14. The ideal manager should lead his company in an authoritative, democratic and humane approach, and not be inconsiderate, brutal and lacking in sensitivity.
15. We should prevent sexual harassment, race, gender, age and other discrimination, nepotism, and all workers should be treated equitably and recruited with ethical screening.
16. The ratio between the highest and lowest salaries in a company should not exceed 30:1.
17. The environment in our cities would be as good as in Copenhagen and not as bad as in Naples, and petrochemical companies would invest in preventive measures as in the Netherlands.
18. Our country would be rated among the ten most ethical countries in the Transparency International Corruption Perception Index, our model would be Finland and not Nigeria, and those who enforce the ethical laws would not cross the lines to work for those who infringe upon them.

19. Companies and tycoons should not perceive corporate social responsibility as the donations of one percent of profits being the essence of ethics, but should earn the other 99% ethically.
20. Government would not be neo-liberal or social democratic but neo-social, adopting the "third way" of Joseph Stiglitz, with a balanced equilibrium between free market and regulation.
21. Perception of success would not be living on a property of \$125 million but on a modest property, like Warren Buffett, known for his personal frugality despite his immense wealth.
22. The model of a politician would be Mahatma Gandhi, practitioner of non-violence, truth, integrity, austerity, simplicity and peace, as opposed to many corrupt politicians of today.
23. The excessive ties between government and business would be loosened, politicians would not be responsible to tycoons and their lobbies but to the people and would be funded by them. Civil servants should not be employed by the tycoons after quitting their jobs, putting their motives in doubt.
24. Milton Friedman's vision would be achieved - that companies should not invest in social responsibility and the policy of the neo-liberals would be implemented with minimum regulation, because if companies are ethical, there will be no need for charity or regulation.
25. Society would not worship bankrupt businessmen who outsmarted their creditors, tax evaders who conned the government, and controlling shareholders who wronged minority shareholders, but nerds who pay their taxes, behave ethically and repay their debts.
26. White-collar criminals should be sentenced to 20 years imprisonment, without plead bargains, indirect or direct bribes, and judges should not be lenient toward bankers, tycoons and corrupt politicians, who are usually represented by the best lawyers.
27. Society would ostracize those who withhold payments to suppliers and employees, those who employ people without providing them with social benefits, and those who prevent unionizing aimed at improving working conditions.

28. Society should encourage and reward whistleblowers who warn against corruption, wrongdoing to stakeholders and ethical criminals.
29. Our country would have minimal social gaps and would rank close to Sweden, with 50% of its population in the middle class and not 50% of the wealth owned by the richest 1%, since democracy is not voting every few years, but having equity, welfare and equal opportunities.
30. We should take our fate in our own hands, acting lawfully and ethically but decisively, investing only in ethical companies, working only in ethical companies, buying only from ethical companies and welcoming only ethical and sustainable companies into our communities.
31. We should not aspire to be creative capitalists or creative accountants, but to be creative in our R&D in high tech, green energy and low tech, with holistic ethical strategic planning.
32. Quality and excellence should be the cornerstones of a company's activities, by adhering to specifications and standards, without jeopardizing quality and endangering people's lives.
33. Ethical standards, codes and assimilation would not be eyewash but the basics of a company.
34. Tenders would not be bent, positions would not be promised to the boys, and lawsuits would not drag on, in an economy with minimal red tape and an ethical environment and infrastructure.
35. We should return to basics: obeying the Golden Rule by not doing to others what we do not want to be done to us, acting in equity, moderation and equilibrium; the Categorical Imperative with its moral obligations should prevail, concluding in an All My Sons Credo.
36. The significant progress that has happened in the last decades in consumerism, quality, health, education and democracy would also be expanded to ethics, social responsibility, corporate governance and sustainability towards the year 2020, if we wish to preserve life.

Those principles are developed at length in my book and are the basis of the New Sustainable Society.

In 2008 the NASDAQ Composite collapsed by 40%, but it is still much higher than it was on July 17, 1995 when it first reached the 1,000 mark. The composite index closed on January 23, 2009 at 1,477, with a 52 week range of 1,295-2,551. The shareholders who bought during this period at the highest price and sold at the lowest price lost 50% of their investments. However, those who bought in 1995 at 1,000 still have a nominal profit of 30% to 40%. Furthermore, the index was launched in 1971 with a base value of 100 points, and in January 2009 it was 14 times higher. Nevertheless, if we remember that in October 1974 the index collapsed to 54 points, 50% less than the 1971 figure and that the all-time high price was reached on March 10, 2000 at the peak of the dot-com bubble with 5,048, we might get confused. Those who bought at this time and sold 8.5 years later have lost 80% of their investment. What is the conclusion of this short analysis of the history of this index if not that unaffiliated shareholders as well as pension funds have no place in the stock exchange? The risk that they incur is much higher than at the roulette table and it is much less fun, especially if we bear in mind that on top of the risks of the bubbles they incur the risks of being conned by unethical companies such as Enron or WorldCom. This book substantiates this conclusion at length and suggests that pension funds should invest only in government bonds and shareholders who have excess amounts of money and are willing to risk it should invest only in ethical funds. It is true that one always looks at the bright side of things and hopes that he will know when to buy and when to sell, but experience proves that unaffiliated shareholders with no insider information tend to buy at the higher prices and sell at the lower prices, thus losing most of their savings and pensions.

THE WAVES OF THE ECONOMIC WHIRL

The first wave of this whirl started with Drexel Burnham Lambert, the junk bonds and Michael Milken, all of them scrutinized at length in this book. Drexel was one of the largest Wall Street investment banking firms which was driven into bankruptcy in 1990. When I made the IPO of my company on Wall Street in 1987 I received three proposals from Drexel, (Shearson)Lehman, and Bear Stearns. By then I knew of the unethical conduct of Drexel and chose Lehman and Bear Stearns. During the IPO, the road show and the closing, I understood what it was all about; it was a defining moment for me, and I decided to switch the focus of my activities to business ethics. Therefore, for me and for many people who dealt with Wall Street, the shock waves of the whirl were no surprise, including the collapse of Lehman and Bear Stearns. The film "Wall Street", reviewed in this book, which I show in the first lesson of most of my courses, describes the unethical climate of this world in an outstanding way. Other films such as Rogue Trader (Nick Leeson and Barings Bank), Barbarians at the Gate (RJR Nabisco's leverage buyout), Other People's Money, etc. are reviewed in my book, as well as the concepts and themes and cases on corporate governance, insider information, ethics in the stock exchange and in banking, integrity of directors and independent directors, which substantiate my conclusions. Only a businessman who is also an ethicist can describe this world in such a vivid way.

Drexel is the archetype of the unethical company. Some of the ideas were good, but the implementation and the people who ran the company were unethical, and, as proved at length in this book, what matters in a company's ethical climate is who runs the company. Drexel was an advisor to startup companies. Michael Milken, its CEO, created a junk bond market. A junk bond is a bond that is rated below investment grade at the time of purchase, with a high risk of default, many times concealed to the public. In order to make them attractive to investors those

bonds pay higher yields than better quality bonds. Investors who want to maximize their profits tend to buy those bonds, most of the time, overlooking the high risk "which will never happen to us". Unfortunately the 2008 recession has proved that even AAA shares and bonds collapsed, so that the epidemic of the junk bonds has reached the "best" securities; however, as the principles of the stock exchange are the same, it is no surprise to us. Milken realized that junk bonds rated less than BBB- were valued less than what they were "worth". Speculative junk bonds became one of the main vehicles of finance in the 1980s mergers and acquisitions, such as in the RJR Nabisco case. In a leverage buyout such as this, the acquirer - KKR - would issue speculative grade bonds to help pay for an acquisition and then use the target's cash flow to help pay the debt over time. But is it good for the economy, for the employees, the investors?

Drexel had its most profitable year in 1986, with profits of more than half a billion dollars, the most profitable year ever for a Wall Street firm. However, history proved that this record, based mainly on unethical conduct, was broken by other firms, showing that the greed and stupidity of the investors has no end and the minority shareholders never learn. Drexel's aggressive culture led many Drexel employees, such as Michael Milken, to stray into unethical, and sometimes illegal, conduct. On May 1986, Dennis Levine, a Drexel managing director and investment banker, was charged with insider trading. He was sentenced to two years in prison in February 1987. In October 1987 the stock market crashed. The SEC sued Drexel, Milken and others in September 1988 for insider trading, stock manipulation, defrauding its clients; all of the transactions involved Milken and his department. Ivan Boesky was also involved with Milken, but he had been sentenced previously, in December 1987, to three years in prison. In December 1988 Drexel agreed to plead guilty to six felonies, settle SEC charges, and pay a record \$650 million. In October 1989 the junk-bond market collapsed. In 1990 Milken agreed to plead guilty to six felonies and pay \$600 million; he was sentenced to ten years in prison. Upon his release from prison in 1993, Milken founded the Prostate Cancer Foundation, the world's largest philanthropic source

of funds for prostate cancer research. Milken himself was diagnosed with advanced prostate cancer in the same month he was released from prison. He donates large amount to melanoma research, to the Milken Community High School; his foundation has even suggested donating some money for a symposium on business ethics held by the Transparency International Israeli office. I was then on its Board of Directors and we declined the offer respectfully, as there is a limit to the repentance of one convicted to six felonies...

There is a straight line linking Drexel in the 1980s to Lehman in the 2000s. According to Wikipedia, which is the basis of many definitions in this chapter, high yield bonds are repackaged in CDO (collateralized debt obligations), thereby raising the credit rating above the rating of the original debt, thus meeting the minimum credit rating requirements of pension funds and other institutional investors despite the huge risks involved. We have to bear in mind that the interests of the investment bankers, the rating agencies and even the managers of the pension funds do not concur necessarily with the interests of the people who benefit from the pension funds, the old men and the widows, which is a major ethical issue, dealt with at length in this book. When such CDOs are backed by assets of dubious value, such as subprime mortgage loans (a "politically correct" term for junk bonds), the bonds and their derivatives become toxic debt. Holding such toxic assets has led to the demise of investment banks such as Lehman Brothers, Bear Stearns, or insurance companies such as AIG, in 2008, and led the US Treasury to buy those assets in September 2008, to prevent the collapse of the economy. No one knows the true value of those "assets", their value is decreasing further as more debtors default, so they represent a rapidly depreciating asset.

There is also a straight line linking Milken and Jeff Skilling, CEO of Enron, who was sentenced to 24 years in prison, following the largest bankruptcy ever, of Enron in December 2001 (this was clearly before Lehman's bankruptcy in 2008). This book reviews the Enron scandal and mentions some of the other corporate scandals. From 1999 until 2002 WorldCom suffered one of the largest public

accounting frauds in history. The fraud was the consequence of the way its CEO, Bernard Ebbers ran the company. In 1996 WorldCom reported revenues of \$5.6 billion and an operating income of \$896 million, a six-fold increase over the company's 1992 profits. We like to hear fairy tales of companies such as WorldCom, Enron or "Mastoss", as I mentioned in my first book, with record profits, 30 consecutive quarterly profits and so on. Unfortunately in many cases these profits are obtained in an unethical way, and even if they are obtained in a legal way, many times they incur high risk and wrongdoing to the stakeholders of the company. This book refers to the models of companies such as Nike, Monsanto or McDonald's, but it reviews the cases of McLibel, and books on those companies such as "No Logo" and the film "The Corporation". On the other hand I mention that record profits can also be achieved ethically, such as in the case of Warren Buffett's Berkshire Hathaway. In WorldCom's case, in 2002, its audit committee discovered \$3.8 billion in expenses that had been booked improperly as capital expenditures. This is also a common practice, as shown in the cases of my book. Ebbers was charged with securities fraud and he is currently serving a 25-year prison term. However, the company filed for bankruptcy-court protection wiping out the value of the shareholders. Led by new CEO Michael Capellas, WorldCom, now MCI, emerged from bankruptcy in 2004. The company officially restated its results for 2000 and 2001 and took a special charge that eliminated \$74 billion from its pretax income for those years. Approximately \$11 billion was due to fraudulent transactions that padded profits by artificially reducing expenses. All this turmoil, all this whirl, with tens of billions lost was only an appetizer for the 2008 recession.

Much of the blame lies with unethical firms such as Arthur Andersen, accounting firms, law firms, rating firms, investment bankers, underwriters or consultants. Andersen was the auditor for Enron, WorldCom, Global Crossing, and many of the cases in this book. After Andersen was convicted of obstruction of justice, the SEC could not accept corporate financial statements that had been audited by a felon. Thus, the firm was put out of business in the US and Andersen notified the

SEC that it would surrender its practice licenses effective August 31, 2002. Having dealt with Andersen's auditors, I was not surprised by this outcome, as Lehman's collapse and the corporate scandals were to be expected. Those issues are reviewed at length in the cases based on my business experience. In the 1990s Tyco adopted an aggressive acquisition strategy managed by its CEO Dennis Kozlowski and for the year ending in September 2001, the company's book value exceeded \$110 billion, with a long-term debt of over \$80 billion. The company's business lines were mainly Electronics, Healthcare, Engineered Products and Services, and Fire and Security. Tyco's revenues for the year ending September 2002 were \$35 billion with losses of \$9 billion. Kozlowski was convicted for misappropriating more than \$400 million of the company's funds and is currently serving at least eight years and four months in prison. Kozlowski asserted his innocence by stating: "I am absolutely not guilty of the charges. There was no criminal intent here. Nothing was hidden. There were no shredded documents. All the information the prosecutors got was directly off the books and records of the company." The issue is therefore, above all, ethical; is it justified to pay a CEO salaries and bonuses of hundreds of million dollars, \$6,000 for shower curtains in a lavish apartment in New York City paid by Tyco and costing the exorbitant amount of \$30 million? Ethical funds invest in companies where the highest paid employee earns no more than 30 times the salary of the lowest paid employee. However, the issue is also economical; I maintain that no CEO deserves more than 30:1, whatever the achievements of the company, and if he earns such huge and unethical salaries, the company is bound to lose money, as it will behave unethically toward other stakeholders as well, just as it happened with Tyco.

Nevertheless, the corporate scandals did not occur only in the US. The European business world was no less corrupt. The multinational Italian dairy and food corporation Parmalat collapsed in 2003, with a \$20 billion hole in its accounts in what was Europe's biggest bankruptcy. By 2001, many of the new divisions of the company had been producing losses, and the company financing shifted largely to the use of derivatives, apparently with the intention of hiding the extent of its

losses and debt. This is a common practice with most of the corporate scandals of the 2000s, in many cases with the full cooperation of the auditors and under the blind eyes of the regulatory agencies. The crisis became public in November 2003 when questions were raised about transactions with the mutual fund Epicurum, a Cayman-based company linked to Parmalat, causing its stock to plummet. What is interesting here is that this was exactly the same strategy used by Lay, Skilling and Fastow at Enron in 2001. Why did the shareholders, the board of directors of Parmalat, the Italian SEC, and all the other stakeholders overlook the similarities? Something must be wrong in the system and unless new institutions, such as the Institute of Ethics, reviewed in this book, are not established, such corporate scandals will occur more and more in larger waves bringing the collapse of the free market system. Parmalat's bank, Bank of America, released a document showing 3.95 billion Euros to be a forgery. The company went bankrupt, hundreds of thousands of investors lost their money, Calisto Tanzi, the CEO of Parmalat was sentenced to ten years in prison for fraud relating to the collapse of the dairy group. Vivendi is an international French media conglomerate with activities in music, television and film, publishing, telecommunications, the Internet, and video games. Its total revenue reached \$38.6 billion in 2000, but its massive expansion in the late 90s and early 21st century has caused the company both financial and legal trouble. The problems arose during the term of former CEO, Jean-Marie Messier, and both US and French regulators investigated potential cover-ups of company losses. When Vivendi began facing financial trouble in 2002, it responded with financial reshuffling, trying to shore up media holdings while selling off shares in its spin-off companies. Messier was replaced in 2002 by Jean-Rene Fourtou. The company was reorganized to stave off bankruptcy, as the losses incurred in 2002 amounted to 23.3 billion euros, the worst loss for a French company, and net debt amounted to \$12.3 billion euros. On December 7, 2004, Vivendi Universal's former chief executive Jean-Marie Messier was fined 1 million euros (\$1.3 million) by French securities regulator for issuing inaccurate and excessively optimistic information on the company; Vivendi was also fined 1 million euros. Once again we find that the fines paid - 1

million euros - in the rare cases when the CEOs and companies are convicted - are completely disproportionate to the amount of losses incurred – 23.3 billion euros.

One also has to deal with the Dot-com Bubble, which lasted from 1995 to 2001. The climax was, as mentioned earlier, on March 10, 2000, with the Nasdaq peaking at 5,132. During this bubble, Western stock markets saw their value increase rapidly from growth in the new Internet sector and related fields, in practical terms, most of the high tech segment. The period was marked by the founding (and sometimes spectacular failure) of a group of new Internet-based companies commonly referred as dot-coms. A combination of rapidly increasing stock prices, individual speculation in stocks, and widely available venture capital created an exuberant environment in which many of these businesses dismissed standard business models, focusing on increasing market share at the expense of the bottom line. Maximization of profits was no more relevant, it was replaced by maximization of valuation, or rather valuation to controlling shareholders. This bubble was unethical in many ways: it was not transparent, as investors who were not insiders were not aware of the appropriate times of buying and selling their shares. Those issues are reviewed at length in this book and in my previous books. In many cases, the insiders (executives and controlling shareholders) used their insider information in order to buy shares when they knew that the shares would rise after breakthroughs or mergers and they would sell shares just days before their collapse, because of excessive burn rate. Many class actions were filed, most of them unsuccessfully. In addition, the companies did not present detailed business plans to receive funding and, in many cases, tens or even hundreds of millions were raised on the basis of preliminary surveys without any economic validity. The analysts and the underwriters knew it but made the IPOs anyhow and gave strong buy ratings, as they received their fees anyhow. Unfortunately, one of the rules that apply to those bubbles is that inevitably the insiders win and the minority shareholders lose. Sometimes whistleblowers have discovered the schemes on the Internet but the shareholders have not been willing to hear their whistles. Shareholders sometimes put all their savings in the bubble and lost it all.

On January 11, 2000, America Online, a favorite of dot-com investors and pioneer of dial-up Internet access, acquired Time Warner, the world's largest media company. Within two years, boardroom disagreements drove out both of the CEOs who had made the deal, and in October 2003, AOL Time Warner dropped AOL from its name. Several communications companies, burdened with unredeemable debts for their expansion projects, sold their assets for cash or filed for bankruptcy: WorldCom, NorthPoint Communications, Global Crossing, JDS Uniphase, XO Communications, and Convad Communications. Demand for the new high-speed infrastructure never materialized, impacting companies such as Nortel, Cisco and Corning, whose stock plunged from a high of \$113 to a low of \$1. Many dot-coms ran out of capital and were acquired or liquidated; the domain names were picked up by old economy competitors or domain name investors. Several companies and their executives were accused or convicted of fraud for misusing shareholders' money, and the SEC fined top investment firms like Citigroup and Merrill Lynch millions of dollars for misleading investors. However, a few large dot-com companies, such as Amazon.com and e-Bay, have survived the turmoil and appear assured of long-term survival. The dot-com bubble crash wiped out \$5 trillion in market value of technology companies from March 2000 to October 2002. And since everything is linked, some believe that the crash of the dot-com bubble contributed to the housing bubble in the US. Yale economist Robert Shiller said in 2005: "Once stocks fell, real estate became the primary outlet for the speculative frenzy that the stock market had unleashed. Where else could plungers apply their newly acquired trading talents? These days, the only thing that comes close to real estate as a national obsession is poker." And that is the problem. Milken, dot-com, Enron, subprime, even Albert Carr advocates that: "Business is indeed a game; the rules of legality and the goal of profit are its sole ethical guideline". Carr and others see business, Wall Street and everything else as a poker game where you want to maximize profits, anything goes; there are no ethics; you can lie, cheat and bluff. But unfortunately we are dealing with the lives and future of hundreds of millions of people, tens of

trillions; this is the biggest poker game in history, and it is high time we stopped playing games.

The Subprime Mortgage Crisis is a financial crisis triggered by a dramatic rise in mortgage delinquencies and foreclosures in the US, with major adverse consequences for banks and financial markets around the globe. The crisis, which has its roots in the closing years of the 20th century, became apparent in 2007 and has exposed pervasive weaknesses in financial industry regulation and the global financial system. Many US mortgages issued in recent years were made to subprime borrowers, defined as those with lesser ability to repay the loan, based on various criteria. When US home prices began to decline in 2006-2007, mortgage delinquencies soared, and securities backed with subprime mortgages, widely held by financial firms, lost most of their value. The result has been a large decline in the capital of many banks and US government-sponsored enterprises, tightening credit around the world. During 2007, nearly 1.3 million US housing properties were subject to foreclosure activity, up 79% from 2006. Financial products called mortgage-backed securities (MBS), which derive their value from mortgage payments and housing prices, had enabled financial institutions and investors around the world to invest in the US housing market. Major banks and financial institutions had borrowed and invested heavily in MBS and reported losses of hundreds of billions of dollars. The liquidity and solvency concerns regarding key financial institutions drove central banks to take action to provide funds to banks and encourage lending to worthy borrowers in order to restore faith in the commercial paper markets, which are integral to funding business operations. Governments also bailed out key financial institutions, assuming significant additional financial commitments. Central banks around the world cut interest rates to 0 or almost 0 to implement economic stimulus packages. Effects on global stock markets due to the crisis have been dramatic. In 2008 (until October 11), owners of stock in US corporations had suffered about \$8 trillion in losses, as their holdings declined in value from \$20 trillion to \$12 trillion. Losses

in other countries averaged about 40%. The reasons proposed for this crisis are varied and complex, but are primarily ethical.

In its "Declaration of the Summit on Financial Markets and the World Economy", dated 15 November 2008, leaders of the Group of 20 cited the following causes: "During a period of strong global growth, growing capital flows, and prolonged stability earlier this decade, market participants sought higher yields without an adequate appreciation of the risks and failed to exercise proper due diligence. At the same time, weak underwriting standards, unsound risk management practices, increasingly complex and opaque financial products, and consequent excessive leverage combined to create vulnerabilities in the system. Policy-makers, regulators and supervisors, in some advanced countries, did not adequately appreciate and address the risks building up in financial markets, keep pace with financial innovation, or take into account the systemic ramifications of domestic regulatory actions." In other words, adherence to the principles stated earlier of low leverage, transparency of financial products and statements, lower risks when profits are not maximized, more regulation, and humane management would have prevented the crisis. The subprime lenders put "a stumbling block before the blind", luring people who were unable to repay the mortgage to buy a house they could not afford which would inevitably bring about their eviction and the loss of all their payments, transferring the risks with the MBS to third parties, to pension funds, to us. The insiders, knowing that the whirl was coming, probably sold their securities on time, cashed in their huge salaries, and found the way to make it all legal, and once again those who paid for their excessive greed were the homeowners and all those who suffered from the shock waves. Household debt grew from \$705 billion at year-end 1974, 60% of disposable personal income, to \$14.5 trillion in midyear 2008, 134% of disposable personal income. This brings us to another important issue: credit cards (40% of households carrying a balance, up from 6% in 1970) and living on credit. In the US and in many other countries people live on credit, buy houses and pay monthly installments much higher than their current rent, buy cars on credit, finance trips abroad on credit, buy furniture

on credit, even live on overdraft with an everlasting negative cash flow. If you live on credit you are vulnerable, you have to do your utmost to keep your job, with a blind obedience to the organization and even to commit unethical acts if you are asked to, since if you are fired you'll lose your house, your Medicare, your car; you'll go bankrupt. It is part of the system that boosts economy to far more than its natural level and endangers the integrity level of your personnel.

On September 7, 2008 the United States Director of the Federal Housing Finance Agency (FHFA), James B. Lockhart III, announced his decision to place two US Government sponsored enterprises (GSEs), Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Mortgage Corporation), into conservatorship run by the FHFA. On Sunday, September 14, 2008, it was announced that Lehman Brothers would file for bankruptcy after the Federal Reserve Bank declined to participate in creating a financial support facility for Lehman Brothers. Despite sharp criticism, this was the best course of action as there is a limit to the burden that the taxpayers should incur. Irresponsible businessmen should know that even if you head a mega corporation you may go bankrupt. Otherwise they will continue to act irresponsibly, knowing that is a win-win situation: if you succeed in your gamble you take the jackpot, and if you lose somebody else will pay the bill. In Lehman's case the volume of toxic assets was so huge that it made a rescue impossible. Immediately following the bankruptcy, JPMorgan Chase provided the broker dealer unit of Lehman with \$138 billion to settle securities transactions with customers of Lehman and its clearance parties. The same day the sale of Merrill Lynch to Bank of America was announced. On September 16, 2008, the large insurer American International Group (AIG), a significant participant in the credit default swaps markets, suffered a liquidity crisis following the downgrade of its credit rating. The Federal Reserve, at AIG's request, created a credit facility for up to \$85 billion in exchange for an 80% equity interest, and the right to suspend dividends to previously issued common and preferred stock. On Sunday, September 21, 2008, the two remaining investment banks, Goldman Sachs and Morgan Stanley, with

the approval of the Federal Reserve, converted to bank holding companies, a status subject to more regulation, but with readier access to capital. On September 25, 2008, Washington Mutual, the largest savings and loans in the US, was seized by the FDIC and most of its assets transferred to JPMorgan Chase. On September 28, 2008, Fortis, a huge Benelux banking and finance company was partially nationalized (49%), with Benelux governments investing a total of \$16.3 billion in the bank. On October 3, 2008, Wachovia, the 4th largest bank in the US was acquired by Wells Fargo.

On October 1 and 3, 2008, the US Senate and House of Representatives passed the Emergency Economic Stabilization Act of 2008, with a \$700 billion bailout plan, expanding bank deposit guarantees to \$250,000 per person, and including \$100 billion in tax breaks for businesses and alternative energy. Similar measures were taken in European countries and governments intervened in other countries as well. On Sunday, October 12, 2008, European leaders, meeting in Paris, led by France and Germany, announced recapitalization plans for Europe's banks. Plans were announced to guarantee bank deposits for five years. European countries would finance their own rescue plans and tailor them to local conditions. Mechanisms were also planned to increase the availability of short term credit. The total rescue plan totaled 1 trillion Euros. Employment reports released by the US Labor Department show that since the start of the recession in December 2007, the number of unemployed persons has grown by 3.6 million and the unemployment rate has risen by 2.3% to 7.2%. It is anticipated by experts that unemployment in the US will rise to 8% by the middle of 2009. On Sunday, November 9, 2008, the People's Republic of China announced a \$586 billion domestic stimulus package for the remainder of 2008, 2009 and 2010. On Sunday, November 23, 2008, a rescue plan for Citigroup was agreed to by the US government. In December 2008 the US government announced that it would give \$17.4 billion in loans to help Chrysler, GM and Ford avoid bankruptcy.

INEFFICIENT & EFFICIENT WAYS ATTEMPTING TO OVERCOME THE ECONOMIC WHIRL

Unfortunately, the vehicles that were devised to prevent such major crises as the Corporate Scandals of the 2000s and the Junk-Bond Market Collapse of the 1980s are not efficient. The tightening of corporate governance, ethical codes and regulation following the scandals of the 1980s did not prevent the scandals of the 2000s. Enron had the best ethical code ever devised, but it didn't prevent its collapse, as the executives winked at their subordinates and did the opposite. The Sarbanes-Oxley Act (SOX) is implemented in many cases, against the will of companies that are opposed to any regulation. They maintain that SOX was an unnecessary and costly government intrusion into corporate management that places US corporations at a competitive disadvantage with foreign firms, driving businesses out of the US. They are patriotic; foreign firms do not register on the US stock exchanges, it cost American companies upwards of \$1.2 trillion, it cost Fortune 500 companies an average of \$5.1 million in compliance expenses in 2004. The Wall Street Journal states in its editorial on December 21, 2008: "The new laws and regulations have neither prevented frauds nor instituted fairness. But they have managed to kill the creation of public companies in the US, cripple the venture capital business, and damage entrepreneurship." Why are all the critics so angry? The SOX improves transparency, corporate governance, investor confidence, and more accurate, reliable financial statements. The CEO and CFO are now required to unequivocally take ownership of their financial statements under Section 302, which was not the case prior to SOX, and allowed Lay and Skilling to put the blame on Fastow for Enron's fraudulent acts. Auditor conflicts of interest are prevented by prohibiting auditors from also having lucrative consulting agreements with the firms they audit, under Section 201. SEC Chairman Christopher Cox stated in 2007: "Sarbanes-Oxley helped restore trust in

US markets by increasing accountability, speeding up reporting, and making audits more independent." So what is really the problem? First of all, SOX prevents maximization of profits, as it increases costs. The CEOs and controlling shareholders overlook the long-term risks of fraudulent acts but want to have the best quarterly results. The Act of 2002 was meant to prevent the losses of tens of billions that happened to shareholders of Enron, WorldCom or Tyco; however, it did not prevent the losses of trillions in 2008, although both crises were caused mainly by the unethical conduct of companies.

SOX established the Public Company Accounting Oversight Board (PCAOB) to provide independent oversight of public accounting firms providing audit services, tasked with registering auditors, defining the specific processes and procedures for compliance audits, inspecting and policing conduct and quality control, and enforcing compliance with the specific mandates of SOX. Most economists and politicians today advocate more regulation, but will it change the companies' attitudes? Has SOX changed their attitude, has it made Lehman, AIG or the banks that went bankrupt, or almost did so, more ethical? It has enriched many law firms who earn tens of millions assisting unethical companies in how to circumvent SOX. Would it not be much simpler to invest millions in order to implement ethics in the company, to be transparent, with less leverage, pay taxes, preserving ecology, taking into consideration the interests of all the stakeholders? SOX established standards for external auditor independence. But do they want to be independent and still maximize their firms' profits? Whose interests do they serve – the companies paying them their fees, SOX's, the minority shareholders, the stakeholders? Senior executives now take individual responsibility for the accuracy and completeness of corporate financial reports. Yet, Martin Sullivan, AIG's CEO, said on December 5, 2007 (Fortune, January 19, 2009): "We are confident in our marks and the reasonableness of our valuation methods. We have a high degree of certainty in what we have booked to date." Outside auditors had warned Sullivan a week earlier of possible "material weaknesses" in AIG Financial Products' accounting. AIG was saved by federal bailout on September

16, 2008, nine months later, with federal loan commitments and investments totaling \$150 billion. What does it help that the matter is under scrutiny by federal prosecutors and the SEC? With \$150 billion we could solve so many health, education and infrastructure problems in the US, but the amount went to bail out AIG. Regulation will not help, just as SOX did not help; what will help are the vehicles and principles devised in this book, ensuring that companies like AIG should be ethical, their management ethical, the business climate ethical.

However, what did Alan Schwartz, CEO of Bear Stearns say to CNBC on March 12, 2008, 36 hours to Armageddon?: "Our liquidity and balance sheet are strong. We don't see any pressure on our liquidity, let alone a liquidity crisis." Bear Stearns sought emergency funding from the Federal Reserve on March 13, 2008, and was then sold to J.P.Morgan. Daniel Mudd, CEO of Fannie Mae, stated on February 27, 2008: "There are no current plans to go back to the market for capital because we have all of those other levers that are turned on, producing capital, putting us into an increasingly – into a comfortable position based on where we are in the market right now." Regulators seized Fannie and Freddie on September 7, 2008, and the matter is under scrutiny by Department of Justice investigators and the SEC. Jeffrey Edwards, Merrill Lynch's CFO, stated on July 17, 2007: "I think proactive, aggressive risk management has put us in an exceptionally good position. We have seen significant reductions in our exposure to lower-rated segments of the market." After taking more than \$30 billion in write-downs, Merrill agreed to be sold to Bank of America on September 15, 2008. The matter is now under scrutiny by SEC and state AGs from New York and Massachusetts. The advocates of SOX maintained that Financial Restatements increased significantly in the wake of the SOX legislation and have since dramatically declined, as companies "cleaned up" their books. But what about the books of Merrill Lynch, AIG, Bear Stearns, Fannie and Freddie? This issue does not matter anymore for Lehman Brothers, which filed for Chapter 11 protection on September 15, 2008, the largest bankruptcy in history. We see that the gangrene is gaining momentum and Enron's bankruptcy is almost insignificant

in comparison to Lehman's. Yet, Richard Fuld, Lehman Brothers' CEO stated on September 10, 2008, five days to Armageddon: "We are on the right track to put these last two quarters behind us." And its CFO Ian Lowitt stated on the same day: "Our liquidity pool also remains strong at \$42 billion. Throughout the market volatility of the past six months, our liquidity and funding framework has served us extremely well, and we remain focused on increasing the funding available in our bank entities and mitigating any liquidity risks to our secured and unsecured funding positions." How will it help the stakeholders of Lehman who lost all their money even if Fuld and Lowitt are convicted, pay millions in fines and go to prison for 5 or 25 years? When Lehman collapsed it had bank debt of \$613 billion, bond debt of \$155 billion, and assets (including dubious assets) of \$639 billion. We are now a long way from the tens of billions of Enron. The damage of the bankruptcy or conservatorship of all these companies to the world economy is estimated in trillions and the only way to prevent such catastrophes is to comply with the principles of this book, mentioned earlier.

Fortune is wrong in stating in its article that it's payback time for Wall Street. Wall Street will never be able to pay back anything nor will the unethical executives who will be convicted. Sentencing them to jail will be like treating a toothache in doomsday. Those who will be affected are the millions who are being fired and have done nothing wrong, the millions who lost a substantial part of their pensions and have never speculated on the stock exchange, the millions who will lose their homes, will not be able to give education to their children, receive health insurance or will suffer abject poverty. Governments will not have money for welfare, companies will not have money for social responsibility, and philanthropists will cease their donations because they have lost their funds in the Madoff Ponzi Scheme. On December 11, 2008, Bernard Madoff, 70, a former Nasdaq chairman and a respected figure on Wall Street for 40 years (they are all "honorable men", as Wall Street measures the greatness of men by the size of their wallets), was charged with having perpetrated a mammoth Ponzi scheme, instantly becoming the new face of fraud on Wall Street. Victims have lost as

much as \$65 billion and Madoff was sentenced to 150 years in prison. The victims include prominent families, charities, and hedge funds. The Inspector General of the SEC investigated into how the SEC staff could have missed so many red flags for so long. So, we have regulations, but when we need them, they are not there; they were not there when needed with Enron and they are not there now with Madoff. Madoff was also a prominent philanthropist who served on the boards of nonprofit institutions, many of which entrusted his firm with their endowments, some of which, such as the Lappin, Picower and JEHT Foundations have been forced to close, as a consequence of the fraud. The whirl hits everybody, the innocents like these donors are hit the most and if the guilty are hit, it is too late and irrelevant.

One of the foundations of ethics is to live according to your means, be moderate, never owing anything to anybody, as you may lose your independence and integrity. I have started from zero and have never owed anything, although I bought a house mainly from my savings, took a mortgage and paid it with monthly installments which were lower than the rent I used to pay. I didn't buy a car before saving enough money, travelled abroad only when I could afford it; in short, I have always had a positive cash flow; even when I didn't work, I had enough savings to allow me to find an adequate job. I try conveying this message - "the key to happiness is a positive cash flow" - to my students, my colleagues, my family and my friends. However, it is completely opposite to current practice. In the global world, when you can be fired without any warning and due to reasons beyond your reach, you have to live according to your means, as that is the guarantee of your integrity and wellbeing. However, the unethical practice of the lenders was even more cynical. Easy credit, and a lie that house prices would continue to appreciate, had encouraged many subprime borrowers to obtain adjustable-rate mortgages. These mortgages enticed borrowers with below market interest rates for some predetermined period, followed by market interest rate for the remainder of the mortgage's term. Joseph Stiglitz describes this process in Time (October 27, 2008) in his article "The Way Out": "The mortgage brokers

loved these new products because they ensured an endless stream of fees. They maximized their profits by originating as many mortgages as possible, with frequent refinancing. Their allies in investment banking bought them, sliced and diced the risk and then passed them on. The bankers forgot that their job was to prudently manage risk and allocate capital. They became gambling casinos – gambling with other people's money, knowing that the tax-payer would step in if the losses were too great. They misallocated capital, with massive amounts going into housing that was ultimately unaffordable. Loose money and light regulation were a toxic mixture. It exploded." Borrowers who could not make the higher payments once the initial grace period ended would try to refinance their mortgages. Refinancing became more difficult, once house prices began to decline in many parts of the USA. Borrowers who found themselves unable to escape higher monthly payments by refinancing began to default. As more borrowers stopped paying their mortgage payments, foreclosures and the supply of homes for sale increased. This places downward pressure on housing prices, which further lowers homeowners' equity. The decline in mortgage payments also reduces the value of mortgage-backed securities, which erodes the net worth and financial health of banks. This vicious cycle is at the heart of the crisis. But this must not necessarily be so.

Community Investing, supporting development initiatives in low-income communities, provides affordable housing, creates jobs and helps responsible businesses get started. It is achieved mainly through Community Banks, Community Credit Unions, Community Loan Funds and Micro-enterprise lenders, such as South Shore Bank. In the 1970s, banks still continued to "redline" against minority neighborhoods, even to credit-worthy residents. Shore Bank founders decided to buy a bank in a disinvested neighborhood and create complementary affiliates, focusing all of the resources on one neighborhood. Shore Bank's basic real estate acquisition and rehab loans are made on 20-year, fully amortizing terms with rates that adjust every two years, with fee structures for mortgage lending and refinancing lower than competing banks. This book describes such a

bank in one of the best pictures ever filmed "It's a Wonderful Life", directed by Frank Capra with James Stewart and Donna Reed. After George Bailey's father's death, Mr. Potter (the subprime bank shark of today) tells the Board of Directors of the mortgage bank owned by Bailey that the way he managed the bank was not businesslike, was utopian and unpractical. George Bailey defends the cause of the so called "rabble", the hard working people who benefit from the cheap loans of the mortgage bank in order to purchase a modest house instead of renting the slums owned by Potter. Georges' social responsibility lies in erecting Bailey's Park, with new small houses for the hard working people who at last have their own homes. And this brings us to the main ethical dilemma of the modern world. In the 2000s, we are no more dealing with a small town like Bailey's, not even Chicago, as with South Shore Bank; we are dealing with the welfare of the US, of the world, since the subprime crisis brought about the recession of 2008. If the sharks of the subprime crisis had given loans on affordable terms, as in Community Banks, without trying to maximize their profits, they would have earned a moderate profit and not gone bankrupt. As they were greedy, put stumbling blocks before the blind and made false representation of the interest' rates, the US economy entered into its worse recession since 1929. If it recovers, but continues with those practices, the next whirl might melt down the world's economy. Now is the time to reprogram, to reset the whole economy, with the principles presented in this book. It is our last chance to do so; we have wiped out trillions; next time the conventional means will not be enough.

I am not alone in making these warnings, but this book may be the only one to illustrate them with a wide variety of cases, theory and analyses of works. Furthermore, this book presents a cohesive set of measures that might prevent the next stage of the whirl from occurring. Nouriel Roubini states in his article "Warning: More Doom Ahead" in the FP Foreign Policy issue of January/February 2009: "This crisis is not merely the result of the U.S. housing bubble's bursting or the collapse of the United States' subprime mortgage sector. The credit excesses that created this disaster were global. There were many

bubbles, and they extended beyond housing in many countries to commercial real estate mortgages and loans, to credit cards, auto loans, and student loans. There were bubbles for the securitized products that converted these loans and mortgages into complex, toxic, and destructive financial instruments. And there were still more bubbles for local government borrowing, leveraged buyouts, hedge funds, commercial and industrial loans, corporate bonds, commodities, and credit-default swaps—a dangerous unregulated market wherein up to \$60 trillion of nominal protection was sold against an outstanding stock of corporate bonds of just \$6 trillion. Taken together, these amounted to the biggest asset and credit bubble in human history; as it goes bust, the overall credit losses could reach as high as \$2 trillion. Unless governments move with more alacrity to recapitalize banks and other financial institutions, the credit crunch will become even more severe. Losses will mount faster than companies can replenish their balance sheets. Thanks to the radical actions of the G-7 and others, the risk of a total systemic financial meltdown has been reduced. But unfortunately, the worst is not behind us. This will be a painful year. Only very aggressive, coordinated, and effective action by policymakers will ensure that 2010 will not be even worse than 2009 is likely to be."

Joseph Stiglitz, cited at length in this book, whom I perceive as the modern prophet of ethical economy, presents a variety of solutions to the bubbles and recessions of 2008 on CNN.com: "This is not the first crisis in our financial system, not the first time that those who believe in free and unregulated markets have come running to the government for bail-outs. There is a pattern here, one that suggests deep systemic problems and a variety of solutions:

1. We need first to correct incentives for executives, reducing the scope for conflicts of interest and improving shareholder information about dilution in share value as a result of stock options. We should mitigate the incentives for excessive risk-taking and the short-term focus that has so long prevailed, for instance, by requiring bonuses to be paid on the basis of, say, five-year returns, rather than annual returns.

2. Secondly, we need to create a financial product safety commission, to make sure that products bought and sold by banks, pension funds, etc. are safe for "human consumption." Consenting adults should be given great freedom to do whatever they want, but that does not mean they should gamble with other people's money. Some may worry that this may stifle innovation. But that may be a good thing considering the kind of innovation we had -- attempting to subvert accounting and regulations. What we need is more innovation addressing the needs of ordinary Americans, so they can stay in their homes when economic conditions change.

3. We need to create a financial systems stability commission to take an overview of the entire financial system, recognizing the interrelations among the various parts, and to prevent the excessive systemic leveraging that we have just experienced.

4. We need to impose other regulations to improve the safety and soundness of our financial system, such as "speed bumps" to limit borrowing. Historically, rapid expansion of lending has been responsible for a large fraction of crises and this crisis is no exception.

5. We need better consumer protection laws, including laws that prevent predatory lending.

6. We need better competition laws. The financial institutions have been able to prey on consumers through credit cards partly because of the absence of competition. But even more importantly, we should not be in situations where a firm is "too big to fail." If it is that big, it should be broken up.

These reforms will not guarantee that we will not have another crisis. The ingenuity of those in the financial markets is impressive. Eventually, they will figure out how to circumvent whatever regulations are imposed. But these reforms will make another crisis of this kind less likely, and, should it occur, make it less severe than it otherwise would be."

These are excellent insights, analyses and solutions. But it is "more of the same", more regulation, more laws, more commissions, fewer incentives to executives.

Those solutions would be sufficient in a normal crisis like we had in the last century after the 1930s depression. The world leaders are now adopting Keynesian solutions, pouring in huge amounts of money to boost the economy and save the financial system, lowering interest rates to 0, and making higher deficits. These methods may suffice for the current recession, maybe for the next one, but as amounts of losses reach the unbelievable figures of tens of trillions, they will not be sufficient to overcome a Domsday Depression by 2020. Only a complete change of ideology, resorting to ethics, not window dressing social responsibility but true hard core ethics as devised in the Credo, in the Introduction and throughout this book, will change the situation drastically and stop the whirl. The closest statement, coming close to the precognition of this book, was made by Klaus Schwab on October 30, 2008:

"Our international system, created in the middle of the last century and based on multilateral institutions, either lacked the authority or the competency to deal with the challenges of a global financial system that went overboard. Furthermore, individual governments have not shown the initiative to address a fundamentally restrictive global financial system – either out of national interest or because of ideological reasons. In addition, the G-7, the grouping of the leading industrialized countries, and the International Monetary Fund have not shown the necessary long-term vision.

The absence of regulatory functions has been abused by many actors to the great detriment of the public, national economies and, unfortunately, common people as well. Only now do we see “global finance summits” aimed at establishing rules that have been long overdue. It remains to be seen whether we will be able to create a “world community” which will find the right balance between necessary regulation and maintaining entrepreneurial dynamism. It is now more important than ever to not choke off the engine of the real economy – especially in the early stages of a recessionary phase – in order to save jobs.

While regulation is important for the future of the global economy, rules alone are not sufficient. This crisis has clearly demonstrated not only our global interdependence, but also the fact that the economy and society are very much

interconnected. In other words, the economy is not an independent or self-contained realm; instead, the crisis has shown that the economy has to serve society. We have to be careful that the measures taken to curtail the crisis will not damage the power of innovation in the real economy.

I founded the WEF in 1971 based on the stakeholder theory, which says that the management of an enterprise has to serve all stakeholders connected to the company. This goes beyond serving only the shareholders; it means that the management has to lead the enterprise as the trustee of all stakeholders and not just the appointee of the shareholders, in order to secure the long-term prosperity of the company.

This comprehensive, professional role of management has been undermined in recent years by bonuses and other systems that link the management to the short-term interest of the shareholders. Maximum profit-seeking has increasingly taken precedence over long-term strengthening of competitiveness and sustainability.

I have described this perversion of the professional ethos of management in the following way: When I had surgery a few years ago, I knew very well that my future quality of life would be dependent to a large extent on the qualifications of the surgeon. This is why I sought an expert who was the best in his profession. I naturally assumed that I was in the hands of a doctor who would apply his most professional skills without claiming that he would like to have a share of my future income – since, of course, this would be dependent on his know-how – in addition to his remuneration.

Going forward, what we need is a management philosophy that is based on a professional ethos and not on maximum profit-seeking. Of course, highly-qualified business leaders are highly paid in an internationally competitive environment. However, those leaders with the corresponding moral qualification in particular should always do their best in every situation without a need for additional incentives such as bonuses. Perhaps we need an equivalent of the Hippocratic Oath for management, as it exists for doctors, which incorporates this comprehensive responsibility. If we are not capable of installing a long-term comprehensive responsibility for business leaders in all areas of the economy,

then the new rules and regulations will not help, because there will always be loopholes.

In times of crisis it is necessary to slow down the tornado caused by mistakes of the past and to prevent further damage. But it is even more important that we should not act blindly in a superficial way. We need to identify the fundamental problems and change our behaviour accordingly. This is why the current crisis hopefully has a transformational character.

For the short-term future, it is essential to build a real global partnership to overcome the negative impact of our financial instruments and to make progress on the other global challenges facing us, such as climate change, fighting poverty, healthcare and other important issues. There is a danger today that these and other fundamental questions will be pushed to the sidelines – with the same disastrous consequences we saw as a result of ignoring the early warning signs of this financial crisis.

I hope that the conscious adoption of a business ethos based on the comprehensive and long-term stakeholder principle, instead of the one-sided, short-term shareholder principle, becomes one positive outcome of this crisis."

Schwab says today what I have maintained, taught and written in the last decade. All these are developed extensively in my new book which I wrote before the crisis and where I forecasted that the crisis would inevitably come. I stated that the law is not sufficient to safeguard the interests of the stakeholders and business ethics is essential. We need ethical executives, with integrity and transparency. In the Introduction to my book, you can read how I attacked the erroneous conception that a company has to maximize profits as it always implies maximum risk and wrongdoing to the stakeholders. I was one of the few who dared to oppose the consensus. My book's motto is that profitability is a precondition to the existence of companies but is not their *raison d'être*. Because of that, I was called socialist and anti-business. In the book, especially in the case studies, I show how the outrageous leverage ratios act to the detriment of long-term stability, but I was told that practice shows the opposite. When I wrote that

managers should be screened ethically as a precondition to their employment, most people said that it is irrelevant as they should maximize profits, be street fighters and crash the competition as in war. Now Schwab says it, as well as a large part of the business, academic, political and media communities. My book gives substantiation to what they say today and proves it.

The governments of the world are losing a golden opportunity to prevent the next recession and ultimately the Domsday Depression. They have spent hundreds of billions to rescue the banks but have not changed anything in their way of thinking. The banks are the same banks, Lehman does not exist anymore but all the others do, in one way or another. They'll continue to devise toxic assets, hoping to be rescued in extremis. What should be done is change the principle of maximization of profits, induce banks to adopt, even in part the principles of community banks, giving subprime customers mortgages with lower interests, longer periods of repayment, fixed installments according to their means, not seeing the subprime borrowers as suckers but as potential prime customers. Another change could be to prevent externalizing the mortgages through MBS. Let the banks assume full responsibility for their loans and assume the risks. They know better than anybody else the customers, the risks and the prospects. They would not put stumbling blocks before the blind if they are personalized and they know that they would have to evict them from their homes. The pension funds should not be allowed to invest in the stock exchange but exclusively in risk free assets as government bonds. It is unethical to risk the pensions and savings of innocent people who know nothing about hedge funds, MBS, derivatives, and who had never speculated in their lives.

The Credo, the 36 Principles, or similar ones should be adopted by all companies, firms and banks that want to receive aid from the governments and the precondition in the rescue programs should be adherence to the Credo. Shareholders would invest only in such companies, employees would work only there, and banks would lend money only to ethical companies. Communities

would welcome only ethical companies, as would all the stakeholders of the companies. If a company does not adhere to the first principle and does not see profitability as a viability precondition but as its only reason for existence, the company would probably wrong its stakeholders sooner or later. If companies continue to seek maximization of profits they will end up taking huge risks as did AIG, Lehman or Drexel and maximizing the wrongdoing to their employees, customers and the ecology. They will practice creative accounting, publish opaque financial statements, and have a leverage of 10:1 or even 30:1, risking other people's money. They will not pay taxes as they should, their independent directors will be biased and their management will not be democratic and humane. If the companies adopt the vehicles devised in this book, the economy will become ethical, the risks will attenuate, and the need for regulation and welfare will decrease substantially, thus saving billions in public funds. An Institute of Ethics should be established in every country, ethical ratings of companies should be adopted, as well as ethical screening for managers, salesmen and employees in purchasing and finance. If the mechanisms devised in this book for appointing independent directors are adopted, they will substantially enhance corporate governance. Our model businessman would be Warren Buffett and not Ken Lay, and society should ostracize unethical businessmen and praise whistleblowers. No one will invest in companies with outrageous salaries to executives, or buy from them, not because we are jealous but because we know for sure that their primary motivation will be toward short term achievements, which are always to the detriment of the stakeholders' welfare. The heavy sentences on corrupt businessmen convicted in the 2000s corporate scandals are a good start, but we should remember that Milken and Boesky also went to prison and the business world became even more corrupt. SOX and more regulation are a good start, but are not efficient enough, as we have seen in the 2008 recession. And most of all, the solution should be comprehensive including all these principles, or similar ones; partial measures do not suffice.

Adherence to the Principles would prevent major economic whirls, with 50% of the population in the middle class, as in Sweden, and not 50% of the wealth owned by the richest 1%, thus enhancing democracy by minimizing social gaps. Reward and punishment should be equitable, not as today, when corrupt businessmen are rewarded and rescued and seldom punished for the extraordinary risks they take, for using insider information and receiving exorbitant salaries, while the innocent are punished, lose their jobs, their pensions, punished for crimes that others have committed. If this situation continues, people will lose faith in the stock exchange and not invest there anymore. People should invest in ethical funds, as advocated in this book, and the climate of business should become ethical, as it is hard to be ethical when most of your competitors are not. If these changes occur, justice will prevail after all. It is not a coincidence that Emile Zola, the ultimate ethicist who is mentioned at length in this book, died (was perhaps even murdered) before writing his book "Justice" in his final series, which consisted of: Fecondite (Fruitfulness), Travail (Work), Verite (Truth) and Justice (Justice). According to Maslow, and even the Kabbalah, there are different levels of needs. Since the earliest days of mankind we have reached fruitfulness and basic needs. Work was reached thousands of years ago in agriculture and handicraft. Truth was obtained with Moses, Jesus, Mohammed, Buddha, Aristotle, Voltaire, Galileo, Einstein, Freud, and so many others. But Justice was never fully achieved: we were almost there in the ancient times of Solomon but then his kingdom collapsed; we saw it coming in 1789 in France, but then came Napoleon and Louis XVIII; we hoped it would prevail after the Civil War in the US, but racism continued to exist for more than a century; the socialists were exhilarated in 1917 in Russia, but then came one of the most murderous regimes in history. I even witnessed the May 1968 Students Revolution in Paris, but the neo-liberal reaction ensued. In 1989 the Berlin Wall fell and subsequently the communist regimes were ousted, but then capitalism's hubris gained momentum in its ugliest forms, with corporate scandals, the subprime crisis and the 2008 recession. Yet, there is a tendency towards more justice and we cannot deny that the situation today is far better than it was even a century ago. Only in business does justice

not yet prevail. Greed is more and more blatant; ethics is in many cases window dressing, reward and punishment do not really exist.

As long as the mentality of street fighters, cut throat competition and the killer instinct prevail, as long as society continues to worship bankrupt businessmen who outsmarted their creditors, tax evaders who conned the government or controlling shareholders who wronged minority shareholders, nothing will change and we'll continue to fight aimlessly against larger and larger whirls. The whole attitude of business and society has to change in order to save us from the Domsday Depression. It is achievable, it is economic, it is ethical and it is just. In this book I offer efficient ways on how to achieve it; my ideas concur and extend Joseph Stiglitz's theories on The Third Way, Klaus Schwab's principles on a New Business Ethos and Nouriel Roubini's warning on More Doom Ahead. Every problem has a solution, as proved in this book; we need only to change our mentality, to elect new men, men who have an ethical attitude to key positions. It will cost us less than the trillions invested in pointless rescue plans that save the wrongdoers instead of the wronged. We should live according to our means, without excessive credit, educate businessmen and MBA students to ethics, and make this world a sustainable world, with equality, justice, and a high quality of life!

THE THEORETICAL FOUNDATION OF BUSINESS ETHICS

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."

Business Ethics according to Velasquez "is a study of moral standards and how these apply to the systems and organizations through which modern societies produce and distribute goods and services, and to the people who work within these organizations. Business ethics, in other words, is a form of applied ethics. It includes not only the analysis of moral norms and moral values, but also attempts to apply the conclusions of this analysis to that assortment of institutions, technologies, transactions, activities and pursuits which we call 'business'." (Velasquez, Business Ethics, p.15) We should treat equitably all the stakeholders of the corporation, not to do to others what you wouldn't want to be done to you. We can even say that the only way to be ethical in business is by not maximizing profits as it is always at the expense of employees, customers, suppliers, environment, community or state. To be ethical in business is therefore to find the right equilibrium between an optimal profitability and the interests of the stakeholders, as all extremes are bound to bring an ethical conduct. This brings us to the Aristotelian theories on happiness and ethics.

Aristotle is perceived by many as the founder of the philosophy of ethics in his book 'Ethics' or 'The Nicomachean Ethics'. According to Aristotle man aspires to be happy, in the sense of eudaimonia, happiness, as the summum bonum of his existence. Happiness is not identical to pleasure, and the ethical man will aspire to live a happy life but not necessarily a pleasurable life. Happiness is not the end of each action, but it is nevertheless the supreme goal of life. "For even if the good

of the community coincides with that of the individual, it is clearly a greater and more perfect thing to achieve and preserve that of a community; for while it is desirable to secure what is good in the case of an individual, to do so in the case of a people or a state is something finer and more sublime.” (Aristotle, Ethics, p.64) Aristotle maintains that wealth is certainly not the happiness that we are looking for, as it is only a means to obtain other goods. Money does not bring happiness, but it helps to obtain it. Man is by nature a social creature and his good should include his parents, his wife, his children, his friends, and his compatriots. “The conclusion is that the good for man is an activity of soul in accordance with virtue, or if there are more kinds of virtue than one, in accordance with the best and most perfect kind.” (Aristotle, Ethics, p.76) “And if, as we said, the quality of a life is determined by its activities, no man who is truly happy can become miserable; because he will never do things that are hateful and mean. For we believe that the truly good and wise man bears all his fortunes with dignity, and always takes the most honourable course that circumstances permit.” (Aristotle, Ethics, p.84)

Virtue has two faces – intellectual and moral. The intellectual virtue is acquired by education and experience. But the moral virtue is acquired by habit and ethos. “The moral virtues, then, are engendered in us either by nor contrary to nature; we are constituted by nature to receive them, but their full development in us is due to habit. Again, of all those faculties with which nature endows us we first acquire the potentialities, and only later effect their actualization.” (Aristotle, Ethics, p.91) A man is not ethical or unethical by nature, he can become so by habit, and the social role of humanity is to develop the ethical aptitudes of all humankind. One cannot be wholly happy without being wholly ethical and moral, and if we could inculcate these notions to the business world, and prove that it is not only a philosophical theory, but also a reality, which is proved in many cases, we could change the aptitudes of a large number of businessmen. As the businessmen at the start of their career are not good or bad, it is circumstances, milieu, ambiance of their companies, example of their superiors, influence of their families, which

make them more or less ethical. The businessmen who remain ethical in spite of an unethical environment are very rare. A very strong character is needed, serious convictions and a vast intellectuality.

The good conduct is incompatible with excess, one has to be moderate in order to preserve his moral qualities. An excessive or insufficient sportive activity is harmful, and it is the same with food, drink, courage, pleasure, and all other human activities. Moderation is not equal to everybody and everybody has to aspire to find his equilibrium in the moderation that suits him. Aristotle treats ethical ignorance with indulgence “When a man repents of an act done through ignorance, he is considered to have acted involuntarily.” (Aristotle, Ethics, p.113)

This book will refer to the feigned or true ignorance of businessmen who do not behave ethically. If we oversee it, if we do not publish it, if we do not dissect it, if we do not blame it in the press and on the Internet, in a nutshell - if we are not activist ethicists, these businessmen will continue to abuse the rights of the stakeholders or the minority shareholders without feeling an iota of guilt. If they are treated like spoiled irresponsible children, they will never regret their acts, and they would say that they did not know. If there is a certainty that resulted from the atrocities of the Nazis, it is that we cannot let the world remain in ignorance, feigned or real. The Allied Forces could always say that they did not bomb Auschwitz because the atrocities were not published, the Poles in Krakow, at 70 kilometers from the camps, could always say that they did not know what happened beneath their noses. But in the modern world, it is impossible to ignore atrocities, and what happens in Rwanda, Kosovo or Bosnia, or in the recent past in Argentina, Chile, Kuwait or Greece, is known throughout the world, which cannot feign ignorance and is obliged to intervene. This book affirms that in the same manner we should not let the ethical wrongdoing committed by companies remain hidden from the public eye and we have to publicize them through the Internet, press, books, articles, theses, the Institute of Ethics, university lectures, shareholders' assemblies, courts, parliament, literature, theatre and cinema.

According to Aristotle, the unjust men have chosen deliberately to be so, and now that they are so, they cannot change. This theory is in contradiction to Christian theory, which enables followers to repent even at their dying breath. It would be interesting to analyze how the modern unethical businessmen tend to repent or not. We only know that the robber barons have founded philanthropic institutions, the bankers who were condemned recently for insider trading have engaged in community activities, etc. But what is the conduct of those who were not apprehended, or those who do not think that they are rich enough to contribute money to society? Here again, if we would disclose their ethical wrongdoing, it would increase the probability of their penance, and activist business ethics would prevail!

We can reach truth according to Aristotle in five ways: through science – episteme, art – techne, prudence – phronesis, intelligence – nous, and wisdom – sophia. How many business administration faculties give courses or try to develop those qualities? They teach mathematical models, which are almost never applied in practice and are completely irrelevant, but who gives courses or case studies, which could develop those qualities that are so necessary to businessmen? One of the most striking features of modern businessmen is the intellectual superficiality of many of them. How many businessmen read classic literature, philosophical dissertations and poetry? How many go to the theater, to concerts, to museums? A business dinner consists almost always of talking about business matters, or often about the best restaurants in New York, Dallas, London or Singapore. With such a limited scope of interests, how can we wonder that some businessmen are not ethical, do not seek truth, moderation or wisdom? Are those qualities incompetent to businessmen? But the fact that this situation prevails in some cases does not mean that it should be so. Furthermore, we cannot allow ourselves to leave any domain of business without ethics even if it is difficult today to converge ethics and business. We are dealing with the salvation of the modern world, and all the

world economy depends on it. This is the reason why it is necessary to inculcate ethics actively by all means at all levels.

In the same way that many people state that ethics in business is an oxymoron, we could state another one - that friendship in business is an oxymoron. Aristotle describes three kinds of friendship – friendship based on interests, friendship based on pleasure, and friendship based on goodness. The first two friendships are quite common in the business world, but the third is very rare, in spite of the maxims ‘love thy neighbor as yourself’. Friendship based on goodness is like love, as it accepts the others as they are, they want their good in all cases, even if they do not derive utility or pleasure from the friendship. It is ‘for better and for worse’, even if the businessman loses his job, his high level and his influence, or he gets sick or becomes poor. This friendship is permanent; they like to remain with each other, and they have complete trust in the friend. How is it possible that the Germans can be friends with the French, after centuries of animosity, and that unethical businessmen cannot establish true friendships and behave ethically towards their stakeholders and colleagues?

Why does everything have to be based on interests and pleasure? We could save hundreds of billions of dollars which are the worldwide costs of the lack of ethics and trust; extremely high bills of lawyers would be eliminated, as will security measures, endless negotiations and due diligences which decorticates the bowels of companies. Why can't we say in purchasing a company ‘trust me that all what I have stated is correct’? Then we shake hands, and we save millions in lawyers', auditors' and consultants' expenses, months of negotiations causing an immense loss of management attention, as well as public and private funds.

I witnessed cases where investments were made and companies bought after one day of negotiations based on complete trust, and others that were concluded after more than a year, not to speak of those which were not concluded at all because of mistrust. And the results obtained were often contrary to what was foreseen. From

the moment that we start to act in friendship and trust in modern business life, as proposed by Aristotle 2,500 years ago, we could establish an unshakable economy, which will conform to the modern world of cooperation and the 'end of history and wars'.

According to Aristotle, fortune is desirable but not if it is obtained at the price of treason. If we analyze the conditions of happiness in Aristotle's Ethics, we have to conclude that most businessmen cannot be happy, as "it is evident that self-sufficiency and leisuredness and such freedom from fatigue as is humanly possible, together with all the other attributes assigned to the supremely happy man, are those that accord with this activity; then this activity will be the perfect happiness for man." (Aristotle, Ethics, p.330) It is very difficult in the modern and competitive business world to possess the virtues required by Aristotle in order to achieve happiness, live a moderate life, without excessive fatigue and 15-hour work days, be content with what you possess, and have enough time to enjoy life and develop your intellect and culture.

Aristotle like Marcus Aurelius understood the value of detachment from day to day life and proposed examining periodically the chosen path and the price that we have to pay in order to pursue it. We need to obtain a psychological, emotional and spiritual equilibrium in order to be happy. There are very few businessmen who can find such equilibrium and find the time to examine the cost of doing it 'my way'. In the excessive way of life that most of us live it is impossible to think and examine the ethical values. At the high speed that we travel in the modern business world we cannot stop and try to obtain the peace of mind necessary to be happy. And if businessmen will not be happy they could never conduct themselves equitably toward others, as it is very difficult to be good to others if your own life is miserable. According to Solon only those who possess moderate goods could be happy, and they will accomplish the best actions in living a moderate life, as it is possible for those who have an average wealth to be just.

How do we follow the precepts of Solon and Aristotle nowadays? According to American statistics stated in the "The Hungry Spirit" of Handy, 69% of Americans would like to conduct a more relaxed life, the per capita consumption has increased by 45% in the last 20 years, but the quality of life, as measured by the Index of Social Health, has deteriorated by 51%. Only 21% of the youth think that they have a good life, compared to 41% 20 years ago. In Great Britain, in a poll conducted in 1993 – 77% have considered their working hours as stressful, 77% were preoccupied with the effect that their working conditions had on their families. The stress costs in 1996 - 40 million working days and \$10 billion in social security costs. The costs of nervous breakdowns in the U.S. are according to a study of MIT \$47 billion, identical to the costs of cardiac diseases. We have therefore completely departed from the model of a happy life developed by Aristotle!

Furthermore, the richest one percent in the U.S. earned in 1989 - \$600,000 per person, and as a group they earn more than the income of the poorest 40 percent of the population. The 1,000 best paid CEOs in 1992 earn on the average 157 times more than the average salary. The 400 richest men in the world have according to Forbes in 1993 a capital that is equal to the combined GNP of India, Bangladesh, Nepal and Sri Lanka. Seventy percent of international trade is conducted by 500 companies. Can we imagine that such an inequality and such a stressed population could subsist in the long term? *Le Monde Diplomatique* comments on the pessimism that prevails in France, where 80 percent of the French do not think that the economy can improve. Unemployment augments, especially among the youth, the nation does not have any more trust in the elites, who are often guilty of corruption, and there is much hostility toward the technostucture. Ironically, the French economy has improved, but nobody feels better about it; they do not even believe the statistics. There is therefore a large gap between the theories of Aristotle on ethics, happiness and welfare, and the actual condition of the world, which is much richer and more developed than

Aristotle's world. But let us check if the current situation conforms better to theories of more 'practical' philosophers.

Two thousand years after Aristotle, Machiavelli advises the princes to recognize reality as it is, at least as it was at the epoch of Machiavelli. 'The way that we live is so different than the way we should live, that those who neglect what is done for what should be done, are ruined rather than preserved, as a man who wants to act completely according to his virtues finds soon his destruction in the midst of what is wrong'. Ethics is therefore unpractical and even dangerous. Machiavelli does not maintain that we have to conduct ourselves immorally by ideology, but rather by necessity, as otherwise we cannot survive in the immoral world in which we live. In the same manner, the managers, politicians, and practically all members of organizations have to do what is necessary in order to protect themselves. In a world acting unscrupulously the only way to survive is to ignore scruples when it is necessary.

Some people even say, that in order to conduct ourselves ultimately in an ethical manner, we have to do unethical actions and gather enough power and wealth that would enable us to conduct ourselves as we really want - ethically. This oxymoron, which consists of legitimizing immoral conduct in order to be able to conduct oneself in the future ethically, advocates that the end justifies the means. We have seen and will see in this book where those ideas can lead. Of all the enemies of ethics in business, the most dangerous ones are the Machiavellists, who blame the others of hypocrisy, because they see the world as it really is and not as it should be. They forget that from the moment that you start to behave unethically you fall with vertiginous speed and you can never climb back and be ethical. You become dependent on fraudulent actions, addicted to wrongdoing, like drugs and liquor addicted, and it is almost impossible to redeem yourself.

"In all important aspects, states and large companies are identical – especially in the framework that they create, and which include an interaction between the

economical and political needs and between the wish and knowledge of men... The wisdom of princes is open for the managers. And that is how we return to Machiavelli. It is a pity that his name has dark and unscrupulous connotations, which are called 'murderous Machiavellian acts'. It is not even true; our initial intention was simply to examine which rules and habits have brought about a political success in the past, and to conclude which principles it is needed to apply in order to succeed in the present political world. This was a true experience of the scientific investigation and request; nevertheless, it is not surprising, that many paths, which according to those precepts have obtained a political success, are not part of the category that benefits from moral gratitude. As says Francis Bacon: 'He has proved openly and honestly what people do, and not what they should do'... The only effective way to examine organizations and their mode of conduct is to see them simply as a *fait accompli*; and not as a moral or immoral act." (Jay, *Management and Machiavelli*, in Hebrew, p. 19, 30, 32)

We have therefore businessmen who claim that we have to conduct ourselves immorally like the Prince of Machiavelli out of necessity, or as their colleagues in the Cosa Nostra say: 'nothing is personal', before murdering someone. If it is not me who will do it, it will be somebody else and I could do it in a much more humane manner, or if I do not do it to another he will do it to me, and it is better that I will be ahead of him. But there are also other philosophers, such as Kant or Schopenhauer, who teach that malice is innate in human nature and cannot be fully eradicated, although men have other qualities such as altruism. Malice is done for its sake and not in order to benefit the one who does it, and it is done in full conscience that those acts are immoral. Therefore, this kind of immoral person cannot even hide in his ignorance as in the cases cited by Aristotle, and not even in necessity as in the Prince of Machiavelli. He does malice for malice, rejoices from seeing his victim suffer and has no scruples, although he knows that his act is immoral.

We tend to think that conducting malice for malice exists only in the criminal environments, in fascist or communist totalitarian regimes, in certain couples, or with certain psychopaths. “Kant and Schopenhauer preconized that man has an innate sense of radical malice which is part of his nature, and in other terms, he is innate of viciousness, which it is impossible to eradicate (and this in the vicinity of other factors which act in the opposite direction). According to Kant there is in the human race a tendency to deviate consciously from goodness, in other terms: act consciously against the moral law, or revolt against it. The material context is underlined with Schopenhauer: in every man (although in different measures) there is a tendency to harm others without deriving any benefit from it, and even at the price of some harm caused to himself.” (Strauss, *Volition and Valuation*, p.233)

Experience proves that Kant and Schopenhauer have described quite a large number of businessmen, that, in spite of the Machiavellian image that they have, do harm for harm, rejoice from it and do not even get from it any benefit. Under the rational and decent appearances of the modern business world, we can notice excessive emotions and vices that can be expressed only in the business world, which is the last bastion of the totalitarian regimes, and where the ‘subjects’ – the employees – are completely subjugated to their employers, who have over them absolute power. Those cases are elaborated in books such as “Brutal Bosses”, and in the psychological analysis that follows. They may not be the rule, but they are nevertheless very frequent.

The only way to eradicate and reduce the absolute power of the managers is by rendering the company more democratic. “Bosses’ cruelty adversely affects employees’ initiative, commitment, motivation, anxiety, depression, self-esteem, and productivity, and may also be implicated in the occurrence of headaches, heart disease, gastrointestinal disorders, sleep disturbances, dermatological problems, sexual dysfunction, and even murder. And it is on the rise... The statistics are staggering. An estimated 90 percent of the workforce suffers boss

abuse at some time in their careers. On any given workday, as many as one out of five subordinates report to bosses from whom they expect harmful mistreatment.” (Hornstein, *Brutal Bosses*, p.xii-xiii)

The employees who were interviewed in ‘Brutal Bosses’ have mentioned that their organizations perversely protect the bosses who cruelly abuse their employees, although the law protects employees against sexual, racist, religious and other abuses. The bosses think that they are almighty, ‘l’etat c’est moi’ is a maxim very common in the business world, and the Darwinist evolution analogy is adopted there too, justifying the abuse of the weak who have to disappear (or be terminated) or to submit fully to the absolute will of their superiors. From the moment that certain bosses do not respect their own employees, how can we expect to ask them to respect the rights of the stakeholders of the company, such as the customers, minority shareholders or suppliers, who are not so close to them and personified as their own employees, whom they see every day? And if this becomes the norm, it does not stop at the executives, but it goes down to all levels of the hierarchy.

Respect is a fundamental right of the employee at the office, of the wife at home, of the minority shareholders in the company, of developing countries, and so on. It is impossible to trace a demarcation line, which stops at the threshold of the companies, and the same democratic evolution that has occurred in the last 50 years in all other domains has to be implemented also within the companies. The Talmud considers public humiliation of a person as equivalent to death. The bosses who maltreat their employees kill them gradually and are responsible for an unforgivable offense. It is therefore necessary to foster especially the ethical conduct toward the employees, who have to be respected, as part of the democratization process of the companies.

Modern economics starts with Adam Smith and his invisible hand theory. Adam Smith (June 5 1723 – July 17, 1790) was a Scottish moral philosopher and a pioneering political economist. He is known primarily as the author of two

treatises: *The Theory of Moral Sentiments* (1759), and *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776). The latter was one of the earliest attempts to systematically study the historical development of industry and commerce in Europe, as well as a sustained attack on the doctrines of mercantilism; it also contained Smith's explanation of how rational self-interest and competition can lead to common well-being with the invisible hand that regulates everything in perfect market conditions. Smith's work helped to create the modern academic discipline of economics and provided one of the best-known intellectual rationales for free trade, capitalism, and libertarianism. This book will refer extensively to the invisible hand, as its author differs completely with this theory, although Smith and he were born on the same day - June 5.

In order to analyze activist business ethics, which is common to most religions, we should try to compare it to the teleological and deontological precepts already discussed in another context previously. Kidder describes in his book - 'How Good People Make Tough Choices' the different aspects of ethical dilemmas compared to the precepts of the philosophers of ethics. We have already mentioned Utilitarianism, which is a teleological philosophy, from the Greek word teleos meaning ends or issue, which gives predominance to the results, results oriented. Utilitarianism is the ethical doctrine that the moral worth of an action is solely determined by its contribution to overall utility. It is thus a form of consequentialism, meaning that the moral worth of an action is determined by its outcome—the ends justify the means. Utility — the good to be maximized — has been defined by various thinkers as happiness or pleasure (versus suffering or pain). In simpler terms, it's for the greatest good for the greatest number of people. And interestingly, perhaps like most thoughtful ethical theories, utilitarianism primarily evaluates proposed actions and courses of action, rather than directly evaluating whether a person is virtuous or has good character.

What matters is the result of an action and not its motives, and whether a certain law or ethics give more utility or welfare to the largest number of persons.

According to this theory, 'Ends-Based Thinking', it is probably justifiable to sacrifice the lives of a few passengers of a hijacked plane in order to save the lives of the rest of the passengers, or to abuse the rights of minority shareholders if the majority of shareholders benefit from it. This theory was conceived by the British philosophers Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873). It is superfluous to analyze in this book the absurdities to which such a theory can lead. How is it possible to measure utility? Are all persons equal, all nations equal, etc?

The opposed theory is the deontological theory, from the Greek deon, which means duty or obligation, 'Rule-Based Thinking', requesting us to act according to our conscience and duty without taking into consideration the results. This theory was conceived by the German philosopher Immanuel Kant (1724-1804), and adheres to the categorical imperative, requesting that our actions have to conform to universal principles. All our actions have to be conducted according to what we would want others to do in similar circumstances. According to this theory, we have to always keep our promises without taking into consideration the sacrifices; we can never agree to exceptions to the rules; everything has to be uniform for everybody, etc. Do we have to remain loyal to a company, even if it commits immoral actions? Who decides that an action is unethical? What do we do when two actions are just but incompatible? As it is practically impossible to foresee all the circumstances of an action, which is never similar to another, and as absolute theories are always dangerous, it is very hard to follow this theory a la lettre.

The third theory, which I prefer, is a theory which is at the basis of almost all religions, and which proclaims 'do to others what you would like them to do to you'. This precept known as The Golden Rule, or Care-Based Thinking, is based on reversibility, which asks you to test your actions by imagining how it would feel if you were the recipient, rather than the perpetrator of your actions. This precept is at the basis of business ethics toward the stakeholders, employees,

minority shareholders, customers, suppliers or members of the community. It appears in Matthew 7:12: ‘All things whatsoever ye would that men should do to you, do ye even so to them.’ Jews find it in the Talmud: ‘That which you hold as detestable, do not do to your neighbor. That is the whole law: the rest is but commentary.’ Or as it appears in the Islam precepts, ‘None of you is a believer if he does not desire for his brother that which he desires for himself’. Why is this rule ‘golden’? The word suggests that it ranks as the first and most valuable rule – ‘the law and the prophets’, as Jesus said, or ‘the whole law’ according to the Talmud.

But is it really necessary to render the company more democratic? There are many elitist philosophers who despise the masses, which they perceive as mean and stupid. Yeshayahu Leibowitz, one of the greatest Israeli philosophers, who is known also as having called the Israelis Judeonazis in their relations to Palestinians, despises openly the masses: “The masses have all the rights. The human rights in society are not derived from their level, and this is democracy. It does not say that men are equal, but that everybody has equal rights. Does democracy preconize that a man with a low intellectual level has less rights than a man with a high intellectual level? But that does not mean that I respect the two men equally. I give both of them the right to vote and therefore the result will be catastrophic, as has said Socrates, and because of that the Athenian democracy has executed him. Because the majority of men is mean and stupid, the power of majority is a power of mean and stupid men, and we can see it all over the world.” (Leibowitz, *On Just About Everything*, p.156)

We arrive here to the height of absurdity, a Jewish philosopher, who names his compatriots Nazis, proclaims that democracy is the power of the mean and stupid, while the same Nazis have exterminated six millions Jews in the Holocaust, in a fascist regime which preconized that the masses were mean and stupid and that only a dictatorship of the chosen people could lead the masses with the whip. He says it in Israel, where the conduct toward the Palestinians has provoked

fundamental and democratic changes, which have brought about the Oslo agreements. We started with Aristotle, continued with Machiavelli, Kant and Schopenhauer, and end up with Leibowitz. It is the human evolution but in the opposite direction. Fortunately, mankind evolves toward humanism, human rights, democracy, social-capitalism, and ethics in business. The democracy of the so-called ignorant masses is always better than a liberal autocracy and monarchy, in spite of what Leibowitz and others may say, and the masses are today much more educated than were the aristocrats in the totalitarian regimes. And the same evolution that has occurred in the political world will happen also in the business world, as nothing can stop it, not even retrograde theories.

“The grand theories of the philosophy of economics, however intriguing they may be in their own right, are not adequate for business ethics, and for many of the same reasons that the classic theories of Kant, Locke, and Mill are inadequate. The theories themselves are incomplete, oblivious to the concrete business context and indifferent to the very particular roles that people play in business. Their inaccessibility or inapplicability to the ordinary manager in the office or on the shop floor is not just a pragmatic problem but a failure of theory as well. What we need in business ethics is a theory of practice, an account of business as a fully human activity in which ethics provides not just an abstract set of principles or side-constraints or an occasional Sunday school reminder but the very framework of business activity. The heart of such a theory will not be a mathematical modes but a down-to-earth, matter-of-fact account of the values that do and should govern business and business enterprises by way of motivating the people who actually live and work in business.” (Solomon, *Ethics and Excellence*, p. 99-100)

To illustrate this chapter on theoretical foundations we can resort to Amitai Etzioni who has managed to find the right equilibrium between all the theories. 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 typically select means, not just goals, first and foremost on the basis of their values and emotions.” (Etzioni, *The Moral Dimension*, p.3-4)

Therefore, the end does not justify the means, and morality is on an equal basis with pleasure and utility. This paradigm is quite far from the maxim of La Rochefoucauld, and concurs completely with my ideas. The dynamics of economy cannot be understood without integrating social, political and cultural factors. Those different assumptions are at the basis of what Etzioni calls the paradigm of I&We. This paradigm is in contradiction to the theories of laissez-faire and the invisible hand of Adam Smith and the utilitarian theory of Bentham. It rallies with the theory of Durkheim that maintains that: “morality is a system of rules and values provided by society, imbedded in its culture, and that individual children acquire these as part of the general transmission of culture.” (Etzioni, *The Moral Dimension*, p.7) And from this point, Etzioni elaborates his thesis on a community that is responsible and gives the same status to the individual and to his union with the community. But one has to be careful not to subjugate individuals to society, which could result in Fascism. “A responsive community is much more integrated than an aggregate of self-maximizing individuals; however, it is much less hierarchical and much less structured and ‘socializing’, than an authoritarian community... Individuals and community are both completely essential, and hence have the same fundamental standing... The individual and

the community make each other and require each other... The I's need a We to be." (Etzioni, *The Moral Dimension*, p.8-9)

If we conduct ourselves in a strictly utilitarian mode, we can enjoy \$1,000 that was stolen in the same manner that we enjoy \$1,000 earned honestly. The utility is the same, the consequences are identical, but the intention is different. In the same way it is worthwhile to sacrifice Iphigeneia in order to enable the Greek ships to sail to Troy, what is the value of one soul in comparison to the welfare of the whole army? We can also sacrifice the freedom of the black slaves to increase the richness of the American colonies and the lives of millions of Jews for the glory of the Third Reich. Many actions based on morals do not result in pleasure and utility. We go to the army out of duty (at least in some countries), we pay our taxes out of conviction (at least some of us), and we do not betray our wives out of fidelity (unfortunately less and less). In the same manner we treat our customers honestly, not only in order to increase our market share; we do not pollute rivers, not only in order to avoid being fined; and we treat fairly our minority shareholders, not only in order to increase our company's valuation.

The businessmen who conduct themselves ethically do not do so for interest or utility, but mostly because of deep conviction. Interests may change, but convictions are normally part of the personality. If you can bribe an official and get away with the pollution of a river for a minimal sum, knowing for sure that your act will never be discovered, is it to the interest of the company to do so? Furthermore, if you can increase your profits by wronging the stakeholders, is it not legitimate to do so? The answer should be categorically negative, because when you adventure in the moving sands of interest, it can bring you to riches, bury you or send you to prison. Only if you act according to your conscience you become directed by a compass, which always points to the north. It is very difficult to understand how so many businessmen adhere to the theories of the utilitarians when it is impossible to measure 'the maximum of utility for the maximum of persons' and that it is immoral to disregard the interests of the

minority shareholders who have to sacrifice themselves for the sake of the welfare of the majority shareholders. Probably it is convenient for them to quote great philosophers such as Bentham in order to conceal their selfish motives, which are to maximize their benefits as majority shareholders or executives who are remunerated by them.

David Warsh analyzes in his article “How Selfish Are People – Really?” (Ethics at Work, Harvard Business Review, p. 23-27) the theories expressed by Robert Axelrod in his book “The Evolution of Cooperation” and by Robert H. Frank in his book “Passions Within Reason: The Strategic Role of the Emotions”. There are therefore two main historical ways, which contribute to notions of just and unjust. One is the ancient tradition based on religion, philosophy and morals, the Golden Rule, the Ten Commandments and the precepts of Jesus Christ, the humanistic tradition. The other is the recently modern tradition of social and biological sciences. The economists claim that people try to maximize the satisfaction of their interests and Darwin further justified selfish conduct in his theory of natural selection and the survival of the fittest. The economy according to Axelrod is based on mutual interests and on cooperation based on reciprocity. There is no reason to have scruples or to feel embarrassed. One has to make a calculation without sentiments and decide on a course of action with maximum benefits, cooperate if we need the partner, or leave him if we do not need him anymore. Frank thinks that emotions shortcut conduct, which is based on mere interests, because honest people are those who are preferred as partners. Virtue is not only its own reward, it can also result in material rewards. The Quakers got rich because they earned a reputation of honesty in the business world. People do not live on desert islands and their conduct is not based, after all, uniquely on egoism and interests. If one follows the theories of Axelrod, a stakeholder who was wronged will try to seek revenge and we enter into a Machiavellian perpetuum mobile requiring an exorbitant price for the lack of trust, while an ethical ‘Quaker’ conduct allows us to concentrate on the vital issues of business, production, sales, research, and not on protection against abuse of trust.

The theory of Etzioni is in fact a symbiosis between the utilitarian theory of Jeremy Bentham and the Categorical and Absolute Imperative of Immanuel Kant. Kant was convinced that ethics has nothing to do with consequences or human welfare, but comes uniquely from a sense of duty and obedience to a moral law that every rational person has to accept. For a law to be moral it has to be universal. When we lie we do not want everybody to lie, and when we steal we do not want everybody to steal. Therefore it is immoral to steal and lie, as it would be impossible to live in a world where everybody steals and lies. And especially, it is not reasonable to wish that all moral laws would be applied toward everybody except you. There are many businessmen who are convinced that this should be the rule and what is permitted to them should not be permitted to anybody else, but probably they have not read Kant, and they are convinced that as God is with them they are untouchables and above everybody else in society. They transgress the universal and impartial maxims of Kant, scorn the dignity of human beings that Kant preconizes to safeguard above all, and succeed in not being apprehended by the law, public opinion, or the stakeholders of the company.

This is the reason that the theory of Etzioni is more practical than the theory of Kant, as it takes into consideration utility, but subjugates it to morality. This compromise allows us to deny the utilitarian theories, which are in complete contradiction to this thesis, as those theories cannot advocate the welfare of the minority shareholders, which is to the detriment of the excessive gains of the majority shareholders, therefore opposed to the utilitarian theory. Utilitarian theories legitimize in many cases the conduct of large companies that transgress the rights of minority shareholders, as the majority should always be preferred to the minority.

The Nobel Prize-winning Milton Friedman (1912-2006) is believed by many to be the most influential economist of the century. He is by far the most popular economist among businessmen, as his neo-liberal and laissez-faire ideas were

embraced by the mainstream by the end of the century. He believes in giving maximum freedom to the market place and having minimum government intervention. He advocates a liberal monetary policy, minimum taxation on corporations and the rich, privatization and deregulation. He influenced the Ronald Reagan administration in the US, the Margaret Thatcher administration in the UK, and the Benjamin Netanyahu administration in Israel. In his famous article in *The New York Times* (September 13, 1970) he stated that the managers of a corporation are hired by the owners of a company for only one solitary purpose – to increase the profits of the firm. The doctrine of corporate social responsibility is a well-disguised bit of managerial irresponsibility. No corporate funds should be spent for social ends. Those funds cut into profits and into return on investment, this is a kind of taxation without representation and the managers who undertake it are not fulfilling their fiduciary responsibility to the owners. The task of alleviating social problems is not within the purview of business, it is the prerogative and obligation of the government. What Friedman does not say is how will the government have the budgets to finance the welfare expenditures if its role and budgets are minimal in the neo-liberal deregulated minimal-taxation state?

The purpose of teaching the ancient and modern philosophers to businessmen is to induce them to behave ethically. In order to do so companies have devised Codes of Ethics and are trying to implement them. Almost all the large companies in the United States and a large number of the other companies have Codes of Ethics that have been written in the last ten years. Nevertheless, “codes of ethics are not a major factor in important decisions involving ethical questions. Codes may communicate the specific rules..., but they have little impact on what might be considered the important problems of business.” (Madsen, *Essential of Business Ethics*, Robin Donald et al, *A Different Look at Codes of Ethics*, p.223) Those Codes of Ethics can be grouped in a few clusters:

“Cluster 1

‘Be a dependable organization citizen.’

- #1- Demonstrate courtesy, respect, honesty, and fairness in relationships with customers, suppliers, competitors, and other employees.
- #2- Comply with safety, health, and security regulations.
- #3- Do not use abusive language or actions.
- #4- Dress in business-like attire.
- #5- Possession of firearms on company premises is prohibited.
- #6- Use of illegal drugs or alcohol on company premises is prohibited.
- #7- Follow directives from supervisors.
- #8- Be reliable in attendance and punctuality.
- #9- Manage personal finances in a manner consistent with employment by a fiduciary institution.

Cluster 2

‘Don’t do anything unlawful or improper that will harm the organization.’

- #1- Maintain confidentiality of customer, employee, and corporate records and information.
- #2- Avoid outside activities which conflict with or impair the performance of duties.
- #3- Make decisions objectively without regard to friendship or personal gain.
- #4- The acceptance of any form of bribe is prohibited.
- #5- Payment to any person, business, political organization, or public official for unlawful or unauthorized purposes is prohibited.
- #6- Conduct personal and business dealings in compliance with all relevant laws, regulations, and policies.
- #7- Comply fully with antitrust laws and trade regulations.
- #8- Comply fully with accepted accounting rules and controls.
- #9- Do not provide false or misleading information to the corporation, its auditors, or a government agency.

#10- Do not use company property or resources for personal benefit or any other improper purpose.

#11- Each employee is personally accountable for company funds over which he or she has control.

#12- Staff members should not have any interest in any competitor or supplier of the company unless such interest has been fully disclosed to the company.

Cluster 3

‘Be good to our customers.’

#1- Strive to provide products and services of the highest quality.

#2- Perform assigned duties to the best of your ability and in the best interest of the corporation, its shareholders, and its customers.

#3- Convey true claims for products.

Unclustered Items

#1- Exhibit standards of personal integrity and professional conduct.

#2- Racial, ethnic, religious, or sexual harassment is prohibited.

#3- Report questionable, unethical, or illegal activities to your manager.

#4- Seek opportunities to participate in community services and political activities.

#5- Conserve resources and protect the quality of the environment in areas where the company operates.

#6- Members of the corporation are not to recommend attorneys, accountants, insurance agents, stockbrokers, real estate agents, or similar individuals to customers.”

(Madsen, Essential of Business Ethics, Robin Donald et al, A Different Look at Codes of Ethics, p.219-220)

Unfortunately, many codes remain vague. “Many thoughtful executives have tried to address the vagueness issue – 60 percent of American companies now have detailed codes of conduct, designed to translate basic company values into specific terms. One-third of American firms have ethics training program or ethics officers. Many are now working with law firms and public accounting firms to make these programs as effective a possible. But even these comprehensive ethics programs are of little help with right-versus-right issues.” (Badaracco, *Defining Moments*, p.30) Do we need Codes of Ethics, if they remain vague and if they are not applied in many cases, or even worse if they are the source of double standards – the theoretic standard and the practical standard, which is often in contradiction to the theoretic standard? The answer is straightforward – we need Codes of Ethics, because even if their efficiency is only partial, they might change the attitude of persons who do not behave ethically and enhance the implementation of activist business ethics in companies.

FROM JEROME KERVIEL TO THE INSTITUTE OF ETHICS, ETHICAL PLANNING AND SCREENING

In January 2008, Jerome Kerviel, a 31 year trader at the Bank Société Générale in Paris, managed to lose \$7.2 billion in just a few weeks. Kerviel was charged with criminal breach of trust and accessing computers illegally pertaining to equity index futures trading within Société Générale, resulting in losses valued at approximately €4.9 billion. Société Générale maintained that Kerviel was a rogue trader and claimed Kerviel worked these trades alone, and without its authorization. Kerviel, in turn, told investigators that such practices are widespread and that getting a profit makes the hierarchy turn a blind eye. The investigation was reported as "the largest fraud" in history. However, it was before Bernie Madoff, who in December 2008, in the same year that many would like to forget, was charged of a fraud of \$ 65 billion.

Kerviel, like Barings' Nick Leeson or Madoff, was a businessman as many others and apparently not the stereotype of a scoundrel. Kerviel joined the middle office of the bank Société Générale in the summer of 2000, working in its compliance department. In 2005 he was promoted to the bank's Delta One products team in Paris where he was a junior trader. Société Générale's Delta One business includes program trading, exchange-traded funds, swaps, index and quantitative trading. Christian Noyer, governor of the Bank of France, has described Kerviel as a "computer genius"; however, sources within Société Générale described Kerviel as "not a star". Kerviel earned a combined salary and bonus of less than €100,000 per year, considered modest in terms of the salaries paid to traders in the financial markets. Mr. Daniel Bouton, the Bank's Chairman, said that four of Kerviel's managers and supervisors had resigned and he himself offered to resign, an offer that was rejected by the Board of Directors of the Bank.

The bank stated that Kerviel was assigned to arbitrage discrepancies between equity derivatives and cash equity prices, and aided by his in-depth knowledge of the control procedures resulting from his former employment in the middle office, he managed to conceal these positions through a scheme of elaborate fictitious transactions. And who said in Davos that this fraud is "everyone's worst nightmare"? – Dick Fuld, the Chairman of Lehman Brothers, who will be instrumental eight months later, in Septemeber 2008, in the collapse of his investment bank and the worst recession since 1929. Francois Hollande, the leader of the French Socialist Party called on the Government to reinforce banking controls, as there is a very worrying lack of internal control mechanisms that needs to be rectified by a tightening of the rules. The writing was on the wall but the warning was not noticed as Kerviel was perceived as another rotten apple and not as a precursor of an avalanche of rotten apples, systems, banks, corporations and economies.

Bank officials claimed that throughout 2007, Kerviel had been trading profitably in anticipation of falling market prices; however, they have accused him of exceeding his authority to engage in unauthorized trades totaling as much as €49.9 billion, a figure far higher than the bank's total market capitalization. Bank officials claimed that Kerviel tried to conceal the activity by creating losing trades intentionally so as to offset his early gains. According to the BBC, Kerviel generated €1.4 billion in hidden profits at the beginning of 2007. His employers say they uncovered unauthorized trading traced to Kerviel on January 19, 2008. The bank then closed out these positions over three days of trading beginning January 21, 2008, a period in which the market was experiencing a large drop in equity indices, and losses attributed were estimated at €4.9 billion. Kerviel's lawyers, Elisabeth Meyer and Christian Charrière-Bournazel, said that the bank's managers "brought the loss on themselves"; accused the bank's management of wanting to "raise a smokescreen to divert public attention from far more

substantial losses in the last few months"; and said that Kerviel had made the bank a profit of \$2 billion as of December 31, 2007.

Kerviel is not thought to have profited personally from the suspicious trades. Prosecutors said that Kerviel has been cooperative with the investigation, and has told them his actions were also practiced by other traders in the company. Kerviel admitted to exceeding his credit limits, but claimed he was working to increase bank profits. He told authorities that the bank was happy with his previous year's performance, and was expecting to be paid a €300,000 bonus. Family members speaking out said the bank is using Kerviel as a scapegoat to excuse its recent heavy losses. Nick Leeson was also about to receive a similar bonus days before he caused the collapse of Barings Bank. This happens inevitably when you put maximization of profits as the only target of a company.

When the Barings Bank scandal occurred in 1995, with the young trader Nick Leeson causing the collapse of the bank, it was alleged that this was an extraordinary event. Barings Bank's management was greedy and careless, it was a small bank and nothing of this sort could happen in a major bank as all precautions were taken. 13 years have elapsed and a major French bank incurs much larger losses caused by another "rogue trader" Jerome Kerviel. Whether he will be sentenced to jail like Leeson remains to be seen, but he will probably write a book as Leeson, a film will be soon produced like "Rogue Trader" and there are already thousands of fans of Kerviel. Société Générale has made a name for itself trading derivatives, the most dangerous investments in the stock exchange. Some specialists maintain that the lesson to be learned from Kerviel's and Leeson's frauds is to separate the "back offices" where trades are processed and recorded from the trading desks. But others, as Francois Ewald, a professor at CNAM, Paris, have a different opinion. He maintains that a new risk has to be taken into account in corporations and banks - the "ethical" risk. A new position has to be created a "compliance officer". "The dimension of ethics is from now on perceived as a fully-fledged component of the economical value (and not only a

way to make it acceptable). Ethics is a component of the economical value. It is not external to it." (Ewald Francois, Un danger a controler: le risque ethique, Les Echos, February 5, 2008)

Since 1994 I have tried to convince in my business and academic activities that the ethical risk is a major risk if not the major one. When Barings Bank's scandal occurred it was called a "rotten apple", then Enron's scandal came which validated the rules of unethical conduct appearing in his books published in 2001, but Enron was deemed by Milton Friedman in an interview as another rotten apple. WorldCom – another rotten apple, all the subsequent scandals – more rotten apples, Jerome Kerviel and Société Générale– probably the ultimate rotten apple. But in the same year, 2008, we experienced the "ultimate" rotten apples of AIG, Lehman Brothers and... Bernie Madoff! Time has come, therefore, to reach the conclusion that all these are not just solitary rotten apples but part of a pattern of unethical conduct deriving from the ideology prevailing in many companies that the corporation has mainly one goal – to maximize profits. Until we eradicate this fallacy, there will be much more rotten apples, the interests of the stakeholders will continue to be blatantly wronged, the pollution will continue to be externalized, and due to glabalization and ethical risks the world economy could fall into a recession, worsen than the 1929 one. This book presents several ways to prevent this catastrophe, we shall focus in this chapter in two: Ethical Strategic Planning and Screening and the Institute of Ethics.

ETHICAL STRATEGIC PLANNING & SCREENING

In the beginning of this century companies are differentiated not by their ethical codes but by their implementation. One of the key elements of strategic planning is therefore – **Assimilation of Ethical Codes** in all levels of management with the backing of top level management and Boards of Directors (Ethical codes are not enough, as 98 % of largest US companies have ethical codes including the most

unethical ones as Enron). This assimilation will ensure an impeccable ethical conduct with stakeholders: customers, employees, suppliers, banks and creditors, majority and minority shareholders, community, government and environment; focusing also on ethical positioning of the company, ethical advertising, IR and PR, quarterly ethical and environmental reports.

But not less important is - **Integrity Screening of Stakeholders**. Major savings will be achieved by adding ethical considerations to the due diligence process of the company conducted by potential customers, suppliers, subcontractors, partners and investors, including integrity screening of the business behavior of companies and their management. A large part of customers' bad debts, companies' costs increase, operational losses, M&A extraordinary losses, sunk investment costs, quality deficiency, late deliveries, legal and financial expenses is due to stakeholders' unethical conduct that could have been avoided by checking their ethical record.

The third pillar of ethical strategic planning is - **Integrity Tests and Employees' Ethical Issues**. This could avoid embezzlements, huge losses or even bankruptcy, such as in the cases of Barings Bank, Societe Generale and Arthur Andersen, by introducing sophisticated Integrity Tests according to a comprehensive method, including case studies, workshops, interviews and business games to new candidates and candidates for promotion. Ethical Dilemmas of management and employees will be analyzed in workshops and academic courses. Ethical conduct to employees will be ensured, including issues of whistleblowers, layoff policies, discrimination and harassment, community projects in education, cultural and social issues.

The ethical strategic planning will be complemented by **Ethical Funds**. Those funds could raise additional tens to hundreds of millions dollars with Ethical Funds from large segments of the public, that does not invest currently in the stock exchange as it is disillusioned from the lack of integrity in many companies,

and will boost economy and long range profitability by investing in smaller and more ethical companies. Investing in Ethical Funds yields a ROI similar to the S&P index, and applies social, political, moral, ethical and environmental screening. The Ethical Funds have already raised 2.1 trillion dollars in the US, 300 billion euros in Europe, in more than 500 ethical funds worldwide.

THE INSTITUTE OF ETHICS

The Institute of Ethics will not operate as a 'big brother', as a 'revisor', or as a 'Russian Commissar'. This organism will operate voluntarily and have a mission to avoid the most flagrant cases of obstructing the rights of the stakeholders and minority shareholders.

By the word 'Institute', we mean either an anemic organization, which does not have power, comprised of detached men unrelated to the business world, who do not understand its complexity. It is at least what its opponents will try to convey. But this book proposes a realistic model, based on a thorough study of the subject and a profound knowledge of the business world. The proposed Institute will be very effective, as will be explained in this chapter, and will have concrete and realistic missions, experienced directors, first class attendants, and an assured financing. Furthermore, it will keep its independence and its impartiality like the courts and the judges.

The national Institute of Ethics will be financed by a contribution deducted from each transaction made at the national stock exchange. The members of the Institute will possess impeccable reputations and will be elected by the national courts, but they will not be active businessmen and will not hold any shares in companies.

We witness recently a trend toward voluntary regulation of companies in many aspects of their activities toward stakeholders, employees, customers, the community, environment, and so on. Industries' associations obtain control over its members, which is often more effective than governmental or legal control. "A faster adaptation to changing conditions in industry is possible when not restricted to laws. The quality of the adjustment to specific conditions of an industry is better. Voluntary participation of the member firms of the branch prevents destructive behaviour and secures the efficiency of self-regulation. Some of the disadvantages are: - Informal behaviour of an industry is hard to generalize and codify. - Member firms are rather inclined to agree to non-binding and mild regulations than to obligatory demanding standards. - Not all companies of a certain branch are members of the association. Consequently they are not forced to adhere to the regulations. - Violations of rules are often hard to punish." (Harvey, Business Ethics, A European Approach, Kuhlmann, Customers, p.117)

The companies adhere to a 'soft law', established after mutual negotiations that result in an agreement on the rules and ways to punish the transgression of the rules.

In the political and economical world, there are associations more or less formal as the United Nations, the European Parliament, the IMF, GAAT, and so on. But those associations, like the stock exchange, are established and managed by the organisms that they are supposed to control. The Institute of Ethics will be elected by impartial courts and will supervise the companies that will agree to submit voluntarily to its rules. If in the future we will reach a status that only companies supervised by the Institute of Ethics will be able to recruit the best employees, have access to the best customers, receive the best prices from the suppliers, sell their shares to minority shareholders; then most of the companies or at least their first league will abide by the rules of the Institute. The other companies will be treated as outcasts, on the outskirts of society, and will not be able to survive in the long run. The ethical reputation of a company will become one of its most important assets and will be a decisive factor in the valuation of the company.

How is it possible to guard the integrity of the members of the Institute? First of all, by choosing members with impeccable integrity, who could have worked prior to that in companies, but will be prohibited to return to work in business. The Institute will be like an Academy or court, with members elected for life, and when they will want to leave they will be entitled to a pension. They will write ethical codes and supervise their implementation, they will elect a large part of the members of the Supervision Boards and the Independent Directors, who will safeguard the interests of the stakeholders, they will give an ethical rating to companies, similar to the creditworthiness rating, ranging from AAA to CCC. The ethical funds will be allowed for example to invest only in companies with an ethical rating of A, and as this rating will be granted by the Institute, it will have financial power of the utmost importance. The National Institutes of Ethics will be associated in an International Institute of Ethics that will establish international ethical codes and exchange information on ethical and unethical companies, ethical funds, unethical executives and directors and so on in the various countries. As the world becomes a global village, a company or an individual who has behaved unethically in one country will not be able to start from zero in another country. Their name will appear on an international black list that will chase them forever, as ethical information will be exchanged by all the National Institutes of Ethics.

The modern structure of business has to be parallel to the political structure, by being democratic and based on the foundation of the separation of power. The legislative power will have to be enlarged in order to include the Institutes of Ethics. The members of the Institutes will have to be independent and have a theoretical and practical background in corporate governance. They will have to be fluent in corporate law, business administration, ethics, accounting (with a special knowledge of the dangers of creative accounting...), etc. But they will need to have active and inquisitive minds, which will not be contented with the unethical conduct of controlled companies.

In the event that a contribution to the Institute of Ethics by a fee on every stock exchange transaction will not be feasible, it could be possible to raise the necessary funds from the ethical funds or the shareholders who will benefit from the privileged information of the Institute, which will be distributed only to the contributors. The operational expenses of the Institute are negligible in comparison to the benefits or prevention of losses to the minority shareholders, as the costs of mistrust and wrongdoing to the minority shareholders amount to billions of dollars and could cause the collapse of the stock exchange securities and lead to a world recession.

The companies will submit an annual report on the ethical and ecological conduct toward its stakeholders and will be responsible for the social results of their conduct. The investors, especially the minority shareholders, employees, suppliers, customers, community and society, will have access to the ethical information that will enable them to decide on their conduct toward the companies based on the ethical reports, in a similar way that they evaluate the operational performance of companies from their financial reports, which give only very partial information on the companies.

The Institute of Ethics could decide to compensate the minority shareholders in case of wrongdoing to their rights by forcing the companies that would want to maintain their ethical rating to reimburse the shareholders of their investment with interests and damages. The most problematic element of investment, the risk, will be neutralized in this way and the minority shareholders will be assured that, unless they resort to the court in order to sue the company, they will have the possibility to recoup the actualized value of their investment if an ethical institution will find their ethical plea justified without the necessity to resort to the expensive procedure of the court and payment of legal fees.

The stakeholders will be able to attenuate their risks by receiving from companies adhering to the ethical norms quarterly ethical reports, monthly financial reports, audited financial reports, etc. The Institute of Ethics will also conduct statistics and reports on unethical costs and losses incurred by stakeholders. The stakeholders will have free access, via the Internet, to the reports of the Institute, which will be assisted by whistleblowers, anonymous or not, who will expose the unethical conduct of the companies, often done in the shade far away from the public eye. The Institute will publish a black list or a pillory of companies that did not behave ethically, as well as of investment bankers, analysts, auditors, and other consultants, whose reports have harmed the stakeholders.

The Institute of Ethics will safeguard the interests of all stakeholders, such as suppliers, customers, lenders, minority shareholders and the community. It will be impartial, very involved, with secured funding and an impeccable reputation. The greatest danger of corruption will be avoided by the fact that its directors would not be allowed to return to the business world, as in the case of managers of government institutions who are tempted to favor certain companies in return for a promise to work for them or the receipt of direct or indirect rewards from them. The combination of ethical strategic planning, ethical screening, ethical funds and the Institute of Ethics could be the ultimate response to unethical conduct of companies and would safeguard effectively the interests of all stakeholders.

BUSINESS ETHICS FROM THE PROPHET AMOS & THE BIBLE TO PROFESSOR JOSEPH STIGLITZ

It was the Bible that gave humanity the foundation of ethics. The most well known social prophet is Amos, the ultimate whistleblower, the prophet of the underdogs, of the "stakeholders", who dared opposing the ruling classes, the tycoons of biblical times. Is there anything new under the sun? What is the difference, if any, between Amos of the Bible, Amos of the case studies in this book, Emile Zola, Joseph Stiglitz and all the activist ethicists of the 21st century? What did Amos say thousand of years ago? Is it not similar to the content of this book? "For three sins of Israel, even for four, I will not turn back my wrath. They sell the righteous for silver, and the needy for a pair of sandals. They trample on the heads of the poor as upon the dust of the ground and deny justice to the oppressed. You who turn justice into bitterness and cast righteousness to the ground. You hate the one who reproves in court and despise him who tells the truth. You oppress the righteous and take bribes and you deprive the poor of justice in the courts. Therefore the prudent man keeps quiet in such times for the times are evil. Hate evil, love good, maintain justice in the courts. Perhaps the Lord God Almighty will have mercy on the remnant of Joseph. In that day I will restore David's fallen tent. I will repair its broken places, restore its ruins, and build it as it used to be."

Today, as in Biblical times, unethical businessmen wrong the stakeholders, the employees, the customers, community. Inequality is increasing, the poor get poorer and the rich richer, the middle class is eroding, the south is getting poorer compared to the north, as proved by Stiglitz in his book "Globalization and its Discontents". The local and international law, the World Bank and the IMF are often panaceas who favor the tycoons and the multinationals. Multinationals are

maximizing profits, the price of oil, the valuation of their companies at the expense of all other stakeholders, selling the righteous for silver and the needy for a pair of sandals, or a yacht. They take bribes, use insider information, oppressing the righteous and the meeks. What should a prudent man do in such times of evil, should he abstain from writing books, lecturing at universities, making films or writing plays, or should he like Al Gore in *An Inconvenient Truth*, Naomi Klein in *No Logo*, Joel Bakan in *The Corporation*, Paul Hawken in *The Ecology of Commerce* or Joseph Stiglitz in all his books say fearlessly what he has to say, even if he is ridiculed, even if he is slighted or hated when reproving in court and telling the truth. Time will come, when all the tycoons will be forgotten (unless they donate most of their fortune to community...) and the names of the modern prophets will be remembered and cherished as the name of Amos.

The Talmudic rabbis considered fraud, particularly if it is committed against the weak, as an odious crime, equivalent to murder, although it was not punished so harshly as violent crimes. The rabbinical courts treated fraud with a particular harshness, prohibiting the swindlers to conduct business, and in exceptional cases by confiscating their property. In Judaism, poverty is not a virtue, but poor people are not blamed for their poverty. Land could be bought, but propriety expired in the next Jubilee. A luxurious life is not treated favorably and moderation is recommended for the just. The Bible forbids charging interests on other Jews, but Yitschak Abarbanel, the erudite Jewish financier of the era of Ferdinand and Isabelle, did not see any difference between a financial benefit and a commercial gain. Jewish law compels treating the gentiles honestly. One should obey the laws of the country in which he resides, as according to the Halakha – *Dina de malkhuta dina*, or - the law of the kingdom is the law. A subject that preoccupies the religions is the charging of interests for money lent. The Jews maintain that when you lend money you do not possess it anymore and you become like the salaried who do not receive their salary on time. Time is an essential dimension and you have to be compensated for the time in which you are no more in the

possession of the money, as well as for the risk that the borrower will go bankrupt.

The Jewish tradition says: “The longest way is the one who goes from the heart to the pocket.” You cannot in fact go from the heart to the pocket without examining the philosophy of life and its significance. The Jews were stigmatized by the Christians as people who have an excessive love of money. “Jews, as creators and promoters of what was to become the ethical heritage of the West, fell prey to a reaction against the restrictions it imposed on human behavior. They originated the fundamental law ‘Thou shalt not kill’, and yet they are charged with the great historical ‘murder’... Despite being bound by severe dietary prescriptions, they are accused of cannibalistic rituals involving Christian children. And finally, Jews are saddled with a reputation for being obsessive about money. Their God, of whom they are not permitted to make images, is assigned the shape of a dollar sign. And yet it is true that the Jews respect money; for in it they see a content which speaks of the true distance between the heart and the pocket. The deeper meaning of money – and, in the broader sense, of earning a living (*parnasah*, livelihood) – is dealt with in Jewish tradition both ethically and with courageous humanity. The Kabbalah of Money is an offering of rabbinical and mystical insights into an ecology of money, involving the health of all forms of exchange, transaction, and interdependence.” (Bonder, *The Kabbalah of Money*, p. 3-4)

The origin of the word Kabbalah comes from the Hebrew word *kabel*, to receive, which represents the tradition that was transmitted from generation to generation. The Kabbalah teaches that from the simple you can reach the complex, from the concrete the abstract, from the detailed the general. This concept is applied in the Kabbalah to money as to all other corporal aspects of life. The Jews respect money earned honestly as it permits them to satisfy the basic needs of life and it enables the spiritual study that is the essence of life. There is a story of a Rabbi who was permitted to visit purgatory, where he heard horrible cries coming from people sitting at a banquet. On the tables was the best food imaginable, but

unfortunately the elbows of the guests were inverted, preventing them from bringing the food to their mouths. Then, he was brought to paradise, where he heard happy laughs. The same sight greeted him, but unlike in purgatory the guests were not trying to nourish themselves, rather each other... “Purgatory is a world with no Market, where a certain difficulty is enough to destroy our ability to enjoy the banquet. In paradise, besides the pleasure of the delicacies we enjoy, we soothe our frustration each time we bring food to our neighbor’s mouth... In the popular collection of rabbinical sayings known as The Ethics of the Fathers (Pirkei Avot), we read: ‘Where there is no flour, there is no Torah. Where there is no Torah there is no flour.’ ” (Bonder, The Kabbalah of Money, p. 9)

The financial system in the Jewish religion is based on an absolute trust of the governmental and other institutions, as without trust money has no worth, being only a piece of paper. Contrary to Christianity, the Jewish religion perceives poverty as a terrible tragedy. In the Midrash (Exodus Rabbah 31:14) we read: ‘Nothing in the world is worse than poverty; it is the most terrible sufferance.’ In order to fight poverty, the Rabbis have developed the concept of yishuv olam, the effort to regulate the world. We have to try always, while safeguarding honesty, to augment the quality of life, to augment the wealth of the community and of the individual, or in the language of the rabbinical Market, the ideal condition is – ‘where a party does not lose and the other one wins’. In other words, a few millenniums before the most sophisticated management theories have invented the ideal of the ‘win-win situation’, the Jewish Rabbis preconized basically the same thing. For example, in the law of neighbors ‘dina de bar-metzra’, if a person has a plot of land that is near another, his neighbor automatically has an option to acquire the plot at the market price. One does not lose, as he receives the market price, and the other gains as he enlarges his property and increases its value.

If we prevent somebody from receiving a possession, it is equivalent to stealing it from him, as we act against the values of the Market. This principle, which is fundamental in the Jewish religion, should be reminded continuously to

companies that make takeover bids or shares offerings addressed only to some of the shareholders. According to the Jewish tradition this is equivalent to fraud. “The sinful cities of Sodom and Gomorrah described in the book of Genesis represent a society that is sick because it is unable to help itself towards the ‘settling of the world’. In refusing to help one another in such a way that one doesn’t lose and another gains,’ the citizens of Sodom and Gomorrah created a miserable market, similar to the purgatory described in (this) chapter, in which inverted elbows don’t cooperate.” (Bonder, *The Kabbalah of Money*, p. 18)

Time is one of the limits that are imposed on wealth. Time is money, but one does not need to occupy all his time in making money, as the essential purpose is not to make money but to study, and money is only a means to enable studying without worry. The Talmud asks – Who is really rich? Rabbi Meir answered: "The person who derives the internal peace out of his fortune." (Shabbat 25b) “Rabbi Meir draws from common knowledge when he says that the truly rich are those who acquire maximum quality of life without creating scarcity for themselves or others, who live up to their responsibilities, avoid ‘wasting time’, and do not draw livelihood from Nature beyond what is truly necessary.” (Bonder, *The Kabbalah of Money*, p. 25-26)

In order to respond to the eternal question of ‘*Tsadik ve ralo, rasha ve tovlo*’, 'The just suffers while the unjust prospers'; the Rabbis of the Kabbalah describe a world that comprises four levels. The elementary level is that of Action – Assiya, of logic – Pshat, of the material, the material goods – Nekhes. The second level is the one of the formation – Yetsira, of the allusive – Remez, of the emotional, the quality – Segulah, which is the internal force coming from the soul that determines who we are. In the business world, good Segulahs can bring you much further than good decisions. The third level is the one of the creation – Beriah, of the symbolic – Drash, of the spiritual, the merit – Zekhut. The supreme level is the one of the emanation – Atsilut, of the secret – Sod, of the connection with the infinite, Lishma – for itself, with no aim of benefit, just for studying and doing

good per se. The merits of our ancestors are coded in our conduct and determine largely the justice and injustice of this world. It is a long chain, which goes from generation to generation. Our actions have repercussions not only on our lives and the lives of the people surrounding us, but also on future lives of our descendants, and this is why we have to try to be just, as injustice can have cosmic repercussions.

“The Bible (Leviticus 19:13 – Do not withhold that which is due your neighbor. Do not let a worker’s wage remain with you overnight until morning) classifies interactions related to theft into two groups: ‘withholding’ (oshek) and ‘misappropriation’ (gezel). Our social awareness singles out and punishes situations of misappropriation, but we rarely impose limits upon transactions that involve withholding. The difference between these two kinds of theft is defined by Maimonides. He states that gezel is the forceful appropriation of something that doesn’t belong to us or that isn’t available to us. By contrast oshek can be (a) the act of not returning something that has been taken, even with the owner’s consent, or (b) the withholding of something that belongs to another, even if we don’t mean to keep it. In committing these thefts, we interfere, act as obstacles, and keep things from being returned to their legitimate owners.” (Bonder, *The Kabbalah of Money*, p. 53)

There are a multitude of cases in modern economy with situations of withholding or oshek, such as the withholding of information which is disclosed only to some of the shareholders, a takeover bid which is offered only to part of the shareholders, the differentiation between majority and minority shareholders who hold nevertheless the same shares, etc. According to Jewish law the dimensions of space and time belong to God, and if we cause a shareholder to lose time in trying to obtain information, which is accessible only to insiders, we commit a crime against God. In the same manner the management, which does not pay on schedule its employees or its suppliers, cause them severe losses, which is condemned by the Bible. ‘Love your neighbor as yourself’ (The Bible, Leviticus,

19:18) is undoubtedly the most important precept of the Judeo-Christian heritage, and the good that we want to occur to us is at the basis of the good that we must do to others, without committing *oshek* or withholding time, information, and so on, as we would not want it to occur to us also.

“From the well-known biblical saying (Leviticus 19:14) ‘Do not put a stumbling block before the blind’ (*lifnei iver*) the rabbis draw an important concept: it is our duty to pay attention not only to the interactions we engage in, but also to the people we deal with in these interactions... To begin with, who is ‘blind’? All those whose ‘vision’ is less than ours.” (Bonder, *The Kabbalah of Money*, p. 59) A large number of managers of companies cause their employees to make misappropriation, by withholding from them information, by intimidation, oral order, or any other means equivalent to putting a stumbling block before the blind. One could find analogies in many cases, where independent directors approve decisions without having all the data available. In those cases, the majority shareholders benefit from the blindness of the shareholders, or of the directors in the Board of Directors, who are often treated as blind, deaf and mute.

The way that the wrongdoers fight the disclosure of the truth to the blind by the whistleblowers is often by spreading slander (*lashon hara*), which is false information widely spread in order to affect the credibility of the whistleblowers. Maimonides says that slander is the worst of crimes equivalent to the forsaking of God. Unfortunately, slander and defamation are very widespread in modern economy, especially on the Internet. At the other side of human conduct is charity, or *tsedakah*, from the Hebrew word *tsedek* – justice, as doing charity is doing justice. Wealth without charity impoverishes the Market and reduces liberty. *Tsedaka* is another example of ‘how to become rich while having less’. Midrash Tanhuma states that ‘*Tsedaka tatsil mimavet*’, charity avoids death, literally or figuratively as it saves us from the anguish of death. Can we imagine any companies, which instead of slandering their opponents would try to be charitable? If so, could they survive?

If businessmen would believe in the different cycles of life, we could obtain a radical change of attitude. “The Mishnah is even more precise and gives us step-by-step instructions on how to deal with our evil impulses in interactions: know (1) where you are coming from, (2) where are you going, and (3) whom you must answer to. In other words: understand the Market deeply. Remember that in each of these infinite cycles of return there is an Eternal Eye that sees everything, an Ear that hears all, and a Book where everything is recorded.” (Bonder, *The Kabbalah of Money*, p. 92) Those maxims, which are relevant to pious people who really believe in God and who are not Tartuffes, could apply to the secular in the same manner, by replacing God with their conscience and humanism. We rediscover here the notions of transparency, sense of proportion, long term, ultimate goal of our existence, and all the other notions that were developed in this book. If we feel transparent, humble, being part of a long chain of humanity, we would be bound to conduct ourselves ethically toward the stakeholders, the community and the shareholders of the companies.

The majority shareholders and the CEOs of the companies should always remember that the last would be the first. “In long-term livelihood, in less immediate cycles of return, our ‘failures’ (falls) are part of our success (rise)... This ‘whole’, this interconnection, resembles a wheel: the side that rises does so while the opposite side falls. The highest point signals the beginning of the fall, and the lowest point means we’re beginning to climb again. Thus, falling is an essential part of the rising mechanism.... What is on the top must descend and what is on the bottom must rise.” (Bonder, *The Kabbalah of Money*, p. 102) In reality, the mighty are almost always intoxicated by their strength; they despise the weak and are convinced that they will never fall. In most of the cases it is this intoxication that causes their fall, as we cannot act in a void; illegitimate actions almost always bring about direct or indirect reactions.

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, and the others become an integral part of our being and everything is amalgamated in an entity, we could survive after our death. Money and selfishness distort our point of view. “The rabbis saw this. Not because they had magic, but because they understood the lens through which we look at things. They used to say that when you look at a glass, you can see right through it. Put a little silver on the glass and it turns into a mirror, so that the only thing we see is ourselves. With a little money, what was once transparent becomes immediately obscure and we can no longer tap into any external reality.” (Bonder, *The Kabbalah of Money*, p. 170)

We could not analyze the ethical aspects of Judaism without mentioning the anti-Semitism that has festered during thousands of years of prejudices against the Jews and their alleged lack of ethics: “In the popular imagination, there seem to be three major factors militating against the acceptance of these Jewish perspective on the moral and ethical issues in modern business and economic behavior. 1. A general acceptance of the anti-Semitic slurs regarding Jewish avarice and business immorality, which are often reflected in the literature and culture of almost all of the Christian societies. The myth of Jewish capitalism and exploitation fostered both by Nazi Germany and by the writing of Karl Marx was built on age-old biases. These either saw in Jewish frugality, hard work, and entrepreneurship the implementation of a national materialistic obsession, or were based on jealousy, the desire to avoid contractual obligations, and the need for scapegoats to explain social or economic distress. 2. The association of biblical and talmudic regulation with a simple agrarian economy, far distant from the modern world of international finance, sophisticated patterns of merchandising, and constant technological changes... 3. An understandable yet unfortunate current overemphasis on spiritual behavior that, following primarily Christian religious patterns, has meant a disassociation of Judaism from so-called secular aspects of life as economics, political organization, and social change.” (Tamari, *The Challenge of Wealth*, p. xiv-xv)

The same qualities, that the Jews shared with American Protestants, frugality and savings, were interpreted on the Jews' behalf as avarice and exploitation and on the Protestants' behalf as honesty and compassion. The Jewish religion has founded the basis of business ethics and all those who adhere to its principles have to conduct ethically: “The Divine origin of wealth mandates that it not be earned through immoral or unjust ways. Even where they are legal, therefore, exploitation, abuse of power, undisclosed conflicts of interest, and oppression through withheld information cannot coexist with a God-given morality. So, Judaism rejects the concept of ‘let the buyer beware’ and places the primary onus for full disclosure on the seller, who is usually more knowledgeable. The biblical injunction against placing a ‘stumbling block in the path of the blind’ is understood as forbidding advice or selling goods and services that are to the physical or spiritual detriment of the other party.” (same, p. xxii) The talmid khakham, the religious Jew, has to comply fully to all those obligations and keep all his promises, even if he can avoid them legally, he should act with clemency toward the debtors, abstain from acting cruelly toward his associates in business, and strive to act ethically toward every one. All religions, including Judaism, have therefore about the same ethical principles, but the practice of some of the believers is often in total contradiction to the religious precepts.

Rabbi Israel Salanter, the founder of the mussar (morals) movement of the 18th century, has stated that the transfer of funds from one person to the other without his consent is a theft according to the Torah, no different from the theft of a burglar. He put therefore the ethical theft, even if it is legal, at the same level as the brutal theft. The Jewish community of Lublin has stated in 1624 that if a debtor does not pay his debts and goes bankrupt he should be excommunicated: “If a bankrupt debtor should offer to make a settlement for his debts (instead of paying them in full) then the cherem, ban of excommunication, is to be published against him... He is to be considered to be unfit to give testimony or to take an oath. He is to be imprisoned for a whole year and shall not be appointed to any

religious position... and he shall not be called up to the Torah for a whole year (or) until he repays his creditors. The creditors may take away all the clothes that the bankrupt has made (even) for his wife within the year that he became bankrupt. He shall lose the rights of citizenship in the community (which limited his right to remain and do business in that town). When the cherem is pronounced in the synagogue the bankrupt person's wife and children must be present (so as to a priori educate against fraud through the fear of such shame)." (same, p. 30)

One could only imagine the fantastic repercussions of such a conduct on the modern business world. If we could ostracize the members of the community who do not act ethically and who prefer going bankrupt than repaying their debts from their personal funds, we could raise substantially the ethical level of the business community. We could put to the pillory all the members of society who do not behave ethically, publish it through the Institute of Ethics and the Internet, exactly as we do for the solvency of the companies.

One of the most common sentences in the business world, said when a party of a contract decides not to fulfill his contractual obligations, is - 'sue me', knowing that a trial is very costly and it is almost impossible to win it if the parties are not of the same strength. Therefore, it is necessary that the party who breaks the contract, does not fulfill his promises, or does not pay his debts, should not be able to act in such a banal way and would have to run the risk of suffering from a much heavier 'fine' than a monetary payment after many years of trial. Rabbi Eliezer states in the Talmud (Shem Mi Shmuel, Parshat Shelach) that a person who does not fulfill his business promises commits an odious crime similar to idolatry. "Each Jew is a standard bearer of the dignity of the Jewish people and their God, so that morality in the marketplace leads to the sanctification of His Name, and dishonesty, to chillul HaShem, the desecration of His Name." (same, p. 36)

The relative success of the adhesion to ethical precepts by the Jews in the Diaspora and by the Americans in the Protestant communities in the previous

centuries was based principally on the religion and on the cohesive structure of the community. A member who was ostracized received the worst punishment, and the social aspect was much more important than the legal aspect. This social supremacy could also end in abusive cases such as the excommunication of Spinoza and the executions of the witches of Salem, and therefore it is recommended to follow a moderate path, as proposed by Aristotle.

Thousands of years after the Bible and the Talmud, the ethical precepts of conduct in business are as pertinent as the most recent books on the subject. “The Bible closes the verse in Leviticus 19:14 forbidding placing a stumbling block in the path of the blind by adding ‘and you shall fear the Lord.’ Wherever this phrase appears in the Bible, it is understood by the Rabbis to refer to actions hidden from the human eye and operating in the recesses of the human heart. Since white-collar crime, economic oppression, and misplaced trust operate primarily in secret, this affirmation of the fear of God is Judaism’s major defense against them. All the spiritual underpinnings of Judaism’s moral business and economic framework, as distinct from its halakhic legislation, are strengthened by the concept of *pattur aval assur* – not liable to punishment but forbidden. As often as not, many immoral acts in business are carried out within the letter of the law; fear of judicial punishment being the primary restraint. Jewish sources, however, based on all the aspects discussed in this chapter, ruled that in order to be clean before God and man, there are acts that although perfectly legal are nevertheless not permitted.” (same, p.44) And it is exactly those precepts that are very often violated by the insiders who place a stumbling block in the path of the ‘blind’ minority shareholders, who do not know of the information that is shared uniquely by the insiders. Those insiders are convinced that they act legally, although not ethically, but they have no fear of the wrath of God, who - according to the Bible - does not allow mankind to conduct those wrongdoing in secret.

In contrast to the Roman concept of *caveat emptor*, the law of the Halakha states that it is the seller who should advise the buyer and divulge everything that he

should know. Moshe Chaim Luzzatto writes in *Mesillat Yesharim* in Italy in the 18th century that it is honest to cite all the advantages of an article to a buyer but it is forbidden to hide the defects, which is equivalent to fraud. This law does not apply probably to Jewish matchmakers (...), but it should be applied to all shares issues, all financial reports, and all consultants' opinions. Nevertheless, reality is in many cases completely opposed to those precepts in order to benefit the companies, often to the detriment of the stakeholders.

“It is well known, both in the accounting and consulting professions, that financial reports can be represented so as to give a desired picture that may or may not always be absolutely true. The window dressing of financial data would therefore seem to be a clear case of *geneivat daat*. The current Hebrew accounting phrase, *leyapot* – to make beautiful – makes this clearer than the polite English window dressing. The techniques are many and varied but all of them have the same purpose in mind, which is to present a picture favorable to the seller, underwriter, or entrepreneur and to hide any flaws, defects, or liabilities from the potential investor.

For example, changes in the way inventory is calculated, the shifting of income or expense from one period to another, and alternative methods of calculating the depreciation of fixed assets all change the profits of the firm without any relationship to the results of its operations. So, too, hiding the true personality of the major investors through straw corporations or offshore corporations, together with a lack of disclosure concerning future earnings and past performance or other weaknesses and strengths, creates a different price for the shares of the corporation, thus leading to a different behavior.” (same, p. 65-66)

The Halakhah condemns the argumentation of a *shaliach ledvar aveirah*, an agent who commits forbidden acts, which could be applied nowadays to the directors who act unethically in the name of the shareholders. Orders to commit such immoral acts are not allowed according to Jewish law. Tamari finds analogies

between gneivat daat, defacement of knowledge, as stated in the Halakhah and modern business, such as misrepresentation of financial results to the minority shareholders as compared to those presented to insiders, such as actions of investment bankers, auditors and consultants in favor of the majority shareholders, insider trading, award of shares and warrants to executives in order to induce them to carry on resolutions to the benefit of the majority shareholders, takeover bids where the minority shareholders are forced to sell their shares at prices fixed by the management and majority shareholders, and so on.

“The entry of current management into the LBOs is a major area of halakhic concern, raising issues ranging from gneivat daat, through lifnei iver, down to the negation of the rules regarding bailees’ din shomrim, literally, the laws of watchmen. The moral issues arise even before the MLBO occurs. The price that will be paid to the existing stockholders, will, inter alia, be affected by the economic performance of the corporation prior to the sale. It is obviously to the interest of the management during this period to operate the corporation as badly as possible; low profits, low sales, and inefficient performance all contribute to a lower price that they will ultimately have to pay. This is simple geneivah, theft, defined by Maimonides as ‘removing another’s wealth without him (the existing stockholders) being aware of it. Since the executive officers are the agents of the stockholders, they are halakhically bound to operate so as to maximize their benefits.... During the negotiations regarding the MLBO, the management is in the potentially immoral situation of being simultaneously both the buyer and agent of the sellers. In order to be clear of transgressing lifnei iver, they have to make sure that this conflict of interest is clearly defined and publicized, even if the stockholders understand it by themselves.” (same, p. 105-106)

Millenniums have elapsed since those ethical precepts were written, Jews were deported from their homeland and were dispersed throughout more than 100 countries in the Diaspora, they have returned to Israel and founded an exemplary state, and still the same cases occur.

The fear of the generation of the Flood to have to share their assets was so great that theft became a norm, and therefore God sent them the Flood. It is beyond the scope of this book to find analogies between the generation of the Flood and our generation, as every generation is convinced that the Flood is near, but it is edifying to cite once again Tamari: “Now crimes against property spread, bloodshed and murder became commonplace, as corruption and immorality became the hallmark of society; therefore God decreed destruction through the waters of the Flood. Recognition of the impossibility of maintaining a moral and ethical society within the parameters of ‘more is better than less’ and without acknowledging man’s egotistical uses of wealth determine much of Judaism. It has made the moral parameters of the limited use of wealth the pillar of its religious, spiritual, and communal tradition.

The Aggadah tells of the gentile who came to study Judaism with Hillel the Elder, whose school of Torah represents the definitive basis of the Halakhah. The gentile’s condition for such study was that it be given while he stood on one foot. Unhesitatingly, Hillel answered, ‘That which is repugnant to you, do not do to your fellow; That is the basis of the Torah, now go and learn its implementation...’ Most of the basic injunctions and teachings of the Torah are found in Kedoshim, where the verse ‘Thou shall love thy neighbor as thyself’ appears. Rabbi Akiva taught that this verse is the essence of the whole Torah. This is the pillar, as it were, on which the Jewish treatment of the use of wealth rests. The essence of such treatment lies in the ability of the individual and society to understand and accept that there is a stage of ‘enough’ regarding economic activity and wealth.” (same, p. 129-130)

This book develops extensively the necessity to disclose or reveal actions, which are not ethical or legal, and tries to legitimize this disclosure of information that is often perceived as an unforgivable denunciation. The main focus of the book is on activist business ethics, and it proves how Jewish law is indeed activist in its

ethical approach. Jewish law favors those denunciations, as is written in Leviticus 19:16 ‘Do not go about spreading slander among your people. Do not do anything that endangers your neighbor’s life. I am the Lord.’ We have therefore to disclose the actions that endanger people but we are not allowed to slander people. One has to be sure that the disclosure is not a slander and that it could really save a person. This commandment is relevant today, as it was a few thousand years ago, and if businessmen had followed it, many frauds would have been prevented, the criminals would have been punished, and the innocents would not have lost their investments.

“The Midrash states, ‘One may not withhold knowledge or evidence that may cause a loss of his fellowman’s money, as it is written, ‘Do not stand idly by your brother’s blood.’ We are also obligated to inform others of shoddy workmanship or loss suffered through a business deal in order that others not suffer the same loss. This is not considered to be lashon hara (talebearing), which is strictly forbidden. So, too, if one hears somebody plotting to cause another harm, one is obligated to tell them, so they can prevent it, or alternatively, one should persuade the plotters not to carry out their plans.

The prevention of damage is not only directed to individuals, but applies also to public welfare as may be seen from the comment of the Shulchan Aruch, ‘Even more so, is one obligated to prevent damage to the public. Therefore, if one knows that people intend to do such damage, one has to protest to the best of one’s ability.’ These injunctions would seem to have special significance for those possessing knowledge of planned corporate takeovers that are to the detriment of the shareholders, as well as for workers who have knowledge of fraud within their corporation, to make their knowledge public. Modern whistle-blowing would seem to be in keeping with these rabbinical injunctions and was even institutionalized in many communities.” (same, p.144)

Jewish law, which has given to all mankind the Ten Commandments, is pertinent in its precepts on business ethics as it was millenniums ago. The largest number of moral dilemmas, which are treated in this book, were already treated by activist Rabbis, who have given solutions to those problems, which could have been written by the most modern ethicists. Nobody condones recurring to those laws in the business world, as the application of them even among the religious Jews is unfortunately as ineffective as among the seculars. Human nature is the same, and the religious Jews, Christians or others are not more moral and ethical than the secular people. But, the norms of the Jews, Christians, Buddhists, Moslems, and others can assist us to guide ourselves by the lighthouse, which lights up the route of the businessmen wanting to return safely to their convictions.

In order to understand the importance of business ethics in the 20th century, one should analyze the Protestant ethical precepts, elaborated principally by Max Weber, a German economist, sociologist and philosopher who lived from 1864 to 1920 and published in 1901 a well-known article: 'The Protestant ethics and the spirit of capitalism'. In his article he proves that the behavior of individuals is understood only if we take into account their beliefs on the world, which include their religious beliefs. If there is a homology between Protestant ethics and capitalism, it is the puritan that realizes it, existing only in the western civilization. The Protestant middle class advocated frugality based on work. Nevertheless, the tendency to tie up the basis of ethics and modern business on the Protestant foundations should also bear in mind that the same foundations prevailed also in the Catholic, Jewish or secular middle class.

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. An individual is no longer directly responsible, as responsibility is

divided throughout the hierarchy. A person does not go anymore to the priest to seek moral guidance, as the manager replaces the priest. However, one should not be too carried away by the idealism of these morals, as in many cases it describes an utopist theory, which was not followed by all businessmen, and a large number of them behaved hypocritically and rendered only lip service to those Protestant ideals. At best, we could accept the ideals of the Judeo-Christian morals as a guide, without establishing that practice followed the guide, as the Tartuffes exist in all peoples and in all religions, and probably in the same proportion, as human nature is identical.

Laura Nash in her book 'Believers in Business' describes evangelist businessmen as having a sense of sin and salvation emanating from a personal and continuous relation with Jesus Christ, an obligation to testify the love of Christ and the divine nature of Trinity, a conviction that all aspects of existence obey Biblical authority. Their conduct is based on the writings of Weber, who describes the conservative Protestant as living a diligent, frugal, punctual, and equitable life in all its aspects. We have to compare two ethics: the ethics of self-interest, of Adam Smith, Friedman, Bentham and others, which maintain that everything is interest in life and especially in the business world, as it is not out of benevolence of the butcher and the baker that we eat our dinner but out of interest; and on the other hand the ethics of alliance, engagement and love, stating that the aim of business is to create values, establish human relations, and render services. I suggest to all those who read this book to make a list of all their actions performed in a typical day or in several days and to classify them as actions motivated by interests and actions motivated by duty, love, sociability, sympathy or sentiment. They would probably find that the majority of actions are not motivated by interests, and that the simplistic theories of the Smiths and Benthams are much less sophisticated than the Judeo-Christian theories that are elaborated in this book.

“The role of faith is to reestablish the proper perspective, but that perspective is itself full of paradoxical viewpoints that combine a deep sense of the immediate

with a calm sense of distance... The believer CEO has the decisiveness and courage to act, and yet chooses to lead according to more relational, participatory input... Keeping these paradoxes in tension is what keeps the ego in check, and yet it creates the self-confidence to take risks, handle failures, accept short-term sacrifice for long-term value.” (Nash, *Believers in Business*, p.193-4) There is for example in the United States - Christian Yellow Pages in the most important cities for those who want to favor Christian suppliers that allegedly share their same convictions. The evangelist managers often prefer to receive professional services from lawyers, members of Board of Directors, or colleagues from the same congregation, although it is very difficult to abstain in the modern business world from an association with members of other religious faith.

If we go back to the origins, we find that Jesus Christ blesses the poor and offers them the Kingdom of Heaven, preaches against the greed of wealth, as it is easier for a camel to go through a needle hole than for the rich to reach the Kingdom of Heaven. One cannot serve at the same time God and Mammon, or money. The poor have no duties toward the rich, but the rich have a duty to be charitable. Saint Augustin preconizes that it is forbidden to get rich by making others poor. Trade was perceived by the first Christians with a certain disdain, as it was associated with fraud and greed. It was forbidden to charge interests, but it was allowed to make a profit on an investment.

The religious importance in the United States is evident even today. 85% of Americans have received a religious education in their childhood, 84% believe in God as a Celestial Father, to whom they can pray, 75% believe that Jesus was the Son of the Lord, 71% believe that there is life after death, 67% are members of a church or synagogue, 40% go to church every week and 38% define themselves as new evangelical Christians. But the number of Americans stating that religion is very important for them has declined from 75% in 1952 to 56% today, and the belief that the Bible is literally the word of God has diminished from 65% in 1963 to 32% in 1992.

Church is perceived in the business administration faculties as the enterprise that is managed in the best manner in the last 2000 years. “The all-time greatest management entrepreneur is Jesus Christ. Just look at what he accomplished. By any measurement standard, the empirical evidence bears witness that the organization founded by Jesus is the most successful of all time. Longevity? Two thousand years are counting. Wealth? Beyond calculation. Numbers? Beyond counting. Loyalty of adherents? Many give their lives for it. Distribution? Worldwide, in every country. Diversification? Successfully integrated into all kinds of enterprises. Ergo, Jesus Christ reigns supreme as the greatest manager the world has ever known.” (Briner, *The Management Methods of Jesus*, p. xi)

Jesus has always insisted on the differentiation between true and false, just and unjust, good and bad. “A lack of absolutes can lead to all kinds of corporate problems, from petty thievery to major crimes. It leads to shoddy products and shoddy practices in the marketplace.” (Briner, *The Management Methods of Jesus*, p. 17) “When there is clear, irrefutable evidence of corruption within the corporation, move immediately to handle it. Never, never try to cover it up... Jesus’ decision to drive the goons out of the temple wasn’t based on rumors or unsubstantial reports. He knew what was going on. He saw it. Gather your facts, then act. Don’t put it off. Get it over with and move on.” (Briner, *The Management Methods of Jesus*, p. 22-23) Those precepts are identical to the precepts that should be implemented by ethical managers who have to differentiate between just and unjust and intervene without delay against every act that is not ethical in their companies.

The ideology of the cultural hero of many tycoons and businessmen, Milton Friedman, is passé. Friedman passed away recently and another Nobel prize winner, Joseph Stiglitz, is becoming more and more prominent. Neo-liberalism is still preponderant in many organizations, governments and multinationals, yet a new capitalism is arising, be it a creative capitalism as called by Bill Gates, a

social capitalism as preconized by many European states, or a humane capitalism as appears in this book. Stiglitz's most important contribution is by helping define a new economic philosophy, a "third way", which recognizes the important, but limited, role of government, as the unfettered markets often do not work well, although government is not always able to correct the limitations of the markets. The real debate today is about finding the right balance between the market, government and the third sector – NGOs. They are needed, they complement each other. The new framework focuses on real stability and long-term sustainable and equitable growth, offers a variety of non-standard ways to stabilize the economy and promote growth, and accepts that market imperfections necessitate government interventions.

Joseph Eugene Stiglitz, born in 1943, is an American economist and a member of the Columbia University faculty. He received the Nobel Prize in 2001. Stiglitz served in the Clinton Administration as the chair of the President's Council of Economic Advisers. Former Senior Vice President and Chief Economist of the World Bank, he is famous for his critical view of globalization, free-market economists (market fundamentalists, neo-liberals or Washington Consensus advocates) and some international institutions like the IMF and the World Bank. Stiglitz writes: "The Washington Consensus policies, however, were based on a simplistic model of the market economy, the competitive equilibrium model, in which Adam Smith's invincible hand works, and works perfectly. Because in this model there is no need for government – that is, free, unfettered, "liberal" markets work perfectly – the Washington Consensus policies are sometimes referred to as "neo-liberals", based on "market fundamentalism", a resuscitation of the laissez-faire policies that were popular in some circles in the nineteenth century. In the aftermath of the Great Depression and the recognition of other failings of the market system, from massive inequality to unlivable cities marred by pollution and decay, these free market policies have been widely rejected in the more advanced industrial countries, though within these countries there remains an

active debate about the appropriate balance between government and markets." (Stiglitz, *Globalization and its Discontents*, p.74)

Stiglitz perceives a danger that following the neo-liberal policies, the social cohesiveness of the countries will be eroded. The citizens will cease to abide by the rules and a social agitation will occur. One of the "rules" is that the poor should benefit from the prosperity in times of growth and the rich would bear their part of the burden in times of recession. Unfortunately, the present situation is in many cases similar to the song "With you it's all or nothing – all for you and nothing for me". In times of recession the poors are requested to bear their part in the burden and the state assists the corporations and tycoons, cut the taxes and subsidizes them. In times of growth the poors do not share the growth, as nothing trickles down, and the state is not rewarded by the corporations, although many officials may be rewarded personally with positions in multinationals, huge salaries and stock options. "Trickle-down economics was never much more than just a belief, an article of faith. Pauperism seemed to grow in nineteenth-century England even though the country as a whole prospered. Growth in America in the 1980s provided the most recent dramatic example: while the economy grew, those at the bottom saw their real incomes decline. The Clinton administration had argued strongly against trickle-down economics; it believed that there had to be active programs to help the poor." (same, p.78) Stiglitz says that one Nobel Prize winner, Arthur Lewis, argued that inequality was good for development and economic growth, since the rich save more than the poor, and the key to growth is capital accumulation. However, South Korea, China, Taiwan and Japan showed that high savings did not require high inequality, that one could achieve rapid growth, without a substantial increase in inequality. Governments ensured that wage inequalities were kept in bounds, that educational opportunity was extended to all. Their policies led to social and political stability, which in turn contributed to an economic environment in which business flourished.

Elsewhere, where governments adopted the Washington Consensus policies, the poor have benefited less from growth. In Latin America, growth has not been accompanied by a reduction in inequality, or even a reduction in poverty. In some cases poverty has actually increased, as evidenced by the urban slums that dot the landscape. The IMF talks with pride about the progress Latin America has made in market reforms over the last decade of the century. But most of the progress didn't trickle down to the poor, Argentina, the star student, collapsed in 2001, and recession and stagnation have afflicted many "reform" countries recently. Stiglitz examines at length the economic saga of Russia and its oligarchs: "At one point, they claimed to control 50 percent of the country's wealth! Defenders of the oligarchs liken them to America's robber barons, the Harrimans and Rockfellers. But there is a big difference between the activities of such figures in nineteenth-century capitalism, even those carving out railway and mining baronies in America's Wild West, and the Russian oligarchy's exploitation of Russia, what has been called the Wild East. America's robber barons created wealth, even as they accumulated fortunes. They left a country much richer, even if they got a big slice of the larger pie. Russia's oligarchs stole assets, stripped them, leaving their country much poorer. The enterprises were left on the verge of bankruptcy, while the oligarch's bank accounts were enriched." (same, p.160) Stiglitz even sees an analogy between the neo-liberals' methods and the bolshevists' methods, after all - why not?, as extremists behave identically if they are fascists, capitalists or bolshevists, fundamentalists or fanatics, in a way that oppresses the masses and is profoundly undemocratic and inhumane. This is the insurmountable difference between the precepts of Aristotle, Kant and the Bible and those of Machiavelli, the Darwinists and the Utilitarians: "In effect, the radical reformers employed Bolshevik strategies – though they were reading from different texts. The Bolsheviks tried to impose communism on a reluctant country in the years following 1917. They argued that the way to build socialism was for an elite cadre to 'lead' (often a euphemism for 'force') the masses into the correct path, which was not necessarily the path the masses wanted or thought best. In the 'new' post-Communist revolution in Russia, an elite, spearheaded by international

bureaucrats, similarly attempted to force rapid change on a reluctant population."
(same, p.163)

Stiglitz traces his credo in the last chapter of his book - "The Way Ahead", maintaining that there is an alternative to the neo-liberal ideology and it works well in many countries, a Third Way, an Aristotelian way, a balanced view: "But there is not just one market model. There are striking differences between the Japanese version of the market system and the German, Swedish, and American versions. There are several countries with per capita income comparable to that of the United States, but where inequality is lower, poverty is less, and health and other aspects of living standards higher (at least in the judgment of those living there). While the market is at the center of both the Swedish and American versions of capitalism, government takes on quite different roles. In Sweden, the government takes on far greater responsibilities promoting social welfare; it continues to provide far better public health, far better unemployment insurance, and far better retirement benefits than does the United States. Yet it has been every bit as successful, even in terms of the innovations associated with the 'New Economy'. For many Americans, but not all, the American model has worked well; for most Swedes, the American model is viewed as unacceptable – they believe their model has served them well. For Asians, a variety of Asian models has worked well, and this is true for Malaysia and Korea as well as China and Taiwan, even taking into account the global financial crisis... In my own work – both in my writings and in my role as the president's economic adviser and chief economist of the World Bank – I have advocated a balanced view of the role of government, one which recognizes both the limitations and failures of markets and government, but which sees the two as working together, in partnership, with the precise nature of that partnership differing among countries, depending on their stages of both political and economic development. But at whatever stage of political and economic development a country is, government makes a difference. Weak governments and too-intrusive governments have both hurt stability and growth. The Asia financial crisis was brought on by a lack of adequate regulation

of the financial sector. Mafia capitalism in Russia by a failure to enforce the basics of law and order. Privatization without the necessary institutional infrastructure in the transition countries led to asset stripping rather than wealth creation. In other countries, privatized monopolies, without regulation, were more capable of exploiting consumers than the state monopolies. By contrast, privatization accompanied by regulation, corporate restructuring, and strong corporate governance has led to higher growth." (same, p.217-220)

Stiglitz believes that we can use the force of the markets to provide incentives in order to make globalization and national economies better. We have learned how to temper the problems of market economy. We have learned how to make sure that the market's benefits do not go just to a few people at the top but are enjoyed broadly by society as a whole. We have learned that we have to regulate markets, there is an important role of government providing safety nets, supporting research, developing new ideas, providing first rate education. We have striven to get a balance between the role of the market and government. These lessons have to be extended to the way we run global economy. We have a global society, in which we become more interdependent, but we don't have yet a global system of dealing with the political consequences, and it is this gap between economic globalization and political globalization that is at the core of so many problems that we see with globalization today. Stiglitz believes that not only is another world possible, he believes that another world is necessary. He knows that economically this other world is possible. He knows that on the basis of economics we can make globalization work. The issue today is one of politics. Can we use the forces of democracy; can we narrow the gap between economic globalization and political globalization? If we can, then he believes that we can reshape globalization, we can make globalization and national economies work not only for the rich and the richest countries of the world but for the poor and the rich in the developed and the developing countries alike.

Tycoons, multinationals and neo-liberal governments need the employees to work in their companies and to pay income taxes, need the consumers to buy their products and to pay sales taxes, need the suppliers, the communities, need also environment and earth as business cannot exist in a vacuum. It is possible that corporations would prefer to have a minimum number of workers, as some garment and athletic shoes companies, will subcontract all their production or possibly their R&D, QA, accounting, human resources, sales and advertising. A company of one person, the CEO, could be the Milton Friedman's ideal, outsourcing everything, working with temporary workers without social benefits, with subcontractors in sweat shops, and with American Idols as Michael Jordan. It is possible that corporations would prefer to be a monopoly, controlling 95% of the market as some hi-tech or software companies, charging very high prices for their products with an insurmountable amount of bugs as there is no alternative for the customers. It is even possible that companies would ruin the environment like many petrochemical companies, externalizing all their costs, forcing communities to pay for cleaning the pollution while other companies will manage to force all of us to buy their patented genetically engineered seeds together with their unsustainable herbicides.

But if the customers, the employees and the communities would exert their strength and their rights, if we could find alternatives, if we could change the ideology from maximizing profits to finding the right equilibrium between all the stakeholders, we could restore David's fallen tent, repair its broken places, renew its ruins, and build the corporation as it used to be – an organization intended to serve society, to take part in the community activities, to employ many employees that would be contented with their work, to deliver goods and services which will satisfy the customers, to be sustainable and not pollute the environment, and to have a social responsibility, all that while obtaining an optimal profitability and an adequate return on investment. Not maximizing anything but achieving a holistic harmony of the interests of all stakeholders – employees and executives, customers, controlling and minority shareholders, suppliers, community, country,

ecology, earth, in a healthy and sustainable environment with happy, equal and sociable people, working in companies which do not exist in order to be profitable but which are profitable in order to live.

PART I

LEADERSHIP, INTEGRITY, WHISTLEBLOWERS

CONCEPTS AND THEMES

The most important feature of a businessman has to be his moral integrity, especially in fiduciary positions such as CEOs, vice presidents, or investment bankers and analysts. It is imperative to broaden humanist education in the universities, including ethics courses. 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 they are obliged to behave unethically, they prefer it to be so toward weaker groups who cannot retaliate, and the stakeholders are amongst the weakest groups.

As there are no businessmen who have all the good qualities, although many of them think so, we have to ask ourselves what are the most important qualities. Should we place the highest emphasis on businessmen who are the most brilliant, efficient or charismatic or those who obtain the best financial results? Or do we favor the most ethical businessmen? Nowadays, ethics is at the lowest level of preferences for some of the managers, but we should transpose it to the highest level, at the same level of the operational qualities. The best manager, with the most brilliant results, who does not behave ethically, will in the long run cause more harm to the company than the ethical manager who is less brilliant but who has nevertheless adequate operational qualities.

We should establish a coefficient of $E \times P$, whereas E is Ethics of the company and P is Profits or Performance. In this formula, we should optimize $E \times P$. This cannot be achieved when E or P are too low, or even if P is 100 percent but E is 0 percent, as the result would be 0. The application of this formula could revolutionize the business philosophy, as nowadays E is not at all part of the coefficient in most of the companies, and certainly not at the same level of P . This result could be achieved only if the stakeholders would insist on it and would not work with or in companies and purchase their shares if they are not managed ethically.

“As a former vice-president of a large firm says: ‘What is right in the corporation is not what is right in a man’s home or in his church. What is right in the corporation is what the guy above you wants from you. That’s what morality is in the corporation.’... Actual organizational moralities are thus contextual, situational, highly specific, and, most often, unarticulated.” (Jackall, *Moral Mazes*, p.6) This dilemma, brought forward by an executive of a large company, emphasizes the need for the predominance of ethics of the CEOs. For many managers, ethics in business is merely their boss’ wishes. The boss is a concrete person, while morality is an abstract concept, and if we want to promote ethics in business, it is mandatory that the executives will behave ethically.

The origin of this full obedience to the boss principle comes from the patrimonial bureaucracy, which was prevalent in the courts of kings, where personal loyalty was the norm and not loyalty to the organization. Nowadays, the executives are at the base of the bureaucratic ethical norms, although they comprise only 10 percent of the salaried. The CEO is surrounded by his ‘court’ of managers who are completely loyal, as loyalty is the most precious characteristic. They have to be ‘one of the gang’. In return for full loyalty to the superior, the chief is supposed to protect the subordinates in the organization, exactly like in the feudal epoch. Jackall finds a stunning analogy between the CEOs and the kings, assisted by

their subordinates who are the 'barons'. "The CEO of the corporation is the king. His word is law; even the CEOs' wishes and whims are taken as commands by close subordinates on the corporate staff, who turn them into policies and directives." (Jackall, *Moral Mazes*, p.21) The most interesting subject of conversation of the managers is the speculation on the plans of the CEO, his intentions, his actions, his style and his public image.

In this environment, which is closer to the court of Louis XIV than to modern democracy, we do not have to wonder if the convictions of the executives become suspect. 'Everybody has a right to his convictions, as long as he leaves them at the door of the company'. We have to mingle in the masses, be a 'team player' and not be brilliant, otherwise we'll become a threat to our colleagues. We have to align ourselves to the prevailing ideology, even if it is in contradiction to our personal beliefs. We should not make waves, we have to concur with the ideas of the majority; we do not have to argue with the orders of our boss even if we are convinced that we are right. All those observations, based on extensive research of Jackall and many others, concur completely with the results of my experience in business.

And we reach the appalling conclusion of Jackall, who resumes the ethos of successful businessmen: "The ethos that they fashion turns principles into guidelines, ethics into etiquette, values into tastes, personal responsibility into an adroitness at public relations, and notions of truth into credibility. Corporate managers who become imbued with this ethos pragmatically take their world as they find it and try to make that world work according to its own institutional logic. They pursue their own careers and good fortune, as best they can, within the rules of their world. As it happens, given their pivotal institutional role in our epoch, they help create and re-create, as one unintended consequence of their personal striving, a society where morality becomes indistinguishable from the quest for one's own survival and advantage." (Jackall, *Moral Mazes*, p.204)

One should not be a prophet in order to understand where this state of affairs can lead. The degeneration of the totalitarian regimes is inevitable in history as in business. The complete devotion to an 'absolute monarch' is bound to lead to corruption, to abuse of rights of minority shareholders, employees, environment, and finally to the infringement of the law. Absolutism is at the base of all evils, and there is no reason why it should subsist in its last bastion – the business world. The Sun Kings of today are sent to a lunatic asylum, a place not unlike some of today's companies, where the talk of the day in the board rooms is not business strategy but rather the mood of the CEO.

We could argue that there is no need to change the autocratic norms of companies, but rather to change the sovereigns to be ethical. It would be much easier for them to institute the ethical norms because of the loyalty of their subjects. Unfortunately, as Diogenes who is still looking for justice, we are still looking for the humanistic monarch in order to render him absolute power. Until we find him, we have to satisfy ourselves with democracy, in parliament as in companies. We are submerged by books written by or about CEOs of the most successful companies, where we can read of all their qualities, but those who know them well can testify that they are in many cases retrograde, mean and petty tyrants. A Hebrew proverb speaks about the difference between a mountain and a monarch: when you look at a mountain from a distance - it looks small, but when you approach it - it looks big, and with the monarch it is the opposite... This book advocates that it is better to have a CEO *primus inter pares*, surrounded by VPs who can keep their initiatives, raise original ideas, and make decisions, rather than a small Napoleon, who looks literally small when you are close to him, is surrounded by vassals who prostrate to him, without ever seeing, hearing or speaking.

An example of an ethical CEO is Al Casey, who embraced the motto: 'If something can go right, it should'. This motto is the opposite of Murphy's Law, and Casey proves how throughout his brilliant career as CEO of American

Airlines, Times Mirror, the US Postal Service and other organizations, he was able to implement his ethical concepts, although it forced him in some cases to quit the jobs in order not to compromise with his ethics. “An axiom of Casey’s Law: if you want something to go right, the foundation of your dealings with others must be total integrity. I emphasize, at the risk of sounding self-righteous, the word total. This is not a matter of blind allegiance to some idealistic code of conduct; it’s simply that a lack of integrity – however seemingly innocuous or minor the deviation – will eventually come home to haunt you and your company.” (Casey, Casey’s Law, p.64)

“My mother used to say, ‘Just imagine that what you’re about to do or say is going to be the headline in tomorrow’s paper. Would I be proud of you, Albert?’ It was a tried and true question, but Mother constantly impressed it on us. ‘I’m not going to be there to help you all the time,’ she would say. ‘But you must always do the right thing. And you must never shame your parents or your family.’ Everyone in the business world ought to be able to agree that treating customers, employees, and suppliers ethically is good business. But corporations often put tremendous, sometimes impossible, pressure on their employees to improve the bottom line. Now they must learn to put equal pressure on their employees to take the ethical high road in meeting their goals and objectives. ‘Only a virtuous people are capable of freedom,’ George Washington once said.” (Casey, Casey’s Law, p.310-311) Aristotle suggested that to be virtuous we have to make an example of a virtuous man. The example of Al Casey and many other executives in the U.S., U.K., France, Israel and other countries, such as Warren Buffett, could help us to find the ethical and practical path, provided that we succeed in discerning the truly ethical businessmen from those who pretend to be ethical.

Many people maintain as a self-fulfilling prophecy that the business world is an immoral jungle and that businessmen are cynically and uniquely motivated by their interests. If people will keep saying it only this kind of businessmen will enter into the business world, and the prophecy will be fulfilled. On the other

hand we should not be deluded that everything is for the best, but we have to see things as they are, and try to find remedies for the diseases of the business world and its leaders. “Not long ago in an undercover investigation in New York, 106 bribes were offered to public officials, and 105 were accepted. I would like to be able to tell you that the one who declined was a man of honor, but no, he turned down the bribe because he thought it was too low. Such amusing stories should not make one cynical.” (Williams, *Ethics and the Investment Industry*, p.32)

The predominance of the ethical role of the CEO is much more pertinent if we notice that the executives are elected very often by a Board of Directors that they control. Executives try to stay in their positions as long as possible, earning salaries 150 times higher than the average salary of their employees. They decide in a group such decisions that as individuals they would have never decided. “Inflated billings, shortcutting workplace safety, tax evasion, secret dumping of toxic waste, even deadly products – apparently all can seem acceptable when the decision is made by a group. This is how good people end up making harmful decisions in corporations. This is how corporate managers, whose personal morality, conscience, or religion would prevent them as individuals from ever willingly placing others’ lives in jeopardy for a few dollars of profit, will do exactly that in the corporation. Good people end up taking such harmful actions because, when they enter the corporate environment, they come under great pressure to accept the corporate morality, to allow it to dominate their personal morality. And the corporate morality, as we have seen, is a soulless morality defined by the single commandment: ‘Maximize the bottom line!’ (Estes, *Tyranny of the Bottom Line*, p. 102) But society does not sanction nor is it upset by the crimes of companies, as there is a double standard for the robber who steals a few hundred dollars and the company that commits a fraud of millions of dollars. “Little crime gets pursued and prosecuted with vigor. Big crime often gets excused; when it is prosecuted the penalty is barely felt. And as a society, we teach our children the morality that wealth and power excuse corruption, while poverty makes it more sinful.” (same, p. 104)

Having good values is the software of the success of a good CEO, while the hardware are the financial and operational results. Values are the intangible, the qualitative component of business - honesty, good service, good products, good relations with employees, stakeholders and the community. "All happy families resemble one another, said the Russian writer Tolstoy. Like happy families, values-driven companies resemble one another in important ways. All have discovered the process of qualitative improvement. All follow a well-defined implementation path. All commit at the top, communicate, educate, set standards, align structure and systems. All recognize performance. Values are a commonplace miracle, fully visible, partially seen. These simple operating qualities, vigorously pursued, release 10,000 elevated acts every day. Their power is available to anyone, yet only a few see its full potential." (Harmon, *Playing for Keeps*, p. 111)

Values can differ from company to company, but the ethical motivation of the executives who have established them is universal. Since its foundation by Eleuthere du Pont in 1802, Du Pont has committed itself to maintaining the security of its employees. The level of work accidents is 40 times less than the average level of the American industry and 10 times lower than the average level of the chemical industry in the U.S. American Steel and Wire Corporation has an employee motivation policy, which could be resumed in the levels of a pyramid: Job Security, Pay Program, Benefits, Training, Development, Communication, Involvement, Measurement, Recognition. For the company, like for Fukuyama, recognition is the highest level of motivation. The values of Intel are: Risk taking, Quality, Discipline, Customer Orientation, Results Orientation, Great Place to Work; and for Disney the values are: Safety, Courtesy, Show, Efficiency.

Values are of the utmost importance in times of crisis, as in the case of 3Com, where the French CEO Benhamou has succeeded in turning around the company in a spectacular way, while enforcing a detailed values system: "In bold capital

letters it talked about people as OUR MAJOR ASSET. It stressed the need to Value the Individual. The conventional wisdom was certainly ‘to save those happy thoughts for a happier day after we get through this.’ Instead, Benhamou challenged himself and his team to be judged by those values during the worst crisis most of them had faced. Topping the list of seven values was ‘Act with Honesty and Integrity.’ The definition gave explicit guidance, almost as if written for such a crisis. ‘Be honest in all our dealings. Tell the truth. Make clear commitments among ourselves and with our customers and partners. Meet those commitments. Communicate openly.’ (Harmon, *Playing for Keeps*, p. 212)

Values from the time of Du Pont until the time of Benhamou are at the base of business ethics and the key for the adherence of the business world to the ethical norms would probably be in the combination of the values of the business leaders with a favorable attitude of their environment toward those norms. The success of those ethical companies is flagrant proof that you can conduct yourself in a different manner in the business world and reach a very high level of profitability, while keeping your ethical standards. What matters is not what the leaders believe or declare but how they act, as there was too much abuse until now of the beliefs and ethical codes that in many cases were not implemented seriously. The proof of ethics is therefore in the facts, in the example, in the perseverance, in devotion. “From CEO to solo contributor, values energize work and enrich life. Although values-driven leaders have a thousand faces, their stories resonate with complementary themes. Values-driven leaders change the way we look at work. They uncover standards we didn’t see. They create traditions that shape behavior. They transform routine into adventure, careers into voyages of self-discovery. Above all, they inspire others by revealing the power of a commonplace miracle called values.” (Harmon, *Playing for Keeps*, p. 273)

The primordial question is therefore if the ethics of the executives will become the principal motivation of the businessmen of the new Millennium. There are certain indications that this is already the case in many companies. “A manager’s

personal values and strength of character have become urgent issues for the corporation. In a recent survey by Korn/Ferry and Columbia University Graduate School of Business, over fifteen hundred executives from twenty countries rated personal ethics as the number one characteristic needed by the ideal CEO in the year 2000. As Delbert 'Bud' Staley, former Chairman of NYNEX, remarked, personal integrity is a business leadership essential: 'We have to depend on every one of our employees for the good reputation of this firm.' So, too, Johnson & Johnson's Jim Burke has asserted that most individuals in his company welcome the emphasis on high ethical standards which their Credo represents. 'After all,' he said, 'everybody wants to believe in something.' (Nash, *Good Intentions Aside*, p. 7) Influential groups of businessmen, such as the Business Roundtable, the American Management Association and the Conference Board, sponsor ethical programs. They have arrived at the conclusion that it is one of the most important goals of the modern business world, following the scandals of the 80s and 90s, the heavy fines that the companies had to pay, the destructive effect on the routine of companies and the moral of employees, the frauds, and the bad reputation of the business world.

On the other hand, there is a large number of businessmen who worship the 'street fighters', as if we were in the West Side of New York at the epoch of the fights between opposing gangs. Commendable characteristics for an executive are to be a 'killer of competitors', a 'shark', or 'quick-and-dirty'. From the moment that we perceive ourselves in a state of war with competition where everything is permitted as in 'cut-throat competition' and 'fight on life and death', we create for ourselves motivations of survival like we do in war, and in 'war like in war' - a *la guerre comme a la guerre*. "Like individuals in life-threatening situations who will violate even the most basic moral tenets in order to survive, the manager or company with a survival ethic will justify actions whose moral implications run counter to their stated moral commitment based on a sense of 'having had to do it.'" (Nash, *Good Intentions Aside*, p. 55) The translation of this state of affairs is catastrophic for ethics of the company, but we can notice an evolution that started

five or ten years ago: “Walk on whomever you can to get ahead. Squeeze your suppliers dry, manipulate your customers into accepting second-best, waste shareholder dollars on the maintenance of status in an effort to establish your image – oh yes, and stay within the laws and customs of the land. Today’s marketplace is not so naive or meek as to accept such behavior without resistance. Suppliers become overnight competitors, customers move on, and shareholders are much more aggressive in demanding an honest accounting. Consumer and environmental groups, somewhat dormant during the last Reagan administration, have recently increased their activism. Thus others are provoked to impose heavy legal or quasi-legal constraints on managers’ exploitative tendencies. Laws on fairness and honesty become the only practical ethical controls. This approach to motivating ethical behavior is both inefficient and ineffective.” (same, p. 69)

It is practically impossible to impose ethical conduct by law, *inter alia* because the large companies will almost always win the litigation, due to their power, and to the fact that it is very difficult to codify ethical conduct in legal terms. Most of the ethical dilemmas of executives cannot even be detected by the legal system. Nash proposes to ask oneself six questions in case of ethical dilemmas in order to augment the moral sensibility: “Is it right? Is it fair? Am I hurting anyone? Could I disclose this to the public or a respected mentor? Would I tell my child to do this? Does it pass the stink test?” (same, p. 130) It is improbable that CEOs, like Joe Keller in *All My Sons* by Arthur Miller, would have conducted themselves unethically if they would have asked themselves those six questions, especially the question on setting an example to your children. This ethical pressure would have to outweigh the other pressures which are much more tangible on the CEOs, such as ‘winning isn’t everything. It’s the only thing.’ You are forced to achieve profitable results in every quarter, while the moral dilemmas are much less urgent. In order to move those two pressures closer, which are certainly not at two different poles, we could once again cite one of the greatest authors of the 20th century: “F. Scott Fitzgerald’s statement that the mark of a first-class intelligence is the ability to sustain in one’s mind two opposing ideas simultaneously is to the

point. Bottom-line thinking can only operate constructively if it is balanced by an intelligent reference to the qualitative, ethical values on which responsible decision making is based.” (same, p. 138)

But the best argumentation for the ethical conduct of a CEO is that if he conducts himself in an unethical manner toward his customers, suppliers, employees, or the government, he will conduct himself in the same manner also toward the majority shareholders who have appointed him to his position. It is almost impossible to remain ethical toward certain segments and unethical toward others. The deceitful will tend to pass on his deceit toward everybody, and those who will lose the most will be those who appointed him, but it will be too late for them to remedy the situation. The hypocrites are much more dangerous than the deceitful, as they are judged by their declarations. Hearing them, you could think that they are the most ethical executives in the world, as they rationalize their lack of ethics: “There is not a manager or human being alive who has not offered one of the following excuses for failure to act with integrity: ‘Nobody’s getting hurt’. ‘Everybody does it. That’s just the way things are done.’ ‘Everybody understands what’s really going on.’ ‘I can’t afford to do otherwise.’ ‘Nobody cares about this anyway.’ ‘That’s not really an ethical issue.’ Whenever such rationalizations are voiced, it’s time to take a second look at your behavior or that of your company. Nine times out of ten you are in a type B situation. Problems in Business Ethics – Type A (The Acute Dilemma): Situations where you do not know what is the right or wrong thing to do. Type B (The Acute Rationalization): Situations where you know what is right, but fail to do it. It must be recognized that although top management tends to deal predominantly with Type A decisions, and mid-to first-level management with Type B, most managers face both kinds of moral challenges.” (Nash, Good Intentions Aside, p, 126-7)

As a CEO, you enter into a short-term whirl of promotion, and you have never the time and opportunity to pay for the mistakes that you have made. You are paid a very high salary that suppresses all your scruples. You are given warrants and

shares of the company in order to participate in the quarry, exactly like Aristide Saccard, who participates avidly in the quarry in *La Curee* by Emile Zola. “The legal system tends to reinforce the delusion of infallibility. An individual engaged in corporate wrongdoing is neither as easily detected nor as likely to be punished as are other types of criminals. Fines and other punishments for corporate crimes are far less harsh than for street crimes. A drug addict who stole a bicycle in Central Park received a four-year prison sentence. A drug company whose managers covered up the fact that one of its products had resulted in four deaths and many illnesses paid a \$25,000 fine and no individual was indicted for criminal charges. Until recently, the insider-trader who stole millions while his company laundered drug money received a slap on the wrist. In an ego-driven environment a manager’s capacity for retaining sensitivity and a respect for others is seriously undermined. Reinforced by a totally inequitable culture and compensation system, along with ego-massaging perks, a manager can mistake corporate hierarchy and financial position for good judgment and ethical conduct. When reality is this muddled, it can seem unremarkable to condone conflict-of-interest activities, cheating, cover-ups, mudslinging, bribery, gouging, price-fixing, exploitation of the little guy, and unsafe production processes, all of which stem from an inability to respect the other person’s rights and needs.” (same, p. 192-3)

This explains how CEOs behave in many cases in the modern business world. They think that they can never lose, that they are infallible, above the masses, protected by the controlling shareholders and their lawyers. The CEOs have almost no fear that their conduct toward stakeholders will be blamed or that they will ever be condemned. They participate in the quarry, eating the leftovers of the majority shareholders, and leaving only the bones for the other stakeholders.

In the present state of affairs, there are too few whistleblowers who have the courage to denounce overtly the crimes of companies against ecology or the stakeholders, to suffer the consequences, the ostracism of society, and the

impossibility to find other jobs. An employee could agree to denounce his company in an extreme case, if there is a danger to the public or to the lives of people. But who would denounce overtly and without getting any remuneration a company that abuses the rights of minority shareholders? The employees who would do it are only those who have a stronger allegiance to the community and to their conscience than to the company.

We could cite as precedents for the efficacy of denunciations, those that are made to the fiscal authorities and who come almost always from the close environment of the companies. If the IRS finds that it is ethical to encourage the denunciations, why should it not be encouraged also by the activist associations? But does the end justify the means, and can we remain ethical while encouraging denunciations, even of unethical acts? What is the alternative? Let the executives wrong the stakeholders. Is it not less ethical, is it a crime to denounce the criminals, or in the words of the Bible ‘The accomplice of a thief is his own enemy; He is put under oath and dare not testify.’ There is a moral obligation to testify against a thief, unless you become his accomplice by not revealing his crime, even if you do not dare do so because you are afraid. Ultimately, if we do not find more efficient ways of safeguarding the rights of stakeholders, we should envisage methods for denouncing unethical acts of companies and render them legitimate without any stigma, as it is probably the only way to resolve problems that could not be resolved otherwise, since crimes are performed usually in the dark.

The companies utilize extreme means to conduct their battles against their adversaries, even if they are dissident shareholders who dare oppose the executives and majority shareholders of their companies. They use the press, public relations agencies, investor relations firms, and even the Internet. But the press could also be used by stakeholders in cases that could be of public interest. Unfortunately, the newspapers get tired of dealing with complicated cases, and in the long run they drop those cases for lack of public interest, or even as a result of

heavy pressure of the companies that threaten to abolish their advertising budgets. An editor prefers a scandalous case of a rape to a tedious case of fraud of minority shareholders, who are often perceived as ‘speculators’. But those minority shareholders can also employ public relations firms, which specialize in this domain, or organizations such as ADAM in France, which specialize in the protection of minority shareholders.

Another efficient method that could prevent the abuse of the rights of stakeholders could be the distribution of rewards to the persons who divulge this wrongdoing of the companies, whether it is unethical or illegal. We enter here into a very problematic domain of the fidelity toward a company where we are employed, as the majority of the whistleblowers would probably be employees of the companies concerned. Would the denunciations be anonymous like on the Internet? How could we distribute the rewards? And who will distribute them – the activist associations or another organization? Is it ethical to encourage the whistleblowers? Would it be possible to employ this vehicle to get revenge from companies or executives who have not committed any fraud? How could we verify if the information is correct and make sure that the denunciations do not resemble precedent cases from totalitarian regimes?

The conviction that to denounce is an atrocious crime is inculcated in all peoples and religions. The Jews ostracized in the Diaspora the ‘mousser’, or the squealer, the person who denounced his brethren to the authorities, even if that brother was a thief or murderer. Everybody knows the awful fate of the squealers who denounce Mafia chiefs to the police. But the American and Italian police would have never succeeded in arresting Mafia leaders without the aid of the squealers of the Cosa Nostra.

Is it moral to denounce a crime committed by the Mafia to the police, in spite of the law of Omerta, which advocates a complete silence? Is it ethical to denounce an immoral act committed toward a customer or shareholder of a company by one

of the company's employees? If he does not denounce his chiefs, the employee knows that truth will never be disclosed, and the company will continue to sell airplanes with damaged components, endangering the lives of the pilots, as was the case in many recent events. Is the employee a squealer? If he believes in God and the Inferno, will he find himself in hell after his death in the vicinity of Judas and Brutus? If he is an agnostic, can he risk his career, the well-being of his family, the respect of his colleagues, in order to save the life of a pilot whom he does not know or to avoid the losses of a minority shareholder?

The employee will never denounce his superiors if society continues to treat him as a whistleblower (pejorative connotation in the business world), a tattletale or sneak (pejorative connotation at school), an informer (pejorative connotation from the German Occupation), a stool pigeon (pejorative connotation in the Soviet Union), or a squealer (pejorative connotation from the criminal world). Maybe he would have the courage to denounce immoral acts, if he would be treated as a 'discloser', a neutral term meaning somebody discloses a fact, without a pejorative connotation. In this book the term whistleblower is used, because otherwise the meaning would not be understood, but the meaning that I embrace is that of a discloser, and if it does not exist in the dictionary it is high time that it should be invented.

This discloser will not be ostracized but will be appreciated by the society in which he lives, as he will assist it to be cleaner and just. Many of the readers of this book will think of McCarthy who meant exactly the same thing when he urged intellectuals to denounce the 'communists' in order to have a cleaner society with no fear of the rising communism that endangered the existence of the free world. In most cases, nobody forced the people to denounce their friends, but those who did not cooperate did not get jobs and were ostracized.

What is therefore the difference between the proposals of this book and McCarthyism? McCarthy represented the authorities, he acted against the weak.

Here is a completely opposite situation where the weak become organized against the powerful. It could be that in the future minority shareholders could become the strongest party, and activist associations would become too powerful. We have seen such inversions in the past in the Soviet Union, where the wronged proletariat became much worse and committed more atrocious crimes than the Tsarist regime that oppressed them. I believe in democracy and checks and balances, and hope that the stakeholders and the companies will have a similar power without any one of them subjugating the other.

But we are aware that this argument will be raised, similarly to what the Jews in Russia called the 'wronged Kozak', meaning the Kozaks who organized pogroms against the Jews and pretended to be wronged by the persecuted Jews. Those who condemn Brutus, the rebel, the traitor, the squealer, to the pit of hell would have condemned as well the French Revolution which was against the legitimate power of the Bourbons, the American revolution which was against the legitimate power of the British, or the terrorists attacks of the Haganah, Etsel or Lehi in Palestine which were against the legitimate power of the British mandate. Those who condemn the whistleblowers are in favor of the multitude of the immoral acts that are performed in companies against their stakeholders. The companies should be transparent ethically, without fearing anything from squealers, because when you have a clear conscience you do not need to be afraid to be discovered. Crime likes darkness, and the companies that do not conduct themselves ethically are looking for anonymity.

There will always be cases where it will be argued that it is impossible to divulge a case, as it is a state secret or a professional secret whose disclosure could endanger the company or the state. The most renowned case of a disclosure of a crime by act of conscience is probably the case of Colonel Picquart. One needs to have extreme courage in order to denounce his superiors, and bring against him the French army, the government and the majority of Frenchmen. But Picquart, imperturbable, testifies at the trial of Zola, after the latter wrote his famous

‘J’accuse’, where he accused the French authorities of concealing the truth about the innocence of Captain Dreyfus: “For more than an hour, he exposes, in a quiet voice, how he has discovered the treason of Esterhazy, the maneuvers that he was victim of and his sadness to be dismissed from the army. The revisionists make him an ovation. After that he is confronted with his old subordinates, whom, all colleagues of Henry, scorn him.” (Troyat, Zola, p.274)

The modern history of business knows many similar glorious pages, where employees have denounced their companies at the risk of their career, their well-being and even their lives.

The transparency of companies will force every employee to ask himself at every moment the question: ‘what is my ethical attitude toward this ethical problem?’, because the following day his acts will be disclosed in the press or on the Internet, and his family, friends and congregation will learn about his acts. We will not have to ask ourselves anymore if our acts are legal or not, if they concur with the mission of the company and its ethical standards, but how they concur with our ethical standards, as we will not be able to hide anymore in anonymity. It will be like in the senate committees for the appointment of high officials, or with presidential candidates who are obliged to disclose their life transparently. Of course, we would have to beware not to resort to McCarthyism, to the open eye of the ‘big brother’, or to the denunciations of the sons and colleagues, as in the dictatorial regimes. The companies should be made transparent with measure and moderation and excesses will have to be condemned. Full disclosure should be made only on important cases, where the evidence is irrefutable, where there are no ulterior motives, and after having exhausted all other instance within the company.

The material advantages of the disclosers are often very high and outbalance the risks. In 1986, the US law, ‘The False Claim Act’ of 1863 was amended, and it encourages the disclosure of companies’ fraudulent acts against the government.

The discloser can receive up to 25 percent of the money that could be recuperated. The most renowned case is that of Chester Walsh and General Electric. In 1986, a manager of GE had conspired with an Israeli General to steal funds from the US military aid to Israel. The thieves succeeded in stealing at least \$11 million, which was deposited in a Swiss bank account controlled by the Israeli General and the GE employee. Some employees of GE asked themselves how millions of dollars were transferred to a company that did not exist in the past. The control system of GE, the US army and the Israeli Army did not succeed in discovering the fraud. In 1992, GE admitted committing fraud and paid a sum of \$69 million in fines. Twenty-two GE employees were fired or punished. The discloser of the fraud was Chester Walsh, a GE marketing director in Israel, who succeeded during five years to gather documents, tape conversations and accumulate evidence of the fraud. Walsh and a non-profit organization sued the US government under the False Claims Act and received the sum of \$11.5 M they shared.

Throughout the centuries, history repeats itself. Disclosers are called squealers and whistleblowers by the legitimate forces that try to conceal their crimes. Progress is always linked with discoveries and disclosures, which the 'majority' tries to hide. Brutus makes a coup d'état against a tyrant, although the majority worships Caesar. Galilei says 'e pur si muove' although the Church in 'majority' tries to silence him. The Dreyfusards try to acquit the poor Dreyfus although the 'majority' cannot admit that a Christian officer has betrayed his country. The financial tycoons of modern economy try to hide their actions, which transgress ethics and even the law. The only way to fight the prerogatives of the majority shareholders, to overcome the law of Omerta and to destroy the last bastion of totalitarian organizations, is to fling upon the windows of the companies and to render them transparent to all ethical critics. As the press safeguards the democratic regime; the Internet, the free access to information on companies, the possibility to reveal the cases that transgress ethics by the employees, should safeguard the interests of the stakeholders.

LEADERSHIP AND INTEGRITY CASE – ORGANIZATIONAL BEHAVIOR

(All the characters and plot and all the names of the companies in this case are fictitious)

Harry, the CEO of Marignan, was very pleased with the performance of Joseph, the Controller of the company. When Harry started to work in Marignan, three years ago, the reliability of the financial reports of the company was very low and the external auditors of the company told him that if this situation will continue they will not be able to audit the reports of Marignan. Marignan intended to go public and reliable financial reports were a must. That is why Harry interviewed personally all the candidates to the Controller position, after the Controller of the company resigned. He couldn't find the right man in the Finance department and he didn't want to hire a manager from outside the company, as it would take him at least a year to learn the intricacies of the Marignan and immediate action was necessary. While interviewing managers from the other departments he discovered Joseph, the assistant legal counsel of Marignan. Joseph was a lawyer and a CPA, and he had an MBA from a leading business school in Europe. He was 32 years old, but most of the executives of the company, a multinational selling \$300M annually, were aged between 35 and 40. Harry decided to take the risk and offered him the position of Controller. He thought that because of that Joseph would be loyal and would appreciate the unique opportunity that he gave him so young.

Joseph succeeded brilliantly in his new job. He promoted junior managers with the right qualifications and changed the existing mentality of "accountants" who would rather be precisely wrong than approximately right. He told them that they were before anything else businessmen who had to give reliable even if

approximate financial data without delay and not wait for the exact data that would be received a few months later when it will be too late to cope with the problems. Even if some minor corrections will be needed in the next quarter it will not affect the accuracy of the reports. Harry backed him in his business attitude and Joseph even succeeded to receive the external auditor's support to his new policy. After the successful IPO of Marignan all the investment banks and analysts were unanimous in praising Joseph for his professional job, his reliable reports, his assistance in the due diligence process, and his impeccable integrity. After the IPO, Harry wondered how he could remunerate Joseph for his fantastic performance and his indefatigable work of up to 20 hours a day.

Joseph married a year before Suzan, a young lawyer working in one of the largest law firms known for its integrity and the many hours of pro bono work for the community. She asked her bosses to divide her job 50%-50% between legal work for large corporations and pro bono work. Only thus she could find the right balance between the necessities of living and her ethical activism. Joseph was agnostic as far as ethical considerations were concerned and as a matter of fact he didn't encounter any substantial ethical dilemmas in his business career. But Suzan shared with him every night her ethical dilemmas and he became aware to them. Both came from lower-class families and didn't receive any assistance from their parents. They didn't even go to a honeymoon after their marriage and invested the cash presents of the wedding and their meager savings as a down payment for a small apartment in a working class suburb.

Harry met with Joseph and told him: "I remember that you didn't have the time and the money to go for a honeymoon after your marriage. That is why I have decided to send you both for a fortnight to Rome for a late honeymoon in the most romantic city of the world. I have booked you two business class tickets, a five-star hotel for two weeks, a rental car for your trips, and I give you \$3,000 for per diem and presents. Go to Fanny, the VP Human Resources, everything is set, you are leaving in a week. Have a safe trip and enjoy!" Joseph was stunned from

Harry's generosity, but in spite of the excitement, his CPA's and lawyer's instincts took over and he asked Harry how he would report the expenses of the honeymoon in the company's books. Harry answered nonchalantly: "Report them as business expenses of course, take with you some business material that you don't have to read and set up one or two business meetings that you don't have to attend. The purpose of the trip is that you'll enjoy 100% and forget for a couple of weeks about your work and Marignan. By the way, if we are speaking on this matter, I have noticed that you report my expenses on family meals in restaurants and my wife's flights when she accompanies me in my business trips as a debt to the company. It amounts already to \$60K and it is high time that you would report them as business expenses. You know that my wife helps me to relax in my business trips and that the family meals are the only chance that I have to be with my family. We pay anyhow huge amounts to the tax authorities and there is no reason that those rascals would benefit at our expense."

Joseph didn't say a word and only shook Harry's hands. He was worried from the turn that the generous gift has received and wondered if Harry doesn't try to bribe him in return to his willingness to report Harry's private expenses as company expenses. He went to Fanny, who was also his personal friend as well as Suzan's, and consulted her what course of action to take. Fanny was astonished. She insisted in keeping a maximum integrity in all personnel relations and all personal expenses were reported as such and full taxes were paid on them. She knew Harry as an ethical manager and couldn't believe that he offered such a scheme to Joseph. After pondering on what to do, she suggested to Joseph that he should insist on paying the taxes on the trip, limit it to one week, and if Harry would refuse - to renounce to take the gift. "And what should I do with his request to report his personal expenses of \$60K as company expenses?" he asked. Fanny told him to insist on receiving a written request and she figured that Harry would never agree to it, as it would incriminate him. Joseph said: "But Harry helped me so much until now, he promoted me to my job, he gave me a one-of-a-kind opportunity, I am one of the youngest Controllers in the country. I have a very

high salary and until now I didn't have any problem with him." Fanny told him that she didn't think that it will jeopardize their relationship, as it was probably a momentary weakness of Harry, who was probably influenced by the new unethical norms in the country and in a conversation with his colleagues they probably suggested him to do so. "I have heard that many companies behave in such a way but in Marignan it will never happen", she said.

At night, when Joseph told the story to Suzan, she was shocked as never before. She asked Joseph to resign immediately. "A man with your qualifications should go to politics, you are a member of the central committee of the ruling party, you come from the lower classes and you should be the voice of the oppressed. I didn't want to talk with you about this subject as I saw that you enjoyed your job but you shouldn't stay even one more day in this corrupted environment. In any case, you don't have anything to do with those filthy capitalists. I have no doubts that if you go to politics you'll become a minister within a few years." Joseph answered her that he doesn't have the politician instincts and the class consciousness that she has, he has a fantastic salary, they have to pay the mortgage payments and he is not willing to jeopardize everything because of one incident. Suzan disagreed with him but they decided to adopt Fanny's suggestions.

The next morning Joseph asked to meet Harry. He told him of his decision to pay taxes on his bonus even if would mean reducing the honeymoon to one week. Joseph explained his attitude in having to give an example to his employees who would know that a personal trip would be reported as business trip, it would induce them to an unethical conduct and they could even blackmail him. Marignan was just after the IPO and they couldn't afford to get tangled because of such trifles, with the auditors and the SEC being very sensitive to unethical conduct. As far as the expenses of Harry were concerned he was willing to report them as company expenses provided that he would be instructed to do so in writing with details on the role of his wife in each trip and with whom were the meals in the restaurants. Harry turned pale but didn't say a word. A couple of

hours later the Security Officer and Fanny came to Joseph's room with a dismissal letter stating that because he was a member of the central committee of a political party he infringed the ethical code of the company and he had to be fired. The Security Officer let him take only his personal belongings and Fanny told Joseph that Harry threatened her that if she wouldn't cooperate she would be fired on the spot. She just moved to a new house, she had two small kids and her husband was fired the day before, so that she cannot afford to be thrown out of the company, even on behalf of principles.

ANALYSIS & TOPICS FOR CONSIDERATION ON: LEADERSHIP AND INTEGRITY CASE - ORGANIZATIONAL BEHAVIOR

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Joseph, Controller of Marignan, 2. Harry, CEO of Marignan, 3. Fanny, VP Human Resources of Marignan, 4. Suzan, wife of Joseph.

* How did the personal background of each of the protagonists influence his decisions?

* Nobody is born ethical or unethical, how did Joseph arrive at business ethics? Because of the specific situation that he has encountered, because of his age, his legal, accounting, business background, because of his family background (his father was an unskilled worker and his mother a housewife with elementary education), because of Suzan, Fanny, his attitude to Harry, the ethical ambience at Marignan, the ethical atmosphere in his country?

* What are the reasons of Harry to "launder" his personal expenses? Because of his educational background (he was a BA in Geography), his military background (he was a colonel in the army before joining Marignan), his family (his father was a physician and his mother a lawyer), his family (his wife didn't work and he had

an exemplary family life), his age (he was 45 years old), the ethical ambience in his country, at Marignan, of his colleagues?

- * Why has Harry chosen Joseph to "launder" his personal expenses?
- * What were the reasons of Harry when he offered the generous bonus to Joseph? Was he only willing to "launder" his personal expenses?
- * If Joseph would have known that he would be fired, would he alter his conduct?
- * Could Harry expect a more flexible attitude from Joseph based on their past relationship?
- * Why did Harry resort to such a drastic move against Joseph?
- * Why did Harry threaten Suzan as he did and why didn't he fire her?
- * Why has Joseph transgressed the ethical code of the company and accepted to be a member of the central committee of the ruling party?
- * Is the reason for firing Joseph completely groundless or could it be justified?
- * What are the risks that a company takes if one of its senior executives is a senior official in a political party, especially in case of a new regime?
- * What are the alternatives that Joseph has and how can he act?
- * Why hasn't Harry spoken with Joseph tête-à-tête before firing him?
- * Could Joseph behave in any different manner while remaining ethical?

* What does this case teach you about friendship in a business organization?
Joseph-Harry, Joseph-Fanny.

* Do you know of similar examples from your personal experience?

* Joseph was not asked to cheat his company, his shareholders, Marignan's employees, the SEC. True or false?

* Is it justified to cheat the tax authorities as they charge us anyhow outrageous tax rates, and as *così fan tutte*?

* What are the lessons that you have derived from this case? What would be in the future the organizational behavior of the company? Was the "faux-pas" of Harry a one-time? What will happen to Fanny in the future? Will there be an informer from Joseph's department in the future?

CONCLUSION

Harry was afraid of being blackmailed by Joseph after discovering a facet that he didn't suspected in Joseph, an ethical character. He assumed that because of his practical attitude as a Controller, he would be more flexible in this case, especially since he thought that it doesn't hurt anybody. After firing Joseph, Harry recruited a new Controller, more flexible in his business attitude. In the first week of his work the Controller reported all the personal expenses of Harry as company expenses. Harry asked for the signed approval of the Chairman of the Board of Marignan, who told his friends that it is a black day for the company. It did not prevent him from receiving a golden parachute of \$15M when he left the company.

Harry refused to give Joseph a recommendation letter. He told all his friends that the true reason for his dismissal was because of a fraud that Joseph has committed but because of the IPO he couldn't disclose it as he wanted to avoid a scandal. Joseph consulted several lawyers what are the alternatives he can choose. As he didn't have any witness to Harry's proposal he didn't have a legal case, and he couldn't rely on Fanny's cooperation after she has decided to cooperate with Harry. None of Joseph's employees decided to be an informer. His employees liked him very much and respected him but they didn't want to risk their position after they saw what Harry did. Gratitude and friendship are not always the forte of the business world. Many in the company knew what happened but the Omerta prevailed and nobody spoke.

Joseph started to read books about business ethics and understood that in such cases it is better to draw the line and continue as if nothing has happened. It is impossible to fight the system, he thought, and in order to change it you have to do it from outside. He took his wife's advice and started a brilliant political career. The evil rumors that Harry spread about him didn't have any impact in the political world that is perceived by many as corrupted anyhow. After a few years

Joseph was appointed a minister in the government of his country - the minister of ethics, ecology and enforcement, the three E. He succeeded very much in his job and for the first time it was possible to enforce ethics in the government and business.

Harry became a very famous CEO. He was elected as the best executive in his country and received many prizes. During his times at Marignan the company's ethics deteriorated to the lowest point ever. The company was sued dozens of times in class actions and by the tax authorities. The company was exonerated from all the law suits, except of one tax fraud. The Controller of Marignan was found guilty of fraud to the tax authorities and served six months in jail. He refused to become a state's witness and to disclose that he committed the fraud with the blessing of Harry and of the Chairman of the Board of Marignan. After receiving from the company in Aruba several million dollars for his cooperation he is now a CEO of one of the leading high tech companies in his country. Harry immigrated to the US after the company was convicted. He manages successful businesses in the US and his wife assists him. His son learns in the same business school with the son of the convicted Controller. In one of his visits to his motherland he threw a party to the VPs of Marignan. The party took place in the luxurious penthouse of the convicted Controller and Fanny who is still VP Human Resources was one of the guests. Joseph declined the invitation. When Harry's wife phoned Suzan and asked her why they don't come, she answered her that there are some things that it is impossible to forget. Harry's wife answered that she should be grateful to her husband otherwise Joseph would not be a respected minister but a convicted Controller with a tarnished reputation! (or is it really tarnished?)

MANAGEMENT AND INTEGRITY CASE - R&D AND GOVERNMENTAL BENEFITS

(All the characters and plot and all the names of the companies in this case are fictitious)

Thomas, VP R&D of Amkat, received the approval of Jerry, the CEO, to invest in the project of Imaging \$4M, but not out of the company's funds. "This is nice", said Thomas, "what do you think - that I am a wizard? How can I engineer money to finance this project? What do you mean exactly by not out of the company's funds, do you want me to rob a bank?" Jerry answered him calmly: "There are many ways to do it. You can ask for grants of the Chief Scientist of the Industry Ministry amounting to 50% of the funds needed, thus you solve half of the problem. Then, you can establish a subsidiary and find a partner who will invest the remaining 50%. You can ask for a bank loan, you can issue R&D debentures, there are dozens of ways to do it. Think, my friend, this is why I pay you so much..." Thomas was furious, but didn't say a word. He knew that Jerry was a vindictive boss and if he would contradict him he could be fired. As for the high salary, this was a bitter joke. Amkat paid the lowest salaries in the high tech industry and he had tremendous problems to find good engineers. Thomas didn't understand anything in debentures, he knew that no banks would ever finance a loan on a R&D project, who would do it if the success rate of such projects was on the average about 10%? But he was sure that if the project would succeed it would revolutionize the company and make it a leader in the Imaging market. He was desperate and thought of abandoning the initiative, in any case Jerry doesn't appreciate any creative ideas, he thought, he is a financier that only by chance became the CEO of a high tech company and he sees everything in nickels and dimes.

The R&D budget of Amkat was \$10M, 10% of the annual turnover. Jerry was not after all a financier but a realistic executive who invested a similar amount of the annual profitability of 10% in R&D instead of distributing the money in dividends. He told his Board that the R&D budget was essential for the future of the company and he promised them that through this investment they would reach their ambitious goal of one billion dollars in five years, as only a mega corporation could survive in the era of globalization. The important thing was to invest in such projects that would bring the company the highest return on investment with the lowest risks in the shortest time period. That is why Jerry hired Thomas who had the reputation of a good manager, an engineer with a vision, but he had to stop his endless initiatives that could bring the company to bankruptcy. Amkat received from the Chief Scientist only \$1M on an approved R&D project of \$2M. The other projects of \$8M were financed from company's funds and Amkat couldn't afford to invest anymore in R&D. Jerry knew that the subject of Imaging interested very much Sinclair, the Chief Scientist, who told him recently in a symposium that he was willing to invest up to \$20M of his budget for Imaging. Why does this petty-minded Thomas come to me with such a small project of \$4M when he should submit a project of \$8M or more to Sinclair who would be grateful to him to finance large projects that were so important for the country. But if Thomas would present a project of \$8M he would be short of \$4M and we wouldn't achieve a thing...

Thomas thought all night on the mission impossible he was assigned and he came the next morning to Jerry with a suggestion to examine the necessity and prospects of all the R&D projects of the company. They examined project after project, when suddenly Jerry had an illumination. "Tell me Thomas", he asked, "the Brazilian project doesn't have any imaging content?" Thomas didn't understand what Jerry was trying to achieve and started to argue why it hadn't any imaging content. "You don't understand Thomas, I don't want you to explain me why it is not imaging but why it is imaging, and then you should convince of it the Chief Scientist who would give you grants on the Brazilian project and on

other R&D projects who have even a remote connection to imaging.." Thomas was astonished, this was fraud he thought, but he decided to raise only mild objections, he said: "It would never be approved by the Professional Reviewer and we will be sued. We risk to lose even the modest \$1M that we receive already". Jerry hushed him and said: "Look, Thomas, you are a big boy, you asked me for creative ways to get full financing of the \$4M needed for your imaging project and this could be a way. You present to the Chief Scientist a \$8M imaging project comprising the \$4M of your project as well as \$4M of existing projects even remotely connected to imaging. You should find the way to make it plausible and you'll get the full financing of your new \$4M Imaging project from the Chief Scientist. I rest my case." Thomas continued to argue until Jerry shouted at him: "Look Thomas, Sinclair himself told me that he wants to invest \$20M in imaging and if he gives us \$4M as grants we would do him a favor and not the other way around! As he is so willing to invest in imaging he will not make you problems in the review, we are not conning anyone as we invest anyhow \$4M in imaging R&D. Besides, you tell me all the time that those ignorant don't understand a thing as they should give us grants on all your R&D projects, so I give you a way to get even with them. A win-win situation!"

After an inner struggle, Thomas came to the conclusion that Jerry was right. Only in this way he would be able to materialize his project that would change completely the future of Amkat. The company, Jerry and him would benefit from it immensely. He was not risking any company's funds as the project would be totally funded de facto by the Chief Scientist, who would even thank us for investing in a market he was so eager to promote. This Jerry is a genius, thought Thomas, he found the solution to the mission impossible. Thomas presented a project of \$8M to the Chief Scientist, but unfortunately this time George was sent as the reviewer. George was very clever, an excellent engineer with a detective mind, he was the best in the field of imaging, after all they wanted to invest in imaging. George understood immediately the scheme and asked for a tête-à-tête meeting with Jerry. In the meeting George threatened to go to Sinclair and tell

him about the scheme. "What scheme?", answered Jerry, "Sinclair himself asked me to present him with large Imaging projects and this is exactly what we are doing. You'll have also a lot of work in this project, I figure that you are a subcontractor of Sinclair paid by the hour and you'll have to spend here hundreds of hours. We'll develop a revolutionary product that would bring exports of hundreds of millions to our country, employment to thousands of people, what is wrong with that?" "What is wrong", answered him George with a smile, "is that only half of your project is in imaging and the other half is in totally different technologies. But I'll tell you what, I don't want to hurt your company and jeopardize your good relations with the Chief Scientist. I am fed up in being a reviewer, I think that I might be much more effective in R&D than in reviewing. Let me be the project manager of the imaging program and I'll get you a budget from the Chief Scientist of \$12M instead of the \$8M that you requested. After completion of my review I'll come to work in Amkat and I'll do the project according to the budget and the time schedule that you want." Jerry agreed immediately to George's proposal and convinced Thomas of the soundness of his decision. But Jerry was not sure that Sinclair would agree that George would come to work at Amkat, it could be construed as unethical, and what if instead of George he would appoint a new reviewer who would blackmail Jerry even more?

ANALYSIS & TOPICS FOR CONSIDERATION ON: MANAGEMENT AND INTEGRITY CASE - R&D AND GOVERNMENTAL BENEFITS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Jerry, CEO of Amkat, 2. Thomas, VP R&D of Amkat, 3. Sinclair, the Chief Scientist, 4. George, the Professional Reviewer of the Imaging Program.

* Is the proposal of Jerry to receive the grants of the Chief Scientist ethical?

* Apparently, all parties benefit from Jerry's proposal. Who loses nevertheless?

- * Was George trying to blackmail Jerry or did his suggestion come naturally?

- * Did Sinclair mean in his conversation with Jerry that Amkat would submit to his approval "so-called" imaging projects and not genuine projects?

- * Explain how everybody in this case hears what he wants to hear and understands what he wants to understand. Is it a case in self delusion? Is it a kind of ethical rationalization?

- * What will happen in the future, once that Amkat and the executives started those unethical practices?

- * What will happen to the financial statements of the company?

- * Why do unethical managers try to attribute to others their unethical way of thinking. In this way minority shareholders become "speculators", the Chief Scientist becomes a "manipulator of Government Funds", the customers want to extort money from the company in their endless recriminations, the suppliers are greedy businessmen who want to cheat the company..

- * What is the reason for the tendency of some companies to cheat the government's organizations: IRS, SEC, Chief Scientist, Ministries, Central Bank, and so on.

- * What is the reason for the tendency of some government's organizations to treat companies as corporations that try to cheat them?

- * Is the job proposal that Jerry gave to George a bribe - direct or indirect? Could Jerry be sued for that?

- * Give some examples of job proposals that government officials received from companies they were supposed to review: Central Bank - commercial banks, Armed Forces - defense industry, Chief Scientist - high tech companies. Are they direct or indirect bribes?

- * How is Thomas convinced that Jerry's proposal is ethical and legitimate?

- * What other alternatives could be found that would not con the Chief Scientist?

- * Are the management methods of Jerry legitimate and ethical? Do you agree with them?

- * Try to show the business merits of Jerry's conduct and proposals, his practical mind, his personal relations, the long run implications.

- * Thomas gave only a 10% chance that his project would succeed. Is it normal in R&D?

- * How do you explain the fact that until then Thomas was able to receive only \$1M in grants?

- * Try to show the merits of Thomas, his work methods, his ethical record, his loyalty.

- * Jerry takes advantage of opportunities. He gave to Thomas a solution to the R&D dilemma that wouldn't cost the company a dime. He offered the Chief Scientist an Imaging Program that answers his expectations. He offered George the job he asked for on the spot.

- * What are the risks that Jerry took in hiring George? Can Sinclair oppose it, although George is only his subcontractor? If George would be a total failure (but

he would report to Thomas who might not let it happen) he would still justify his salary as because of his involvement Amkat would receive \$4M or even 6M from the Chief Scientist.

* Could George cause damages to Amkat beyond the refusal to approve the Imaging program, if Jerry would have refused to hire him?

* What are the lessons that you draw from this case. How would you behave if you were in Jerry, Thomas or George's positions?

CONCLUSION

George was hired by Amkat. He received a salary that was twice as high as the salary he got from the Chief Scientist as a reviewer. He also received a company car and large bonuses linked to R&D milestones.

Thomas was very pleased with George's work. George even assisted him to receive grants for other projects. The situation even "deteriorated" to an absurd when Amkat received from the Chief Scientist grants of 60% although the maximum they could receive was 50%. In order to prevent this to be discovered by the Chief Scientist, some of the manufacturing and sales expenses were transferred to the R&D expenses in Amkat's financial reports.

Jerry managed to keep the scheme on the Chief Scientist only at this level. He refused to other proposals of creative accounting in order to improve financial results in "poor" quarters. He was not willing to transgress the law beyond what he has done with the R&D. He said: you can con someone all the time, but you cannot con everybody even part of the time.

The Chief Scientist didn't discover the scheme. The personnel he had was not able to do so or was not willing to do so, after they saw the success of George's reviews. All of them tried to imitate George and envied him and George gave them a special treatment that made everybody happy. Some of the reviewers even got jobs with Amkat and others. George received bonuses linked to the amount of grants received and soon became the highest paid employee of Amkat

The Imaging program was very successful. It made a revolution in the profitability of the company that is now one of the leading high tech companies in the world in its field. Amkat sells at last more than a billion dollars annually, employs thousands of employees, and exports most of its sales. Amkat pays very high taxes and reimburses to the Chief Scientist royalties on sales for the

successful programs. The conscience of all the parties involved is crystal clear, it was indeed a win-win situation.

After a few years Thomas left the company and George replaced him. He wanted to hire a bright engineer to replace him with the Chief Scientist's grants. After explaining to him how the systems work and promising him large bonuses, the engineer told him: "I am sorry, but I am a Quaker and cannot take your offer, as it is against my moral standards. I don't want to go to hell for conning the Chief Scientist even if he doesn't know".

Amkat is perceived as one of the most ethical companies in its country. Its human relations are excellent. The salaries have increased substantially after the huge increase in profitability and they are now among the highest in the industry. The return on investment for its shareholders is the highest and its valuation has skyrocketed. The company donates one percent of its profits to the community. Jerry received a PhD honoris causa from one of the leading universities in his country. He appears in the World's Who Is Who and is perceived as the best executive and the most ethical one in his country.

WHISTLEBLOWER CASE – ETHICS IN QUALITY, PROGRAMS AND OPERATIONS MANAGEMENT

(All the characters and plot and all the names of the companies in this case are fictitious)

Paul, VP Quality of Fire Control, was considering what course of action to take. He knew of the late deliveries in the program schedule, of the heavy penalties it would have to pay, on the loss of credibility in the Ministry of Defense and the Armed Forces. The program of Tank Fire Control was behind schedule because of the incompetence of Carl, the program manager, the protégé of the new CEO, Peter, who served with him in the same corps when they were at the Army. When he was appointed as CEO, Peter brought with him from the Army, where he was a General, ten executives to fill in the key positions in the company: VP Human Resources, VP Marketing, South East Asia Sales Director, VP Programs, Carl the program manager of the fire control project, VP Production, a Division Director in the R&D Division, an Army Sales Division Director, and two senior positions in the Finance Division. The Army "invasion" caused a lot of antagonism in the company, but it was losing huge amounts of money and Peter promised the controlling shareholders that he would bring to the company military discipline and management by objectives and he would shake all the lazy managers and employees. Peter had an excellent reputation as a brilliant General who succeeded very much in his 30-year military career. He received a huge salary, an expensive company car and a carte blanche to do in the company whatever he wanted, provided he would turnaround the company within a year, make it profitable, and receive from his friends in the Army large orders. Peter didn't touch two key positions: VP Finance and VP Quality, as they were managed by excellent executives and he thought that as they were young they would be loyal to him. One of the key lessons he drew from his military service was to ensure maximum

loyalty of his subordinates. "Give me mediocre but loyal officers and I'll win all the wars", he said and he adopted his precepts also for Fire Control. David, VP Finance, convinced Peter to learn business administration at the university in order to learn what it is all about, but after only two lessons he ceased his studies and told David that it was a waste of time as he could teach those square professors more on business than they would ever know, he meant of course - the business (or monkey business) he learned at the Army...

Carl decided to be "flexible" with the customers' quality specifications in order to meet the delivery schedule and not pay penalties. He had also to meet the company's targets in order that he, Peter and all the old buddies from the army would get their bonuses. Paul entered with him in a front clash, as he was the customers' representative, he didn't want to change anything in the specifications and he said that it would endanger the lives of the soldiers if they did so. Often, he had to confront Carl in Peter's presence, but Paul always lost all his fights, as Peter had a complete confidence in Carl. Paul thought that all those Army officers didn't understand a thing in production, sales, quality or programs and were endangering the existence of the company. If soldiers would get killed because the Fire Control systems were not accurate it would be the end of the company and he didn't want to have on his conscience the lives of innocent people. But Peter and Carl told him that they shouldn't hear from him lessons about saving the soldiers' lives, they have saved in the army lives of hundreds of people in all the wars, while Paul was only a chocolate soldier who never shot a bullet. Paul consulted David on the course of action he should take as this time he was not going to give in.

"You'll see that those soldiers are going to die because of the greed of the tycoons and the generals who don't care about the company and the Army but just on obtaining maximum profitability and receive huge salaries. This time I'm going to tell the Army about Peter's schemes", said Paul. David answered him: "There are two kinds of untouchables in our society - tell-tales and bankrupts. The

whistleblowers are perceived as the enemies of the people, while they only want to help the people and prevent corruption, they are even more outcasts than the bankrupts as those actually are not the real bankrupts - only their creditors, employees, customers and suppliers are bankrupts while they transferred all their money to safe heavens and society looks at them as smart guys. The whistleblowers are dangerous as every one has something to hide and they act as the mirror of society that sees a portrait it would prefer not to see. That is why if you want to be a whistleblower it would be the end for you not only in our society but also in the business world. You'll never get another job, Peter will ruin your reputation, will defame you, so, if you do not want to have the responsibility of the defective systems resign from your job without scandals and don't blow the whistle. In any case take with you all the incriminating evidence that would assist you in case of problems."

In the confrontation that took place between Carl and Paul, Carl won as usual and when Paul didn't give up and gave Peter a letter with all the implications of his conduct, Peter told him: "I give you back this letter and I never received it. You don't understand anything in the Army's specifications, I was a General and it is my responsibility. You dare tell me that I don't care about the lives of the soldiers because of my greed? If you were in the army I could sentence you to six months in jail because of your impudence. You are completely disloyal to me, although I kept you in your position while I fired all the other incompetent VPs. For the last time either you take back this letter or you are fired and I'll ensure that you'll never find another job." When Paul refused, he was fired immediately and he left the company.

A year later, in an Army maneuver nine soldiers were killed from "friendly" fire. Paul gave to the Commission investigating the event all the incriminating evidence and informed them on the conversations he held with Peter and Carl. David resigned from the company on the same day. Paul confessed to David that

he had a guilty conscience that he didn't give the evidence to the Army a year ago and preferred to save his career.

**ANALYSIS AND TOPICS FOR CONSIDERATION ON:
WHISTLEBLOWER CASE - ETHICS IN QUALITY, PROGRAMS AND
OPERATIONS MANAGEMENT**

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Paul, VP Quality of Fire Control, 2. Peter, CEO of Fire Control, 3. Carl, Program Manager of Fire Control, 4. David, VP Finance of Fire Control.

- * What is the blame of each of the protagonists?
- * How is Peter perceived as a CEO, a human being, a friend, even a General?
- * Why has Peter brought ten "friends" to the key positions in the company? Is it nepotism?
- * Is this practice common in your country? Is it positive or negative? Has this method ever succeeded? Is it recommended only in extreme cases when a company is collapsing?
- * Is there a possibility that an executive/officer who has succeeded very much in one career could also succeed in another career? Give examples of success and failure.
- * Is it ethical that a General or a purchasing officer who was in working relationships with a company would be employed by this company immediately or after one or two years?

- * What are the alternatives of a government official or an Army officer to work after quitting the government or the Army, where can he work if not with the companies he used to know?
- * Why has Peter learned only two lessons in business administration and said it was enough?
- * If a business professor would go to an officer course and leave after two lessons would the army let him command a platoon?
- * Why has Peter chosen not to fire David and Paul and retrospectively was he right?
- * Is it recommended to be a whistleblower in a company, at least in cases of endangering of human lives - is there a difference between dumping toxic materials, not meeting the specifications of fire control systems, driving a bus while being drunk?
- * Is it recommended to be a whistleblower in a company in order to protect the rights of minority shareholders, customers, suppliers, employees, creditors?
- * Is it justified to establish a commission of enquiry in case of loss of human lives or should we let bygones be bygones and not render miserable the lives of more people? Is transparency and the quest for truth a legitimate demand or are we happier if we don't know the truth?
- * What do you think of the resemblance and the difference between bankrupts and whistleblowers, who is more accepted in society? Why are bankrupts who wrong extremely stakeholders more popular than whistleblowers who want to rescue and help society?

- * Why has Paul decided not to be a whistleblower after quitting Fire Control, why hasn't he disclosed what he knew to his client - the Army, to the press, to the police? Would somebody believe him or would they rather believe the famous General - Peter?

- * Could Paul save the lives of the soldiers if he would have disclosed what he knew, even anonymously or unofficially, at least to the Army?

- * Why has Paul decided to disclose the incriminating material to the Commission? Does he want to get to the truth, is it a vengeance, he wants the guilty persons to go to jail, clear his conscience, cover himself in case the Commission would blame him on what have happened?

- * If you were David would you suggest to Paul to be a whistleblower, to compromise with Peter and collaborate with him, or continue to work in the company and hope for better times?

- * Try to be the defending counsel of Peter. Did he really think that the soldiers would die, can he rely on the last vestiges of a management that brought the company to bankruptcy? Does he believe that his ten "friends" would save the company, does he know how to manage it?

- * Carl is a competent or incompetent program manager? What is required from him?

- * What is required from a good VP Quality? Is his allegiance primarily to his company, his boss - the CEO, the program manager, his customer, the stakeholders of the company?

- * Why has the Quality Assurance of the Army not discovered that the Fire Control Systems didn't meet the specifications?

- * If you read "All My Sons" by Arthur Miller, what is the resemblance and difference between Joe Keller and Peter?

- * What would be the results of the Commission of inquiry that the Army has established in order to find how the soldiers were killed? Would it change anything if the head of the commission is a personal friend of Peter?

- * What will happen to Fire Control after the commission publishes its findings?

- * Will Paul be charged by the commission for not disclosing what he knew?

- * What are the lessons that you draw from this case? If you were Paul would you be a whistleblower, when exactly?

CONCLUSION

The Commission of inquiry found Fire Control guilty. They recommended the immediate dismissal of Peter, Carl and other managers. They gave the incriminating material to the police. Although the Chairman of the Commission was a personal friend of Peter he behaved ethically and was not afraid to blame Peter. He told his Army friends that the lives of the soldiers are much more important than his friendships. He didn't believe Peter when he testified with tears in his eyes that he didn't know that he endangers the lives of the soldiers. He told him: "Paul told you and you were supposed to know, the minimum that you could do is to tell the Army about the divergence of opinions and let them decide who was right. Paul is the representative of the Army in his position of VP Quality and only because of his loyalty to the company he didn't give the evidence to the Army although he was wrong in that. You had only one objective in mind, maximizing profitability for your shareholders and you did it at the expense of the lives of our soldiers. You betrayed the most important values of our society, the Army, your company, your friends, your soldiers. You are not fit to be an executive and to have any more relationships with our Army."

The Commission rebuked Paul but didn't blame him on what happened, after Paul gave them all the incriminating material and proofs that he warned Peter and even asked his permission to inform the Army on the quality problems. Paul said: "I behaved according to the ethical code of the company. Gave all the evidence to my CEO and if he didn't do with it anything it is his problem. I drew the conclusions and quitted the company. I suffered very much from my behavior as Peter did his utmost to discredit me when he was asked to give a reference. In retrospective I was probably wrong in not disclosing the facts to the Army, but if I knew that there was a certainty that the soldiers would die I would have done it." In a personal conversation with David, Paul broke off and with tears in his eyes said: "I am a lousy coward and all my life I will have on my conscience the lives of nine of our soldiers. I was afraid to be a whistleblower, I was acquitted by the

commission but my conscience will never acquit me. Even my wife doesn't appreciate me anymore, she comes from a family of intellectuals and despises all the elites and especially the Generals, corrupted politicians and tycoons who rule our country". David tried to console him by saying that even if he would have been a whistleblower nobody would have believed him as it was his word against the word of a respected General and CEO, connected to all the elites.

At the trial in the criminal court Peter and Carl were acquitted for lack of evidence. The company and its controlling shareholders, the richest families in the country, hired the best lawyers who convinced the respectable judges that night is day and day is night and the soldiers died for many reasons except due to the quality problems of Fire Control. The Army had to take all the blame, they wanted the systems without delays, they didn't take the necessary precautions, didn't conduct the quality assurance tests. But the company was sued for damages and in this trial the judges sentenced the company to pay billions in damages. The company couldn't do it and went bankrupt, or to be more accurate - the customers, creditors, employees, suppliers and subcontractors went bankrupt as the tycoons took out of the company most of its assets in legal ways and compensated largely Peter, Carl and all the others for the aggravation they have suffered. At the party in the Independence Day in Peter's house all his friends were invited - the old buddies from the Army, the tycoons, the lawyers. They were outraged by the conduct of the commission and the damages they were sentenced to pay. They started to think that something has to be done against the anarchy in "our beloved country". "We have to be the rulers of the country not only de facto but also de jure. We need a revolution and have to execute all those who don't think as we do", and decided that it is high time to stop talking and start shooting.

PROFESSIONAL INTEGRITY CASE - LIBEL

(All the characters and plot and all the names of the companies in this case are fictitious)

Francis contemplated the letter he received from Alain with astonishment. On Thursday there was a stormy meeting in Alain's office. Alain was a well-known lawyer who was a tax specialist. Francis rejected Alain's proposal that could be very dangerous to his client, and today he receives a letter from Alain in those words:

1. Further to our conversation on Thursday I found it necessary to put in writing my standpoint to all the sequence of events of the exercise of the options.
2. Your interpretation is untenable, mendacious and I am contemplating to sue you for libel.
3. I am not surprised that you were fired from Lardit, and I am not surprised of your despicable human relations in all your previous positions; I was astonished of your deliberate lies that are totally groundless, except in your sick mind!!!
4. Beyond what I write you here, I will not add anything at present, as I don't think it suitable to argue with you... not with you...

Francis worked for twenty years in the high tech industry and succeeded very much in his positions. Most of the time he worked for Lardit, where he was VP Sales and Finance. He quitted the company for ethical reasons, the CEO Shargon, asked him to transfer a bribe to their agent in a European country in the amount of \$300K for bribe payment to a local government official who decides on the award of a large contract. Shargon refused to give any written instruction and he

proposed to report the bribe as software import from the agent. Francis objected to it vehemently and put in writing his reservations. But Shargon gave this assignment to another VP and the bribe was paid. Francis perceived it as an infringement on the local law (false report of software import), the European Law (paying bribe to a governmental official), an opening to give kickbacks in the future, as no adequate report was made and the contract was not received after all, breach of trust in his positions as VP Sales and VP Finance, and so on. This event was the climax to other events where Francis was asked to commit illegal and unethical actions. Francis quitted the company as he has foreseen the ethical collapse of the company and started an independent career in M&A. Francis told his friends about the unethical conduct of Shargon and Shargon told them that Francis was shamefully fired from Lardit. But it was the first time that Francis received a written proof of Shargon's defamation. He knew that if he would go to court he could prove the payment of the bribe and the other illegal actions of Shargon so that there was a balance of terror between them and Shargon never crossed the borders. This defamation was not too damaging for Francis's reputation that was excellent (everybody knew that Shargon was a crook), he succeeded in his career and got rich.

18 months before receiving the letter, Francis started to work for Lariman, a successful American high tech company that wanted to invest in Francis's country. He conducted on their behalf negotiations to acquire two local companies that were practically bankrupt although they were active in a growing telecommunications market. Francis conducted the merger of the two companies, the turnaround, and contributed substantially to a tenfold increase in the valuation of the American company. The Chairman of the Board of Lariman was Jean, an absent-minded professor but also a brilliant businessman who taught Francis a lot. Throughout the years, they became friends and Francis received with some other executives options to buy Lariman's shares at a low price. If Lariman would continue to increase its valuation the executives could benefit substantially from the meteoric increase of the price of the shares and become millionaires. They

received warrants that could be exercised at the prices of 1995, date of receipt of the options in times when the shares were undervalued, - one third each time in 1996, 1997 and 1998. The tax payments they were about to pay on exercising the options and selling the shares with a huge profit could amount to millions of dollars. Francis was very careful in his business conduct, kept impeccable ethical standards, and wanted to examine the way to exercise the option without paying the maximum taxes, in a legal way. Jean authorized Francis to consult Alain who had a reputation of being a wizard in finding creative ways to minimize the payment of taxes.

Alain learned the issues and within a few days submitted for a relatively low price a detailed opinion to Francis. Francis read the opinion for the first time and didn't understand a word. He read it five more times and was stunned on what he thought he understood. That is why he gave the opinion to his friend Jacques, Lariman's lawyer, who was also stunned from the opinion. Finally, Francis gave the opinion to Jean who didn't understand it and didn't want to understand it. "Do whatever you think appropriate", said Jean to Francis, "you have my full mandate to decide for yourself." As this is not a case on tax consulting the opinion will not be elaborated. But the general idea was to completely evade paying taxes utilizing a very sophisticated method of trustees, tax heavens, straw companies, fictitious employment agreements, and so on, that could crumble if examined thoroughly by the IRS. Alain would have received astronomic remuneration for keeping the card tower, but he had no responsibility if the tower crumbled. He would probably receive a much larger amount in order to keep the executives out of jail. Francis opposed the opinion vehemently, explained to Alain why, pointed at the extraordinary risks, and convinced the other managers to refuse to Alain's proposal in the Thursday's meeting. In the heat of the deliberations and after Alain tried to convince the managers to adopt his proposal, Francis asked him: "I am willing to go for it if you would give a written commitment that in case you put us into trouble you will find the way to rescue us for free." Alain refused to this

suggestion and Francis said that it showed that he didn't believe in his own opinion, because if he really believed in it he would agree.

Francis had an excellent reputation and succeeded in most of his mergers. However, in one case a client of his accused him that the business plan he prepared did not meet his expectations and refused to pay. Francis who saw it as an excuse (it was the first time ever that he met such an argument) decided to sue the client and won the case. But he knew that this client would never forgive him and would seize every opportunity to vilify him. Francis figured that Alain approached Shargon and this client, the two only persons he thought would try to slander him, and he asked Jacques what to do. "From these two cases Alain draws his hasty conclusions that I was fired from Lardit, that I have despicable human relations, that all what I say is groundless and he treats me as an untermensch with whom you can't argue. If this is not libel, I wonder what libel is."

Jacques replied: "As I was present in this famous Thursday meeting, and as I am the lawyer of Lariman, I can testify in every court that what you said was sound, logical, not groundless and surely not deliberate lies. You didn't mean to ruin Alain's reputation, there was a down-to-earth discussion that never approached slander. You probably offended him, as he was sure that he would receive the fabulous contract from the executives and because of you he is going to lose a lot of money. He tries to intimidate you and make you change your position. In our beloved country if you can't find anything on an ethical man you invent something as Shargon and Alain are doing. You have all the justification to sue him for libel, you can prove of course that you quitted Lardit as you didn't want to be involved in unlawful acts, you can prove that your argumentation against Alain was legitimate, but think twice before doing it. Shargon is still the CEO of one of the largest companies, Alain has a lot of connections, they will bring first rate lawyers who will prove that you are Al Capone although you are Mother Theresa and the intelligent judges will believe them. You'll receive bad publicity, your clients might leave you, nobody gets into the crux of the matter, and your name

will be vilified because you opposed two respectable businessmen as Shargon and Alain. Some of your clients would not want to testify in your favor, others might have grudges against you as you didn't succeed in the mergers although they paid you large amounts of money. You never can tell what will be the end of going to court, I strongly recommend you not to do so."

Francis went home, read once again the letter, got angry again, and thought: "Maybe that is exactly what they want me to do, that I'll get mad, lose my temper, answer them with an offending letter, sue them. What will be the thing that will annoy them most? Do what they think I'll do or forget it, not to pay attention to the offense as I know it is not true, and remember this letter once more only ten years after when I will give it as an example of a business and ethical dilemma? And what if this wise guy will finally sue me for libel if I don't respond, he might think that I'm afraid and accelerate his attacks. He could attack me in the press, what damage will it make to my reputation, to my family, to my business? What will Jean say, which client would ever want to work with me?" Francis thought over and over until he reached a decision what to do.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: PROFESSIONAL INTEGRITY CASE - LIBEL

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Francis, consultant of Lariman, former VP Sales and Finance of Lardit, 2. Alain, lawyer, expert on tax laws, 3. Jacques, Lawyer of Lariman, 4. Jean, CEO of Lariman.

* What do you think was Francis's decision?

* Analyze several scenarios: Francis sues Alain for libel, Alain sues Francis for libel, Francis abstains from doing anything, Francis hires a detective to find out

who vilified him and what they told to Alain, Francis answers in a sharp-witted letter to Alain.

- * What would you do if you were in Francis's position? Alain's position?
- * How was it possible to refuse to Alain's proposal without offending him?
- * It is hard to find friends, it is much easier to make enemies. What should you do in order not to have enemies in the business world? Is it worthwhile?
- * Who is wise - the man who conquers his temper. How does it apply to Alain? Francis?
- * What was Alain's purpose in writing his letter: intimidating Francis in order to make him agree to his proposal, getting even with Francis who made him lose millions, Alain was manipulated by Shargon in order to entangle Francis in a libel suit as he was afraid of a frontal clash because of the bribes and unlawful actions that would be brought to court.
- * Francis knows that every word in Alain's letter is a lie, so why is he so nervous and cross?
- * Who wins from libel suits: lawyers, the offended party, the offending party?
- * What is the danger in libel suits: management attention, high legal expenses, bad reputation, bad press, voyeurism, finding skeletons in the closet, opportunity to get even.
- * What can you win of libel suits: satisfaction of the ego, a lot of money, justice, annoying your enemies.

* In the world history and literature we know of many cases in which people risked their lives in order to clear their name or to keep their reputation. Why is it so important?

* What is unethical in the conduct of Alain? Alain is a lawyer and has probably taken courses in professional ethics during his law studies. Why does he infringe this conduct?

* Many businessmen say that modern business is like in the Far West. Everything is based on threats, slander, interests, intimidation, verbal and physical violence, finding incriminating evidence or inventing it, illegal tapping, private investigators. True or false?

* Why are Transparency and Ethics so important? Beyond the obvious reasons or not harming others and treating them fairly, an ethical businessman is not subject to threats of Alains as he doesn't have any skeletons in his closets and he can act according to his conscience. On the other hand unethical businessmen are always afraid of being blackmailed. True or false?

* What are the lessons you draw from this case? Are the fears of Francis justified? Is his anger towards Alain justified? Can these letters even bring to physical violence? Should we conduct our ethical struggle only by ethical means?

CONCLUSION

Francis wrote Alain the following letter: Your letter is totally unacceptable in its contents as well as in its style. From all the trials that Francis encountered in his professional career this was probably one of the toughest. His temperament, his character, his justice sense, all impelled him to write at least a furious letter to Alain with the strongest words. But he stopped just short of it, thought coolly, counted until ten and thought: "What will I achieve by it? That is exactly what they want me to do. He will answer me and I will answer him and we will find ourselves in court. Until now he doesn't have any ground for a libel suit but in my harsh letters I could give him such ground. I don't want a libel suit. I am not afraid of skeletons in the closets but I don't have the time and energy to go to court. The court is a boxing arena where the best lawyers win, not necessary justice. And they have the best lawyers. The judges will never understand the issues, they don't have a business education and the problems are very intricate. I will deal with the trial for months and years, spend all my savings, receive an ulcer, and finally even if I win I will get peanuts. Thank God, my ego doesn't need it, my wife and family don't require it, my clients will never know of this event if I don't publicize it. A guy like Alain will probably be entangled in a scandal sooner or later and somebody else will get my revenge. I will answer him a short letter showing that I am not afraid of him but I don't want also to escalate. This will probably the shortest libel suit in history."

A few years ago a well-known lawyer came to Francis and told him that he represents Lardit's European agent who has received the bribe from Shargon. The agent went to jail in another case after being found guilty of bribing a governmental official. After serving his term he continued to work for Shargon but Shargon refused to pay the commissions due to him. The lawyer sued Shargon in the agent's country and he wanted to sue him in Shargon's country as well. He heard of the feud between Shargon and Francis and wanted to receive incriminating evidence from Francis against Shargon. Francis answered him that

although he does not wish well to Shargon, he was not willing to make a pact with the Devil in order to get even with Shargon. "I will never cooperate with your client who is a crook, received bribes and went to jail. Let the two crooks get even but I don't want to be involved in it", told him Francis.

Jacques continues to advise to his friends moderation and patience. Francis found an outlet to his aggressions in writing articles, books, a PhD thesis, a novel and a play on business ethics. "This is my Catharsis", he says. Alain was involved in many scandals and some of his clients who followed his advice got into trouble. Shargon continues to vilify Francis and vice-versa, but none of them is very emotional about it. Jean still works with Lariman and made tens if not hundreds of million dollars from selling his shares and options. It is not known how many taxes he paid from his capital gains. Francis paid large amounts from his capital gains to the tax authorities, from these amounts many families could live for years. He accepts it willingly as he thinks that it is ethical to pay taxes and unethical not to pay taxes at all. You can argue with the tax authorities if you should pay 35% or 40%, but not to pay at all taxes like many tycoons do, utilizing legally tax loopholes and tax heavens, is not ethical. If the rich men will not pay taxes all the burden will fall on the middle classes and will impoverish the whole nation. If Francis succeeds in his campaign, tax advisors like Alain will be out of jobs. After all, if someone wants to know in a nutshell what the difference between law and ethics is - it could be explained by the tax issue. Not to pay taxes at all may be legal but is completely unethical! And those who don't agree with it may sue Francis for libel...

THE CEO AND ETHICS - THE PLAY "ALL MY SONS" - SUMMARY AND ANALYSIS

Based on the play All My Sons (1947) by Arthur Miller

The film is based on the play with slight changes:

All My Sons 1948, 95 min., Director Irving Reis, with Edward G. Robinson, Burt Lancaster

Summary:

The play takes place after the end of World War II in a small town in the US. Joe Keller is a successful businessman, owner and CEO of an industrial company that during the war manufactured airplane cylinder heads. Joe maintains that the motive for his conduct is the welfare of his family, a common excuse for many criminals such as Don Corleone, the Godfather and family man. Joe has two sons: Chris, who was a combat officer in the war and works now in his father's company, and Larry who was a pilot during the war and is missing in action. Chris wants to marry Ann Deever, the daughter of Steve Deever the former partner of Joe in the company, and who was Larry's fiancée. Joe and Steve, who were partners, friends and neighbors, shipped during the war damaged airplane cylinder heads causing the death of 21 pilots. Joe was acquitted as he was "sick" during the day of the shipment, but Steve claimed that Joe knew of the defective parts and instructed him to ship them. However, as he couldn't substantiate his allegations he was sent to jail. Joe is a strong man, a self-made man, who was never sick (except conveniently in the fatal day of the shipment), without scruples, who put the blame on his partner and took over his part in the company. Kate Keller, Joe's wife knows that her husband is guilty but lives in self denial

convincing herself that Larry the pilot is not dead, because if he is - Joe killed him and a father cannot kill his son... She does not agree to bless the marriage of Chris and Ann because it would be an admission that Larry is dead. George Deever, Ann's brother, who visits his father in jail to inform him of the imminent marriage of Ann to Chris, is convinced by his father of Joe's guilt. George comes to Chris to meet his sister and persuade her not to marry Chris, the son of the criminal who incriminated their father. Ann who faces a difficult dilemma decides to show the letter that Larry sent her prior to his death where he tells her that after learning from the newspapers of his father's crime he has decided to commit suicide. When Joe reads the letter he understands at last that for Larry the pilots were "All My Sons" and he kills himself.

Analysis:

The play illustrates the importance of the CEO in influencing the ethical conduct of the company. The main dilemma of the play is choosing between ethics and profitability, as sticking to maximizing profitability at all cost can bring you to kill your own son or other people's sons. Many examples of similar unethical conduct of executives can be found easily. Arthur Miller stresses the importance of treating stakeholders equitably as a guarantee of success of companies and society. Those ethical dilemmas are relevant today as they were sixty years ago.

Another aspect is the predominance of ethics over law, as Joe was exonerated by the judges. Is it possible to achieve anything with good lawyers and a lot of money? But Miller describes also the attitude of society towards successful businessmen even if they are unethical. Joe's friends who know that he is guilty continue to be his friends, play poker with him and even praise him for his smartness. In the play as in business life it is very often to pin the blame on the weaker parties, as with Steve, Joe's partner. "The meek are always guilty, they are speculants, crooks and corrupted", claim the unethical businessmen and join the plunder.

Joe and Kate try to lure George Deever to cooperate with them and promise him a position, a wife and success in his hometown. They even promise him to find a job for his father after he is liberated from prison. They just have to remain silent and let bygones be bygones. George is tempted but finally decides to combat for the truth, to prove Joe's guilt and to alleviate the blame on his father, although he knows that by doing so he ruins Ann's happiness. Another aspect is the absolute faithfulness of Kate to her husband although she knows that he is guilty. She is willing to sacrifice Chris' happiness in order to perpetuate her self denial that Larry is alive, as otherwise Joe would be a killer. She doesn't mind that he caused the death of 21 anonymous pilots but if he caused the death of his own son it would be an unbearable guilt.

Chris experiences a metamorphosis from idealism and worship of Joe to willingness to denounce him. Joe is guilty of the death of his son Larry while Chris causes the death of his father Joe. Like in a Greek tragedy, as in the play Oedipus by Sophocles. Chris' conduct to his father raises the dilemma: is it ethical to be a whistleblower with such consequences? Another dilemma is about the victim and ethics. Steve Deever, the weak partner of Joe, is convicted and loses his money and his honor, while Joe takes advantage of it and takes over the company, although he is guilty. And the inevitable question: what is more important: family, money, society, justice, ethics? What happens when Joe disregards ethics for money allegedly for his family?

One of the pillars of ethics is transparency, but here it has a heavy toll and the truth ruins the family and the lives of Joe and Kate. Joe utilizes the excuse that everybody does the same and he is no worse than his colleagues, however this "conformism" could bring the ruin of society if everybody's conduct would be unethical. But is it possible to conduct business ethically? What would have happened if Joe would not have delivered the defective parts? His company would not have collapsed, he would have lost money, maybe a large sum, but this would

be against Friedman's maxim to maximize profits. So, Joe sacrifices the lives of 21 pilots for some nickels and dimes. He deceives himself, by rationalizing that the Air Force will discover the defective parts. It is not his fault that the pilots have died, it is due to the bad quality assurance of the Air Force. The blame is always transferred to a third party.

Chris Keller and George Deever are more ethical, at least they think so. Possibly, because they are more intellectual, or because they have been heroes at war, or even because they want to be better than their parents. Joe Keller is a self-made man and cannot lose in any instance as it would ruin his ego. His conduct is very human, he is not a totally negative person, as Arthur Miller describes his heroes with empathy, even if they are crooks. Their ethical dilemmas and the reasons of their conduct are described with subtle psychology. Miller puts the plot in its social and economical context and society exonerates Joe's conduct. Miller is an American playwright, but the same ethical dilemmas described in his plays could happen in France, Brazil, Israel or India, as Ethics is universal.

Joe can be perceived as a criminal of the worst kind, as he murders, lies, cheats his partner, has no inhibitions and is also a hypocrite. But we can also find extenuating circumstances for him. Joe was never sick, even on the fatal day where the parts were shipped, but he is socially and morally sick. He lives very well with it, sleeps soundly at night, not like ethical men who have scruples which give them insomnia. The play is not a complete tragedy as it has an optimistic end: Joe pays for his sins, Chris marries Ann, Kate recovers from her self denial, George preserves his integrity. It is true that transparency has sometimes very tragic effects, but in the long run the sun is the best remedy for all social sicknesses. It is impossible to build anything on lies, as Joe and Kate did. This is the message of the play which is an ethical play with a moral aim.

Chris summarizes it all: You can be better! Once and for all you can know there's a universe of people outside and you're responsible to it, and unless you know

that, you threw away your son because that's why he died. Or in Joe's words: As to Larry they were all my sons.

ETHICAL LEADERSHIP IN COMPANIES

THE FILM "EXECUTIVE SUITE"

SUMMARY AND ANALYSIS

Based on the film:

Executive Suite, 1954, 104 min., Director Robert Wise, with William Holden and Frederic March, based on Cameron Hawley's novel "Executive Suite"

Summary:

The film describes the gist of the basic managerial dilemma - what is more important: maximization of profitability to shareholders or finding an equitable balance between the needs of the main stakeholders: employees, customers, community, as well as shareholders. Don Walling is VP of the R&D division of the Tredway Corporation, whose CEO has died suddenly without naming a successor. He wants to develop and market products of good quality, well designed, cost effective, but that requires investments in R&D. Loren Shaw, VP Finance, is strongly opposed to such investments as he wants to maximize profitability and dividends to shareholders. He encourages marketing of products of inferior quality to the detriment of customers' satisfaction and employees' motivation. Their attitudes are affected by the dilemma between short term and long term considerations.

Shaw wants to be appointed as CEO because he increases the profitability of the company by tax planning, streamlining and cutting down expenses. He has increased substantially dividend payments and expects to be rewarded by the controlling shareholders who should appoint him. Walling opposes him and advocates that the mission of business is to sell products of good quality, to

motivate employees and to help community, as well as making profits. Ultimately, he manages to convince the Board of Directors of Tredway and is nominated CEO. George Caswell is a corrupted director who takes advantage of insider information in order to make a huge profit by speculating on Tredway's shares. Shaw covers up Caswell's speculation in return for his support. Mary Walling, Don's wife, does not encourage her husband to be a candidate as she is aware of the implications of Don's being a CEO on his family, his health and possibly his integrity. Don is aware of the exacting price but it is balanced by the satisfaction he derives from answering the needs of stakeholders and taking care of the company's long term objectives.

Analysis:

The film describes in a trenchant way the power struggle within the Board of Directors, while in most cases the personal interests overshadow the interests of the company and those of stakeholders. We could draw a lesson that the most important characteristic of a director should be his integrity, maybe more than his competence and financial capabilities. Executive Suite describes in a brilliant way the various nuances of the managerial world, there are no "evil" or "good" characters, and every executive has his own objective credo. This is a "generic" film released more than fifty years ago, but still modern, with dilemmas applying to the new economy, banks, hi-tech companies as well as to low-tech corporations.

The film shows what are the strong and weak points in the arguments of each protagonist and what is the importance of ego and ambition in the character of the executives. It is a film committed to a cause stating that there is no inherent contradiction between successful business, profitability, growth, ethics, integrity, social responsibility, stakeholders' and shareholders' interests. Don believes that all those factors could be integrated and planned coherently, in spite of the personal example that gave the former CEO of the company, who preferred Shaw's

policy after so many years of successful management. Many questions are raised after watching the film: Is there a correlation between age and ethics, are young managers more ethical than elder managers? Are women more ethical? Are experience and emotions necessary ingredients to an ethical attitude? Is there a correlation between idealism, cynicism and age?

Don dismantles the table in the Board's meeting to make his point and prove how the products' quality has deteriorated because of Shaw's policy. Everyone is invited to find similar examples in his company and if there is a contradiction between satisfying customers' needs and profitability. To summarize - the film shows what is the mission of the company and influences our attitude on this issue and on all the other business and ethical dilemmas raised in the film.

A WHISTLEBLOWER WITH SOCIAL RESPONSIBILITY - THE PLAY "AN ENEMY OF THE PEOPLE" AND THE INDIAN FILM "GANASHATRU" - SUMMARY & ANALYSIS

Based on the play "An Enemy of the People" (En Folkefiende), 1882, by Henrik Ibsen

The films:

An Enemy of the People, 1978, 90 min., Director George Schaefer, with Steve McQueen, is based on the play with slight changes

Ganashatru, 1989, 99 min., Director Satyajit Ray, Indian masterpiece based on the play, with substantial changes

Summary:

Dr. Thomas Stockmann is a doctor in a small Norwegian town and the medical officer of the baths developed by his initiative under the management of his brother Peter, the Mayor of the town. The baths brought a surge in tourism and the financial conditions of the citizens improved substantially. Thomas and his wife have many friends who are often invited to dinner at their home, especially Hovstad the editor of the local newspaper and Billing the sub-editor. Thomas is a family man worshipped by his daughter Petra, a teacher, and by his sons Ejlif & Morten. His father-in-law is Morten Kill, a tanner, whose factory pollutes the water of the baths. When Thomas discovers the pollution he decides to write an article in the local newspaper in order to warn the citizens of the danger to their health. The editors and Aslaksen, the publisher of the newspaper, back him at first and Thomas tells them modestly that he doesn't want them to honor him with a

dinner for his contribution to society. But, after the interference of the Mayor, the publisher and editors change their mind and decide not to publish Thomas' report, as they are afraid that the citizens will have to bear the costs of repairing the contamination. Thomas refuses to accept this and decides to convene a meeting of the town's citizens in order to explain them the dangers of the pollution. In the meeting, the Mayor convinces the citizens to back him, Thomas is denounced as a lunatic, anti-democrat, as he maintains that he is right and the majority is wrong. He is proclaimed an Enemy of the People, is fired from his position at the Baths, his daughter is fired, hooligans break the windows of his house and he is asked to leave his house. Thomas decides to remain in town and fight for his principles against all odds.

Analysis:

The play illustrates the dilemma of the whistleblower and his moral motives. Is he a despicable tell-tale, a martyr, or a fearless hero? Society bans the whistleblower, even when he blows the whistle in order to rescue the people. Ibsen shows the double talk of unethical persons who talk like the Mayor on a need of tolerance and civility, but act on behalf of the town's rich people. Another aspect is the consideration of ego in business: whose idea it was to open the Spa - Peter's or Thomas'. But things are not clearcut. We see the modesty of unethical people like Peter as compared to the lavishness of ethical people like Thomas. Is it at all relevant to the ethical issues? The unethical businessmen depict those who fight for ethics as having their own agenda, they are megalomaniac, lunatics, anti-business, short or long in their shares' transactions, they are unfaithful to their wives or husbands, they are shoplifters if they refuse to pay for a damaged can-opener, and so on.

In the play we see the joy of creation of Thomas the innovator as compared to the gloom of Peter the bureaucrat. Thomas is very generous by inviting his friends frequently to dinners, however it doesn't pay off. We face the dilemma whether

Thomas was right when he didn't disclose to Peter his suspicion about the polluted water. Thomas should be loyal and transparent, but to whom? To his superiors in the Spa's board, to his brother the Mayor, to the inhabitants of his town, to the tourists who use the Spa, to his family, to his conscience, to his profession? Is it justifiable to blow the whistle on corrupted business practices? Is the Mayor correct in telling Thomas that the individual in society should be loyal to the authorities of society who are responsible for the welfare of the public? To what extent should the individual adapt himself to the norms of society, and be a "conformist"? As those who are not ready to conform risk the retaliation of society, their bosses, their colleagues...

The Mayor doesn't have broad interests and is very narrow-minded, he confines himself to work only, but he is very efficient. However, he is under the pressure of election, and being slightly paranoid he is afraid that all the "schemes" of Thomas and his father-in-law are all intended to undermine his position and to benefit from the low prices of the shares of the Baths. The pressure on Peter reminds of the pressure exerted on politicians by election to the parliament or the presidency, on executives of companies traded on the stock exchange by quarterly reports, controlling shareholders, audits, etc. Does it justify an unethical conduct of the managers? Ibsen, Thomas and the Captain, who hosts the citizens' assembly, believe in elitism. This raises the question: Who should lead: the elites, assuming that they are competent and ethical, or the masses, even if they are ignorant and without values?

Other facets of the analysis: The criticism of Petra on hiding the truth at school where she teaches and at home towards her younger brothers. Dr. Stockmann is in favor of maximum transparency and raising the curtain on the evils of society. But is it always justifiable? The ecology as a driving factor in this play, one of the first plays to raise ecological issues. What is more important economy and progress or ecology, should there be a contradiction between them? Should we always be

concerned by economic factors even when human lives and health is at stake? If we advocate maximization of profits - the answer is yes.

Another facet is: The naivety of whistleblowers like Stockmann who believe that society will give them prizes and honor to reward them of what they have discovered. But are all Thomas' intentions pure, to what extent is his conduct motivated by rivalry with his brother, revulsion from his father-in-law the tanner who spoils the water of the Spa with his factory's waste, ego considerations, revenge from the Spa's board who wanted to save the costs of expensive piping? What about the rationality of economics? And maybe the most important issue: Is Dr. Stockmann a Don Quixote who doesn't have an economic vision or are his considerations valid for the long run only? Possibly, a little more cunning (like Ulysses and the Trojan Horse) would have assisted Thomas in his campaign, if the end justify the means. After all, what has Stockmann achieved? He has lost his job, Petra was fired, they cannot live anymore in their house, their children are beaten, the pollution will continue and people will get sick and die, he was declared an enemy of the people and has lost most of his friends. So, what can we suggest Thomas to do in order to achieve at least part of his plea, without giving up his convictions? Could he embark in such a campaign without a political sense?

Dr. Stockmann thinks that his brother will envy him because it was he who discovered the pollution. His more practical wife suggests him to tell the Mayor that it was his idea from the beginning. The attitude of Mrs. Stockmann up to the people's assembly is quite critical and down-to-earth, but when she sees how the editors and the people treat her husband she decides to back him fully, although she might disagree with his methods. The citizens do not want to recognize the truth about the pollution and convince themselves that it is a sheer invention of the lunatic Dr Stockmann. Ultimately, a simple problem like the water's pollution becomes a pawn in the campaign of the tanner against the Mayor, the journalist against the tycoons, the Mayor in his election campaign, and the citizens who do

not want to pay more taxes. Hovstad mutates from the journalist who starts as a fighter against the tycoons and ends as their most fateful lackey. This raises the question whether it is a common aspect in the relations of the media with business?

Thomas starts as the most popular man in town and ends up as an enemy of the people. He is inconsistent as he is in favor of majority when he thinks that everybody is with him and favors the minority when he learns that he is left almost alone. The victim is always guilty. Peter blames Thomas that the Spa will be closed because of him and not because he objected investing enough money in the piping. Peter objects the disclosure of the pollution for ethical reasons as it will hurt his credibility as a civil servant. The Mayor, as well as many unethical businessmen state "that the public does not need new ideas, as the old ones serve us pretty well". Would Galileo, Emile Zola and Brutus agree? The mayor accuses Thomas of being paranoiac and individualistic, and in fact it is a very common accusation against the whistleblowers. Peter asks Thomas to retract from his disclosure, although he knows that Thomas would not be able to do so. But even if he would have agreed, it would discredit Thomas in the eyes of his few supporters and he would be fired anyway, as he is perceived as a whistleblower. Another common allegation against the whistleblowers is that they oppose everyone who is their superior. Is the ideal employee the obedient yes-man, who agrees with the whims of his bosses even when their commands are unlawful and unethical?

The silence of the lambs, the law of Omerta, community of thought, like in The Enemy of the People, may be slogans of the Mafia, totalitarian regimes, banana republics, but they often apply to a part of the business world. The Mayor tells Thomas that as an employee he is not entitled to his own opinion and especially if it contradicts the ideas of his superiors. This statement is very common in many companies, but in any case one should find the golden mean between this idea of total discipline as opposed to total chaos and insubordination. Peter tries to

convince his sister-in-law to call to order her husband for the sake of her family and welfare. This tactic is very common - to try and influence or intimidate the family of the whistleblower - and succeeds only in cases where the family is not cohesive enough, like in *The Insider* or *The Visit*, but not in cases like the Dreyfuss Affair. The whistleblowers are not rewarded for their actions, they are dismissed and banned. Often because they are not politically correct in their allegations, like Dr. Stockmann who finds an analogy between the polluted water and the polluted moral climate of his town. But, who loves the town more: the Mayor or the physician? One would tend to think that the physician, but we can also find justifications to the Mayor's conduct as well.

Mrs. Stockmann tells her husband that justice without power has no value. We could think of many examples that validate this statement and the opposite one as well. The communists believed that they were just but they didn't prevail until they had the power. However, the dissidents like Solzhenitzyn and the East Germans democrats at the end of the eighties, as well as the Indians in 1948 prevailed although they didn't have the power. These arguments raise the question: Does the end justify the means and is a person who fights for justice allowed to act against his people, his religion or his country? To the detriment of his family, his welfare, his health and even his life? Is the whistleblower a modern hero who fights for justice? Thomas may sound selfish when he doesn't pay attention to the admonition of his wife who tells him to think of his family and compromise with the evils of society. But Thomas perseveres in his fight even against the whole world. Thomas may also sound manipulative when he says that he wants to be able to look in the eyes of his sons when they will grow up and be free men. Here again he acts on behalf of the victims, for their own good, without even asking them, although Petra supports him from the start.

Dr Stockmann is accused of being a revolutionary, and so is Lowel Bergman in *The Insider*. Is it a compliment, an insult, a fact? Was it his intention from the start? As Thomas didn't want to be a revolutionary but was driven to that, we

could argue that circumstances make most of revolutionaries what they are. Dr. Stockmann could have stuck to his findings as a scientist and not transgress his fight to political issues. Doing so, it wouldn't have hampered his credibility and allow slander that he is motivated by revenge against his brother or by ambition to become the new Mayor. Aslaksen states that he is a coward in the local arena but is not afraid to state his own views in the national arena. We could explain that by his fear of personifying the struggle. Aslaksen and Hovstad change their views by 180 degrees after they talk to the Mayor, as the strength of their moral convictions is in opposite function to the strength of the pressure exerted on them. On some people putting pressure is effective but with others it goes on the opposite way and strengthen their resistance. Ibsen shows how flattery is effective in the business world. The mayor flatters Aslaksen and is successful but Dr Stockmann fails, because he is too blunt. Aslaksen was ready to fight for a cause when it was abstract. But when it affects his welfare and the welfare of his colleagues he opposes it. Charity begins at home.

Why do Aslaksen and Hovstad fall into the trap of the Mayor? They could have said that the Spa's company which is entitled to all the profits should bear also all the investment for repairing the pipes. The piping should not be on the community expenses as they don't share the profits. But this is a common attitude of unethical businessmen to ask for the assistance of government and community when the situation deteriorates but not to share with them profits when it improves. Thomas sounds sometimes as a macho, when he tells his wife to go home and take care of the household while he will take care of the problems of society. Another issue which is relevant even today is: Who decides what should be written in the newspaper: the editor, the owner, the readers, the authorities? Hovstad, Aslaksen, Dr Stockmann or the Mayor? Does mediocrity shut the truth up or is 'vox populi vox dei'? We could see many commonalities between the town's citizens meeting and the shareholders' meetings. The chances of an individual shareholder or a man with dissident opinions to express himself and to influence others are very slim, as the Chairman and the mighty act in both cases arbitrarily.

Aslaksen advocates for the golden mean like Aristotle, Dr Stockmann is a "revolutionary" who wants to destroy the corrupted society. But who is more ethical? Aslaksen and Hovstad, the conformists are expected to receive their reward from the Mayor and the wealthy people in due time, indirectly, as they owe them now. Dr. Stockmann in the meeting does not flatter his people but attacks them, still he wants their support, or is he trying to maintain a cause which he know has no chance to prevail? Stockmann wants the destruction of his hometown as it is based on lies. Is it effective? We could draw analogies from Soviet Russia and Great Britain. In the Soviet Union the revolution didn't work on behalf of the masses while in Great Britain the masses are in much better conditions without any revolution. What about other political regimes, racial conflicts, economic and social conflicts? Is destruction the only way to remedy the evils? The examples of the fascist and communist regimes as opposed to democracies where people compromise and don't destroy are illuminating in advocating for moderation.

When they don't find rational arguments against Stockmann his friends resort to slander: he is crazy, he wants a raise in his salary, he wanted to purchase the shares of the Spa with his father-in-law at a very low price and that's why he invented the story about pollution. Ibsen raises another issue: what is preferable to stick to your country and society even if they are corrupt and you are persecuted in order to change them from within or emigrate. Dr. Stockmann wanted to emigrate to the US but ultimately he decides to stay and fight in his hometown. "One should not wear his best trousers when he wants to fight for truth and freedom". Is it a private joke of Ibsen or does it contain a lot of truth about the risks of the struggle? Ibsen illustrates the brutality of society and the mighty who break Stockmann's windows, threaten him and his family, fire him and the captain his only friend, his daughter... Is it common also today? The cases and the research show that in many cases it is still common. Peter tries to convince Thomas to sign a declaration that he was wrong and maybe they will hire him

back in the future. This is a common communist device to give a so-called appearance of justification to their brutal acts. But luckily Thomas refuses as he doesn't want to deny his convictions, as Galileo said *e pur si muove* and Dreyfus maintained that he was innocent. Thomas' father-in-law, Morten Kiil, tries to bribe him as he wants to preserve his reputation. Unethical persons insist in maintaining a faultless reputation and they are willing to pay for it. Finally, is Dr. Stockmann a model for imitation, will he achieve success at least in the long run?

Norway is today the most ethical country in the world, and Ibsen has contributed to it with his plays. However, in the Indian film *Ganashatru* we have a happy ending, with many young people coming to support the enemy of the people and others deciding to publish his report, still India is among the most corrupted countries in the world. What approach is best for reform?

ETHICAL LEADERSHIP IN LABOR UNIONS

THE FILM "F.I.S.T." - SUMMARY AND ANALYSIS

Based on the film:

F.I.S.T., 1978, 145 min., Director Norman Jewison, with Sylvester Stallone, Rod Steiger

Summary and Analysis:

The film is based on the rise and fall of Jimmy Hoffa. It is about a labor leader, Johnny Kovak, who makes a Faustian bargain with the Mafia for which he ultimately pays the price. He turns to the mob boss Tony Milano when the survival of his trucker's union is on the line. Kovak joins the Teamsters trade union in a local chapter in the 1930s and works his way up in the organization. As he climbs higher and higher his methods become more ruthless and finally Senator Madison starts a campaign to find the truth about the alleged connections with the Mob. The film depicts the pre-dawn of the organized labor movement in the US, what were the conditions before the work force was unionized, what drove the workers to form the original labor unions. Kovak reluctantly helps organize FIST, Federated Inter-State Truckers, and leads it through the early dark years of violent strikes and lockouts to the later years of labor successes breeding union corruption.

The film starts in 1937 in Cleveland. Kovak works in a factory of food packaging. The workers work 14 hours a day and are paid only for 8. Kovak complains on the harsh conditions to his mother, but she answers that his father and friends never complained. Kovak's employer fires workers without any justification, as there are many unemployed who are eager to replace them. They are penalized in

their salaries for every damage, there is no health insurance, no social benefits. Kovak is perceived as a troublemaker as he tries to organize the workers and is fired. The workers break all the crates. A representative of the management comes to Kovak and promises him that all the problems would be solved, no worker will be fired without the authorization of a senior manager, they will not be penalized on the damages that they commit, and he is even willing to discuss the payment of overtime. Kovak believes that the workers have won their struggle. But when they return to work, all the rebels are fired, in spite of the agreement made.

FIST, the Federated Inter-State Truckers union talks to Kovak. They were impressed by his leadership and his communication with the workers. He is promised a commission on every worker that he will enroll to the union. Kovak starts to work in the union but encounters the resentment of the truckers who do not want to join the union and are afraid of their employers. At the union meeting Kovak brings with him a trucker, member of the union for twenty years, on a wheelchair. The company didn't want to pay him anything after his accident, but the union took care of his family, his medical bills and all his needs. Kovak promises them to take care of them, their medical bills, overtime, and convinces hundreds to join the union. A lawyer of the employers comes to him and tries to bribe him. Kovak refuses and is beaten by the thugs of the employers.

Max Graham, the nation's president of the union, persecutes Kovak as he is not a trucker. Abe Belkin, Kovak's friend, joins the management of the labor union. He is more ethical than Kovak and refuses to employ violent measures. In the negotiations with the employers Kovak requests bluntly medical insurance, payments for doctors, and threatens that if they will not agree he will organize a strike. He asks for overtime payments and wage increases but is rebuked. Kovak organizes a strike of all the truckers in the company and posts his men at the entrance of the factory in order to prevent any truck to get in or out of Consolidated. After a month of strike, the owners of the company ask from the League of Law and Order to crash the strike. They come with rifles, beat the

strikers, burn and destroy everything. One of the strikers try to enter with his car, but he is shot and killed by the thugs. Kovak is stunned by the defeat and tells his fiancée Anna that it is all due to his fault. He asks from his childhood friend Vince who is connected with the mob to contact them as he wants to win at all cost. Kovak swears that they will not be beaten or killed anymore, and is willing to make a pact with the devil in order to win.

When Vince and the mob interfere they throw grenades on the trucks, they fire at them, burst into the factories, burn and destroy everything. The management gives in, they agree to pay overtime to the workers, medical insurance and everything that they want. The father who owns the company is not willing to shake hands with Kovak but his son doesn't mind. The issues raised by the film are: Was Kovak right when he contacted the Mafia, how would we react? What were the alternatives of Kovak: to give in, to fight only with his people, to agree to reduced benefits, to employ Mafiose methods like the employer but without resorting to the Mafia? Did he react this way because of his ego, his mission, the end justifies the means, he wanted to have a family with Anna, for economic reasons?

Franc Vasco refuses to join the union with his men. Kovak comes to Vasco on Christmas's eve and although both of them come from Hungary they cannot reach an understanding. Frank says that his men do not want to pay for membership because they have already medical insurance, they are paid for overtime and they have good relations with their employers. But Kovak tells him that he has to comply as it is all for one and one for all. Kovak, who is about to be married to Anna, meets Antony Milano, the Italian mob boss, and asks for his friendly persuasion of Vasco to agree. They agree to cooperate in this issue and other delicate matters and in return the truckers will smuggle in their trucks contraband goods. Milano wants to bribe Kovak and offers him as a wedding present a beautiful house but Kovak refuses. What is the difference between personal bribe and communitarian bribe? Kovak is willing to break the law and smuggle goods for the mob but doesn't want to benefit personally from the bribe, as breaking the

law is permitted according to his ethical code only if it is to the benefit of his union. Abe Belkin opposes strongly the pact with the Mafia and accuses Frank that he has disregarded his principles. But Kovak answers him that nothing is pure, and "look what we obtained". Abe breaks apart from Kovak and joins another location of the union.

Twenty years later Kovak climbs the ladder of the union and following the disclosure of the corruption of the president of the union Graham he is forced to resign and Kovak is elected as the president. But Kovak is worried of the investigation on corruption in the union and links with the Mafia conducted by the Senator Andrew Madison. Kovak conducts tough negotiations with the employers on a wages' increase of 8% in return of a commitment not to strike. Abe breaks the agreement and an unauthorized strike is initiated by Abe. The union comprises two million people already. Kovak appears on the front page of Time. But at the peak of his rise comes also his downfall. The mob that is worried that Abe would betray them as he opposes the ties with the Mafia and becomes a whistleblower murders Abe at a supermarket. Vince and Milano do not cooperate with the Congress commission. The commission puts a lot of pressure on Kovak to reveal his contacts with the mob. When Kovak learns of Abe's murder he says that he was not connected with it as Abe was his friend.

Kovak tells Milano that he will not cooperate anymore with the mob. Kovak is accused of having given loans to the Mafia from the Pension Funds. Kovak answered that the decision was taken by the Union's Board of Trustees. He is accused of killing a man in 1938 in labor riots but Kovak maintains that it was done in self defense. When Senator Madison accuses Kovak of contempt in his testimony to the community, Kovak answers that he scorns the Senator, his committee, the hearing, Milano and mainly himself. He leaves the committee and is cheered by his followers. What are we, he shouts, FIST, and he waves his fist. Answering FIST they wave their fists as well. But returning home, Kovak is murdered, probably by the mob, and his body is never discovered.

It is impossible to deal with leadership and management in the business world of the last century without referring to labor unions. The labor unions' leaders started their careers from ideological motives, but they were often corrupted by power, bribes, contacts with the mob, preference of strong unions, collaboration with the employers to the detriment of the workers, or establishing labor unions' own companies that oppressed their workers. In the Soviet Union the workers didn't have any rights as the leaders said that the nation itself is ruled by the proletariat, so the workers don't need any better protection than the state's. And so, in the capitalistic states the workers had much more rights and far better conditions than in the Soviet Union that was supposed to safeguard their rights. The fear from the communism was a catalyst to improve the workers' conditions. However, in the 21st century, after the collapse of the Soviet Union and communist regimes, we witness the rise of a brutal capitalism in the world, that oppresses the workers, makes massive layoffs, cuts down their salaries, cancels their social benefits, gives lower tax rates to the rich people, wrongs the poor people, and retracts from the welfare state. Finally, Business Ethics, Social Responsibility and Welfare Policy could well replace the role of the labor unions that became in many places corrupted and obsolete.

BRUTAL BOSSES AND THEIR VICTIMS

THE PLAY "DEATH OF A SALESMAN"

SUMMARY AND ANALYSIS

Based on the play Death of a Salesman (1949) by Arthur Miller

The film is based on the play with slight changes:

Death of a Salesman, TV 1985, 130 minutes, Director Volker Schlöndorff, with Dustin Hoffman and John Malkovich

Summary and Analysis

Willy Loman, an aging traveling salesman can no longer make the long trips to his customers. His boss fires him brutally and Willy loses his self respect and mental sanity wondering what went wrong. Willy is perceived as an insignificant player in the "new economy" of those days, which appreciated only youth and not experience. He remembers the heroic times of his youth and his outstanding achievements but he is the only one who remembers it and nobody else cares. We are not even sure that what he remembers is correct as he imagines things and has flashbacks that are not realistic. Yet, Willy has the full support of his wife Linda who loves him, respects him and protects him from his suicidal attempts. Willy can continue living only with his hallucinations as the reality is too cruel to be lived. Or is it? After all, many people have a much worse fate than Willy, but he is too proud to admit that he is a loser. His son Biff is unwilling to forgive him that he smashed all his youth's ideals when he found his father with a lover in a hotel. Or is it an excuse for his failures? Everybody in this play blames somebody else for his fate instead of taking responsibility of their destiny. Howard, the son of the former boss of Willy, is not willing to carry on a "dead wood" as Willy, he

has no empathy for his past performance, he wants to maximize his profits and for him Willy is a burden. He fires him and Willy who has no more a reason for living commits suicide.

Miller took a simple American family struggling to make life work, and made each character extraordinary. A masterpiece on labor relations. Although the play takes place in the late forties it is still actual, as today more than ever before elder people are being fired only because they are no more young. Only that today an "old" man or woman who has to retire is aged 50 or even 45, while he behaves in a much younger way than in the forties, he is healthier, has a life expectancy of twice his age, so what should he do after being fired? Should he commit suicide like Willy or start a new career? The worst discrimination in modern business is not racial, sexual or religious, it is discrimination of age. If we bear in mind that people start working at 30, after getting an MBA or equivalent, spending a few years in India, and a military service, the work expectancy is today 15 or maximum 20 years. Furthermore, there is no more life employment in one company, not even in Japan, so a normal executive perceives his job as temporary for a few years, with 3-5 similar jobs, and that's it. Before that - he studies or travels or serve his country or community, after that - he retires and most of the times he is compelled to do so.

The conclusion is that a young manager has to earn in Wall Street, Monsanto or Nike very high salaries in order to repay the loans he made to finance his expensive studies, and to save the money he needs for his early retirement. Can he get such high salaries? The most brilliant ones can, but what about all the others? Does it compel them to be unethical and to obey without hesitation to any unethical order of his bosses, brutal or not? Does he have at all an alternative, unless he wants to go on welfare? The most tragic part of the story is that nowadays managers aged 50 are in their prime. They are experienced, not reckless, they can work long hours because their children have left home, they have a lot of ambition and stamina, they have at least a work expectancy of 25

years, much more than their present experience. Those who want to retire could do so, but probably they are a small minority. Furthermore, if people will retire only at 70 or 75 it will solve all the actuarial problems of the pension funds. Brutal bosses are the worst curse of modern business. Because of the high standard of living needed, the high payments for mortgage, expensive cars and vacations, the fear that managers will be fired being "obsolete", those bosses can behave in a dictatorial way, offend their subordinates, take advantage of them in many ways, and nobody would dare to react, fearing to be fired and to receive an image of a troublemaker or even worse - a whistleblower.

DARWINISM AND BUSINESS LEADERSHIP

THE PLAY "GLENGARRY GLEN ROSS"

SUMMARY AND ANALYSIS

Based on the play Glengarry Glen Ross (1984) by David Mamet

The film is based on the play with slight changes:

Glengarry Glen Ross, 1992, 100 minutes, Director James Foley, with Jack Lemmon, Al Pacino, Ed Harris, Alan Arkin, Kevin Spacey, Alec Baldwin, Jonathan Price

Summary and Analysis:

The survival of the fittest, those who cannot be the best should perish as there is no place in the modern world for weaker persons and employees. Times are tough in a real estate sales office; the salesmen are given a strong incentive to succeed in a sales contest. There is no room for losers in this dramatically masculine world; only "closers" will get the good sales leads. Can a society, a company or a country exist with no place for the weakest? The main dilemma of the film and the play is - can businessmen who are not the best survive in the modern business world? Managers who are older than 45; salesmen who sell less than they used to; people who have family problems - they are sick, their wives or husbands left them, they lost a child; businessmen who don't belong to the elites - Afro-Americans, Moslems, Indians; women in a machoistic environment; people with physical disabilities and so on. As a matter of fact, the survival of the fittest was always the slogan of the darkest fascistic regimes, which killed millions of Jews, crippled, sick, Gypsies or homosexuals. Every one is often in his work career not at his best: so, should he be fired on the spot, are we human beings or cows who are

slaughtered when their milk production deteriorates? On the other hand, there are many who argue that a business is not a welfare agency and a company cannot afford to support people who are not at their best.

The purpose of a corporation according to Milton Friedman and most of businessmen is to maximize profits and it is impossible to keep people like Shelley Levene or his colleagues in the organization. So, they should be fired even if they worked very hard and still are, but their results are not as good as before, because of age, family problems or sickness. Those who favor these beliefs should bear in mind that in due time they will also have problems and not be at their best, so it will repercuss on them as well. "Don't do to others what you wouldn't want others to do to you" is not a utopist maxim, it is the bread and butter of civilization and ethics, as we are not animals who slaughter the weakest (even they don't do it most of the time) but human beings who, after millenniums of evolution, are giving a chance to women, people from different religions or races, people with disabilities, businessmen not coming from the elites, and older people. In a primitive society only the strongest monkey would survive but in a democratic society people can excel in many ways even if they are not the fittest. They could get lower salaries if their contribution is lower but they should not be fired in such a brutal way as in this film nor be scared of being fired and forcing the salesmen to commit crimes that otherwise they wouldn't even think of committing.

The salesmen complain that they don't receive good leads. Dave Moss (Ed Harris) says that it is impossible to treat people in such a way, but he is told that Roma will receive the leads of Glengarry Glen Ross as he is a closer. In the harsh world of real estate and in business in general you should be ready to do anything in order to survive. The pressure put on the salesmen oblige them to cheat the potential clients, to lie, to tell them half truths, as no one wants to be fired. Competition is very hard and if you don't cheat somebody else will and you will lose everything. The business world is not for weak people, if you don't devour

the others they'll eat you. The two worst losers are Aaronov (Alan Arkin) and Levene, they are not tough enough, but they are driven to extreme actions. Aaronov agrees to steal the leads in order to give them to Moss, but ultimately it is Levene who steals them. Levene tries to bribe Williamson but he refuses as he doesn't want to be mixed up with such a loser, finally he agrees but Levene cannot pay him the advance payment. Moss says that they should stop thinking as slaves, they are men, they should be independent and not salaried. Roma doesn't want to abide to the middle class moral norms, it is OK to steal, as bad men don't go to hell anyhow. The pressure on Levene increases as he has to pay for his sick daughter, the stolen leads could give him thousands of dollars that he could receive for them. In this play and film everyone cheats everyone else. It is OK to threaten, there are no friendships, no values, no feelings, except the family sentiments of Levene. The unfair treatment is towards the subordinates, the bosses, the colleagues, the clients, the stakeholders. After Levene is caught for stealing the leads he says that it is a world of bureaucrats, not of human beings, we live in a world that is disappearing and that's why we should stick together. This is the message to the meeks, it is the only way to oppose the strong people, the wrongdoers, the unethical businessmen who oppress the stakeholders, and if the meek will unite they could win their battle and achieve a juster distribution of resources.

BEN & JERRY'S – A MODEL OF ETHICAL, SUSTAINABLE, PROFITABLE AND SOCIAL RESPONSIBLE LEADERSHIP SUMMARY AND ANALYSIS

Based on the book: Cohen Ben and Greenfield Jerry, "Ben & Jerry's Double-Dip, Lead with Your Values and Make Money, Too", Simon & Schuster, 1997

Based on the film: Biography – Ben & Jerry's, 2008, 50 min., starring: Ben Cohen, Jerry Greenfield

Summary and Analysis:

Ben & Jerry's, the ice-cream company Ben & Jerry's, which was founded by Ben Cohen and Jerry Greenfield, contributes 7.5 percent of its pretax profits to the communities of Vermont, compared to an average of 1 percent in the United States. In order to evaluate rigorously the social performance of the company, external auditors prepare social audits each year, which are published with the financial reports of the company. The audit includes the morale of the employees, the environmental performance, the customers' satisfaction, and the contribution to the community. We should elaborate in more details the example of Ben & Jerry's, as it is significant for a company behaving ethically, sustainably and with social responsibility by conviction. The company is driven by values not less than by profits. The founders believe that their customers do not like just their ice-cream, but also what they stand for. Cohen and Greenfield do not think that they are not maximizing their profits, because the values contribute to profits not less than performance. The more they are ethical, sustainable and social responsible, the more their customers are loyal to them, the more they are profitable. In 2000

the company was taken over by Unilever but it maintains its independence in its ethical mission.

According to the founders of the company, Ben Cohen and Jerry Greenfield: “By incorporating concern for the community – local, national, and global – into its strategic and operating plans, the values-led business can make everyday business decisions that actualize the company’s social and financial goals at the same time. Instead of choosing areas of activity based solely on its own short-term self-profitability, the value-led business recognized that by self-addressing social problems along with financial concerns, a company can earn a respected place in the community, a special place in customers’ hearts, and healthy profits, too... Unlike most commercial transactions, buying a product from a company you believe in transcends the purchase. It touches your soul. Our customers don’t like just our ice creams – they like what our company stands for... Our experience has shown that you don’t have to sacrifice social involvement on the altar of maximized profits. One builds on the other. The more we actualize our commitment to social change through our business activities, the more loyal customers we attract and the more profitable we become.” (Cohen and Greenfield, Ben & Jerry’s Double-Dip, p. 30-31)

Consumers can affect the collective quality of life by influencing one force that strongly controls it and that force is business: "We can influence business by 'voting with our dollars': supporting companies that reflect our values. When we buy from the Body Shop, we oppose animal testing and support international human rights. When we spend our money with Patagonia, we help fund environmental initiatives. When we shop at local stores that support the community, we encourage other consumers and businesses to do the same." (same, p.35) Ben & Jerry's do a kind of ethical strategic planning, by screening their vendors' values alignment, making a review of vendors' social and environmental programs in the company's ingredients specifications. If companies like Ben & Jerry's will assist in establishing an ethical and sustainable club, with

companies such as Ray Anderson's Interface, Patagonia, Body Shop, and others it could be a model of ethical companies, collaborating with each other, buying and selling to each other, values-driven employees will prefer to work for them, minority shareholders and ethical funds will invest in their stocks, communities will invite them to open facilities in their towns.

Ben & Jerry's Mission Statement

(From Ben & Jerry's website)

Leading with Progressive Values Across Our Business

We have a progressive, nonpartisan Social Mission that seeks to meet human needs and eliminate injustices in our local, national, and international communities by integrating these concerns into our day-to-day business activities. Our focus is on children and families, the environment and sustainable agriculture on family farms.

- Capitalism and the wealth it produces do not create opportunity for everyone equally. We recognize that the gap between the rich and the poor is wider than at any time since the 1920s. We strive to create economic opportunities for those who have been denied them and to advance new models of economic justice that are sustainable and replicable.
- By definition, the manufacturing of products creates waste. We strive to minimize our negative impact on the environment.
- The growing of food is overly reliant on the use of toxic chemicals and other methods that are unsustainable. We support sustainable and safe methods of food production that reduce environmental degradation, maintain the productivity of the land over time, and support the economic viability of family farms and rural communities.
- We seek and support nonviolent ways to achieve peace and justice. We believe government resources are more productively used in meeting human needs than in building and maintaining weapons systems.

- We strive to show a deep respect for human beings inside and outside our company and for the communities in which they live.

CERES Principles

In 1992, Ben & Jerry's signed the CERES Principles to acknowledge our responsibility for the environment. The ten aspirational principles guide us in all aspects of our business as responsible stewards of the environment by operating in a manner that protects the earth.

Protection of the Biosphere

We will reduce and make continual progress toward eliminating the release of any substance that may cause environmental damage to the air, water, or the earth or its inhabitants. We will safeguard all habitats affected by our operations and will protect open spaces and wilderness, while preserving biodiversity.

Sustainable Use of Natural Resources

We will make sustainable use of renewable natural resources, such as water, soils and forests. We will conserve nonrenewable natural resources through efficient use and careful planning.

Reduction and Disposal of Wastes

We will reduce and where possible eliminate waste through source reduction and recycling. All waste will be handled and disposed of through safe and responsible methods.

Energy Conservation

We will conserve energy and improve the energy efficiency of our internal operations and of the goods and services we sell. We will make every effort to use environmentally safe and sustainable energy sources.

Risk Reduction

We will strive to minimize the environmental, health and safety risks to our employees and the communities in which we operate through safe technologies, facilities and operating procedures, and by being prepared for emergencies.

Safe Products and Services

We will reduce and where possible eliminate the use, manufacture or sale of products and services that cause environmental damage or health or safety

hazards. We will inform our customers of the environmental impacts of our products or services and try to correct unsafe use.

Environmental Restoration

We will promptly and responsibly correct conditions we have caused that endanger health, safety or the environment. To the extent feasible, we will redress injuries we have caused to persons or damage we have caused to the environment and will restore the environment.

Informing the Public

We will inform in a timely manner everyone who may be affected by conditions caused by our company that might endanger health, safety or the environment. We will regularly seek advice and counsel through dialogue with persons in communities near our facilities. We will not take any action against employees for reporting dangerous incidents or conditions to management or to appropriate authorities.

Management Commitment

We will implement these Principles and sustain a process that ensures that the Board of Directors and Chief Executive Officer are fully informed about pertinent environmental issues and are fully responsible for environmental policy. In selecting our Board of Directors, we will consider demonstrated environmental commitment as a factor.

Audits and Reports

We will conduct an annual self-evaluation of our progress in implementing these Principles. We will support the timely creation of generally accepted environmental audit procedures. We will annually complete the CERES Report, which will be made available to the public.

PART II

ETHICS IN CORPORATE GOVERNANCE, THE STOCK EXCHANGE AND BANKING

CONCEPTS AND THEMES

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.53-54)

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 they don’t understand. 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 I 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.

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?

Hereinafter are presented the summaries of some cases and laws referring to this Part that were already devised at length in my previous books. The empirical part of the book “*Business Ethics: The Ethical Revolution of Minority Shareholders*” presents four cases of US, French and Israeli companies, most of them in high-tech, in which the minority shareholders lose almost all their investment. The cases are based on current events and try to find the common aspects and basic rules that govern the wrongdoing to minority shareholders.

The first case of a French company Loskron shows how the legal system proves to be a worthless panacea, and how an activist association, ADAM, discloses the ethical wrongdoing and utilizes the press and public opinion for attempting to win the case. The second case of an American/Israeli company Furolias describes the Kafkaian experience of an individual shareholder, who dares to disclose the ethical wrongdoing made to the minority shareholders, attempts without success to win the support of other shareholders and stakeholders, and how the huge organizations of the majority shareholders try to crush him.

The third case of an Israeli company Sektow and its parent company Erinsar describes the fight of a CEO and shareholder, who dares to oppose the controlling shareholders and how he and other shareholders attempt with the assistance of the press and class actions to fight back. The last case of an American company Mastoss describes how the Internet and the Stock Talks between minority shareholders disclose the ethical wrongdoing of the company and controlling

shareholders, and give shareholders the opportunity to sell their shares before they collapse.

36 LAWS OF WRONGDOING TO MINORITY SHAREHOLDERS IN UNETHICAL COMPANIES

1 – In unethical companies, the minority shareholders will always lose in the long run.

2 – Unethical managers tend to work on the verge of the law, finding loopholes, and getting the legal advice of the best lawyers, in cases of wrongdoing to the minority shareholders.

3 – Boards of Directors and executives of companies tend to safeguard primarily the interests of the majority or controlling shareholders, who have appointed and remunerate them.

4 – Independent Directors, who are appointed by the executives, decisions of their committees, and fairness opinions that they order, are in many cases unreliable to minority shareholders, as they tend to comply with the opinions of the majority shareholders.

5 – Auditors, underwriters and consultants are loyal primarily to the executives who remunerate them, and the minority shareholders should be cautious with their reports and recommendations.

6 – When examining the reports of analysts and their ‘buy’ suggestions on companies, one should bear in mind what are the interests of the analysts, if they own shares of the companies, and what is their success record until now.

7 – The legal system does not safeguard in most of the cases the rights of the minority shareholders, who cannot fight on equal terms with the companies that are assisted by the best lawyers, and have much more time and resources.

8 – Companies tend sometimes to accommodate large institutions, which were wronged as minority shareholders, mainly by indirect compensation.

9 – The SEC is in many cases a panacea that is indifferent to wrongdoing to minority shareholders and to creative accounting.

10 – Society does not ostracize unethical managers and believes that ethics should be confined to the observance of the laws.

11 – Minority shareholders should refrain from investing in companies whose ultimate goal is to maximize profits, as it would in many cases benefit only the profits of the majority shareholders and executives.

12 – Minority shareholders should invest in companies having ethical CEOs, as they would probably safeguard their rights and not be loyal exclusively to the majority shareholders.

13 – Minority shareholders are often perceived as speculators, who do not care for the welfare of their companies, but are greedy and interested in an immediate and riskless return on investment.

14 – The perception of the minority shareholders as greedy and speculators, and the lack of personification to the nameless individuals, legitimize in many cases wrongdoing to them.

15 – Unethical companies tend to avoid transparency and publish opaque prospectuses, press releases and financial statements. Transparency is therefore the main safeguard of the minority shareholders.

16 – Shareholders should compare the prospectuses with the press releases and interviews of the executives and owners of the companies. If there is double talk and the information released to the SEC does not comply with the press conferences, it could indicate that the companies are in trouble.

17 – Minority shareholders should read carefully all the information accessible to them, participate in the stock talks on the Internet, and have a fair understanding of financial statements. If not, they should abstain from investing directly in companies and should rather invest in Ethical Funds.

18 – The conduct of the shares' price prior and subsequent to a public offering indicates the ethics of a company, especially if price increases substantially before the offering and collapses a short time afterwards.

19 – Minority shareholders should avoid investing in companies whose executives do not own their shares or have sold most of them, and whose controlling shareholders sell a large part of their shares at public offerings.

20 – Executives of many companies tend to receive warrants when the shares' price is at their lowest point and sell them at the end of their restriction period, when their prices reach a maximum. Minority shareholders are invited to read this information on the Internet and imitate their conduct.

21 – Unethical executives tend to benefit from insider information in buying and selling their shares and minority shareholders can receive indications on the future profitability of the company by following on the Internet insiders' data. Selling of

shares by insiders could indicate future losses and buying of shares could indicate favorable prospects.

22 – A Company that wants to sell a subsidiary partially owned by it to a fully or majority owned subsidiary tends to convey the impression that the situation of the subsidiary it wants to sell is precarious, with no potential acquirers, in order to justify the collapse of its price and the acquisition of the partially owned subsidiary at a token price by the fully owned subsidiary.

23 – Unethical companies have double standards for their shareholders. They may convey the impression that they are on the verge of bankruptcy in order to discourage the minority shareholders, and after the controlling shareholders and executives buy their shares at minimal prices, make public encouraging prospects in order to increase their shares' price.

24 – Companies tend to be privatized before the end of revolutionary products' R&D or after the implementation of a successful turnaround plan, when the shares' prices are still low, by forcing the minority shareholders to sell their shares at those prices, and concealing those prospects to them.

25 – Delaware's Laws give extreme license to the controlling shareholders to do whatever they want in their companies and enable them in some cases to commit wrongdoing to minority shareholders without giving them a fair possibility of retaliation.

26 – Majority shareholders and executives tend to conceal their true motives of depriving the rights of the minority shareholders behind altruistic talks of saving employment, assisting the community and helping the economy.

27 – Minority shareholders should suspect government officials who are supposed to safeguard their rights if the law enables them to be recruited by the companies that they were supposed to control.

28 – Shares' transactions that are executed in August, during the vacations, around Christmas, New Year's Eve, or in other periods, where most of the minority shareholders are out of town, are often meant to wrong them without giving them the opportunity to interfere.

29 – Shareholders' meetings are in many cases orchestrated in such a way that minority shareholders cannot express effectively their discontent, and even if they do so the protocols of the meetings do not report it.

30 – Minority shareholders should beware of companies that expense too often extraordinary losses, charges for in-process technology, acquisition costs, contingent liabilities, and make huge reserves for non-recurring charges on restructuring plans. Those losses may be a heaven, concealing operational losses, and precursory of the imminent collapse of the company's valuation.

31 – Minority shareholders should refrain from investing in companies that are controlled exclusively by the majority shareholders, especially if those own less than 50 percent of the shares, and allow no representation of the minority shareholders in their Boards of Directors.

32 – Activist associations should gather information on unethical companies, shareholders and executives and publish it on the Internet and to minority shareholders. People tend to forget or do not have access to this data and it is the responsibility of the activists' associations to make the relevant information accessible to all.

33 – Disclosers of unethical conduct of companies toward minority shareholders should be encouraged by rewards, esteem and recognition, and should not be ostracized by society as whistleblowers.

34 – Individual shareholders who have lost in the stock market, due to an unethical conduct of companies, should publish the information on the Internet, the press, the SEC, among their friends, and try to get the maximum coverage for the wrongdoing of unethical companies.

35 – Minority shareholders should only resort to ethical means if they have to fight the companies that have wronged them, as in an unethical combat the stronger parties will always win.

36 – The minority shareholders should put a very high emphasis on the ethics of the companies and the integrity of their managers and owners in their investing considerations and refrain from investing in unethical companies that might wrong them, even if those companies have excellent prospects.

ETHICS IN CORPORATE GOVERNANCE CASE - INSIDER INFORMATION

(All the characters and plot and all the names of the companies in this case are fictitious)

Mathew faced a major ethical dilemma. He acted as the Chairman of the Board of Directors of Medical Equipment that his company bought as a financial investment a few years ago. He managed to turnaround Medical Equipment and was about to sell it to a German conglomerate for half a billion dollars. However, the Germans for their own reasons wanted that the transaction would be announced only on January 2nd, and the effective date would be January 1st, the first day of the new fiscal year. They wanted to start the new year with a clean table and insisted, to Mathew's displeasure, that the effective date shouldn't be December 31st of the previous year as he wanted. For accounting reasons it was much easier for Mathew's company to report the transaction on December 31st. But, there was also Mathew's warrants' problem. Mathew had an option to purchase one million shares of Medical Equipment at the price of \$20 per share, expiring on December 31st. He received them as part of the compensation package given to him and the other shareholders received their warrants in a rights' issue three years ago, when Mathew took over the company. The price on the stock exchange was close to the year's end only \$19 and it was clear that nobody would exercise the option at this price. Why should one pay \$20 exercising an option to buy a share when he could buy the same share on the stock exchange at \$19? Mathew knew, as an insider and as the architect of the merger, that the share's price of his company would increase by tens of percents after the merger would take place, as it was very beneficial to the shareholders. He was prevented to disclose the forthcoming merger at the request of the Germans and the announcement would take place two days after the expiry of the warrants. On the

other hand if he would not exercise the option he would lose millions of dollars just because of two days. He could always buy one million shares at \$19 on the stock exchange, but this would cause a lot of rumors on the stock exchange and this for sure would attract him a true criticism that he utilized the insider information to profit from the merger's impact on the price of the shares. Indeed, what an ethical dilemma!!

Mathew consulted his lawyer William. "How should I behave", he asked, "in order not to be liable to class actions and recriminations on an unethical conduct? I want to exercise the warrants, it is ethical and justified to do so, I deserve it, I worked very hard to get there. The initiative of the merger was mine, the shareholders are going to receive a benefit of tens of percents on their shares' prices on top of the existing price. The merger takes place at a price which is 50% higher than the company's Net Worth, 30% higher than its valuation on the stock exchange based on a price of \$19 a share. They are going to benefit a capital gain of hundreds of million dollars and it is inadmissible that the only one who wouldn't benefit from it would be me, the initiator of the merger. I consulted the controlling shareholders on this issue and they have agreed that I would exercise the options. Furthermore, they are willing to give me a three-month loan to purchase the shares at the exercise price of \$20. If I would sell the shares within this period at \$26, and conservatively it would be the minimum price of the shares in this period, I would make a profit of \$6 per share or \$6M after repaying the loan of \$20M. Not bad for negotiations that took place during two months only." William examined all the legal issues and gave him a detailed opinion stating that he could exercise the options, as on the 31st of December there was no certainty that the transaction would take place. As long as the merger is not signed, the parties could change their minds, furthermore, the execution of the contract was subject to the fulfillment of many subsequent events, such as the approval of the Chief Scientist, who financed part of the company's R&D, to the transaction, and so on.

Mathew raised a strong antagonism in the management of Medical Equipment. They were mainly scientists who founded the company tens of years ago and brought it to a valuation of several hundred million dollars. For them the sale of the company to the Germans was an outrage as they thought of themselves as the entrepreneurs of high tech in their country. They were the first local company to go public in the US, they were the first to enter those markets in their country, they developed in many cases the most advanced medical equipment in the world. On the other hand, Mathew was a mediocre engineer and all his success was due to his sharp business senses, they even said his "schemes". He proposed to the tycoons with whom he collaborated to take over Medical Equipment three years ago for the ridiculous market price of \$50M, to turnaround the company and sell it for \$100M. They agreed to acquire the company and now after only three years he was about to sell the company not for \$100M but for \$500M. "In every other country I would be called the benefactor of the shareholders, and only in this hypocrite country I am nicknamed the enemy of the people and they want to crucify me", he said. After pondering a lot on all the ethical issues Mathew decided to exercise the options at a price of \$20, one dollar more than the market price.

Mathew was the only warrant holder who exercised his options, after all it didn't make any business sense to do so. But before the astonished shareholders had the opportunity to investigate what happened they were informed that Medical Equipment was sold to the Germans at the exorbitant price of \$500M. Robert, the CEO of the company, who knew of the merger but opposed it vehemently as most of the company's management, made a public announcement that he opposed the merger and was overruled by the controlling shareholders. "It is a black day for our young high tech industry. The flagship of our industry is sold by greedy tycoons to a foreign company for a capital gain that is far less than the intrinsic value of our company, that should be at least one billion dollars. Furthermore, our CEO utilized insider information to make a few million dollars profit at the expense of the other shareholders who didn't have his insider information. I had

this information but didn't exercise my options, I knew that I was losing a lot of money in not doing so, but my conscience wouldn't allow me to benefit at the expense of the other shareholders, by breaking the law, and by selling my company to the detriment of most of the stakeholders and of our nation." In one of the interviews he was asked what was wrong in increasing the valuation of a company tenfold in three years from \$50M to \$500M. He said that the valuation is much more than that and he urged the Chief Scientist not to approve the transaction as it was to the detriment of the country and he suspected that Medical Equipment would not reimburse the Chief Scientist of all his investments in R&D in the company. Robert urged the shareholders to sue Mathew and Medical Equipment on not disclosing the forthcoming transaction prior to the closing and on enabling the Chairman to benefit unlawfully from insider information.

Mathew was astonished of the emotional reaction of Robert. He consulted Lawrence how to respond to it, as this conduct was completely against all business practices, against the interests of the controlling shareholders, and transgressed Robert's loyalty to the company. Lawrence founded Medical Equipment tens of years ago but became soon a financial wizard who was busy most of his time in conducting IPOs and public issues on the subsidiaries of his holding company. He remained one of the controlling shareholders in Medical Equipment together with the tycoons who acquired it and he had an obvious interest that the merger would take place. Lawrence backed Mathew and advised him to fire Robert. At a stormy Board of Directors' meeting of Medical Equipment the merger was approved, Robert was fired and Mathew received the full support of the directors, including on the options' exercise. Within a week of the announcement of the merger Mathew and Medical Equipment were sued in ten class actions for non disclosure and benefiting of insider information, but the press reacted to those actions as provocative. The Chief Scientist stated that he would oppose the transaction unless he would be reimbursed on the \$250M that he had invested in the company's R&D. The Germans who were baffled by the unfavorable responses to the merger considered its annulment. The shares' prices

dropped to \$19 and all the benefit from exercising the options vanished. Mathew pondered on the course of action he should take.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: ETHICS IN CORPORATE GOVERNANCE CASE - INSIDER INFORMATION

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Mathew, Chairman of the Board of Directors of Medical Equipment, 2. Robert, CEO of Medical Equipment, 3. Lawrence, founder of Medical Equipment, 4. William, legal advisor of Medical Equipment.

- * What were the reasons for Mathew's decision to exercise his options?
- * Why has Robert opposed the merger of his company with the Germans?
- * Why hasn't Robert exercised his options of Medical Equipment?
- * Differentiate between the rational and irrational motivations of the protagonists.
- * Was William right when he gave the favorable legal opinion on the exercise of the options?
- * Why has Lawrence urged Mathew to fire Robert?
- * Was the dismissal of Robert a sound decision?
- * What are the differences between a financial and a strategic investment?
- * Did Mathew have a moral right for selling the company? And if so - to foreigners?

- * Did Robert have a moral right to oppose the merger? And if so - to express it in the press?

- * Has Mathew benefited from insider information in exercising his options? Did he take any risk that the transaction wouldn't take place after all? What was the collateral that Mathew gave for the loan he received to exercise the options?

- * Has Mathew envisaged such a strong criticism to the merger and to the exercise of his options? What was the reason for this criticism?

- * How would you behave if you had the possibility to exercise the options?

- * Describe a way that you could exercise the options and still remain ethical?

- * Describe the ethical/unethical conduct of the protagonists of this case.

- * Mathew wanted to exercise his options in parallel to the announcement of the merger. He couldn't do so because of the constraints that the Germans raised. Mathew didn't mean therefore to utilize any insider information and he would have preferred to exercise his options with the other shareholders. True or false?

- * Has the fact that Mathew was the architect of the merger give him any special rights to benefit more of the merger than the other shareholders?

- * In contrary to Mathew's allegations, Robert maintained that he was responsible of the miraculous turnaround and the increase of the valuation tenfold. If it were not for his and his management's endeavors the Germans would have never given such a proposal - true or false?

- * Why are the Germans so sensitive to the bad publicity on the merger? What is the basis of a high tech company's valuation: its assets, its know-how, its goodwill, its employees?

- * Why has the Chief Scientist opposed the merger?

- * Why did the Germans want to report the transaction in the new year and the sellers in the previous year?

- * Were the Germans disappointed from Mathew's integrity when they heard of the imbroglio on the exercise of the option, the dismissal of Robert and the bad publicity?

- * Are cases of utilization of insider information common in the world, in your country?

- * What is unethical in utilization of insider information? All those who have insider information utilize it anyhow, whether they are minority shareholders or investment bankers?

- * If Mathew would have bought shares prior to the announcement of the merger and sold them immediately afterwards it would have been a clear-cut situation of utilization of insider information. But, Mathew didn't decide of the timing of the exercise of the option that was set much sooner, therefore this is not a case of illegal use of insider information. True or false.

- * Michael Milken, the King of the Junk Bonds, was sentenced to several years of prison because of unlawful utilization of insider information. Do you know of cases in your country that tycoons were sentenced to prison on similar cases?

* Were the warrants to purchase one million shares that were given to Mathew reasonable or too high?

* Why has Mathew received the full backing of the tycoons and of Lawrence?

* What will happen to Robert after quitting the company? Do you know of any other cases that the CEO of a company acted against the decisions of the Chairman of the Board and the controlling shareholders?

* What are the lessons that you draw from this case? How would you behave if you were Robert or Mathew?

CONCLUSION

All the class actions were dismissed by the courts. At least, the minority shareholders didn't have to pay penalties to their wrongdoers. The learned judges arrived to the conclusion that Mathew didn't utilize insider information. Needless to say that Mathew was represented by the best lawyers who impressed very much the judges with their learned arguments. Medical Equipment was sold to the German conglomerate. The Chief Scientist didn't get back his investment in the company. The public and the minority shareholders had to feed the bill as they didn't have the opportunity to sell their shares at the higher prices. The controlling shares of the company, with its \$500M in cash, was sold to another tycoon at a premium and subsequently the price of the other shares dropped to a minimum.

Robert received a reputation of a whistleblower. He couldn't get any employment contract in his country and he became an entrepreneur. He participated recently in a panel on business ethics and told the audience about his ordeal as a whistleblower and his long Odyssey on behalf of justice. The panel was very interesting but the press didn't report it.

Mathew is a very successful businessman. He participates in several venture capital funds and has even established his own one with the millions of dollars he received on the merger. At any occasion, he discredits Robert and relates to him as an untrustworthy man. He would never forgive Robert for blowing the whistle and disclosing his "unethical" conduct to the shareholders, to the press and to the public. Mathew is cherished by his country's tycoons.

William has one of the largest law firms in his country. He continues to give legal opinions to every bidder. The defamatory allegations are - that he has two price tags for these opinions: \$5,000 for an opinion in which he believes and \$10,000 for an opinion in which he doesn't believe. William is convinced that all his acts are ethical and he often gives lectures on ethics.

Lawrence has quitted his business activities due to his age. When he met Robert recently in a cocktail party, Robert refused to shake hands with him. When Lawrence wondered why, he told him: "There are things that one cannot forget!" But Lawrence answered him that if everyone whom he has allegedly wronged would ostracize him he wouldn't remain with any friend. "Admit what has happened like a man and like all my friends did. Flow with the tide, don't hold any grudges or you wouldn't be able to do any business in our country", he recommended him.

The minority shareholders continue to invest in companies of Mathew and his associates. They never learn, "suckers" continue to lose their money as they have a very short memory and hope optimistically that ultimately they would become millionaires as Mathew or Lawrence, their mentors. The minority shareholders try to imitate Mathew and get insider information from their bankers, friends and executives of the companies they invest in. But as they are outsiders they are never able to get the information and lose all their money in the long run.

In the US minority shareholders correspond in stock talks and are able to get information or disinformation from other minority shareholders or from disguised company's executives. Often, whistleblowers, like the famous Mr. Pink, give them for free insider information but they don't believe him as they would rather believe the biased information of the unethical companies that have a vested interest instigating the minority shareholders to buy their shares at the peak prices and sell their shares to insiders at bottom prices, by manipulating the price of the shares for their own benefits and utilizing the insider information received as executives and directors. Nevertheless, the Internet is now a vehicle that minority shareholders can use.

ETHICS IN THE STOCK EXCHANGE CASE – INTEGRITY OF DIRECTORS

(All the characters and plot and all the names of the companies in this case are fictitious)

Bernard was very strict throughout his business career in his ethical behavior. He worked as VP Finance in many large companies and the subject of integrity was his prime concern. In his last position he worked in a company that needed a turnaround and he managed to do it while paying the salaries on time, paying the suppliers, the tax authorities, the banks and all the other creditors. It was a point of honor for him to keep his word and he thought that going bankrupt was a crime. Bernard was a silent hero who contributed to society by his deeds much more than many tycoons who gave charity to the community. He thought that being CFO of a successful company was not really a challenge and what he did was the real thing. That is why he wasn't sure that he should take the fantastic position he was offered by the Bank that was the controlling shareholder of his ailing company. He was offered by the bank to be the CEO of its largest trust fund, a very profitable organization, one of the largest of the country. Although he was offered one of the highest salaries he thought that it was justified as he held in trust the funds of the widows and orphans who invested in his fund. This time his cash-box was full but he worried at night that he wouldn't be able to give the highest return on investment, that he would receive a lower rating, that the bank would regret his nomination.

The stock exchange of that year had very disappointing results. Many companies went bankrupt or had losses. All the funds regressed in their results and some of them achieved even a negative return on investment. Bernard fought very hard to retain his position as the fourth fund in its return and the first fund out of the

banks funds. He didn't want to compete with the first three ones that were held by private investors as he thought that their investment strategy was too risky. He had a very conservative approach and would not invest in risky shares. After all, the widows and orphans cannot afford to lose their money. This quarter he was about to lose money for the first time unless a miracle occurred. He was too ethical to try getting insider information on the companies he was invested in and he couldn't receive information from the bank where their accounts were held because of the "Chinese Wall" between the two activities of the bank - commercial and investment. The Board of Directors of his fund comprised of an equal number of independent directors and bank directors. This was done for ethical reasons in order not to impose the bank's interests on the fund's clients. But Bernard was worried, too much ethics, too many walls, and from where would he find his profits? All his competitors were not as scrupulous as him and they would surpass him...

At his meeting with Craig, the CEO of one of the holding companies of the bank, he told him: "I don't want to get any insider information, it would be against my ethical standards and contrary to the law, but if the shares of one of your companies are expected to collapse I would be grateful if you would just hint me and I would get rid of those shares. I can't afford to lose anymore and I need to find the right balance between my conscience and my clients." Craig answered him: "It is swell that you told me that. As a matter of fact, I expect that the shares of one of my subsidiaries would collapse soon. Fabrizio is in a bad shape for a long time but until now we sustained the price of the shares. If we would cease to do so, as well as take some other initiatives that you shouldn't know about them, the valuation of the company would collapse to one million dollars. After this, we intend to privatize the company and purchase from the "poor" minority shareholders their shares. They hold 75% of the shares but we control with our 25% the Board and appoint the "cooperative" CEO. We are about to complete the turnaround of the company and the development of some revolutionary products, we have the best scientists, and a know-how worth at least a few hundred million

dollars. The present valuation of the company is \$40M but we don't want the other shareholders to benefit from the turnaround. After all, they are only despicable speculators motivated only by greed, while we really care for the company, its employees and our export. I know that your fund has a lot of Fabrizzio's shares, 5% if I am not mistaken, and in order not to hurt your rating and your widows you should dump into the market all your shares, it will start the collapse and all of us would benefit from it. After the privatization and the turnaround we intend to issue once again the shares, this time for a valuation of at least \$100M, and then the shares will collapse, we'll turnaround the company, and the fools' ship will continue to sail indefinitely. Sky is the limit, my friend, and you'll profit from it a lot!"

Bernard sensed that the information he received was not so ethical to say the least, "but who would ever know, as the laws of Omerta prevail in our country, like in the Mafia. I do it for a just cause, for the widows and orphans, for the shareholders of the bank. Fabrizzio is an American company, most of its shareholders are Americans and the interests of my countrymen prevail over the interests of the foreigners. Those speculators gambled on the shares, and in the stock exchange you win some and you lose some. It cannot be compared to my clients who invest all their savings in my fund and need their money for their old age. What should I prefer - the interests of the American wealthy gamblers or the interests of the poor people saving in my fund? This is social justice in its more refined form. I cannot afford to lose and if I don't use this information it would jeopardize our position in the market and the bank and the orphans could sue me that I didn't act in their best interest. If I had only a few shares, I wouldn't mind, but I have \$2M in Fabrizzio's shares and I really can't afford to lose all this money. Besides, if my fund will lose I would probably be fired and some shark would replace me that could act to the detriment even of the clients in the fund. My allegiance is first of all to my clients, then to the bank, to the economy of my country, to my wife and children, and all these force me to sell the shares and let them benefit from the information."

On the same day Bernard gave instructions to sell all his shares in Fabrizzio. Following the dumping of 5% of the shares the price collapsed by 20% in one day. "Who are those suckers who buy my shares today?", thought Bernard, "if they only knew what will happen to their shares, poor guys, but what can I do, it is either me or them. But on second thought, they are only speculators who think that they buy the shares at a bargain price of 20% less than yesterday." The NASDAQ investors didn't even notice this event, as Fabrizzio was a rather small company. It was the beginning of the collapse of the company's shares and when the valuation of the company reached \$2M after nine months (unfortunately, Craig and his friends couldn't achieve their goal to reach a valuation of \$1M) the management of Fabrizzio proposed gracefully to buy the shares of the company from the minority shareholders. 98% of them agreed to the offer and all the others had to sell their shares, losing almost all their investment. Bernard showed on that a year a low return on investment, but still positive. He obtained only the fifth rank, but was still the most profitable bank fund. Bernard calculated that if he wouldn't have sold the Fabrizzio's shares he would have got only the eighth rank and the third one in the bank funds. "I had such luck to receive the hint of Craig, it helped me to maintain my rating and my position, the bank and clients benefited, indeed a win-win situation." He got a bonus of half a million dollars and was the highest paid fund manager. He took a trip to Rio de Janeiro and danced samba at the carnival with his wife (he was a family man) for three days and three nights. It was a good year for him and for aaalll his stakeholders...

Back home, he learned of two disturbing events. His good friend Don who invested all his savings in the shares of Fabrizzio lost all his money and committed suicide with his gun, leaving a widow and five small orphans. Another shareholder of Fabrizzio, Mario, who was a harasser thorough investor, investigated on all the funds who were invested in Fabrizzio, if they still hold their shares or if they sold it and when. He discovered that Bernard's fund managed to sell its shares right before the collapse. He approached the SEC and

asked for an investigation of the fund, as he suspected that it has used insider information from one of the conglomerate's executives, as both Fabrizzio and the Fund were part of the same conglomerate. Still hearing the sound of the carnival's sambas and with a hangover of the quarta-feira, Bernard wondered if he was right in his actions, if he should have used the insider information, sell the shares, and what would be the end of this saga.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: ETHICS IN THE STOCK EXCHANGE CASE - INTEGRITY OF DIRECTORS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Bernard, CEO of the Bank's Trust Fund, 2. Craig, CEO of Fabrizzio's holding company, 3. Don, a minority shareholder of Fabrizzio who committed suicide, 4. Mario, a minority shareholder of Fabrizzio, who blew the whistle to the SEC.

* Will the principle of personification apply to Bernard in this case? As long as he didn't know personally the shareholders of Fabrizzio he didn't care about them, but now - he knows one of them, Don his friend who committed suicide because of his actions. Will it matter?

* Is the utilization of insider information by Bernard legal, ethical, effective, moral, fair to his stakeholders, fair to Fabrizzio's stakeholders, fair to the bank?

* What will be the reaction of the SEC to Mario's complaint?

* Bernard started his career at the Fund as an ethical executive. Was his work at the fund the cause of the change in his principles? Does wealth corrupt, excessive wealth = excessive corruption? He remained ethical when the situation was tough, so why has he changed now?

- * Why has the Bank offered Bernard a position as the Fund's CEO?

- * Bernard boasted that he was the keeper of widows and orphans and now his actions made new widows and orphans. How would Bernard react: forget it and go to the Mardi-Gras in New Orleans, commit suicide, leave his home and become a monk, quit his job and start to teach business ethics at the university, donate his \$500K bonus to Don's family?

- * Bernard's wife who saw him worried said to alleviate his conscience: "Even if you wouldn't do anything, Craig would have made the shares collapse in a different way, so it is not your fault." Is she right?

- * An old saying says that a rich man who lost all his money is far poorer than a poor man who never had any money. Does it apply also to Bernard and to his behavior?

- * Is it easier to commit ethical crimes in a bear stock exchange, when many shares collapse?

- * Do you believe in the Chinese Walls of the banks?

- * Do you think that Trust Funds shouldn't be owned by banks?

- * Bernard asked from Craig information only on collapse of shares that he knows of. Is there a difference in insider information on collapse of shares, moderate decrease in valuation, moderate increase in valuation, breakthrough of a company, stagnation of prices?

- * *Così fan tutte*. Is it a reason for Bernard to do as all the others do and utilize insider information?

- * Why should we prevent from Bernard the possibility of getting insider information from other companies in the conglomerate? If he wouldn't do so what kind of relative advantage would he have, especially if the other funds did it?
- * Insider information, bribe, violence are the weapons of weak and incompetent people. Good managers don't need it in order to succeed if they have a sharp business sense. True or false?
- * Craig tells Bernard about all Fabrizzio's scheme details although he could only hint him "sell the shares". Why does he volunteer information?
- * Craig has a crystal clear conscience about all his actions. Why?
- * Mario gathered information on all the funds. Is it easy to get it, why didn't all Fabrizzio's shareholders do it? What can he learn from this information?
- * Don committed suicide after losing all his money. Was he a speculator? Why hasn't he invested his money in a solid Trust Fund like Bernard's?
- * What lessons do you draw from this case? What would you do if you were each one of the protagonists? Describe similar cases that happened in your career.

CONCLUSION

The SEC didn't do a thing. Mario spoke with one of the enforcement department who told him that the SEC does not investigate such matters. There was no evidence that the prices of the shares were manipulated and there was a bear market anyway. Mario lost all his money but didn't commit suicide. He started to study what happens to minority shareholders in unethical companies and discovered the rules that govern such conduct. He published a book, the first one on ethics to minority shareholders, just before the Enron scandal that validated the rules that he found. None of the minority shareholders bought his book. But he decided to devote his life to this purpose until they would want to hear.

Bernard didn't go to the funeral of his friend Don. He couldn't face the widow and the orphans although they didn't suspect that he was involved in this matter. He didn't go to the Mardi-Gras in New Orleans but preferred to visit the Galapagos. When looking at the prehistoric turtles, he wondered to which direction Darwin's evolution goes. Is there a place in the modern world to endangered species of honest men and women or will they be extinguished in a generation or two?

Craig continues in his Machiavellian schemes. Recently, the conglomerate in which he works was sold to another tycoon. He left the conglomerate with a golden parachute of \$15M, after all, he was instrumental in achieving the high valuation that his tycoon received for the conglomerate. Mario sent a letter to this tycoon right after he discovered the scheme but never got an answer. He wrote that Craig would betray the tycoon as he has betrayed the minority shareholders of Fabrizzio, but he was wrong. Craig continued to be a devoted and loyal servant to the tycoon who appreciated the fact that he made him richer without entangling him in his schemes. But the tycoon, being an ethical man, remunerated him very well with the parachute.

The widow of Don had to return to work in spite of having to raise her five small children. She invested the small amount of money she received from the insurance in Enron's shares, which was perceived as the company with the brightest prospects. "I will recoup all Don's losses and will be able to send the kids to college", she said. After the collapse of Enron her eldest children had to go to work. She never heard of Mario and of his book.

The turnaround of Fabrizzio did not succeed. Most of the engineers left the company as they knew of the scheme and didn't want to work in such a corrupted environment. The new CEO caused the final collapse of Fabrizzio. Subsequently, he was transferred to another subsidiary and trying to improve its profitability evaded paying taxes of \$5M. He was caught by the IRS and sent to jail, but as he didn't blow the whistle on his bosses who backed his schemes, he received in Aruba an amount of \$10M. He didn't transgress the law of Omerta and the tycoons appreciated it. His reputation was tarnished but society perceived him as a smart guy.

The know-how of Fabrizzio was not lost. It left the company with the hundreds of engineers and scientists. They started tens of new start-ups which were valued subsequently in billions of dollars, they sold billions and employed thousands of people. Their shares went up and down, some people lost all their savings, others became millionaires, mostly those who had insider information. None of the minority shareholders got rich, as they always lose in the long run by investing in unethical companies. When will they ever learn?

BANKING AND INTEGRITY CASE - INDEPENDENT DIRECTORS

(All the characters and plot and all the names of the companies in this case are fictitious)

Professor Smith was a finance lecturer in one of the leading business schools in his country. His dissertation and specialization was in the technical analysis of shares' prices in the stock exchange. He was convinced that Adam Smith's invisible hand governed the conduct of all the economies, the stock exchange and human behavior. This invisible hand found the right balance between the vectors of all the forces and interests of the market. The prices of the shares were achieved accordingly by a sophisticated mathematical model that he discovered. The technical analysis decided why a price couldn't get lower than \$10 or higher than \$20. Everything is rational, mathematic, logic, cold. Because of the worldwide reputation he had (his friends even submitted his candidacy to the Nobel Prize) Ordat Bank offered him a position as an independent director in its Trust Fund. The Board of Directors comprised ten directors - five from the bank, one of them was Jonathan the Fund's CEO, and five independent directors, one of them was Smith. This balance between the interests of the public and the bank coincided with the invisible hand theory stating that all was balanced in life. Smith was a bachelor, as he couldn't understand women's mentality that he perceived as unbalanced, illogical and emotional. The Bank Funds were requested according to a recent law to attend all shareholders' meetings in the companies they were invested in. Jonathan would report to the Board on those meetings, how they asked the companies trenchant questions and what they answered them. However, the Funds never voted against the motions of the controlling shareholders who were in most of the cases - the Banks, the tycoons owning the

banks, or their friends and associates. "We were required to participate but nobody can tell us how to vote", he said smiling.

To tell the truth, Smith enjoyed very much the Board's meetings. The bank also remunerated him largely, and he got from the Fund much more than his meager salary at the university. But Smith's needs were moderate, he didn't have a pet, didn't go to the theatre or films, and his only fun was to participate in symposiums with his colleagues and argue about the latest developments in the mathematical models. The Bank liked very much professors like Smith who never asked tough questions and they had many Smiths in all their Boards of Directors. They didn't have in any Trust Fund Board a social activist woman who would safeguard the interests of the widows and orphans, the John Does who invested in the funds all their savings. There was not also any journalist who disclosed frauds or understood business schemes in the Board. But how could you compare such troublemakers with distinguished professors like Smith? Jonathan would ask once in a while Smith to give an opinion (paid by the Fund) on the technical conduct of a share. In 10% of the cases Smith was right, he was very proud of it and was praised by all his colleagues. He even told his students about them in his courses, but they were very bored by his technical lectures, didn't participate in classes and received low grades in the exams, knowing they will never use the formulas in their professional career.

The Olympic serenity of the invisible hand was disturbed one day by Horacio, a minority shareholder in Tovlin. This company was not related to Ordat Bank, although its parent company Tovdor that was very profitable deposited \$50M in the Bank. Troy, the CFO of Tovdor, was a personal friend of the CEO of Ordat Bank, as they grew up in the same neighborhood in their childhood. Horacio discovered that the price of the shares of Tovlin were manipulated in order to wrong the minority shareholders, make the share collapse and enable Tovdor to purchase the minority shares of Tovlin, that had prior to that a valuation of \$100M, at a valuation of \$10M. All the minority shareholders were convinced

that the collapse was due to the bearish market and sold their shares to Tovdor that purchased all the minority shareholders' shares and privatized the company. But Horacio received insider information from one of the managers who was fired. He told him what really happened, gave him incriminating evidence, proving that Tovdor premeditated the takeover, caused the collapse and purchased the remaining 70% of the shares (they controlled the Board with 30% of the shares) at a valuation of \$10M instead of \$100M, 10% of the original value or \$90M less, thus wronging the minority shareholders by \$63M (70% x 90). Horacio, who was married to Smith's sister, asked him in a family dinner if by any chance his Trust Fund had invested in Tovlin's shares. Smith said that he didn't know but he would check and inform him. The day after when he asked Jonathan, he learned that indeed they had invested in Tovlin and even have lost \$3M in the collapse of its shares. Smith examined the technical conduct of the shares of Tovlin and discovered that it totally contradicted all his theories. For the first time he discovered that not an invisible hand but a very visible and greedy one has wronged the minority shareholders of all their savings and the Fund of \$3M. He was so shocked by his discovery that he decided to investigate the matter personally and asked to convene the Board.

Jonathan and his colleagues at the Bank were stunned. They called Smith the mouse that roared, and indeed he looked like a mouse, but he didn't roar at all. In his quiet and dry language he presented to them all the material, the scheme that was by all means illegal and unethical, the motives and the evidence and requested formally that the Fund would sue Tovdor and Tovlin. Jonathan was very nervous. He knew of the personal friendship of Troy and the Bank's CEO, on the \$50M deposits of Tovdor in the Bank. But he couldn't shatter the illusion of the Chinese Wall. "We have to conduct carefully", he thought, "this madman can go to the press, to the SEC, God knows to whom else. He is very respectable and we cannot disregard his allegations. I couldn't care less of the \$3M loss of the Fund. The Bank will lose much more if they start a holy war against Tovdor and the tycoons who control it and who are befriended with the tycoons who control

our bank." Jonathan seemed very impressed by Smith's allegations, he told him that \$3M means a lot to the Fund, and he wanted to meet immediately Horacio. "Know thy enemy", he thought, but he couldn't imagine for a moment that he was not his enemy but his friend of misfortune, as both have lost a lot from Tovlin. But were they really friends? Horacio lost his money, the money he has saved for buying a house. But Jonathan didn't invest a dime in his Fund, nor has the Bank. All the money in the Fund was money of people who saved for their old age or for other purposes. There was a divergence of interests between their interests and the interests of the bank. Furthermore, the interests of the Bank were different than the personal interests of its CEO, of Jonathan, of the controlling shareholders, and so on. And there was no invisible hand that balanced all interests. The strongest interests, those of the tycoons, would prevail and the weakest, the orphans and widows who saved in the Fund, would lose. The models of Smith didn't foresee it.

Horacio set a meeting with one of the leading lawyers who specialized in representing wronged minority shareholders. Jonathan hoped that the lawyer would ask for such a high prepayment that his Fund wouldn't be able to pay it. To his surprise, Horacio convinced the lawyer to work on a contingency basis. He didn't like Tovdor and its management as he learned of their unethical practices in previous cases. He made only one condition that Horacio would join forces with the Fund. Jonathan had to send a junior employee to the Shareholders' meeting of Tovlin and he asked twenty harsh questions prepared by Horacio. Tovlin's lawyers, auditors and directors evaded answering the questions and they did not even include them in the protocol of the meeting. The purchase of Tovlin by Tovdor was approved by an overwhelming majority. Smith continued to insist on suing Tovlin, Jonathan continued his war of attrition, in full coordination with Tovdor's and the Bank's management in spite of all the Chinese, Burmese and Japanese Walls. After eight months of attrition, Jonathan managed to get the approval of the Fund's Board not to sue Tovlin because of the minor administrative costs of the legal suit (the lawyer didn't charge anything) that could not be borne by the other investors. It was not ethical to do so to the widows and

orphans who invested in the Fund. The Fund was very profitable this year and the loss of \$3M was "immaterial".

Smith was the only one to oppose Jonathan's proposal. The other independent directors were reluctant to oppose the Bank who appointed them "indirectly". Smith was considering the different alternatives open to him. He started to read books on business ethics, novels of Emile Zola - *L'argent*, learning that nothing was new under the sun. He wondered if he should be like Dr. Thomas Stockman, the whistleblower in *An Enemy of the People* by Henrik Ibsen. He buried all his theories about the invisible hand but he came hand in hand with a charming woman at the family dinner with Horacio and his sister. Troy, Jonathan, Ordat Bank's CEO and all their associates were anxious to know how Smith would react to their actions. They knew that with a lot of money and the assistance of the best lawyers they could face any allegations but preferred to avoid publicity. If only Smith could be convinced by a direct or indirect sweetener to let bygones be bygones and behave rationally like all the others!...

ANALYSIS AND TOPICS FOR CONSIDERATION ON: BANKING AND INTEGRITY CASE - INDEPENDENT DIRECTORS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Professor Smith, Finance lecturer at the university, 2. Jonathan, CEO of Ordat's Bank Trust Fund, 3. Troy, CFO of Tovlin, subsidiary of Tovdor, 4. Horacio, a minority shareholder of Tovlin.

- * What do you think would be the next steps of Smith?

- * Why has Smith changed his beliefs after the case of Tovlin?

- * Do you believe in technical analysis of the price of shares in the stock exchange?

- * What are the real interests of Jonathan?

- * What are the real interests of Ordat's Bank CEO?

- * Why has Tovdor decided to wrong the minority shareholders of Tovlin in order to takeover its operations?

- * Why has the CEO of Tovlin cooperated with the management of Tovdor in the scheme? Has he betrayed the interests of his company, his stakeholders, his minority shareholders?

- * What real options has Smith to force the Fund to sue Tovlin?

- * What are the interests of the directors, independent and others, of the Trust Fund?

- * Who should appoint the independent directors of the Fund?

- * Should the independent directors be restricted to be directors in only one or two Boards of Directors? Which interests they should protect?

- * Was the fact that Horacio was his brother-in-law instrumental in the decision of Smith to investigate the matter? What would have happened if Horacio was not related to Smith?

- * How does Jonathan succeed to maneuver between the contradicting interests and find a solution to the crisis?

- * Is the decision of Jonathan not to sue Tovlin justified?

- * Do you know of cases that Trust Funds have sued the companies in which they have invested, when they wronged their shareholders? Have they succeeded in their lawsuits?

- * How should be devised the law on Independent Directors in order to make them safeguard the interests of the minority shareholders? Of other stakeholders? Who should appoint and remunerate them?

- * Do you know of any cases in which independent directors changed the decisions in Boards of Directors acting against the interests of the controlling shareholders?

- * Many controlling shareholders look for independent directors who don't hear, see or speak, like the three monkeys of the pictures. What do you think?

- * What are the lessons that you draw from the case? How would you behave if you were Smith, Jonathan? Do you know of similar cases? Is there a difference between an independent director in a Trust Fund, in a Bank, in a company?

CONCLUSION

Smith didn't do a thing. He came to the conclusion that he didn't have any chance to fight the Fund, the Bank and the tycoons who controlled the Bank and Tovdor. He decided to sublimate his fight and attack the system. He is trying to promote the establishment of a National Institute of Ethics who would judge the unethical conduct of companies and banks, appoint and remunerate independent directors who would represent the interests of all the stakeholders of the companies, including the shareholders who are not the controlling shareholders. He wants to organize all the shareholders so that they would give their proxies to the independent directors and to the Institute of Ethics. In a company controlled by shareholders who have 30% of the shares, the independent directors would represent the shareholders having the remaining 70% of the shares who do not control today the company as they are not organized. In this way, in most of the existing companies, the mega corporations, the conglomerates, the independent directors would represent the democratic interests of the unorganized majority and even of the stakeholders. He dreams of a Union of Shareholders like the trade unions who managed to get the workers all the rights that their employers denied in the Dickens times. He says: "We are like the proletariat of the unorganized workers in the late nineteenth century. But we are not going to make all the mistakes of the socialists and communists regimes. In a post-modernistic era we have to reconstitute the rights to the people who own the companies as shareholders, in Trust Funds, Pension Funds, as employees, customers, suppliers and members of the community. The tycoons do not represent the people although they influence all the democratic regimes by financing the politicians. The rights of the people should be predominant and not the rights of a few hundred billionaires who control everything. I am a true democrat wanting to reconstitute the power to the people." Smith's remuneration has decreased substantially as he is perceived a whistleblower and is no more a director. He has to live from his meager salary at the university and support a family - his wife, his three children and the old parents of his wife. His wife is a lawyer working pro bono for the community, and

although she is a brilliant lawyer, she declined to work for famous law firms and represent the interests of the tycoons.

The ordinary people, who invested all their savings in Ordat's Fund, didn't even hear of the scheme of Tovlin and the loss of \$3M they have incurred. The transparency of the Fund does not go beyond the minimum requirements of the law. Smith tries to convince them and all the shareholders to invest in ethical funds that have 13% of the total professional investments in Wall Street with \$2.2 trillion. He appears on TV and writes many articles showing that those funds give a similar return on investment as the S&P. His slogan is: "You can be ethical, successful in business and earn an adequate return on investment. Business and Ethics are not an oxymoron, don't be greedy or you'll lose all your investment." Smith maintains that the independent directors should be primarily ethical, independent, motivated by moral standards, have a sufficient knowledge in business, and not be intimidated by the controlling shareholders. He says: "The stock exchange needs us. If we will not invest in unethical companies they will collapse. We have the Armageddon weapon and we should use it. Nobody can force us to invest our money in the stock exchange. We should swim against the stream which today is transferring the funds from the poor and middle class people to the tycoons. We should break the waves, invest only in ethical funds and if not - in saving accounts, but don't ever invest in unethical companies or in companies that you cannot know if they are ethical or not. The Institute of Ethics guides you on the ethics of the company. The most important screening of a company should be the ethical screening. Unite and we will win our combat!"

WALL STREET AND ETHICS - THE FILM "WALL STREET" - SUMMARY AND ANALYSIS

Based on the film:

Wall Street, 1987, 120 min., Director Oliver Stone, with Michael Douglas, Charlie Sheen

Summary and Analysis:

The film describes the ethical dilemmas of a father - Carl Fox - and his son - Bud Fox - and how they are influenced by a financial tycoon - Gordon Gekko. Bud Fox doesn't succeed as a broker, which raises the question: Can you afford to be ethical only if you are successful? Carl, a foreman in an airline company, cannot understand why Bud decided to be a broker. Bud answers that he can earn in a year five times more, as he has no ethical considerations. Gordon Gekko appreciates the perseverance of Bud in trying to reach him and is willing to hear him for five minutes. Bud volunteers insider information on his father's company. The style of Gekko is military, very violent (I want him to bleed), a very common style. Bud becomes a hero at work after his success with Gekko, who is known to be unethical. Gekko demands from Bud to continue to supply him insider information like he did with Bluestar, as Gekko is not a gambler, he does not risk anything and plays for sure. Bud has inhibitions as he knows that it is illegal and he can lose his license. But Gekko lures him with bonuses of hundreds of thousands dollars if he will assist him to win as he doesn't like to lose.

Gekko who comes from a humble background despises WASPs, who love animals but can't stand people (but does he like them?). Gekko doesn't want Harvard graduates, he prefers poor and hungry people, but wise and unscrupulous,

who want to win. If you need a friend get a dog. Gekko contributes many donations to community and is a member of the New York Zoo, a trait very common to unethical companies who donate to community and cultural activities (tobacco companies?). Gekko describes the minority shareholders as a flock of sheep who get slaughtered. He demands from Bud to spy on Wildman and try to obtain some information on which company he wants to takeover. Although it is illegal, Bud agrees as Gekko tells him that he has already slipped when he gave him insider information on his father's company. Gekko rationalizes his conduct. His father died aged 49 after working very hard. That's why he is entitled to be ruthless and unethical, although the illegal actions are performed by others. Gekko lures Bud with the exorbitant amounts that he will win, not a miserable \$400K, rich enough to have your own jet, \$50-100M, A player or nothing... Which types of people can Gekko influence? Can an MBA graduate with courses in ethics succumb to Gekko? He is undoubtedly charming and convincing (most unethical people are?) In the meantime, Bud has long talks with his mentor Lou Mannheim who warns him to remain ethical. On the other hand, Darien Taylor, Bud's lover, has a bad influence on him, as she is interested in winners only, whatever the cost is.

Wildman wants to turnaround the Annacot steel factory after the takeover while Gekko is only interested in a speculative profit. He intends to dismantle the company and layoff most of its employees. Wildman tells him: We are talking about lives and jobs. You are a rogue and lousy blackmailer... Are Wildman and Gekko made from the same stuff or is there a difference between tycoons? Gekko rationalizes Bud's new conduct by saying that nobody loses. Is it true? What about the stakeholders: the employees, customers, suppliers, creditors, minority shareholders? Bud is generous towards his father, while in the past he only took money from him. But it raises Carl's suspicions and he warns him from unethical moves. Gekko clarifies to Bud that it's preferable that he will look as if he operates by himself. It's Bud's responsibility and Gekko supposedly doesn't know a thing. This is a crucial issue, as unethical managers/directors don't sign any

incriminating documents and don't incur any criminal risks. Bud buys a superb flat in Manhattan and gets accustomed to a very high standard of living. This is another consideration that increases degeneration. You are willing to pay any moral price in order to remain on the same standing, that you, your wife and your kids have acquired.

One of the highlights of the film is the fantastic performance of Gekko at the Shareholders' Meeting of Teldar. He wants to takeover the company and he manipulates the minority shareholders against the existing controlling shareholders and management. He says that America has become a second grade power because of such incompetent managers as the existing Teldar's management. Gekko: America has to return to the time of Carnegie and Mellon (the robber barons) who risked their own money. Not like the bureaucratic executives of today. There are now 33 vice presidents and the whole management owns only 3% of the equity. They lost \$110 million last year and half of it was lost because of overstaffed personnel and the correspondence between them. Gekko: The New law of America is the survival of the unfits. Either you do it right or you are annihilated. On the last seven transactions that I made there were 2.5 million shareholders who have earned 12 billion dollars. I don't destroy corporations I liberate them. And finally his speech on greed: Greed is good, greed is right, greed works, greed clarifies, cuts through and captures the essence of the evolutionary spirit. Greed, in all of it's forms - greed for life, for money, knowledge - has marked the upward surge of mankind, and greed will not only save Teldar Paper but that other malfunctioning corporation called the USA.

What is our impression on Gekko's speech? Can we agree to it completely, partly, not at all? America has really become in the '80s a second grade power because of excessive bureaucracy in government and business. Teldar with its existing management cannot survive, but is the solution to let greedy tycoons like Gekko dismantle it? What about the rights of stakeholders? Gekko boasts of the fantastic profits he has generated to his shareholders but he forgets to mention the

distribution of the profits, as he got the lion's share and the others - peanuts. The survival of the fittest as advocated by Gekko is the opposite of ethics. Of course the fittest must run the economy but not at the expense of the weakest. All the stakeholders should be treated equitably. Without ethics we shall return to the catastrophes of the '80s and to Enron.

Gekko tries to takeover Bluestar, Carl's company, cut down salaries and streamline the business. He manipulates the pilots and stewardesses, with the assistance of Bud, but doesn't succeed to outfox Carl Fox. Carl tells his son that the rich people have always conned the poor ones and that's what he'll do also with Bluestar's employees. You should never work with greedy men. Carl prefers the existing owners even if they are incompetent, but they have founded the company out of nothing and gave employment to thousands. Bud answers his father that his conduct is influenced by the fact that he is jealous of him, but Carl answers that he has never measured the success of a man by the size of his wallet. A basic consideration in activist business ethics is never to work with companies and businessmen who are motivated uniquely by profits and especially by greed. In the long run you are always conned by those people and companies. This is the first of Cory's laws. Success, profits and valuation are very important but ethics is no less important.

Bud learns that Gekko has taken over Bluestar only to dismantle it and plunder the pension funds. Unethical tycoons have often acquired companies only for their pension funds, leaving the employees without any money for retirement. Without ethics you don't care for employees. Bud who is supposedly Bluestar's new CEO does not agree with Gekko's move and Gekko answers him: You're walking around blind without a cane. A fool and his money are lucky enough to get together in the first place. Which means that with ethics you can't get rich. But this time Bud knows the employees. We have here the personification principle stating that it is much harder to wrong people if you know them personally. He asks Gekko "How much is enough?". But for Gekko there is never enough,

somebody wins somebody loses. Money itself isn't lost or made, it's simply transferred from one perception to another. Gekko: The richest one percent of this country owns half of our country's wealth, five trillion dollars. One third of that comes from hard work, two thirds comes from inheritance, interest on interest accumulating to widows and idiot sons and what I do, stock and real estate speculation. 90% of people out there have little or no net worth. I create nothing. I own. Gekko: You are not so naïve as to think that we are living in a democracy. It's the free market and you are part of it. You can survive only if you have the Killer Instinct. Gekko suggests Bud very convincingly to cooperate and he'll have enough money for his father too.

Is Gekko right with his arguments? What is better: Half of the wealth owned by 1% of the population or by 20-30%, what will generate more employment, growth, long run profits and valuation? In Israel, for example, half of the stock exchange is owned by 10 families.

After the heart attack of his father Bud decides to leave Gekko and join the ethical and poorer club. He is arrested after his illegal transactions are discovered. He decides to betray Gekko and becomes a whistleblower. Staring at the abyss Bud finds finally his character.

ETHICS IN BANKING – BARINGS BANK THE FILM "ROGUE TRADER" SUMMARY AND ANALYSIS

Based on the book by Nick Leeson with Edward Whitley: *Rogue Trader, How I brought down Barings Bank and Shook the Financial World*, Little, Brown and Company, Boston, 1996

The film is based on the book with slight changes:

Rogue Trader 1999, 101 min., Director James Dearden, with Ewan McGregor, Anna Friel

Summary and Analysis:

The film shows the importance of the CEO's personal example for the ethical climate of the bank/company. Peter Baring, the Chairman of Barings Bank is the descendant of an illustrious family of bankers who has managed the English bank for over 200 years. He succumbs to the business environment and instructs the managers to make profits at all cost, disregarding the conservative image that the bank has maintained throughout the years. This example has permeated throughout the whole organization until it gets to Nick Leeson who caused to the bank a loss of over a billion pounds, because of an irresponsible conduct in trading in the futures and options market in Singapore. Leeson is cited as an example by his superiors as he earns fictitious profits of up to ten million pounds in a week. There is no effective control and management of Leeson's transactions which are extremely intricate. The immediate cause that the Bank of England found for the bank's collapse in 1995 was lack of control of the bank. But no

measures were taken against the managers and controllers of the bank, probably due to the extensive connections of the family with English society.

Peter Baring boasted in 1993 that it is not so difficult to make large profits on the stock exchange. The failure of the bank was also caused by lack of transparency, predominance of profitability over ethics, and lack of ethical screening of employees which enabled a careless and uneducated person like Leeson to reach such a high level position in the bank. As "usual", the people responsible for the collapse of the bank were not punished (besides Leeson of course who was caught because of his clumsiness), and those who lost were the stakeholders, shareholders, customers, community and employees. In the Barings case, as in Enron, the executives were interested mainly in receiving huge bonuses, overlooking Leeson's scams which were apparent long before the collapse. The British press gave a very negative coverage of the scandal and complained the fact that Leeson was the only manager found guilty.

Some of the issues raised by the film and the book are: Could a rogue such as Nick Leeson be recruited in our company/bank/organization or promoted to a senior position? What are the most sensitive positions in our company and how could we avoid to recruit people such as Leeson? Should there be an ethical screening for positions in sales, purchasing, finance, control, human resources, quality control, top-level management? Why is ethics and the implementation of the Ethical Code the ultimate guarantee that such cases as Barings' collapse would not take place in our organization? Even if people like Leeson would infiltrate an organization and the control would fail in detecting unethical acts, such cases would not have occurred if there was no aggressive policy of granting huge bonuses to management regardless of ethical considerations. What are the positive aspects in the conduct of Leeson, Peter Baring and Barings Bank's management and control, if any? Following Barings' precedent should we become paranoid and suspect every one or should we still trust people and expect that most managers

are ethical? Is the integrity of management the most important characteristic in a company? If not - what is the most important one?

Can a similar case occur in a French Bank – Societe Generale for example, with another young man named Jerome Kerviel in 2008? Milton Friedman commented on Enron as a rotten apple, when will they ever learn that what is rotten is not the apples but the system, putting emphasis only in maximizing profits and valuation, disregarding values, ethics, social responsibility? The only preventive cure for those cases is by educating all the echelons of management in business ethics, screening the candidates first of all on integrity and ethics basis, and by returning to basics, namely that the mission of companies and banks is not to maximize profits but to optimize profits while finding the right equilibrium between the rights of all the stakeholders.

ETHICS IN LEVERAGE BUYOUTS - RJR NABISCO THE FILM AND THE BOOK "BARBARIANS AT THE GATE" - SUMMARY AND ANALYSIS

Based on the book *Barbarians at the Gate - The Fall of RJR Nabisco* (1990) by Bryan Burrough & John Helyar

The film is based on the book with slight changes:

Barbarians at the Gate, 1993, TV, 107 min., based on the book about the Nabisco takeover, Director Glenn Jordan, with James Garner, Jonathan Price

Summary and Analysis:

Barbarians at the Gate, the leverage buyout of RJR Nabisco, is a book and a film about the well-known duel between American Express/Shearson backing the CEO of RJR Nabisco, Ross Johnson, and Kravis over the acquisition of one of the largest American companies – RJR Nabisco, which was undervalued, but became subsequently overvalued. A leverage buyout is a typical example of the use of insider information as the buyers are the management of the company, assisted by huge financial organizations that utilize junk bonds or other modes of financing that were not theirs (they were there only for the profits) but from people who bore all the risk in return to a large profit. Here again we see the golden rule of the sharks: They never risk their own money but they earn most of the profits - whether it is the management of the company or intermediaries as investment bankers. Moreover, in order to finance the deal they use in most of the cases the assets, cash and pension funds of the acquired company as collateral, thus transferring the risk to the company. In many cases thousands of employees are fired in order to cut down expenses, cash is reduced to zero, financing expenses

increase manifolds, and sometimes the company goes bankrupt. Everybody loses, but the insiders and their associates gain huge profits. Ross Johnson and his associates would tell you that the shares' prices of RJR Nabisco were too undervalued despite the profitability and solvency of the company. Because of the competition between Kravis and Shearson the valuation of the company doubled compared to the market price, so if the mission of a company is to maximize valuation they have to be praised and to receive the "Friedman" prize for adhering to his precepts. But the buyout did not meet its expectations and all the other stakeholders lose from the deal.

The no. 1 bestseller *Barbarians at the Gate* captured the savage fight for control of RJR Nabisco, the largest takeover in Wall Street history. The book, which is read like a novel, has been called one of the most influential business books of all time. Bryan Burrough and John Helyar's account of the frenzy that overtook Wall Street in October and November of 1988 is the story of deal makers and publicity flaks, of strategy meetings and society dinners, of boardrooms and bedrooms - giving us not only a detailed look at how financial operations at the highest levels are conducted but also a richly textured social history of wealth at the twilight of the Reagan era. Yet, nothing illegal occurred like in the scandals of the eighties, Enron or Barings Bank. Everything was legal, but the system was corrupt.

Ross Johnson is running one of the biggest corporations in America, selling cookies and cigarettes globally. He even tries unsuccessfully the creation of a smokeless cigarette that promises to revolutionize the industry. But the price of the stock is stagnant because of the unholy combination of food and "anti-food". Wall Street is afraid of legal suits against the tobacco companies. Johnson meets Henry Kravis, CEO of KKR, a corporate raider known for his skills in buying up companies and turning huge profits in the process. Johnson meets with Henry, but their temperament is incompatible, Kravis is a bit on the cold side whereas Ross is everyone's witty friend. Worse, the Nabisco executive gets the feeling that Henry

won't let him run the company the way he sees fit, maintaining a huge fleet of corporate jets, posh expense accounts.

Ross Johnson decides to go ahead with his leveraged buyout without Kravis at the helm. He contacts his old friend Jim Robinson over at American Express, who in turn brings in financial whiz Peter Cohen from Shearson Lehman to help finance the deal. Robinson's wife and public relations guru Linda also lends a hand. All the principals must keep quiet about what they plan to do, though, because Kravis and other sharks on Wall Street will offer a higher bid. Kravis does discover the plan and makes it a personal crusade to force Johnson out of the picture. He cannot afford to lose the deal as he considers himself the "Father of the LBO". The film deals with the minutiae of back and forth backstabbing, blatant greed, under the table dealing, and assorted other highly unethical business practices. It shows the dark side of Wall Street, much like the film *Wall Street*, but this is not fiction it is a documentary.

ETHICS OF HOSTILE TAKEOVERS

THE FILM "OTHER PEOPLE'S MONEY"

SUMMARY AND ANALYSIS

Based on the play "Other People's Money" (1989) by Jerry Sterner

The film is based on the play with slight changes:

Other People's Money, 1991, 103 minutes, Director Norman Jewison, with Danny DeVito, Gregory Peck, Penelope Ann Miller, Piper Laurie

Summary and Analysis:

Larry Garfield is a serial liquidator of companies acquiring undervalued companies, called by him - "sleeping beauties", tearing them apart to the detriment of the stakeholders and owners, as the valuation of the parts is higher than the whole. Andrew Jorgenson, an old-school manager-owner, believes that companies should serve mainly their stakeholders but loses his company to the New Economy's tycoon Garfield. Garfield, a corporate raider, attempts to acquire an 81 year old New England Wire & Cable company. He fights the company's CEO and tries to convince the shareholders to rally him in order to increase their profits to the detriment of the company's employees, who would lose their jobs, the community and most of the stakeholders. Garfield is arrogant, greedy, self-centered, ruthless, but very convincing to the shareholders with his "Darwinist" arguments.

The film begins with a monologue of Garfield: "I love money, more than what I buy with it. Money doesn't care what I do and what my beliefs are. But more than I love money, I love other people's money." This is the summary of the film and

of a merger course - to employ as much as possible other people's money, to convey them the risks but to keep the profits for you. Is it ethical, why do the "suckers" who give the Garfields money never learn? His opposite is Andrew Jorgenson, who manages and owns a large part of the company. He is loved by his wife, his family, his friends, his workers, and he thinks also by his shareholders. But in a moment of truth the shareholders decide to back Garfield's attempt to takeover the company in order to dismantle it and to increase their valuation at the expense of the workers, the community and the stakeholders. Garfield shows them that their valuation has decreased sharply over the years, while the salaries of the workers have increased, the community continues to levy taxes, the products have become obsolete, and the management is totally incompetent.

Jorgenson has 20% of the shares and Garfield has managed to acquire 12%. Both of them have to convince the remaining shareholders who should back up one of the policies. The climax of the film is the confrontation between Garfield and Jorgenson at the Shareholders' Meeting. Kate is a prominent lawyer in one of the largest law firm, she is also the daughter of Jorgenson's wife, so she tries to find a compromise between the two, unsuccessfully. Jorgenson is afraid of the Shareholders' Meeting. He is not familiar with the new economy, things have changed, what happened to the people who assisted each other? He doesn't want that "this" man would win, he is proud of the business he has established, he is worried that his workers would lose their jobs, he fights for principles, the good old ones... In his speech, Jorgenson says that his company has overcome all its crises in the last 80 years. If the company will be closed it would ruin the community. He points with an accusing finger to Larry the Liquidator who threatens to ruin the company, he is the post-America businessman, the new robber baron. But the old ones left something behind: mines, steel, railroads, industry, banks, while Garfield does not produce anything, only paper. Larry doesn't promise to manage the company better than him, he just says that he'll kill them as they are worth more dead than alive. He finishes his speech by saying that

the company will increase its valuation, they are stronger as they are survivors. If Garfield will prevail, they'll remain only with lawyers and tax heavens. If you kill your neighbor it is murder, but if Garfield wants to maximize profits he is effectively a murderer. The company is much more than its value in the stock exchange, it is a place with workers, products, a management who cares for people. Jorgenson receives a standing ovation. His "people" are much more cooperative than Dr. Thomas Stockman's people in *An Enemy of the People*. But when their money is at stake they would react in the same manner. The only difference in over a century that has elapsed between those two plays is that the people are now politically correct and give the ethical businessman a standing ovation while voting for the unethical businessman.

Garfield answers in a brilliant speech: "Amen, Amen, and Amen. What you have just heard is a prayer, a prayer for a dead company, as the company is dead. I didn't kill it, it was dead when I got there. It is too late for prayers. Even if we believed in miracles it is too late because there are new technologies, obsolescence, optical fibers. We are dead but we are not bankrupt. We have a responsibility for the workers? The community? Who cares? This company has spent your money in the last ten years. Did the community lower their municipality taxes? The share is now worth one sixth of its valuation ten years ago. But the workers have doubled their salaries. They don't care for the shareholders. The only one who cares about you is me, I am your only friend. I don't produce anything? I don't make money? Take the money I'll make you earn and invest it wherever you want, in investments that are fruitful to the community. I am called Larry the Liquidator as in my funeral you'll come with a smile in your face and pockets full of money." The shareholders vote for him and the Board is replaced. The classical duel between Garfield and Jorgenson reminds of a Western duel, only that this time the bad guy wins. It is no more *High Noon* with Gary Cooper, it is *High Time* that the western hero, this time an old and tired Gregory Peck, should go and let Larry Garfield to take over. Garfield was elected democratically, the shareholders wanted him and that's what they'll get. But in the

horizon we can see Enron, WorldCom and all the corporate scandals caused by such Liquidators. If Greed is the only criterion for success, as Gordon Gekko says, greed will act also to the detriment of the minority shareholders who will lose all their money, as in the survival of the fittest, not only the old Jorgenson succumbs, also the shareholders lose, as there is always one fitter in the battle of the fittest: whether it is Ken Lay, Gekko or Garfield. Surely, it is never the stakeholders who are the true owners of the company and if they will unite they will be the fittest. They have the ultimate power and all the Garfields are mere parasites who take a ride on their back and suck their blood.

ETHICS FOR MINORITY SHAREHOLDERS IN THE STOCK EXCHANGE AND BANKING – THE BOOK AND FILM "L'ARGENT" BY EMILE ZOLA

Based on the book "L'Argent" (1890) by Emile Zola

The film is based on the book with slight changes:

L'Argent TV 1988, 250 minutes, Director Jacques Rouffio, with Claude Brasseur, Miou-Miou and Michel Galabru

Another film based on the book with substantial changes:

L'Argent, 1928, 195 minutes, Director Marcel L'Herbier, with Pierre Alcover, Alfred Abel, Brigitte Helm

Summary and Analysis:

If we could choose one film, book or play that describes in the most trenchant way the dilemmas of business ethics, tycoons, the stock exchange, banking, and especially ethics for minority shareholders it is undoubtedly the book L'Argent (Money) by Emile Zola, which was adapted to the screen and the stage several times. Zola was one of the first, together with Ibsen, to deal with business ethics in literature and he did it in a superb way, in a moving style that touched readers and spectators very deeply. Zola, who was a social radical, dared to attack the capitalist system, the stock exchange, the tycoons and the banks, at least the "rotten apples" of this system.

The plot of the book takes place during the Second Empire, that of Napoleon III in France, the nephew of the great Napoleon. Napoleon III epitomized all the corruption and hypocrisy of French society, but also the glory, the joie de vivre

and the debauched life. If the emperor had a mistress whom he acquired at an astronomical price, Aristide Saccard, the hero of the book, had to get her at a higher price, and ensured that all of Parisian high society knew it, as it was a status symbol and was also good for business. But Saccard was also close to a pure soul, Caroline Hamelin, who was attracted to him like a butterfly to a flame. She becomes his mistress and in spite of the enormous difference in their characters and way of thinking, she falls in love. His vitality, his unending energy and his occasional bursts of kindness facilitated her infatuation. Saccard, who was bankrupt, gains the confidence of a princess who founds an orphanage from her own money, and he assists her pro bono. But he also tries to receive the management of her immense fortune from her, 500 million francs that she inherited from her husband. He wants to speculate with the money on the stock exchange, but she refuses categorically, as this money was acquired by her husband in unethical but legal ways on the stock exchange. Her husband was responsible for the loss of the savings of poor minority shareholders, and that is why she wants to invest it only in philanthropy and not be ashamed anymore.

Saccard was bankrupt because of his rivalry with Gundermann, a Jewish banker, serious and ascetic. Gundermann is the opposite of Saccard the hedonist. Both visit the same luxurious restaurants, but while Saccard eats the best gourmet dishes with the most refined wines Gundermann drinks only a glass of milk and behaves modestly in spite of his legendary wealth. At one of the family dinners of Saccard and Caroline, he hears from her brother, Georges Hamelin, that all the projects that Georges devised to develop Lebanon/the Middle East – mining, transport, schools, hospitals, industry, cannot actualize because of a lack of funds. George's vision fades, and he is unable to achieve his dream, as a fervent Catholic, to enable the Pope to return to the Holy Land and to spare him the humiliation that he receives from the nationalist Italians who want to chase him away from his territories. Saccard, the eternal entrepreneur, sees an opportunity in Georges' plans to sway the Catholic masses with the dream of reclamation of the desert in the Middle East and the Holy Land. He markets dreams, like the modern

entrepreneurs, only a fraction of which ultimately succeed in their high tech ventures. Saccard chooses a challenging name: La Banque Universelle, no more, no less. One could ask: who is the true entrepreneur – Georges who had the vision, made the plans, spent long periods in the Middle East, or Saccard who implemented the programs in the real world, found the money (l'argent) to make the vision come true... or not, as we shall see later on?

Saccard meets Mazaud, a broker, and asks him to raise 25 million francs. "Think Big", as our modern tycoons would say, while leveraging their investment with unreasonable proportions of 10:1, ten times more loans than the private equity that they bring in. In Saccard's case, as in many other modern schemes, the entrepreneur doesn't bring any money of his own, because he doesn't have any or he doesn't want to risk it. If he succeeds - the benefits will be his because he was the entrepreneur, but if he loses - the banks or the shareholders will bear the costs. The slogan of many of the modern tycoons is to work with "Other People's Money". Mazaud is astonished at Saccard's daring, he knows that he doesn't have a dime, that the project is not even his, and nevertheless he wants to raise tens of millions, later even hundreds of millions. But Saccard believes that you need two things in order to succeed in life: dream like a crazy and work like an animal, and he excels in both. When Caroline asks him if he doesn't want to rest he answers her that rest means death.

Saccard approaches a colleague who manages an Ottoman Bank in the Middle East and wants to interest him in the project. The banker answers him in Russian and Saccard goes to his friend Sigsimond who speaks many languages and who is in the process of translating the Communist Manifest by Karl Marx. He is a fervent communist, but Saccard likes people who fight for their causes, such as Sigsimond the communist or Georges Hamelin the Catholic. Saccard says that "Passion" is the most important thing, it is what makes the world go around, it sounds like "Money/l'argent, makes the world go around" of "Cabaret" or "Greed makes the world go around", as maintained by Gordon Gekko in "Wall Street".

Sigsimond reads the letter and tells Saccard that the Banker's answer is affirmative. Sigsimond is very ill and Bush takes care of him. Bush is a loan shark, who specializes in collecting bad debts. Thus, for many years he has been trying to find a man who gave IOUs to a young woman who gave birth to his child, but disappeared. By comparing Saccard's handwriting to that of this man, he understands that Saccard is the man he is looking for. Saccard has changed his name several times in his career because of his schemes, but Bush tells his partner Madame Mechain, that the time is not appropriate to approach Saccard as he doesn't have any money to pay for the IOUs. Indeed, Saccard is the same man that we know from Zola's previous book "La Curee"; he became rich and lost all his money several times, he was married twice, had plenty of mistresses. He even has a legitimate son from his first marriage to Renee – Maxime, who inherited money from his rich mother after she died, but his son doesn't want to help his father as he knows of his schemes. Saccard's illegitimate son from the young woman who received the IOUs is Victor, who became an unbridled vagabond. Originally Saccard was called Rougon, the origin of his family is from the south of France and he is the brother of Son Excellence Eugene Rougon (Zola's hero in another of his books in the series of the Rougon-Macquart), a prominent minister in Napoleon III's regime. Eugene disavows Saccard, as he knows of his schemes, and doesn't want to have any ties with him.

Saccard goes to a luxurious restaurant, where he meets Gundermann. He tells him defiantly that he has founded a new bank with a capital of 25 million francs. He asks him, cynically, if he would be willing to invest in his bank as the shares will rise enormously. Gundermann of course refuses and predicts that Saccard will fall once again, however from a greater height, as he has connections and support from other tycoons, the Catholic milieu and possibly the Pope. Saccard's drive beyond the lucrative aspects, are ego considerations: he wants to win in the showdown with his rival, as it is a struggle between different temperaments, religions and ideologies. It reminds us of *The Merchant of Venice*, but this time the prudent Jew wins while the frivolous Catholic loses. It is not surprising if we

remember that Zola would write "J'accuse" on the Dreyfus affair several years later. The world has evolved since the times of the Duke of Venice. We are in the 19th century, in a democratic France, but the hatred of the Jews was still prevalent. Nobody likes the stern Gundermann, while masses of minority shareholders like Saccard very much and are even willing to forgive him his bankruptcy as the Jews are to blame in their conspiracy against the Catholics and the Pope. Zola based his novel on a similar case that had happened in France a few years earlier, when a Catholic bank collapsed because of its speculations and the Jewish Rothschild bank was blamed by those who lost their money. Yet, Saccard and his likes do not exist anymore, while the Rothschilds still exist and prosper. We know of course that speculation has nothing to do with religion. There are many Jewish (and Israeli) speculators who behaved unethically to their stakeholders, while other bankers and tycoons who were Catholic, Protestant or Moslem behaved ethically and meticulously fulfilled all their obligations. The Bible invented business ethics, but the Jews do not have the copyright on ethics. Business Ethics is universal and has nothing to do with religion and Zola proves it in his book *L'Argent*. Saccard also wants to prove to his arrogant brother Eugene that he can succeed even more than he had, as he is as good. The book proves to us, once again, that what makes the business world go around is not Adam Smith's invisible hand, but primarily feelings, psychology, love, hate, ego, envy and competition.

Saccard meets Huret, his brother Rougon's confidant, and asks him to intercede in his favor with his brother. Huret tells him that he doesn't have a chance, as Eugene despises him, but when Saccard offers him shares in the bank and a seat on the Board of Directors, Huret is willing to comply. Saccard tries to play the Catholic card but Huret tells him that Gundermann has come to the rescue of the government with loans when it needed them and the stern banker has the favor of the Emperor. Saccard tells Caroline that the business world is like a war and those who are afraid die first. All that happened long before the admiration street fighters get today. Zola "invented" modern business ethics, and if I had to choose between reading the books of the best modern ethicists or Zola's "*L'Argent*", I

would recommend Zola, as he encompasses most of the issues in a much more interesting way. Saccard is willing to risk everything (especially as it is not his money), he has the mentality of a gambler, as it is his only possibility to rise once again from the ashes. Zola also invents the "externalities" here, the stakeholders bear the costs and risks, while Saccard doesn't risk a thing. The directors of La Banque Universelle have not invested anything in the Bank; they have received their shares (illegally) from Saccard, if they are "wise" enough they can sell their shares at their peak as some of them do, if they are too loyal they risk losing their money and reputation. Yet, this is only in Zola's book. Zola, who is a moralist, shows that at the end the speculators lose, bringing down thousands of innocent minority shareholders with them, while in modern economies in most cases the unethical businessmen do not bear the costs of their speculations, except in a few cases such as Enron, WorldCom, Barings and so on. By externalizing the costs and the risks, those who pay the price are the minority shareholders who lose their savings, the employees who lose their jobs, the banks who lose their loans, the suppliers who are not paid and the customers who don't get the goods and services that they paid for, and, of course the environment and the community who have to pay to remove the toxic waste.

Caroline is in love, she is still young but has grey hair after suffering from an earlier love affair. She only sees Saccard's positive sides: he is brave, impulsive and generous. In comparison to him, Daigremont is much more cynical. He is a tycoon who wants to win easily, eat and drink in the best restaurants, have women and entertainment, with a minimal risk. He is willing to cooperate with Saccard as long as he has something to gain from it. Daigremont is willing to join the bank but only if Rougon backs the venture. Saccard adds Sabatini to the Board; here is an unscrupulous hedonist with a dubious past, who remained friendly with Saccard in his bad moments. Another acquisition to the Board is the Marquis de Bohain, contributing his name and pedigree to the Bank. However, he is also a hedonist who cheats in cards and entangles Saccard in his problems. Another protagonist in the novel and the film is the journalist Jantrou, who founds a

journal named L'Esperance (Hope) with Saccard's money. He is Saccard's straw-man, writing laudatory articles about him and the Bank, as well as about the regime and Rougon. Huret intercedes with Rougon in favor of Saccard, but the minister answers him: "Let my brother do whatever he likes, but he shouldn't count on me". But Saccard tells Huret: "The ministry is not eternal, the empire is not eternal, but money is eternal". Finally, he convinces Huret to tell everybody that Rougon cannot back up Saccard openly because he is his brother, but he said nevertheless: "Let my brother do whatever he likes". Telling half truths and not behaving transparently is something as common in Zola's time as it is nowadays. Huret doesn't repeat the end of the sentence, he remains vague, he doesn't disclose the bad news, and exaggerates the good.

The conscientious and moral Caroline, who became Saccard's mistress, continues to be skeptical of her lover's work methods, but he shows her her brother's plans of and convinces her that he'll manage to build factories, mines and schools from them. People will find employment, sick people will be cured, prosperity will be achieved. Caroline is worried, as according to the law, the issued capital should also be paid up, but some of the founders have not paid for their shares, like Huret and de Bohain. He appeases her by telling her that everybody does the same thing, another typical excuse of unethical businessmen. The bank keeps some shares illegally, under the name of Sabatini, who is his straw-man, exactly like Topaze in Pagnol's play, written 40 years later. Saccard mocks Caroline who is always worried, but she answers him that she loves him and doesn't want him to be hurt. And, indeed Saccard has a winning personality, he is liked by almost everybody, like many unethical businessmen (Gordon Gekko, to name one). It is hard not to like him as it is easy to hate Gundermann the righteous, cold and distant man, with his eternal glass of milk. Drinking milk and not wine to a Frenchman is probably pure heresy. However, Saccard also wants his bank to be perceived as a modest and serious bank, it is a bank working for people with modest income, with a solid appearance, a modest building, he even asks for the Princess' permission to locate the bank initially in her orphanage. But later on, Saccard

intends to start his speculations. He thinks that the Bank's regulations are intended only for the notaries, it is not regulations that built the Suez Canal, it is the energy, the inventiveness, the vision. He says that speculation, to the masses, is a dirty word, but it is speculation (in Boesky's words Greed) that develops the country, it is the new world, it reinforces. Without the stock exchange and speculation everything is small, it is at a standstill, it is dead. But with the stock exchange everything is possible, there are factories, employment, railways, prosperity, and new opportunities. MONEY (L'ARGENT) IS GOD, ALL THE WORLD WILL BE RICH WITH THE BANQUE UNIVERSELLE, AND EVERYBODY WILL BE HAPPY, BECAUSE OF ME!, says Saccard. Saccard is much more convincing than Ivan Boesky or Michael Milken. He is much more picturesque, true and credible, although he is fiction and they are real, but Zola's style is so real that he makes a fictional novel sound like a documentary.

Saccard governs the Board of Directors in typical corporate governance, where the yes-men agree with whatever Saccard does, even if it is unethical or illegal, nobody cares about the minority shareholders anyway and everybody owes his seat to Saccard. The film chooses to show the Board meeting like in a silent movie and as a matter of fact an earlier version of "L'Argent" was a silent movie by L'Herbier. Words are superfluous anyhow, as nothing is different in Board meetings of unethical companies, either in Zola's times or nowadays. Gundermann says about Saccard: "Saccard thinks that I despise him because he is not a Jew. It is untrue. I will break him as I respect our mission as bankers. I don't like people fooling with the seriousness of the banks. I will let him grow, take his revenge on me and then I'll break him." And in the meantime the shares are sold at higher and higher prices. Pensioners buy them, as do noblemen and merchants. But Maxime is not willing to invest in his father's bank, he knows too well who his father is. At the Shareholders' Meeting nobody asks any questions, decisions are taken unanimously. We should bear in mind that as always Zola was a pioneer, he was one of the first to describe at length what happens in Board meetings, shareholders' meetings, banks, minority shareholders, speculation,

entrepreneurs. Today it is obvious, but in the romantic 19th century his naturalistic approach was unheard of. However, even today Zola's "L'Argent" seems modern, as if it were written in the US, France or Israel of the years 2000. His protagonists are immortal, his plot is universal and his insight is unmatched.

Saccard asks his friend Sigsimond how in his communist world people will live without money, and he answers him "they'll live freely". The communist is even eager that Saccard succeed, as in the days of the revolution the proletariat will nationalize all the private enterprises and instead of nationalizing many banks they'll have to nationalize only one - Saccard's. Lenin would say a few years later that the worse it gets the better it gets for the communists, who managed to rule Russia because of the catastrophes of the Tzarist regime. We are curious to know what Zola would say of the neo-liberal world of today, with a few tycoons and multinationals controlling the world's economy, not so far from the communist world of Sigsimond and the Soviet Union where the state controlled everything, and very similar to the worship of speculation, greed and money by Saccard. Speculation and greed are bad; they ruin companies, economies, make millions miserable and enrich the few. Gundermann's way of thinking is sensible, cautious, moderate, even if he or his likes are not as charismatic as Saccard or Gekko. Masses and shareholders tend to follow the demagogues, the speculators, the panaceas of the scoundrels. We are today somewhat blasé, tired of revolutions: fascists, communists, nationalists, tired of socialists, neo-liberal and ultra-capitalist regimes. We should return to the basics: to Aristotelian moderation, to Stiglitz's third way, to Zola's neo-social doctrines. Extremism is bad; we have seen it from the French revolution to Milton Friedman's nightmarish inhuman world where you have to maximize profits, widen the social gaps, pay exorbitant salaries to executives, while more and more people have McJobs. The third way doctrines are not utopic, they exist in Scandinavia, in the Netherlands, even in many ways in France. They don't exist in the US or in Israel and in many other countries, but reading Zola's novels, studying Stiglitz's academic books and watching movies like Erin Brockovich could assist in bringing about the changes.

This is the ultimate purpose of my book in bringing together all these elements and illustrating them by case studies based on an international business career, academic studies and teaching, and analyzing the immortal masterpieces of Zola, Ibsen, Arthur Miller or the prophet Amos.

The minority shareholder is characterized by the junior employee of the newspaper Dejoie, who invested all his savings in the Bank's shares in order to pay for his daughter's dowry. When the Bank collapses, he blames his ambition (the victim's syndrome) not Saccard. In some way he is right, as he had enough money for the dowry but then he wanted to have money for his pension as well, and his appetite grew bigger and bigger until the price of the shares collapsed and he lost everything. So, should we blame him for being greedy or Saccard, who ruined Dejoie? I believe categorically that there is only one guilty party: Saccard. Dejoie is "blind" and Saccard put a stumbling block to his feet, like in the Bible's time, like in the subprime mortgage crisis. He doesn't have the insider information of Saccard, he is innocent and cannot follow the intricacies of the stock exchange. Of course he shouldn't speculate, people like him should save money in saving accounts and it should be forbidden for pension funds to invest in the stock exchange, least of all in speculative shares. If pension funds want to invest a small amount of their funds in the stock exchange they could at least do it in Ethical Funds and thus avoid the risks of unethical investments. Dejoie's daughter leaves him as her fiancé broke the engagement and she is not willing to forgive his father. She runs away with an "aged" man of 40 in a way that will bring her to perdition. Dejoie cries in the presence of Caroline after the bankruptcy and when she blames Saccard he resents and says: "Saccard was right when he persuaded me not to sell. The business is fantastic. We could have won if the traitors hadn't have left us. Only Saccard can save us now and it is a pity that he was sent to jail. I told the judge to give him back to us and I'll give him all my savings, my life, once more as this man is God, he did whatever he wanted. Tell Saccard when you see him that we'll always be with him." After these astonishing and true statements of the minority shareholders who never learn, we should not be

surprised if Gilda, Rigoletto's daughter, is willing to sacrifice her life in order to save the life of the man who abducted her, the Duke of Mantua, who complains that women are frivolous, *la donna e mobile*. The victims' syndrome is a very common mental sickness in love as on the stock exchange.

Back to the novel's plot – Saccard doubles the capital of the Bank, he raises money from the public several times at higher and higher prices, as he is always short of money in order to keep up with the speculation. He illegally keeps 3,000 shares, which could assist him in crucial votes at Shareholders' meetings, as he knows that Gundermann is secretly buying shares in the Bank in order to ruin him in due course. Saccard forces George to sign a false statement stating that all the shares were funded and he entangles him in an illegal act that could put him in jail, as indeed ultimately it does. When George and Caroline come to Saccard in order to pay for the shares that they have illegally received for free, after they inherited enough money to pay for the shares, Saccard doesn't allow them to do so. His rationale is that they deserve the money for their initiative, but he really wants to make them his accomplices, after they declared that they had paid for the shares and the books had been forged accordingly. The tycoons have a vital interest in making their partners accomplices in their schemes as in this manner they cannot disclose all the illegal deeds of the tycoons. When the partners participate in the schemes they do it for "peanuts", while the tycoons gain the millions, in most of the cases they sign on behalf of the tycoons as Georges did for Saccard, Bud Fox did so for Gordon Gekko, and all the junior managers do it for their bosses, unless they become state witnesses, as in Enron or in other scandals. Caroline is worried because of the war with Prussia that is imminent, but Saccard tells her that it doesn't interest him, as all his thoughts are with the Bank and the minority shareholders... This is another typical excuse of unethical tycoons who are always worried about the employment of their employees, the welfare of the community, the country's prosperity, while they are maximizing their profits to the detriment of all the stakeholders, the minority shareholders; they don't pay taxes, externalize the waste and hurt the environment but advertise

that they are green companies who donate 1% (!) of their profits to welfare, while obtaining the other 99% by schemes and unethical acts. And Saccard summarizes that the motto of business is to create a snow ball based on the trust of the shareholders.

The Baroness Sandorf is a compulsive speculator who invests all her money without the knowledge of her husband, who is a counselor in the Austro-Hungarian Embassy in Paris. Jantrou, the journalist, is willing to give her some insider information in return for her favours, but she prefers to give them to Saccard, who treats her like a prostitute, but delivers some useful information from time to time. Saccard and Jantrou mislead the investors with disinformation on the happenings in Lebanon, where the Bank's money is invested in order to enliven the speculation. What is essential is not what happens but what is reported in the newspaper; this is a kind of virtual reality, of a perception of the truth and not of the sheer truth. The only truth is what is written in the news, and, of course, they never heard of transparency. The strong ties of unethical tycoons with the media are present throughout books, plays and films such as *An Enemy of the People*, *The Visit*, *Topaze*, *The Insider*. Sometimes the role of the media is positive, as in *The China Syndrome*. In *L'Argent*, Jantrou wants to convince the readers that the imminent war with Prussia will not affect the Bank as all its investments are in the Middle East. Caroline who is always worried prays "God, make all this succeed", and Saccard replies: "Leave God outside, he is too far away from the stock exchange". Saccard receives insider information from his partner Huret that France was summoned to act as a mediator in the Austro-Prussian war and the war is nearing its end. He decides to risk all his money (correction – other people's money that he controls) and all the money of the saving accounts of the Bank's clients (without their knowledge of course) to speculate, resulting in a huge profit of 20 million francs. Saccard doesn't risk anything, he knows for sure, because of the insider information, what the result of the war will be and this shows, once again, how the market is not perfect, as maintained by all the neo-liberals. If the speculation succeeds the Saccards benefit

from all the profits, but if it fails it is the minority shareholders, the clients and the employees who bear the costs. If worse comes to worse, Ken Lay and Jeff Skilling are called Bad Apples and those who were not caught continue their schemes in spite of Sarbanes-Oxley.

Saccard wins 20 million francs and gives a million to Georges and Caroline. He is undoubtedly generous, he is not a miser; he helps his accomplices, in contrast to Gundermann, who doesn't keep his word. And Gundermann summarizes the event in his laconic way: "I like the profit of 20 million francs that Saccard has made. It will make him conceited and it is like the plague". Caroline tells Saccard that he has become a slave to money, but Saccard answers her that money is a vehicle to create employment, education, hospitals, prosperity. This dual language is like a mantra of unethical tycoons. Saccard buys a palace from Gundermann for the Bank; it is no longer the modest bank but an extravagant bank, as Enron was an extravagant company before it collapsed. This time Saccard explains it by saying that the clients would prefer a sumptuous bank, a bank that makes plenty of money and shows it off. And de Bohain even adds "and an honest bank as well". The share price of the bank is now 1,300. Caroline continues to love Saccard, as he has something exciting, gentle, that makes her forget his swindling. In the meantime he continues to artificially boil the kettle of the market until it explodes. Saccard's new ambition is to reach a price of 3,000, not the employment of tens of thousands; he has forgotten this argument, it is now sheer speculation.

In one of the comic interludes of the film we see a ball in Parisian high society near the end of the reign of Napoleon III. Saccard's new mistress, who has been the emperor's mistress, introduces the two. Bismarck, the guest of honor at the ball, who will, in a short while, win the war against France and make the rotten regime collapse, remarks: "Both started from zero, both will have the same end, the end of the adventurers". But Saccard is at the height of his career and believes that his success will last forever. Daigremont raises a toast in Saccard's honor at the ball and congratulates him for being the King of Paris. Meanwhile, a

friendship starts between Maxime and Caroline. He urges her to leave Saccard and not to endanger her money in his schemes as he ruins everyone with whom he works. Maxime sees Georges as a weak man who is under the influence of the charismatic Saccard; he is risking his reputation and freedom with the false financial statements, the straw-men, the false statements on the capital of the Bank, the fraud on the Bank's books. Caroline is weighing whether to sell her shares but decides not to do so, as she believes and loves Saccard and could not face his disappointment if he learned about it. But Huret tells Saccard that he doesn't believe in him anymore and forces him to buy out his shares in cash. Saccard's friends start to leave him, but even at the price of 3,000 Saccard has no intention stopping, because if the price stagnates the shareholders will lose their confidence in the Bank and start selling their stock, and Gundermann will take over the Bank. The final gunfight between the two is imminent. Finally, Caroline sells all their shares after seeing that the Pope is not willing to back up Saccard. The Pope is not willing to back up a speculative bank even if it is Catholic. Saccard conceals the decision by the Pope from the public, as he is afraid of the collapse of the share' price. The Baroness comes to Gundermann and offers him information in return for assistance. Gundermann tells her that he is aware of the conduct of all the directors of the Bank. He confesses that he is a lonely man without any joy of life. He promises to recompense her generously. However, when she tells him of all the plans made by Saccard, her lover, he sends her away without giving her anything, because he doesn't like traitors. When she insists on receiving some piece of advice from him he tells her: "Don't deal with money, it makes you ugly". Gundermann's conduct presents us with another ethical dilemma: should you reward squealers who assist you or not. What is more important: a promise made by Gundermann or not keeping a promise to squealers?

The price of the share reaches 3,000. Saccard is exhilarated, but more and more people are leaving the sinking boat. The last of them is Jantrou, Saccard's closest counselor. Gundermann has already purchased 40% of the capital of the bank. He

lets Saccard know that he is going to attack him on November 22, the day of the dividend' payment. Gundermann plans to sell more shares than Saccard could buy, thus making the Bank collapse. Saccard is convinced that he is going to win this time also and that he will become France's no. 1 banker. However, Daigremont betrays him, after learning that Rougon doesn't back his brother; he sells all his shares. Saccard then tries to convince his former friend, in the name of the small shareholders who are going to lose all their money. Daigremont tells him that he should have thought of them before he lied to him about his brother. After the fall, Mazaud, the broker who committed fraud and lost his reputation, commits suicide. His wife and children discover his body when Caroline visits them. And Maxime tells Caroline: "My father has caused victims throughout his life: his wives, his mistresses, his friends, those who trusted him, you, your brother, me, all of us were betrayed, were knifed by him, and when I think that he called his newspaper Hope, he should have called it shame, lie, rubbish". Caroline, still backing Saccard, tells Maxime that Saccard was willing to sell all his belongings in order to save the minority shareholders, but he hasn't had enough time to do it. Only after she visits Saccard in jail she is convinced that he is an incorrigible cheat without remorse. He claims that they call him a cheat because he has lost the battle, but if he had won, everybody would have praised him as they had in the past. He has no remorse, as he is not guilty, he hasn't caused the death of Mazaud, Daigremont has done it with his betrayal. However, in his trial he intends to disclose everything and reveal the behaviour of the elites, the haute finance, all those who have brought about his ruin. He will make them share his ruin, they will fall with him and he will start all over again. He will even find money to compensate the minority shareholders. But those have lost everything, their world has collapsed, their lives are ruined. Caroline is too sensitive to their fate and when Saccard tells her that he'll make her rich once again, when she sees that he has no remorse, she decides to leave him. However, as nowadays, the rotten apples don't pay the price. Rougon who is afraid of the scandal involving his reputation as well, decides to banish his brother to Amsterdam. In the puritan Netherlands Saccard starts all over again, making a

presentation to a Dutch Board of Directors, trying to convince them to build a huge dam in order to dry part of the sea; it will be a project similar to the Suez Canal, which will add huge amounts of fertile soil to the small country, bringing about employment and prosperity. And he ends by saying: "Give me the money and I'll give you life". Saccard perceives himself to be like God, who brings life, not like Satan, who brings destruction. He continues in his endeavors, like many other unethical tycoons who destroy economies, the lives of innocent people, the ecology and even the earth. The ethical people can unite against the demonic power of the Saccards, as we - workers, customers, the community - have the power, as ethics is the ultimate guarantee for justice, prosperity, life!

PART III

ETHICS, CORRUPTION, WRONGDOING, AND STAKEHOLDERS

CONCEPTS AND THEMES

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 whistleblower, 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 I find the hypothesis that business is analogous to poker, thus justifying cheating in business and unethical conduct, 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.” (Madsen, Essentials of Business Ethics, Velasquez, Corporate Ethics: Losing it, Having it, Getting it, p.233)

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, Carterpillar, 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.

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.

Kant was convinced that ethics has nothing to do with consequences or human welfare, but comes uniquely from a sense of duty and obedience to a moral law that every rational person has to accept. For a law to be moral it has to be universal. When we lie we do not want everybody to lie, and when we steal we do not want everybody to steal. Therefore it is immoral to steal and lie, as it would be impossible to live in a world where everybody steals and lies. And especially, it is not reasonable to wish that all moral laws would be applied toward everybody except you. There are many businessmen who are convinced that this should be

the rule and what is permitted to them should not be permitted to anybody else, but probably they have not read Kant, and they are convinced that as God is with them they are untouchables and above everybody else in society. They transgress the universal and impartial maxims of Kant, scorn the dignity of human beings that Kant preconizes to safeguard above all, and succeed in not being apprehended by the law, public opinion, or the stakeholders of the company.

Ultimately, we should take into consideration pleasure and utility on the one hand and ethics and moral on the other hand, while trying to find the possible symbiosis between the two, if we do not insist on maximizing the two basic principles. The company could be analyzed at the same time as: “(1) a profit-maximizing organization operating in a more or less competitive environment, (2) a social contract defining the rights and duties of different stakeholders, and (3) a community sharing a common mission and value system. This tripartite definition of the firm means that an enterprise combines the three models of social coordination. It is an economic, political and moral institution.” (Harvey, *Business Ethics, A European Approach*, Bouckaert, *Business and Community*, p.159)

Hasnas develops further this analysis as well as the lack of communication between ethical theorists and businessmen. “Critics of the discipline often point out that business ethicists are usually academics, and worse, philosophers, who speak in the language of abstract ethical theory... Business people, it is pointed out, express themselves in ordinary language and tend to resist dealing in abstractions. What they want to know is how to resolve the specific problems that confront them.” (Business Ethics Quarterly, January 1998, Hasnas, *The Normative Theories of Business Ethics*, p. 19) “Far from asserting that there are no ethical constraints on a manager’s obligation to increase profits, the stockholder theory contends that the ethical constraints society has embodied in its laws plus the general ethical tenet in favor of honest dealing constitute the ethical boundaries within which managers must pursue increased profitability... Few contemporary business ethicists have the kind of faith in the invisible hand of

the market that neoclassical economists do. Most take for granted that a free market produces coercive monopolies, results in damaging externalities, and is beset by other instances of market failure such as the free rider and public good problems, and thus cannot be relied upon to secure the common good.” (same, p. 22-23) Thus, “as an empirical theory, the stakeholder theory asserts that a business’s financial success can best be achieved by giving the interests of the business’s stockholders, customers, employees, suppliers, management, and local community proper consideration and adopting policies which produce the optimal balance among them... This, of course, implies that there will be times when management is obligated to sacrifice, at least partially, the interests of the stockholders to those of other stakeholders. Hence, in its normative form, the stakeholder theory implies that businesses have true social responsibilities. The stakeholder theory holds that management’s fundamental obligation is not to maximize the firm’s financial success, but to ensure its survival by balancing the conflicting claims of multiple stakeholders.” (same, p. 25-26) “The social contract theory asserts that all businesses are ethically obligated to enhance the welfare of society by satisfying consumer and employee interests without violating any of the general canons of justice.” (same, p. 29)

We talk about trust, mid-west ethics, Christian or Jewish morals, while the heroes of the business world are always the ‘smart guys’, the ‘street fighters’, and the prevailing maxims are ‘catch as you can’, and ‘we cannot argue with success’. “The concept of win/lose as opposed to win/win is too often prevalent in business. We assume winning is the only way to function. Wars are probably society’s extreme example of this concept. We fight for what we believe in. We translate this into business and use war terminology such as ‘guerilla tactics’, ‘killer instincts’, ‘the corporate battlefield’, and so on. If we continue to promote war-related words, we will continue to see business as a ‘fight’. In such a mentality, there is little room, even in a minor disagreement of the day, for others to win. If someone else wins, then we perceive the situation as if we have lost; losing is viewed as unacceptable.” (Chatfield, *The Trust Factor*, p. 80-1)

An encouraging step in the moral support and cultural validation of the American business world was taken in 1989 by the “Business Enterprise Trust, an independent nonprofit organization led by prominent leaders of American business, labor, academia, and the media... like Warren E. Buffet, chairman and chief executive officer of Berkshire Hathaway Inc.; Katharine Graham, chairman of the executive committee of The Washington Post Company; Ambassador Sol Linowitz; and Henry B. Schacht, ... chairman and chief executive officer of Lucent Technologies... Each year the Trust honors five awardees who have shown bold, creative leadership in combining sound management and social conscience.” (Bollier, *Aiming Higher*, p.VIII - IX)

Three of the awardees are:

- Jack Stack and the company Springfield ReManufacturing, which have installed an ‘open books’ system, where all the financial results of the company are accessible to all its employees. As a result of this system, the financial results of the company have improved radically, and the community of employees has become cohesive, laborious and enthusiastic. The philosophy of Stack is to treat the employees as human beings who want to contribute their intelligence, creativity and energy to the company.
- The ice-cream company Ben & Jerry’s, which was founded by Ben Cohen and Jerry Greenfield, contributes 7.5 percent of its pretax profits to the communities of Vermont, compared to an average of 1 percent in the United States. In order to evaluate rigorously the social performance of the company, external auditors prepare social audits each year, which are published with the financial reports of the company. The audit includes the morale of the employees, the environmental performance, the customers’ satisfaction, and the contribution to the community.
- The pharmaceutical company Merck, which has developed and distributed for free Mectizan, a remedy for river blindness sickness, which is widely spread in Africa amongst populations who do not have the

means to buy this medicine. Merck was cited by Fortune as the most admired company in seven consecutive years. With a sales turnover of \$16.7 billion in 1995 and a net profit of \$3.3 billion, Merck is very sensitive to its social responsibility mission. The value of the free donation of Mectizan in 12 years is estimated at \$250 million.

We should elaborate in more details the example of Ben & Jerry's, as it is significant for a company behaving ethically by conviction. According to the founders of the company, Ben Cohen and Jerry Greenfield: "By incorporating concern for the community – local, national, and global – into its strategic and operating plans, the values-led business can make everyday business decisions that actualize the company's social and financial goals at the same time. Instead of choosing areas of activity based solely on its own short-term self-profitability, the value-led business recognized that by self-addressing social problems along with financial concerns, a company can earn a respected place in the community, a special place in customers' hearts, and healthy profits, too... Unlike most commercial transactions, buying a product from a company you believe in transcends the purchase. It touches your soul. Our customers don't like just our ice creams – they like what our company stands for... Our experience has shown that you don't have to sacrifice social involvement on the altar of maximized profits. One builds on the other. The more we actualize our commitment to social change through our business activities, the more loyal customers we attract and the more profitable we become." (Cohen and Greenfield, Ben & Jerry's Double-Dip, p. 30-31)

The ethical evolution follows the ecological evolution, which has followed the democratic evolution and the evolution of human rights. Those movements are in direct correlation and will become in the near future the norm of conduct of all civilized countries. "The socially responsible business movement is in its early stages. It's at a critical point in its development. There's a lot of questioning going on – some of it cynical, some well intentioned – about where it's headed and

whether it can actually work. The same thing happened in the early days of the environmental movement. The mainstream pooh-poohed it. People called environmentalists ‘tree huggers’ and ‘crazy hippies’. Now there’s curbside recycling in most major American cities. There’s a steady stream of environmental legislation moving through Congress. Environmental considerations are a part of the normal planning process today. Many corporations have environmental coordinators on staff. Most Americans know there’s no ‘away’ to throw things. Concern for the environment doesn’t seem so crazy anymore. That’s the way social movements change what the norms are. Our guess is, it’ll be that way with values-led business. It won’t be long before the idea that business should be a positive force in society won’t seem crazy either. We know the world won’t change overnight. What we’re talking about here is taking small steps. The important thing is to take them in the right direction – and in the company of a lot of good people.” (Cohen and Greenfield, *Ben & Jerry’s Double-Dip*, p. 53-4)

In spite of the optimism of Ben & Jerry, and of many other ethical businessmen, it is still difficult to discern which tendencies will govern the business world of the 2000s. Will it be a democratic and ethical world, or a cynical and hypocritical world, which will render lip service to ethics while continuing to be brutal and selfish, or rather a world in slow transition, that will last a century as did the transition from the autocratic world at the beginning of the 20th century to the democratic world of today? One cannot also ignore the regressions, and many businessmen who have started their career as ethical men have come to the conclusion that in order to progress and manage a company selling hundreds of millions or billions of dollars they have to behave in an unethical manner. To alleviate their conscience they can become philanthropists like the robber barons, and finance a cathedra at the university, buy a few Renoirs for a museum, or found a billion dollars fund for charitable causes. Is there a threshold beyond which it is impossible to behave ethically? Is it possible to found a financial empire while remaining ethical? This theme could be the subject of another book.

“Over the last hundred years, American history can be read as a succession of wilding periods alternating with eras of civility. The Robber Baron era of the 1880s and the 1890s, an age of spectacular economic and political wilding, was followed by the Progressive Era of the early 20th century, in which moral forces reasserted themselves. The individualistic license of the 1920s, another era of economic and political wilding epitomized by the Teapot Dome scandal, yielded to the New Deal era of the 1930s and the 1940s, when America responded to the Great Depression with remarkable moral and community spirit. The moral idealism of a new generation of youth in the 1960s was followed by the explosion of political, economic, and social wilding in the current era... The prospect of the death of society gave birth to the question symbolized by the Ik: What makes society possible and prevents it from disintegrating into a mass of sociopathic and self-interested isolates? This core question of sociology has become the vital issue of our times.” (Derber, *The Wilding of America*, p. 14-5)

“Criminologists Fox and Levin define sociopaths as ‘self-centered, manipulative, possessive, envious, reckless, and unreliable. They demand special treatment and inordinate attention, often exaggerating their own importance... On their way to the top, sociopaths ruthlessly step over their competitors without shame and guilt.’... A sociopathic society is one, like the Ik, marked by a collapse of moral order resulting from the breakdown of community and the failure of institutions responsible for inspiring moral vision and creating and enforcing robust moral codes. In such a society, the national character-type tends toward sociopathy, and idealized behavior, although veiled in a rhetoric of morality, becomes blurred with antisocial egoism.” (same, p. 24)

The business world is more and more conscientious of the necessity of ethics. In the annual polls of the Gallup Organization, the number of persons who insist that a ‘strict moral code’ is ‘very important’ has increased steadily from 47 percent in 1981 to 60 percent in 1989. But on the other hand, “Asked in a Harris Poll in

1992 to name the groups with good moral and ethical standards, American adults said: small business owners (64 percent), journalists (39 percent), business executives (31 percent), lawyers (25 percent), members of Congress (19 percent).” (Kidder, *How Good People Make Tough Choices*, p.48).

Do people in general and businessmen in particular have a tendency to cheat and conduct themselves in an unethical manner? “The baseline research on cheating was done in the 1920s by Hartshorne and May, and published by Macmillan under the title, *Studies of the Nature of Character*. Their research question was, ‘Do people who have received character education (later called moral education and now often known as ethics training) cheat less frequently than those who have not received character education?’ One activity they used to investigate the question was to administer tests to different groups of students (religious, private, and public schools) and monitor the cheating rates. Their conclusion? They found that character education had ‘no influence on producing a general moral character trait which consistently resists opportunities to cheat.’ One of their assumptions was that cheating in school indicated future cheating as an adult.

Since their controversial reports were published, the research methodology has been repeated over 700 times in the United States, Canada, United Kingdom, France, Germany, Israel, and in many Eastern and Spanish-speaking countries. What does over 60 years of research in over 30 countries have to say about whether teaching right from wrong influences behavior? Hartshorne and May were right! Cheating is situation-based for 90 percent of the population. At one time or another, depending on the situation, 90 percent will cheat. The other 10 percent? They will cheat all of the time, unless it is too easy! When the stakes are high and the supervision is low, somewhere between 20-25 percent will cheat. It is not always the same 20-25 percent; and over a period of time, 90 percent will cheat in that situation. Where the stakes are high and the supervision is high, the cheating runs from 8-12 percent. This includes the hard-core cheaters and those driven by desperation.

Does this 60 years of research hold true for adults? The Roper Organization conducted a nationwide survey on cheating in the workplace. They found that 25 percent of the people surveyed admitted to the pollsters on the telephone that they cheated on their income taxes, 20 percent admitted to lying to their boss, 22 percent thought there were circumstances in which stealing from an employer was justified, and 18 percent admitted padding expense accounts. Corporate, independent and government auditors might place some of the percentages higher... The same cheating rates hold consistent at community and junior colleges. Consistency seems to be the theme from age to age, geographic location to location, and time to time... Thus, simply having a code, teaching it to people, and increasing supervision will not eliminate all the cheating. Enforcement is required.” (Ward, *A Code of Business Ethics*, p.6-7)

In a poll conducted by Professor Donald McCabe of Rutgers University among 6,000 students in 31 universities, the highest percentage of students who admitted cheating at least once in an examination or a major paper was among the business administration students – 76 percent, compared to 63 percent among Law students or 68 percent among medical students. In order to change those alarming findings we have to change the attitude of the business students and the managers of companies. “Ethics is not a blind impartiality, doling out right and wrong according to some stone-cold canon of ancient and immutable law. It’s a warm and supremely human activity that cares enough for others to want right to prevail.” (Kidder, *How Good People Make Tough Choices*, p.59).

Wuthnow cites in his book ‘*Poor Richard’s Principle*’ that a study conducted by the National Accounting Association in the U.S. has revealed that 87 percent of American managers were ready to commit a fraud in one or many cases that were presented to them. Another study conducted among 400 salesmen revealed that it is the fear of being discovered, and not moral principles that prevent people from transgressing the laws. Wuthnow, himself, has discovered in a study that 48

percent have maintained that it is justifiable to bend the rules from time to time at work, and 32 percent have disclosed that they have seen colleagues commit unethical acts in the last month.

Derber in his book 'The Wilding of America' writes about a poll made by Professors Kanter and Mirvis of the Boston University, showing that the wilding state of mind has spread all over the country. "Self-interest, Kanter and Mirvis believe, has become such an overwhelming urge that it is pushing empathy and moral sensibility into the far background. They describe an American landscape in which close to half of the population takes as its basic assumption 'that most people are only out for themselves and that you are better off zapping them before they do it to you. Many Americans, Kanter and Mirvis report, believe that their fellow Americans will cheat and lie to get what they want, especially when money is concerned. Sixty percent say that they expect 'people will tell a lie if they can get by it,' and 62 percent say that 'people claim to have ethical standards, but few stick to them when money is at stake.' About half say that 'an unselfish person is taken advantage of in today's world', and slightly under half believe that people 'inwardly dislike putting themselves out to help other people.'

As among the Ik, who take positive pleasure in hurting others, none of this strikes Americans as particularly noteworthy or surprising. Forty-three percent – and more than half of young people under 24 years of age – see selfishness and fakery at the core of human nature. Millions of Americans, Kanter and Mirvis conclude, are hard-boiled cynics who, 'to put it simply, believe that lying, putting on a false face, and doing whatever it takes to make a buck' are all part of the nature of things... Making reference to the culture of the Reagan-Bush era, Kanter argues, 'The tendency to behave cynically is being reinforced to an unprecedented degree by a social environment that seems to have abandoned idealism and increasingly celebrates the virtue of being 'realistic' in an impersonal, acquisitive tough-guy world.' He could be talking to the Ik when he concludes that 'in citizen and

country alike, there seems to be a loss of faith in people and in the very concept of community.” (Derber, *The Wilding of America*, p. 90-1)

One of the reasons of this state of mind could stem from the alarming findings of the National Center for Health Statistics, showing that stress afflicts 59 percent of the workforce at least once a week, that 44 percent seldom get enough time for themselves and 46 percent feel sometimes that they are burned out in their jobs. In recent surveys it was revealed that “Most Americans still work hard and feel it is meaningful and important to do so, but a majority (77 percent in one study) also worry that they have become workaholics – addicted to something that may be preventing them from realizing the full measure of life. Despite their interest in material possessions, a large majority (72 percent) readily admit that they ‘want more from life than just a good job and a comfortable lifestyle.’ Most (78 percent) say they do think a lot about their values and priorities in life, but a sizable minority (35 percent) also claim they ‘need more time to think about the really basic issues in life.” (Wuthnow, *Poor Richard’s Principle*, p.36)

WRONGDOING TO STAKEHOLDERS CASE - MERGERS AND ACQUISITIONS

(All the characters and plot and all the names of the companies in this case are fictitious)

Richard was overjoyed when he sold his shares of Memenco. A profit of \$4M on an investment of \$20K that he even didn't fund from his own money is a very adequate return on investment by all means. Richard came from a lower-class family that couldn't finance his studies and he was obliged to work as a night watchman during the five years he studied for his BA and MBA degrees. Due to the excessive workload of studies and work and his mediocre qualifications he barely passed his exams, but was convinced that whatever the price would be he'll get to the top. He thought that the good students came from wealthy families and had time to devote to their studies, they could afford to have high ideals and be ethical, they never suffered from want, but he cannot afford such luxuries. "Even if the Mafia will offer me a decent job I'll take it, but only in its legitimate business, as I am not a sucker who would risk all what he has achieved". Operate on the edge of the law was his slogan as long as you have the backing of a large company, this was as far as he was willing to risk in his career. It is not a matter of morality or such nonsense, it is only a cold and logical profit and loss analysis, he said.

The chance of his life occurred when he met Ron. The age gap between them, Richard was 30 and Ron his boss was 60, was a cardinal factor in his conduct towards his boss as he perceived him as a mentor. Ron was the CEO of Torsaf, a holding company, managing some of the most successful high tech companies in his country. Ron was the absolute ruler of his company and chose only yes-men as his subordinates. He often said that he is not looking for geniuses (he meant

that one genius was enough in his company...) but for loyal men who would obey his orders without questions. He used Richard as his front man in delicate business that he was reluctant to handle. He had to keep an impeccable appearance as an ethical manager and if one had to dirty his hands he chose Richard. That is why he appointed him to the Board of Directors of one of his American subsidiaries with a great technology, Tordot, as he plotted to takeover it from its "minority" shareholders. Ron had only 30% of the equity, but effectively he controlled the company and appointed its directors and management. The valuation of the company on the stock exchange was too high and its prospects were too bright, knowing it from insider information. That is why he planned to manipulate the price of the shares dropping them by 90% and then offering the shareholders to purchase their shares, thus privatizing the company at a very attractive price and benefiting from 100% of the prospects instead of 30%. Richard was chosen to accomplish this job.

Ron was a good judge of men's ambitions. He perceived that Richard had no inhibitions and his greed would overcome any apprehensions. That is why he offered him, to obtain his goodwill in return to the Tordot dirty job, an offer that he couldn't refuse. Albert, Ron's son, has established in Texas a startup, Memenco, in a high tech market segment close to those of Torsaf. He knew that the company had an excellent potential and he invested personally large amounts in his son's company. He didn't invest of course in Tordot, his subsidiary, as he knew what would be the fate of its shares, but he wanted that his company Torsaf would invest also in Memenco. Ron was very rigorous in keeping an ethical appearance and he couldn't afford to be accused of nepotism, as Torsaf was a public company controlled by one of his country's tycoons. He therefore sent his VP Richard to conduct the due diligence on Memenco and to be sure of the results of his diligence he gave his VP a loan of \$20K to invest on Memenco. "If the investment will be profitable you'll repay the loan and if not - forget about it!" he told him with a wink. Richard understood the hint, conducted the due diligence,

gave an excellent report on the company and Torsaf invested a large amount of money in Memenco.

The investment of Torsaf and Ron in Memenco came in a critical period for Albert, as the company ran out of cash and was about to collapse. With the influx of funds the cash flow improved substantially and Memenco was able to finish the R&D and go public. The product that Albert developed was indeed a revolutionary product (Ron as an honorable man couldn't afford to tangle Torsaf in a bad investment) and the valuation of Memenco reached an unprecedented level. Ron and Torsaf gained tens of millions of dollars on their investment, everything was fine, a win-win situation, everybody wins and nobody loses. But in parallel to the bonanza Richard was asked to manipulate the shares of Tordot and bring them down to almost zero. He succeeded in that beyond all expectations and Torsaf was able to purchase the remaining 70% of the shares for \$3M. The minority shareholders lost tens of millions dollars but thought that it was due to a force majeure. Ron was perceived in the media as the rescuing knight who saved his subsidiary from bankruptcy and who invested a huge amount (\$3M...) to rescue it. After privatizing the company, he conducted a miraculous turnaround and a year later he offered once again its shares to the public at a valuation of \$100M...

Richard was so happy of the bonanza he received from Memenco that he told some of his friends about it, including the story on the riskless loan of \$20K, the incredible profit of \$4M and the objective due diligence on Memenco. He was not however so careless as to tell them about the manipulation of the shares of Tordot, after all one cannot be too transparent... Among those who heard the story was Charles, who invested a large amount of his savings in Tordot and lost as everybody else almost all his money. The boasting of Richard raised his suspicions, as he thought that a businessman who conducted unethically with Memenco can also cross the line and break the law with Tordot, being a Board member of this company. Charles investigated the matter and contacted some of

his friends in Wall Street and he discovered that the collapse of Tordot's shares was not accidental. He asked for an urgent meeting with Ron whom he respected very much (at least until his new discoveries) and he threatened him that he would go to the press and the SEC if he would not be reimbursed immediately on all the amount he has lost plus a "penalty" of 200% on the "aggravation".

Ron faced one of the toughest dilemmas in his life. If he would succumb to Charles's "blackmail" he could be extorted more and more with others. If he would fire Richard it would be a confession that something was fishy and the young scoundrel could also testify against him and become a state's witness. If he would ignore the whole issue he was sure that Charles would fulfill his threat. If the tycoon would learn about his schemes he would lose his reputation and he could be fired. If Wall Street would learn about Tordot and that the investment in Memenco was made illegally they would investigate the matter and Memenco's shares could collapse. He hasn't sold yet part of his Memenco's shares and he could lose millions (he forgot that he has already gained tens of million dollars). Albert, who learned about the imbroglio (Richard the chatterbox told him everything) threatened that if his reputation would be tarnished he would commit suicide and leave Ron's grandchildren orphans. The situation seemed insolvable.

ANALYSIS & TOPICS FOR CONSIDERATION ON: WRONGDOING TO STAKEHOLDERS CASE - MERGERS AND ACQUISITIONS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Ron, CEO of Torsaf, 2. Richard, VP of Torsaf, 3. Albert, CEO of Memenco, 4. Charles, minority shareholder of Tordot.

* Is Charles a blackmailer or does he request only what he is entitled to?

* Which unethical and unlawful acts has Ron made, if at all?

- * Would Richard turn on Ron and become a state's witness?

- * What were the reasons of the boasting of Richard that he has made "the investment of the century"?

- * Was the riskless loan to Richard necessary in order to convince him to cooperate in Tordot's dirty job and in the due diligence on Memenco?

- * Will Albert commit suicide if the affair will go public and there will be a SEC investigation?

- * If worse comes to worse, will Ron resort to murder Charles the "informer"?

- * What are the choices of Ron?

- * How did the wives of the four protagonists react after hearing the case?

- * What would be the reaction of the tycoon when they would learn of the case?

- * Why has Ron invested his own money and Torsaf's money in Memenco and not in his subsidiary Tordot?

- * Why hasn't Ron invested at least the profits that he and Torsaf have made in Memenco in rescuing Tordot?

- * What were the motives of Ron in taking over Tordot at such a low price?

- * Has Ron thought even for a minute on the consequences of his schemes on the stakeholders and minority shareholders of Tordot?

* What is the difference between an ethical conduct and an ethical perception?
How does Ron refer to the subtle difference between both?

* What are the motives of Richard for his uninhibited conduct?

* Is ethics only a privilege of the rich people? Give examples of an ethical conduct of poor people and an unethical conduct of rich people. Is there a psychological connection between ethics and the size of one's fortune?

* Is there a connection between the age of Richard and Ron and their ethical conduct?

* Are the management methods of Ron modern, conservative, common, efficient?

* Has Richard fulfilled his legal and ethical obligations as a Board member of Tordot?

* Was the investment saga of Ron, Richard and Torsaf in Memenco a win-win situation? Who lost in spite of everything?

* Was the conduct of Ron somewhat nepotistic? Was the riskless loan a bribe?

* Was the merger between Torsaf and Tordot legal, ethical?

* Is it possible to prove that the merger was not conducted legally?

* Was there any transgression on the SEC regulations in Memenco and Tordot?

* Was there any contradiction of interests in the conduct of Ron?

* Torsaf had an ethical code. Has Ron transgressed any of the code's clauses?

- * What is the difference between overt and dissimulated bribe in this case?

- * Has Ron utilized insider information in his investment in Memenco? Has he utilized insider information when he decided not to invest in Tordot?

- * Who were the informers who disclosed to Charles what happened with Tordot?

- * Is it ethical to utilize informers in order to discover illegal/unethical acts?

- * What do you think happened to the minority shareholders of Memenco who bought their shares at the exorbitant prices in which Ron, Albert and Richard sold theirs?

- * Why have the minority shareholders of Tordot accepted to sell their shares to Torsaf after the collapse of their prices? Why haven't they opposed to the merger? Why haven't they tried to investigate what were the reasons of the collapse? If they would investigate what would they discover? Is there any chance that they would sue Ron, Richard, Tordot and Torsaf in a class action?

- * What will happen if Ron will abide to Charles's threats?

CONCLUSION

Ron didn't succumb to the threats of the "blackmailer" Charles (but he also didn't murder him...)

He gave several interviews to the media where he gave an adequate disclosure on the investment of Richard in Memenco. He mentioned that Richard has invested \$20K in the company, but he didn't tell of course that it was financed by a riskless loan from him.

Ron made clear to Charles that Memenco's valuation is today \$800M in the US stock exchange and if he will dare to sue him, he will employ all the legal means (Ron is an honorable man employing only legal means) that are available to him, Torsaf, the tycoon, Memenco, all of them with a total valuation of billions of dollars.

Ron told the tycoon in a tête-à-tête conversation the truth, but clarified that the conglomerate benefited the most from the Memenco and Tordot bonanzas and if there will be an enquiry nobody would believe that they were not part of it.

Ron started a smear campaign against Charles. He described him as a blackmailer, untrustworthy, informer and dishonest. Charles became ostracized by his country's society and business community and had to leave the country.

Albert didn't commit suicide. It was not necessary, but the shares of Memenco collapsed a few weeks afterwards. He managed to sell all his shares just before the collapse and became a multimillionaire even richer than his father, with a fortune of hundreds of million dollars. The minority shareholders who bought their shares at the maximum price lost almost all their investment. The huge amounts that Albert received changed his life but to the worse, he became addicted to heroin and divorced his wife.

Two years later the conglomerate of the tycoon sold its holdings in Torsaf and the new owner forced Ron to resign at the age of 62 with a golden parachute of tens of million dollars. He chose Richard to replace him as the CEO of Torsaf.

Richard has contributed recently two million dollars on behalf of Torsaf to one of the largest universities in his country to establish a Torsaf Business Ethics Chair. The university chose Richard to its Board of Governors.

CORRUPTION CASE – ETHICS IN SALES

(All the characters and plot and all the names of the companies in this case are fictitious)

Claudio immigrated to his country from Argentina when he was one year old. He of course didn't remember a thing from his Latin American childhood, he didn't even dream in Spanish as his parents did, both of them were professors of Spanish Literature who immigrated for economic reasons. His mother tongue was indeed Spanish as the Argentineans in his new country didn't want to relinquish their heritage. Claudio made over the years frequent trips to Argentina to visit his many uncles and aunts who remained in Buenos Aires. When he compared his fate to the fate of his cousins he was very happy that his parents have decided to immigrate. He loathed the corrupted ambience in Argentina, the corrupted politicians, the regime that was often dictatorial, the shaky economy and the poverty that he encountered in the streets. He received his MBA from one of the best Californian universities. He enjoyed very much the couple of years that he spent there, the weather was fair, the mentality was American but most of his friends there were Hispanic. Nevertheless, when he received an offer that he couldn't refuse he decided to return immediately to his country. He was offered a job as sales manager to Latin America of one of the leading defense companies, Global Defense, that sold tens of millions dollars annually to this continent. He was not bothered by the fact that in many cases he sold similar military systems to belligerent countries which had often border skirmishes and he contributed to the arms race in those countries, which were the poorest in the world. He enjoyed every moment during his frequent trips to Latin America, he was single and the long negotiations didn't tire him. He did not encounter corruption cases as he worked with local agents and what they did with the 10% commission he gave them from the sales to the armies was none of his business. His conscience was crystal clear.

After several years in which he succeeded very much in his job Claudio received the most important assignment of his career. He was about to submit a proposal of \$80M to the Air Force of one of the leading armies in the region. It was the largest proposal his company ever made and, if he succeeded in receiving the contract, there was a good chance that he would replace his boss as VP Sales and his boss, John, will become CEO of the company. "Not bad", he thought, "to become a VP of one of the leading companies in my country being younger than 30. My mother would finally forgive me for not becoming a lawyer or a physician as most of the children of her friends." At about this period he started to date a young lawyer of his age who wanted to get married very soon and have children. He worked night and day to prepare the proposal to his agent Jesus, who was the brother-in-law of the Chief of Staff of this country's army. Claudio's client was Jose, a Colonel in the local Air Force, with whom he made excellent personal contacts. They visited often local bars, got drunk, met with local women, although Jose was married and had children, and played tennis every morning when Claudio was in the capital. Now and then Jose hinted to him that the receipt of "goodies" would improve the chances of receiving the large contracts but Claudio insisted on giving only a 10% commission to Jesus and only after the award of the contract. John backed this attitude and told him that when you start to give bribes you never know when to stop. But Jesus insisted on receiving at least a few hundred thousand dollars in the proposal phase in order to improve the chances of receiving the contract.

This time the situation was different. If Global Defense would receive the contract, the company's profitability would increase by twenty million dollars, a substantial percentage of its annual profit. There was no doubt that after receipt of the contract Claudio and John would receive very large bonuses, and this would help Claudio to start his married life. He made the trip to his client with mixed feelings. He knew that Jesus insisted on receiving a "prepayment" of at least \$1M in order to pay it to the Chief-of-Staff - his brother in law, the Air Force

Commander and Jose. But he knew that in the past there were many cases that such prepayments were paid by his competitors and they didn't get the contract after all. He was in a big ethical dilemma, although the problem was only of the timing of the payment of the bribe, prior to the receipt of the contract or as a part of the 10% commission - or \$8M - that Jesus would receive after the signature of the contract. There was a long delay in the flight and Claudio figured that he would arrive at one o'clock in the morning of Saturday when the deadline for submitting the proposal was on Friday midnight. He could therefore miss the deadline for technical reasons and lose everything, even his job. Claudio phoned in panic from the stopover where he was delayed and begged Jesus to do his utmost for obtaining him a few hours delay. Jesus told him "not to worry" in his nonchalant way but Claudio told him harshly "you are about to receive \$8M from this contract for a few hours work so do anything needed in order to get the contract..."

When Claudio arrived to the Airport gates, Jesus waited for him with a large smile. "Why are you so happy?" asked him the nervous Claudio "Have you got a postponement?" "Better than that", answered Jesus, but he didn't want to explain. Claudio tried to get from him an explanation but Jesus remained silent. "Paciencia", he told him at last, "you will know soon". Claudio noticed that they drove in a new direction which was not the hotel or Jesus' home. "Where are we going?" he asked, but before Jesus could answer the car stopped in front of a large hacienda in one of the most luxurious suburbs of the capital. "Take with you the proposal and some blank pages with your company's letterhead" said Jesus. The door of the hacienda opened and Jose received Claudio to his home with a strong "abrazo". "Mi casa es tu casa", he said. It was the first time that Claudio visited Jose's home, as Jose preferred to prevent Claudio from meeting his wife (and the "suegra") for obvious reasons. When the worried Claudio asked him where his wife was, Jose answered him with a wink: "I sent her to the country with her mother, as we are going to have a very special machos' entertainment". "Ay",

thought Claudio, "This sex maniac must have invited call girls instead of taking care of the proposal. He forgot that I am almost a married man!"

But Jose took him to his study where he found five open envelopes with all the proposals of Claudio's competitors. The envelope of Global Defense contained a hundred blank pages. "This is your envelope that Jesus has submitted to us duly sealed right on time. As I have received the proposals to review them during the week-end, and in view of our warm friendship, and if you promise to lose five consecutive times in our tennis matches, you are invited to hand me your proposal now. We read all the proposals and found that the cheapest one is the American with \$91M, so that we ask you kindly to submit your proposal at a price of \$90M instead of the \$80M that Jesus told me that you intended to submit. It will still be the lowest bidder, but Jesus and his friends are going to receive a commission of \$18M instead of the original \$8M, let us say because of our warm hospitality. Your company will receive \$72M net and will not lose a thing, you will meet the deadline although you were late, my country will give the contract to the lowest bidder and will not lose a thing. It is a win-win situation, but you have to give us an immediate answer and you cannot consult anybody as we are afraid of bugs. What do you decide? Say yes and the contract is yours!" Claudio knew that he stood at the most important ethical crossroad of his career, he couldn't delude himself anymore, this was the "real" thing, he was asked to pay bribe, to commit an unlawful act. If he would decline the friendly offer he might lose the contract and even his job, after all he was late and they did him a favor to receive his proposal. He might even get fired because of his negligence of not coming a day earlier. If he agreed, John might disapprove as he told him several times not to give any bribes. But was it a bribe? After all, he only increased the commission from ten to 20%, his company would receive anyhow the \$72M it has forecasted, the profitability will be enormous, he will be promoted to VP, receive huge bonuses, John might agree after all and nobody would ever know. Should he accept or decline the offer?

**ANALYSIS AND TOPICS FOR CONSIDERATION ON: CORRUPTION
CASE - ETHICS IN SALES**

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Claudio, Sales Manager Latin America in Global Defense, 2. John, VP Sales in Global Defense, 3. Jesus, Global Defense's local agent, 4. Jose, Colonel in the local Air Force.

* Describe the ethical attitude of Claudio.

* Is it possible to conduct business in a corrupted country and remain ethical?

* Is the argument that "paying a 10% commission to the local agent in a corrupted country after the receipt of the contract" valid from an ethical point of view or is it only self delusion?

* To what extent does the background of Claudio affect his decision: his Latin American origin, his revulsion from the corrupted practices in Argentina, the ethical education that he received at home, the ethical deterioration in his country's business environment, the ethical standards of Global Defense, the ethical standards or double standards in the defense industries in the world?

* Do Jesus and Jose see the imbroglio that has developed as a problem or an opportunity?

* How will John react when Claudio will tell him about the events: if he agrees to the friendly persuasion or declines it?

* Acceptance of Jose's offer would break Claudio's country law, the local law, the American law?

- * Does Claudio incur a risk of being arrested by the local authorities?

- * Jesus tempts Claudio (he knows well enough the ethical inhibitions of his "client") by telling him that Global Defense would receive exactly what it had forecasted with a large profit, there is no a priori bribe, there is no direct bribe, the country of Jesus doesn't suffer as it gives the contract to the lowest bidder, is it really a win-win situation?

- * Claudio's conscience might be corrupted as he is involved now for the first time in his life in giving directly a bribe. He knows that Jose shouldn't show him his competitors' proposals, that he shouldn't let him participate in the bid as he was late, that his friends will benefit from the additional ten million dollars and not their country, that the lowest bidder - the American company - will not get the bid although technically they should win.

- * What do you think of the scenario that Claudio would tell his hosts: "It is all fine, but I haven't been in Jose's home. I came to give a proposal of \$80M and this is what I shall do, take it or leave it!" Would his hosts agree reluctantly to his attitude, would it affect their future relationships, should he inform John later on of all that happened if they agree or if they refuse?

- * What do you think of the scenario that Claudio would tell his hosts: "You are asking me to risk going to jail in your country and the prisons are quite filthy here. I risk ten years of my life and don't get a thing while you will be \$10M richer. I agree on one condition that you give me a kickback of \$2M, you'll still get \$16M instead of \$8M, doubling your commission, and I'll get \$2M for the risk that I take. This is really a win-win situation to all!"

- * How do you think would be the reaction of Claudio's fiancée when she hears of what happened if he will agree to Jose's offer? She works in the state's prosecutor office. Should he tell her, assuming that they have no secrets from each other?

- * What are the risks that Jose incurs in this tricky case?

- * Whose initiative was it to make the offer to Claudio? Who is going to receive most of the "increased commission"?

- * What will happen to Claudio in his future career if he agrees to the offer?

- * The US have enacted an Anti Corruption Act in 1977 prohibiting paying bribes in foreign countries. Most of the Western countries have issued similar laws. Claudio's country has not. Can Claudio be charged according to the US Act, can Jesus and Jose be charged, assuming that the American company that offered \$91M and lost the bid although technically it was the winner would discover all the scheme? Is there any chance that they would discover it?

- * In Rome do as the Romans do. Is it valid in a Latin American country that is used to bribes? Is it valid in an anthropophagic tribe if you visit there? What about your own values?

- * Is business ethics universal as the Declaration of Human Rights?

- * Is paying bribes an ethical wrongdoing? Why? How does it distort competition, the local country's budget, the local social justice, the income gaps between the richest and the poorest?

- * Was Claudio right in befriending with Jose? Would the situation be different if they were not old buddies?

- * Claudio is not yet 30. Can he afford to commit unethical acts at his young age, but promise to himself that in the future he will always be ethical? Are elder men/women more ethical?

* How would the situation change if the Sales Manager Latin America was woman aged 40 with a lot of experience in Sales and was not from a Latin American family?

* Did John hoped in the deep of his heart that Claudio, being a "Latin American", would find a way to deal with his compatriots without telling him how he does it?

* Would John agree to give a written or tacit approval to Claudio to accept Jose's offer?

* What are the lessons that you can draw from this case? How would you act if you were Claudio? John? Can you be more Catholic than the Pope? Do you have first of all an allegiance to your company, yourself, your country, who cares about the other stakeholders?

CONCLUSION

Claudio agreed to increase his proposal to \$90M and accepted Jose's offer. He wrote a letter to Jesus stating that if they will receive the contract he will get a commission of \$18M, to be sent to whatever location Jesus will indicate.

Global Defense received the contract. The profitability of the company increased subsequently to unprecedented levels, the shares' prices increased by 30% and the executives, including Claudio and John who had options, received huge amounts. The "deal" remained the secret of four people: Claudio, Jesus, Jose, and later on John.

John backed Claudio retroactively but didn't give him a written approval. He even congratulated him on his resourcefulness. John was promoted CEO of Global Defense and Claudio became its VP Sales.

Claudio married his sweetheart but he didn't tell her what happened.

Global Defense continued to conduct business with local agents mainly with Latin America and South East Asia. But the amounts and percentages of "commissions" skyrocketed and amounted sometimes even to 40% of the contracts.

After five years, the internal auditor of Global Defense discovered a kickback deal in which Claudio received from his South Asian agent half of the commission of \$30M that the agent received from a \$90M contract. The auditor learned it from the Chinese ex-wife of the South East agent who didn't receive from her ex-husband the alimony that she hoped to get and decided to blow the whistle and tell everything she knew, thus incriminating her ex-husband and all his associates.

Claudio was fired on the spot by John, although he denied the allegations of the agent's ex-wife. "I am innocent!" he said, "This is a second Dreifuss case!" Claudio's wife divorced him after speaking with the ex-wife who told her that Claudio received also "other kinds" of bribes...

The agent's ex-wife was found drowned in suspicious circumstances in the pool of her beautiful house. The police discovered that the South East agent was connected also to the local mafia that probably received part of the commission. Claudio and the agent were exonerated after the police couldn't find any evidence on the kickback, the only witness being dead.

Claudio felt outraged from the alleged suspicions to his impeccable integrity and immigrated to a Polynesian Island State. He married there the daughter of the local Prime Minister. Claudio was appointed recently as his country's consul in this tiny state, and it has become the most fervent supporter of his country in the United Nations. Claudio even invested \$2M in the local tourism and boosted by far the local economy.

BRIBE CASE – ETHICS IN GOVERNMENT

TENDERS

(All the characters and plot and all the names of the companies in this case are fictitious)

It was undoubtedly a macabre scene. Emil and Simon walked in mourning behind the coffin of their neighbor who had died of cancer at the age of sixty. When all of a sudden Simon told Emil: "Look what is happening in our country, that a nobody dares to sue large and respectable companies like Shannont. Not long ago a dubious person came to me at the District Court where I am judge with a bizarre lawsuit requesting a commission from Shannont for the receipt of a huge project of Telecommunications, \$300M or so. During the trial, he told us that he had acted as middleman between Shannont and a high ranking government official who supposedly was their consultant in this deal. He didn't have a signed contract and it smelled bad to me, as if he had mediated a bribe. I didn't at all understand what he wanted from me. You should have seen how Shannont's first rate lawyer made him a laughing stock in court. Finally, I sentenced this blackmailer to pay damages to Shannont." They continued to follow the coffin with the widow and children, the sun was burning and Simon continued to tell his story: "Why am I telling you all this? I remember that you once worked at Shannont and you know how ethical and honest they are. So, maybe you can tell me, now that the trial is over, if you have heard anything about this story as, in retrospect, it looks really odd. Why should such a man wake up one morning and sue such a respectable company, just like that..."

Emil phoned his friend Maurice, who was the CEO of the company that was the main competitor of Shannont in this project. Maurice burst into a roaring laughter and said: "Look, there is no end to the idiocy of our dear judges. You rightfully

earned a lavish lunch that would dispel the bad taste of the confession in the morgue that you had to suffer." The day after that they met at the most expensive restaurant in town. They ate calamari, drank fine French wines and, a little tipsy, Maurice said: "Perhaps you remember the Shannont of ten years ago when you worked there, but it is no longer the ethical and honest company that you used to know. In the last few years they wanted to reach a sales turnover of a billion dollars at all cost. They had to increase their earnings every quarter in order to meet the analysts' forecasts, and somewhere in the middle of the road they lost their compass. They could no longer grow from their own resources, they tried to enter into new market segments but to no avail, they acquired companies but failed in merging them; in short, Norbert, the CEO, did not succeed in the legitimate ways of growth and he was looking for new unorthodox methods. And then, Patrick, his CFO, came to him with the brilliant idea that they should participate in the \$300M telecommunications tender. There was only one slight problem; they didn't know a thing about this market segment, while my company was the market leader. You remember the tender, all the newspapers wrote about it and especially about the scandal of how Shannont won, with no experience, while we, who had delivered tens of projects in this field, couldn't do a thing. When we heard that Shannont was competing, we grinned and didn't take them seriously. So, when they won I knew that there was something fishy in it. After hiring the best detectives in the country, we learned that Patrick had a brother-in-law, who was the mediator who sued Shannont, This man told him casually at one of the family dinners that if Shannont wanted to win the telecommunications contract he could mediate with the high ranking government official responsible for the project and they would win. It would cost them the moderate amount of \$0.5M to be paid, in Switzerland, to the law abiding civil servant. The mediator asked for only \$100K for his mediation and he was also willing to receive it in Switzerland, after receipt of the contract. However, the official insisted on receiving the money immediately, as he had been conned in the past and believed only in cash a priori." Emil and Maurice were eating their soufflé with an

excellent digestif and Emil congratulated his colleague on the excellent choice of the restaurant.

"Don't mention it; anyhow, it is at my company's expense... But, the best part of the story is yet to come. Patrick proposed to Norbert that he pay the bribe and report it in the company's books as the import of software. Nobody would ever know a thing, he promised him, "but you have to give me your word of honor that my brother-in-law will receive his commission after receipt of the order. It is peanuts if you take into consideration what we'll earn from the project; you should be grateful that we are not in South America, as those guys would charge you with a much higher bribe. The government officials in our ethical countries can be bought at reasonable prices, so why not seize the opportunity instead of investing in R&D and acquiring expensive companies." Norbert was hesitant as to whether he should comply with Patrick's offer. Until now they hadn't ever bribed anyone, at least not in their own country. However, he heard from his colleagues that today it was quite common to win a tender by paying bribes and they did it often. And if we didn't pay the bribe our competitors would... We have to meet our ambitious target of a billion dollar sales or we will be sacked. Norbert had a duty towards his controlling shareholders to maximize profits and this was the cheapest way to do it, no risks, a high return on investment, nobody will ever know." Maurice continued: "You probably wonder how I quote whole conversations of the two rascals, but you'll soon understand. Therefore Patrick received the green light, transferred the bribe to the official's bank account in Switzerland and Shannont got the contract. We were all stunned, Shannont admitted that they didn't know anything in this field but told the reporters that it had been its strategic objective for a long time to enter this new market and they would invest millions of their own funds in R&D." Maurice paid, Emil left a large tip and they left the restaurant.

"Let us go along the boardwalk, we'll soon get to the "puenta". Norbert, my dear colleague, probably forgot that I was not born yesterday and I smelled that all this

business was not kosher. I hired the best detective bureau in town, they gathered all the information on what really happened and within a few weeks I learned all that I told you. In our young country we do not have yet the law of Omerta, and everybody talks. We don't have the tradition of silence like in the civilized countries where you don't say a word on the bribes you pay and on the mistresses you take. And this is how I cracked the secret; *cherchez la femme*, my friend. Patrick told everything to his mistress; she wanted to break up anyhow and she recorded him on tape. My detectives bought Patrick's bedroom confessions from his mistress for \$20K, gave me the tapes and I showed them to poor Patrick. I told him that he had two choices, either go to the police himself or let me do it, but the only chance he got was to be a state's witness. He said that he wanted to consult Norbert before he went to the police and I strongly recommended him not to do so. But he insisted, I warned him that Norbert was a dangerous guy, he belonged to the elites, played golf with all the ministers and millionaires, he was a personal friend of the chief of police and his lawyer was a special advisor to the Prime Minister. Norbert would never agree to get mixed up in such a story and he would put all the blame on Patrick if the stinking story were discovered."

On the beach hundreds were sunbathing, playing and eating. Maurice continued: "Oh, how I envy those who have the time to go to the beach. I work so hard and they do nothing... On Monday morning Patrick met Norbert. Nobody knows what happened in this meeting, but the yelling was heard in all the adjoining offices. Patrick left Norbert's office after a couple of hours and told his secretary that he was going home to rest. He got into bed and never woke up; they said that he had a heart attack, but I know that Patrick was the healthiest man I ever met. Without Patrick I didn't have a case anymore and I couldn't do a thing against Shannont. The day after, I attended Patrick's funeral and I don't know why I had the impression that I was participating in a carnival. Everybody looked happy, as if they were relieved of something. I couldn't avoid going to Norbert to pay my condolences. You should thank God, as Patrick's death saves you from prison, I told him. Norbert answered me smiling - what can I do, God is always on my

side, my mother told me that I have a guardian angel who will rid me of any foe that I'll encounter in my life. I grinned and answered Norbert - an angel or his associate - pointing at him. Norbert looked at me with such murderous eyes that I felt a chill up and down my spine. I returned to my office and decided to bury the case. Rather bury the case than be buried, life is too short, I have to enjoy it and not risk it even for my company's sake. Patrick didn't learn the lesson and he paid the full price!"

Emil was smoking an expensive cigar and offered one to Maurice. He suddenly said: "I don't know yet how Judge Simon got into the picture." Maurice smiled and continued: "It is true, because of that I invited you to lunch. The mediator saw that all at once he would be deprived of the \$100K that had been guaranteed by Patrick, God save his soul. He came to Norbert and asked him to pay the money. Norbert told him that he didn't know what he was talking about and if he had any recrimination against Patrick, he should sue him in hell. The mediator was furious and tried to receive the money from the government official, who told him that they hadn't made any agreement between them. He had no choice but to sue Shannont for \$1M - the \$100K promised to him and \$900K for aggravation. He went to the press, but everywhere he went, he was perceived as a madman and blackmailer, especially since Norbert used all his contacts to discredit him. Norbert hired his lawyer friend who managed to win a similar case where another "blackmailer" had sued Shannont prior to an IPO for breaking its obligations and causing them huge losses. The brilliant lawyer managed to receive damages from the blackmailer although everybody knew that Shannont was guilty. The same lawyer appeared before Simon and impressed him with his learned arguments. Simon, who didn't understand anything in business and was impressed by the rhetoric of the lawyer, the honorable appearance of Norbert and Shannont's witnesses, perceived them as honest and ethical people suffering from the lunatic allegations of a blackmailer. He dismissed the case and forced the mediator to pay for Shannont's legal fees."

Emil and Maurice departed with a handshake. After all, it was a pleasant afternoon, much more interesting than an idle sunbath at the beach. A copious meal in a luxurious restaurant, an entertaining story, good wines and an expensive cigar, what could be better than that to strengthen your joie de vivre!

ANALYSIS AND TOPICS FOR CONSIDERATION ON: BRIBE CASE - ETHICS IN GOVERNMENT TENDERS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Maurice, CEO of a telecommunications company, 2. Norbert, CEO of Shannont, 3. Patrick, CFO of Shannont, 4. Simon, a District Court Judge.

* Is the criticism against the District Court Judge Simon justified? Had he any chance of discovering the truth?

* Do you know of similar cases? Do you think it is a fictitious case or that similar cases could happen also in your country?

* Why did Simon choose to "confess" to Emil at their neighbor's funeral?

* If you were Simon, how would you solve the case?

* Who is Maurice: A warrior for justice and ethics, a revengeful man who wants to get his revenge for losing the tender, a coward who doesn't want to mess with people like Norbert?

* Why does Maurice tell Emil the story after all?

* Patrick - a tragic character of a rogue, a loyal executive of Shannont who wants its success, a blackmailer who wants to involve Norbert in his schemes?

- * What do you think happened during the meeting between Norbert and Patrick?

- * Was Patrick right when he went to consult Norbert before becoming a state's witness?

- * Do you believe that such an honorable man as Norbert would mess in criminal acts against Patrick or does he only want to be perceived as a dangerous man?

- * Describe the metamorphosis that happened to Norbert who turned from an ethical man into a bribe giver, or possibly a murderer?

- * What were the alternatives Maurice had after Patrick's death?

- * Why has the mediator decided to sue Shannont against all odds?

- * Are there any prejudices in the legal system: in favor of large companies, brilliant lawyers, members of the elites, and against minority shareholders, third rate lawyers, John Does who cannot express themselves in the right legal jargon?

- * How can you explain that such an intricate case comprising the dubious death of an executive, a legal suit, bribe allegations, an investigation of Maurice's company, was not covered by the media, there was no police investigation, and no tattle-tale ever spoke?

- * Would it change the story if Patrick were single, married, old, young, with low class or elite origins, Afro-American, a WASP?

- * Describe the apologetics on Norbert's part: he has to act this way because of the cut-throat competition, the controlling shareholders putting pressure on him, the analysts wanting him to meet his forecasts, he failed as a CEO but still has to

deliver the goods. Isn't a bribe the speediest and safest way to meet his objectives, it was not his idea to give the bribe, he didn't give written instructions, Patrick was too dangerous and could jeopardize Shannont's success.

* Why did Maurice decide to threaten Patrick and not go straight to Norbert?

* Why are the low or middle level executives always those who go to jail, if at all, in such cases? Why are the CEOs and Tycoons almost always exonerated?

* What are the lessons that you can draw from this case: live and let live, if you want a long life don't mess with the elites, justice will prevail after all, as Emil will start a campaign against Shannont and Norbert?

CONCLUSION

Emil didn't start a campaign against Shannont and Norbert. Even if he wanted to do so he had no smoking gun evidence. Shannont was acquired a few years later by an ethical tycoon who managed to get rid of the unethical executives. One of the first moves he made was to fire Norbert, with a golden parachute of \$10M.

Patrick died, but his memory will always be with us. Norbert published a book in memory of Patrick, financed by Shannont. In the foreword of the book, Norbert wrote: "I have seldom worked with such a dedicated, ethical and loyal executive as Patrick. As VP Finance, Patrick's name became synonymous with integrity and honesty. He had an employee aged 70 and in spite of the pressure put on him to let him retire, he kept him in his department, as he was a good employee and a good example for the young managers. My father, said Patrick, was laid off at the age of 55 and it ruined his life. I want everybody to know that you can continue to work at Shannont even if you are old and not as efficient as in the past, but yet with the right motivation and dedication. However, unfortunately, Patrick didn't manage to reach 70 or even 55. He died relatively young and his loss is our loss. Dear Patrick, we love you and will never forget you. Rest in peace, our friend, your example will always guide us!"

Maurice continues to work hard, he changed several jobs and is now independent. He has completely forgotten the Patrick saga and if it were not for Emil he wouldn't even remember it. He continues to eat gourmet dinners and generously invites his friends. However, his doctors told him that if he doesn't go on a diet he might suffer from obesity. Recently he received a cigar box from Emil, who was in Cuba on business.

Norbert succeeded very well in his career. Over the years he gave bribes of many millions in his country and abroad. He always managed to do so secretly, most of the time indirectly, to family members - sons or cousins, in anonymous bank

accounts. Nobody ever dared let him down, everybody knew, after the Patrick case, that you shouldn't mess with him. He only complained that the bribes he had to pay in his country were higher and higher, it was no longer like in the good old times when you could buy a \$300M tender for only \$500K. As he is an honorable man, he pays the bribes every time on the dot and his clients can count on him.

Last year, Norbert joined the ruling party and his name has been mentioned by the newspapers as a serious candidate for the Treasury Ministry. It is high time he says in his interviews that our country had ministers who are businessmen with integrity, taking care of the interests of all the stakeholders, and not corrupt politicians, who are always on trial for corrupt practices. We need ethical executives like me, let me lead our people!

Norbert never contributed anything to the community. He says that his contribution is much more than a miserable million or two to a hospital or a university. His contribution is in committing his life to the country, its economy and its people. Nevertheless, he was quite disappointed at not getting the highest honors of his country, as many old professors did. He said: "They write articles on subjects that nobody understands, while I am maintaining this country with my bare hands. My country is ungrateful, as they cannot recognize my merits."

Recently, Norbert received an anonymous letter with a citation of Cicero's first oration against Catiline: "Nihil agis, nihil moliris, nihil cogitas, quod non ego non modo audiam, sed etiam videam planeque sentiam". He didn't understand it, after all he was never good in Latin...

THE VICTIMS OF CORRUPTION
THE NOVEL "JEAN DE FLORETTE"
SUMMARY AND ANALYSIS

Based on the novel Jean de Florette (1962) by Marcel Pagnol

The film is based on the novel with slight changes:

Jean de Florette, 1986, 122 min., Director Claude Berri, w. Yves Montand, Gérard Depardieu

Summary and Analysis:

In a rural French village in Provence a rich old man, Cesar, and his only remaining relative, Ugolin, cast their covetous eyes on an adjoining vacant property. They need its spring water for growing their flowers and are dismayed to hear that the man who has inherited it, Jean Cadoret, son of Florette, is moving in with his wife, Aimee, and his little daughter, Manon. They block up the spring, thus not disclosing this insider information to the underdog "shareholder" Jean, while the village inhabitants abide the rule of Omerta and do not interfere against the "tycoon" of the village, Cesar. Cesar and Ugolin watch as their new neighbor tries to keep his crops watered from wells far away through the hot summer. Though they see that Jean's desperate effort is breaking his health to death and his wife and daughter's hearts, the two unethical "businessmen" wanting to maximize their profits think only of getting the water and the money it will bring them.

In the sequel of Jean de Florette, Manon des sources, Manon has grown into a beautiful young shepherdess living in the idyllic Provencal countryside. She determines to take revenge upon the men responsible for the death of her father.

Cesar and Ugolin have become successful flower growers using water from the spring of the former property of Jean which they have bought at a very low price from his widow right after his death. They made the valuation of the property (the shares' prices) collapse by withholding the insider information on the spring = money. Manon avenges the crime they have committed and the silence of the lambs in the village and blocks the central spring of the village which she has discovered. The villagers are taken by remorse as they think that it is God's punishment to suffer the same fate as the late Jean, they denounce in front of Manon the crimes of Cesar and Ugolin. Ugolin wants to compensate Manon whom she loves by marrying her but she refuses, disgusted to marry her father's murderer. Cesar discovers finally from an old friend that Jean was his own son born from a love affair he had with Florette who decided to marry Cadoret in another village after she has not received an answer to her desperate letters to Cesar who was in the war and didn't get her letters. Cesar stunned by the knowledge that he has murdered his own son dies from remorse. The lesson of the story is similar to the lesson of Arthur Miller's *All My Sons*: When you commit unethical acts that bring the death of people it will have a repercussion on you, as if you have murdered your own son.

Some of the leitmotives of the novel are: The symbol of the water (or money in business) stolen by Cesar and Ugolin, who are not ethical towards the weak stakeholders. The law of Omerta in *Les Bastides* which is - don't interfere with other people's business. Is it typical to France, to Sicily, to the US, to China, to Germany, the UK, or is it international? The villagers are ready to unite only against those who threaten their capital.

Ugolin is greedy and kisses his gold coins. Money is his only *raison d'être*. Cesar also is extremely greedy but he is afraid that if Ugolin doesn't marry he will not have anyone to bequeath his money to. Both don't have any ethical inhibitions. If Ugolin wants to grow flowers it is not because they are beautiful but because he can get more money from them than from vegetables. The villagers know also of

another crime - the murder of the hunter by Pique-Bouffigue but they don't say a word because of the Omerta. That is why they don't interfere to help Jean (they discover only at the end of the sequel Manon that Jean was the son of Florette who was originally from the same village.) But, not knowing that Jean was one of theirs, they perceive him as an outsider, not a member of the local "elites", he is also an intellectual, not rich, doesn't buy anything from them, and even worse - he is a hunchback. The Bastidians can understand that a crime could be committed for greed but not for wickedness, as you shouldn't mix sentiments with business, nothing is personal. Pique-Bouffigue himself is murdered by Cesar as he didn't want to sell his property to Cesar, although he was offered a fair price. Cesar does it without inhibitions because he wants to improve the valuation of the property by growing flowers which will give a higher return on investment than Pique-Bouffigue's. In order to maximize profits everything is permissible, according to Cesar and he commits twice a murder even if it is indirect. The second murder, Jean's murder, is also justified as he is a fool, a bad businessman, and both the victims mix sentiments with business, which is completely forbidden, according to Cesar's ethical code.

Crespin, the village of Cadoret who married Florette, is a neighboring village of Les Bastides. They hate and fight each other, which is quite understandable, because if you don't fight your neighbors whom are going to fight? This is similar to what Michael Milken, who was convicted for fraud in Wall Street, said: "If you don't con your friends whom can you con?" The hate between similar villages, people or companies is very common. The worse fights are between similar newspapers, cut-throat competition of similar companies, hate relationships in families of tycoons. Cesar utilizes disinformation in order to enforce his position. He says to one of the villagers Anglade that the spring was dry, that an "accident" happened to the spring and blocked it. The unethical companies use the same methods, giving ambiguous justifications for their unethical acts. They "rescue" the poor minority shareholders by buying their shares at 10% of their price after they caused the collapse of the prices. They disclose "insurmountable" problems

in their companies in order to make the prices collapse and then buy the shares at a much lower valuation.

Water for the villagers is like money for businessmen. When you block the spring it is similar to blocking the knowledge on the prospects of your own company in order to acquire the shares of the minority shareholders who don't know that the situation is excellent. But this is known only to the controlling shareholders who have the insider information about the spring or the prospects of the company. Cesar and the unethical tycoons utilize time to their benefit, as they have all the time necessary for their schemes, having a lot of money and resources, while the minority shareholders or Jean don't have time and unlimited resources. It takes Cesar three years and two murders in order to acquire the property for growing flowers. Some unethical companies plan their schemes five or ten years ahead. They also drag trials for five years or more in a war of attrition with their opponents, who cannot afford to wait for five years in order to recoup the money they lost. At Cesar's suggestion, Ugolin becomes Jean's friend in order to learn of his plans and give him wrong advices. He does therefore industrial (or agricultural) intelligence (or espionage), while Cesar doesn't want to meet Jean as he prefers to commit the crimes without knowing the victims, as personification can jeopardize his schemes. But he laughs at Ugolin who becomes sentimental like his mother and wants to assist Jean, moved by his misfortunes. Cesar tells him: "Do you want carnations or friends?", namely - make up your mind, because if you'll help Jean you'll never get his property. He could also tell him like Gordon Gekko in Wall Street: "If you want to have a friend in business, take a dog!"

Cesar and Ugolin cut Jean from the Bastidians, as they don't want him to learn from them that his property has a spring. Cesar speaks ill of Jean to the Bastidians and Ugolin speaks ill of the Bastidians to Jean. Ill speaking is a legitimate weapon for many unethical businessmen. One of the worst mistakes of Jean (and he made many) is that he doesn't befriend with the Bastidians in spite of everything. If he would have done so and told them that his mother Florette was a Bastidian they

might have told him about the spring. Cesar and Ugolin give Jean wrong advices like unethical companies encourage analysts to give unreal forecasts on their companies, in order to make the prices collapse. Manon with her intuition hates Ugolin from the start as she senses that he wishes them ill. Finally she takes her father's revenge after his death. It might be too late as her father died, they were ruined, she became a shepherdess instead of a lady, and more than ten years have elapsed. But being a shepherdess she thinks like a Bedouin who taking his revenge after 40 years says that he has one regret - that he took his revenge too early...

Jean is like the scientific businessmen who base their decisions on mathematical models about the conduct of the shares, the market trends and everything else. He doesn't employ his common sense, psychology, or intelligence on the Bastidians. The statistics blur his mind from seeing that without water (or money) he doesn't have a chance to succeed. He thinks that he knows everything and doesn't take the advice of specialists, which he is not. We could analyze the conduct of Jean as a start-up entrepreneur. He spends fourteen thousands francs in equipment and remains with no reserves or working capital. As in many other cases, Cesar buys ultimately the start-up for peanuts. He always has money and waits patiently to take advantage of the inexperienced entrepreneurs who remain without cash, just before the breakthrough. He makes all the profits while the entrepreneurs made the investment and lost. What are the reasons of Jean's ambitions and why does he want to prove to everybody else that he is the smartest, although he is a hunchback? He doesn't understand that in business like anywhere else everybody has a hunchback, sometimes it is a real defect, sometimes it is a virtual one, like low-class origin, a ruined family, an oriental or Afro-American origin in a racist society. He cannot overcome his complexes, which are only in his imagination, although he has a beautiful loving wife, a worshipping daughter, a heritage of a property and plenty of money. Jean is very intelligent, but he loses everything because of his complexes and ego.

Cesar on the other hand doesn't commit any mistake, he is cool, a good example of an unethical businessman. He doesn't personify his victim, he plans his schemes years ahead, he manipulates and "buys" the goodwill of all the villagers, he cooperates with Ugolin, who is the scapegoat should anything go wrong. But maybe Cesar commits the worse mistake of all, as he murders his own son Jean, Ugolin commits suicide, and he has to bequeath all his money and the properties to his victim - Manon. Jean's family, sympathetic, ethical and loving lose all their money and Jean loses also his life, while Cesar and Ugolin, single, selfish and mean gain everything, at least in the first part of the story. What is therefore the conclusion? That the first part of the story describes the normal way of conduct in business, while the second part was written only to have a happy ending and it doesn't reflect truly what happens in business, where Cesars prevail and Jeans lose everything? Is the vengeance of Manon effective or does it come too late? What would we do if we were in Jean's place?

Cesar remains calm also when the whistleblower, who has seen him block the spring, comes and confesses to the community. He denies it against all evidence and tries to discredit the witness. He is always business-like, all his conduct is rational, maximizing the profits. Pamphile and his wife are a good example of the attitude of society towards ethical crimes. Pamphile wants to assist Jean but his wife opposes it with all the standard argumentation: Jean comes from Crespin and we hate those guys, you don't interfere with other people's business, Jean wanted to kill Cabridan (while it was the opposite), and finally - Jean doesn't buy from him anything while Cesar has just placed an important order. Ugolin has a clear conscience as he has warned Jean of the catastrophe coming and Jean didn't want to quit. But he forgets the basic fact that he has blocked the spring and if he wouldn't have done it, Jean would not have died. We can compare that to the clear conscience of tobacco companies that warn their clients of the dangers of smoking and if they smoke, it's their own customers' business as they are adults who know what will happen to them. Furthermore, they contribute tens of millions to the community, to opera-houses, to universities, to arts.

What is the reason of Jean's death: his megalomania, Ugolin's treason, Cesar's scheme, the Omerta of the Bastidians, the blind love of Aimee who backs up all his foolishnesses? Cesar and Ugolin simulate the finding of the spring one hour after buying the plot. Manon, Jean's small daughter, sees them and understands that they have blocked the spring and caused Jean's death. Just like the controlling shareholders of a "failing" company discover after purchasing the remaining 70% of the shares from the minority shareholders, who didn't have the insider information and sold their shares to the tycoons at 10% of the price, that the company after being privatized has really a tremendous potential and is about to make a breakthrough.

CORRUPTION IN MEDICARE - THE FILM "DAMAGED CARE" - SUMMARY AND ANALYSIS

Based on the film:

Damaged Care, 2002 (TV), 114 min., Director Harry Winer, with Laura Dern.

Summary and Analysis:

The film is about the true story of Dr. Linda Peeno, a woman pushed to the edge, risking her career and family to punish the ruthless companies who valued profits over human lives. Trained as a doctor, Linda went all out, using her experience to testify on behalf of patients suing their insurers. In spite of all the difficulties and risks she decided to fight the unethical Medicare companies, the HMO, Health Maintenance Organizations, insuring the sick people. Peeno is the whistleblower who exposes the corruption in the system people are unaware of. The film leaves the audience shocked and frustrated with the existing US medical system, but similar systems exist nowadays all over the world. Damaged Care centers around the state of ethics in medical care and what happens when corporations get involved in medical decision making the bottom line take precedence over sound medical care. It shows the dilemmas faced by the doctors, the managers, as well as the plight of their patients. Peeno is torn by ethics, family and career. Laura is a doctor who married and had kids before she was able to practice medicine. Her first efforts to return to the work place lead her to becoming a medical reviewer for a large HMO. There she is told she will help to stop the practice of doctors ordering (and making the insurance companies pay for) unneeded tests and procedures. It becomes clear that in fact she is there to rubber stamp denials and add an aura of legitimacy to the practice of denying people the services their premiums paid for. Despite her stress and unhappiness her husband has her stay

on in order to supplement the family income. Only after she has to make a life or death decision does she begin to realize that the system itself is flawed and cannot be fixed from the inside. As she expresses her concerns publicly the family starts to fall apart and the increased stress almost makes Peeno give up the fight. Her moment of truth comes with the help of two people - a nun and a former nurse now a victim of the system she once worked for.

When medical insurance was privatized the Medicare companies faced a very serious ethical dilemma: to what extent could they assist their patients in giving them expensive treatments at the expense of the profitability of the companies. What is more important: a heart transplant to save the life of a patient, less expensive medical treatments, or obtaining an adequate or maximal return on investment? Furthermore, in many cases the hospitals make unnecessary surgery in order to benefit from the medical insurance and improve the doctors' experience. The manager of the first company where she starts working, Humana, explains her that in the last three years the medical expenses increased by tens percents. She has to be tough in order to make tough decisions. She ensures them that she will be able to do so and gets the job. Linda has to check if the treatments requested adhere to the criteria of the companies and are covered by the medical insurance. The doctors supervise the nurses' activities. Linda befriends Cheryl Griffith, a nurse who has a humane approach to her patients. Her bosses involve irrelevant considerations like approval of unnecessary treatments that are recommended by doctors they want to promote as they might bring them new patients. Linda tells the management that the system is expensive and cumbersome, and this prevents to give the patients the proper treatments. She thinks that they invest the money in the wrong places.

A new manager starts working in the company, Dr. Scarwood, who complains that nobody cares of the bottom line, and from now on it will be the unique consideration. He wants to receive every week from the doctors what is the level of rejections they have authorized. He asks them to reject more and more requests

for treatments in order to cut costs and increase profitability. Linda cannot agree to this approach who contradicts her ethical standards. Peeno is not allowed to approve expensive treatments. She doesn't want to impose to the doctors which treatments to approve and how to treat their patients. A doctor phones Peeno and asks for her approval on a heart transplant, otherwise his patient will die. Before she decides what to do, her boss and colleagues give her to read the terms of the insurance policy in order to find a way how to reject the request. The ethical argumentation is that if she will agree to the transplant it will be at the expense of a baby needing a palate surgery or three chemotherapy treatments. The employer of the patient ensured that the insurance would not cover heart transplants. Finally, Peeno gives a negative answer and the doctor tells her that she is a murderer. But all her colleagues congratulate her as she has saved the company half a million dollars. She asks herself is she responsible for the patient's death or not, even if the company is legally covered and is not obliged to finance the transplant. Linda notices in the same time how the company installs in its lobby an expensive statue valued at a similar cost than the heart transplant. She weeps and regrets her decision. Two colleagues encourage her to complain on the inhumane attitude of the company's management, they promise to back her in the management's meeting.

Scarwood announces that they have acquired another company in Miami, its cash flow will improve because of the retirees, as many of them will die of age and the company will save their drugs and treatments, in short the bottom line will improve substantially. The colleagues decide not to back her, as they don't want to confront the CEO. Linda resigns and tells her children that she has done it for ethical reasons, as she doesn't want to find excuses why not to save lives. Linda's children and husband react to her resignation with mixed feelings as they need the money from her salary. They tell her the standard excuse: "Why didn't you stay in the company in order to fight from within for your ideas?" She asks her family to stand by her side but her husband tells her that she could at least have consulted him. She answers that if she would stay - something in her would have died, but

Doug says that everybody has to pay a price. Doug is a doctor and says that today you need a business degree in order to practice.

In March 1988 Linda starts to work in Brothers Louisville Kentucky. Her friend Cheryl who worked with her at Humana finds her this job and tells her that this employer is much more receptive to the patients' needs. She says that there is a difference between a responsible action and greed. It is possible to deny requests for objective reasons and not in order to increase profitability. She checks herself every day in order not to transgress the lines. Their hospital is an NGO headed by Dr. Gershon and he is also one of the owners and managers of Brothers. Linda is contented with her job. But the parent company of Brothers is a Minnesota company that decides to inspect Linda's company after noticing that they lose a lot of money. Andrew McCullough is appointed as the new CEO and he tells the doctors that what will prevail from now on is only the bottom line. Cheryl resigns but Linda cannot as they have bought recently a new house. They have financial obligations. This time she'll stay with the company and tell what she thinks. Linda receives a case of a nurse who is paralyzed and cannot communicate with anyone, named Dawn Dubose. She received a severe stroke at the age of 31 and needs infinite treatments. Cheryl is replaced by Gemma Coombs who works in unison with the new boss. The CEO tells Linda (who cooperated with him to his satisfaction in another issue) that she must find a way to get rid of Dawn. She costs a lot and her case is lost anyhow, and besides they can devote the limited resources to better applications.

Linda tells her husband that she has reached the same crossroad as before, but she cannot understand why. It is an NGO, the doctors should care about their patients and they are the owners of the company. But they tell her that they cannot afford her high moral standards. Linda meets a lawyer Paul Sheinberg and tells him that she has approved the request for treatment of the child represented by him, but he shows her a letter of refusal of her company. She understands that Gemma has overruled her decision although she reports to Linda, probably with the backing of

McCullough. This is unethical and she asks the lawyer what to do. He tells her that he is studying now Ethics in Louisville College and he gives her the book by Thomas Martin studied in the course. Linda confronts Gemma in a management meeting and tells her that if she overrules her decisions another time she will fire her. Linda tells Paul that she cannot make decisions against her moral judgment. She makes a presentation to the management on a computer that can assist Dawn to communicate with her surroundings. It could lower their costs if they approve to purchase it as Dawn would tell what she needs and they'll save a lot of unnecessary costs. Linda approves the purchase of the computer for Dawn but has to resign subsequently.

Linda meets a nun from Loretta convent on the plane and gives to the nuns a lecture on her experience in Medicare. She senses that if something wouldn't be done the situation would only deteriorate. In March 1993 a small child was sent to a distant hospital where his insurance company Kaiser gets a discount of 15%, in spite of his critical condition. Linda appears on TV in the program Date Line and says that such cases should not occur in a country with the best Medicare. The child's family sues the company and wins. Linda tells the audience that the purpose of the insurance company is to make profits and not to give adequate treatments to its clients. The TV station is submerged with heated responses of the public. Linda speaks vehemently against Humana and other companies and Humana asks her to retract what she said. Her husband has contracts with Humana and he is afraid that he'll lose them if she doesn't retract. He is not willing to back her crusade. Linda receives many telephone threats that if she'll continue her campaign her family will suffer from it. The lawyer of a policeman asks her to be an expert witness against Humana in a case where the company refuses to give expensive treatments to the policeman's daughter who suffers from mental retardation. The nun urges Linda to abide Hippocrates's oath and help the patients. Linda receives anonymously a proof on her husband's unfaithfulness and he admits it. Her daughter urges her not to give evidence as it will ruin her father's practice, but Linda says that she made compromises for 15 years for her husband's

sake but now she has to do what she seems right. She separates from her husband because of his unfaithfulness.

Linda agrees to be a witness on behalf of the policeman's daughter. She is the only one to do so and all the others are afraid from Humana. Linda is from now on perceived as a whistleblower. She knows how to attack those companies as she worked there. She didn't think that they would take so personally her testimony but for those unethical companies money is very personal. Dawn sends her a touching letter thanking her for enabling her to have at last a voice and to be able to communicate with the world. Linda explains to the court how the doctors receive bonuses if they manage to diminish the expensive treatments. The companies have an incentive to receive only clients that would increase their profitability. Humana wanted to save millions by getting rid of 31 chronic patients who were in the policemen's insurance policy. They wanted to get rid of the problematic children. Because of Linda's testimony the policeman receives a compensation of \$78.5M from Humana. Humana appealed the decision on the high damages. The parties settled outside court. Linda comes to visit Dawn who thanks her for finding a voice but Linda tells her that she should thank her as she assisted her to find her inner voice. She promises her to continue until she will be heard.

Linda appears before the Health subcommittee of the American Congress. She confesses that in 1987 as a doctor she caused the death of a man because she refused to approve a heart's transplant. This case, as well as others, have affected her soul, but the distance was great and the anonymity of the patient eased her conscience (this reinforces the need for personification as a vehicle for ethical behavior). To ease her conscience she was told that she didn't prevent treatment, she only prevented payment. Now she is not willing to agree anymore to these double standards. History shows what happens when systems operate without transparency, they need to be inspected and fully transparent, otherwise many

more deaths and suffering will happen until the public will find the courage to change the course of action.

CORRUPTION IN STATE ADMINISTRATION

THE FILM "MARIE: A TRUE STORY"

SUMMARY AND ANALYSIS

Based on the film:

Marie: A True Story, 1985, 112 min., Director Roger Donaldson, with Sissy Spacek

Summary and Analysis:

The film is based on a true story about the corruption of the Governor of Tennessee Ray Blanton, the members of his family and his friends and allies living and profiting at the expense of the taxpayers. This is also the story of Marie Ragghianti who managed to rehabilitate her life, leaving her husband, finishing her university studies and disclosing the corruption of the Governor. Marie was beaten by her husband but was afraid to leave him as she had three small children and no job. Finally she decides to return to her mother in Nashville, Tennessee, and in 1973 resumes her studies at the university. In the beginning, everything works out to her detriment. She works as a waitress, her son swallows something and suffers from spasms, it is very difficult to earn enough money for her family and she can't find time to study at the university. After graduating she doesn't find any job, until she meets a classmate Eddie Sisk who works as the Legal Counsel of the Governor of Tennessee, Ray Blanton. He offers her a job and she befriends a colleague, Kevin McCormack. Sisk offers her a job as the official responsible for extradition of the state of Tennessee. There is a lot of red-tape in the extradition requests and the Governor is also committed to give equal opportunity to women. Marie receives the job because of her friendship to Eddie and she "owes" him. She needs money, the job is a senior one, and Sisk hopes that she'll

be extremely loyal to him. Apparently he chooses her inexperienced and he thought also spineless.

Within a short period of time she masters her job and asks for more responsibilities. He takes her to the state prison where 31 people are waiting to be executed but the Governor is against the death penalty and it is not clear what would happen to them. She sees the electric chair. Sisk wants her to be the contact person for the pardon applications from the Governor. Sisk tells her that there is a prisoner named Jimmy Krot, whose father is one of the most important contributors to the Governor. He was sentenced for drugs offences, but anyhow there is no room in the prisons that are overcrowded. So, it would be advisable to release him as he is a good guy anyhow. The Governor has a friend Billy Thomson, a despicable man, who does for him all his dirty jobs. Soon, Marie understands why she was offered the job. She is supposed to be the rubberstamp and give pardons to prisoners whom the Governor wants to release. Later on she will learn that they bribe the Governor in order to be released. Marie is told that it is the Pardon season, but she wonders why only those recommended by the Governor should be released. Marie seems to cooperate and doesn't ask too many questions. Sisk recommends her to be the Chairman of the Parole Board of the State of Tennessee. It is one of the most important functions in the State's administration. Marie meets the Governor, who is very nice to her and agrees to accept Sisk's recommendation.

A person named Will Midget is asking for parole. He says that a man called Roundtree came to him, he looked like Bill Thomson and said that he is the friend of the Governor and is asking for \$20K in return to a parole. Marie tells the story to Sisk and he asks her not to be too nosy. He agrees after many instances to talk about it with the Governor. But Sisk warns her that it might jeopardize her career if she would be too nosy. In this case, like in most cases of corruption, the Governor is not involved directly in the corruption and doesn't incur risks. Those who incur all the risks and who get only peanuts of the bonanza are guys like

Sisk. Marie had a role to play, without asking too many questions. Everybody knows its place in the administration, Sisk, Thomson, and Marie is supposed to be the dumb blonde who doesn't ask any questions. When Marie continues to be nosy and inquires about bribes and Thomson's role, Sisk becomes blunter and tells her that if the affair will be publicized she is finished. He gave her the job and she owes him. Sisk tells her about two more prisoners who should be released. Worse criminals are released so why not they. Marie sees that the Governor was not even approached by Sisk and she suspects him and Thomson that they receive the bribes. Marie's motto is that wickedness thrives when good people don't do anything. Marie chooses to tell everything to the Governor without the presence of Sisk. Blanton asks her to deal with it as she thinks it appropriate and he doesn't want to be involved with it.

When Sisk learns about it he phones Marie, curses her, and she answers that she doesn't need his approval in order to meet the Governor. Marie learns that her secretary told Sisk about her secret meeting with the Governor and she fires her. Mrs. Cooper comes to see Marie and complains why she denied the parole in spite of the money she paid for it. In the meantime, Marie learns that a rapist was released from prison and that he raped again after his release. The FBI agents approach Marie and ask her to assist them in finding evidence against the corruption officials and tape Eddie, but she refuses to do so because Eddie assisted her. They tell her not to tell a word about her FBI contacts otherwise she might be killed. And indeed Weintal is murdered as he was supposed to be the key witness in the trial of Friter, he associate of Thomson. Meanwhile the doctors finally find the cause of Marie's son's spasms, a peel that he has swallowed. They remove it and he will be at last healthy. When Sisk's position deteriorates Marie is asked to retire from her job and receive another job with the same salary. She refuses as she is willing to take the heat. The Governor reads a statement that Marie's conduct was detrimental to the fulfillment of her position and committed criminal acts, while she was supposed to deal with criminals. She required reimbursement of expenses that she did not make and payment of overtime of

\$7,500 on work she has not done. The Governor was patient with her criminal conduct but he was now forced to dismiss her. Marie was shocked. She said that she didn't embezzle anything, and she is not ready to be fired on actions she did not commit. Marie wants to sue the state on unjustified dismissal. When she checks her attendance records she finds that they have cooked the evidence and utilized unintentional mistakes to her detriment, especially since her secretary she has fired filled in the forms. Her lawyer tells her that there is only one way to prove her innocence - she must prove that she was fired because she didn't want to cooperate in the bribes' receipt of Sisk and the Governor. But she has only a probability of 10% to succeed.

Kevin, her friend, wrote at the beginning a letter against her as he was afraid of his position, but after Eddie requested him to testify against her he resigned and took with him incriminating evidence against the crooked officials. In his way to bring her the evidence he was murdered. Marie is flabbergasted by Kevin's death but she cannot substantiate any allegations of a murder. When the crooks pardon murderers for greed we shouldn't be surprised if they also murder in order to prevent being incriminated. She notices that she is being followed. In court Marie remarks that Sisk is very relaxed. He and his colleagues are convinced that they will win the case. She doesn't have incriminating evidence, no witnesses for the prosecution, she is bound to lose. The Jury has to decide if the Governor acted beyond his authority when he fired Marie thus harming her rights as a state's employee. Marie tries to justify the discrepancies in her expense reports on mistakes committed by her secretary who was later on fired. As for the overtime, Eddie told her that she is being paid globally and it doesn't matter how many hours she works. Her salary was \$ 26,400 a year and she is accused of "stealing" expenses of \$300, while Eddie goes to play golf during work. When her lawyer asks what was the reason to check the expenses of Marie, he is answered that a complaint was made by her secretary (whom she fired), Kevin (who was killed) and Charles Traugher who was against her from the start. But if she was such a crook why did they offer her another job with the same salary? After Marie left,

the Governor pardoned all his protégés. Traugher (Morgan Freeman) testifies that she was absent from many meetings and came late to most of them. But he is also expecting to be nominated to a new job and needs the Governor's approval. Eddie is asked why he has not examined her complaint against Thomson, although he is the Legal Counsel. Marie is accused of being a troublemaker and even her friend Kevin wrote a letter against her. To that she answers how come that all Kevin's friends didn't come to his funeral while she attended it.

The Governor's associates accuse her of being unethical (a very common argument of unethical persons is to accuse others of their own crimes, minority shareholders are speculators while the controlling shareholders are those who speculate, and so on). Because of that she was fired and \$300 are equivalent to much more, as her position requires absolute honesty. Marie is accused of being ambitious, she wanted to manage the Board as her own property, disregarding the law. The Governor had a moral obligation to fire her. But her lawyer answers that the Governor and his friends tried to intimidate her, get rid of her, shame her in public, while she decided to fight back, not for keeping her job as she knew she would have to pay the price, but in order to do the right thing. The Jury decides to accept all her allegations. The public is enthusiastic with the sentence. Marie hugs her children who stood by her during the whole ordeal. Sisk and his friends are stunned. The FBI continued to make its inquiry. In 1981 Eddie Sisk and Bill Thomson went to jail for selling pardons. The Governor Blanton was impeached on the same grounds. In 1983 he was sentenced to jail for corruption in giving pardons. Marie lectures and writes on criminal law.

WRONGDOING OF STAKEHOLDERS BY MEGA CORPORATIONS - THE FILM "CLASS ACTION" AND THE FORD PINTO CASE SUMMARY AND ANALYSIS

Based on the film:

Class Action, 1991, 110 minutes, Director Michael Apted, with Gene Hackman, Marie Elizabeth Mastrantonio

Summary and Analysis:

Jeb Ward specializes in class actions of victims wronged by mega corporations. This time it is in a case very similar to the Ford Pinto case. His client is suing a car company, that had safety problems in one of its models, who was severely burned by an accident while driving one of these models. He finds out that the attorney representing the car company is no other than his estranged daughter Maggie. The senior partner of Maggie asks her to discredit the plaintiff in order to win the case. A lot of money is involved and justice is not so important as well as the damages caused by Argo Motors to the plaintiff with its deficient car. The law firm has to safeguard the interests of their largest client Argo and do whatever is necessary. What drives Maggie is not her conscience (she hates her hypocrite father whose conscience makes him take the cases of the meek but did not prevent him to cheat his wife, her mother), nor money or friendship, but professional satisfaction. Alexander Pavel, who was an inspector at Argo and has retired, tells her that he blew the whistle and wrote a report stating all the quality problems of the Meridian car. His boss, Dr. George Getchell, told him to leave it, as it is OK. It appeared that if there was a collision of the car when the left winker worked the car exploded. The report remained at the company.

Maggie finds the report and tells her lawyer friend Michael Grazier about it. He tells her that he was consulted by Getchell about the report but he was busy with 50 other cases and didn't pay attention to the repercussions of the case. Grazier tells her that she should let it go on behalf of their friendship but she refuses. They decide to consult the senior partner who suggests that they will give the report to Jeb (who knows about it and has asked for it), but to burry it among all the other documents given to him. After all, Argo pays them \$8M a year... Argo has based the decision on the safety of the car with their risk analysts. To fix the problem it would have cost them \$300 per car (in the Ford Pinto case it was only \$11). There were 175,000 cars, so they would have to pay \$50M. On the other hand they would pay damages to plaintiffs in the worst case amounting to only \$30M. So, the choice was obvious according to Friedman's theory of maximizing profits - let all those people burn to death and save Argo \$20M, thus giving the shareholders a better return on their investment. The problem was that some of the shareholders could have been also the victims, as in a corrupted environment, you are always a victim as a stakeholder of unethical companies - as a customer, a supplier, a member of the community, a creditor, an employee or a minority shareholder.

The Ford Pinto Case:

The Ford Pinto was a subcompact car manufactured by the Ford Motor Company. The car's design began in 1968 under the direction of Ford executive Lee Iacocca. It was first introduced in 1971, and was built through the 1980 model year. The car's design was conventional, with unibody construction, but through early production of the model, it became a focus of a major scandal when it was discovered that the car's design allowed its fuel tank to be easily damaged in the event of a rear-end collision which often resulted in deadly fires and explosions. The problem was that the vehicle lacked a true rear bumper as well as any reinforcing structure between the rear panel and the tank, and in certain collisions,

the tank would be thrust forward into the differential, which had a number of protruding bolts that could puncture the tank. This, and the fact that the doors could potentially jam during an accident (due to poor reinforcing) made the car a potential deathtrap. Ford was allegedly aware of this design flaw but refused to pay the minimal expense of a redesign. Instead, it was argued, Ford decided it would be cheaper to pay off possible lawsuits for resulting deaths. This discovery of Ford's apparent gross disregard for human lives in favor of profits led to major lawsuits, inconclusive criminal charges, and a costly recall of all affected Pintos.

In February 1978 a California jury handed down a verdict that assessed \$125 million in punitive damages against Ford in a case involving the rupture and explosion of the fuel tank on a 1972 Pinto. In *Grimshaw v. Ford Motor Co.*, the California Court of Appeal for the Fourth Appellate District reviewed Ford's egregious conduct in painstaking detail, and upheld compensatory damages of \$2.5 million and punitive damages of \$3.5 million against Ford. It also upheld the judge's reduction of the punitive damages from the jury's original verdict of \$125 million. Of the two plaintiffs, one was killed in the collision that caused her Pinto to explode, and her passenger, 13-year old Richard Grimshaw, was badly burned and scarred for life.

The bean counters of Ford who assessed the risks of possible lawsuits for resulting deaths versus the costs of redesign didn't take into account the irreparable damages to Ford's reputation and were probably the cause that more and more Americans bought Japanese cars which were cheaper and safer. Ultimately, in December 2008 the US government announced that it would give \$17.4 billion in loans to help Chrysler, GM and Ford avoid bankruptcy, as Ford had losses of more than \$14 billion in 2008. Ford's results could have been much better if Ford would have taken into consideration the stakeholders' interests rather than wanting to maximize its profits.

CORRUPTION, BUSINESS, CRIME AND GOVERNMENT - THE PLAY "THE THREEPENNY OPERA" - SUMMARY AND ANALYSIS

Based on the play "The Threepenny Opera" (1928) by Bertolt Brecht.

The film is based on the play with substantial changes:

Die Dreigroschenoper, 1931, 112 min., Director Georg Pabst, with Lotte Lenya, Rudolf Forster. Based on Bertolt Brecht and Kurt Weill's opera "The Threepenny Opera".

Summary and Analysis:

The musical play was written by the German Bertolt Brecht with music by Kurt Weill. It is adapted from an 18th century English play The Beggar's Opera by John Gay. The Threepenny Opera is perceived even today as a socialist critique of the capitalist world. It is set in London's Soho. The central character is Mack the Knife - Macheath, a murderer and robber who sees himself as a businessman. Mack the Knife "marries" Polly Peachum, whose father Jonathan controls the beggars of London. He is the boss of the "labor unions" of those days and is interested only in enriching himself at the expense of the poor. Peachum wants Macheath to be hanged, and he deserves so because of his crimes, but the robber is a personal friend of Tiger Brown the chief of police of London. Macheath is arrested, escapes and is imprisoned once more. Both Polly and his former "wife" - Lucy Brown, the daughter of Tiger Brown, try to rescue him but to no avail. When Mack the Knife is about to be hanged he is rescued by a messenger of the Queen with a happy ending. The most ethical character of the play is Jenny, a whore who loved Mack, who sings a ballad on how she leads a pirate assault on

the city. The opening song about Mack has become a classic, describing the robber with white gloves and a hidden knife that nobody sees.

The play raises crucial dilemmas as: What is the danger in the cooperation between government and tycoons? Financing their political campaigns in return to subsidies to their companies, tips on economical measures, refraining from being sued even when caught on unlawful acts, etc. What are the dangers in the cooperation between crime, gambling, drugs and government, trade unions, leaders of the mob? How do the governments in some countries utilize the mob in their policy? How can democracies increase corruption? For example by permitting to the Mafia to infiltrate in the parties' organizations and influence the politicians. What about lobbying in favor of gambling, the tobacco industries, real estate companies? Examples where old buddies from the military service help each other when they get to key positions in the economy, government and trade unions. Is it legitimate, to what extent? Should civil servants be prohibited from going to work for companies which they were supposed to control?

Brecht describes in a captivating way the degeneration of wealth and power. How comes that this subject is modern and relevant from the times of John Gay's opera to nowadays? Who is today Mack the Knife and how does he manage to keep his gloves white, while nobody sees his knife? Do the governments of today support only tycoons and strong parties or weaker parties as well? Is it the purpose of democracy, the rule of the people, by the people and for their benefit? Is it true that today the rich get richer, the poor get poorer, and the middle class are disappearing? What will happen to democracies if this tendency will continue? Why is corruption bad for the economy, equality, minimizing the gaps between people, growth? Who benefits from corruption? Crime likes darkness, and unethical companies are looking for anonymity, just like Mackheath in the opening and ending song:

Moritatensanger:

“Und der Haifisch, der hat Zahne
 Und die tragt er im Gesicht
 Und Machheath, der hat ein Messer
 Doch das Messer sieht man nicht.
 Ach, es sind des Haifisch Flossen
 Rot, wenn dieser Blut vergiesst.
 Mackie Messer tragt ‘nen Handschuh
 Drauf man keine Untat liest.
 An ‘nem schonen blauen Sonntag
 Liegt ein toter Mann am Strand
 Und ein Mensch geht um die Ecke
 Den man Mackie Messer nennt.
 Und Schmul Meier bleibt verschwunden
 Und so mancher reiche Mann
 Und sein Geld hat Mackie Messer
 Dem man nichts beweisen kann.”

(Brecht, Die Dreigroschenoper, The Threepenny Opera, Die Moritat von Mackie
 Messer, The Ballad of Mack the Knife, Act I, scene I)

“Streetsinger:

And the shark has teeth
 And he wears them in his face
 And Macheath, he has a knife,
 But the knife one does not see.
 Oh, the shark’s fins appear
 Red, when he spills blood.
 Mack the Knife, he wears his gloves
 On which his crimes leave not a trace.
 On a nice, clear-skied Sunday
 A dead man lies on the beach
 And a man sneaks round the corner

Whom they all call Mack the Knife.
 And Schmul Meier disappeared for good
 And many a rich man.
 And Mack the Knife has all his money,
 Though you cannot prove a thing.”

In order to denounce immoral crimes in companies, as for discovering the crimes of Mack the Knife, we have to be assisted by disclosers, as nobody sees the knives of immoral companies, which keep an impeccable facade and are assisted by the best lawyers and public relations. We need transparency otherwise nothing would ever be disclosed, and the law will never be able to safeguard the interests of the stakeholders, whether they are rich like Schmul Meier or poor like Smith. Therefore, only light can raise the curtain on the unethical acts of companies.

Moritatensinger:

“Denn die einen sind im Dunkeln
 Und die andern sind im Licht.
 Und man siehet die im Lichte
 Die im Dunkeln sieht man nicht.”

(Brecht, Die Dreigroschenoper,
 Die Schluss-Strophen der Moritat, The Final Verses of the Moritat,
 Act III, last scene)

“For the ones they are in darkness
 And the others are in light.
 And you see the ones in brightness
 Those in darkness drop from sight.”

Other issues raised in the opera are: Has Mack the Knife any ethical dilemmas? Why does he cooperate with the authorities? Why he is not punished and pardoned by the authorities? Peachum as a trade union leader who collaborates with crime, tycoons and government to the detriment of those he is supposed to

protect, reminding of analogies with trade unions in the US, France and the Soviet Union. Brown the Sheriff as a moral character, is he ethical? How does he compromise between Peachum and Macheath? Is Jenny the only moral character in the play although she is a whore? Why does she betray Mack? Ultimately, Brecht is an author of modern business ethics, who perceived eighty years ago the dangers of corruption.

CORRUPTION IN THE LOCAL GOVERNMENT

THE PLAY "REVIZOR"- SUMMARY AND ANALYSIS

Based on the play Revizor (1842) by Nikolai Gogol

The film is based on the play with substantial changes:

The Inspector General, 1949, 102 min., Director Henry Koster, with Danny Kaye

Summary and Analysis:

Gogol introduces us into the ethical dilemma of the play from the first line when the mayor tells his colleagues: "I have invited you in order to announce you very unpleasant news, a Revizor is coming to inspect us". Following the astonishment of his colleagues he tells them that it is a revizor from Petersburg who is about to visit the town incognito with secret instructions. The revizor is about to disturb their peace of mind, preventing them from receiving bribes and not fulfilling their duties, while none of the citizens is complaining. They do their schemes in obscurity and all of a sudden the revizor will shed light on their stealing and they will become transparent. When the alleged revizor (a bum who is mistakenly perceived as the incognito revizor) agrees to receive from them bribes they can at last obtain their peace of mind, as "he is one of us and we can come to terms with him, like with all the others". The merchants who dare to complain are rebuffed by the Mayor who tells them that he is a good friend with the Revizor, who intends to marry the Mayor's daughter (The Mayor doesn't know of course that his wife tried to seduce as well the Revizor but he possibly wouldn't mind if the Revizor would be willing to overlook the Mayor's crimes). In the climax of the euphoria comes the postmaster with a letter from the alleged revizor where he describes cynically to his friend all the defaults of the elites of the town. They finally understand that they, who normally con everybody else, have been conned

by a smarter crook. And then the real revizor comes and the play ends showing their astonished faces.

Gogol describes the mayor as a man who gets old in his position, very clever, receiving bribes but perceived as a man of honor. Many politicians could fit into this profile. All the important men of the town are honorable men, but beneath their conduct they are corrupted as the worst thieves. They are willing to bribe the revizor or the inspector general in the English version, as it is a price worthwhile to be paid in order to perpetuate their schemes. The play was actual in Tsarist Russia as it is actual today all over the world, especially in unethical countries. The Russian censors were afraid to authorize the play but the Tsar Nikolai I had to interfere personally in order to allow the play to be staged as he wanted to eradicate the corruption in his country. The Mayor and the corrupted civil servants claim that this is the way to do business and nothing can be changed in the human nature. These are the usual norms and what is ethics after all if not abiding to the common norms. But if corruption is universal so is ethics and one cannot say that it does not apply in his country.

Gogol's satire has no sympathetic characters, all are crooked, distorted, corrupted. The play displays greed, stupidity and corruption. Khlestakov, the alleged revizor, is reckless, irresponsible and light-minded. Revizor can be played as a realistic or surrealistic play. It is even perceived as the precursor of the absurd movement, of Ionesco and Rhinoceros. It deals with the hypocrisies of everyday life as with the essence of the corruption of the elites.

PART IV

TRUST, TRANSPARENCY AND FAIRNESS

CONCEPTS AND THEMES

Trust has a predominant role in the business world, although the erosion of trust costs exorbitant amounts to the modern economy. “It is ironic, then, that at a time when there is increased trust between the superpowers, there seems to be less trust by many within and between businesses. Downsizing, mergers, outsourcing, and reengineering have led to mistrust by many employees of the business for which they work (or worked). Dangerous products, invasive marketing, and efforts to pressure people to agree to unneeded repairs have fostered mistrust between customers and businesses. Takeovers, leveraged buyouts and corporate espionage have fostered mistrust among businesses. And yet the importance of trust within and between business organizations, both nationally and internationally, is increasingly recognized. Trust is said not only to reduce transaction costs, make possible the sharing of sensitive information, permit joint projects of various kinds, but also to provide a basis for expanded moral relations in business. Indeed, many (such as Gewirth and Hosmer) have claimed that ethics and trust are bound up together.” (Business Ethics Quarterly, April 1998, Brenkert, Trust, Business and Business Ethics: An Introduction, p. 195).

But trust also has its limits and risks, and having an absolute trust in a leader or a fuhrer has caused in the past severe repercussions. One has to find the middle way between trust and suspicion, as unfortunately it is still impossible to have unreserved trust in the business world, even if we possess the best intentions. “A

trust relation implies very little with respect to organizational ends. Parties to a trust relationship can engage just as easily in unethical and even illegal behavior as they can in ethical behavior (Koehn, 1996; Baier, 1986). Witness such groups as the Mafia where members of such ethnically homogenous groups prefer to do business in 'old boys' networks (Landa, 1994). Fanaticism may take place on the basis of trust relationships due to shared values. Howell and Avolio (1992: 47) describe the trust that employees of Michael Milken had in the junk bond king. They report that, according to one former subordinate, 'if he walked off the cliff, everyone in that group would have followed him.'" (Business Ethics Quarterly, April 1998, Husted, The Ethical Limits of Trust in Business Relations, p. 239)

Trust has its national nuances. Japan, Germany, and even the United States until not so long ago, are societies with a very high level of trust and social orientation; while France, Italy and China are societies which are more individualistic and mistrusting, especially toward the authorities. Fukuyama maintains that the United States is a country in transition from trust to mistrust, with a very high budget of police protection, more than 1 percent of the population in prison, a very high percentage of lawyers and an exorbitant cost of mistrust deriving from those tendencies and amounting to many percents of the national product. This mistrust tax, including the transaction costs, is imposed also on the French and Italian economies, while the trust of the German and Japanese societies are at the basis of their accelerated growth in the past.

"Law, contract, and economic rationality provide a necessary but not sufficient basis for both the stability and prosperity of postindustrial societies; they must as well be leavened with reciprocity moral obligation, duty toward community, and trust, which are based in habit rather than rational calculation. The latter are not anachronisms in a modern society but rather the sine qua non of the latter's success." (Fukuyama, Trust, p. 11) Nevertheless, the United States could succeed to make a spectacular turnaround as we saw at the turn of the century, in associating individualism and communitarism, which are inherent in its society,

causing an interaction that joins together the advantages of the individualistic and communitarian societies.

The economic repercussions of trust exist in the Japanese keiretsu, like Sumitomo and Mitsubishi, which are groups allying many companies, often around a bank, each one possessing shares in the other companies as in a gigantic spider web, treating each other in a preferential mode. With the Koreans we find the chaebol, like Samsung and Hyundai. On the other hand, the Americans and the British have arms-length regulations obliging the different groups of companies to treat each other equitably, as with an unaffiliated company. In the Chinese society, the private companies are almost always family companies. The CEOs of the Japanese companies are professional executives while the Chinese executives are almost always members of the families that control the companies.

“The true essence of Chinese Confucianism was never political Confucianism at all but rather what Tu Wei-ming calls the ‘Confucian personal ethic’. The central core of this ethical teaching was the apotheosis of the family – in Chinese – the jia – as the social relationship to which all others were subordinate. Duty to the family trumped all other duties, including obligations to emperor, Heaven, or any other source of temporal or divine authority. Of the five cardinal Confucian relationships, that between father and son was key, for it established the moral obligation of xiao, or filial piety, which is Confucianism’s central moral imperative.” (Fukuyama, *Trust*, p. 85) Here also, we see the predominant place that religion and national morals have over the ethical conduct in the business world. Trust and ethics are perceived as the outcome of modern economy, democracy and evolution. But they are also inherently linked to thousand years old religions and philosophy, as we shall see in the following chapters.

The activists shareholders, who are more and more influential, can communicate via the Internet, which enables free, instantaneous, interactive communication between shareholders, between shareholders and companies, and between

shareholders and the organizations that are supposed to safeguard their interests as the members of the board of directors, independent directors, fiduciaries, the SEC, etc. In the future, they would be able to ratify decisions that will be submitted to them via the Internet, receive all the required information and financial reports for their decisions from the Internet, and obtain answers to their queries very promptly.

In the business world, as in the political and social world, the tendency is for everybody to mind their own business, and even if the rights of others are wronged they seldom interfere, as they do not want to make enemies, they do not have time for such occupations, or “they didn’t help me when I was in need so why should I help them now?” etc. But if it is possible to denounce the crimes without being discovered, there is a tendency to do so, in order to have a clean conscience. The Internet is the best vehicle to do so as it enables you to retain your anonymity while disclosing to the whole world the facts that prior to then were hidden. Light is the worst enemy of criminals who prefer to work in the dark. In some business circles the law of Omerta (Silence, like in the Mafia) prevails, and rarely does someone dare to transgress this law. But the Internet changes this setup, as the whistleblowers remain concealed and the truth is revealed.

Unfortunately, it is possible to utilize this vehicle also to defame businessmen and companies, manipulate shares, spread rumors and misinform the shareholders by interested parties – the companies, the majority or minority shareholders, competition, or others. As everyone keeps his anonymity, they remain unpunished, although there are some attempts to raise the curtain over those people in extreme cases. Misinformation or not, the minority shareholder has at least the opportunity to be informed about unethical acts performed by the companies or to denounce them in advance. He has only to discern the true and false information, which is better than before when he had no access to the true information.

The ideal would be that companies would be transparent to the shareholders and that all the shareholders would receive simultaneously the same information, whether they are minority or majority shareholders. No more insider information, no more abuse at the detriment of shareholders who live far from the headquarters of the company and who have no access to the information divulged by the insiders to the boards of directors. We could also imagine a black list, established by activist associations and published on the Internet, of companies and persons who do not behave ethically, who went bankrupt, who were condemned by the courts. Accessible to everyone around the world, this list could induce the companies and their executives to conduct themselves ethically and legally, make their utmost effort not to go bankrupt and to repay their debts even if they do not have a legal obligation to do so. It would be recommended to achieve an ethical responsibility of companies, and of their executives and owners, that would not be limited. Responsible executives and companies are the safeguards of the interests of the stakeholders, minority shareholders and the community. The leitmotiv should change from 'I am doing my best to diminish to a minimum my responsibilities' to 'I should behave responsibly toward my employees, all my shareholders, my country, my customers, ecology, and first of all toward my conscience.'

In order to denounce immoral crimes in companies, as for discovering the crimes of Mack the Knife, we have to be assisted by disclosers, as nobody sees the knives of immoral companies, which keep an impeccable facade and are assisted by the best lawyers and public relations. We need transparency otherwise nothing would ever be disclosed, and the law will never be able to safeguard the interests of the stakeholders, whether they are rich like Schmul Meier or poor like Smith. Therefore, only light can raise the curtain on the unethical acts of companies.

Religious persons should conduct themselves morally as they believe that God examines their acts at every moment and nothing escapes him. For businessmen

who are slightly less religious the fear of the disclosure of their acts to the public should replace the fear of God, because if they do not have anything to hide they will not have to fear anything. On the other hand if the employees utilize the liberty of disclosure to reveal the secrets of the companies to the competition or for reasons that have nothing to do with ethics, they would be subject to reprisals, exactly like the newspapers, which benefit from the liberty of the press and cannot disclose state secrets. The employees have to divulge only systematic and permanent cases of abuse that are inherent to the operations of the companies, which wrong the stakeholders, and which are backed by irrefutable documentation. They have to resort to outside bodies only after having exhausted all the internal bodies, which are meant to deal with those cases, such as the ethics officer, the superiors, the executives, the CEO, or even the Board of Directors.

In order to prepare an omelet you have to break the eggs; in order to build a house you have to break the stones; and in order to succeed in the business world you have to break your principles. Those ideas prevail in parts of the business world of today, which is very competitive, and where you can win it all or lose it all. The rates of unemployment, especially of executives, are very high, and on the other hand the remuneration of brilliant executives is very high. Therefore, the temptation to conduct oneself in an immoral way is very strong. You have much to lose if you have too many scruples; if you come from a rich family you have to prove to yourself that you can surpass the achievements of your father, and if you come from a poor family you have to do your utmost to succeed in life and not be like your father. Business is a profession where you start out as an idealist and end up as a cynic. The managers and the consultants ask themselves frequently what is the market price for their conscience. They perceive themselves as mercenaries who are paid by the highest bidder. Society is ruled by wealth and power. Truth and ethics have nothing to do with it. We have to accept the world as it is.

But things are not as simple as they appear; we cannot remain cynical without feeling guilty about it and without perturbing our emotional and even sentimental

life. This can result in excessive drinking, acute anxiety, nervous breakdowns, excessive rage, disgust, and tension with wife and children. Do we have to decide to leave the business world in order to cultivate our garden, or can we try to change the norms by evolution or revolution?

We hesitate to condemn the mighty. And we continue to shout at the donkey, as we are too afraid to confront the lion, the wolf or the fox. We cannot hope that the unethical tycoons of this world will all of a sudden be overcome by remorse. Therefore, it is necessary to fight and not condescend their immoral conduct, exactly as we condemn crimes performed by highway robbers. There is no difference between a bank robbery and a stakeholder or minority shareholder wrongdoing. And we have to define as theft every unethical act, even if the law cannot punish it. We could always sanction ethical crimes publicly, as this book advocates.

Charles Derber describes in his book 'The Wilding of America' the modern heroes, whom he calls sociopaths and savages, and compares them to the Iks of Uganda, known for their inhuman conduct. Boesky was proud of his greed, declaring in the 80s before a students' assembly at Berkeley that 'Greed is healthy. You can be greedy and still feel good about yourself.' Milken, the God of Wall Street in the 80s, is described by some authors as the ultimate savage, in fact the greatest financial criminal of history. "One of Milken's favorite sayings was, 'If we can't make money off our friends who can we make money off of?'" Milken did not favor either buyers or sellers of junk; he took both under his wing and found, as described in the SEC indictment, exquisite ways to extort money from them, whether it was taking exorbitant commissions, demanding 'warrants', a type of financial sweetener for the deal-maker, or distorting the price of offerings often by ingenious schemes involving unethical if not illegal buy-backs and trading on the extraordinary inside information available to him. Milken, virtually omnipotent, saw himself as outside both moral and legal constraints, regarding them as 'mere conventions... for the foot soldiers of the world – the less creative,

less aggressive, less visionary.’ Bruck writes that the King would make his own laws: ‘For whether it meant procuring women, or threatening would-be clients, the resounding credo at Drexel was to do whatever it took to win.’” (Derber, *The Wilding of America*, p. 46-7)

The precepts of Boesky, Milken, and others are followed assiduously by some executives in the business world of today, who do not perceive themselves as guilty of anything and when they are accused, they feel outraged by the arrogance of the accusers. If you cannot get rich at the detriment of your friends and colleagues, from whom can we get rich, and what chutzpah have the wronged to sue them, the untouchables? They are beyond conventions, constraints, morality. They are the aristocrats of finance, half-Gods, or at least the lackeys of the omnipotent. They make their own rules, as the conventional rules and ethics are good only for the ignorant masses that always have to lose. The individual stakeholders and minority shareholders have to understand that they have only one goal in life – to fill in the treasury coffers of the insiders, without having any right to complaint. Everything is permitted in order to win, and the rights of the weak are none of their concern.

The cynical individualists of the business world today think that they are the true capitalists defined by Adam Smith, and if every one pursues his own interest there would be an invisible hand that will translate the individual interests into the common good. “Adam Smith, the first great economist of the modern age, articulated the idea of the ‘invisible hand’, the mysterious market mechanism that automatically translates the selfish ambition of each person into the good of all. Always a problematic doctrine, the idea of an invisible hand has now been spun into a dream with almost surreal dimensions. In the good society, a market society, Americans now learn, the supreme virtue is to concentrate feverishly on one’s own interests, for by doing so one not only maximizes one’s chances of getting ahead, but also performs what George Gilder, whose book *Wealth and Poverty* is discussed in Chapter Three, calls a great ‘gift’ to society. As with the

Ik, goodness, in practice, means ‘filling one’s own stomach’; the difference is that an Ik does not pretend that such ‘goodness’ is good for anyone else. An American Dream that does not spell out the moral consequences of unmitigated self-interest threatens to turn the next generation of Americans into wilding machines.” (Derber, *The Wilding of America*, p. 101)

Badaracco mentions a simple sleep test as a possible method for evaluating moral dilemmas. Literally, a man who conducts himself ethically can sleep soundly, but those who conduct themselves immorally have insomnia. According to this theory we should rely on our intuition in order to conduct ourselves ethically. But he refutes those simplistic theories. “Everyone knows people who sleep quite soundly even though they have the ethics of bottom-dwelling slugs. They may be masters of rationalization or denial, they may be sociopaths and lack of conscience, but they can look themselves in the mirror and live in peace with whatever perfidy they have committed. During the Holocaust, a good number of doctors spent their days committing atrocities in the concentration camps, and then sat down to quiet family dinners. In contrast, responsible people sometimes lie awake at night precisely because they have done the right thing. They understand that their decisions have real consequences, that success is not guaranteed, and that they will be held accountable for their decisions. They also understand that acting honorably and decently can, in some circumstances, complicate or damage a person’s career. In short, if people like Hitler sometimes sleep well and if people like Mother Teresa sometimes sleep badly, we can place little faith in simple sleep-test ethics.” (Badaracco, *Defining Moments*, p.44-5)

My limited experience concurs perfectly with Badaracco’s point of view, as almost always the immoral businessmen think that they are ethical, invulnerable, and above the law, while the ethical executives spend many white nights attempting to solve intricate ethical dilemmas which are unavoidable in the business world.

The ethical men respond to forces that are deeply rooted in the soul, whether cultural, psychological, emotional, or practical. But the most important force is the force of personal experience, as expressed by the French saying: 'l'homme est un apprenti la douleur est son maitre et nul ne se connait tant qu'il n'a pas souffert', or 'man is an apprentice pain is his master and nobody knows himself until he has suffered'. We become ethical sometimes after having suffered a trauma caused by an immoral act done to us. We can be moderately ethical as long as we have not suffered, but after suffering personally we become fanatic about ethics. When we feel on our own flesh the pain of a flagrant ethical transgression, which causes a substantial loss of money, trust or friends, we cease to treat mockingly ethical crimes, as when we see somebody fall we often laugh, but if we fall ourselves, then it becomes serious.

Luckily, as the immoral cases perpetuate more and more, we will soon reach a status where everybody will be affected by ethical crimes, and we will discard the maxim that 'suckers do not die but are just replaced'. If all of us will be suckers in one way or another, it will be time to act, as unfortunately we do not act until we reach an extreme condition. For example, the inflation rate in Israel had to reach the astronomic amount of 500 percent annually in 1985 in order to convince us to adopt a drastic turnaround plan, which could have been adopted five years before with much less damages.

Everybody has to decide at a certain moment which way he chooses to follow, the ethical route or the other. It is true that nobody is 100 percent or zero percent ethical, but all of us are fundamentally ethical or unethical. In defining moments the ethical character is formed; it can be influenced by others, by the environment, education, etc., but ultimately every person has to decide for himself. By being promoted as an executive with large responsibilities, or by encountering complex situations, we reach the crossroad of ethical decisions, as business ethics is not an academic theory but a constant fight that has to be fought every day. The more complex the cases, the sooner we arrive at ethical conclusions. We can always

leave a company that is unethical; there is always a trade-off between conscience and remuneration, but then the conscience of an ethical man can never be bought. We can be flexible on some minor points, but when the chips are down we have to decide how to proceed, as there is never ambiguity on the basics of ethics.

The moments that define our ethical character according to Badaracco, are vivid, acute, crystallized, intensifying, or as Montaigne says: 'one movement when it is watched closely, can reveal the whole character of a person'. The moments, or the movements, reveal also the past, as the seeds of ethics are in the past. Schindler had such a moment, Petain had it, De Gaulle had it, Sadat had it, Begin had it. Begin, the former leader of the Etsel, who was always perceived as an extremist, gave Sinai to Sadat in order to achieve peace. De Gaulle, who was perceived as an ultranationalist, gave Algeria to the Arab Algerians, sacrificing the French colonists. Businessmen do not need to reach ethical decisions on life and death, their decisions are not disclosed most of the time in the press, and their ethical dilemmas are rarely described in the professional literature. Their internal struggle has no glory and their victory does not give them any medals. Therefore, this struggle is much more valorous as it is conducted in the shade, in many cases to the detriment of their well-being, their wealth, their career, or their family.

An ethical reasoning presupposes a person who is mature and considerate. Can a young man be ethical? Of course, although the temptations of a young man are stronger, and his character is less formed, as he has less experience. But we meet in the modern business world many ethical young men and women, as well as extremely unethical men more than 70 years old. Nevertheless, it is recommended by Aristotle and other ethics philosophers, to increase ethical education in order to assist the young in surmounting the unethical temptations they encounter throughout their career. What matters after all is the moral and ethical character, which can be formed in family circles, at school, in the army, at university, or through volunteer organizations. We tend to think that the young have an idealistic image, the mature have a cynical approach, women are more moral than

men, etc., but ultimately what matters are the individual cases, as we should not have prejudices in this domain, as well as in all other domains. “This approach builds on Aristotle’s empiricism, rather than Plato’s abstractions, for resolving difficult ethical decisions. It shifts the focus of ethical deliberation from abstract principles to issues of personal character, from logic toward psychology, from the universal to the individual, from the intellectual toward the emotional, from objective truths to personal choice and commitment, and from the marble temple on the hill to the hurly-burly of everyday life. In all these ways, the perspective of this framework is much closer to literature than to the grand principles.” (Badaracco, *Defining Moments*, p.53)

This is why that I am convinced that reading ethical oriented literature can contribute considerably to forming ethical character, as philosophy is too abstract, especially for practical businessmen. It is hard to believe that a businessman who has enjoyed reading and was influenced by Pagnol, Zola, Racine, Ibsen, Moliere, Hugo, Brecht, Shakespeare, Cervantes, Agnon, or other authors quoted in this book and in other ethical works could behave unethically in business. Or as Kenneth R. Andrews says in his article “Ethics in Practice” (*Ethics at Work*, Harvard Business Review, Andrews, *Ethics in Practice*, p. 40): “Great literature can be a self-evident source of ethical instruction, for it informs the mind and heart together about the complexities of moral choice. Emotionally engaged with fictional or historic characters who must choose between death and dishonor, integrity and personal advancement, power and responsibility, self and others, we expand our own moral imaginations as well.”

It is true that Zola was perceived in his epoch as very immoral, and the reading of his novels was prohibited in many circles, therefore, we should not define too narrowly the borders of ethical literature. Sartre, Giraudoux, Mauriac, Dostoyevsky, Proust, and Pirandello are ethical as well in the sense that their work and the problems treated by them can encourage intellectuals and businessmen to think about the basic values of life. From the moment we think

seriously we can find ethics, by the road to Damascus or by existentialism, as ethics is universal. It is not uniquely Catholic, Jewish, Protestant, Buddhist, Communist, Socialist, Capitalist, or Nihilist; it is the aggregation of all the theories and practices of ethics. Man is fundamentally the same in Paris, New York, Brisbane or Tel Aviv, and the struggle between ethical and unethical men is a struggle that has been going on for thousands of years, from the days of Moses, Aristotle, Jesus, Mohammed, Kant, Etzioni and many others. It's a struggle with different nuances, with an acerbic polemic, but with a definite goal, with a known issue, which we believe is near.

What is the goal of human economic activity? This cardinal question has to be analyzed psychologically. Is the economic man a completely rational man who seeks only to augment his well-being, or has he other goals in his agenda, such as gratitude, megalomania, malice, goodness and social empathy? "In the End of History and the Last Man, I argued that the human historical process could be understood as the interplay between two large forces. The first was that of rational desire, in which human beings sought to satisfy their material needs through the accumulation of wealth. The second, equally important motor of the historical process was what Hegel called the 'struggle for recognition', that is, the desire of all human beings to have their essence as free, moral beings recognized by other human beings... All human beings believe they have a certain inherent worth or dignity. When that worth is not recognized adequately by others, they feel anger; when they do not live up to others' evaluation, they feel shame; and when they are evaluated appropriately, they feel pride...

Natural wants and needs are few in number and rather easily satisfied, particularly in the context of a modern industrial economy. Our motivation in working and earning money is much more closely related to the recognition that such activity affords us, where money becomes a symbol not for material goods but for social status or recognition... The entrepreneurs who create business empires do not do so because they want to spend the hundreds of millions of dollars they will earn;

rather, they want to be recognized as the creators of a new technology or service. If we understand, then, that economic life is pursued not simply for the sake of accumulating the greatest number of material goods possible but also for the sake of recognition, then the critical interdependence of capitalism and liberal democracy becomes clearer... Liberal democracy works because the struggle for recognition that formerly had been carried out on a military, religious, or nationalist plane is now pursued on an economic one. Where formerly princes sought to vanquish each other by risking their lives in bloody battles, they now risk their capital through the building of industrial empires. The underlying psychological need is the same, only the desire for recognition is satisfied through the production of wealth rather than the destruction of material values.” (Fukuyama, *Trust*, p. 358-360)

The challenge of the economic ethical movement is to tie the recognition that businessmen and tycoons want to achieve to an ethical base, and that recognition, which is not at the same time ethical, should be perceived in a negative way. Only success that was achieved in an ethical way would bring the recognition that businessmen seek so eagerly. The Hebrew proverb - *'tov shem tov mishemen tov'*, 'it is better to have a good reputation than a large fortune' - has to be applied literally, provided that the good reputation can be achieved only ethically. Unfortunately, too many cases prove that it is possible to eat the cake and leave it intact, and businessmen who behaved in an extremely unethical way have nevertheless an excellent reputation, while the Don Quixotes who try to oppose them are treated as squealers, crazy, or enemies of the people.

TRANSPARENCY CASE – ETHICS IN IPOs AND FINANCIAL REPORTS

(All the characters and plot and all the names of the companies in this case are fictitious)

James, CFO of Sharmiel, enjoyed every moment of the IPO of his company in NASDAQ. Sharmiel's shares were traded already for several years in the stock exchange of his country, but this time he would raise from the American Institutions a very high amount and the shares will be traded also in the US. James initiated the IPO, prepared a very professional presentation with fascinating analysis of the financial ratios, sales, profitability, short term and long term forecasts, risks and prospects. He succeeded so much in impressing the investment banks that he received five proposals for underwriting the issue from the leading banks in Wall Street. Morton, the Chairman of the Board of Sharmiel who was in New York on business, was astonished of James's success. He was a shrewd fox who has issued many companies in Wall Street, but to receive five proposals from such prominent banks for an IPO was unheard of. Morton consulted the tycoon, who was at the head of the conglomerate's pyramid and lived in New York, and he decided that they should choose two banks - the second largest bank in the world and a much smaller one where his grandson was employed. Everything looked rosy and bright and the only thing that remained was to conduct the IPO. "Kleinishkeit", said Morton, "you'll see that all those bankers are very nice at you in the beginning, but they'll make your life miserable at the end." "We'll wait and see", answered him James, "this is all the fun in business that you never know what will happen next."

And he didn't know how right he was. A couple of weeks after returning home his government annulled a mega defense project that Sharmiel counted on it heavily

in its prospects. All of a sudden, all the forecasts had to be revised, the new budget was much tighter with substantially lower sales and profitability. James consulted Taylor, his CEO, what to tell the analysts that were about to come in a week to conduct the due diligence. James proposed to be fully transparent: "I'll show the next year budget and the changes in the long run planning. It really changes the picture drastically, but I can show them other prospects with high probability that could replace the project that was cancelled by the government. All in all, I don't think that it should change the valuation of our company. It is true that next year's profitability will be 20% lower and in subsequent years 10% lower. But our current valuation in the local stock exchange is based on a multiple of 10 while our competitors have a multiple of 16 or more. With all the discounts imaginable we are still attractive at this price even with lower profitability forecasts. Anyhow, this is what I'll tell the Americans."

The day after, James was invited to Morton's home. He thought that it was quite unusual as they normally met at his office, but he brought all the IPO's material as he was requested. In the luxurious living room Morton and Taylor were already present and they received him very warmly, offered him a drink, and looked at the detailed material. After an hour of deliberations James finally understood why he was convened urgently to Morton's home. He was asked by his superiors, unofficially and at his full discretion, to change the budget's figures to be presented to the bankers in the due diligence. Taylor clarified: "You'll never be able to issue the company in Wall Street with such forecasts. We are going to spend millions in all this process but the underwriters will retract in the last moment and even if not, the Institutions will never invest in our company and the underwriters will remain with large amounts of unsold shares. It means that the price of the shares will collapse, as they'll try to offer the shares to the public anyhow. And if the IPO fails the public will never have confidence in our company and will never forgive us that they lost their money. Our shares' price will be affected for years. Don't forget that we'll be able to exercise our options within a few months and if the shares' price will be lower than the exercise price

we'll lose all the benefits of the options and of the shares that we have already but we had to wait for two years to sell them, which means a loss of millions of dollars for Sharmiel's executives, tens and hundreds of millions for the controlling shareholders who'll not be able to sell part of their shares as they planned at the IPO and afterwards. It will be a catastrophic loss of credibility and money!"

James didn't believe what he heard. He knew that Taylor was sly, some people said even a crook, but he counted on the ethical Morton that he would restrain him. James answered furiously: "You ask me to lie overtly to the investment banks, give them erroneous forecasts, it is against the law and elementary ethics, it is even silly as the SEC could ask us to raise the curtain and show them the budgets that we gave to our own Board of Directors a week ago with the lower forecasts. I could go to jail because of that, I will never be able to operate in Wall Street, and for what - that you would be able to benefit from a few million dollars from your options. Morton, I understand that Taylor proposes such a scheme but how can you, who are so ethical, agree to it?" Morton was surprised of the emotional response of James and his unprecedented attack on Taylor. "If a subordinate speaks like that to his boss", he thought, "he has probably decided to quit the company. We should beware of what we tell him as he could blow the whistle and tell the investment banks what we proposed him to do." Morton hugged James in a very friendly manner and told him smilingly: "Forget what Taylor said. He just thought loudly on the situation and it doesn't mean that I, the controlling shareholders or even he is serious about that. If your conscience doesn't allow you to change the forecasts, do what you think is right to do. You are the leader of this IPO and you have full responsibility and authority. But remember that if the IPO will fail you'll bear the consequences." "Thank you for your backing", said James dryly, "I will bring you the money at the present valuation even if I'll receive an ulcer from it!"

James made a detailed protocol of the meeting. He also decided to record all the meetings and phone conversations with Taylor and Morton in the future. He was

sure that he was being recorded by them already including the frustrating meeting that he just had. "In any case, I'll not survive the IPO", he thought, "it is a lose-lose situation, as I am losing in both cases. If the IPO succeeds Taylor will never forgive me for telling him what I think of him and he'll find the right occasion to fire me or make me quit, if the IPO fails they'll fire me because I didn't agree to their friendly persuasion." James consulted his wife Theresa on the alternatives he had. Theresa, a psychologist, wanted to get the whole picture, their body language, the ambience, their speech tones, even the drinks they had. After his description, she said: "James, you were miraculously saved from the ambush that those bastards set you. You were supposed to be the scapegoat of those crooks. If the scheme would have been discovered they would have said that it was your initiative, as they are two against one. Morton knows everybody in Wall Street, he has the full trust of the tycoon who owns the company, and I am not sure that it was not his idea initially. If the IPO fails the old tycoon is going to lose the most so it is his prime interest that it will succeed at any cost. You are right that your days in the company are numbered. You are a walking dead man. The only think that you can do is enjoy the IPO, it is quite an experience, make contacts with all the financial community in Wall Street, and after Sharmiel fires you I don't mind if you will receive a proposal to work in Wall Street."

The IPO was not a picnic. The due diligence was successful and the analysts were very impressed by the integrity and transparency of James who disclosed them all the problems. They told him: "Very few American companies would dare being transparent as you are. You have proved an uncommon courage and we fully believe that you'll be able to meet your revised targets. Sharmiel cannot be blamed for what happened, it was a force majeure, and you show a very sensible way of how to tackle the difficult situation. But the valuation of your company is borderline, we'll have to decide if we'll raise all the quantity of shares that we planned or only half of it." In a private conversation the investment banker of the largest bank proposed to James to raise all the IPO with him and he will commit to market all the shares at the present valuation. He told him that the decision to

work with the small investment bank where the grandson of the tycoon worked was a mistake as they'll never be able to deliver the goods, least of all now when the situation was much more complex. James brought the issue to Morton's decision, but Morton decided after consulting the tycoon that the situation would remain unchanged. James noticed the cool response of Morton and knew that he has lost a friend and ally. At night he told Theresa: "They are nice and friendly to you as long as you do what they want. They request from you blind loyalty, that you would take all the risks and they would take all the prospects. But on the moment you show an independent mind, you are dead." Theresa answered him that she was proud of his behavior as he didn't have the victim's mentality and a slave character. "All of them are slaves", she said, "even Morton is a lickspittle. They are screws in the huge capitalistic machine. Only the tycoons don't abide by the rules."

James followed the advice of Theresa and enjoyed every moment of the IPO. He flew from coast to coast in first class, stayed at the best hotels in the States, commuted in long limousines with bars and TV. He made excellent contacts with the Wall Street community and succeeded very much in the road show. In one day he made a presentation in Dallas, San Francisco and Los Angeles. The investors were very impressed by the story he told them, but the results of the IPO were rather disappointing. The large bank sold all its commitments, but the "grandson's" bank sold close to nothing. If the large bank would not have come to the rescue, the IPO could have been a complete failure. Back to Sharmiel, an organizational change was conducted, and James was appointed as VP Special Missions, a position reserved for "about to be fired" executives. He understood the hint and resigned. When Taylor refused to give him the normal parachute he threatened that he would go to his Wall Street friends and tell them what was the true reason of his job transfer and reminded him that it is possible to cancel the IPO within a month if a fraud was discovered. He received immediately all what he asked. After all, James had not the victim syndrome. James and Theresa were thinking on the alternatives open to them.

ANALYSIS & TOPICS FOR CONSIDERATION ON: TRANSPARENCY CASE - ETHICS IN IPOs AND FINANCIAL REPORTS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. James, CFO of Sharmiel, 2. Taylor, CEO of Sharmiel, 3. Morton, Chairman of the Board of Directors of Sharmiel, 4. Theresa, James's wife.

* James is a modern ethical hero, a Don Quixote, a coward afraid to break the law, a blackmailer, a revolutionary?

* Was James right in his decision not to cooperate with Morton's and Taylor's scheme and to remain transparent?

* What would have happened to James if the scheme would have been discovered? To Taylor? To Morton? What are the chances that the scheme will ever be discovered?

* Was it possible to eat the cake and leave it intact? For example, it was possible to change the forecasts to the Board as well, and in this way to be consistent in the scheme, after all, nobody can be sued for mistakes in the forecasts and unsound business judgment.

* James nevertheless transgressed the second law of unethical companies: the law of blind obedience and total loyalty. Why didn't he transgress the first law: the law of Omerta, and chose not to be a whistleblower? What reward did he receive for his silence?

* Why did Morton and Taylor believe that James would cooperate with their scheme?

* James was afraid of being caught and decided not to cooperate. What would have happened if he was asked to wrong minority shareholders in an unethical or illegal action, which is however much more difficult to discover? Would he be so courageous and transparent?

* Morton is perceived as a more ethical person than Taylor. Why did he initiate nevertheless the meeting with James? Did he receive a hint from the almighty tycoon?

* Theresa is a psychologist. Has she discovered the psychological dilemmas of the protagonists?

* What will happen to James after quitting Sharmiel? Will the reputation he got as a disloyal revolutionary enable him to receive another CFO position? Will he be a university professor?

* Try to find the positive aspects of Taylor's behavior. Which of his arguments are right?

* Will the new contacts that James made with the Wall Street community help him to find a new job, in his country, in Wall Street, in the US?

* Was James's decision to record his conversations with Taylor and Morton a sound decision, a paranoid decision, it wouldn't make any difference as both were now very careful with him?

* What are the lessons that you draw from this case? How would you behave if you were James, Taylor, Morton, Theresa? Are there any protagonists who are completely ethical, unethical? Is it advised to be transparent in every case? Does Wall Street appreciate it?

CONCLUSION

James never returned to Wall Street, except for a family visit with his daughter in New York. Morton and Taylor managed to give him a reputation of a whistleblower, a revolutionary and a blackmailer. The financial community was not grateful for his transparency and integrity. They probably prefer blind loyalty and lambs' silence. James transgressed some of the basic laws of the business world. He dared to revolt against a mighty tycoon, as Taylor and Morton acted on behalf of the tycoon with his total blessing. James dared refuse to incur the risks of the disclosure of the illegal acts, although it is customary that the CEOs and Chairmen never incur any risks. The recent scandals prove it. The most dangerous position is to be a CFO who knows of everything, goes to jail but receives peanuts in comparison to his superiors who don't incur any risk and who always say that they didn't know anything of the CFO's schemes although they benefited from them. They never sign any incriminating documents, only the CFOs do, but recently in some occasions their pretending innocence is not accepted by the courts. The worst offence of James was to think independently and refuse to have a slave mentality, as he thought that in today's world everyone is a slave and a master in parallel. Morton is the tycoon's slave, the prime minister and the politicians are the tycoons' slaves as they receive from them contributions to their parties in return to governmental benefits and privatization at ridiculous valuations. There are possibly several hundreds of tycoons in every country who are not slaves but they are not the "people".

The worst mistake that James made (in business, not in ethical terms) was when he refused to Taylor's proposal, a proposal one cannot refuse. If he would have collaborated probably nobody would have ever discovered the scheme, the IPO would have succeeded beyond all expectations, and when the shares' prices would have collapsed a few weeks or months later it could have been attributed to a force majeure that was unknown during the issue, as all the unethical companies do. Everybody was furious at James and he suffered the most. But when he

contemplates the fate of the two CFOs who followed him; one died in mysterious circumstances after threatening to be the state's witness in a bribe scheme that Morton and Taylor participated in it, and the second one went to jail as he evaded paying corporate taxes of tens of million dollars but refused to incriminate Morton and Taylor who gave him the instructions to do so; James does not regret in not cooperating with the two crooks. Theresa backed all his actions and remained the loyal and loving mate. James didn't work anymore for any company, he became independent and got rich from some smart transactions that he made. He is sure that it is the ultimate proof that you can succeed in business while remaining ethical.

Morton and Taylor left Sharmiel after several colossal scandals, wronging the minority shareholders and the Chief Scientist of hundreds of million dollars. Each one received throughout the years, in golden parachutes and as hush-money, tens of million dollars, but none of them was happy as he thought that the other one got much more although he didn't deserve it. The old tycoon passed away, the younger generation took over but they messed everything up, as true "fils-a-papa" who never had to struggle for obtaining anything. Recently, they sold the family conglomerate to another tycoon, sic transit gloria mundi. The brother of the old tycoon, who parted from the family when it started to behave unethically and published about his struggle books and articles, is still living. He contributes millions of dollars to the community and wants to wash the stain on the family's name. He is a good friend of James and meets him once in a while. He complains on the empire who was lost because of the schemes of his brothers. "Basha Klassa", low level crooks, he says to James in their mother tongue: "how they ruined everything in less than three generations... They don't have a word of honor, respect to their traditional ethics, where are the honest businessmen of my times, today the only way to survive is to be a crook..."

TRUST AND FAIRNESS CASE - BRIDGING IN MERGERS

(Due to confidentiality and editing reasons some of the names and details have been changed. The amounts are given for indication purpose only)

When Anthony was invited to lunch by Douglas, the President and Owner of American Furniture, he was not convinced that he should accept the invitation. Douglas' company was one of the largest furniture companies in the world and its subsidiary in his country was the main competitor of one of Anthony's major clients - International Furniture. Anthony, formerly a high tech executive and currently an International M&A program manager, maintained impeccable ethical standards and this was part of his reputation, together with the high rate of success of his M&A. He was a personal friend of Christian's, the President and Owner of International Furniture. In spite of the age differences and their different hobbies (Christian was a well-known sportsman while Anthony never watched a basketball or soccer game) they became close friends. Anthony started to work for Christian a few years ago and assisted his company in strategic planning, know-how agreements with a large American multinational, the turnaround of the company's activities, financial matters and the organization of the sales department. Anthony naturally informed Christian that he was about to meet Douglas, but promised him that he wouldn't disclose insider information on his client. Christian encouraged him to meet Douglas, as he was aware of the fact that the American company was dissatisfied with the performance of its local subsidiary. Both companies were competing in the same market and in the multimillion tenders they engaged in cut-throat competition to the detriment of both. This competition had a very negative impact on their profitability and on their market share, but Christian's company balanced the losses with the

multimillion royalties it received for its know-how from the American company, with whom it had signed a know-how agreement, with the assistance of Anthony.

Douglas was very friendly to Anthony, he told him the story of his life, a holocaust refugee who came to America penniless and constructed a multibillion empire with his own hands. Douglas told Anthony that he had heard excellent reports about him, his success with International Furniture, and complimented him on the fact that Christian's company was so profitable, probably because of Anthony's contribution. Anthony answered him that he was only a consultant to Christian and all the credit was due to Christian and his partner, who were excellent managers and experts in their fields. They had transformed their company into a high-tech company although it was in the furniture business, and most of their customers were indeed high-tech companies that liked the modern and sophisticated designs and their state-of-the-art technologies very much. Towards the end of the meal, Douglas told Anthony what the reason for his invitation was; he asked Anthony to assist him in the same manner that he had helped Christian to overcome the losses of the local subsidiary and to prepare and implement its strategic planning. Anthony told him right away that it would be impossible for him to do so as it contradicted his ethical standards, but Douglas clarified that he didn't expect him to divulge any secrets from Christian's operations but just implement the same methods which were not proprietary, and he would receive a very high remuneration for that. When Anthony insisted in his refusal, Douglas asked him: "So, what do you suggest?"

Anthony told him that instead of engaging in a cut-throat competition they should merge their local operations. He suggested that Christian and his partner conduct the merger with the local subsidiary and turn the merged company around with Anthony's assistance and thus bring the merged company to very high profitability. Anthony specified that that was his own opinion and he hadn't consulted Christian on this, but Douglas, who was very impressed by Anthony's integrity and his competence, gave him a full mandate to pursue his proposal, on

the one condition that he, Anthony, would conduct the negotiations as a mediator and he would be remunerated equally by both parties. Anthony was very surprised by this act of confidence; for the first time in his very long career he was offered such a deal. He was sure that he could be a fair mediator, but he asked Douglas nevertheless: "Don't you think that I might be more inclined to be on Christian's side, since he is not only my client but also my personal friend?" Douglas answered him with a smile: "A few minutes ago you passed your integrity test brilliantly and I have no doubt that in the near future we will also become good friends".

Christian immediately agreed to concur with Anthony's proposal. He was also convinced that there was no point in having such fierce competition in such a small market as the local market, selling similar products with similar quality and similar prices. There were enough competitors, local and foreign, and together they could achieve a critical mass in the local market that would enhance sales and profitability. Although he didn't want to lose control of his company, he was aware of the fact that the modern business world belongs to mega corporations and in the long run he needed to join forces with such a large company as Douglas'. He checked into past merger possibilities, with Anthony's assistance, with some of the American companies but they were not interested, as the local market seemed too small for them. Douglas' case was different, as he had already a local subsidiary, although it lost money, and Christian could give him an added value. Christian had tried to make an IPO without success, as the stock exchange was interested only in high-tech companies and a small foreign furniture company was not attractive enough. Therefore, the idea of merging with Douglas' subsidiary made sense. He knew that Douglas was a sophisticated businessman with an excellent ethical reputation. Christian hoped that he would convince him to merge only the local operations in a 50%-50% partnership, but in the back of his mind he knew that ultimately his company would be acquired fully by American Furniture, as it didn't make sense to have a joint venture while a fully integrated subsidiary would be much more profitable. He was still young and

hoped that he would succeed in making an impact in the multibillion company in the European organization or even in the American organization. He was confident of his managerial skills and his state-of-the-art products and he knew that he had much more to offer than in managing the local business. Christian's partner in the local company was more reserved, but he agreed to investigate the matter further.

In preparation for the negotiations in America Anthony prepared a document that included four subjects: the logic of the merger, the preferences of both companies, parameters for the valuation, details on the financial statements of International Furniture. In the document on the logic of the merger the advantages of a larger company were detailed, especially in manufacturing and sales, the substantial savings in overhead, the avoidance of a cut-throat competition, keeping the two brand names with their relative advantages and segmentation of the market accordingly, increase of the local market share, making the activities of the American subsidiary profitable, contribution of the state-of-the-art technology of International Furniture to the R&D activities of the Americans, introducing revolutionary locally-designed products to the product mix of the Americans throughout the world, unification of the manufacturing facilities on the premises of Christian's company, thus benefiting the subsidiary's products, which were not manufactured in a development zone from the approved enterprise status, similar objectives for both companies, a similar entrepreneurial and ethical mission, a very fast return on investment, minimal exposure and low risk, rationalizing of the manufacturing and purchasing process, a combined and aggressive management.

The preference of the local company was that the merger be executed only with the subsidiary. The subsidiary had a similar turnover of several tens of millions of dollars annually, but they encountered a problem of valuation, as the subsidiary lost money and its pricing was based on transfer prices from the American parent company for the imported products. However, a large part of the sales were of products manufactured in the local subsidiary, which also exported part of its

production to Europe. Christian preferred that all the manufacturing of products to Europe should be done locally due to the proximity to Europe and the trade agreements with the EU. He also hoped that in the near future it would be possible to make an IPO of the merged company in Europe or the US. The American company was already a public company.

Nevertheless, the Americans were interested in acquiring 100% of the local company and merging its operations with the parent company. Anthony suggested that in this event part of the consideration should be in cash and part in shares of the American company guaranteed with a bank guarantee on the nominal value. Both parties agreed that part of the consideration should be linked to the performance of the merged company, as it was agreed that Christian and his partner would continue to work in the merged company for at least three more years. The prospects seemed bright as the common objectives were far more prevalent than the differences, but very soon some cardinal divergences of opinions were perceived: a very large gap between the valuations of the local company by the parties, the distribution of the consideration to the different components, and who was going to manage the merged company. Anthony perceived his main task in bridging between the opposite views of the parties.

Christian figured that Douglas would offer him no more than a valuation of \$40M, based on the net profit of the local company with a multiple of 15. In the furniture business this was the maximum that could be achieved as the multiples were not as high as in the high-tech industry. This was also the multiple of the American company that was profitable on the American stock exchange. Furthermore, Christian asked for royalties of 3% on the sales of some revolutionary products that were developed but not yet marketed, as the Americans did not agree to incorporate them in the valuation of the company. Anthony suggested to Christian that he agree to receive part of the consideration in shares of the American company with a bank guarantee on the nominal value. Christian and his partner agreed to receive their current salaries, but required

bonuses of up to 50% of their annual salaries if they meet objectives mutually agreed upon. Douglas requested, after signing a confidentiality agreement, that he receive full disclosure on the local company, including the know-how agreements, the royalties and sales breakdown, pricing data and other details of the financial statements. He was particularly interested in data on the local factory, the equipment, R&D, aging of customer' debts, banks loans, details on the salaries and the forecasts of sales of the different products. After a preparatory meeting with Douglas and his managers and discussions with Christian and his management, Anthony suggested a detailed proposal according to the following lines.

The minority shareholders of International Furniture, who owned one third of the shares and were mainly relatives of the first generation founders, would not be employed by the company after the merger. Christian believed that they would be willing to agree to a much lower valuation of the company as they were interested in an immediate exit and would not contribute to the success of the merged company, as the two CEOs would. Christian and his partner, the two CEOs, who held two thirds of the shares, would remain in the company as executives and contribute to the success, sales and profitability of the merged company locally, in Europe and in America. The agreement would be for five years and they would receive an employment agreement, including salaries, bonuses and warrants. The bonuses and warrants would be tied to objectives, but would not be part of the consideration for selling their company. The minimum payments for the company were open for discussion by the parties. Those figures were based, inter alia, on the savings in costs due to the merger, the increase in profitability, the sales growth, obtaining more lucrative tenders by avoiding competition, the new products, the decrease in overhead, the relocation of the subsidiary's facilities to the approved enterprise zone, economies of scale and so on. All the proposals were given in full transparency and the minority shareholders had to agree to the different valuations for them and for the partners.

It was proposed that the minority shareholders, who held one third of the shares, would receive \$7M, half in cash - \$3.5M - and half in shares of the American company, with a bank guarantee of \$3.5M for 5 years. This guarantee would not be subject to any objectives. If Douglas' forecasts of an annual 25% increase in the price of the shares of his company materialized, the value of the shares would increase to \$10M after 5 years and they would therefore receive \$13.5M in five years, amounting to a valuation of \$40M, as they had one third of the shares. In the worst case, they would receive \$7M, with a valuation of \$21M, thus giving them an upside of twice the valuation, which is equivalent to the price that they wanted, and a downside of half this price, but they knew that the Americans did not want to acquire the company for its assets, but mainly because of the two partners who would contribute to the growth of the merged company; for that reason Christian and his partner deserved to receive more. This differentiation between the shareholders, with full transparency, was one of the main ingredients of the compromise that was ultimately achieved in the negotiations in order to overcome the huge gaps between the requirements of the buyer and the sellers. The minority shareholders, who wanted to have an exit and couldn't get it unless the company was sold or traded, were willing to compromise much more than the two partners.

Anthony proposed that Christian and his partner, who remained in the merged company and continued to manage it, should receive the following consideration: a cash payment of \$6.5M and shares of the American company amounting to \$6.5M and guaranteed by a five year bank guarantee. However, if the profitability of the merged local activities dropped lower than the current profitability of American Furniture, including its local subsidiary, the bank guarantee would only amount to \$3.2M, or 50%. If, on the other hand, the valuation of the American company did not increase as forecasted, threefold in five years, the bank guarantee would increase to \$13M, or twice the initial amount, provided that the profitability of the merged local company increased by at least twice in those five years, at the same rate of increase as the bank guarantee. This compromise

bridged between the large gaps of the parties' positions in a sophisticated manner, as it reflected the profitability of the local company, which was influenced by the performance of the local partners, and the profitability of the American company which was influenced by the performance of the American partners.

Anthony also proposed that the local partners should receive 3% royalties on the revolutionary new products. Christian believed, after conducting market research and consulting his worldwide distributors, that the sales of these products would amount to \$200M in five years. They would therefore receive \$6M in royalties. If the Americans decided to exercise the option to market those products and did not market or succeed in marketing the products, the partners would get at least \$3M, or more if sales were higher. However, if the Americans did not exercise the option to market the products, the local partners were free to find other companies that would want to market the products and give them royalties. Therefore Christian and his partner would receive, in the optimal case of an increase of threefold in the price of the shares in five years, the amount of \$32M (6.5 in cash, 6.5x3 in shares, 6 in royalties) with a valuation of \$48M, which was similar to what they wanted originally: a valuation of \$40M and 3% royalties on sales of \$200M or \$6M. In the more realistic case, that the price of the shares did not increase threefold and the bank guarantee on an increase of twofold were exercised, and if Christian's forecasts on the profitability of the local merged company and the royalties did materialize, they would receive \$26M (6.5 in cash, 6.5x2 in shares, 6 in royalties), with a valuation of \$39M. In the worst case, they would receive \$13M (6.5 in cash, 3.2 in shares, 3 in royalties) or a valuation of \$20M.

The exposure of the Americans was \$20M maximum, for the whole company (\$10M in cash for the partners and the minority shareholders and \$10M in shares or actually dilution of their ownership). This amount would increase to \$26M if the increase in the price of the shares in five years were less than twice, but could also decrease to \$17M if the profitability of the local operations were less than

forecasted. The royalties were not taken into account in the amount of the exposure, as the Americans had the option not to market the new products. According to Anthony's proposal, the local partners received what they wanted: a valuation of \$40M in realistic scenarios, and the Americans were exposed to a valuation of \$20M which was the price that they were willing to pay, and even this, only half in cash and half in shares. How was this alchemy achieved? By the differentiation of the minority shareholders with full transparency, payment of half the consideration in shares with a bank guarantee on the original amount and by keeping the new products and their royalties out of the formula. Other parameters were also introduced into these proposals, linking the consideration to the performance of local activities and the conduct of the price of the shares. We will see that ultimately the compromise that was achieved was even more complicated, but kept however the same principle, that the local partners get what they want and the Americans pay only what they want, in spite of the large gap between the positions of the two parties.

A few weeks later more parameters were added to this formula. First of all, it was decided that the Americans would not acquire the local company, but its activities, assets and liabilities, goodwill, etc., with some clauses on the loans made by International Furniture to its shareholders, and it was decided that the local partners would maintain ownership of the premises of the plant in the development zone. The Americans committed to a five-year lease contract of the manufacturing facilities with an option to increase it to ten years that they would enter upon signature of the agreement, paying an annual rent payment of \$0.6M. The Americans committed themselves to pay the partners a sum of \$10M in five years subject to achieving certain objectives. This amount was based on 50% of the increase of the merged local company's profitability in five years compared to the aggregate profitability of International Furniture and the loss of the subsidiary in the base year. On top of the salaries of the partners, which would remain unchanged, they would receive bonuses of 5% of the pretax profitability of the merged local company. The partners would also receive, upon achieving their

objectives, 30,000 five-year warrants to purchase shares of the American company, to be exercised at the price that was on the stock exchange on the day that they received the warrants.

In the following weeks negotiations were held, with frequent business trips, in an attempt to overcome the gaps between the positions of the parties, to investigate the tax implications, the problems of issuing new shares, managing the merged operations and so on. Anthony examined different scenarios with both parties, optimistic, pessimistic, realistic, minimum and maximum exposure, forecasts of the locally merged operations, sales and profitability in the next five years, financial and legal implications and so on. The possibility of giving convertible debentures instead of shares was examined, the requirements for bank guarantees, what the prerequisites were to signing the agreement: approval of the Boards of Directors, approval of the Chief Scientist, approval for the approved enterprise status, approval of the anti-trust authorities, approval of the owners of the know-how, approval of the banks that had liens and so on. Anthony flew back and forth to America and tried to keep his status of a fair mediator.

In November 1998, two months after the beginning of negotiations, the local partners received a formal proposal from the Americans as follows: American Furniture will purchase the activities, assets and liabilities, goodwill, know-how, and so on of International Furniture, excluding some of the assets and liabilities. American Furniture will pay a sum of \$10M for the acquisition in convertible debentures of the company that can be converted into shares within five years but that cannot be traded during this period. American Furniture will give a five-year bank guarantee for those debentures. The premium of convertibility will be of 15% over the price of the shares on the stock exchange on the day of signature of the agreement. The interest rate of the debentures will be the US Libor. The bank guarantee is accepted as collateral for getting bank loans. The cost of the loans will be the difference between the bank interests and the Libor. If the local partners do not convert the debentures within five years and the price of the shares

after five years is lower than the conversion rate, the local partners will exercise the bank guarantee. However, if the price of the shares is higher, the local partners will be compelled to convert the debentures to shares, but they will be able, of course, to sell the shares on the stock exchange immediately. During those five years it will be possible to partially convert the debentures into shares.

The additional conditions that the Americans proposed were: they will pay the shareholders of International Furniture \$1M, which will enable them to reimburse the bank loan that they took in the past in order to invest this amount in their company. In parallel, the local partners will keep the bank loans that they have taken in order to build the plant in the development zone and will continue to pay the interest. The Americans will have the option to purchase 50% of the plant for a cash payment of \$1.5M. The value of the plant and the land is about \$6M and the outstanding loans amount to \$3M, thus the net value of the plant is \$3M. The rent will amount to \$600K annually, in a five-year contract renewable to five more years. The Americans will have the option to acquire the rights on the new products and pay the local shareholders 3% royalties on the sales of the new products. If they do not exercise the option within a few months, the local shareholders will have the option to sell the know-how to other parties.

The local partners will receive \$2M every year for the first three years of the agreement, to a total \$6M, for both. The precondition for receiving those amounts is their work in the merged company during each year of this period. The Americans insisted on adding other conditions such as best efforts in their work and so on. Both parties were very suspicious of the implementation of this clause: the Americans were afraid that the two executives would only come to work and do nothing in order to receive the \$6M, while the local partners were afraid that the Americans would try to find excuses for not paying those amounts, saying they have not made their "best efforts", and so on. It will then be too late for them to do anything, as the company will already be owned by the Americans. In addition, the local partners were to receive, from the Americans, an amount of

\$9M in five years, subject to meeting several objectives: 50% of the additional profitability of the merged company, compared to the initial profitability up to a maximum of \$1.8M annually, or \$9M in five years. This topic raised many arguments as the local partners wanted to be involved in the international activities of American Furniture and didn't want to be evaluated only on the profitability of the local organization, it was not clear what the base profitability was, as the subsidiary was losing money and received transfer prices for some of their products, there were many non recurring costs, how would the profits be calculated on the sales of the products manufactured locally to the other subsidiaries in Europe, how would the R&D component of the P&L be neutralized from the calculation, and so on. The partners were requested to sign a five-year employment contract with American Furniture on the basis of the existing salaries and social benefits; every partner would receive a bonus of 5% on the annual pretax profit of the locally merged company on the first \$1M, 4% on the second million, 3% on all the other profits. The partners would also receive 30,000 warrants each for purchasing the shares of the American company according to the employees stock options plan. It was not decided what the positions of the two partners in the company would be.

On November 27, 1998, a Letter of Intent was signed according to the abovementioned outlines. This was much less than what the local partners wanted and the risks involved were much larger. No cash payment was granted, in the best case the partners were about to receive \$28M, 67% of \$20M (10 debentures, 3 net for the lease of the plant, 1 loan, 6 royalties) or \$13M as well as specific payments of \$15M (6 employment contract, 9 additional profitability), in total \$28M or a valuation of \$42M. The valuation of the company for the minority shareholders was the abovementioned \$20M, as they expected and it also left them an upside if the price of the shares increased, but without a guarantee on the basic payment if the price of the shares did not increase. For the Americans the exposure was minimal, as except for the repayment of \$1M of the loan in cash, they didn't pay anything in cash. They issued convertible debentures that they

knew would be converted, as they were confident that the price of the shares would increase in five years, the dilution was minimal, they were not required to buy the facilities of the plant and they benefited from the rent that was according to market prices, receiving approved enterprise status and transferring their manufacturing facilities there, saving large amounts of overhead. They were not required to exercise the option on the new products, but they committed to pay an unconditional \$6M to the partners and \$9M subject to meeting profitability objectives. However, the Americans were convinced that they would increase the local profits by at least \$25M in five years, and pay to the partners \$15M. The Americans bought a company with a large potential for almost nothing, with an adequate solution to the losses in their local subsidiary; it was a good transaction for them.

The risk for the local partners was in the fact that half of the consideration was linked to the objectives and working in the merged company; as the Americans were not enthusiastic about purchasing the new products, the prospects of finding other partners for those products was slim; they would not receive anything in cash, they were not happy with the proposal of convertible debentures, and it was probable that the amount that they would receive would be \$20M or less if there were no royalties and if they received only half of the conditional consideration ($4+6+67\% \times 14$). However, in spite of all the risks, there were many prospects, as they were convinced that they would increase the profitability substantially, they knew that they would continue to be employed by the company as they believed in the integrity of the Americans, they hoped for a substantial increase in the share' prices and had a moderate hope of receiving at least part of the royalties. On second thought, they believed that they might receive a valuation that would be similar to the \$40M valuation that they wanted initially. If only they could receive part of the consideration in cash they would be satisfied with the agreement. Therefore, in spite of the signature on the Letter of Intent, which was subject to the approval of the Boards and receipt of many other approvals, the parties continued to negotiate in order to clarify different points, with an

indefatigable Anthony, who tried to bridge between the divergent standpoints of the parties.

In parallel to the negotiations, a thorough due diligence was conducted on the local company, all the repercussions of the merger were examined including tax considerations and an employment contract was ultimately devised. It was decided that the salary base of the workers in the two local entities would be unified, without increasing the labor costs substantially, in spite of large gaps in the salaries of the two organizations. Similar gaps were also in the number of company vehicles. It was decided to make profit centers for the main activities of the merged company, with the involvement of the managers in the decisions on transfer prices, sale prices, efficiency criteria and so on. A joint organization was devised and it was decided that Christian would be General Manager of Sales, his partner would be General Manager of Design and Development, and Taylor, the President of the merged company, would continue to benefit from the full confidence of Douglas and would be the boss of the two partners. Taylor was a newcomer and was not responsible for the losses of the subsidiary and the partners agreed to receive his leadership after they knew him better. Taylor did his utmost to attenuate their apprehensions and they were confident that they would manage to work as a team as they had a lot to gain in bonuses and incentives from the success of the merged company. Nevertheless, it was decided that only Douglas would have the authority to fire Christian and his partner.

In February 1999, a local newspaper published an article disclosing that International Furniture was contemplating the possibility of introducing a strategic partner to the company - American Furniture. For half a year the parties managed to keep their negotiations confidential, but after such a long period of time and after many parties were now involved in the negotiations, it was no longer possible to hide it from the press. No amounts were disclosed and the newspaper wrote only about partnership and not full acquisition. The suspicions of the parties were still very high and Anthony had to work overtime in order to

attenuate them, taking into consideration that the lawyers of the parties also tended to augment the suspicions level. It is not clear if this was a tactic of negotiations, but every disclosure on obligations to the banks, ecological problems, problems with suppliers and customers, in the know-how agreements, taxation and so on increased the suspicions and the final contract comprised hundreds of pages and it took more than a year to finish the legal negotiations. Anthony continued to have the full confidence of both parties, but it was harder and harder for him. The local partners couldn't understand why the American lawyers spent thousand of hours trying to find insurmountable problems on issues that seemed trivial to them, the exorbitant legal costs didn't improve the confidence of the parties.

In the final agreement, there were no more convertible debentures and the basic consideration decreased to \$8M in cash, much less than what was stipulated in the letter of intent and of course less than in the initial phases of the negotiations. However, the parties were exhausted after more than a year of negotiations and the local shareholders were eager to receive at least part of the consideration in cash. The Americans committed to assuming all the liabilities of the company and the personal guarantees of the shareholders. This amount was corrected according to the profitability of 1999. The local plant remained under the ownership of the local shareholders and the Americans committed to rent it as mentioned above. The salaries, social benefits and bonuses were as mentioned above. However, the amount subject to employment in the company was reduced from \$6M to \$4M in three years. The conditions for receiving those amounts were employment in the company, working fully and exclusively for the company, devoting reasonable best efforts to enhancing the interests of the company (on these topics only the parties negotiated for a week...), the partners would not engage in activities that might bring substantial harm to the interests of the company, while the financial results were not part of those activities. The \$4M payments would be paid in shares of the American company according to the share price prevalent on the date of the signature of the contract, thus if the shares increased twice or thrice in

three years the partners would receive two or three times more if they sold their shares immediately. The partners would also receive consulting fees of \$20K monthly for five years and in total \$1.2M. The overall amount that was not linked to performance amounted to \$5.2M (4+1.2) instead of \$6M in the letter of intent; this amount was slightly less than in the LOI but most of it would be paid in shares that might double.

In addition, a special bonus would be paid conditional to increase in sales and gross profit every year for three years. The maximum amount to be paid would be \$2M in three years, the conditions for obtaining it were easier than in the letter of intent, but the amount was much less - \$2M in three years instead of \$9M in five years. The royalties were as stipulated in the letter of intent but the Americans didn't exercise their option and the local partners didn't succeed in finding a company that was interested in the know-how. The maximum amount of conditional payments was therefore reduced by \$13M (6 royalties and 7 bonuses). If we add the reduction in the basic payments to that, the consideration that the local shareholders received was much less than what they wanted, what they were promised in the first stages of the negotiations and what they signed for in the letter of intent. The Americans managed, after more than a year of attrition, to obtain the commitment of the local partners, who couldn't retreat, and maybe because they had come to the conclusion that the local company was not as profitable as they hoped, their liabilities were much higher and the risks larger, to acquire the company for \$8M; as for all the other considerations, they managed to pay them from the increase in profitability and the saving of expenses.

The minority shareholders received a minimal amount, although they could have vetoed the transaction if they were not satisfied, as everything was done with full transparency. They actually received a valuation of \$11M (8 cash and 3 net for the plant); as they held one third of the shares, they received \$3.5M, most of it in cash; as for the plant, it was also in cash, in monthly leasing payments. This was much less than \$20M and of course less than \$40M that they had hoped to receive

at the beginning of the negotiations, but it was at least in cash and they got the exit that they were so eager to receive. The two partners received \$15M ($11 \times 67\% + 4 + 1.2 + 2$) instead of the \$25M or more that they had hoped to receive. It represented a valuation of \$22M, half of their original requirements. However, we have to remember that the initial amount included the royalties that became irrelevant, shares, and conditional payments subject to meeting very aggressive objectives. Now, the amounts were much less, but with a much lower risk. There was also a substantial upside with 3% to 5% of the annual profit for every partner and a potential increase in the price of the shares in the first three years of an amount of up to \$4M. After such a long and exhausting Odyssey, they thought that they had achieved the best that they could get.

In retrospective of years, Anthony continued to keep a very warm friendship with Christian, the merger was a tremendous success, the merged company had high profits, in the harsh years of the recession they managed to survive while individually they could have collapsed, and the merger saved large amounts of expenses. The local partners received a substantial consideration and an excellent employment agreement, the Americans had, at last, substantial profits from their local operations, with almost no risk and exposure on their part. Douglas continued to be in touch with Anthony and congratulated him on favorable developments in his career. This case is therefore an excellent example of success for all parties involved, proving that ethics and trust, excellent business competence, alchemic and charismatic bridging can bring any difficult transaction to a win-win situation.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: TRUST AND FAIRNESS CASE - BRIDGING IN MERGERS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Christian, President and Owner of International Furniture, 2. Douglas, President and Owner of American Furniture, 3. Anthony,

Program Manager of the Merger, 4. Taylor, President of the local Subsidiary of American Furniture.

- * What are the ethical motives of the case and how did they affect the results?

- * The friendship relations between a client and a consultant, an advantage or a disadvantage?

- * To what extent is the merger the result of Anthony's initiative and would the merger occur even without his involvement?

- * Was there a party who won, lost, won partially, and does it matter, in view of the fact that all parties were satisfied with the results?

- * What would have happened to the local subsidiary of American Furniture if the merger had not taken place?

- * What would have happened to International Furniture if the merger would not have taken place?

- * Has the merger contributed favorably to the local economy, although part of the competition was eliminated together with its cut throat price wars?

- * Do you know of other cases where two parties divided the remuneration of a consultant who bridged between their positions?

- * How did the two partners of International Furniture agree to become salaried after they had been owners throughout their whole career?

- * Why are shareholders reluctant to purchase low tech shares, especially of small companies?

- * To what extent did the full transparency assist the Americans, the minority shareholders and the two local partners?
- * What are the benefits of the merger to the merged company in this case?
- * Why was the alternative of a 50%-50% merger between the local subsidiary of American Furniture and International Furniture ultimately not chosen by the parties?
- * Prepare a table of the changes in the valuation of International Furniture throughout the case.
- * To what extent did the final valuation match Anthony's original proposal?
- * What were the major ingredients of Anthony's "alchemy formula", which gave each party what they wanted?
- * Was the different valuation of the shares of the minority shareholders ethical for them?
- * Was the substantial reduction in valuation offered by the Americans at the end of the negotiations ethical towards the local shareholders?
- * How did the negotiators overcome the ego differences of the three executives of the merged company?
- * What do you think of the creative solutions of: offering of shares with a bank guarantee on their nominal value, leaving the facilities in the development under the ownership of the local shareholders and renting them with a long-term contract to the Americans, different valuation to minority and controlling

shareholders, linkage of part of the remuneration to profitability objectives that do not cost anything to the Americans, as their alternative is currently a loss of their subsidiary, taking the new products out of the valuation of the company and giving royalties on their sales should the company succeed in marketing them, and so on?

* How were Anthony's bridging-proposals of balanced between both parties and did he perform his job as a mediator fairly?

* Why was Douglas so interested in the management skills of Christian and his partner and would he have acquired the company without them?

* Why has the merged company failed to find customers for the new products and why didn't the local shareholders receive any royalties?

* Was the chain of events of the negotiations intricate or normal, taking into considerations the large amounts and the length of the negotiations?

* What were the reasons for the American lawyers in finding more and more hurdles during the negotiations? Was it a war of attrition, was it justified, to whom? Were the lawyers ethical towards Douglas who paid them more than a million dollars, or did Douglas save much more in valuation because of the lawyers' tactics?

* Why were all parties concerned satisfied with the results of the negotiations?

* What was the exposure of the Americans and did they take unnecessary risks? Were those risks higher than those they took when they opened their local subsidiary?

- * Were the Americans right in forcing all the executives to work together: their local CEO, who was not an expert in furniture but was a good executive, and the two local executives, who were considered as the best experts in designing and marketing of furniture?

- * What is the difference between acquiring the company and acquiring its activities, assets and liabilities?

- * What were the reasons for the length of negotiations - more than a year?

- * Do you think that the consideration which is linked to the performance of the company is justified and contributes to the success of the company?

- * How have the parties overcome the mutual suspicions in linking part of the remuneration to the performance of the merged company?

- * Was the trade-off between the amount and the mix of the consideration reasonable?

- * Why were the Americans so afraid of finding skeletons in the closets and why didn't they ultimately discover any skeletons?

- * Could the premature publication of the merger in the press jeopardize the success of the merger?

- * Is this case indeed a good example of a win-win transaction?

JOINT VENTURE CASE - TRUST, TRANSPARENCY AND FAIRNESS DILEMMAS

(Due to confidentiality and editing reasons some of the names and details have been changed. The amounts are given for indication purpose only)

In 1980 Advanced Systems suffered huge losses of \$10M in its Civilian Products division. Fred, who managed until then the Defense division successfully, received in January 1981 the management of all the company, with the main objective of making a turnaround to the Civilian operations. He asked Robin who was his VP Sales and Finance in the Defense division, to conduct the turnaround, in its financial and sales activities, and appointed him as VP of the company. Robin succeeded beyond the most optimistic expectations in this mission. The cornerstone of the turnaround was in the management of the very profitable joint venture with Computers Germany. Computers Germany was one of the leading computer companies in Germany with sales of more than a billion dollars annually, compared to the sales of \$100M for Advanced Systems. Later, Computers Germany was acquired by one of the leading German mega corporations. Dietmar, VP of Computers Germany, was very interested in the advanced computer system of the local company, but he had very strong apprehensions on the entanglement of Advanced Systems. In large companies there are heavy investments in non-recurring costs to introduce a new system into the market, and if Advanced Systems would collapse after introducing the system it would cause severe damages to Computers Germany. That is why he expected to receive from Fred and Robin assurances that the executives of the local company have conducted successfully their turnaround plan, they had a strong financial backing and they would manage the program with the utmost responsibility.

Arthur was chosen as the program manager for the German-local joint venture, he spoke fluently German, his parents immigrated from Germany and spoke at home only German with their children and taught them the German culture. Arthur was one of the leading engineers of Advanced Systems, Robin was a VP who had a working knowledge in German, and Fred the President didn't speak German at all. The negotiations were held in English, as Dietmar and his colleagues spoke English fluently, but the day to day program management was held in many cases in German. Dietmar was a very centralistic manager and he decided on all the important matters. His local counterpart was Fred, because of the huge difference in the size of the companies. Twice a year were held negotiations between the parties, in most of the times in Germany, and at the end of every bi-annual meeting Dietmar would examine his two-year schedule and the parties would set a date for the next meeting. Arthur spent weeks in Germany as the joint venture requested cooperation in R&D, manufacturing and assistance in sales and service. Everything was so planned, the meetings, the programs, the correspondence, that Robin wondered if the jokes were not planned as well. But in the four long years of the program he couldn't recall even one joke, as the ambiance was always tense, business-like, rigid, sometimes even unpleasant.

When Robin inherited the Civilian sales he found a contract between Computers Germany and Advanced Systems dated of February 1980, a year before the merger of the two divisions took place. The contract was not activated because of the catastrophic situation of the Civilian Division. The German company was losing its patience and it was obvious that if the program would not be resuscitated immediately it would collapse, and the local company might even be sued by the Germans for not fulfilling its obligations. To Robin's surprise he discovered that the agreement was excellent, the system that was developed was very sophisticated, the Germans were still interested in cooperation, but only the prophet Ezechiel could revive the dead bones of the program. Robin was never involved before in civilian projects, but he had an excellent background in international negotiations with multinationals (mainly Americans) and an

adequate experience in know-how agreements and joint ventures. He had to read several times the agreement and consult with those who negotiated it but were no longer employed by his company in order to understand the contract. But as he got deeper and deeper into it, he discovered treasures that even those who signed it were not aware of them. The agreement contained a tremendous potential for reviving the activities of the Civilian division and contributing huge profits to the company. In the first meetings with the Germans they were often infuriated when Robin relied on clauses of the contract which were not meant by the parties, but Robin told them that as the local executives who prepared it were no longer working in the company, he had to rely on the written pages and that's what he did. He backed his arguments with the mantra that a contract has to be respected and the Germans couldn't contradict it, being educated from early childhood to abide by the rules.

There was a full harmony between him and Fred, who on top of being an excellent CEO was also a brilliant negotiator. The relationship between the two started a few years before when Fred, a high ranking officer in the purchasing department of the local army, was the main customer of Robin. They spent weeks together negotiating toughly during the day and going out to the theater and jazz performances at night. They had breakfast together every morning, although Fred preferred the Waldorf Astoria and Robin preferred eating at cheap restaurants with menus of one dollar. Over the years a special friendship evolved between them that was based on trust and common interests and when Fred came to manage the Defense division of Advanced Systems he appointed Robin as VP Finance and Sales, knowing that he will deliver the goods and remain loyal to him.

Another strength of Advanced Systems was in the strong backbone of the company. The consolidated sales were profitable after the turnaround of the civilian activities as the defense activities were very profitable. The company was part of a local mega corporation that backed its ailing businesses whenever

possible and didn't let them down. Perception is one of the most important characteristics of business and Robin and Fred conveyed to the Germans a perception that their company had a sound financial background, "good and caring" parents, an excellent new management for the civilian activities and they could count on Advanced Systems that they who would deliver the goods. Fred and Robin conveyed a message of self-assurance and a record of discontinuing unprofitable operations. They told the Germans that if the joint venture wouldn't be very profitable for Advanced Systems they would discontinue it as they did to most of the other activities of the Civilian division. The Germans who were very interested in the program understood that they should give enough "Lebensraum" to the locals, otherwise they wouldn't hesitate to cease the activities. There was a lot of "hutzpa" on behalf of Fred and Robin to come with demands to Dietmar, VP of a company ten times larger, in spite of the fact that they still suffered from the collapse of the civilian activities. But they learned in their negotiations with even larger American companies that self-confidence is the cornerstone of successful negotiations. If your counterpart wants your products he will agree to your terms if you insist on them, and if not - you could give up everything and they still wouldn't want you. They might not like you for being so tough but they will respect you, even if they drag you for weeks in Taiwan or conduct tense negotiations in Germany. You do not conduct business in order to be liked but to make profits...

The most important condition for the success of the program was in the state-of-the-art system of Advanced Systems. It was one of the best systems in the world in this market segment, and it needed only the financial and sales backing of Robin and the program management of Arthur in order to be very successful. If Computers Germany would have found a better system or developed such a system on their own they would prefer it on a joint venture with the locals. The Germans felt uncomfortable with the self assurance of the locals that could be construed also as arrogance, there was a complete incompatibility of personalities between the parties, they were extremely polite, and tried to do their best to

overcome the difficulties with patience and forbearance. They made the best out of the situation and instead of having profits on the systems of the local company they derived most of their profits from the related systems, the service and the peripherals that could be sold with the new systems. Arthur, who understood very well the mentality and the requirements of Dietmar, delivered the systems exactly according to the specifications, right on time, with an excellent quality and maximal cooperation. The locals couldn't afford to relax on those issues as the balance was not on their favor and the Germans would discontinue without regret the program if the arrogant locals, charging them "exorbitant" amounts for their products, would on top of it deliver deficient systems. Arthur was the good guy who understood the concerns of the Germans, while Robin was the bad guy who was only interested in maximizing the profits, and who couldn't make friends with his counterparts as he was accustomed to do in most of his other business contacts.

Advanced Systems gave to Computers Germany manufacturing and marketing rights for the computer system it has developed. According to the agreement, the locals had to continue developing the next generations of the systems, manufacture some of the subassemblies locally, and market the system locally, while the Germans were entitled to participate in the R&D, manufacture some of the subassemblies and make the final assembly, sell and service the systems all over the world except in Advanced Systems' country. The Germans forecasted purchase of products from Advanced Systems in quantities of up to \$13M until 1982 and sale of the systems developed by the local company for hundreds of millions dollars to the end users of the systems in the first seven years of the agreement. The agreement took into consideration that an enhancement of the existing systems was needed and an additional R&D would be required in order to meet the needs of the customers. It was stipulated that the locals keep all the know-how rights of the products and systems, except the rights that were given to the Germans according to the agreement. The milestones for ending the R&D were set, but as mentioned before because of the problems in the local company

most of the milestones were not met until the beginning of 1981. There was an urgent need to enter into a crash program in order to meet the German requirements, and the Germans were willing to reach an understanding on this crash program.

Know-how agreements are nothing and everything depending on the eyes of the beholder. The knowledge of all their ramifications can decide if the agreement will be profitable or lose money and a long-time experience can change completely the profitability of the program. The business world is very cruel and every company selling know-how should bear in mind that on the first occasion an unethical licensee could try to break the contract, manufacture on its own similar products without paying royalties, and especially if it is a large company tell the licensor "sue me" if he insists on receiving the royalties due to him. There are only very few companies, especially if they are small and unprofitable, that would dare to sue large multinationals even on flagrant cases of breaking the contract. At best they would settle for a compromise giving them ten percent of what they would receive according to the contract. The licensor has to insist on the right of auditing the licensee, and the best way to do it is to stipulate that they or an independent auditor would audit the licensor every year as a matter of routine. The licensor has so much flexibility in setting the prices of the systems on which royalties are due that only an experienced auditor can review if the breakdown between the different parts of the systems was done fairly. Only if the licensee has an interest in keeping good contacts with the licensor, as for example in the case of development of new generations by the licensor, the licensee might not break the contract for several years. After all, who would want to pay "exorbitant" amounts for nothing, as know-how is nothing for the licensee and everything for the licensor. Anyhow, it is obvious that legally and ethically know-how is a product as every other product and as software, and the licensee has to pay the full price for it.

Fred, Robin and Arthur managed to tie Dietmar in such a complex relationship that even if he wanted he couldn't untie the Gordian knot. First of all, there was the good contract signed by their predecessors. But beyond that, there was a true cooperation in the joint venture, in R&D, in manufacturing and in backing for sales and service. Even if the Germans wanted to untie the knot they couldn't do it because of the entanglement of hundreds of people working together. If Advanced Systems was only a Civilian company the Germans would have bought it without hesitating, but as it was part of a larger corporation and it had the backing of the local mega corporation they couldn't buy the activities and they had to abide to the know-how agreement. The agreement expired after four years when the new generations were exhausted, mainly because the locals didn't want to continue to invest on their own as they were focused on the defense systems and looked at the German program as a cash cow. The program reached an aggregate turnover of \$100M, in royalties, R&D financed by the Germans, manufacturing for the Germans, and local sales. The current profitability amounted to 50% of the turnover, quite a nice return on investment on the initial R&D that was expensed already as a sunk cost and was buried in all the losses of the Civilian division. If Robin would not have discovered this program in the ruins that he had inherited the company would have lost all this profitability, and he wasn't sure that he didn't overlook more treasures in the mud. The German bear was unable to disentangle from the local bear hug, Dietmar continued to pay those huge amounts, they tried now and then to employ the local R&D engineers with very lucrative employment contracts but Robin stick to the contract that prohibited Dietmar to do so specifically. Only after the contract was discontinued were the local engineers allowed to work for Computers Germany and they hired some of the key personnel.

The locals granted to the Germans exclusive marketing rights in Germany, Austria and Switzerland (the "home" market, German speaking countries). But, and here is the sophistication, those exclusive rights are kept only if minimal royalties targets are achieved, one million dollars annually. If the Germans want

to keep the exclusivity even if they don't meet those targets they may do so by paying 80% of the difference between one million dollars and the actual royalties amount paid in this year. In the same method but with different amounts were granted exclusive rights in the Netherlands and Spain. But in the case of the Netherlands a prepayment of \$400K was set, while 80% of the royalties due to the locals on the sales of the German products in the Netherlands will be setoff from the prepayment until it will be setoff completely. In the other countries the Germans received non-exclusive rights. In their own country, the local company retained exclusive rights. The constellation was very interesting, the contract was signed early in 1980, when there was a euphoria and the Germans and the locals thought that they were going to conquer the world. To ask for \$1M only for keeping the exclusivity in Germany, receiving \$400K as prepayment for the Netherlands, additional royalties for minimal goals for Spain and so on are draconic conditions for a licensee who receives them from a weakness standpoint. When the Germans got rid of the locals' civilian management who thought that they would conquer the world with their excellent systems, they discovered that they were replaced by even harsher negotiators intending to fulfill the contract a la lettre although the conditions changed. The prepayment on the Netherlands was not linked to any milestone, and although in the beginning of 1981 the locals didn't meet the R&D schedule, the first thing that Robin did was to send to Dietmar an invoice of \$400K for the prepayment, according to the contract. The Germans were furious, they threatened the locals to sue them for not meeting their R&D milestones, but Robin told them that they can do it and the locals will probably discontinue the program but in the meantime they had to pay the prepayment as the payments were not linked. The Germans paid ultimately and Robin utilized this payment to finance the R&D of the program, as there were no free lunches anymore.

Computers Germany received an option for global manufacturing non-exclusive rights (outside of the local market) to manufacture the products of the agreement. Advanced Systems committed to give them within 30 days of the exercise of the

option all the relevant know-how and the documentation needed for the manufacturing. The rights were granted for the German company and its subsidiaries. The slicing of the cake to many slices (manufacturing rights, marketing rights, exclusive and non-exclusive rights, royalties, prepayments, according to years, countries, and so on) increased the size of the cake tenfold. The Germans had already paid prepayments of \$1M before Robin entered into the picture. Another half a million dollars were to be paid as prepayments but those were linked to milestones of R&D that had to be met. Robin and Arthur made a detailed calculation and discovered that the completion of the R&D would cost less. It was now only a problem of cash flow, and this was financed partly by the Germans on the other prepayments for marketing rights.

It was stipulated in the contract that 20% of the royalties due to the locals on the sales of the systems by the Germans would be setoff against those prepayments until completion of the setoff. Robin calculated that only when the royalties will amount to \$7.5M will all the prepayments of \$1.5M setoff at a rate of 20% of the royalties. The profitability of the know-how contract and the risks derive from the wording of the contract. If a setoff of 100% was stipulated, the prepayments would have been setoff after payment of royalties of \$1.5M and the Germans would have an incentive to break the contract at a much earlier stage of the program. However, in this case, if the royalties amounted to 4% of sales, only when the sales would amount to \$187.5M the setoff would amount to \$7.5M, at a setoff rate of 20%. It is easy to imagine how many years would be needed to elapse until \$187.5M were sold, and the risks of the locals were now much smaller because of the high prepayments and the low setoff rate. If the Germans would not achieve such sales the prepayment would be retained by the locals as those are not reimbursed in any case, even if the contract is terminated. On the same token, if the Germans would break the contract the locals would have received most of the payments already that would mostly not be setoff and this was a disincentive for breaking the contract. It was stipulated in the contract that

the setoff would be only against royalties due from sales and not from royalties due from manufacturing rights.

It was stipulated that the Germans would pay royalties for sales, leasing or rental of products and related products that will be manufactured by the Germans under license from the locals according to the following breakdown: 6% from the price to the customers up to a maximum of \$2M royalties (maximum of \$33.5M sales to end users). 5% of sales up to a maximum of additional \$4M royalties (maximum of additional \$80M sales). 4% of sales up to a maximum of additional \$4M royalties (maximum of additional \$100M sales). 3% of sales after receiving \$10M royalties. Two years after the end of the agreement 50% of the royalties will be paid. If the locals will develop new products with self-financed R&D they would be entitled to royalties according to the abovementioned rates for 5 years after the commencement of sales of those products, but the licensees will be entitled to receive all the enlargements and enhancements of those products during this period. In case of rental or leasing, the selling price to the customer will be computed according to 80% of the theoretical price of an if sold value which is the basis for the rental or lease.

The royalties will be paid only on the portion of the product which is based on the know-how of the licensor. This gives an opportunity to creative accounting because if the licensee sells a system comprising several subsystems, some of them with the know-how of the licensor and some of them with the licensee's own know-how he might tend to inflate the price of the licensee's products and to reduce artificially the prices of the licensor's products. This might be prevented if the licensor audits the sales of the licensee at least once a year and if the two parties are so entangled in manufacturing and R&D that it would be impossible to change the prices. In the other cases the licensor will always lose, as the customer is indifferent to the breakdown of the price between its components and the licensor doesn't have the ability to check the breakdown of the price. In our case, Advanced Systems has never exercised its option to audit the sales of Computers

Germany because of the abovementioned reasons, because of the fact that the relations were tense anyhow, but mostly because of the fact that Arthur figured that the prices were inflated by no more than 10% to 20% and it would be very difficult to prove it anyhow. The best way to overcome apprehensions of suspicions is to stipulate a priori in the contract that the licensor will audit as a routine the books of the licensee every year either directly or with an independent auditor.

The contract stipulated that Computers Germany would buy products of Advanced Systems for at least \$13M in the first three years of the agreement. This commitment on top of the prepayments diminished the risks of the locals as it ensured them a substantial amount of sales. If the Germans would not purchase the products in the first three years, they would be compelled to pay 50% of the difference between \$3.3M and the actual sales to the Germans. On the next bracket of \$3.3M they would pay 25% of the difference. On the next bracket of \$3.3M they would pay 12.5% of the difference and on the last bracket of \$3.1M they would pay 6.5% of the difference. In fact, the Germans bought from the locals much more than what was stipulated in the contract, so that this clause was not activated. But this clause had a very important impact as it encouraged the Germans to give part of the manufacturing to the locals as they were committed to give them a minimum quantity anyhow.

The contract was relatively short - 18 pages and a similar number for the appendices. We will mention several more important clauses, such as the crosslicensing that the locals received to manufacture and sell products developed by the Germans, provided that the locals would pay them parallel royalties. The deliveries of the subassemblies by the locals were based on 18 months orders that only the first 6 months were binding. It was stipulated that in 1981 it would not be possible to cancel more than 30% of the order, in 1982 - more than 40% and in 1983 - more than 50%. There was a very dangerous clause stipulating that only in the first two years of the agreement the Germans might not market similar

systems to the locals systems. After that period they would be able to market any system, of course not based on the local know-how, but as we know it is very difficult to prove infringements of patents. This is the escape clause that most multinationals that want to escape from the know-how contracts use, they get introduced into the market by the licensor and after two years tell him "thank you and good bye", but in our case because of the entanglement with the locals they escaped from the contract only after four years and after the locals reached a turnover of \$100M with a 50% profitability, not bad for a bankrupt activity. However, the Germans gained as well a very important time to market and they benefited from the joint venture in their new ventures.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: JOINT VENTURE CASE - TRUST, TRANSPARENCY AND FAIRNESS DILEMMAS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Dietmar, VP Computers Germany, 2. Arthur, Program Manager of the Joint Venture, 3. Fred, President Advanced Systems, 4. Robin, VP Sales Advanced Systems.

* Was there an alternative of a merger instead of the joint venture that was signed between Computers Germany and Advanced Systems?

* Describe the differences between a merger, a joint venture, and an acquisition. In which conditions each alternative is recommended?

* Who is the strong party and who is the weak party in this case and what caused it?

* What is the importance of the cultural gaps in this case?

- * What is more important in this case: the development of state-of-the-art systems or excellent business capabilities? The combination of both is of course preferable, but in which conditions is it possible to achieve better results if only one of those aptitudes is available?

- * How did the new managers of the civilian activities made a "resurrection" to the project for the Germans?

- * What is preferable: self-financed R&D or R&D financed by a customer? Relate to the royalties and know-how sales.

- * What types of royalties do you know? Describe the types described in this case: minimum royalties, advance payments/prepayments, setoffs, annual royalties, royalties needed to retain exclusivity in countries, marketing rights, manufacturing rights, royalties on different categories of sales, cross licensing, royalties on related products, royalties on products that are partially financed by the customers.

- * Describe the ambiance of the negotiations and the periodical meetings between the Germans and the locals. Was the ambiance unpleasant, unfriendly, stressful, is it possible in such conditions to build long-term relationships and a fruitful cooperation between the parties?

- * Gordon Gekko in Wall Street says that if you want a friend in business take a dog. To what extent does this case justifies the saying? Why didn't the parties have friendly relations?

- * Has Computers Germany kept the contract a la lettre? Why? Has it tried to break the contract?

- * What was more preferable for Dietmar: the continuation of the existence of the Civilian Division or the relations with the new management of Advanced Systems?
- * Why has Robin decided to behave toughly and be inflexible towards the Germans, insisted on receiving payments due by the agreement although his company didn't meet the delivery schedule of the R&D?
- * Was the agreement written clearly and why were new insights discovered occasionally that were in favor of the locals?
- * Describe the difference of the relations between Dietmar and Robin and the relations between Fred and Robin, when Fred was his customer in the past?
- * To what extent does this case discover irrational conduct in the pattern of behavior of the protagonists?
- * Was the know-how agreement ideal and has it acted in favor of the locals only? Describe clauses that could be construed in favor of the Germans if they would have utilized them?
- * The Germans were honorable men and kept all their contractual obligations a la lettre. But the locals also, once they have overcome the delivery schedule of the R&D, met all their obligations. Was it because of a similar business mentality?
- * Do all the multinationals operate in a similar manner, in different market segments, different countries, different times?
- * Describe ethical considerations in the business conduct of the parties.

- * Why are there almost no legal suits against multinationals for breaking know-how agreements? Is it because they never break the agreements, it is too difficult to prove it, small companies cannot sue effectively larger companies?

- * What are the main cases of breaking the contractual obligations of know-how agreements: in the computation of the royalties, the sales figures which are the basis of the royalties, the breakdown of the systems prices between the components subject to royalties and the others, in the reports of the auditors examining the financial records of the licensees?

- * How is it possible to overcome the inconvenience of requesting an audit of the royalties reports from the licensees?

- * Describe the Gordian knot that Robin, Fred and Arthur tied Dietmar to, in order to ensure that he would continue to be dependent on them.

- * Why haven't the Germans employed the local engineers that had all the know-how?

- * Were the local engineers more creative than the German engineers? Was it a consideration to continue the relationship in spite of all the hardships?

- * What is the importance of the level of setoff of advance payments from the royalties payments?

- * Why haven't the Germans taken all the manufacturing of the subsystems? Was the reason for it that they didn't want to pay royalties on those subsystems or outsourcing or both?

- * Why is it worthwhile to insist on high advance payments and low setoff rates? They are deducted in any case from the actual royalties payments, so what is the

difference? Describe the risks factors, tendency of the licensees to break the agreement, cash flow considerations.

* What was the sophistication in requiring from the Germans minimum obligations to purchase products from the locals? Why is the formula of setting payments from the gaps between minimum commitments and actual orders a substantial incentive to order maximum quantities of products from the locals?

* Is the length of the agreement, 18 pages, a reasonable one for such a sophisticated contract?

* Explain why was it convenient for the Germans to adhere to the agreement in spite of all the problems and their recriminations from the locals.

* Why has this project become the most profitable of Advanced Systems? Describe the clauses of the R&D financed by the customer, the joint manufacturing, the royalties.

THE WORTHWHILENESS OF TRUST CASE – THE ETHICS OF VALUATION

(Due to confidentiality and editing reasons some of the names and details have been changed. The amounts are given for indication purpose only)

Amos tried often to understand what was the reason that some negotiations were concluded promptly while others dragged on and on for months or over a year, costing millions of dollars. If it only were possible to increase the level of trust between parties so that negotiations would last minutes or hours and be concluded in a handshake... It would save millions in transactions costs in the average M&A negotiations on due diligence, contractual negotiations, financial negotiations. Think of how many people are involved in an M&A process: the management of both parties, employees of both parties, lawyers receiving hundreds of dollars per hour, they come sometimes by two, three or even six together on each side, they submit invoices on thousands of hours amounting sometimes to millions of dollars for transactions of only millions or even tens of millions dollars, expenses of auditors and due diligence, consultants of every kind, analysts, investment bankers, not including sometimes illegal tapping, detectives and business intelligence.

The costs of mistrust are the Achilles' Heels of modern business and amount to tens of billion dollars annually. We could solve all the hunger problems of the world if businessmen would only trust each other. We could behave like in the diamond industry where deals in millions are concluded by a handshake and saying the Hebrew words: "Mazal Oubraha", luck and blessing. But, today, even in the diamond industry there are a lot of breaches in these norms. Nevertheless, the application of ethics and integrity by both sides could save most of the costs if you would reduce the due diligence and the length of negotiations. The problems

are more acute in modern business with multinationals as you need a vast knowledge of many issues, especially if the companies are unethical and hide skeletons in their closets. If an Institute of Ethics would rate the companies by their ethics like the ratings of solvency, the costs of mistrust could be reduced as in M&A negotiations between ethical companies only minimal costs would be invested in due diligence and contractual negotiations. Bear in mind, that in any case there should be financial negotiations as it is not expected even from the most ethical companies to agree on the prices and terms right away. Or is it so? as this case will describe.

In 1993, Amos received an urgent phone call from his friend Oded, CEO of Telephonia Israel. Oded worked with Amos in the past on several projects and they trusted and appreciated each other. Oded was appointed CEO of the company a few months ago by Zalman, the owner of the company, an orthodox Jewish tycoon who received a franchise on callback calls from Israel to other countries. Oded hired a professional company to prepare a business plan on the feasibility of the project in order to present it to a multibillion American mega corporation, a leader in this field, that showed interest in the project. The CEO of the mega corporation was Steve who urged Zalman to come to Los Angeles in order to conclude the deal.

Zalman, an orthodox Jew in his thirties, learned in a Yeshiva most of his life but his family, American billionaires, wanted him to go into business. He was married to an educated and beautiful wife and had already five small children. His family contributed a very large amount to a well-known American Business School and consulted them on how they could teach Zalman business administration. The Dean built for Zalman a special program with his best lecturers and after a short while Zalman graduated and was ready to enter into business. But he preferred to learn Torah, Talmud and the holy books, Zalman met several times a week the most holy Israeli orthodox rabbi (who also blessed his business), donated large amounts to the community, widows and orphans, and was perceived as the most

cherished (and rich) man in the orthodox community in Israel. As a matter of fact, if you are a billionaire it is probably enough to understand the business issues, as you can always hire professional businessmen who would conduct all the necessary business transactions and manage your companies. Or is it not? Anyhow, Zalman hired Oded, gave him a large office in his house in an orthodox neighborhood, and from this office Oded managed the orthodox startup of Telephonia Israel.

But the business plan was not prepared on time and did not meet the standards expected by Steve's company - Telecommunications Inc. The negotiations were due to start within a week and the business plan was not ready. Even worse, the preliminary version didn't prove the expected valuation of the owners for the expected merger with the Americans, it didn't look professional enough and did not suit a company like Telephonia Israel that was positioned as an Israeli leader in its field. In this critical timing Oded phoned Amos and asked him to rescue them urgently in return to a substantial amount. "Leave everything else that you are doing and come for a week to the orthodox town. You'll have to work around the clock, eat Kosher food ("You don't mind, do you?"), and finish the business plan before we leave for LA." Amos left home and came to Zalman, who was considerate enough not to ask him to wear a yarmulke in his house. Amos was agnostic but he respected all cultures and religions, including his own.

Since Amos started to be a program manager for M&A he worked with all kinds of clients, from all backgrounds, socio-economic conditions, religions and countries. He worked with tycoons, basketball players, rural Arabs, people with elementary school education and university professors, former taxi drivers, former Generals, Kibbutzniks, labor union leaders, government organizations, public and private companies, companies selling less than a million dollars or over a billion dollars annually, high tech wizards, young people in their twenties, aged people in their seventies, Israelis, Americans, Chinese, Frenchmen, Italians, Germans, Englishmen, Latin Americans, Spanish, Swiss, men and women, and so on. But

Zalman was really an exception, very shy in spite of being a billionaire, a Yeshiva man but also an elite tycoon, a devoted family man who runs his army of aides, cooks, servants, nannies, bodyguards, chauffeurs, teachers and gardeners. Amos befriended the small kids who were baffled who was this strange guy who was the only one at home not wearing a yarmulke.

Oded told Zalman that Amos was the only one in Israel who could accomplish the job on time, he trusted him fully, he was very competent (and expensive), but his work was first rate. He saw how Amos convinced mega corporations, with sophisticated fully documented business plans in English, on high valuations of small Israeli companies. Zalman fully backed Oded's decision and returned to his beloved studies of the Talmud. When Amos arrived to Oded's office in Zalman's house he was bewildered by all the material gathered for the business plan. He read everything thoroughly, had to understand the technical background of the business plan, employed the company's managers in order to analyze all the calculations, and started to contribute his creative ideas. He deliberated with Oded and Zalman what should be the valuation of the company. Amos saw often in his long career valuations of companies that amounted to \$17.88M and were backed by piles of documentations. He believed that valuation should not be based exclusively on mathematical formulas, but on many other considerations, such as the value for the acquirer of the company, know-how, market positioning, competence of the executives, and so on. Those methods of valuation were not less legitimate than the mathematical ones with their "accurate" forecasts and present values.

In the case of Telephonia it was only a franchise that its value could be set according to the business it will bring. There were several market researches with different estimates, which could validate a valuation of \$5M as well as \$20M. After many deliberations he asked his colleagues: "Forget about all the material. Tell me truly what do you think would be fair for you and for the Americans. Would you invest in the company with such a valuation if you were the

Americans? My experience shows me to try always to understand the other party. It doesn't mean that I should agree with them but it indicates me what to do. Sometimes the valuation that I can get is much higher than what I thought but if this is how the acquirer values me this is the true valuation. On the other hand if I am convinced that I should get a very high valuation but I know that the other party wouldn't want to pay it, what does it matter if I put this exorbitant valuation that he wouldn't pay anyhow? Don't forget that you are bringing a strategic partner in the company that you would have to live with him for many years. If he'll think that you conned him he'll get even with you in the long run. So be fair to him while not forgetting your own interests and you'll find the right valuation." Finally, they decided on a pre-money valuation of \$8M. With this number Amos validated the valuation rather easily, as he also thought that it was a fair price. He prepared the outlines of a detailed business plan with full substantiation, but he had a problem - it was already Friday afternoon and the flight to LA was scheduled on Monday morning.

Zalman asked Amos if he would be ready for the meeting on Tuesday morning LA time. Amos answered him that he would be ready only if he worked on Saturday. The meeting could not be postponed as many American managers were invited with a very tight schedule, as it is always the case with such mega corporations. But Zalman didn't even want to consider that Amos would work on the Sabbath. He was ready to lose the project and not sign the deal but not to ask one of his subcontractors to infringe the religious precepts. "Why do you care?", said Amos, "I am anyhow agnostic, I always work on the Sabbath, seven days a week, I even work in Yom Kippur and of course I don't fast." But Zalman made Amos swear that he will not work on the business plan at home nor phone to one of Zalman's employees or even think about the project. "You'll go home a couple of hours before the Sabbath as you are not also allowed to drive on the holy day and you'll come back a couple of hours after the Sabbath. If it is necessary you'll work all night and on Sunday. You are flying with us on first class on Monday morning and you'll be able to sleep on the plane. I am paying you and I am

responsible that you'll not commit a religious offence on my behalf. Trust me, if you'll do it, God will be with us and we'll win the contract. But if you'll not be ready, it means that God was not willing to let us win."

Amos thought that it was very convenient to be religious, as it is a win-win situation even if you lose, but didn't want to cross his employer. He kept his word and didn't work on the business plan. He even had a guilty conscience as he remembered that the deal on which he worked on Yom Kippur didn't come through, maybe because of him. After returning to Zalman's "castle" he worked around the clock and managed to finish the business plan a couple of hours before the flight. During the long flight he prepared very thoroughly the presentation, the justification of the price, the details of the negotiations.

The meeting took place in the Board room of the multibillion American mega corporation. Steve came with six VPs, lawyers and consultants. Zalman came with Oded, Amos, a lawyer and the technical manager. After a few words of welcome by Steve, Zalman stood up, explained the project in a few sentences and asked Amos to present the business plan in details. Steve stopped Zalman and told him: "I understand that you ask for \$4M in return of one third of the company, or a pre-money valuation of \$8M. We intend to invest this amount in equipment and training. Tell me with your word of honor - do you believe in the business plan, in the project, in the investment? Do you think that it is fair to us as well as to you and can we trust each other as partners? In short, do you recommend me to invest according to this valuation?" Everybody in the room was silent, the lawyers of both parties looked at each other with uneasiness. Oded and Amos looked at Zalman with wondering eyes and were not sure what will be his answer.

But Zalman answered with full confidence that he believed in the program, the valuation and the investment. He was convinced that it was fair to all parties concerned. Steve continued: "I know your family for many years and have learned that all your deals are done with integrity and ethics and your reputation was

never stained by a foul deal. I accept your word of honor as the best guarantee and I renounce to any due diligence and contractual negotiations. I just ask the lawyers of both parties to prepare a one-page memorandum of understanding highlighting what we have agreed. Gentlemen, thank you for coming to LA, the meeting is over!" Amos was stunned, throughout all his long career he has never encountered such an event. He has witnessed once a case where the parties decided to break apart after a few hours of negotiations, but such a "miracle" has never happened to him - to conclude an agreement in a few minutes based on trust. Zalman would say that it was due to a divine interference, Amos preferred to believe that it was due to trust, ethics and a good reputation. On the same day, the MOU was signed and the Americans instructed their division to send the equipment as agreed by the parties.

Amos made all the way to LA and back for a few minutes. He barely had time to enjoy the treat of the luxurious Beverly Hills hotel. The victory dinner was held in the Kosher restaurant of the mother of Steven Spielberg. When they were in the last course, Zalman winked to Amos and told him: "All this happened because you didn't work on the Sabbath. This is the reward of a Mitzve." After returning home Amos didn't continue working with Zalman, he continued to manage other M&A projects, not so short as this one (otherwise he wouldn't have a livelihood). But he was not cross at Zalman, he paid him fairly and Amos was glad that all went well with his client. Oded informed Amos every now and then on the new developments of the project and learned that everything was working on schedule. Suddenly, Amos heard of the tragic death of Zalman. His wife tried to continue the business, but unfortunately she didn't have even the elementary background in business that Zalman had and, in spite of her efforts, the company collapsed. The Americans lost apparently their money and Oded and the employees were fired.

Amos didn't become religious and started to believe in miracles after these events. But it reinforced his conviction that the most important factors in business should be ethics, trust and integrity (and of course luck, as Zalman lost his life and the

Americans their money for not being lucky). Maybe the diamond dealers who wish each other with their hand shake "Luck and Blessing" are the wisest of all - why luck it is obvious, but the blessing is probably the ethics, trust and integrity that bless every ethical transaction and make it prosperous. Amos was convinced that if there is trust between the parties the merger succeeds, Amos started to conduct researches, write academic books and doctorate dissertations on the connections between ethics and success in business. No, definitely business ethics is not an oxymoron, and Amos teaches it in many courses to different audiences, in what can be named in context of the religious events of this case - the Gospel of Amos...

ANALYSIS & TOPICS FOR CONSIDERATION ON: THE WORTHWHILENESS OF TRUST CASE - THE ETHICS OF VALUATION

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Zalman, Owner of Telephonia Israel, 2. Oded, CEO of Telephonia Israel, 3. Steve, CEO of Telecommunications Inc., 4. Amos, Program Manager of the Deal.

- * What are the most important characteristics for the success of M&A?
- * What are the interests of the different parties involved in M&A, are they contradictory, are they bridgeable?
- * Give examples of negotiations that ended promptly because of the trust between the parties.
- * Give examples of lengthy negotiations that took months and years because of the lack of trust between the parties.

- * How is it possible to bridge over the lack of trust between the parties?
- * Which due diligence is essential even in case of full trust between the parties?
- * Is there a connection between the professional capabilities of the lawyers and the complexity of the contracts that they prepare?
- * Give examples in which lawyers were instrumental in the successful completion of deals.
- * Give examples in which lawyers raised pointless arguments and entangled negotiations unnecessarily.
- * What is in your opinion the professional ethics of lawyers in M&A?
- * Does the adding of an M&A program manager facilitate or not the closing of the deal? How do the other professionals involved in the negotiations - lawyers, executives and auditors - accept it?
- * Why are there more and more lawyers who graduate also in accounting, economics and business?
- * What is in your opinion the professional ethics of auditors in M&A?
- * Should there be in your opinion full transparency in M&A negotiations? After the Merger?
- * Was there full transparency in the negotiations on the Telephonia merger?
- * Describe the ethical characteristics of the case.

- * Is there a connection between the ethics of Zalman and the fact that he is an orthodox Jew?

- * Give examples on the connection between ethics and religion in the business world: Christians - Catholics, Protestants, Fundamentalists, Orthodox, Quakers; Jews - Orthodox, Secular; Moslems, Buddhists, Atheists, Freemasons, Witnesses of Jehovah, Pagans (Aristotle...), and so on.

- * Why was the deal signed within minutes according to the conditions asked by the Israelis? Because of Zalman's ethics, his family record and reputation, his orthodoxy, the blessing of the Rabbi before the trip, the good deeds and contributions of Zalman, the business plan of Amos, the deal was very small for the mega corporation, Amos didn't work on the Sabbath?

- * How much could be saved in the business world if there were trust between the parties?

- * To what extent can Ethical Funds assist in the establishment of trust in business?

- * Is it possible to conclude deals like in the diamond business with a hand shake and saying the Hebrew words: "Mazal Oubraha", luck and blessing?

- * Is a process of long negotiations and thorough due diligence a prerequisite for a successful M&A?

- * Is a process of short negotiations and minimal due diligence too risky and does it jeopardize the M&A?

- * Can you be a good businessman as well as an intellectual or a scholar in the Bible? Is there a contradiction between the characteristics or is it a precondition for the success of the deal?
- * Does a second-generation tycoon need to be an MBA in order to succeed in business or can he hire professional businessmen?
- * Was the method of the project's pricing ethical?
- * What is the ethical way of setting a price for a company, or is it just a negotiations issue that has to be resolved by give and take?
- * What is the value of a franchise, how can it be validated?
- * Is the multiculturalism of the program manager an important condition for the success of the negotiations? How was Amos able to conduct M&A negotiations in completely different ambiances, mentality, business practices and countries: Israel, Europe, China, Latin America, US, orthodox Jews and Christians, Arabs, socialists and capitalists, men and women?
- * What are Steve's considerations in deciding not to conduct a due diligence and contractual negotiations?
- * To what extent were instrumental the trust and friendship between Amos and Oded to the success of the deal?
- * Why Telephonia didn't continue its business relations with Amos after signing the deal?
- * Was Zalman a frustrated Yeshiva scholar or a sophisticated businessman or both?

* Was Oded a good manager or did he pilot the decisions to Zalman and the work to Amos?

* Was Steve's decision to invest in the project justified although he lost all his investment due to force majeure?

* What are the lesson that you draw from this case? How would be your conduct if you were each one of the protagonists?

GREED UNLIMITED - THE ENRON CASE

THE FILM "THE CROOKED E"

SUMMARY AND ANALYSIS

Based on Articles and Internet material on Enron.

Based on the book Anatomy of Greed, The Unshredded Truth from an Enron Insider (2002) by Brian Cruver

The film is based on the book with slight changes:

The Crooked E, the Unshredded Truth about Enron, TV 2003, 100 min., Director Penelope Spheeris, with Christian Kane and Brian Dennehy

Summary and Analysis:

Some basics about Enron: At the end of 2001 Enron went bankrupt, the largest bankruptcy ever in the US. 10,000 employees lost their job. \$25 billion were lost. Thousands lost their pension and life savings. The film describes the story of the junior managers, not the sharks. Brian Cruver, a young manager who started working at Enron in the beginning of 2001, has received a values education in his Texan hometown, discerning between right and wrong. When Brian starts working at Enron the share price is \$55.70. Working at Enron was a dream come through as he learned at the university all about Enron and its success, it was the best company and everybody envied him for working there with very high salaries. Enron was no. 7 in the US and wanted to become no. 1. The company started in the energy industry but in 2001 80% of its turnover came from intangible assets. Brian hears at the introductory meeting that in order to ensure the integrity of the company they took the prestigious Audit firm Arthur Andersen. Ken Lay is the founder and Chairman of the Board and Jeff Skilling is the CEO. In Enron they believe in RICE - Respect, Integrity, Communications

and Excellence. Slogans, public relations, one of the best ethical codes... Enron is innovative, ambitious, bold. Enron plays by the rules, keeps its promises, is fair, stand by its words, that's the Enron way.

But words aside, the executives are motivated by an aggressive system of bonuses based on the profitability of the company, or to be more precise on the actualization of future profits, even if they are very doubtful and spread over ten years, but are included in this year results. The policy is based on image, perception, how you are perceived by everyone and not how you really are. A lot of brainwashing to the customers, creditors, shareholders and employees. Enron contributes generous donations to the Bush administration and lends its plane to Bush. Brian works in the bankruptcy department that gives insurance on bankruptcy of key clients. How ironic and presumptuous from a company that went bankrupt in the same year. In a conversation with Mr Blue, an Enron key executive, he tells Brian that Enron is the Wild West, outer space, there is no limit to Enron besides the limits it sets to itself. Unfortunately it proved to be true, as there was no limit to the crookedness of its dealings. Here again we hear militaristic terms such as "they don't take prisoners", "they can do everything and it doesn't matter at what cost". An indication to unethical companies is among others an unlimited expense account. The junior managers spend \$500 on a lunch. They are married to Enron and their partners come only after Enron. Brian's relations with his fiancée deteriorate as she doesn't fit the mentality. The secretaries are ex-strippers, Playboy's playgirls of the month, the morality of the key executives is very slack, most of them are remarried with younger women.

The temptation is very high. There are executives who received bonuses of tens of millions of dollars on fictitious sales and profits. All of it with the supervision of Arthur Andersen. Cruver learns that Enron owes billions but nobody cares. The creditors continue to give Enron credit and the system continues to operate without any boy who says that the king is naked. But there is a whistleblower Sherron Watkins, VP, who tells Ken Lay about the dubious partnerships, but Lay

doesn't respond, as of course he knew it all. Ken Lay advocates full transparency. He reports on fantastic sales and profits, but he sells shares at high prices, overall more than \$200M, while he tells others to buy Enron's shares. The SEC starts to investigate on transactions with related parties, where ultimately Enron hid all its operational losses. But the basic question is how comes that the SEC started to investigate almost at the end when it was too late to remedy the situation. Here again we see the difference between ethics and the law. Legally most of what they did was right (of course the shredding of material evidence was illegal, but you can't prove something that was shredded, as a material witness who gets murdered by the Mafia cannot testify). They were backed up by AA and by the best lawyers, but ethically they were wrong.

Clifford Baxter, Vice Chairman of Enron's Board, committed suicide (or was murdered) in January 2002. He complained before the collapse to Skilling the CEO about the dubious transactions with related parties and Sherron Watkins says that he was of the utmost integrity. Ken Lay was convicted on May 2006 on his call to investors to buy shares while he knew of the company's problems who were not disclosed properly. He died on July 2006. Skilling, who resigned a few months before bankruptcy (he was CEO only for a few months) was convicted on May 2006 of 19 counts of fraud and was sentenced to 24 years in prison. Richard Causey, Enron's controller was sentenced in 2006 to 5.5 years in prison. Andrew Fastow, Enron's CFO, admitted in January 2004 to two charges of conspiracy and is the highest ranked executive of Enron who became state's witness. He was sentenced to 6 years in prison. 21 Enron executives were convicted. The draconic Sarbanes-Oxley Act was enacted in 2002, following the Enron scandal, giving fines of up to \$20M and jail sentences of up to 20 years on fraud. Enron who had a turnover of \$100 billion before its collapse in 2001 remained with only \$12 billion in assets to distribute to more than 20,000 creditors. Stephen Cooper, the company's interim CEO, said the bankruptcy reorganization plan has the backing of 80% of creditors. Creditors are seeking to recover more than \$200 billion but only \$67 billion of that amount is justified. The amount of assets available to

creditors would grow if Cooper succeeds with a mega claim against leading banks that helped Enron create complex deals to hide debt and inflate cash flow. The largest group of creditors would receive 14.4% of their debt. On September 2006, Enron sold Prisma Energy its last remaining business, according to the final restructuring plan submitted to the bankruptcy court. 9.4 billion dollars were distributed to creditors, 26% of all the justified claims.

Enron shareholders, whose investments in Enron were worth \$60 billion in 2000 have been virtually wiped out and would receive nothing under the bankruptcy reorganization plan. Cruver shows how the small investor is lured to buy Enron's shares, secretaries investing all their savings, ordinary people who lose time after time because of criminals who tell them to invest money in their companies while they are selling their shares. Enron's top executives say that in Enron everybody wins. Is it true, who wins and who loses? A few months before the collapse Enron discloses (casually) an extraordinary loss of \$1 billion. This loss was hidden in the complex structure built by Fastow. A similar way of hiding operational losses was discovered by me in one of my case studies of an American company who reached a multibillion dollar valuation hiding its losses in extraordinary restructuring charges. I made a comparison between my books and the rules of wrongdoing minority shareholders that I have discovered and Enron which validated the rules. Creative accounting, whistleblowers, collaboration of auditors, sales of shares by executives just before the collapse, Omerta cover-up etc. are at the backbone of the cases and research, Enron just made it blow-up. And in all the cases those who food the bill are the minority shareholders, the ordinary employees, the community and the creditors. Mr. Blue confesses to Cruver ultimately that management received inflated bonuses based on unrealistic profits. Executives told investors to buy shares when they sold them. What made the company go around was sheer greed. It was the globalization of stupidity. In Enron it was forbidden to report on problems, those who did it were transferred and because of it there were many accidents and tens of people died. The system was conceived in order to enrich very few people at the expense of masses of

shareholders and employees. They bribed politicians, the auditors, the media. He admits that he is guilty and that all of them were cheap immoral speculators. He estimates that there are still thousands of Enrons. After they discover another debt of \$2.5 billion the company collapses, most of employees are fired. Cruver returns to the basic values of integrity and ethics, and publishes the book.

LAW, JUSTICE, FAIRNESS AND ETHICS

THE PLAY "THE MERCHANT OF VENICE"

SUMMARY AND ANALYSIS

Based on the play "The Merchant of Venice" (1597) by William Shakespeare

The films are based on the play with slight changes:

The Merchant of Venice, 2004, 138 min., Director Michael Radford, with Al Pacino, Jeremy Irons

The Merchant of Venice TV, 1973, 131 min., Director John Sichel, with Laurence Olivier

Summary and Analysis:

The play conveys the dilemma between law and ethics, what is more important? Obedience to an immoral law: slavery laws, racial discrimination, apartheid, totalitarian laws - communist, Nazi, aristocratic laws of Louis XVI, French occupation laws in 1940, British laws in the American colonies prior to the revolution, etc. It raises the issues: Is The Merchant of Venice an anti-Semitic play? Can it be played by geniuses like Laurence Olivier who shows Shylock as a tragic hero, similar to Oedipus, more aristocratic than the Duke of Venice, Antonio and Bassanio? Does the play still perpetuate the pejorative ideas about Jews in business?

Bassanio, a young Venetian and close friend to Antonio, the Merchant of Venice, needs money in order to woo a beautiful and wealthy heiress Portia. Antonio wants to give him 3,000 ducats but cannot do it as all of his ships are tied at sea. They

approach Shylock, a moneylender Jew, for a loan. Shylock hating Antonio because he lends money without interests thus ruining his business, mocks and despises him and spat on him, proposes that if Antonio is unable to repay the loan at the specified date he can take a pound of Antonio's flesh from wherever he pleases. Antonio is surprised by the generosity of Shylock and signs the agreement. Bassanio succeeds to woo Portia, but Antonio's ships are reported lost at sea. As he is unable to repay the loan, Shylock asks at the court of the Duke of Venice to exercise the bond. Bassanio, married to the rich Portia, offers Shylock 6,000 ducats but he refuses and asks for justice. The Duke refers the case to Balthazar (the disguised Portia), supposedly a young doctor of the law. Portia asks Shylock to show Christian mercy but he still refuses. At the moment that Shylock is about to cut Antonio with his knife, Portia points out a flaw in the contract - the bond only allows Shylock to remove the flesh, not blood of Antonio. If Shylock were to shed Christian blood, his lands and goods will be forfeited under Venetian laws. The Duke pardons Shylock's life, who is forced to convert to Christianity, half of his wealth is given to the government and half of it is to be bequeathed to Jessica, Shylock's daughter who ran away and married a Christian - Lorenzo.

The main dilemmas of the play: Are Bassanio and Antonio more ethical than Shylock? Are their motives to take the loan ethical? The "close" connection between the motives of the protagonists of the play and the invisible hand of Adam Smith. Is the economy driven uniquely by rational forces, or by sentiments? Sentimental motives in the business world: hate, envy, racism, love, compassion, friendship. The pound of flesh as a parable of deals that you shouldn't do in any case: transactions with doubtful people, with the Mafia, with people you don't trust, with unethical people... Did Antonio take all the necessary precautions before taking the loan? Unnecessary risks, "it won't happen to me!", unfounded overconfidence? What kind of businessman is Shylock: sensible, balanced, wants to liquidate competition (Antonio), racist, tragic, comic, lunatic, obsessed, rational, irrational, "typically Jewish", vindictive, shark, street fighter, unethical, ethical, respectful of laws? What lessons can we draw from the play: go

in the golden mean as advocated by Aristotle, don't do business with Jews as still advocated by certain Christian textbooks (in bibliography), don't take unnecessary risks, don't be a guarantor for reckless friends, don't take loans. Why does society see the reckless Bassanio and the careless Antonio as positive figures and the industrious Shylock as negative? What would happen if Bassanio and Antonio were Jews and Shylock Christian? Who prospers more in the business world (at least Shakespeare's): Shylock the ant or Bassanio the grasshopper? Who is the winner who takes it all?

Is Shylock right in not belonging to the elites and not mingling socially with his business partners? What is the importance in business to belong to the same milieu, going to the same parties, operas and dinners, playing golf together? Is it ethical to honor commitments only towards "old buddies", our people, our kind? Antonio and Shylock quote frequently the Bible, but who is more attached to biblical principles (an eye for an eye), or should we differentiate between the new and the old testament? Antonio thinks of Shylock as Satan but doesn't hesitate to do business with him. Is it possible to deal with Satan, what happens to those who do so (figuratively)? Maybe he does it because he feels secured that if worse comes to worse his friend the duke of Venice and his buddies will rescue him and he will not need to reimburse the loan. Antonio asks Shylock not to do business with him as a friend but as an enemy. What happens today in the business world, is business made friendly, based on trust or not? Why does Antonio perceive the bond of a pound of flesh as a generous offer made by a Jew? Who outsmarts whom with the pound of flesh: Antonio or Shylock? Is it ethical?

What are the ethical considerations in Jessica's theft of Shylock's jewels and in giving the money to Lorenzo who is willing to forgive her Judaism in return to her money? How does Shylock behave towards the stakeholders: Jessica his daughter, his servant, his clients, his colleagues, the authorities? What are the ethics of the whistleblower (Jessica) who discloses to her father's enemies Shylock's intentions? What do we think of Jessica? Does Shylock change his

decision on requesting the pound of flesh after Jessica runs away with Antonio's friend Lorenzo? What is the meaning of Shylock's famous words: "I am a Jew. Hath not a Jew eyes?..." Does it reinforce the belief that all businessmen behave in the same manner or on the contrary that business conduct varies according to temperament, religion, country, gender? What is the impact of shaky health conditions, personal catastrophes, childhood traumas etc. on business conduct? Does it make people tougher or softer, how does it affect Shylock? What is the real reason of the inflexibility of Shylock towards Antonio: his Christianity, the insults he received, his friendship with Lorenzo, insolvency, or a cool business consideration? Does Shylock apply Milton Friedman's theories of maximizing profits without making other considerations, including ethical ones? Why does he decline Bassanio's generous offers of reimbursement of the loan and he insists on observing the contractual terms with the bond? Is the Duke of Venice objective and impartial towards Shylock in the trial?

Shylock who dared to sue Antonio, who belongs to the elites, not only didn't receive his money back but had to pay half of his wealth to Antonio as fine and become a Christian. Can we cite other examples that the underdogs or minority shareholders or poor stakeholders had to pay fines for daring to sue the mighty tycoons and how the judge treated their pleas as nuisance? Is there a universal ethics? Or ethics specific to Jews, Christians, Moslems, Venetians, Americans, British, French or Israelis? The issue of Ethics towards the weak parties, the minorities, the underdogs. If they don't participate as consenting victims with their aggressors those say of them that they have a harsh Jewish heart. Shylock justifies his harshness by saying that the Venetians are harsh also to their slaves. Is it a justified excuse? Everybody does it, so can I? Is Shylock the strong or the weak party in the play? What are the pros and cons. Bending of the law on behalf of the strong parties and to the detriment of the weak ones in the play (Portia in the trial), with the legalistic hair-splitting of lawyers who can convince consenting judges that the criminals are benefactor to the victims. Are the judges in the modern business world really impartial as they are supposed to be? Are they

impressed with the first rate lawyers representing the tycoons and despising towards the third rate lawyers representing the weak parties? The issue of double standards towards the Jews or the weak parties who are asked to show Christian mercy toward the strong parties. What would happen if the situation was opposite, would the Duke of Venice ask Antonio to show mercy towards Shylock if he was not able to reimburse his loan.

You are often required to show mercy towards the strong ones and seldom asked to do so towards the weak ones. One sided leniency asking for clemency only towards the tycoons who were caught and not towards the poor ones who are evicted from their house if they don't have enough money to pay for the installments. Ethics should be applied first of all towards the weak, the poor, the strangers, the minority shareholders, who do not have in most cases the possibility to confront the mighty people in court. This is the basic conflict between ethics and the law, as the law does not apply in many cases in the same manner towards the weak and the strong parties.

WEALTH, FAIRNESS AND ETHICS – THE NOVEL "THE GREAT GATSBY" SUMMARY AND BASIS FOR DISCUSSION

Based on the novel "The Great Gatsby" (1925) by Frances Scott Fitzgerald

The film is based on the novel with slight changes:

The Great Gatsby, 1974, 140 min., Director Jack Clayton, with Robert Redford, Mia Farrow

Summary and Analysis:

Nick Carraway, a New York bond dealer from the Midwest, befriends his neighbor Jay Gatsby, an extremely wealthy young man known for hosting lavish evenings in his Long Island mansion. Gatsby's great wealth is a subject of much rumor, nobody knows for sure anything about his past. Nick is the cousin of Daisy married to a millionaire Tom Buchanan, who has an affair with Mirtle Wilson, the wife of a cheap car garage owner. Daisy and Gatsby were in love before she met Nick, but she couldn't marry Gatsby as he was poor. With Nick's help they meet once again and begin an affair. When Tom discovers it he confronts Gatsby in an hotel room, Daisy runs away and Gatsby follows her. She drives his car and in a hit and run accident crashes into Mirtle who ran out to meet the car. Gatsby takes the blame on him, and Tom directs Wilson to him as the one who killed Mirtle. Wilson kills Gatsby and commits suicide. None of Gatsby's friends attend his funeral, except Nick. Nick describes Tom and Daisy as rich people who leave it to others to clean up their messes, but he pardons Tom and Daisy and moves back home.

The main issues raised by the book are: The turnabout of Nick, the narrator's attitude towards Gatsby, from scorn to whatever he stands for to admiration and friendship. Nick Carraway finds a career in bonds not because he likes it but because all his friends do the same. It shows the conformism of the narrator. West Egg and East Egg as a parable: West Egg where the nouveau riches, such as Gatsby, live, and East Egg where New York's "aristocrats" live, such as Tom and Daisy Buchanan. Tom comes from a very wealthy family and spends huge amounts of money without working in any field. His main occupation is playing Polo and conducting a very active social life. Daisy also comes from a very wealthy family. Nick describes Tom as an arrogant, aggressive, choleric, despising person, who is also a racist, believes in the supremacy of the white race, very superficial intellectually, cheating his wife on every occasion and responsible for her miserable life. Gatsby was a Major during the war, a hero, a self-made man, who became rich in dubious ways, loves truly Daisy who is Nick's cousin, very sociable, a perfect host, a good friend. Why is it him and not Tom who gets murdered for a crime he has not committed and the wealthy criminals Tom and Daisy are not punished?

Nick believes that he is one of the most ethical people he knows, is it true? Even so, how comes that he admires more Gatsby with the dubious past and not Tom who comes from a respectable family? Who is more ethical, Tom or Gatsby, in what respect? What considerations were taken into account in Daisy's decision to marry Tom and remain married to him despite his despicable conduct? Is it because he is rich, they come from the same milieu, her family approves it, he is handsome, good-hearted? Why hasn't Daisy decided to choose Gatsby even when he got rich although she loved him and knew that he will remain faithful? All that in the context of American's society in the early twentieth century that was too much impregnated with prejudices against nouveau riches, Jews, Afro-Americans, Italians, Irish, poor people, every one who did not belong to the elites. Wolfsheim and Gatsby believe that they can "buy" Nick, but he tells them that integrity is for him a supreme value. All the wealth of Gatsby, his house, his luxurious parties,

were meant only to impress Daisy. Is it really effective, is he correct in his assumption that only wealth impresses her, even after she got disappointed from Tom's wealth and character?

Scott Fitzgerald manages to describe in a brilliant way how wealth and poverty are only a façade that beyond it are hidden eternal human behaviors, such as love, hate, envy, arrogance, cruelty, hypocrisy, greed... Is it not an oversimplification to say that money makes the world go around, is it true, in all cases, in the past, today, only in American society? Scott Fitzgerald describes brilliantly the phenomenon of the nouveau riches (reminding of Moliere's play *Le Bourgeois Gentilhomme*), what are their motives, how they despise the world that they come from, their envy to the old bourgeoisie, and their wish to be like them, even though it can never be achieved because of the poverty "smell" emanating from them? Napoleon said that he prefers lucky generals to talented generals. What are the reasons that Gatsby is so unlucky? A loser, who does not get satisfaction from anything? He remains an outsider, without any true friends, Daisy remains with Tom and he is murdered instead of him. The double standards of Tom who loses his temper when he learns that Daisy has a lover, although he has also a lover. Why is Gatsby more dangerous than the Wilsons? The double standards of Tom who despises Gatsby because of the dubious way by which he got rich associating with the Jewish Mafia, while he himself is an idler who never earned a dollar from work, and maybe his ancestors got also rich being robber barons?

Daisy describes the "dilemmas" of the rich bums who do not have a positive contribution to society by asking what will they do in the afternoon, and tomorrow and in the next thirty years? When there is no *raison d'être* it brings to corruption, unethical conduct and degeneration. Gatsby believes that the voice of Daisy is silvery, this is her charm, her rich background, forever unattainable for the depressed Gatsby. He probably loves her because of what she represents and not because of her personality and this could be the reason why she leaves him. Nick arrives to the conclusion that there is no basic difference between human

beings. Wilson reacts when he learns that his wife betrays him in a similar way to Tom when he learns that Daisy betrays him, however Wilson draws the conclusion of his crime and commits suicide while Tom cowardly commits an indirect crime going unpunished. The exorbitant eyes of T. J. Eckelberg in the huge poster near Wilson's garage: Those are the eyes of God, or of conscience, or of fate, morality and ethics. They see and know everything, and one cannot escape from them except the wealthy who always get away unpunished. Most of the novel takes place in a rich environment, in Gatsby's house, Tom's house, the Plaza hotel and so on. But in spite of this the protagonists are unhappy. The reason could be that if you haven't earned your money in an ethical way and with your own efforts you can never be satisfied by your fate. Or is it a wishful thinking?

The novel takes place a few years before the collapse of 1929, they live in a decadent world, without morals and ethics, and Scott Fitzgerald as a biblical prophet prophesizes what is going to happen. Is this situation similar to the modern era? Tom succeeds to deprecate Gatsby's image to Daisy when he tells her what are the origins of his wealth. She is horrified from it although the conduct of Tom is no less corrupted. The ethical criminals always find a moral justification to their crimes. They commit them for the benefit of the victims, they want to help society. Tom suspects that Gatsby ran over Wilson's wife on purpose, and that's why he convinces Wilson that Gatsby was his wife's lover. He gets rid of Gatsby with his white gloves with clean hands and conscience. However, it is Daisy who made the accident, but the loving Gatsby doesn't divulge it and because of his kindness he is murdered. Daisy knows the truth, that she killed Wilson's wife and Gatsby, but this does not disturb her peace of mind, because they do not belong to their world and their lives do not count anyway. It strengthens her ties with Tom as they share those secrets and crimes. The victim is the underdog and the wealthy remain unpunished.

Scott Fitzgerald describes the cowardice of the wealthy who ran away from the scene of the crime, from their crimes and from Gatsby. The others behave bravely

- Gatsby who was a Major at war protects Daisy and Wilson is not afraid of committing suicide. Daisy and Tom are not happy from what happened but are not also sad, they have a natural intimacy, egoistic to the extreme, despising the others and knowing that nothing would happen to them because of their wealth. The most transient difference between Tom and Gatsby is their self-confidence. Tom is confident that because of his background and wealth he is immune, the end justifies the means. While Gatsby is insecure because of his origins, instead of insisting to take Daisy from Tom, he waits passively until he is murdered as he cannot reach a decision. Gatsby is a novel on wealth and ethics. The narrator cannot forgive his rich friends or like them. He acknowledges that what they have done was entirely justified to them. They were careless people, Tom and Daisy - they smashed up things and creatures and then retreated back into their money or their vast carelessness, and let other people clean up the mess they had made... He shakes hands with them as he feels as though he is talking to a child. Nick doesn't tell the police of what he knows because of his cowardice and the pointlessness as he doesn't have any proof although he knows the truth. He forgives the criminals because they are children. What do you think, should they be forgiven, what is the point in calling criminals children or finding excuses for criminal conduct in a traumatic childhood? What is the analogy between the conduct of Tom and Daisy and the conduct of unethical companies? Should they be forgiven or should we fight this conduct relentlessly?

**TRANSPARENCY, ETHICS AND THE MEDIA –
Dr. JEFFREY WIGAND AND THE TOBACCO
INDUSTRY - THE FILM "THE INSIDER"
SUMMARY AND ANALYSIS**

Based on the film:

The Insider, 1999, 157 min., Director Michael Mann, with Al Pacino and Russel Crowe

Summary and Analysis:

The fact that the film is based on a true story increases the credibility of the film. The film starts with a scene where Lowell Bergman, the producer of 60 minutes, succeeds in obtaining an interview by Mike Wallace with the leader of the Hizballah, based on the program's reputation, integrity and objectivity. There are excellent working relations between Wallace and Bergman in the famous CBS program "60 minutes".

Dr Jeffrey Wigand had a senior position in one of the largest tobacco companies Brown Williamson, where he was VP R&D, but he feels an outsider socially in the company where he is employed. Is it one of the reasons why he decides to become a whistleblower? We should remember that Dr Stockmann in An Enemy of the People was very sociable and that didn't help him when his conduct was opposed to the interests of his friends. We should bear in mind also the consideration of the disease of his daughter in Wigand's ethical decisions. The film shows the phases that Wigand undergoes until he decides to become a whistleblower. After he arrives to the conclusion that the company introduces addictive ingredients to the cigarettes he decides to quit as this conduct is against

his conscience. He is faced with the dilemma: what is more imperative for him - adherence to the law and the confidentiality agreement or adherence to his conscience? He cannot conceal the reason of the death of hundred of thousands people as the result of the tobacco company's conduct. Wigand brings as an example the conduct of Johnson & Johnson, where he worked in the past, who lost in the Tylenol case huge amounts when they decided not to risk the life of their customers when a lunatic introduced poison to a few capsules. In the BW case the management poisons deliberately its customers. As a scientist he can't agree to it. This conduct raises the question: Can a tobacco company be conceptually ethical when they poison their customers, even if they donate millions to humanitarian causes?

Mike Wallace is very much interested in interviewing Dr Wigand who is called "The Ultimate Insider". He is the Chief Scientist in the no. 3 tobacco company in the US. It is like blowing the whistle on an unsafe plane which puts at risk the life of its passengers. Wallace is warned that the tobacco companies will ruin CBS as they spend annually \$600M in legal expenses. They have never lost in damages trials, but if court will compel Wigand to testify they will not be able to say that he has infringed his confidentiality agreement. Wigand is willing to lower his standard of living and become a teacher, but he is content with his decision, his wife unfortunately is not. Wigand's wife cannot stand the heat, the stress, the disease of their daughter, their lower standard of living. What is the character required for a whistleblower's wife? She decides to divorce Jeffrey while Stockmann's wife stands by him. This is due maybe to the methods of unethical companies to slander the whistleblowers, look for unethical conduct in their life, threaten and sue them.

Wigand accuses Bergman that he is a commodity for him. Retrospectively, is it true? What is the integrity required from journalists who should be transparent, can they desert or betray their sources? The film hints at a potential cooperation of the FBI with the tobacco company, which might be due to promises to FBI's

agents to work in the future for the company. Is it possible to prohibit civil servants from going to work for companies? What are the risks of such conduct? The whistleblower needs to remain very cool, when the lawyers threaten him, when he could go to jail, when his family desert him, when he receives bullets in the mail... The lawyer of CBS points out that there are some doubts about the credibility of Wigand. As the truth is more considerable the threats are fiercer. The data of BW about addiction is theirs and if they win the case they could become the owners of CBS. No mention is made of ethics, the health and lives of millions, only financial risks

The owners of CBS want to sell the media company to Westinghouse and they do not want to stand the risk of getting a multibillion lawsuit that could jeopardize the merger. They therefore decide not to release the interview (the executives are about to benefit millions from the merger) and Wigand feels that Bergman has betrayed him. Bergman is called by CBS executives: fanatic, anarchist, and he answers them: "Are you journalists or businessmen?" Transparency limited. Bergman and Wallace take opposite standings as Wallace favors CBS's executives decision. Bergman's wife supports him and encourages him to leave the company. We witness the apologetics of Wallace who tells Bergman that he is at the end of his career and he doesn't want to be remembered as the one who destroyed CBS because of his interview. What about ethics, victims? Only ego, reputation and money. The tobacco companies paid in damages 246 billion dollars following this scandal. Wigand was elected the teacher of the year in Kentucky. Bergman lectures on journalism at Berkeley. Does it prove that whistleblowers cannot remain in the business world and can only teach?

TRUST, TREASON AND THE VICTIM'S SYNDROME

THE OPERA "RIGOLETTO"

SUMMARY AND ANALYSIS

Based on the opera:

Rigoletto 1982, 130 min., Verdi's opera with Piave's libretto based on Victor Hugo's play *Le roi s'amuse*, Director John Michael Phillips, with John Rawnsley as Rigoletto and Marie McLaughlin as Gilda. The English National Opera in an adaptation to contemporary Mafia.

Summary and Analysis:

One of the most difficult problems in the struggle against unethical persons is the problem of the victim's syndrome. The victim identifies many times with his oppressor, for various reasons: admiration, love, fear, masochism. The opera *Rigoletto* by Piave and Verdi, based on the famous play by Victor Hugo "*Le roi s'amuse*", gives an excellent example of the victim's syndrome. The Duke of Mantua is an unscrupulous tyrant with an absolute power over his citizens. He is a womanizer and sends his noblemen to prison if they dare complain. But he perceives himself as the victim of women who are fickle (*la donna e mobile*). This is a typical attitude of wrongdoers who attribute their defaults to the wronged people, thus the minority shareholders are called despicable speculators while it is the controlling shareholders who speculate, and here - the rapist of women complain that he is the victim of women.

Monterone, a respectable nobleman, complains to the Duke that he abducted his daughter. He threatens to become a whistleblower (my voice will be heard everywhere). Rigoletto, the court jester ridicules Monterone and asks him how

dare he accuse the Duke of such crimes. But Monterone pursues his accusations. He tells the Duke that he'll interrupt his orgies. He wants to punish the Duke for his crimes and even if he'll be sentenced to death he'll return as a ghost to avenge the honor of his daughter. When the Duke tells his servants to take Monterone to prison he curses the Duke, as he has sent a dog to tear the body of a dying lion, and Rigoletto, as he is a mocking snake who ridicules the pain of a father. All the court mocks Monterone, but Rigoletto this time is silent. After Monterone is taken to his death he pardons the Duke, saying that as he couldn't hurt him he wishes him to be happy. This is a typical victim's syndrome. Some of the victims commit suicide when they cannot succeed to punish their wrongdoers, some of them get sick or die of sorrow, but others identify with their oppressors and become worse than them.

Rigoletto, apparently has not such a syndrome. He has a daughter Gilda who is abducted by the Duke (because of Monterone's curse, he believes). He decides to murder the Duke and pays a killer Sparafucile to do the job. But Gilda who is in love of the Duke, although she knows that he abducted her on false pretense and is courting Sparafucile's sister, disobeys her father and sacrifices herself to Sparafucile's knife in order to save the Duke. Verdi and Hugo, who were both freedom fighters, couldn't imagine that a Duke might be killed by a common and they are saved by the same commons that they offended. Rigoletto who dares planning the murder of the Duke loses his daughter and Monterone who dared be a whistleblower loses his life. This is one of the best examples of the victim's syndrome which is very common in the business world. Very few people who dare to oppose unethical tycoons succeed and almost all of them don't remain in the business world as they are perceived as whistleblowers. In some cases they are even killed like Silkwood. Unethical Tycoons (the modern robber barons and Dukes) are therefore immune from reprisal in most of the cases, only their lieutenants, the CFOs or the Majors are punished if at all, but the CEOs, Tycoons or Generals remain untouched. Those who dared confront them are severely punished as happened to Monterone or Rigoletto.

FAIRNESS, FAMILY AND BUSINESS - THE NOVEL LA CUREE (THE GAME IS OVER) AND THE WORK OF EMILE ZOLA, THE ULTIMATE ETHICIST SUMMARY AND ANALYSIS

Based on the book:

"La Curee" (1871) by Emile Zola

The film is based on the book with substantial changes:

The Game is Over, La Curee, 1966, 98 min., Director Roger Vadim, with Jane Fonda, Michel Piccoli, P. McEnery

Based also on the books:

"Le ventre de Paris" (1873) by Emile Zola

"L'Argent" (1891) by Emile Zola

"Zola" (1992) by Henry Troyat

Based on the film:

Life of Emile Zola 1937, 116 m., Director William Dieterle, with Paul Muni, Henry O'Neill

Summary and Analysis:

Renee, a young woman, is married to an elderly tycoon Aristide Saccard who sacrifices her in order to get richer. She loves his son from a first marriage and is ready to leave all her wealth in order to live with him. However, Maxime, much like his father although a weaker person, prefers to abandon her in order to marry a rich woman, whose father can assist Aristide in his business. Aristide Saccard,

the hero of *L'Argent* as well, has no scruples or ethics, and his wife, son and friends are merely pawns in his ambitious schemes. *La Curee* describes also insider dealings, real estate speculation, endless ambition, the world of get-rich-quick, and many more topics treated in business ethics courses. If we compare the family relations in *La Curee* to *An Enemy of the People*, can we draw conclusions on the secret of a happy marriage, is it ethics? Or is there no correlation between family and ethics? Can a man be ethical in his family relations and unethical in his business relations? Can a man betray his wife and conduct ethically to stakeholders? Or rather can a man be an exemplary family man and be the worst unethical and corrupted businessman?

La Curee describes the degeneration that comes to a family because of excessive richness, but Zola who describes all the layers of society describes similar family degeneration in the lower classes as well, such as in *L'Assomoir* and *Nana*. Emile Zola describes in his book '*Le Ventre de Paris*' - '*The Belly of Paris*' the conduct of Lisa Quenu-Macquart who finds herself in an ethical dilemma that would make a good case study on ethics. Florent, her husband's brother, has fled from the Devil's Island where he was imprisoned because of subversive conduct toward the regime of Napoleon III. He has the right of his part of the inheritance and she decides to give it to him, by fundamental honesty. She wants to give him the money, but Florent insists that she keep it in her butcher shop. "Vous avez tort, dit-elle, comme pour conclure. J'ai fait ce que je devais faire. Maintenant, ce sera comme vous voudrez... Moi, voyez-vous, je n'aurais pas vécu en paix. Les mauvaises pensées me dérangent trop." (Zola, *Le Ventre de Paris*, p. 106) "You are wrong, she said, as to conclude. I have done what I had to do. Now, it will be as you wish... You see, I would have never lived in peace. Malicious thoughts disturb me too much."

Lisa is the epitome of honesty; her conscience does not reproach her of anything; she does not owe a penny, is not part of any skullduggery; she buys and sells good meat, she does not charge more than her competition... The dishonest people are

people like Saccard her cousin the financier, the hero of L'Argent, the speculators, those who despoil the poor people. She is a proud 'minority shareholder' who despises the 'majority shareholders', the mighty. "C'est bon pour nos cousins, les Saccard, ce que tu dis-la. Ils font semblant de ne pas même savoir que je suis à Paris; mais je suis plus fière qu'eux, je me moque pas mal de leurs millions. On dit que Saccard trafique dans les démolitions, qu'il vole tout le monde. Ça ne m'étonne pas, il partait pour ça. Il aime l'argent à se rouler dessus, pour le jeter ensuite par les fenêtres, comme un imbécile... Qu'on mette en cause les hommes de sa trempe, qui réalisent des fortunes trop grosses, je le comprends. Moi, si tu veux le savoir, je n'estime pas Saccard... Mais nous, nous qui vivons tranquilles, qui mettront quinze ans à amasser une aisance, nous qui ne nous occupons pas de politique, dont tout le souci est d'élever notre fille et de mener à bien notre barque! allons donc, tu veux rire, nous sommes d'honnêtes gens!" (same, p. 238-239) "It is good for our cousins, the Saccard, what you say here. They pretend to ignore that I am in Paris; but I am prouder than them, I don't care about their millions. They say that Saccard speculates in real estate, that he steals from everybody. It doesn't surprise me; he started like that. He likes money to roll with it on the ground, in order to throw it afterwards from the windows, like a fool... I understand that people of his kind who earn exorbitant fortunes have questionable conduct. For myself, if you want to know it, I don't estimate Saccard... But we who live quietly, who will need fifteen years to achieve an easy life, we who are not preoccupied by politics, whose only concern is to raise our daughter and row our boat properly! Come on, you are kidding, we are honest people!"

And it is this honest woman, who ultimately finds the political discussions of Florent despicable, who cannot stand the smell of fish that Florent brings to the table as it prevents her from eating, she – who probably has the smell of pork from her butcher shop. She thinks that Florent eats too much but he doesn't enjoy it. He cannot even get fatter, the miserable, as he is eaten up by his malice. The honest lamb Florent has become a wolf in the imagination of Lisa, when she sees that she can profit from the inheritance. "Elle s'était approchée de la fenêtre. Elle

vit Florent qui traversait la rue Rambuteau, pour se rendre à la poissonnerie. L'arrivage de la marée débordait, ce matin-la; les mannes avaient de grandes moires d'argent, les criees grondaient. Lisa suivit les épaules pointues de son beau-frère entrant dans les odeurs fortes des Halles, l'échine pliée, avec cette nausée de l'estomac qui lui montait aux tempes; et le regard dont elle l'accompagnait était celui d'une combattante, d'une femme résolue au triomphe." (same, p. 242-3) "She approached the window. She saw Florent cross Rambuteau Street and reach the fish shop. The tide overflowed this morning; the mannas glistened like silver, the fishmongers' auctions were at their peak. Lisa followed the pointed shoulders of her brother-in-law entering the Halles, his back curved, with a nausea of the stomach that reached his temples; and the look with which she accompanied him was a look of a warrior, a woman resolute to win." Florent was condemned because of his smell of fish, of his 'malice', but really because these excuses gave her the legitimacy to steal his part of the inheritance that she coveted without admitting it, as she was honest. Exactly like those who condemned Captain Dreyfus to exile to the same Devil's Island where Florent was imprisoned, because of his Jewish smell, his treason, his innocence. And Zola, who 20 years later condemns the honorable and honest men who have judged Dreyfus in 'J'accuse'; blames Lisa of her treachery and honest people of their covetousness, after the policemen take Florent to prison. "Les bandes de lard entrevues, les moities de cochon pendues contre les marbres, mettaient la des rondeurs de ventre, tout un triomphe du ventre, tandis que Lisa, immobile, avec sa carrure digne, donnait aux Halles le bonjour matinal, de ses grands yeux de forte mangeuse. Puis toutes deux se penchèrent. La belle Mme Lebigre et la belle Mme Quenu échangeèrent un salut d'amitié. Et Claude, qui avait certainement oublié de diner la veille, pris de colère a les voir si bien portantes, si comme il faut, avec leurs grosses gorges, serra sa ceinture, en grondant d'une voix fâchée: 'Quels gredins que les honnêtes gens!' " (same, p. 424) "The packs of bacon, the half porks hanged over the marble, put over there roundness of bellies, a whole triumph of bellies, while Lisa, motionless, with her imposing dignity, gave to the Halles the good morning, with her large eyes. Then both of them stooped over.

The beautiful Mme. Lebigre and the beautiful Mme. Quenu said a friendly hello to each other. And Claude, who certainly has forgotten to dine yesterday, furious to see them so healthy, decent, with their large bosoms, gripped his belt, while growling in an angry voice: 'What scoundrels are the honest people!' "

But the simplistic segmentation of Lisa between simple and honest people and rich and corrupted people has no value, as we should not personify the minority shareholders as weak and honest. The majority shareholders can be more honest than the minority shareholders and this book does not intend to idealize the honesty of the weak. Those weak masses can become wolves when they have the opportunity, exactly like Lisa has become a wolf to Florent. Human nature is the same, among the mighty and the weak. The only reason to safeguard the interests of the stakeholders and minority shareholders is for justice and ethics to prevail and allocate the same rights to the strong as to the weak, exactly like in the democracies. The same rights, even if they abuse them, even if they do not deserve them. For it is impossible to pronounce an ethical judgment on the personal value of every one of us. We can always find excuses why we have to abolish the rights of others, legitimate or not, as we are wolves or lambs subsequently or simultaneously, depending on who describes the case.

Zola describes in a magnificent way the panacea of the board of directors in his famous book 'L'Argent', 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'était donné tout entier à la fortune de l'Universelle, la représentant au Corps législatif, 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 à Mazas. Et le vicomte de Robin-Chagot, le vice-président, touchait cent mille francs de prime secrète pour donner sans examen les signatures, pendant les longues absences d'Hamelin; et le banquier Kolb se faisait également payer sa complaisance passive, en utilisant à l'étranger la puissance de la maison, qu'il allait jusqu'à compromettre, dans ses arbitrages; et Sedille lui-même, le marchand de soie, ébranlé à la suite d'une liquidation terrible, s'était fait prêter une grosse somme, qu'il n'avait pu rendre. Seul, Daigremont gardait son indépendance absolue vis-à-vis de Saccard; ce qui inquiétait ce dernier, parfois, bien que l'aimable homme restât charmant, l'invitant à ses fêtes, signant tout lui aussi sans observation, avec sa bonne grâce de Parisien sceptique qui trouve que tout va bien, tant qu'il gagne." (Zola, *L'Argent*, p. 310-311)

"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.”

Insider trading is surely not a modern invention. Zola described it brilliantly in *L'Argent – The Money*, where Saccard and his colleagues commit insider trading and speculations to the detriment of the minority shareholders and remain practically unpunished. “*L'Argent* serait-il donc un conte moral ou les mechants sont punis et les bons recompenses? Bien sur, l'escroc Saccard est emprisonne – pas pour longtemps. Mais le ‘filou’ Sabatini, l’ ‘adroit’ Nathanson et le malhonnete Fayeux courent encore. Et surtout beaucoup de gens honnetes dont la seule erreur a ete leur pitoyable naivete restent des victimes. C’est le cas de l’agent de change Mazaud mais surtout de tous les petits actionnaires. Les gros s’en tirent mieux. Si la justice n’est pas retablie par la condamnation effective des profiteurs dans la diegese elle-meme, du moins l’est-elle par leur condamnation verbale.” (Commentaires par Therese Ioos, Zola, *L'Argent*, p. 502) “Is *L'Argent* a moral tale where the bad people are punished and the good ones rewarded? Of course, the swindler Saccard is imprisoned – not for long. But the ‘crook’ Sabatini, the ‘skillful’ Nathanson and the dishonest Fayeux are still at large. And especially many honest people whose only mistake was their pitiful naivete remain their victims. It is the case of the broker Mazaud but especially of all the small minority shareholders. The big ones succeed more. If justice is not reestablished by the effective condemnation of the profiteers in the story, at least it is done in their verbal condemnation.”

One and a half century have elapsed since the events that took place in the French stock exchange that inspired Zola to write his masterpiece *L'Argent*. His book that should be the bible of the minority shareholders concludes by describing the outcome of the schemes to which they have succumbed. Every small shareholder

should read the following lines before deciding to invest in the stock exchange today as in the times of Zola. “Mais les morts inconnus, les victimes sans nom, sans histoire, emplissaient surtout d’une pitié infinie le cœur de Mme. Caroline. Ceux-la étaient légion, jonchaient les buissons écartés, les fosses pleines d’herbe, et il y avait ainsi des cadavres perdus, des blessés râlant d’angoisse, derrière chaque tronc d’arbre. Que d’effroyables drames muets, la cohue des petits rentiers pauvres, des petits actionnaires ayant mis toutes leurs économies dans une même valeur, les concierges retraités, les pâles demoiselles vivant avec un chat, les retraités de province à l’existence réglée de maniaques, les prêtres de campagne dénudés par l’aumône, tous ces êtres infimes dont le budget est de quelques sous, tant pour le lait, tant pour le pain, un budget si exact et si réduit, que deux sous de moins amènent des cataclysmes! Et, brusquement, plus rien, la vie coupée, emportée, de vieilles mains tremblantes, éperdues, tâtonnantes dans les ténèbres, incapables de travail, toutes ces existences humbles et tranquilles jetées d’un coup à l’épouvante du besoin!” (Emile Zola, *L’Argent*, p. 440)

“But the unknown dead, the nameless victims, with no history, filled especially with infinite pity the heart of Mme. Caroline. Those were legions, were strewn all over the remote bushes, the ditches full of grass, lost corpses, wounded people moaning from anxiety, behind every trunk of a tree. How many dreadful silent dramas, the crowd of the small poor retired people, the small shareholders who have invested all their savings in the same stock, the retired concierges, the pale old maids living with a cat, the old people living in the country in a well-ordered obsessive existence, the priests in the villages resorting to begging, all those tiny little people with tight budgets, so much for milk, so much for bread, such a small and exact budget, that any reduction can cause a cataclysm! And, all of a sudden, a void, life is cut off, taken away, old shaky hands, desperate, groping in the dark, unable to work, all those humble and quiet lives thrown all of a sudden to the terror of poverty!” (All translations in this chapter are by Cory Jacques)

Emile Zola is probably the best symbol of social responsibility. He devoted his life to improve French society, was condemned by large segments of the conservative French society, the militarists, the religious, high society and the elites, while he was admired by the liberal and socialist segments of the French society, the intellectuals, artists and the press. Zola fought all his life on behalf of the oppressed, the poor, women, minorities, ecology, the stakeholders, and was the pillar of the humane and social conscious France of today. But in his times he was called enemy of the people and he was probably murdered by suffocation. He is worldwide renowned because of the Dreyfus affair, when he accused, in his famous article in *L'Aurore* "J'accuse" in 1898, the French government and the French army of sentencing Dreyfus to life imprisonment for treason although he was not guilty. Dreyfus, a Jewish Captain in the French Army, one of the first Jews to enroll the Army, was accused of treason on behalf of Germany, then France's worst enemy, while Colonel Picquart discovered that he was innocent and Esterhazy was the traitor. But Esterhazy was a member of the elites, an aristocrat while Dreyfus was only a Jew and could be the scapegoat, disregarding justice and truth. The honor of the French Army and the government was at stake as they couldn't admit the mistake. So, Zola was sued for diffamation on his article and sentenced to one year imprisonment. He escaped to England (like Victor Hugo forty years before) and returned to France only after the Dreyfus case was revised. Yet, if we compare the "guilt" of the French government, army and people and their anti-Semitism, it is insignificant in comparison to the atrocities that other European people have committed to minorities in the twentieth century.

France was divided almost equally between the Dreyfusards and the Anti-Dreyfusards, and Zola alone was responsible for changing the opinion of half the population, as before his article and trial most of the French were either indifferent or against Dreyfus. Zola put all his reputation in favor of justice and against the wrongdoers and by blowing the whistle he managed to change the public opinion. His courageous interference as well as his excellent books, mainly the *Rougon-Macquart*, changed the whole history of France. Zola's books

revealed the flaws of French society, the bourgeoisie, the proletariat, the government, the nobility, the rich and the poor, corruption, business ethics, wickedness and goodness, filth and beauty, the worst and the most sublime facets of mankind. Zola was driven to the Dreyfus case against his will. He was not pro-Semitic to say the least but he met Dreyfus's wife who gave him evidence of her husband's innocence. Zola was particularly outraged by the conduct of the Army towards Picquart, who very courageously maintained that Dreyfus was innocent and because of that he was demoted of his functions and sentenced to jail. The personification of the victims, Dreyfus and his wife as well as Picquart, made him change his mind as you become aware of a wrongdoing more often when it is personified by a victim you know or when it happens to you. Zola, who all his life fought against prejudices against the poor, the women or the liberals, decided to fight the prejudices against the Jews. Many Frenchmen thought that the Jews had to be guilty, they were perceived as foreigners, a lot of them came from Germany and spoke Yiddish, so they should probably be also in contact with their brethren over there and assist Germany, France's worst enemy.

Nevertheless, Petain who was still young during the Dreyfus affair, collaborated with the Germans and sent thousands of Jews to the Holocaust, to the same Germans they supposedly loved so much. But anti-Semitism is always the same, the excuses only change. Sometimes the Jews are accused to be the richest men in the world, with the famous Protocols and they oppress the poor Christians, while sometimes they are accused to be revolutionary Trotskists, Bolshevics, wanting to kill the bourgeoisie. Zola understood it and decided to fight those prejudices in the same way that he fought the prejudices against the workers.

In the film on Zola, Picquart is perceived as the worst whistleblower and the worst traitor for the French conservatists, Dreyfus was a Jew, and those people could not be trusted anyway after killing Christ, Zola was half Italian, even Esterhazy if he was the traitor did it because he was not a real French, but Picquart one of our own, how has he the the Hutzpeh of accusing the Army who could

never be wrong or make mistakes? The judge is hostile from the beginning of the trial to Zola and to Picquart who was also a witness. Picquart maintains that the incriminating document against Dreyfus is forged. The judge doesn't want to have a trial on the Dreyfus affair only about the slander by Zola. Zola says in his trial that some people fight with their swords, but he fights with his pen. As a matter of fact we could say that all his life he fought in his books and articles for integrity, honesty, conscience, justice, social responsibility, business ethics, in favor of the meek who don't have a say. Zola cannot resist the temptation to do it, he is bound to be a whistleblower even if it is against his welfare, his peace of mind, his reputation, his wealth and his freedom.

TRANSPARENCY, OMERTA AND SOCIAL RESPONSIBILITY - THE FILM "THE CHINA SYNDROME" - SUMMARY AND ANALYSIS

Based on the film:

The China Syndrome, 1979, 122 min., Director James Bridges, with Jane Fonda,
Jack Lemon

Summary and Analysis:

While doing a series of reports on alternative energy sources, an opportunistic reporter Kimberley Wells witnesses an accident at a nuclear power plant. Wells is determined to publicize the incident but soon finds herself entangled in a sinister conspiracy to keep the full impact of the incident a secret. Jack Godell is a long time nuclear technician who discovers that his plant is endangering lives of thousands for the huge profits they earn. Wells and her cameraman try to disclose the danger by interviewing Godell, but he is described by the company as an unstable man and they murder him. Ultimately, the TV management and the mega corporation cooperate in order to cover up the story, thus endangering the lives of thousands. The accident occurring in the Ventana Power Plant of the mega corporation California Gaz & Electric, could be the precursor of a catastrophic catastrophe that would destroy part of California, calling it the China Syndrome, as China is on the other side of the globe. The plant renews its operations without fixing the problem as it doesn't want to jeopardize the renewal of its license to operate. Richard Adams continues to film the accident that they witnessed although they can be sued for doing that but he is motivated by a strong community sense. We are faced by the dilemma of maximizing profits while endangering the lives of thousands.

Godell tries his best to postpone the renewal of production and he notices that quality assurance data was falsified. He asks the technician responsible for the falsification why he did it and he answers that he loves the company, which means for him everything. Godell tells his superiors that the factory should be closed but he is not absolutely sure of that when he meets Wells who wants him to disclose his suspicions to the TV station. The man who received the incriminating photos taken by Godell dies in an "accident" caused by the company that doesn't want that her schemes be published. Everybody is convinced that Godell is drunk when he seizes a gun and orders every one to cease the production, endangering California. He shuts the control room and is interviewed live by Wells. However Godell sounds incredible, confused and incomprehensible to the audience, who thinks that he has gone mad. The CEO of the company orders the security men to force the room, as Godell endangers the security of the plant. They penetrate the room and kill Godell, not really because he endangered the plant as he only wanted to cease production but in order to prevent the divulgation of the truth about the China Syndrome. After Godell's murder Wells tells the public, against the advice of her management, that he was not crazy and just wanted to prevent a nuclear accident.

Godell, the whistleblower, defends at the beginning of the film his management. He is a safety foreman and believes in the integrity of his superiors. But with Wells and Adams's assistance he discovers that safety is not the primary concern of the company but greed, and that his bosses are willing to endanger all California in order not to lose money. The film shows how the only thing that prevents such catastrophes to occur is the integrity of courageous men as Godell, (or Karen Silkwood in Silkwood). The film produced in 1979 preceded by a few weeks the nuclear accident of Three Mile Island and became a sensation. This is a film with a social and communitarian message that makes the public think. It was based on the accidents of the nuclear power plant in Dresden II near Chicago in

1970 and Brown Ferry, Alabama, in 1975. Ten years later took place the worst catastrophe in modern history - the Chernobyl accident in USSR.

PART V

SUSTAINABILITY, SOCIAL RESPONSIBILITY AND ACTIVISM: INTEGRATION OF SOCIAL, HUMAN, ENVIRONMENTAL AND BUSINESS GOALS

CONCEPTS AND THEMES

In order to define clearly the terminology of sustainability and corporate social responsibility, we resort to different sources:

SUSTAINABILITY

United Nations General Assembly (1987) *Report of the World Commission on Environment and Development: Our Common Future*. Transmitted to the General Assembly as an Annex to document A/42/427 - Development and International Co-operation: Environment.

"1. Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- **the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and**
- **the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.**

2. Thus the goals of economic and social development must be defined in terms of sustainability in all countries - developed or developing, market-oriented or centrally planned. Interpretations will vary, but must share certain general features and must flow from a consensus on the basic concept of sustainable development and on a broad strategic framework for achieving it.

3. Development involves a progressive transformation of economy and society. A development path that is sustainable in a physical sense could theoretically be pursued even in a rigid social and political setting. But physical sustainability cannot be secured unless development policies pay attention to such considerations as changes in access to resources and in the distribution of costs and benefits. Even the narrow notion of physical sustainability implies a concern for social equity between generations, a concern that must logically be extended to equity within each generation.

4 The satisfaction of human needs and aspirations is the major objective of development. The essential needs of vast numbers of people in developing countries for food, clothing, shelter, jobs - are not being met, and beyond their basic needs these people have legitimate aspirations for an improved quality of life. A world in which poverty and inequity are endemic will always be prone to ecological and other crises. Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life.

5. Living standards that go beyond the basic minimum are sustainable only if consumption standards everywhere have regard for long-term sustainability. Yet many of us live beyond the world's ecological means, for instance in our patterns of energy use. Perceived needs are socially and culturally determined, and sustainable development requires the promotion of values that encourage consumption standards that are within the bounds of the ecological possible and to which all can reasonably aspire.

6. Meeting essential needs depends in part on achieving full growth potential, and sustainable development clearly requires economic growth in places where such needs are not being met. Elsewhere, it can be consistent with economic growth, provided the content of growth reflects the broad principles of sustainability and non-exploitation of others. But growth by itself is not enough. High levels of productive activity and widespread poverty can coexist, and can endanger the environment. Hence sustainable development requires that societies meet human needs both by increasing productive potential and by ensuring equitable opportunities for all.

7. An expansion in numbers can increase the pressure on resources and slow the rise in living standards in areas where deprivation is widespread. Though the issue is not merely one of population size but of the distribution of resources, sustainable development can only be pursued if demographic developments are in harmony with the changing productive potential of the ecosystem.

8. A society may in many ways compromise its ability to meet the essential needs of its people in the future - by overexploiting resources, for example. The direction of technological developments may solve some immediate problems but lead to even greater ones. Large sections of the population may be marginalized by ill-considered development.

9. Settled agriculture, the diversion of watercourses, the extraction of minerals, the emission of heat and noxious gases into the atmosphere, commercial forests, and genetic manipulation are all examples of human intervention in natural systems during the course of development. Until recently, such interventions were small in scale and their impact limited. Today's interventions are more drastic in scale and impact, and more threatening to life-support systems both locally and globally. This need not happen. At a minimum, sustainable development must not endanger the natural systems that support life on Earth: the atmosphere, the waters, the soils, and the living beings.

10. Growth has no set limits in terms of population or resource use beyond which lies ecological disaster. Different limits hold for the use of energy, materials, water, and land. Many of these will manifest themselves in the form of rising costs and diminishing returns, rather than in the form of any sudden loss of a resource base. The accumulation of knowledge and the development of technology can enhance the carrying capacity of the resource base. But ultimate limits there are, and sustainability requires that long before these are reached, the world must ensure equitable access to the constrained resource and reorient technological efforts to relieve the pressure.

11. Economic growth and development obviously involve changes in the physical ecosystem. Every ecosystem everywhere cannot be preserved intact. A forest may be depleted in one part of a watershed and extended elsewhere, which is not a bad thing if the exploitation has been planned and the effects on soil erosion rates, water regimes, and genetic losses have been taken into account. In general, renewable resources like forests and fish stocks need not be depleted provided the rate of use is within the limits of regeneration and natural growth. But most renewable resources are part of a complex and interlinked ecosystem, and maximum sustainable yield must be defined after taking into account system-wide effects of exploitation.

12. As for non-renewable resources, like fossil fuels and minerals, their use reduces the stock available for future generations. But this does not mean that such resources should not be used. In general the rate of depletion should take into account the criticality of that resource, the availability of technologies for minimizing depletion, and the likelihood of substitutes being available. Thus land should not be degraded beyond reasonable recovery. With minerals and fossil fuels, the rate of depletion and the emphasis on recycling and economy of use should be calibrated to ensure that the resource does not run out before acceptable substitutes are available. Sustainable development requires that the rate of depletion of non renewable resources should foreclose as few future options as possible.

13. Development tends to simplify ecosystems and to reduce their diversity of species. And species, once extinct, are not renewable. The loss of plant and animal species can greatly limit the options of future generations; so sustainable development requires the conservation of plant and animal species.

14. So-called free goods like air and water are also resources. The raw materials and energy of production processes are only partly converted to useful products. The rest comes out as wastes. Sustainable development requires that the adverse impacts on the quality of air, water, and other natural elements are minimized so as to sustain the ecosystem's overall integrity.

15. In essence, sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations."

CORPORATE SOCIAL RESPONSIBILITY (CSR)

The Social Accountability International SA8000 Standard:

"1. CHILD LABOUR

Criteria:

1.1 The company shall not engage in or support the use of child labour as defined above.

1.2 The company shall establish, document, maintain, and effectively communicate to personnel and other interested parties, policies and written procedures for remediation of children found to be working in situations which fit the definition of child labour above, and shall provide adequate financial and other support to enable such children to attend and remain in school until no longer a child as defined above.

1.3 The company may employ young workers, but where such young workers are subject to compulsory education laws, they may work only outside of school

hours. Under no circumstances shall any young worker's school, work, and transportation time exceed a combined total of 10 hours per day, and in no case shall young workers work more than 8 hours a day. Young workers may not work during night hours.

1.4 The company shall not expose children or young workers to any situations – in or outside of the workplace – that are hazardous or unsafe to their physical and mental health and development.

2. FORCED AND COMPULSORY LABOUR

Criteria:

2.1 The company shall not engage in or support the use of forced or compulsory labour as defined in ILO Convention 29, nor shall personnel be required to pay 'deposits' or lodge identification papers with the company upon commencing employment.

2.2 Neither the company nor any entity supplying labour to the company shall withhold any part of any personnel's salary, benefits, property, or documents in order to force such personnel to continue working for the company.

2.3 Personnel shall have the right to leave the workplace premises after completing the standard workday, and be free to terminate their employment provided that they give reasonable notice to their employer.

2.4 Neither the company nor any entity supplying labour to the company shall engage in or support trafficking in human beings.

3. HEALTH AND SAFETY

Criteria:

3.1 The company shall provide a safe and healthy workplace environment and shall take effective steps to prevent potential accidents and injury to workers' health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the workplace environment, and bearing in mind the prevailing knowledge of the industry and of any specific hazards.

3.2 The company shall appoint a senior management representative to be responsible for ensuring a safe and healthy workplace environment for all personnel, and for implementing the Health and Safety elements of this standard.

3.3 The company shall provide to personnel on a regular basis effective health and safety instructions, including on-site instruction and, where needed, job-specific instructions. Such instructions shall be repeated for new and reassigned personnel and in cases where accidents have occurred.

3.4 The company shall establish systems to detect, avoid, or respond to potential threats to the health and safety of personnel. The company shall maintain written records of all accidents that occur in the workplace and in company-controlled residences and property.

3.5 The company shall provide at its expense appropriate personal protective equipment to personnel. In the event of a work related injury the company shall provide first aid and assist the worker in obtaining follow-up medical treatment.

3.6 The company shall undertake to assess all the risks to new and expectant mothers arising out of their work activity and to ensure that all reasonable steps are taken to remove or reduce any risks to their health and safety.

3.7 The company shall provide, for use by all personnel, access to clean toilet facilities, access to potable water, and, where applicable, sanitary facilities for food storage.

3.8 The company shall ensure that any dormitory facilities provided for personnel are clean, safe, and meet the basic needs of the personnel.

3.9 All personnel shall have the right to remove themselves from imminent serious danger without seeking permission from the company.

4. FREEDOM OF ASSOCIATION & RIGHT TO COLLECTIVE BARGAINING

Criteria:

4.1 All personnel shall have the right to form, join, and organise trade unions of their choice and to bargain collectively on their behalf with the company. The company shall respect this right, and shall effectively inform personnel that they

are free to join an organisation of their choosing and that their doing so will not result in any negative consequences to them, or retaliation, from the company. The company shall not in any way interfere with the establishment, functioning, or administration of such workers' organisations or collective bargaining.

4.2 In situations where the right to freedom of association and collective bargaining are restricted under law, the company shall allow workers to freely elect their own representatives.

4.3 The company shall ensure that representatives of workers and any personnel engaged in organising workers are not subjected to discrimination, harassment, intimidation, or retaliation for reason of their being members of a union or participating in trade union activities, and that such representatives have access to their members in the workplace.

5. DISCRIMINATION

Criteria:

5.1 The company shall not engage in or support discrimination in hiring, remuneration, access to training, promotion, termination, or retirement based on race, national or social origin, caste, birth, religion, disability, gender, sexual orientation, family responsibilities, marital status, union membership, political opinions, age, or any other condition that could give rise to discrimination.

5.2 The company shall not interfere with the exercise of personnel's rights to observe tenets or practices, or to meet needs relating to race, national or social origin, religion, disability, gender, sexual orientation, family responsibilities, union membership, political opinions, or any other condition that could give rise to discrimination.

5.3 The company shall not allow any behaviour that is threatening, abusive, exploitative, or sexually coercive, including gestures, language, and physical contact, in the workplace and, where applicable, in residences and other facilities provided by the company for use by personnel.

5.4 The company shall not subject personnel to pregnancy or virginity tests under any circumstances.

6. DISCIPLINARY PRACTICES

Criterion:

6.1 The company shall treat all personnel with dignity and respect. The company shall not engage in or tolerate the use of corporal punishment, mental or physical coercion, or verbal abuse of personnel. No harsh or inhumane treatment is allowed.

7. WORKING HOURS

Criteria:

7.1 The company shall comply with applicable laws and industry standards on working hours and public holidays. The normal work week, not including overtime, shall be defined by law but shall not exceed 48 hours.

7.2 Personnel shall be provided with at least one day off following every six consecutive days of working. Exceptions to this rule apply only where both of the following conditions exist:

- a) National law allows work time exceeding this limit; and
- b) A freely negotiated collective bargaining agreement is in force that allows work time averaging, including adequate rest periods.

7.3 All overtime work shall be voluntary, except as provided in 7.4 below, shall not exceed 12 hours per week, nor be requested on a regular basis.

7.4 In cases where overtime work is needed in order to meet short-term business demand and the company is party to a collective bargaining agreement freely negotiated with worker organisations (as defined above) representing a significant portion of its workforce, the company may require such overtime work in accordance with such agreements. Any such agreement must comply with the requirements above.

8. REMUNERATION

Criteria:

8.1 The company shall respect the right of personnel to a living wage and ensure that wages paid for a normal work week shall always meet at least legal or industry minimum standards and shall be sufficient to meet the basic needs of personnel and to provide some discretionary income.

8.2 The company shall ensure that deductions from wages are not made for disciplinary purposes. Exceptions to this rule apply only when both of the following conditions exist:

- a) Deductions from wages for disciplinary purposes are permitted by national law; and
- b) A freely negotiated collective bargaining agreement is in force.

8.3 The company shall ensure that personnel's wages and benefits composition are detailed clearly and regularly in writing for them for each pay period. The company shall also ensure that wages and benefits are rendered in full compliance with all applicable laws and that remuneration is rendered either in cash or check form, in a manner convenient to workers.

8.4 All overtime shall be reimbursed at a premium rate as defined by national law. In countries where a premium rate for overtime is not regulated by law or a collective bargaining agreement, personnel shall be compensated for overtime at a premium rate or equal to prevailing industry standards, whichever is more favourable to workers' interests.

8.5 The company shall not use labour-only contracting arrangements, consecutive shortterm contracts, and/or false apprenticeship schemes to avoid fulfilling its obligations to personnel under applicable laws pertaining to labour and social security legislation and regulations.

9. MANAGEMENT SYSTEMS

Criteria:

Policy

9.1 Top management shall define in writing, in workers' own language, the company's policy for social accountability and labour conditions, and display this policy and the SA8000 standard in a prominent, easily viewable place on the

company's premises, to inform personnel that it has voluntarily chosen to comply with the requirements of the SA8000 standard. Such policy shall clearly include the following commitments:

- a) To conform to all requirements of this standard;
- b) To comply with national and other applicable laws and other requirements to which the company subscribes, and to respect the international instruments and their interpretation (as listed in Section II above);
- c) To review its policy regularly in order to continually improve, taking into consideration changes in legislation, in its own code-of-conduct requirements, and any other company requirements;
- d) To see that its policy is effectively documented, implemented, maintained, communicated, and made accessible in a comprehensible form to all personnel, including directors, executives, management, supervisors, and staff, whether directly employed by, contracted with, or otherwise representing the company;
- e) To make its policy publicly available in an effective form and manner to interested parties, upon request.

Management Representative

9.2 The company shall appoint a senior management representative who, irrespective of other responsibilities, shall ensure that the requirements of this standard are met.

SA8000 Worker Representative

9.3 The company shall recognize that workplace dialogue is a key component of social accountability and ensure that all workers have the right to representation to facilitate communication with senior management in matters relating to SA8000. In unionised facilities, such representation shall be undertaken by recognized trade union(s). Elsewhere, workers may elect a SA8000 worker representative from among themselves for this purpose. In no circumstances, shall the SA8000 worker representative be seen as a substitute for trade union representation.

Management Review

9.4 Top management shall periodically review the adequacy, suitability, and continuing

effectiveness of the company's policy, procedures, and performance results vis-à-vis the requirements of this standard and other requirements to which the company subscribes. Where appropriate, system amendments and improvements shall be implemented. The worker representative shall participate in this review.

Planning and Implementation

9.5 The company shall ensure that the requirements of this standard are understood and implemented at all levels of the organisation. Methods shall include, but are not limited to:

- a) Clear definition of all parties' roles, responsibilities, and authority;
- b) Training of new, reassigned, and/or temporary personnel upon hiring;
- c) Periodic instruction, training, and awareness programs for existing personnel;
- d) Continuous monitoring of activities and results to demonstrate the effectiveness of systems implemented to meet the company's policy and the requirements of this standard.

9.6 The company is required to consult the SA8000 Guidance Document for interpretative guidance with respect to this standard.

Control of Suppliers/Subcontractors and Sub-Suppliers

9.7 The company shall maintain appropriate records of suppliers/subcontractors' (and, where appropriate, sub-suppliers') commitments to social accountability, including, but not limited to, contractual agreements and/or the written commitment of those organisations to:

- a) Conform to all requirements of this standard and to require the same of subsuppliers;
- b) Participate in monitoring activities as requested by the company;
- c) Identify the root cause and promptly implement corrective and preventive action to resolve any identified non-conformance to the requirements of this standard;
- d) Promptly and completely inform the company of any and all relevant business relationship(s) with other suppliers/subcontractors and sub-suppliers.

9.8 The company shall establish, maintain, and document in writing appropriate procedures to evaluate and select suppliers/subcontractors (and, where

appropriate, sub-suppliers) taking into account their performance and commitment to meet the requirements of this standard.

9.9 The company shall make a reasonable effort to ensure that the requirements of this standard are being met by suppliers and subcontractors within their sphere of control and influence.

9.10 In addition to the requirements of Sections 9.7 through 9.9 above, where the company receives, handles, or promotes goods and/or services from suppliers/subcontractors or sub-suppliers who are classified as home workers, the company shall take special steps to ensure that such home workers are afforded a level of protection similar to that afforded to directly employed personnel under the requirements of this standard. Such special steps shall include, but not be limited to:

- a) Establishing legally binding, written purchasing contracts requiring conformance to minimum criteria in accordance with the requirements of this standard;
- b) Ensuring that the requirements of the written purchasing contract are understood and implemented by home workers and all other parties involved in the purchasing contract;
- c) Maintaining, on the company premises, comprehensive records detailing the identities of home workers, the quantities of goods produced, services provided, and/or hours worked by each home worker;
- d) Frequent announced and unannounced monitoring activities to verify compliance with the terms of the written purchasing contract.

Addressing Concerns and Taking Corrective Action

9.11 The company shall provide a confidential means for all personnel to report non-conformances with this standard to the company management, and the worker representative. The company shall investigate, address, and respond to the concerns personnel and other interested parties with regard to conformance/non-conformance with the company's policies and/or the requirements of this standard. The company shall refrain from disciplining, dismissing, or otherwise

discriminating against any personnel for providing information concerning observance of the standard.

9.12 The company shall identify the root cause, promptly implement corrective and preventive action, and allocate adequate resources appropriate to the nature and severity of any identified non-conformance with the company's policy and/or the standard.

Outside Communication and Stakeholder Engagement

9.13 The company shall establish and maintain procedures to communicate regularly to all interested parties data and other information regarding compliance with the requirements of this document, including, but not limited to, the results of management reviews and monitoring activities.

9.14 The company shall demonstrate its willingness to participate in dialogues with all interested stakeholders, including, but not limited to: workers, trade unions, suppliers, subcontractors, sub-suppliers, buyers, nongovernmental organisations, and local and national government officials, aimed at attaining sustainable compliance with this standard.

Access for Verification

9.15 In the case of announced and unannounced audits of the company for the purpose of certifying its compliance with the requirements of this standard, the company shall ensure access to its premises and to reasonable information required by the auditor.

Records

9.16 The company shall maintain appropriate records to demonstrate conformance to the requirements of this standard."

In this book we refer to Personification as the link between business, human, social and environmental factors. One should bear in mind that ultimately, the ethical crimes return almost always to the criminals as a boomerang, and from the moment that you act immorally, sooner or later you will be the victim of the immoral norms. The Jewish religion can be summarized according to the Mishna

in one sentence: Love thy neighbor as yourself. Pagnol and Miller, the great humanists, are convinced that a "business" crime against a stranger is ultimately a crime against your own son, as we see in *Jean de Florette* and *All My Sons*. We have therefore to try to prove that the individual stakeholders are like us and personify them as much as we can to the executives and controlling shareholders. We have to do our utmost to divulge the maximum information to the public, as only light can uncover criminals who prefer to act in the dark.

One of the reasons for the 'neat' conscience of the companies' executives when they wrong the individual stakeholders is the lack of personification of those people who are in most of the cases too small to endanger the position of the executives. It is much easier to harm somebody who you do not know and do not respect, especially when you are convinced that you act rightfully. The executives of the companies have a direct interest in their companies; they conceive their missions beyond the immediate profits, and give allegiance to the majority shareholders who have often founded the company, control it and can remunerate the executives.

Jackall describes an act of conscience of an executive of a chemical company who had to decide if they had to spend \$25 million to eliminate the halogenated hydrocarbon from the water or cause the death of 20 people in a million who would drink the contaminated water. "I don't know how to answer that question as long as I'm not one of those twenty people. As long as those people can't be identified, as long as they are not specific people, it's OK. Isn't that strange? So you put a filter on your own house and try to protect yourself. Impersonality provides the psychological distance necessary to make what managers call 'hard choices'." (Jackall, *Moral Mazes*, p.127) It is very difficult to imagine the Holocaust and the fact that six million Jews were exterminated by the Nazis and their European collaborators. Therefore, every year, on the commemorative date of the Holocaust, ceremonies are held throughout Israel to commemorate and say the names of those who were killed. Different organizations have started to gather

all the names of the dead in order to immortalize them, and to publish them on the Internet. Steven Spielberg has dedicated all the profits of his film 'Schindler's List' and a part of his personal fortune to document thousands of stories about the Holocaust as told by survivors. If the Nazis have succeeded in their satanic mission it is by depersonifying their Jewish victims, and by hiding their fate.

Personification and exposure are very efficient safeguards against crimes, but also against immoral acts. Pagnol and Spielberg fortify the hypotheses of this book, as illustrated by Jackall. From the moment that stakeholders would have direct access to the Boards of Supervision of the companies, to the Institute of Ethics, to the Internet, to the press, it will be impossible to transgress their rights, as they will have names; they will be known; their photos will be seen; their fate will be made public when their rights will be violated. In the same way it will be necessary to personify and publish all the unethical acts of the businessmen and companies toward their shareholders and stakeholders. We will publish their names and their wrongdoing. We will point our fingers at them in their community. Their family will be ashamed of their acts. They will not be able to hide behind their present anonymity, and the personification might make them honest persons.

One of the cases that can best illustrate the personification and absurdity of the utilitarian theories is the famous case of the Ford Company, which decided that it would be less costly to risk the lives of 180 persons who would buy the defective Pinto model rather than add the cost of \$11 to each car. "To see more clearly how utilitarianism ignore considerations of justice and rights, consider how Ford's managers dealt with the Pinto's design. Had they decided to change the Pinto's design and to add \$11 to the cost of each Pinto, they would in effect, have forced all the buyers of the Pinto to share in paying the \$137 million that the design change would cost. Each buyer would pay an equal share of the total costs necessitated by this aspect of the Pinto design. On the other hand, by not changing the Pinto's design, the Ford managers were in effect forcing the 180 people who

would die to absorb all of the costs of this aspect of the Pinto design. So we would ask: Is it more just to have 180 buyers bear all the costs of the Pinto design by themselves, or is it more just to distribute the costs equally among all buyers? Which is the fairer way of distributing these costs?" (Velasquez, Business Ethics, p. 81)

This dilemma has no economic solution. The answer is very simple; it resides in the degree of personification that the engineers, managers, or shareholders of Ford see in those 180 persons who would die as a result of their economic decision. If they envision their sons and daughters among the dead, they would not make this decision in any case, even if it were rational and economic, as they would be convinced that 'all are their sons' and 'love thy neighbor as yourself'. But if they perceive the dead as anonymous people without names and faces, who have nothing to do with their loved ones, they will make the same decisions as the Papet in 'Jean de Florette' or Joe Keller in 'All My Sons'.

The companies are controlled today in most cases by majority shareholders who own often less than 50 percent of the shares but who manage to control the boards of directors. From the moment that the stakeholders will be represented in the boards of directors, their rights would probably be safeguarded. The majority shareholders justify their absolute control of the company by the fact that they have invested their capital into the company. Nevertheless, Estes and many other authors maintain that the stakeholders invest also in the company, often much more than the majority shareholders.

"But the corporation has other constituents as well: the workers, customers, suppliers, community, and the greater society. These other stakeholders are investors too, and they often risk far more than financial investors. Employees invest in the corporation. They bring their education, skills and experience – often gained at substantial personal expense – to the job. They invest time, energy, and too often their health. They invest their careers, careers that can be effectively

wiped out in a casual layoff or relocation decision... Customers invest in the corporation. Their monetary investments are often greater than those of stockholders... Like workers, suppliers are investors too. They may commit production facilities, install special equipment, redesign products, and provide financing to their corporate customers. They have a right to expect fair treatment and a fair return on their investment.

Communities – neighbors, towns, cities, counties, and states – invest in corporations. They provide much of the infrastructure, such as streets and bridges, water and sewer systems, and police and fire protection, without which the corporation could hardly function.... Communities are investors and deserve a fair return on investment as much as stockholders. The nation – society – invests in the corporation. It provides the social capital and structure, without which we would face the brutal anarchy of the cave dweller. Our society supports the democratic system that allows the corporation, and the rest of us, freedom of movement and action. It provides protection for the free enterprise system.

Nations also grant specific benefits to corporations, such as investment incentives, tariff protection, research subsidies, defense contracts, and tax benefits including investment tax credits, accelerated depreciation, and foreign tax credits. Employees, customers, suppliers, communities, and society are all investors, but the corporation is not accountable to them. It reports regularly and comprehensively to stockholders, almost never to other stakeholders.” (Estes, *Tyranny of the Bottom Line*, p. 4-6)

If you analyze which funds effectively finance the company, we shall notice in most of the cases that the funds of the shareholders who control the company contribute only a minimal part of the necessary funds for the functioning of the company. In many cases those who control the company are the executives who have not invested anything in the company even if they own its stocks. In the cases of the founders, they have invested in the initial phases of the company or

when the shares' prices were not so high, and those who have invested the largest sums in equity are the minority shareholders who not only are not represented in the boards of directors but also have invested when the shares' prices were very high, mainly at public offerings.

Furthermore, the original investors of the company have often sold their shares on the stock exchange, and the new shareholders have not invested into the company but paid to the other shareholders for their shares. Thus, the company has not profited from the appreciation of the price of the shares, especially if it does not issue new shares. The suppliers, willingly or not, finance the company that utilizes their credit to finance the working capital. The clients finance undoubtedly the company, as it is their revenues that generate the profits of the companies. The creditors finance the company, as their financial leverage finances sometimes two or three times more than the equity. It is superfluous to state that the financing of the community and the state is so high, that in some stages, especially in the first ones it can amount to a third or even more of the total financing.

In the last years, we witness in the U.S., and to some extent also in France, a growing social activism of the shareholders and in many cases they succeed in changing the decisions taken by large companies in the U.S.: "The world-wide phenomenon observed as a growth in shareholder awareness comes under the general term of 'government of companies' or corporate governance. This phenomenon involves an increased interest in two categories of concerns linked to the internationalization of the capital of large industrial and financial conglomerates. The first category of concerns, already well recognized in France, regards questions directly relating to the rights of shareholders: company policy on information, distribution of profits, the organization of the Board of Directors, remuneration and protection of managers, etc.

The second category, not yet well known in our country but more widely discussed on the other side of the Atlantic, covers questions related to the general direction taken by management in response to a movement that could be termed ‘social activism of shareholders’... Numerous recent initiatives by shareholders in the United States - ‘General Electric sells its aerospace division to Martin Marietta under pressure from the Sisters of Notre Dame de Lorette; - The sisters of the Charity of the Holy World force Kimberley-Clark to sell its tobacco division; - The Lourdes Medical Centre forces the management of Pfizer to change their strategy; - The Sisters of Sainte Catherine de Sienne win a lawsuit against Wal Mart...’ (Richardson, World Ethics Report, Leroy, Development of Social Activism amongst Shareholders, p. 161)

In shareholders’ meetings in the U.S. there are hundreds of resolutions that are adopted every year as a result of the activism of the shareholders, who are mainly minority shareholders. The most dominant organizations in their activism are religious associations, proactive associations of shareholders, often with women dominance. “The spiritual heart of this movement is a New York non-profit organization, the Interfaith Centre for Corporate Responsibility... For the last twenty-five years, ICCR has organized a coalition of 275 institutional investors, Protestant, Jewish and Catholic, who together represent a share portfolio with a total of value of 45 billion dollars. This organization co-ordinates the activity and voting of its members at shareholder meetings. Each year, it also publishes the astonishing growth of external proposals put forward by shareholders at general meetings of American publicly-owned companies...

In the United States, ownership of shares is popular and the American financial system is favorably disposed to direct intervention by shareholders in the business affairs of a company. Contributory pension funds are managed by organizations without links to the banking system and they are also subject to managements by vote. In addition, the invested capital allowing a shareholder to propose a motion at a company general meeting is low, being only one thousand dollars. To be

included in the agenda of a general meeting, any resolution must also be recorded by the company; and the minutes are controlled by the American Securities and Exchange Commission.” (same, p. 162)

The stakeholders are not conscious of their power, in the same way that the people were not conscious of their strength before Rousseau, Voltaire and the French revolution. A large number of stakeholders and minority shareholders act like Candide and are convinced that everything is for the best in the best of the world, and that they should continue to lose in the long run like the gamblers who lose at the casino. There are very few militant minority shareholders and very few organizations that safeguard their interests like ADAM, managed by Mme. Neuville in France. The power of these individuals and organizations is very limited and if they sue the companies they often lose. But they ignore that they possess the absolute power, the Armageddon weapon, the absolute weapon, and if they use it they could collapse the Philistines’ temple. But Samson, who is blind and thinks that he has no power, does not have to die with his persecutors. The minority shareholders can cease to invest in companies that do not behave ethically and in parallel invest uniquely in ethical funds. They could also, if they do not want to incur any risk, invest their money in savings deposits and be satisfied with 5 percent interests per annum.

Majority shareholders and the companies cannot operate without stakeholders and minority shareholders, as the majority shareholders invest effectively in most of the cases only about 30 percent of the equity in order to obtain control of the company and the remainder is invested by the minority shareholders, who own in fact the majority of the shares without having any control of the company. In paraphrasing a well-known 250-year-old maxim, the minority shareholders should say – no investment without representation! Furthermore, the majority shareholders do not lose in most cases from their investment, as they know when to sell and buy the shares with their insider information.

It is stunning how democracy has evolved dramatically in the last few years, but how democracy in business has remained retrograde. Heraclites has said that cattle are driven to the water with a stick, and the same law prevails possibly with humankind. There needs to be a catastrophe in order to instigate drastic change, as only after World War II did the world reach the conclusion that the best regime is the democratic regime, and the communist economies needed to collapse in order to change their totalitarian regimes. I am not so pessimistic and am convinced that even without a catastrophe evolution is inevitable and in five or ten years at most there will be a drastic change in ethics in the relations between companies and stakeholders. We need to publish theses, books, articles on this subject, we need to introduce new norms, we need to use the Internet and other vehicles to augment the democracy of companies and assist the stakeholders. We have to remember that there has never been a revolution in the US to abolish racist laws, there has never been a revolution in South Africa to abolish apartheid, and there has never been a revolution in the Soviet Union and its satellites to establish capitalistic democracy.

The dictatorial regimes of Spain, Portugal, Argentina, Chile or Greece have disappeared almost without bloodshed, although they were established in civil wars and bloody revolutions. The reason for this evolution without revolution was that the dictatorial regimes were ostracized and boycotted by the democratic countries, which have also ostracized the regimes of the Soviet Union and South Africa. In the same manner we need to ostracize and boycott the companies that will not conduct themselves ethically toward the stakeholders.

Stakeholders are waiting for their leaders, their Martin Luther King, their Nelson Mandela or their Ben Gurion. They are waiting for their 'Altneuland', their 'Contrat Social' or their 'Kapital'. Business ethics is not merely a nouvelle vague, a new wave, an ephemeral fashion, a gimmick, a buzzword. This is the new level of evolution of business, after the taylorism, the marketing, the organization, the

quality and the ecology. The time of business ethics has arrived and it will remain forever.

We should however be careful not to succumb to the tendency to pay artificial tribute to ethics as many companies are doing today, by having Codes of Ethics and not practicing them. As it is not politically correct to express oneself with pejorative terms toward women, Afro-Americans or Jews, the majority of businessmen declare their profound allegiance to business ethics but some of them continue to act as in the past in their intimate circles. Eventually, they could hire an ethics officer, ethics consultants, or finance an ethics cathedra, to use them as Adam's leaves to cover the moral nudity of their companies.

We know how the 'robber barons' have alleviated their conscience by donating millions of dollars to build museums, universities or hospitals. According to their ethical norms and the norms of their followers to our days, they can despoil the rights of minority shareholders, cheat their customers and suppliers, destroy the ecology of entire nations, and make amends for it by giving to society a small percentage of what they robbed and usurped. And society, in order to thank them, nominate them as doctors honoris causa, give them the legion of honor, or the award for the best industrialist or exporter.

The only way to act against those ethics criminals is by organizing a campaign led by the activist associations that will ostracize the unethical businessmen instead of envying them, to refuse their donations, to nominate them doctors deshonoris causa and to put them on the black list. For them, appearances are very important and they invest considerable amounts in public relations in order to save face. We should only change their rules of the game, as those who should lead in the business world should be the ethical businessmen. It would be like being members of an exclusive club, where the ethics criminals would not be admitted, even if they try to redeem themselves.

We have already mentioned the activist minority shareholders, but we should emphasize also the worker-owners, as a vehicle to safeguard the rights of minority shareholders. The activist minority shareholders were already responsible for the significant improvement of competitiveness and financial results of many American companies in the last ten years of the century. Companies such as General Motors, IBM, Eastman Kodak, Westinghouse, and Sears Roebuck have improved their performance as a result of an intervention of activist shareholders. The 100 million salaried in the U.S. possess through their pension and other funds the majority of shares of a large number of companies. "There are now over 10,000 American ESOPs, including huge companies such as United Airlines, Avis Rent-a Car, and Weirton Steel, and there is evidence that they are more responsive to their employees and their customers. Studies show that worker-owners are more productive and deliver higher quality, with Avis now number one in ratings of customer satisfaction.

Hundreds of ESOPs and cooperatives, including large worker-owned factories, practice sophisticated forms of workplace democracy. They are proving effective in job creation and retention, and are responsible for saving hundreds of jobs during the epidemic of factory closings in the last decade. According to polls, including one by Peter Hart, economic democracy makes sense to most Americans; approximately 70 percent say that they would welcome the opportunity to work in an employee-owned company. Employee ownership in the United States has grown fifty-fold since 1974, with employees being the largest shareholders in more than 15 percent of all public companies.

The cutting edge is in the Fortune 500, where by 1990 the percentage of employee ownership was 11.7 percent in Ford, 9.3 percent in Exxon, 10 percent in Texaco, 16 percent in Chevron, 24.5 percent in Procter & Gamble, 18.9 percent in Lockheed, and 14.5 percent in Anheuser-Busch. By 1995, employee ownership was higher than 30 percent in huge companies such as Kroger, McDonnell Douglas, Bethlehem Steel, Rockwell International, Hallmark Cards, Trans World

Airlines, U.S. Sugar, and Tandy Corporation. Thirteen percent of the labor force – 11 million workers – are employee owners, more than the number of private sector union members. The total value of stock owned by workers in their own companies now exceeds \$100 billion.” (Derber, *The Wilding of America*, p. 158-159)

On the other hand, many companies and university professors maintain that stakeholders and minority shareholders harass the companies in order to extort benefits that are not due to them. Therefore, according to them, it is their duty to prevent their schemes by forcing them through the courts to pay damages. If the issue of the stakeholders is tackled under a strictly defensive angle, we can find many cases in which stakeholders resort to harassment maneuvers that not only destabilize the management in charge but can also in due term threaten the social interest. As the right to criticize that is recognized for the stakeholders has only a goal to serve strictly their individual interests, the protest becomes pure harassment reprehensible as other sorts of harassment, such as contractual harassment. Those strategies of harassment have sometimes received some encouragement, notably through the decisions of the Court, especially in cases of class actions.

The following is a sample of social investing and consumer activist groups and organizations: 20/20 Vision for protecting the environment, Action against Hunger, The Action Coalition preserving human rights, the American Animal Care Foundation, Center for Biological Monitoring, Center for Defense Information monitoring and criticizing the military, Center for Economic Conversion, Computer Professionals for Social Responsibility, Co-op America provides practical tools for businesses to address social and environmental problems, Council on Economic Priorities, Cruelty Free Investment News, Earth Challenge, Earth Wins, Environmental Defense Fund, The Equality Project, Fair Trade Federation, Friends of the Earth, Grassroots International working for social change, Habitat for Humanity International, Hunger Web, Inner City Press

on community reinvestment, Institute for Global Communications, International Co-operative Alliance, International Federation for Alternative Trade, Macrocosm USA for urgent social and environmental problems, New Uses Council for new consumer uses of renewable agricultural products, New World Village for the politically progressive Internet community, the Nonviolence Web, Nuclear Information and Resource Service, Pax World Service, Physicians for Social Responsibility, The Progress Report, Public Interest research Groups, Rainforest Alliance, Social Justice Connections, Union of Concerned Scientists, Zero Waste America.

Transparency International is a non-governmental organization, operating in about 90 countries and dedicated to increasing government accountability and curbing both international and national corruption. The movement has multiple concerns:

- * humanitarian, as corruption undermines and distorts development and leads to increasing levels of human rights abuse.
- * democratic, as corruption undermines democracies and in particular the achievements of many developing countries and countries in transition.
- * ethical, as corruption undermines a society's integrity.
- * practical, as corruption distorts the operations of markets and deprives ordinary people of the benefits that should flow from them.

Combatting corruption sustainably is only possible with the involvement of stakeholders, which include the state, civil society and the private sector. Through their National Chapters they bring together people of integrity in civil society, business and government to work as coalitions for systemic reforms. As they outline in their Mission Statement they do not identify names or attack individuals, but focus on building systems that combat corruption. They are playing an important role in raising public awareness and their Corruption Perceptions Index has triggered meaningful reform in many countries.

Transparency International classifies countries according to their level of lack of corruption, giving to Finland in 2000 the grade 10, or first place, for being practically without corruption, and to the other Scandinavian countries the second, fourth, sixth and seventh place. The other countries are: New Zealand (3rd 9.4), Canada (5th 9.2), Singapore (8th 9.1), the Netherlands (9th 8.9) and United Kingdom (10th 8.7), the ten least corrupted countries of the world, with grades of 10 to 8.7. Switzerland is 12th - 8.6, Australia is 13th - 8.3, the United States is 14th - 7.8, Germany is 17th - 7.6 and Spain is 20th - 7.0. France is 21st - 6.7 and Israel is 22nd with 6.6. In five years Israel has deteriorated from 14th place to 22nd place. Japan receives the grade of 6.4 in 23rd place, Belgium 25th - 6.1, South Africa 34th - 5.0, Italy - 4.6 in 39th place, Brazil 49th - 3.9 and Turkey 50th - 3.8. Argentina is 52nd - 3.5, Mexico 59th - 3.3, Egypt 64th - 3.1, Romania 68th - 2.9, India 69th - 2.8, Kenya 82nd - 2.1 and Russia - 2.1 in 83rd place. Nigeria is the most corrupted country with 1.2 in 90th place.

Karl Marx did not believe that the proletariat existed as a class conscious of its rights when he wrote 'Das Kapital'. The stakeholders, nowadays like the proletariat in the 19th century, are not associated and conscious of their power. Marx has noticed the excessive abuse of power of the capitalists of his time who managed the economy not with the invisible hand of Adam Smith but with an iron fist, which oppressed the masses. It is Dickens, Zola, Hugo and others who have described the sufferance of the masses, but unfortunately a substantial part of modern literature does not pay attention to the wrongdoing to stakeholders. Marx and Zola have condemned the indifference and injustice of the mighty toward the poor, the weak, those who were not organized.

“Taking the labor theory of value to its logical conclusion, Marx argued that those who did the work produced the value and, consequently, deserved the products of their labors for themselves. In other words, his emphasis on the actual activity of production instead of the commercial value of the end products led him to a conclusion that would have not been tolerable to Adam Smith – that the work

itself was everything and the operations of the market were only a systematized form of theft. Marx, in other words, is very much in the line of ancient and religious thinkers who rejected the activity of business as parasitic on the honest labor of the working man... That concept is exploitation, and it is the sense of being exploited that did, in fact, create the class consciousness Marx urged (for example in the American labor union movement) and that continues to appeal so powerfully to so many people in Third World countries, especially former colonies of the great industrial empires.” (Solomon, *Above the Bottom Line*, p. 267)

Nobody advocates ending up with the conclusions of Marxism in order to safeguard the interests of the stakeholders, although the basic situation is the same – they are the majority of people contributing the most to the economy but sharing only a fraction of their contribution without being represented adequately. The solution should be cooperation between the stakeholders, the controlling shareholders and the management of the companies. But in order to reach this stage, it is needed that the stakeholders should sense that they are despoiled in many cases, they should organize in order to safeguard their interests, and they should be assisted by the activist associations. We could do it by way of evolution or by revolution. The corporations should reach the conclusion that it is in their best interest not to abuse their excessive rights and conduct in a similar way of Great Britain, which has managed to move from absolutism to democracy without a revolution.

SOCIAL RESPONSIBILITY CASE - DIRECTOR IN AN NGO

(All the characters and plot and all the names of the companies in this case are fictitious)

"You will not believe me if I told you whom have I met in the mall", said Liv to Gustav on returning home. "I met Olaf who studied with me in elementary school and I haven't seen him since. He recognized me immediately and asked me what am I doing and how do I manage to look so young. You haven't changed since you were twelve years old he said. I was so flattered by the compliment that I invited him and his wife to a lunch at our house on the week-end. He is the General Manager of our local theater and when I told him that the theater was your main hobby he promised me that you'll have plenty to talk about."

And indeed at the lunch they became good friends, Gustav showed proudly to Olaf his library with more than one thousand plays in the twenty languages that he read and he told him how he employs his business trips to see the latest plays in Paris, London, New York, Frankfurt, Madrid or Milan. Olaf asked Gustav how charity doesn't begin at home and why he has no subscription to the local theater. Gustav answered him that he was once a subscriber but as the artistic level deteriorated he decided to discontinue his subscription.

"You offend me", Olaf said, "you don't know that since I came to manage the theater a year ago the theater has become one of the best in the country, we have won many prizes and have doubled our subscribers. You should be a member of our Board of Directors, we need good men like you, come and do something for the community, everything is not only business in life."

Gustav was very flattered by Olaf's proposal and after meeting Ingrid, the Chairman of the Board, who was very enthusiastic of the combination of his business and cultural background, he accepted Olaf's offer and became an Independent Director of the local theater. Gustav became heavily involved with the theater's life. He was total in his involvement in every field and when he was interested in a subject he devoted to it hundreds of hours, even if it was pro bono.

He invited to lunches in his house dozens of friends and convinced them to subscribe to the theater. He became instrumental in the theater's PR among the business community and asked them to give a chance to the theater that had now an excellent repertoire: Hamlet, The Crucible, Romeo and Juliette, and other local and international plays.

In the first Board of Directors' meeting that Gustav attended Olaf presented the huge deficit amounting to ten millions and the burden it put on the operational budget. Some of the directors complained on how there were some municipality officials who received free tickets to the theater that was almost bankrupt and Gustav proposed that it should cease at once.

He said: "We should set an example to the municipality officials and to the public and pay for our complimentary pair of subscriptions that we receive for free and costs two thousand. All of us come from a socio-economic environment that allows us to pay for it and I am sure that it will give us legitimization to cancel all the complimentary tickets and an excellent PR." The directors didn't like at all his ideas, but Gustav insisted to put it to a vote. Only one director out of the twenty voted in favor, but he decided to pay for his subscription, the only director to do so.

After the meeting Greta, the theater's PR, came to him and told him in Italian, a language both of them spoke: "Tu sei pazzo da catena, you are completely crazy, to raise such a touchy issue and at your first meeting. You are heading to a suicide

course and if you continue in it you will not be able to make any change in the theater. You should be practical, understand the reality, *chi va piano va sano e va lontano*, go slowly and you'll succeed."

Gustav enjoyed very much talking with the brilliant Greta and answered her *du tic au tac*: "*Chi va con zoppo impara zoppiare*, if you go with lames you start to lame. I didn't come to the theater to go slowly or to get accustomed to the lame ducks that I see all around. I came to make a revolution and if I don't succeed I'll leave. We cannot afford to go slowly with such a huge deficit as we will not exist in a few months. We have an excellent repertoire, very good managers, a brilliant PR officer, it is high time that we take all the benefits of these and conduct a turnaround. I came to the theater to show it *Quo Vadis*, where to go, I have an excellent background in strategic planning and turnaround plans and I don't see why I shouldn't apply my business experience to this NGO."

She answered him bewildered: "*Si non e vero e ben trovato*, if it is not true at least it is a good story, go for it but I am sure that you'll not succeed. I am too veteran in this theater to understand that the theater and the local officials would never agree to a revolution. I met guys like you all over the years and none of them remained in the rotten kingdom of Denmark." What does she understand this Greta, Gustav thought, she is already twenty years in this theater and has succumbed to routine.

Gustav started a series of dozens of meetings with the management at all levels, with the actors (and the actresses), the directors, the PR officer, the Sales manager, the VP Finance, and everybody who could influence the turnaround. He even met the municipality officials who were responsible for the theater (and who were not so cooperative after they heard that he suggested ceasing the receipt of their complimentary tickets). He worked for hundreds of hours and prepared a detailed business plan.

Olaf was enthusiastic and told Gustav: "I appreciate very much the tremendous effort that you put in our theater. You did a fantastic job. No director has ever introduced such an innovative spirit in our theater. You showed us that an NGO should work according to business principles and I have a special bonus for you. I know that your favorite play is *The Crucible* by Arthur Miller. Be prepared for an experience that even you cannot pay for it, you are kindly invited to the dress rehearsal of the play, go and enjoy, it starts in five minutes..."

Gustav sat in the dark theater with tears in his eyes, for the first time in his life he was present at a dress rehearsal. He sat among the most famous directors and actors in the country who were invited for the rehearsal. It was indeed a treat, one of the best in his life, all his efforts were not in vain, and he was at last an integral part of a leading theater.

But his euphoria was soon shattered. All his proposals were rejected. His strategic planning was not even brought to discussion as he proposed to review the concept that the theater should be a municipal theater. He proposed to relocate the theater from the old neighborhood where it was unsafe to go at night as many potential subscribers were afraid to go to the theater because of the drunkards and the junkies who lived in the neighborhood. Gustav interested prominent contractors to finance the relocation to a new neighborhood but the city's mayor refused even to consider it as it was against his urban plans. Ingrid, who backed Gustav's proposals at the beginning, gave him the cold shoulder after she saw that the mayor, the directors, the municipality officials, in short everybody was against him.

The final blow was when Gustav who advocated transparency discovered that the true deficit was not ten millions but fourteen millions. He demanded that the financial statements should be corrected accordingly as he didn't want to sign like all his predecessors on a false report. Everybody tried to convince him that he should retract from his crazy request. "It will ruin our reputation", he was told,

"nobody will ever lend us money, and there will be a request for an enquiry to find out why we have concealed this additional deficit." But Gustav was very firm in his request, he knew that he could be sued if he signed the reports and it could ruin his business career.

Furthermore, there was no director's liability insurance and he was exposed to suits of millions if the theater was not able to pay its suppliers or employees. He could lose his house and all his savings. Definitely, there was a limit to what he was willing to do for the community, especially if it didn't appreciate too much his endeavors. Many suppliers who didn't receive on time their payments asked him to intervene on their behalf.

Gustav, who never took a loan in his life, was now a director of a bankrupt theater who might cease paying its creditors any moment now. But the theater refused to recover from its catastrophic situation; they refused to receive his business-like advice, so how could they expect that he would be responsible for their misconduct.

When the Board of Directors fired Olaf, it was the last straw, as without a good manager and repertoire the theater stood no chance for recovery. Gustav resigned from the Board of the Directors without giving any explanations. When Ingrid who sounded very surprised asked him why, Gustav told her that he was too busy with his business obligations and he had no time left for any pro bono activities.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: SOCIAL RESPONSIBILITY CASE - DIRECTOR IN A NGO

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Gustav, a businessman, independent director of the local theater, 2. Olaf, General Manager of the local theater, 3. Ingrid,

Chairman of the Board of Directors of the local theater, 4. Greta, PR officer of the local theater.

- * How does the personal background of every protagonist affect his decisions?
- * Has Gustav left the sinking ship like a rat?
- * Why hasn't Gustav remained in the theater to try to change it from within?
- * Was Greta right in her previsions and should the road to change be much longer?
- * Why hasn't Ingrid, the Chairman, given a better backing for Gustav's initiatives?
- * Has Gustav any chance to succeed in community pro bono activities? If he hasn't succeeded to change anything in the theater maybe he should be a director in the films' festival, or in an ethical organization like Transparency International?
- * Why hasn't Olaf succeeded to change the theater as he hoped and was he sorry that he recommended Gustav as a director of the theater?
- * Were the considerations of the mayor justified, what is more important: urban considerations, the success of the theater, other factors?
- * Will Greta stay in the theater and try to change it slowly from within as she suggested to Gustav?
- * Can the business experience of Gustav be translated to a NGO like the local theater?

* What are the requirements needed for an NGO director in general, for a director in the local theater?

* What are the lessons that you draw from this case? What will be the course of conduct of the theater in the future? Will it go bankrupt? Will it recover? In a year, five years, ten years?

CONCLUSION

Gustav continued his subscription at the local theater for one year more but ceased it subsequently. The repertoire was very poor and the new management incompetent. The number of subscriptions went down by fifty percent. But Gustav continues to travel often abroad and compensates himself with the best world repertoire. "You cannot be a prophet in your hometown", he said recently to a friend who asked him why he does not volunteer to a pro bono assignment.

Greta continues in the same position in the local theater. She remained a good friend of Gustav but cannot change anything. Recently they adapted together an ethical novel that Gustav has published. Gustav told her: "We cooperate at last in something productive. You should be creative, write plays, novels, you are very talented. Get out of the routine and do something with your life!"

Ingrid has left the theater and has entered in politics. Maybe she thinks that in politics she would be able to change more for the community. Olaf is now a manager of another theater and enjoys very much his new position. The new mayor of Gustav's hometown asked Gustav recently to present a strategic planning for the theater. Gustav wrote a new plan but he hasn't heard since then from the mayor.

Gustav left all his pro bono activities after encountering similar problems. "I was probably not born to be a director in an NGO. When I see so many friends who are serial directors and are never bothered by anything I envy them. I was not made of this staff. I am a total man and if I cannot change the organization I leave it." He decided to devote his pro bono activities in teaching young students business ethics. At last he found a domain where he can influence people, the students like him and he was recently chosen as the best lecturer of his university.

PRESERVATION OF HUMAN CAPITAL CASE – SEXUAL HARASSMENT

(All the characters and plot and all the names of the companies in this case are fictitious)

Catherine, VP Finance and CFO of Masur, was shocked. Douglas, the new CEO of Masur, pressed her tightly to his body and confessed to her that he desires her. His marriage life is a mess, he is considering leaving his monstrous wife, and he liked Catherine from the first time that he saw her. He dreams of her at night and is ready to do anything for her. He proposed to buy her a luxurious company car, the latest Audi model, as he appreciates very much her achievements at work, they will fly to exotic places like Fiji and Rio on behalf of the company and will stay at the most expensive hotels. "Don't worry", he told her, "I have an open expense account and I have carte blanche from the Board of Directors to do in the company whatever I want, provided that I succeed to turnaround the company. I need you 24 hours a day, you'll assist me to make the company profitable, you'll be my Executive VP, and who knows, one day you might even replace me!"

The astonished Catherine couldn't free herself from the strong embrace of Douglas. She was afraid of the terrible scandal that could ensue if she would scream or if somebody would enter the room. In Masur, where she worked for five years, everybody knew her as a quiet woman, very dedicated to her work, with a classical beauty of Botticelli's Venus. Victor, her husband, worshiped her, she was a model mother to their son and daughter who studied in elementary school, and her house was always very clean in spite of her long hours at work. Victor always asked her how she manages to do everything so perfect and she smiled saying to him that it is because she loves him, the children, the house and her work. She was never harassed so brutally before. At the university some fresh

students tried to do so, but she knew how to refuse without causing a scandal or even offending the students. Some of them even became her best friends, after all it was a common norm among young people and she looked at it in her calm and serious way as a bother but no more. Catherine never thought that she would have to face in her own company such harassment, especially as she was now a married woman, a mother of two children and a VP. Least of all she expected it from the CEO, but he was also the only one who would dare to do it. Douglas was a middle-aged handsome and virile man and his wife was fat, ugly and neglected. But she came from a very rich family and this was the price he had to pay in order to study, have a house and an easy life. His father in law sent them to study at one of the best American universities after a six-month honeymoon around the world. But his success in the business world was due solely to his own capabilities and he had a reputation of a business wizard. He was extremely self-assured, scorned the conventions, and did whatever he liked.

After the first shock, Catherine pushed Douglas and told him dryly in a very resolute tone that she is not interested in his courtship, she is happily married and he doesn't attract her at all. She promised him to forget this slip if he would cease his harassment. But Douglas insisted, almost every night he asked her to come to his office after working hours to explain him financial issues and on every occasion he continued his harassment. The situation became unbearable. Catherine's employees started to wonder what was she doing every evening in Douglas's office and they were convinced that they had an affair. Finally, Catherine decided to tell her husband Victor on Douglas's harassment. Victor was stunned that it was going on for weeks and advised her to go to the police and bring a charge against him for sexual harassment. Victor was a contractor, without a formal education, very delicate, a few years younger than his wife, but he was convinced that the money he brought outbalanced these "deficiencies". Nevertheless, he was afraid that Catherine invited Douglas's courtship as this successful middle aged macho was the complete opposite of him.

Catherine refused to complain to the police. She was not interested in a scandal and was afraid of the negative publicity it would bring her. She never gave an interview in her life and knew that the press would like very much to report on this juicy scandal. Besides, Catherine knew of the negative image that whistleblowers had and this was so contradictory to her nature that she couldn't lead such a fight. It will also be his word against her, and Douglas would say that she wanted to blackmail him and receive a raise in her salary and bonuses. Victor told her to quit her job, he earned plenty of money and she doesn't need to work. They can have one or two more children and she could be a housewife, study for a PhD, teach at the university, or do whatever she likes. But Catherine didn't give up. She told him: "Masur is a second home for me. I built the finance department with my ten fingers. I was the one who discovered in what bad shape the company was after I succeeded in building a reliable pricing and budgeting system with up-to-date financial reports. I am perceived as one of the best CFOs in the country, I have a very high salary, and for a woman it is quite an achievement. I am not going to throw everything away because of an aging sex-maniac!" Finally, they decided that she will consult her close friend, Marilyn, the VP Human Resources. Both of them were the only women in Masur's management and they had a tough job to be received in the virile environment of the company's management, but they helped each other and had the same views on many topics.

Marilyn was very pleased to meet Catherine in her office: "To tell you the truth, I was convinced like everybody else that you had an affair with Douglas, especially because he is the total opposite of Victor. I thought, with my silly psychological background that you had a father complex and that's why you choose Douglas. But I am very glad to learn that I was completely wrong and I will do everything to assist you. The next time that he will harass you, I suggest that you threaten him that you will complain to the Board and to his fat wife. He is rather new in the company and he will not jeopardize his position for an affair. There are enough single and divorced women in Masur that would be delighted to have an affair with him, so he'll not have to mourn you too much." Catherine was afraid to

threaten, as it was against her gentle nature, but comforted with her friend's advice she decided to do what she recommended, after all, Marilyn had a lot of experience and she was the VP Human Resources. When Douglas tried once more to harass her, she told him bluntly that she has already told her husband and Marilyn, and if he wouldn't stop she would go to the Board and even to his wife.

The next evening Douglas invited Catherine to a meeting at nine PM. She was surprised by the very late hour; especially that she knew that at such hours there was nobody in the company. When she came to the meeting she was astonished that the wife and the secretary of Douglas were present. Douglas told Catherine arrogantly: "I have invited my wife to witness how I ask you once and for all to stop harassing me, threatening me and blackmailing me on false charges of sexual harassment. I asked also my secretary to be present in order to make a written report of our meeting and to testify that you are harassing me in the last few weeks with your threats, by coming to my office in late hours when nobody is around and by trying to seduce me. She even heard you saying that if I wouldn't buy you a new luxurious Audi you'll go to the police and complain. There is a limit to what I can suffer from the harassments of a slag like you. My wife believes me fully, as she knows that in my previous job the company secretary also tried to blackmail me and she was shamefully fired. I hereby give you a last warning before firing you, if you'll not stop your harassment I will decapitate you and ensure that you'll never receive any job in our country." The stunned Catherine didn't say a word; she burst into tears, and ran away from the office.

After returning home she decided with Victor that she hadn't any choice and she has to complain to the Board. The day after, she wrote a detailed letter stating all what happened and sent it to Curtis, the Chairman of the Board, asking him to interfere as the situation was unbearable. Curtis met with Catherine immediately and told her that he has decided to send her letter to all the Board members as he was convinced that she was trying to frame the poor Douglas with her false charges. He sat at her side, took her hand firmly and said: "Honey, even if all

what you wrote is true it doesn't matter, as we need Douglas. We brought him to turnaround the company, millions are at stake and I cannot afford that such trifles would interfere with our business. The mission of our company is to maximize profits and you as a CFO should know it. I have only one allegiance - to the controlling shareholders, I am not your friend, I am not interested in your inventions, I back fully Douglas as he is irreplaceable and you are expendable! I appointed him and don't expect me to admit that I was wrong. We give you 24 hours to retract your false allegations and if not - you'll be fired on the spot."

Catherine returned home, but nobody was home at such an early hour. She wanted to cry but decided to be strong more than ever. She stood at a crossroad that would change all her life and she had to decide coolly what to do, without emotions, to think like a "man"... She made the balance of the pros and cons of all her alternatives and tried to decide which option to chose: go to the police, speak personally to all the members of the Board, tell everything to Douglas's wife, ask for Marilyn's assistance, let Victor decide, leave everything and quit the company. Maybe after all it wasn't such a bad idea to devote all her time to Victor and the kids.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: PRESERVATION OF HUMAN CAPITAL CASE - SEXUAL HARASSMENT

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Catherine, VP Finance and CFO of Masur, 2. Victor, her husband, 3. Douglas, CEO of Masur, 4. Curtis, Chairman of the Board of Directors of Masur.

* Make a balance of the pros and cons of all Catherine's alternatives of actions.

* Was Catherine wrong on the handling of the situation, where exactly?

- * Why is the first inclination of many of us to blame the victim of the responsibility on what happened to her?

- * Based on Catherine's character what do you think will be the course of action she will choose?

- * Why has Douglas chosen Catherine of all the women in Masur?

- * Why has Douglas's wife believed her husband?

- * Why does Curtis believe Douglas, or does he really believe him?

- * What is more important in the business world: justice, human relations, the bottom line.

- * When we have to choose between two opposite versions which one we would tend to choose? Why? Is really everything in life based on interests?

- * Why has Douglas chosen the tactics of intimidation and was it justified from his perspective?

- * What is the importance of a good reputation for Douglas, for Catherine, for Masur? To what extremes would men and women go in order to preserve their good reputation?

- * Can such cases occur in your country, your company, to you, have you incurred such cases?

- * Try to find a positive argumentation on Curtis's conduct.

- * How do you think that Marilyn would react to the latest developments?

- * What will Victor advise Catherine to do?

- * How will Catherine be perceived in the business world if she goes to the police?

- * Does Catherine have a case if she goes to the police?

- * What is the image of a woman who complains on sexual harassment in the business world?

- * Why do some people always say that there is no smoke without fire? Is it true?

- * Why have everybody in Masur believed that Catherine had an affair with Douglas?

- * What is the optimal course of action that Catherine can choose in order to remain in Masur and not be harassed anymore by Douglas?

- * It appears that Douglas has a similar record in his previous company. Why hasn't he been convicted yet for all his sexual harassments?

- * How would you behave if you were Catherine?

CONCLUSION

Catherine went to the police. The officer who received her complaint was convinced that it was justified, especially since she knew of the previous complaint against Douglas. She suggested Catherine to "seduce" Douglas and make him confess all her allegations, record him, and bring the incriminating evidence to the police. Although Catherine was reluctant to be a whistleblower she thought that Douglas has gone too far this time, she had to stop him once and for all, whatever the cost will be. She was quiet and gentle, but when she was finally angry she could be very resolute and irrational.

She set a meeting with Douglas in a coffee shop. Catherine came to the meeting in a provocative dress and told him: "I have to confess, you have won. I should have agreed to your proposal from the beginning but I was afraid of the repercussions it would have on my marital life. I married Victor a marriage of convenience, although I didn't love him. He came from a rich family, but cannot match you in your virility. The truth is that I was attracted to you right away and that's why I opposed you so much as I didn't want you to think that I was easy to get. If you are still interested in me I am willing to accept your generous offers, you'll buy me the luxurious Audi company car as you promised, I will accompany you to all your business trips and be your mistress. I don't care if our affair becomes public, as I intend anyhow to divorce Victor. I know that you'll never be able to marry me as you need your wife's money, but I would be satisfied to be only your mistress."

Douglas was so impressed by Catherine's confession that he answered immediately: "Baby, I knew we would get to that. The woman who cannot stand my sex-appeal was not born yet. I knew from the start what your true nature is and that beneath the Madonna's image hides a very sensuous woman that her womanly husband hasn't discovered yet. I was blunt to you, as you women understand only such a language. The tougher you are to women the more they appreciate you. I stand behind all my commitments as I am a man of honor. You'll

get your luxurious car and accompany me to all my trips if it is needed professionally or not. Curtis the moron and all the other jerks of the Board cannot refuse me anything and I'll need you to relax anyhow, so that it is justified from the company's perspective. Let us meet tonight at the hotel and celebrate all night our agreement." He pressed her hard and gave her a kiss. Catherine ran, disgusted, to the police and gave them all the evidence. The police officer complimented her on her coolness and told her that now Douglas would be convicted and Curtis will not back him after hearing what he said about him.

Douglas was fired from Masur, but Catherine was also asked to leave. The scandal appeared in the front pages of the newspapers after the police leaked out the story. Catherine couldn't find another job in all the business community of her country. Victor who thought that there was no smoke without fire divorced Catherine and married an 18 year old woman. He was the first man in her life and he hoped that she will be faithful to him. She was a new immigrant and agreed to stay home and raise the children. it was quite refreshing to have a woman who had no ambition and who was totally dependent on him. That is what all women should do, he thought, the worst thing in life is a feministic woman, careerist, ambitious, intelligent, educated, strong-willed and older than he was.

Catherine was forced to live on a meager income as a freelance, preparing tax reports for small companies. She couldn't give her children the best education as her husband gave her only a minimal alimony. She never remarried and thought that she has ruined her life with her own hands. Catherine often wonders if she was right in refusing to be Douglas's mistress. She would be better off, for sure. Douglas continued to succeed in business and the new companies didn't care so much of his affairs as he was an excellent CEO. Catherine was embittered and thought that there was no justice in society, the strong persons always win and the ethical ones suffer...

EQUAL OPPORTUNITY CASE

RACIAL DISCRIMINATION

(All the characters and plot and all the names of the companies in this case are fictitious)

Sima Buzaglo, the Legal Counsel of White Medicines, couldn't believe what she heard. She attended the weekly management meeting in the sumptuous meeting room of the company. Sima was the youngest executive in the company, the only woman, and the only person from an oriental origin. Truly, she was quite surprised when she was appointed to this position a year ago after finishing summa cum laude her studies in the best Law School in Paris. But she was fluent in French, her mother tongue, as she spoke it at home, her parents being from a Jewish Algerian origin who have immigrated to Israel long before she was born. Most of the customers of White Medicines were French companies, the contracts were in French, they had a subsidiary in Montpellier, and the Israeli company needed a French lawyer with a French and Hebrew background. Soon she learned that there was also another reason - the company whose management and Board comprised totally of Ashkenazi (Jews from American and European origin) Israeli men needed to have in its management a woman and preferably a Sephardic (Jews from Asian and African origin) one. They didn't want to be accused of discrimination and this was for them the optimal solution. Sima was also an excellent lawyer, somewhat inexperienced, but very ambitious and hard working. Besides, she didn't look oriental and Sephardic at all, as she was "complimented" by her colleagues, she was blonde and white skinned and one could be mistaken that she was a Swede. They told her jokingly: "Are you sure that one of the blond soldiers of Rommel or De Gaulle who fought in Northern Africa was not the lover of your grandmother?" But she thought bitterly how they would react if she would

tell Mordekai, the CEO of the company who was darkish: "Are you sure that your mother didn't have an affair with her Arab gardener?"

Sima thought often to change her family name. She was convinced that if her name was Helena Bugoslavski she would overcome many of the prejudices that existed against oriental Jews in Israel. But she knew that it would offend very much her father whom she worshiped and who was Buzaglo for ten generations at least. Her father was a wealthy merchant in Alger and came to Israel as he was a Zionist. But he couldn't adapt to the Israeli business mentality, was conned and lost all his money. They had to move to a small town in the desert and were it not for her mother who was a university graduate and educated Sima at home in French, history, mathematics and most of the other subjects she would have received the same mediocre education as all her friends and be a waitress at most. Most of her family immigrated to France and succeeded very much there. One of them was a TV star, another a standup comedian, she had uncles who were physicians, professors, scientists. One of them had even the largest optometrist chain in France. From all the family who immigrated to Israel she was the only one to have a Masters degree or to have a university education at all. Besides receiving the best education at home, she got many scholarships, she was a brilliant student, and her rich French uncle even assisted her to study in France. Nevertheless, she had the Zionist virus of her father and decided to come back to Israel although she was offered very interesting positions in France.

In the last few months she sensed that the jokes and remarks at White Medicines became more and more venomous. The founders of the company, which was one of the largest in Israel, couldn't adapt to the fact that more and more Sephardic Jews held top positions in politics, in civil service, in the media, in theater, cinema and literature. They were astonished that oriental Jews became Presidents of Israel, successful Ministers (foreign affairs, treasury, and defense), General Managers of government organizations; the Sephardic orthodox even founded a strong party who was instrumental in welfare and education. Only in one segment

the Sephardic Jews, who were a majority in the country, were almost not present - in the management and Boards of public companies. So, Mordekai and the like were anxious to keep them away from these positions that were the highest paid in Israel but they didn't mind to have one specimen in their executive suites. They were mostly afraid that their children would bring them home a Schwartz (black in Yiddish) daughter-in-law. Sima was an excellent scapegoat; she heard their racist remarks and remained silent. Zalman, the CFO, told her recently that he can't understand how the country's celebrities go to the Babas (holy men) and the like, to receive their blessing. "It is a primitive and barbaric custom to receive the blessing of a holy man, who gives them talismans and good-luck charms. We are returning to the Middle Ages with all those superstitions, it is the only thing that the North Africans Jews have brought to Israel." Sima tried to answer in a soft voice: "And what about the talismans of the Lubavitch Rabbi. The Hassidim think that he is the Messiah and that he didn't die, so he is still alive among us and they distribute his good-luck charms." But the VP R&D Tevie answered: "There is no difference between them, your people are blacks and our orthodox people wear black, in principle both of them are primitive." Zalman even joked about the new cinematheque that was opened in Sima's hometown: "What do your people need culture, the only films you watch are anyhow Arabic films with Farid Al-Atrash and Um Kulthum." And Sima, who had also a BA in French and English literature, remained silent.

But the climax came on the same morning, when they heard on the news that Palestinians mutilated bodies of Israeli soldiers in Gaza. In the management meeting, Mordekai burst out: "Where are we heading to in this country? Don't think that the Israelis are better, at least the Arab Israelis, I mean the immigrants from North Africa and the other Arab countries. They also mutilated corpses of suicide bombers a few years ago. What have your people contributed to Israel? The Jews originating from Germany, Poland and Russia have built this country, the Kibbutz, the industry, the liberal professions, the army. And what are your people doing all day: complaining that they don't receive enough welfare, most of

them are on welfare, and those who aren't want raises in their minimum salaries. They should be grateful that we give them employment at all and don't relocate our factories to the Far East, where the salaries are much lower. Tevie and Zalman, have you visited their towns in the desert? I have to go there once in a while as I have a factory. Everything is in a state of neglect, only Babas and fortune-tellers, superstitions and ignorance. And your leaders, they have conquered the labor unions and bring unrest to my workers, every now and then we have strikes, I wouldn't be surprised if one of the Labor Union leaders wouldn't run for prime minister. This would be the end of the country. Is it not enough that since some of your people hold senior positions in the police and the army they have corrupted those organizations taking bribes and cooperating with their cousins from the Moroccan Mafia? We are turning into a Levantine country and I wouldn't mind emigrating to Europe or America, from where we originated..."

The room was completely silent; all the executives looked at Sima. She was livid, her lips trembled, she burst into tears and said: "Mordekai, you are a lousy and shameless racist. To accuse a whole people for the misconduct of a few is like accusing all the Jews that they were responsible for the death of Christ. My people are a glorious community of whom I am proud. If you want so much to return to Europe you are invited to do so and wait for the next Holocaust. The Europeans that you are so proud of hated you, despised you, confiscated all your wealth and murdered you. We, oriental Jews, lived in peace with the Arabs for thousands of years and we never suffered such atrocities like in Europe. To say that we are parasites is an outrage, since we built this country and you were the parasites who profited from our labor giving us peanuts. If so many of our people need welfare and we have relatively more criminals it is because you didn't know how to integrate our community. The same families who immigrated to France are now la crème de la crème of this country while here in our nation we are the poorest community. These are the same families but here they grew up in a racist society while in France they were received as equal citizens. We don't stand a

chance here, with your nepotism where everyone gets jobs and benefits according to their origins and not according to their merits. And what recrimination do you have against your workers who earn minimum salaries while you earn more than a million dollars a year? This is not enough for you and you want to relocate your factories. You forget that you built them in development zones and received millions in grants from the government in order to employ Israelis and even if you want to relocate to the Far East - you are not allowed to do so. So, don't teach me lessons on Zionism, you are here because you receive the highest salaries and benefits that you can get at our expense and at the expense of our government, and if only you could you would desert this country with all the tycoons, who are the real parasites of the country, leaving us to rebuild our country with sounder foundations!"

Sima left the room flabbergasted and ran home. She phoned the day after and said that she was sick and wouldn't be able to come to office in the next couple of weeks. After two weeks she was considering her options when she received a short letter stating that the company has hired a new Legal Counsel, Dr. Jean Kadishman from France. Sima returned to her hometown to decide what to do. She phoned her French relatives and told them what happened, asking to check the credentials of this Ashkenazi Kadishman. A week later she returned to Tel Aviv knowing exactly what she should do.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: EQUAL OPPORTUNITY CASE - RACIAL DISCRIMINATION

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Sima Buzaglo, Legal Counsel of White Medicaments, 2. Mordekai, CEO of White Medicaments, 3. Zalman, CFO of White Medicaments, 4. Tevie, VP R&D of White Medicaments.

* What do you think that Sima should do?

- * Was the weak attitude of Sima prior to the clash appropriate? Did it invite harsher remarks?
- * Why has the company perceived Sima as a representative of her congregation and not as a human being, as every woman has dozens of characteristics and her origin is only one of them
- * Is there any racism in the business world of your country? Against whom? Describe.
- * There is no smoke without fire. Was there any truth in the allegations of Zalman, Tevie and Mordekai?
- * Are the racist remarks of the company's management identical to anti-Semitic remarks said against the Jews in the Diaspora?
- * Was Sima right in her outburst?
- * Was Sima right in what she said to Mordekai?
- * Was Mordekai surprised of Sima's outburst?
- * Why was Jean Kadishman hired by the company right in this timing?
- * Was Sima hired because of her origins, her capabilities, both?
- * A company who has a Sephardic Board/management member cannot be racist. True or false?
- * Is it possible to sue the executives for their racist remarks?

- * Does Sima know company's secrets that she can use to get revenge from the company?
- * What will be Sima's reputation if she will publish what happened to her? If she becomes a whistleblower?
- * Will Sima be threatened if she will blow the whistle on the company?
- * Should Sima abstain from reaction in order to keep her job? Is it not imperative for her to do so in order to prevent the justification of treating her "people" as troublemakers?
- * Why has the branch of Sima's family who has immigrated to France succeeded much more?
- * Where is racism in business more acute, if at all: in France against Arabs, Jews or Africans, in England against Arabs, Jews, Indians, Pakistanis, Africans, in the US against Arabs, Jews, Afro-Americans, Hispanic, Chinese, Indians, Japanese, Native Americans, and so on.
- * Is the appointment of a new Legal Counsel above Sima a proof of a racist conduct, a reaction to the "freshness" of Sima who insulted Mordekai, or simply because Jean was better?
- * Should there be affirmative discrimination in liberal professions, management, Boards of Directors, Universities, government organizations, army, police, and so on.
- * Is there a more overt racism, if at all, against specific communities, why?

* What is the right way to fight racism in business: restraint, struggle, political activism, teaching at the university, articles, books, novels, essays, dissertations, activist associations?

* How would you behave if you were Sima? Mordekai? Can a CEO forgive a subordinate if she spoke as harshly to him as Sima did, even if he was wrong? Can a CEO attack in such a way a subordinate in public or in private, what is her fault after all?

CONCLUSION

Sima's French relatives suggested her to immigrate to France and lured her with excellent jobs in Paris. They decided to initiate a consumers' boycott against White Medicines among the Jewish community and to harm as much as possible their business in France. After five years the company had to cease altogether its activities in France and incurred heavy losses. The valuation of the company decreased subsequently by 50%.

Sima complained to the Israeli SEC on cases of wrongdoing to the company's minority shareholders. The controlling shareholders did not report on time on an important transaction in order to keep a low price of the company's shares until the expiration of the options that the public held. The SEC checked the matter and decided to exonerate the company as the transaction was signed two days after the expiration of the options. Sima discovered that the Legal Counsel of the Israeli SEC was Kadishman's cousin. Sima also discovered that Kadishman was involved in a fraud scandal in France and that's why he decided to immigrate in a hurry to Israel. Sima disclosed this fact to the government authorities, but they didn't do anything about it.

Sima resigned from the company but didn't complain about the racist incidents. She was convinced that in the existing ambience in Israel it would be a lost cause. She started her own Law firm, which put as a primary target to assist low-income people against government organizations, local authorities and public companies that wrong them as employees, suppliers, minority shareholders, and so on. She won some very famous cases, some of them against racist discriminations.

Two years later Sima met, while studying for her PhD at the Hebrew University of Jerusalem, a handsome divorcee called Professor Adi Orlev. He was her reviewer on her dissertation: "Reference of the Israeli Law towards Racist Phenomenon". After dating for some months and deciding to live together he told

her that he was the son of Mordekai. He didn't dare to tell her prior to that as he was afraid that she would despise him and he would lose her love. He told her that he disconnected his ties with the family many years ago after divorcing the daughter of one of the partners of White Medicines that he was lured to marry by the families, who wanted to increase their voting power in the Board. It was an unhappy marriage from both sides and they divorced within two years. Adi left the company a few years before Sima started working there and opened an academic career.

Sima and Adi were married in the desert hometown of Sima and were blessed by the local Baba. Adi's parents were not invited and Sima's parents appreciated very much the fact that Adi was wearing traditional North African clothes at the wedding. Adi wanted Sima to keep her maiden name of Buzaglo but she decided to adopt his new Hebrew name Orlev, as it was a neutral modern name not Ashkenazi nor Sephardic. Yet, she kept the name of her Law firm as before - Sima Buzaglo.

ETHICAL ACTIVISM, ERIN BROCKOVICH VERSUS KAREN SILKWOOD - THE FILMS "ERIN BROCKOVICH" AND "SILKWOOD" SUMMARY AND ANALYSIS

Based on the films:

Erin Brockovich, 2000, 132 min, Director Steven Soderbergh, with Julia Roberts, Albert Finney

Silkwood, 1983, 131 min, Director Mike Nichols, with Meril Streep, Kurt Russell, Cher

ERIN BROCKOVICH

Summary:

The film is based on a true story. Erin is a single mother with three small children and a low income. She is injured in a car accident and hires Ed Masri to handle her case. Ed loses, because of her "big mouth", he says. Erin insists to work at Masri's law firm, and while filing some dossiers she discovers medical documents in real estate deals between home owners who lived in the vicinity of a plant owned by a large corporation PG&E. When she investigates the case, Erin discovers that PG&E tried to buy the houses in order to conceal the pollution of the water used by the residents who probably emanated from the factory. As a result of the pollution hundreds got sick with cancer and other diseases, but nobody thought that the cases were connected. She convinces Masri to handle the case and to sue the company on behalf of the victims. They agree and sign with Ed an agreement ensuring him a remuneration of 40% of the compensation on a

success fee basis. Ed has liquidity problems handling the case and he decides to collaborate with a large law firm Potter, namely with two lawyers Kurt Potter and Theresa Dallavale. Erin resents it as they don't appreciate what she has achieved. Nevertheless, after they fail to convince the plaintiffs to an arbitration agreement she succeeds in obtaining the consent of all of them to the arbitration. The judge decides that PG&E should compensate the victims with \$333M and Erin tells the good news to Dona Jensen, one of the victims.

Analysis:

The film emphasizes the importance of perception, image, looks, dress and conduct in the business world. Some of the issues raised by the film are: What is the nature of the relations between Ed Masri and Erin Brockovich? What is the nature of the charm of Erin on the victims of the polluted water? What is the attitude of Pacific Gas & Electric Corp. regarding the pollution of the water? Why don't the victims of pollution react until Erin starts her investigation? The film shows how Ethical Activism has become one of the modern vehicles to combat corrupted companies. We should "Beware of corrupted companies' presents", especially when they want to purchase the houses closest to the polluted water. We are faced by the dilemmas of Donna Jensen's family and their sicknesses.

Ultimately, the American system works quite well when it enables an ordinary woman without education to subdue a huge conglomerate. Could such a woman win a similar case in another country? Are class actions in other countries as successful as in the US? The investigation enables Erin to reach self fulfillment. Erin is a good example for all prejudiced people proving that you can look cheap but be extremely intelligent, with a fantastic memory, an outstanding detective aptitude, excellent convincing abilities, courage, and capacity of lashing her opponents. PGE tries to intimidate Masri and Brockovich with their sales turnover (\$28 billion a year), their infinite resources, the seniority of their lawyers.

We ask ourselves if it is ethical that the lawyers in class actions charge even 40% of the compensation received, if they win the case. What is the risk that they incur? How can a small law firm cope with tycoons? How does Erin succeed to convince the assembly of the plaintiffs to agree to arbitration after she has convinced them to let Masri handle their case? Erin does not hesitate to take samples of polluted water running away from the security officers of PGE. She is not deterred by threats on her life and her kids. What are the qualities and type of character required from a whistleblower or an ethical activist? We can analyze the difference between the law firms of the case: the small Masri's and the large Potter's, as well as the difference between Erin's mode of conduct and Theresa Dallavale's, and why the latter cannot win the confidence of the victims. Another comparison is between the tragic fate of Silkwood to the success of Donna Jensen who receives assistance from Erin. What has changed in the last 20 years in the US, is it similar in other countries? We face the personification of wrongdoing, in the confrontation between Miss Sanchez, PGE's lawyer, and Erin who gives her drinking water from PGE and she refuses to drink.

This feminist film emphasized the change of roles between George, Erin's friend, who takes care of her children, and Erin who is the breadwinner of the family. Another facet is the generosity of Ed Masri who gives Erin a car, a high salary, and ultimately a bonus of \$2M, beyond her brightest expectations. Is Masri a typical example of an American lawyer? Trust and Ethics are the secret weapons of Erin who comes from the people and remembers it. Instead of common belief that 'nothing is personal' Erin believes that everything is personal. Here again we have a whistleblower who comes to Erin, because of her charm, her dedication, his cousin's death, or all of those reasons. Finally, we see the courage of the American judge who is not fooled by the pomposity of PGE's lawyers and awards \$333M to the plaintiffs. Would the judges in other countries behave similarly?

SILKWOOD

Summary and Analysis:

In a sharp contrast with Erin Brockovich we witness the tragic fate of Karen Silkwood, who was an activist employee. Karen Silkwood (Meryl Streep) died in 1974 trying to bring evidence on dangerous practices of a nuclear facility in Oklahoma and blow the whistle to a reporter from the New York Times. She was the only one who dared to oppose the nuclear energy company and help her fellow workers who got cancer from the contamination. The factory was finally closed shortly after her death. Silkwood may be perceived by some as "vulgar" but she develops a strong sense of social responsibility and she becomes a warrior with integrity who is not afraid to fight her own employer against all odds. Some of the key issues of the film are: the nature of the relations between Karen and Drew Stephens (Kurt Russell), the secret of the charm of Silkwood in her relations with her coworkers, the reporters, the close friends, the nature of the relations between Dolly Pelliker (Cher) and Karen, and we suspect that Dolly is responsible for turning in Karen to the company, thus causing her death.

The attitude of Kerr-McGee, the employer of Karen, towards the radioactive contamination of the workers in its plant is negative from the start, they try to conceal evidence, but the victims of contamination refuse to take any measure against the company until Karen starts to organize the protest. The workers receive an adequate treatment from the company's physicians but refuse to complain to the authorities, possibly because they are afraid, there is no chance anyhow to change things, they cannot prove anything, and they are afraid of unemployment. The film shows how Employee's and social activism is a modern vehicle to overcome unethical activities. We witness the inner struggle of Karen who wanders if her body was contaminated on purpose by the company because she was perceived as a troublemaker. But she is not afraid, as she believes that what she does is right.

The American Justice system in 1974 was incapable to find evidence on the murder of Karen Silkwood and on the contamination by the company. However, a huge difference has occurred in the system since those times to today, as illustrated by Erin Brockovich. The company tried to intimidate Karen, threaten her, silence her. They are ready to do anything as they are driven only by one motive - greed and maximization of profits at the expense of the workers's health, the community and the stakeholders. The company buys the silence of the lambs which is connected with the uneducated background of the workers and the unemployment in the community. One wonder: What are the chances of a simple worker as Silkwood to fight against a large company, having unlimited resources, the best lawyers, political connections in every place? What are the nuances in the attitudes to life between Karen and Drew? Why does Silkwood have a social responsibility motivation and her employers have none?

The attitude of the Media to the struggle of Silkwood is ambivalent, so is the attitude of the labor unions to the struggle of Silkwood. Silkwood dies because she was a pawn in the power struggles of the media and the unions. But Silkwood's death was not in vain. Karen knew that she was endangering her life and didn't listen to Drew's advices to let it off. She was ready to go the extra mile in order to fight for her beliefs, even if she didn't receive gratitude from the workers, the unions, the press and the friends.

Silkwood pays the full price as a whistleblower, the ultimate price. She is murdered as many others before. But her death attracts publicity. Tens of years before - nobody would even speak of her death, tens of years after - her struggle would be fruitful. There is an evolution in the struggle of the stakeholders, in democracy, consumerism, quality, human rights, ecology, fight against poverty, end of wars, giving hope that the social responsibility and ethical struggle will prevail. And the film ends with the unforgettable Requiem of Silkwood, how she separates from Drew and her labor unions colleagues, the car accident and her

grave. We hear only the spiritual befitting to a popular heroine as Silkwood coming from the people and working for them, with social responsibility.

CONFORMISM, SOCIETY AND ETHICS - THE PLAY "RHINOCEROS"- SUMMARY AND ANALYSIS

Based on the play:

Rhinoceros (1959) by Eugene Ionesco

The film is based on the play with slight changes:

Rhinoceros, 1974, 104 min., Director Tom O'Horgan, with Zero Mostel and Gene Wilder

Summary and Analysis:

The play shows the futile discussions between Jean, Beranger, the logician and others if there were rhinoceroses or no and if they have one horn or two. This futility reminds the authorities dealing with minor ecological and ethical issues instead of tackling the main problems. At first the people do not want to interfere and intend only to complain to the authorities on the rhinoceroses. Jean thinks that he is powerful because he has moral power, he does not drink alcohol like Beranger, he is conservative and a good citizen. But he is one of the first to become a rhinoceros while Beranger the libertine remains the last man and refuses to adapt. Are the rhinoceroses dangerous or not? They run to all directions but Ionesco tells us that they only trampled a cat. The reason is probably that everyone becomes a rhinoceros and there is no need to trample their own kind, but they will probably trample Beranger as he is not a conformist and chooses to remain a human being. Botar is suspicious of everyone, he says that journalists are liars, that his colleagues have not seen clearly the rhinoceroses. He believes only what he sees and he believes in conspiracy. Mrs. Shore is ready to become a

rhinoceros only in order to remain with her husband who has become one. Love as an additional cause of becoming a rhinoceros.

The transformation to rhinoceroses expands in a geometric progression. And what about the progression of corruption and bribery? Jean becomes a rhinoceros in front of the bewildered Beranger, but when the later wants to call a doctor, Jean loses his temper. This is similar to businessmen who do not like to hear anything about ethics and lose their temper when somebody talks about it or gives a lecture. Jean believes that he will not become a rhinoceros, as nobody in his family suffered from this "disease", but unfortunately this is not a genetic disease. The rhinoceroses are strong, ugly, breath heavily and snore, they have a coarse skin and a green color. In comparison, human beings are weak, breath regularly, but are they beautiful? Jean, who has become a rhinoceros, does not believe anymore in friendship and ceases to be the best friend of Beranger. Jean does not hate people, he is indifferent to them, they make him sick but if they will stand in his way he will trample them. We can find analogies to the different opinions on business ethics and the mission of companies as perceived by Milton Friedman and the ethicists. If Jean has an aim he tramples towards it. He is a street fighter and nothing can obstruct his way in order to obtain his goal. Jean has now a coarse skin that is not affected by changing weather. What about unethical businessmen who have also coarse skins and are not affected by ethical considerations?

Jean believes that people enjoy becoming rhinoceroses and this is the normal procedure. He is convinced that those animals are like us and they also have a right to live. Beranger thinks on the contrary that there is a gap in mentality, we have morals and they don't, but Jean despises morals, he is sick of morals and thinks that we should go beyond it. Jean proposes instead of morals returning to nature, to the laws of the jungle, the survival of the fittest, as morals contradicts nature and rhinoceroses can live only in the jungle. This is a very similar attitude to the business theories stating that business is like a jungle without any morals,

where only the fittest survive, but this is not an evolution from the ape to the man but a reverse evolution from the man to the ape or the rhinoceros. Beranger states that we have a philosophy that the rhinoceroses don't have, value systems, thousands of years of civilization and culture. But Jean answers that they will destroy everything and this would be better for all of us. He does not want to hear even the words humanity, spirit, man, as those are clichés of a sentimental person, old and ridiculous. This is a way of thinking of many unethical businessmen who despise ethics and helping the weak. Jean is willing to become a rhinoceros as he doesn't have prejudices. He says that we should experience everything without prejudices. What about drugs? It is good to experience new things but in which direction? All this shakes the self-confidence of Beranger who sees that all his friends become rhinoceroses. He does not understand why and he is afraid that it is a contagious disease.

Dodar, Beranger's friend, is also in the process of becoming a rhinoceros. But he doesn't pay any particular attention to this process, as he sees it very natural. Everyone that doesn't see in the bestialization, the decline in moral standards, a dangerous development is likely to become a rhinoceros himself very soon. Only a strong opposition can save us from this fate. Dodar suggests to Beranger to overlook the rhinoceroses, to humiliate in front of them, as they do not want to harm anybody. This happens with every totalitarian regime or corrupted economy in the beginning of their "reign" but later on they attack everybody standing on their way and all those who refuse to become rhinoceroses, communists, collaborators or corrupted. Beranger decides to fight only with ethical means, as it is forbidden to lose your temper, not knowing where anger could lead you to. Beranger is militant and activist, is solidarior to every event, as he cannot remain indifferent. Dodar brings the standard arguments: don't judge others if you do not want to be judged, do not take to heart what happens around you, do not interfere even when the situation deteriorates, remain aside of the events if you don't want to get hurt. But Jean has to interfere as this deterioration doesn't happen in another country but in his country. He cannot adapt to the situation as Dodar, he maybe

stubborn like Don Quixote, but he cannot get asleep, he has nightmares. Dodar admonishes Beranger that he likes being tortured, that he is a masochist. If this situation happens, that's the way it should be and we cannot change it.

Beranger does not know what to do, he will write to the newspapers, write pamphlets, go to the mayor, in contrast to the advice of Dodar who tells him to let the authorities handle the situation. Should we let also the SEC, the legal system, the boards of directors, the analysts, the audit firms and others to handle a situation like in Enron even if they are incompetent? Dodar accuses Beranger that he sees flaws in everything and this is a characteristic of an inquisitor. Is it true? Dodar does not perceive the boundaries between right and wrong, normal and not normal, but what is normal or right anyway? Beranger thinks that tolerance is a sign of weakness, and if everyone would be conformists as Dodar is, where would we be? Dodar now thinks that becoming rhinoceros is a sign of progress. One should be modern and adapt to the new era. In Rome do as the Romans do. If you can't beat them join them. Is it true? Beranger believes that Dodar will become a decent rhinoceros just as he was a decent man. Is it possible? Beranger still believing that rhinoceroses are in minority thinks that something should be done. Maybe put them in huge internment camps and keep them in quarantine. Is it justified? Will it bring to McCarthyism, inquisition, gulags? But on the other hand tolerance would destroy morals, democracy, humanity. Weak regimes have enabled Bolshevism, Humeinism, Nazism to prevail and tolerance to corruption could destroy the economy. What is the solution?

Dodar becomes a rhinoceros out of conformism, vocation and mission, as he believes that he should follow his superiors, give an example for better and for worse. You should stick to the majority, you could always criticize from within instead of doing so from without. Is it better to stay in a corrupted society, in a fascistic regime, or should you leave those societies? All the rhinoceroses are alike, they lose their identity, like yes-men in a totalitarian company trying to please their bosses. What if you have original ideas, how do they affect society?

Daisy believes in happiness, regardless of what happens. She wants to understand the rhinoceroses and their languages, she believes that everything is relative, nothing is absolute. She thinks that the snoring of rhinoceros sounds like poetry, they are beautiful, they are gods. Beranger decides that he will not succumb. He will retain his humanity, he will not follow the majority because he believes that they are wrong and he is right. He believes in human values, he is lonely, but optimistic that ultimately his ideals will prevail.

SOCIAL RESPONSIBILITY, BUSINESS AND COMMUNITY - THE FILM "IT'S A WONDERFUL LIFE" - SUMMARY AND ANALYSIS

Based on the film:

It's a Wonderful Life, 1946, 130 min., Director Frank Capra, with James Stewart,
Donna Reed

Summary and Analysis:

George Bailey spends his entire life giving up his big dreams for the good of his town. His family's business a mortgage bank is what stands between the citizens and Mr. Potter, the evil richest man in town, who takes sick pleasure in taking from everybody, without even caring how it affects them. Bailey's guardian angel comes to earth in a moment of despair when George contemplates suicide and shows him how his town, family and friends would turn out if he had never been born. Bailey decides to return to his family and discovers that the entire town has united in rescuing him. This marvelous fairy tale about social responsibility is modern even today.

George Bailey rescues his brother from drowning, his father's bank from collapsing, decides to stay in town in order to help poor people to obtain cheap loans, marry Mary and raise four children. Bailey is falsely accused of embezzlement but decides to continue his struggle against evil embodied by the unscrupulous Potter. At the unforgettable ending scene on Christmas' eve all those who were rescued by George come to his assistance. Can it happen in today's business world, does gratitude exist today?

Some of the issues raised by the film are: Why does Bailey continue his struggle in favor of the stakeholders in spite of all the hurdles? We can try to figure, following George's example, what would have happened if we were never born. What would happen to our family, friends, company, subordinates, country, community, colleagues, competitors, enemies? What are the risks of assisting stakeholders relentlessly? Why does Potter do his utmost to ruin Bailey, tempt him to leave his bank, discredit him? What are the motives of Potter? What are the motives of Bailey? What are the alternatives facing an ethical businessman when he reaches an impasse: continue his struggle against all odds, commit suicide, quitting the business world and start teaching at school or at a university like Dr Wigand in *The Insider*, relying on friends, fight against the system if not against the corrupted businessmen, leave the country?

After George's father death Potter tells the Board of Directors of the mortgage bank that the way he managed the bank was not businesslike, was utopian and unpractical. Is it true? Bailey defends the cause of the so called "rabble" the hard working people who benefit from the cheap loans of the mortgage bank in order to purchase a modest house instead of renting the slums of Potter. George's first dilemma is to forego his studies at the university in order to takeover the bank and continue his father's mission. He foregoes his own good for the good of the community. After his marriage, he plans to go on a honeymoon but invests all the money he has in order to rescue the bank from its customers' panic that were willing to sell their shares at half their price to Potter if Bailey would not have invested all his money.

Georges' social responsibility is also in erecting Bailey's Park with new small houses for the hard working people who at last have their own houses. Potter tells Bailey that he is an old man whom nobody loves and who loves nobody, he is lonesome, although he owns most of the town. He offers him a huge salary to come and work for him, thus closing the mortgage bank. George is tempted but refuses. Ultimately, what is the purpose of a company: maximize profits,

valuation, benefits to the controlling shareholders, answering the needs of the customers, suppliers, community, country, employees, minority shareholders? What are the lessons drawn from the film? Has it changed our attitude towards ethics? Is the social responsibility the main mission of a company as every company should have a social meaning?

ECOLOGY AND ETHICS - THE FILM AND THE BOOK "A CIVIL ACTION", THE WOBURN CONTAMINATION CASE SUMMARY AND ANALYSIS

Based on the book A Civil Action (1995) by Jonathan Harr

The film is based on the book with slight changes:

A Civil Action, 1998, 112 min., Director Steven Zaillian, with John Travolta,
Robert Duvall

Summary and Analysis:

The families of children who died from leukemia sue two companies for dumping toxic waste, a tort very expensive to prove. Jan Schlichtmann, a tenacious lawyer, is addressed by the families of the victims. When investigating the seemingly non-profit case, he finds it to be a major environmental issue that has a lot of impact potential. A leather production company is found to be responsible for the deadly cases of leukemia, but it is also the main employer of the area. Jan Schlichtmann and his colleagues set out to have the company forced to decontaminate the affected areas in Woburn, Massachusetts and to sue a major sum of compensation. But the lawyers of the leather parent company are not easy to get to and soon Jan and his firm find themselves in a battle of mere survival. The case becomes Jan's obsession to the extent that he is willing to give up everything - his career and his clients' goals - in order to continue the case against all odds.

In 1982, a case was filed in Massachusetts district court which would become one of the most complicated and controversial in American legal history. The story begins ten years earlier with the death of Jimmy Anderson from leukemia. When Jimmy's mother discovered that several other children in her neighborhood suffered from the same disease, she came to believe that the area's notoriously foul drinking water was to blame. After years of false starts, a 1979 finding that local wells were contaminated by toxic solvents opened the door for legal action. The families that had lost children joined together in a law suit against two Fortune 500 companies (WR Grace and Beatrice Foods) believed to be the source of the contamination. Helping document the bitter, controversial and long battle are attorneys from both sides, bereaved parents and Judge Walter Skinner. What can we say about the objectivity of Skinner, his preferences to the lawyers of one side or the other, what is the reason of his attitude? What can we say about the conduct of Facher, has he any moral criteria? What is the background of his behavior - ambition, greed, hate of Jan, ego, contempt to the weak parties? What can we say about the conduct of the victims, when do they decide to fight? The leadership of Mrs. Anderson, the reason they choose Jan, do they trust him, does he deliver the goods?

Jan commits a professional suicide. His obsession works finally against his clients as against his own interests. Why does he continue to do so against all odds? Instead of celebrating the law, the story is a maddening look at the elusiveness of the courtroom case. When Jan and his friends descend into the case, the unbridled sense of power and money is abandoned. This case is ultimately about survival, ecological and personal. Is money the only reward for lost of broken lives? What is more important for the victims - compensation, punishment, cleaning the ecology of their neighborhood? Facher and the manager of the leather company are very humane, they are not love-to-hate persons. Facher represents the law at its brilliant foundation - to best represent one's client. The leather company manager is very convincing in his argumentation that he is a pillar of society, his family worked there for generations, he gives employment, he wants to earn

money disregarding any other goals. Both of them despise ethical argumentation and perceive the victims and their lawyers as blackmailers who want to make money from their children's death at the expense of their companies. Both of them have a clear conscience to the end.

The film and the book leave you wondering how such injustices continue to occur in America. After all the legislation on ecological matters, we discover that ultimately with good lawyers and insensitive judges you could win a case even if you are guilty, as the weak parties - the victims and their second rate lawyers - have no chance to combat the corrupted companies with their highest paid lawyers and unlimited funds. The film captures the irony of lawyers at their best and their worst.

Jan Schilchtmann is the hottest young lawyer in Boston. He will do anything to win a case. He is a personal claims lawyer, very cynical and manipulative, stating that "whites are worth more than blacks, men more than women, the rich more than the poor and a long agonizing death over a quick one, a white male professional in his forties in his prime earning potential is worth the most and a dead child is worth least at all". Yet he decides to litigate with two huge conglomerates in order to compensate the families of children who died from leukemia, a charge that is very difficult to prove. Jan has therefore a very complex personality or alternatively the reason of his conduct is his transfiguration. The families believe that money is not the point and they just want that the companies will acknowledge their responsibility and apologize to them. But as corporations apologize with money and they have deep pockets, it is a case worth taking for Jan in a civil action. Jan with his limited team and funds fights the huge corporations and gets personally involved which is lethal for a lawyer as for a doctor. He shows empathy, which is a grave disservice to the legal profession because it clouds his judgment. The lawyers teeter on the waterfalls of bankruptcy to the point of mortgaging their homes. It has become a source of pride, ego,

which is opposed to the recommended conduct of a lawyer as prescribed by Facher at his law class.

Facher, the attorney for Beatrice, is a statesman-like man of experience, but has a isolated yet eccentric personality. He is a knowledgeable man and his observation on the justice system is true, but at times appalling. When Jan tells him he is searching for the truth, he tells him: "You've been around long enough to know that the courtroom is not the place to look for the truth". And he truthfully says that the case stopped being about children the moment Schlichtmann filed for action. Facher is the complete opposite of Jan. The frugal Facher is not impressed by any of the lawyers or their arguments but the free pen that he can take home. The book and the film present the feelings and priorities of those injured by the negligence of a corporation. The characters evolve during the story understanding what is important and what is superficial. The greedy Jan grows a conscience and starts out on a quest to defend the less privileged.

The book and film are based on true events exposing the American legal system bare, it shows the impartial brutality of the adversarial system, and how one mans flaws can be amplified by that system, until they consume not only him, but all those around him. Trials and lawsuits are examples of how corrupt and rotten the legal system and some lawyers are. Is it worth having a system where the first party to come to their senses (to cut their losses and call for a settlement) is the loser? A Civil Action also shows that despite the need for compassion it is better to have a lawyer who thinks more with the head than the heart. The film, but even more so the book, show the price of justice and how justice is understood in the legal process. In fact, it draws a very fine dichotomy between ethical and legal justice and shows how hard it is to get justice in a legal setting. That is why ethics is so important as it does not have the drawbacks of the legal system and ethical considerations can remain pure. The moral of the story is that we should be grateful for people who are willing to go to extreme lengths, at great personal cost, to define justice on their own terms and to fight for it.

If we compare A Civil Action to Erin Brockovich we can analyze what were the reasons that Erin without any legal experience can win a case which is very similar to the case that Jan has not succeeded to win. But still, he had a limited success, although he did not collaborate as closely as Erin did with the victims. Erin had also Ed Masri and Potter to balance her impulses while Jan worked almost alone and even if his colleagues tried to influence him they did not succeed. Maybe the reason is that Erin's conduct was not motivated at all by greed but by compassion while Jan's conduct was motivated at least in the beginning by greed. Ecology is the great winner of the case. The pollution of the water of Woburn has ceased completely and the soil was cleaned from the toxic materials. The river was cleaned and the area has become a park for recreation to the inhabitants of Woburn. But it will take thousands of years to clean completely the area although it took only a few years to pollute it. The companies paid huge amounts for the cleaning process instead of fully compensate the victims. Or maybe, this is justice, as the goal of the families was not to get compensation for the lives of their children as there is no compensation for that but just to prevent that such cases will not occur in the future and will not kill other children. They have succeeded in obtaining these goals as the case hastened the legislation on ecological issues, just as the Enron bankruptcy brought about the Sarbanes-Oxley Act.

SUSTAINABILITY – SAVING EARTH - THE FILM AND THE BOOK "AN INCONVENIENT TRUTH" - SUMMARY AND ANALYSIS

Based on the book An Inconvenient Truth (2006) by Al Gore

The film is based on the book:

An Inconvenient Truth, 96 min., Director Davis Guggenheim, Narrated by Al Gore

Summary and Analysis:

An Inconvenient Truth is a documentary on global warming. Al Gore, who was Vice President of the US between 1993 and 2000, has devoted his life to sustainability and received in 2007 an Oscar on his film and the Nobel Prize. Gore delivers in the film a multimedia presentation he has given an estimated 1,000 times since 1989. The talk is augmented with an impressive array of graphs, animation, anecdotes and statistics that convey a flurry of facts, projections and conjecture, all pointing to the ill effects the present rate of emissions has on the environment. Gore starts by saying that people tend to think that earth is so big that it is impossible to harm it. The most vulnerable part of earth is the atmosphere and the concentration of carbon dioxide has a negative impact on the atmosphere causing the melting of the glaciers. A 2004 Science magazine survey of more than 900 peer-reviewed academic papers on the subject of global warming found that all supported the reality while none contested it. However, a like sampling of mainstream media found that 53% of the stories portrayed global warming as something that was in doubt in the scientific community. The mixed message has kept the automobile and oil industries in the driver's seat and the

issue out of political debates. Glacier erosion, the threat to wildlife and the spread of deadly viruses make for some terrifying scenarios. Hurricane Katrina and other weather-related disasters that occurred in late 2005 are included, giving the film a sense of timeliness and a powerful visual element, which Gore compares to "a nature hike through the Book of Revelations."

On Mount Kilimanjaro there is no more snow and 40% of the earth population in India and China will not have enough water because of the negative effects of warming on the water sources of the Himalaya. During 650,000 years, CO₂ has never been higher than 300 parts per million, but nowadays it is much more. When there is more CO₂ the temperature gets warmer, because the carbon dioxide traps more heat from the sun in the atmosphere. In the next 50 years earth's temperature will be far above the level it was during 650,000 years. It is not a political issue so much that it is a moral issue, if we allow this to happen it is deeply unethical. In recent years the warming is uninterrupted and intensifying. The ten hottest years ever measured were in the last 14 years and the hottest was in 2005. In 2003 the Heat Wave in Europe killed 35,000 people, mainly in France, Portugal and Italy. In India in Andhra Pradesh temperatures went up to 50 degrees C, causing 1,400 deaths. When the oceans get warmer it causes stronger storms, hurricanes, tornadoes, typhoons, like hurricane Katrina. We cannot overcome the consequences of global warming. It causes more flooding and more draught. Soil evaporation increases dramatically with higher temperatures. When the sun beams hit ice, 90% of the heat is not absorbed as the ice acts like a mirror, but when they hit water 90% of the heat is absorbed, thus when the glaciers melt, earth is getting warmer and warmer. The US are the worst contributor to the problem of global warming.

Species are lost, there are much more diseases, mosquitoes. If Greenland melts and half of Western Antarctica as well, sea level will increase by 6 meters and this will flood half of Florida, large parts of California, Netherlands and Shanghai, Calcutta and Bangladesh. 100 million people might become refugees, putting a lot

of pressure on earth and ecology, increasing food and water demand, devastating forests. 30% of the CO₂ comes from forest burning, 30% of the global warming comes from the US. The three factors that affect global warming are: 1. Increase in population, 2. New technologies, 3. Old way of thinking. Warming is gradual, it does not come as a crisis, and that is why politicians tend to ignore the problem. The Oil and Gas industries have very influential lobbies, influencing the Republican president as well. Scientists who opposed them were persecuted, ridiculed, deprived of jobs, income, simply because the facts that they have discovered led them to an inconvenient truth.

Gore maintains that we don't have to choose between the economy and environment. If we choose only economy we'll not have a planet, but if we do the right thing we'll have a lot of wealth and jobs. Toyota and Honda are manufacturing more efficient cars, but GM and Ford are opposing efficiency programs in California, such as are adopted by governments in Japan, China and Europe. And the outcome of the film is: use more efficient electrical appliances, higher mileage cars, passenger vehicles efficiency, cut down consumption of fuel, transport efficiency, renewable energy and so on. These could bring us back to the 1970 level of global warming. We have all what we need in technologies and knowledge, we just need political will. All world countries have signed the Kyoto agreement, except Australia and the US.

Unlike many whistleblowers that sound sometimes disconnected and hallucinating, Gore is very convincing, speaks fluently, is likeable. The fact that he was Vice President of the US, and now an Oscar and Nobel Prize laureate, gives him credibility and his opponents can no more slight him. His truth is inconvenient but not ridicule, he can stand in the same footing with the huge multinationals and the political administration serving them, as Gore has the sympathy and support of hundreds of millions. As Schopenhauer said about the three phases of truth, we are no more in phase one where truth is ridiculed (the Don Quixotic phase), we are in the phase of the opposition to truth (the Enemy of

the People phase). We hope to reach soon the phase where the truth about sustainability will become a motherhood and apple pie truth and Gore's opponents will boast that they invented it.

SUSTAINABILITY – BIODYNAMIC FARMING - THE DOCUMENTRY "HOW TO SAVE THE WORLD" - SUMMARY AND ANALYSIS

Based on the film:

How to Save the World, 2007, 103 min., Directors Thomas and Barbara Burstyn

Summary and Analysis:

Peter Proctor, a New Zealander, is the father of modern biodynamic agriculture. In the last sixty years he has been building gardens and advising farmers all over the world. He has visited India 25 times. In the film he is almost eighty but for him the earth sings. Proctor believes that biodynamic agriculture is the last chance the planet has. He decides to move permanently to India with his wife in order to promote biodynamic agriculture. One of the Indians interviewed maintains that Monsanto has monopolized seeds and their objective is that whosoever buys seeds buys from Monsanto. More than 25,000 Indian farmers have committed suicide in the last ten years, because most of the seeds they are buying are failing them in their fields. Corporations dictate what the farmers should grow; they are controlling what we must eat. Proctor is a modern hero – rather than battling the problem he lives the solution. He assisted in establishing a large number of biodynamic farms in India. We are introduced to Patel, an Indian biodynamic farmer, MA in Agronomy from a US university. After reading books on the subject he began to understand what organic farming is.

The transformation of dead material like fallen leaves to compost is the cornerstone of biodynamics. Leaves, grass, animal manure, are parts of the compost. The film shows the preparations with a mixture of herbs, minerals like

silica and calcium. All these are put in cow horns. There are 8 preparations devised by Steiner, the founder of modern biodynamics. The cow horns with the material are put in earth for 6 months. After the horn compost matures it is put into water for an hour, the flow increasing the capacity of water to form life. The farmers spread the preparations on fields in a special manner. This compost improves the quality of the soil and of the plants. It is a dynamic material spreading life to soil and crops. The soil which was before hard because of the chemicals becomes soft like cotton. There is a specific calendar for preparing and spreading the compost. Farmers learn to live with nature in a holistic way, combining sustainably all "stakeholders" – soil, animals, plants and men. Healthy soils make healthy plants which make healthy people. Biodynamic agriculture is based on small farms tied to their community. Proctor visits 10 farms a day. The farmers are organized on a local and regional basis and share information. They switch from chemical farming to organic farming and from organic farming to biodynamic agriculture. Their aim is to make India totally organic or biodynamic. "Green Revolution" promoted by the multinationals was a mistake because it gave layers and layers of chemicals. The soil became sick and waterlogged, the production went down and the pest infestation increased. Soil quality is better with biodynamic farming because of the compost. The profitability increases, environment is better off, there is less erosion, less ground, soil and water contamination. Without pesticides energy efficiency improves. 50% less water is used in biodynamic agriculture, and you save also the money of pesticides and seeds. In one sentence – sustainable agriculture which is not controlled by the large corporations in a land with very small farms is the key for a harmonious society. Organic farming has made a revolution in society, families are reunited because in chemical farming the men worked far away from their families, now all are working in the farms together, "honoring their women and respecting their elders". All are working organic, eating organic and living in organic harmony. At last they grow what they want and eat what they want "without Monsanto telling them what to do, what seed we grow and what food we eat". All this is extremely important due to the fact that in India 60% of the population are dependent on

farming. In small and marginal farms with one hectare of land you don't need Monsanto seeds, once you have your organic seeds, you can use them year after year.

Biodynamic farming adheres to the ideology of Mahatma Gandhi, preconizing self sufficiency. Biotech seeds cost 400% more than conventional seeds and their yield is 30% less. Yet, the biotech seeds produced by the multinationals are sold aggressively by the dealers who get huge commissions. Farmers are forced to buy the Genetically Modified (GM) seeds as part of their purchase of pesticides. 60% of Indian farmers using GM seeds cannot recover their investments and feed their families. In 2006 Bush and Singh signed in India an agreement that would bring Indian agriculture into the control of American multinationals. Following this agreement hundreds of thousands demonstrated. One of the persons interviewed says: "You are what you eat. If you eat deception and untruth you will behave accordingly toward the others." World's hunger is not caused by food scarcity; it is caused by trade liberalization, industrial agriculture, genetic engineering and military dominance. The problem is in the philosophy of infinite growth with limited resources. Proctor and his followers are trying to bring back the benefits to the people, eliminating child labor and improving working conditions.

BioRe is a different kind of corporation. Their philosophy is to match economic interest with ethical corporate responsibility, along the entire textile chain. In biodynamics the flow of energy is reversed. It is a profound local alternative to the model of globalization that is incapable to address the human needs we all share for self realization and self determination. Biodynamics is a holistic approach. It is too simple to be true. Only small initiatives can make the difference. "I am the world, you are the world, and if we change the world changes". The film ends with a citation of Mahatma Gandhi on Democracy: "My notion of democracy is that under it the weakest should have the same opportunity as the strongest. No country in the world today shows any but patronizing regard for the weak. Western democracy as it functions today is diluted fascism. True

democracy cannot be worked by twenty men sitting at the center. It has to be worked from below by the people of every village."

SUSTAINABILITY – GENETICALLY ENGINEERED FOOD - THE FILM "BAD SEED – THE TRUTH ABOUT OUR FOOD" - SUMMARY AND ANALYSIS

Based on the film:

Bad Seed: The Truth about our Food, 2006, 112 min., Director Adam Curry

Summary and Analysis:

Over 60% of the food on grocery stores shelves in the US and Canada contain ingredients from genetically modified crops. No safety testing is required of genetically engineered food, despite the fact that studies have shown it to be highly dangerous to health and to the environment. Over 800 scientists from around the world have signed an open letter expressing extreme concern about the safety of genetically modified crops and calling for a ban on bio-patents. We are involuntarily part of a test that affects our health and life and we don't even know that. Life is life and doesn't belong to anybody. Genetically Modified (GM) food is unstable and changing. A UK governmental study headed by Dr. Arpad Pustai discovered that rats fed by GM potatoes showed an abnormal thickening of their stomach lining. Biotechnology reduces biodiversity and it affects the ecosystems. We need to control overproduction driving the prices of food down and not increase production as the biotech companies advertise. We don't need to produce more food and therefore we don't need Genetically Engineered (GE) crops. Those crops produce less than other crops. Small farms have a much higher yield per acre than industrial farms.

Monsanto budgets \$10 million each year to investigate and sue farmers who are not paying it patent royalties. Most of Biotech companies invested in chemical

companies that promoted pesticides, and invested as well in seed companies. The second revolution for biotech companies is in GM. We don't need corn that is resistant to pesticide, we have over production anyhow. But the multinationals want the farmers to be dependent in seeds and herbicides put together. Scientists in the documentary maintain that Monsanto puts almost no effort to care about poor people. We incur therefore a lot of risks without any benefits. GE is inherently hazardous. Even FDA experts were opposed to GE seeds, which are different from normal seeds. Because of side effects those seeds have to be submitted to long term testing. Hundreds of scientists from around the world, including American and FDA scientists, strongly oppose the unleashing of untested genetically modified organism into the environment. The same scientists vigorously oppose the patenting of natural life-forms by corporations and the theft of indigenous plant knowledge. Michael Taylor, a former lawyer in a law firm representing Monsanto, was appointed in 1991 as Deputy Director of the FDA. His job was to certify GE products in spite of the opposition of the FDA scientists. The FDA declared subsequently that they were safe and there was no need to test them. Taylor and other FDA employees were investigated by the US General Accounting Office for their role in approving Monsanto's hazardous bovine growth hormone (rGBH) used to increase milk production. After quitting FDA, Taylor became VP of Monsanto.

The GE hormone poses serious health risks and has been linked to cancer and other health problems in humans. Most countries have banned its use. Arthur Andersen was the consultant for Monsanto. Monsanto officials stated that they wanted in ten to twenty years that all seed in the world will be genetically modified and patented. For over 100 years Monsanto has produced some of the most toxic materials ever created – herbicides, pesticides. Dioxins, DDT, rGBH, PCBs, Aspartame. DDT was advertized as being perfectly safe by Monsanto, yet it devastated wildlife populations. It was widely known to be harmful to wild life and humans in the fifties but it was not banned until 1972 due to pressure by Monsanto. Monsanto dumped PCB into the soil in Aniston but did not disclose it.

Tens of thousands were poisoned. Due to toxic materials sent to Vietnam by Monsanto 400,000 Vietnamese children were later born with grotesque difformities. Aspartame is associated with brain cancer, hair loss, asthma, seizures, weight gain and death. The documentary maintains that it was approved by the FDA with the knowledge that it is highly toxic.

A governmental report in India showed that Monsanto's GE cotton produced a net income that was five times less than non-GE cotton. Over 17,000 children, some as young as six, support Monsanto's subsidiary in India by working in dangerous conditions up to twelve hours a day. GE crops make it possible to spray more of the herbicide glyphosate. It is extremely toxic to plants, soil microbes, wildlife and humans. In January 2005, Monsanto was fined \$1.5 million for bribing government officials in Indonesia. No fines were levied for bribing US officials. Over 1,000 Canadian Canola farmers have filed suit against Monsanto for contaminating their crops. In many States talking about the hazards of GMOs can now result in imprisonment and fines. An estimated 80% of the GMOs in the US food supply originate from Monsanto. It is imperative that the food containing GM ingredients would be labeled accordingly in the US as it is done in Europe.

SUSTAINABILITY - SAVING ENERGY - THE DOCUMENTARY "WHO KILLED THE ELECTRIC CAR?" - SUMMARY AND ANALYSIS

Based on the film:

Who Killed the Electric Car?, 93 min., Director Chris Paine, Narrated by Martin Sheen

Summary and Analysis:

The film "Who Killed the Electric Car?" is a documentary film alleging that it could be the multinational oil companies and car manufacturers that could be responsible for that. The film deals with the history of the electric car, its development and commercialization, mostly focusing on the General Motors EV1, which was made available for lease in Southern California, after the California Air Resources Board (CARB) passed the ZEV mandate in 1990, as well as the implications of the events depicted for air pollution, environmentalism, and global warming. The electric car had many advocates, ordinary citizens as well as celebrities such as Mel Gibson and Tom Hanks. The State of California enacted a law that 10% of the cars in the State should have no pollution. However, this mandate was reversed after suits from automobile manufacturers, the oil industry, and the George W. Bush administration. The film points out that Bush's chief influences, Dick Cheney and Condoleezza Rice, were former executives and board members of oil and auto companies. GM tried to demonstrate to California that there was no demand for the electric car, and then to take back every EV1 and dispose of them. A few were disabled and given to museums and universities, but almost all were found to have been crushed; GM never responded to the EV drivers' offer to pay the residual lease value. Several

activists are shown being arrested in the protest that attempted to block the GM car carriers taking the remaining EV1s off to be crushed.

By the end of 2004 there were no more EV1 cars in use. The oil companies, that did not want to have any reduction of demand to fuel, have doubled their profitability in two years. The profits of Exxon, Mobil, Chevron, Texaco and Conoco Phillips doubled from \$33 billion in 2003 to \$64 billion in 2005. One of the reasons that there was no demand for those cars was that they were not advertized enough. It was alleged that the batteries were not good enough but the CEO of the batteries company, Ovshinsky, maintains that they were excellent. However, his company that was controlled by GM was sold to Chevron Texaco and they burried the development of the batteries. The film also explores the future of automobile technologies including a critical look at hydrogen vehicles and a discussion of plug-in hybrid electric vehicle technologies. There are many analogies between environmentally motivated films like this one and films like An Inconvenient Truth, How to Save the World and Bad Seed, the Truth about our Food.

The film describes the history of automaker efforts to destroy competing technologies, such as their destruction through front companies of public transit systems in the US in the early 20th century. It mentions that automakers introduced important safety and emissions innovations including seat belts, airbags and catalytic converters only when forced by government legislation, and maybe also because of the Japanese competition. The hydrogen fuel cell was presented by the film as an alternative that distracts attention from the real and immediate potential of electric vehicles to an unlikely future possibility embraced by automakers, oil companies and a pro-business administration in order to buy time and profits for the status quo. So, who is to blame for killing the electric car? The consumers, oil companies, GM, the Government, CARB, Hydrogen Fuel Cell? Probably all of them, with the exception of the batteries companies,

although after being taken over by oil companies they became guilty as well by dropping their development programs.

SUSTAINABILITY – PAUL HAWKEN - THE BOOK "THE ECOLOGY OF COMMERCE" SUMMARY AND ANALYSIS

Based on the book:

Hawken Paul, The Ecology of Commerce, HarperCollins, 1994

Based on the film:

The New Great Transformation, 2007, 71 min., Paul Hawken hosted by Stewart Brand

Summary and Analysis:

Paul Hawken is perceived by many as the prophet of sustainability. He is not only an excellent writer, his books move us deeply, but he is also a very successful businessman. This combination is very uncommon in business ethics, social responsibility and sustainability. Normally, you can be an ethical businessman but you don't write on ethics, you can be an excellent ethicist but you don't practice business. Rather, this "oxymoron", adds so much to the credibility of Hawken's books and activities, that it has influenced millions of people. One of the people he has influenced most is Ray Anderson, the founder and chairman of Interface, the world's largest carpet manufacturer of commercial carpet. After reading The Ecology of Commerce by Hawken, Anderson wept, he reached the conclusion that until then he was a "plunderer of the earth" and he decided to change his company into a sustainable company because it is good to earth, to society, to humans and to business.

Biography of Paul Hawken from his official website:

"Paul Hawken is an environmentalist, entrepreneur, and author. Starting at age 20, he dedicated his life to sustainability and changing the relationship between business and the environment. His practice has included starting and running ecological businesses, writing and teaching about the impact of commerce on living systems, and consulting with governments and corporations on economic development, industrial ecology, and environmental policy.

He has appeared on numerous media including the Today Show, Larry King, Talk of the Nation, Charlie Rose, and has been profiled or featured in hundreds of articles including the *Wall Street Journal*, *Newsweek*, *Washington Post*, *Business Week*, *Esquire*, and *US News and World Report*. His writings have appeared in the *Harvard Business Review*, *Resurgence*, *New Statesman, Inc*, *Boston Globe*, *Christian Science Monitor*, *Mother Jones*, *Utne Reader*, *Orion*, and over a hundred other publications.

He is author and co-author of dozens of articles, op-eds, papers, as well as six books including *The Next Economy* (Ballantine 1983), *Growing a Business* (Simon and Schuster 1987), and *The Ecology of Commerce* (HarperCollins 1993). *The Ecology of Commerce* was voted in 1998 as the #1 college text on business and the environment by professors in 67 business schools. His book, *Natural Capitalism: Creating the Next Industrial Revolution* (Little Brown, September 1999) co-authored with Amory Lovins, is published in fourteen languages and has been read and referred to by several heads of state including President Bill Clinton who has called it one of the five most important books in the world today. His books have been published in over 50 countries in 27 languages and have sold over 2 million copies. *Growing a Business* became the basis of a 17-part PBS series, which Mr. Hawken hosted and produced. The program, which explored the challenges and pitfalls of starting and operating socially responsive companies, was shown on television in 115 countries and watched by over 100 million people. His piece on Seattle and the WTO entitled "N30" was published on over

100 websites and by 13 magazines. His latest book was published by Viking in May 2007 entitled *Blessed Unrest: How the Largest Movement in the World Came Into Being, and Why No One Saw It Coming*. www.blessedunrest.com

Companies he has founded or co-founded software companies specializing in proprietary content management tools; Smith & Hawken, the garden and catalog retailer; and several of the first natural food companies in the US that relied solely on sustainable agricultural methods. He is presently the head of PaxIT, PaxAuto, and PaxFan, three companies associated with Pax Scientific, Inc., a research and development company focused on energy-saving technologies that apply biomimicry to fluid dynamics.

Paul heads Highwater Research LLC in Sausalito, California. Highwater Research was established to promote a new methodology for reviewing and rating corporate social, ethical and environmental behavior. Highwater believes their methodology raises the standards for the SRI industry as a whole, and will become the preferred method for SRI selection in the future. By establishing standards for social and environmental responsibility, bringing transparency to current business behavior, and driving investment to those companies who have adapted to these higher standards, Highwater reasserts the original intent of SRI - to influence the way business is done. Baldwin Brothers, Inc. and Highwater Research launched the Highwater Global Fund on September 1, 2005, to address global sustainability opportunities by building a team of experts combining environmental, social and financial research into an alpha driven public equity fund.

Paul heads the Natural Capital Institute (www.naturalcapital.org), a research organization located in Sausalito, California. The Natural Capital Institute has created a hub for global civil society (www.WiserEarth.org). It is a collaboratively written, free content, open source networking platform that links NGOs, funders, business, government, social entrepreneurs, students, organizers, academics, activists, scientists, and citizens.

As a speaker, he has given keynote addresses to the Liberal Party of Canada, King of Sweden at his inaugural Environmental Seminar, American Bookseller's Association, Urban Land Institute, SRI International, Harvard University, Stanford University, Wharton, Cornell, Prime Minister of New Zealand's Conference on Natural Capitalism, US Department of Commerce, Australian Business Council, Yale University and Yale University Commencement, University of California (Berkeley) Commencement, Ministry of Agriculture France, American Association for the Advancement of Science (AAAS), Prince of Wales Conference on Business and the Environment—Cambridge University, Commonwealth Club, Herman Miller, National Wildlife Federation, State of Washington, American Society of Landscape Architects, American Institute of Architects, American Institute of Graphic Arts, American Solar Energy Association, Apple Computer, World Business Council for Sustainable Development, Cleveland City Club, Conference Board, U.S. Forest Service, Ontario Hydro, Environment Canada, EPA, and several hundred others.

He has served on the board of many environmental organizations including Point Foundation (publisher of the Whole Earth Catalogs), Center for Plant Conservation, Trust for Public Land, Friends of the Earth, and National Audubon Society. Among recognition and awards received are: The 2008 Green Prize for Sustainable Literature Award by the Santa Monica Public Library, Green Cross Millennium Award for Individual Environmental Leadership presented by Mikhail Gorbachev in 2003; World Council for Corporate Governance in 2002; Small Business Administration "Entrepreneur of the Year" in 1990; Utne "One Hundred Visionaries who could Change our Lives" in 1995, Western Publications Association "Maggie" award for "Natural Capitalism" as the best Signed Editorial/Essay" in 1997; Creative Visionary Award by the International Society of Industrial Design; Design in Business Award for environmental responsibility by the American Center for Design; Council on Economic Priorities' 1990 Corporate Conscience Award; American Horticultural Society Award for

commitment to excellence in commercial horticulture; *Metropolitan Home Design* 100 Editorial Award for the 100 best people, products and ideas that shape our lives; the Cine Golden Eagle award in video for the PBS program “Marketing” from *Growing a Business*; California Institute of Integral Studies Award “For Ongoing Humanitarian Contributions to the Bay Area Communities”; *Esquire* Magazine award for the best 100 People of a Generation (1984); and five honorary doctorates.”

In "The Ecology of Commerce" Hawken maintains (p.xiv-xv) that in order to be sustainable we must begin with a set of objectives: 1. Reduce absolute consumption of energy and natural resources in the North by 80 percent within the next half century, it amounts to making things last twice as long with about half the resources. We already have the technology to do this in most areas, including energy usage. 2. Provide secure, stable, and meaningful employment for people everywhere. (Hawken, a humanist, sees sustainability as a holistic concept that includes of course employment, welfare and happiness). 3. Be self-actuating as opposed to regulated or morally mandated. Humans want to flourish and prosper, and they will eventually reject any system of conservation that interferes with those desires. 4. Honor market principles. We can't just ask people to pay more to save the planet. They won't do it in some cases – and can't in most. 5. Be more rewarding than our present way of life. Present-day limits need to become opportunities. 6. Exceed sustainability by restoring degraded habitats and ecosystems to their fullest biological capacity. Any viable economic program must turn back the resource clock and devote itself actively to restoring damaged and deteriorating systems. 7. Rely on current income. Redesigning all industrial, residential, and transportation systems so that everything we use springs easily from the earth and returns back to it. 8. Be fun and engaging, and strive for an aesthetic outcome. Government, business and environmental organization cannot create a sustainable society. It will only come about through the accumulated

effects of daily acts of billions of eager participants. Furthermore, the urge to create beauty exists in commerce as well as in society.

Hawken, as Joel Bakan in "The Corporation", as Aristotle and the Bible, believes that: "The ultimate purpose of business is not, or should not be, simply to make money. Nor is it merely a system of making and selling things. The promise of business is to increase the general well-being of humankind through service, a creative invention and ethical philosophy. Making money is, on its own terms, totally meaningless, an insufficient pursuit for the complex and decaying world we live in... Businesspeople must either dedicate themselves to transforming commerce to a restorative undertaking, or march society to the undertaker." (Hawken, *The Ecology of Commerce*, p.1-2) It is quite untorthodox for a businessman to say that the ultimate purpose of business is not to make money. Not only not to maximize profits, but simply not to make money. Business should ensure the general well-being of humankind, not the well-being of tycoons, of controlling shareholders, or even of executives. Business should be restorative or society would march to the undertaker. This is not the saying of a detached philosopher, Hawken is a successful businessman, and he substantiates his theories in his books in business terms. 15 years later, Bill Gates will advocate a new kind of capitalism, a creative or social capitalism, Warren Buffett will donate most of his wealth to society.

Hawken says that business has three basic issues to face: what it takes, what it makes, and what it wastes. The harmful way it exploits natural resources, the excessive amounts of toxins and pollutants it produces, and the excessive energy it consumes in the process. This is completely uneconomical, as in nature there is no waste. Business should be patterned according to basic ecological principles. In nature, waste equals food, all growth is driven by solar energy, and the overall well-being of the system depends on diversity and thrives of difference. Everything should be reclaimed, reused or recycled. In the restorative economy some businesses will get smaller but hire more people (bioagriculture in small

farms for example), more money can be made by selling the absence of a product or service (for instance, where public utilities sell efficiency rather than additional power), and where profits increase when productivity is lowered. In short, those recommendations are quite the opposite of current business theories as preconized by Milton Friedman. It is indeed a revolution, a fresh and pioneering school of thought, advocated by few, as Ray Anderson, but feasible.

But there are always the skeptics, the groups of interests, oil companies, politicians who don't believe or prefer not to believe that sustainability issues are so important. Still, Hawken maintains that we must levy a carbon tax on energy, and issue significant green taxes on hydrocarbon-based chemicals, replacing them with processes derived from the organic, non-polluting, renewable resources, because it will ultimately help to eliminate most of the toxins in our food and water and the ozone-destroying chemicals in our atmosphere. "If we continue on the same path and find out forty, fifty, or one hundred years from now that the scientific projections about global warming were correct, it may be too late to mount an effective counter-strategy. On the other hand, if we choose to make the transition to an economy that runs on perpetual solar income and we later find out that the CO₂ buildup was less a problem than anticipated, we are still ahead on every count. We have eliminated hundreds of billions of tons of pollution from the air, ground and water, and improved health worldwide. We have engendered a myriad of new, safer, and friendlier technologies to replace those deposed. We have not poisoned the planet or our bodies with the toxins produced in a hydrocarbon-based economy. We have created hundreds of thousands of new companies and many more jobs than we lost, while moving toward a world whose work and money are infused with meaning and vision, toward a just and constructive future." (same, p.182-183)

Hawken is visionary and practical; he tackles the issues generically and specifically. Resources are not infinite in supply and we see that they are being depleted at an alarming rate. Therefore, Hawken introduces the term biological

accounting, we have to end waste, shift to renewable power (solar, hydro, wind), and Hawken concludes: "We have to recognize that we've reached a watershed in the economy, a point at which 'growth' and profitability will be increasingly derived from the abatement of environmental degradation, the furthering of ecological restoration, and the mimicking of natural systems of production and consumption." (same, p.210)

EDUCATION, SOCIETY, SOCIAL RESPONSIBILITY

THE PLAY "TOPAZE" - SUMMARY AND ANALYSIS

Based on the play:

Topaze (1928) by Marcel Pagnol

The films are based on the play with some changes:

Topaze, 1951, 136 min., Director Marcel Pagnol, with Fernandel, Jacqueline Pagnol

Topaze, 1933, 78 min., Director Harry d'Abbadie d'Arrast, with John Barrymore, Mirna Loy

Summary and Analysis:

Albert Topaze, a sincere and ethical schoolteacher works at a private school run by a supremely money-grubbing M. Muche, whose daughter also a schoolteacher makes cynical use of the knowledge that Topaze loves her. Topaze's naïve honesty brings him unjust dismissal. It makes him fair game for the "aunt" of his private pupil Suzy Courtois, really the mistress of the crooked politician Regis Castel-Vernac, who is looking for a new straw man for his schemes after the former one wanted too much money and left. Topaze, dazzled by Suzy, is lured to become the new straw man, but he soon discovers of the schemes and has a moral crisis. Should he continue cooperation, as he earns a lot of money or should he beat his employer in his own game and takeover the company as he is already its "official" owner. He decides to beat the system, ruins Regis, gets Suzy, bring Tamise as his assistant, and loses his ethics, according to the maxim: If you can't beat them join them and then beat them. The conclusion could be that ethics can't prevail in a corrupted world that manages to corrupt even the most ethical men

and women. The attitude of society towards unethical businessmen is in many cases benevolent, admiring and respectful, while it scorns ethical conduct. The crooks are the smart guys, they are envied, and members of society want to resemble them.

In the beginning of the play we see maxims on the walls of Topaze's class: Poverty is not a vice, You would better suffer than cause sufferance, Money doesn't bring happiness. Topaze teaches his pupils moral, but his pupils don't seem to understand what it is all about. When Muche, his headmaster, wants Topaze to raise the grades of a bad pupil coming from a rich and noble family he is fired from the school. After Topaze discovers the schemes of Regis Castel-Vernac and cooperates with his employer, we see different maxims in his office: 'Soyez brefs' – be brief, 'Le temps, c'est de l'argent' – time is money, 'Parlez de chiffres' – speak in numbers. Topaze is a front man, a man of straw. He feels soiled and cannot suffer the look of an honest man. Topaze tries to maintain still that money does not bring happiness, but Suzy, the woman he loves answers him 'No, but it buys it from those who make it'. In the corrupted environment he starts to prove himself and becomes much more competent than his colleagues.

The play describes the metamorphosis of Topaze from an ethical teacher to an unscrupulous crook, the temptation of Tamise, Topaze's friend, to cooperate with Topaze, the conduct of Muche, the headmaster, who is willing to sacrifice Topaze in order to keep a rich client's son in his school, the conduct of Suzy Courtois, who respects and admires money and who leaves Regis, who corrupted Topaze after Topaze manages to con his boss and takes over the company. In confrontation with his old friend, Tamise, he justifies himself: 'All that I have done is legal. If society was just, I would have been in prison.' And Topaze concludes: "Look at those banknotes, they can fit in my pocket but they will soon take form and color of my desire. Comfort, beauty, health, love, honors, power, I hold all this in my hand... You are bewildered, my poor Tamise, but I will tell you a secret: in spite of the dreamers, in spite of the poets and maybe in spite of

my heart, I have learned the big lesson: Tamise, men are not good. It is power which governs the world, and this small rectangles of noisy paper, this is the modern structure of power.” Pagnol, alternatively pessimist and optimist, describes to us admirably the dilemmas of all of us and how many of us resolve them. If Topaze would have remained in his environment, as a teacher with an honest headmaster, he would have remained the most honest man. But it is because Topaze has suffered injustice and has joined a corrupted society that he has been corrupted himself and has sold his soul, while being convinced that he is on the right track. He becomes much more corrupted than his mentors, as he thinks that this is the only way to survive, and he finds justifications that manage to convince him as well. This is therefore the predominant role of the moral environment, which succeeds in most of the cases, especially with men who do not have a strong and well-formed character, to fashion its members into its image. Tell me who your friends are, and I will tell you who you are.

POLITICAL ASPECTS OF ETHICAL CONDUCT
THE PLAY "JULIUS CAESAR"
SUMMARY AND ANALYSIS

Based on the play:

Julius Caesar by William Shakespeare

The film is based on the play:

Julius Caesar 1953, 120 mi., Director Joseph Mankiewicz, with Marlon Brando,
 James Mason

Summary and Analysis:

We are educated since our childhood that it is prohibited to tell on your friends. The pejorative names for the telltales or tattletales are countless – whistleblowers, stool pigeons, squealers, etc. Dante writes in the last verses of the Inferno, how the traitors and informers are punished in the lowest place of hell. Dante and Virgil enter Judecca, the lowest zone of Cocytus, where the souls of the traitors who betrayed their legitimate superiors and benefactors are totally immersed in the frozen waste. At the central and lowest point lies Satan, who devours Judas, Brutus and Cassius in his three mouths:

“That soul there, which has the worst punishment,
 Is Judas Iscariot, my master said,
 With his head inside, and kicking his legs.
 Of the two others, who hang upside-down,
 The one who hangs from the black face is Brutus;
 See how he twists and says not a word;
 And the other is Cassius, whose body looks so heavy.”

(Dante, The Divine Comedy, Inferno XXXIV, 61-67, p.192-3)

It is incredible that out of all the criminals - those who have committed atrocious murders, genocides, rapes - the ones who receive the worst punishment are the traitors. It is not Pontius Pilate, who gave the order to crucify Jesus, it is not Julius Caesar who was an unscrupulous tyrant, it would not be Hitler if Dante would have lived in our times, but it would rather be Rommel, who 'betrayed' his fuehrer in order to save Germany.

Brutus and Cassius had to wait 1,600 years in order to be partially rehabilitated in the best historical play of Shakespeare 'Julius Caesar'.

(Brutus) "If then that friend demand why Brutus rose against Caesar,
This is my answer: Not that I loved Caesar less, but that I loved Rome more. Had you rather Caesar were living, and die all slaves,
Than that Caesar were dead, to live all free men?
As Caesar loved me, I weep for him;
As he was fortunate, I rejoice at it;
As he was valiant, I honour him;
But, as he was ambitious, I slew him.
There is tears for his love; joy for his fortune;
Honour for his valour; and death for his ambition.
Who is here so base that would be a bondman?
If any, speak; for him I have offended."

(Shakespeare, Julius Caesar, Act III, Scene II, p.834)

Brutus, Cassius, and other high-ranking Romans murder Caesar, because they believe his ambition will lead to tyranny. The people of Rome are on their side after hearing Brutus's speech above-mentioned. But Marc Antony, Caesar's right-hand man, makes a moving speech and proves in a demagogical way that Caesar was not a tyrant and loved them. He was murdered by these honorable men, although he gives in his will to every Roman citizen seventy-five drachmas, he

has left them all his walks, his private arbours and new-planted orchards. Here was a Caesar! When comes such another? Unfortunately, Marc Antony was wrong, every generation brings many Caesars of all kinds, politicians or tycoons, who steal from the masses hundreds of millions and give them back seventy-five drachmas... The conspirators are driven from Rome, and two armies are formed: following the conspirators or Antony. Antony has the superior force, and surrounds Brutus and Cassius, but they kill themselves to avoid capture.

One of the most important ethical dilemmas in business, society and politics is how to oppose wrongdoing, by using ethical or unethical means. Is terrorism justified when all the other means of rebellion fail? Is it legitimate to murder a tyrant like Julius Caesar who wanted to be an emperor and abolish the democracy in Rome? Or in business - if you are a minority shareholder whistleblower trying to organize the wronged shareholders and you are a victim of illegal tapping by the controlling shareholders who want to prevent your legitimate combat, should you use such means and organize tapping of the wrongdoers? Should you use only legal means? Should you use only ethical means? Brutus, who was extremely ethical and an emblem of integrity in Rome, especially compared to Marc Antony, decides to become a murderer and to kill Caesar. But because he is ethical he decides not to kill Marc Antony against the advice of the other conspirators. Furthermore, he lets him mourn Caesar in front of the people. The lesson that we draw from this play and from fights of the oppressed is to conduct your combat only by ethical means as you will never be able to surpass the unethical politicians or businessmen. They will always win in an unethical combat, as it is in their nature while it isn't in the nature of the oppressed. You need to have a formidable character of a Gandhi or a Martin Luther King in order to fight and succeed by ethical means, but it is the only course of action to be applied in all aspects of life.

SOCIAL RESPONSIBILITY OF MODERN BUSINESS TYCOONS - WARREN BUFFETT (BERKSHIRE HATHAWAY) - SUMMARY AND ANALYSIS

Based on the film:

Warren Buffett - Oracle of Omaha, 2000, 60 minutes, documentary about the story of Berkshire Hathaway.

Not all financial tycoons are Gordon Gekkos, Michael Milken or Ivan Boesky. Warren Buffett is an excellent example of a tycoon, controlling Berkshire Hathaway with integrity, taking into consideration the interests of the stakeholders, with a humane approach to business, while still becoming a billionaire. Recently, he decided to donate most of his fortune to the community.

In the 2002 Annual Report of Berkshire Hathaway Inc. Warren Buffett wrote that "Derivatives are financial weapons of mass destruction". He wrote this five years before the worst financial crisis since the Great Depression that was due mainly to the unethical use of derivatives with massive leverage, taking advantage of other people's money and ultimately being rescued by the government and the tax payer. Wall Street was at that period in euphoria and Buffett was among the few who saw the writing on the wall. He wrote: "The range of derivatives contracts is limited only by the imagination of man (or sometimes, so it seems, madmen). At Enron, for example, newsprint and broadband derivatives, due to be settled many years in the future, were put on the books. Or say you want to write a contract speculating on the number of twins to be born in Nebraska in 2020. No problem – at a price, you will easily find an obliging counterparty. When we purchased Gen Re, it came with General Re Securities, a derivatives dealer that Charlie and I

didn't want, judging it to be dangerous. We failed in our attempts to sell the operation, however, and are now terminating it. But closing down a derivatives business is easier said than done. It will be a great many years before we are totally out of this operation (though we reduce our exposure daily). In fact, the reinsurance and derivatives businesses are similar: Like Hell, both are easy to enter and almost impossible to exit."

Nicknamed "The Oracle of Omaha", Buffett is one of the few sages in the world economy who did not participate in the Economic Whirl, whether it is the Dot.com Bubble, the Corporate Scandals or the Subprime Crisis. He saw the dangers of the virtual economy and wrote: "Another commonality of reinsurance and derivatives is that both generate reported earnings that are often wildly overstated. That's true because today's earnings are in a significant way based on estimates whose inaccuracy may not be exposed for many years... the parties to derivatives also have enormous incentives to cheat in accounting for them. Those who trade derivatives are usually paid (in whole or part) on "earnings" calculated by mark-to-market accounting. But often there is no real market (think about our contract involving twins) and "mark-to-model" is utilized. This substitution can bring on large-scale mischief... In recent years, some huge-scale frauds and near-frauds have been facilitated by derivatives trades. In the energy and electric utility sectors, for example, companies used derivatives and trading activities to report great "earnings" – until the roof fell in when they actually tried to convert the derivatives-related receivables on their balance sheets into cash. "Mark-to-market" then turned out to be truly "mark-to-myth." I can assure you that the marking errors in the derivatives business have not been symmetrical. Almost invariably, they have favored either the trader who was eyeing a multi-million dollar bonus or the CEO who wanted to report impressive "earnings" (or both). The bonuses were paid, and the CEO profited from his options. Only much later did shareholders learn that the reported earnings were a sham... Charlie and I believe, however, that the macro picture is dangerous and getting more so. Large amounts of risk, particularly credit risk, have become concentrated in the hands of

relatively few derivatives dealers, who in addition trade extensively with one other. The troubles of one could quickly infect the others. On top of that, these dealers are owed huge amounts by non-dealer counterparties. Some of these counterparties, as I've mentioned, are linked in ways that could cause them to contemporaneously run into a problem because of a single event (such as the implosion of the telecom industry or the precipitous decline in the value of merchant power projects). Linkage, when it suddenly surfaces, can trigger serious systemic problems. Indeed, in 1998, the leveraged and derivatives-heavy activities of a single hedge fund, Long-Term Capital Management, caused the Federal Reserve anxieties so severe that it hastily orchestrated a rescue effort... The derivatives genie is now well out of the bottle, and these instruments will almost certainly multiply in variety and number until some event makes their toxicity clear. Knowledge of how dangerous they are has already permeated the electricity and gas businesses, in which the eruption of major troubles caused the use of derivatives to diminish dramatically. Elsewhere, however, the derivatives business continues to expand unchecked. Central banks and governments have so far found no effective way to control, or even monitor, the risks posed by these contracts. Charlie and I believe Berkshire should be a fortress of financial strength – for the sake of our owners, creditors, policyholders and employees. We try to be alert to any sort of megacatastrophe risk, and that posture may make us unduly apprehensive about the burgeoning quantities of long-term derivatives contracts and the massive amount of uncollateralized receivables that are growing alongside. In our view, however, derivatives are financial weapons of mass destruction, carrying dangers that, while now latent, are potentially lethal." One would think that this essay was written as a penitential confession of an investment banker or a regulator in 2009...

Warren Edward Buffett (born August 30, 1930) is a wealthy American investor and businessman. Buffett has amassed an enormous fortune from astute investments, particularly through his company Berkshire Hathaway. In 2008, Buffett was ranked by Forbes as the richest person in the world with an estimated

net worth of approximately \$62 billion. Despite his immense wealth, Buffett is famous for his unpretentious and frugal lifestyle. He continues to live in the same suburban house in Omaha he bought in 1957 for \$31,500. His chairman's salary from Berkshire Hathaway of \$100,000 per annum is extremely modest by corporate American standards. Buffett is also a notable philanthropist, having pledged to give away 85% of his fortune to the Gates Foundation.

"Warren Buffett is not easy to describe. Physically, he is unremarkable, with looks often described as grandfatherly. Intellectually, he is considered a genius, yet his down-to-earth relationship with people is truly uncomplicated. He is simple, straightforward, forthright, and honest. He displays an engaging combination of sophisticated dry wit and cornball humor. He has a profound reverence for all things logical and a foul distaste for imbecility. He embraces the simple and avoids the complicated.... When reading Berkshire's annual reports,... unabashed honesty. Buffett is candid in his reporting. He emphasizes both the pluses and the minuses of Berkshire's businesses... When Buffett took control of Berkshire the corporate net worth was \$22 million. Forty years later, it has grown to \$69 billion.... Since he took control of Berkshire in 1964, the gain has been much greater: Book value per share has grown from \$19 to \$50,498, a rate of 22.2 percent compounded annually." (Hagstrom, 2005, p.4)

Buffett's investment philosophy is based on a three-prong approach:

Generals: undervalued securities that possess margin of safety and meet expected risk/return characteristics

Arbitrages: company events that are not related to broader market changes such as mergers and acquisitions, liquidation, etc.

Controls: build sizable holdings, ally with other shareholders or employ proxies to effect changes in companies

Buffett views himself as capital allocator more than anything else. His primary responsibility is to allocate capital to businesses with good economics and keep

their existing management to lead the company. Besides his skills in managing Berkshire's cash flow statement and income statement, Buffett is skilled in managing the company's balance sheet. Since taking over Berkshire Hathaway, Buffett has weighted every decision against their impact on the balance sheet. Knowing that he is not a computer prodigy or an innovation genius, Buffett set out to obtain a competitive advantage by building a financial fortress. Buffett takes comfort that in the foreseeable future his company will not be one of those shaken by economic or natural catastrophes. He repeated over the years that his insurance operation is the only one he knew that can clear the check the next morning. However, Berkshire Hathaway was shaken by the 2008 crisis. It suffered a 77% drop in earnings during Q3 2008 and several of his recent deals appear to be running into large mark-to-market losses. Buffett has called the downturn in the financial sector "poetic justice", but this justice penalized him as well. Yet, he remained faithful to his saying that one should be fearful when others are greedy and greedy when others are fearful, and after being very cautious in his investment policy in the years before the downturn he made during the 2008-2009 downturn large investments in what he perceives as lucrative investments.

Over the years, his purchases of entire companies with Berkshire's cash included National Indemnity from Jack Ringwalt, National Fire and Marine Insurance, Illinois National Bank and Trust from Eugene Abegg, Blue Chip Stamps, See's Candies, Buffalo News, Wesco Financials, Mutual Savings and Loans, Associated Retail Stores, etc. When choosing common stocks, Berkshire employs a focused strategy with a medium to long term horizon. Stock picks from 1970s through 1980s included GEICO, Washington Post Company, Capital Cities/ABC, Ogilvy & Mather International, Interpublic Group of Companies, Knight-Ridder Newspaper, Kaiser Industries, SAFECO Corporation, Amerada Hess, Affiliated Publications, Media Generals, Times Inc., General Foods, R.J. Reynolds Industries, Beatrice, F.W. Woolworth Company, Exxon Corporation, Handy &

Harman, Freddie Mac, Coca-Cola Companies, etc. Arbitrage positions included Arcata Corporation which was sold to KKR.

While being very ethical, Buffett does not focus his investments in ethical investments, clean technologies or ethical funds. During the RJR Nabisco, Inc. hostile takeover fight in 1987, Buffett was quoted as telling John Gutfreund: "I'll tell you why I like cigarette business. It costs a penny to make. Sell it for a dollar. It's addictive. And there's fantastic brand loyalty." Jeffrey Wigand wouldn't have liked this remark after having sacrificed his career in order to prove that cigarettes were addictive, thus saving probably the lives of millions by his revelations. Buffett cannot be compared either to Paul Hawken or Ray Anderson, to Ben & Jerry's and many other ethical investors and executives. But we need heroes, different than the "rotten apples" that are increasing exponentially. Even if he invests in investment banks, in AIG or in Coca Cola, that would not be the prime choice of ethical funds, he does it in a very ethical way, transparent, honest, achieving one of the highest return on investment with a minimal risk in the long run. Buffet stated that he only paid 19% of his income fro 2006 in total federal taxes, while his employees paid 33% of theirs, despite making much less money. Buffett favors the inheritance tax and believes government should not be in the business of gambling. That is quite different than the neo liberal approach on taxation and regulation, and he cannot be nicknamed "anti-business" as many neo social thinkers that hold similar views are named, because he is the richest businessman in the world and we all know that "you can't argue with success..."

PART VI

INTERNATIONAL BUSINESS ETHICS AND GLOBALIZATION

CONCEPTS AND THEMES

Many theories have been proposed in order to prove that there could be a difference in the ethical norms in different countries. What is customary in Italy is not so in Switzerland, the norms in the United States are different from those in Colombia, in Japan from those in Thailand, in Israel from those in Iraq, in South Africa from those in Nigeria, and so on. It is evident that there are various nuances in the practice of business ethics in all the countries of the world, but there are very few differences in the ethical concepts in the world. In the same manner that it was possible to establish the universal human rights of the UN, that the democratic principles are universal, and that the 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.

One of the criteria for the survival of a society is that it needs to have a common morality for all members of the society. “What follows from this is that there are certain basic rules that must be followed in each society; e.g., don’t lie, don’t commit murder. There is a moral minimum in the sense that if these specific moral rules aren’t generally followed, then there won’t be a society at all. These moral rules are universal, but they are not practiced universally. That is, members of society A agree that they should not lie to each other, but they think that it is

permissible to lie to the members of other societies. Such moral rules are not relative; they simply are not practiced universally. However, multinational corporations are obligated to follow these moral rules. Since the multinational is practicing business in the society, and since these moral norms are necessary for the existence of the society, the multinational has an obligation to support those norms.” (Madsen, *Essentials of Business Ethics*, Bowie, *Business Ethics and Cultural Relativism*, p. 376)

One of the aspects of ethics in international business is ethics toward employees, which varies from country to country. “Employees should be regarded as full partners, rather than as hired labour. Their voice should be taken into account, directly or indirectly, through employee representatives on the Board of Directors, when deciding on company policy. Evidently, such participation in the decision-making process should be accompanied by participation in the ownership of the firm ... The socio-economic approach to participation was institutionalized mostly on the European continent, especially after the Second World War. The clearest example is provided by the German system of ‘Mitbestimmung’, but also French, Dutch, and Belgian economic law contain some specific models.” (Harvey, *Business Ethics, A European Approach*, Gerwen van, *Employers’ and employees’ rights and duties*, p.76)

One of the most important criteria for the conduct of companies in international business is the differentiation between the laws and ethics in the different countries. “Moral problems are often raised in multi-national or transnational companies: which law should they obey, when the legislation of the headquarters’ country is not the same as that of the subsidiary’s? This question can be solved by the distinction between legality and morality. If the legislation of the country a firm is operating in is different, but is just, it must be followed because, by so doing, one contributes to that country’s common good. If there is no law, or if it is not in accordance with moral criteria, one must always follow the moral criteria.”

(Harvey, Business Ethics, A European Approach, Argandona, Business, law and regulation: ethical issues, p.129)

De George claims that in case of divergent ethical opinions, the companies that want to act with integrity have to act according to their own ethical norms, even if the norms in the foreign countries are less strict. In particular, we should not justify a mode of conduct as ‘everybody does it’. If the act is wrong, transgresses the law, or is not ethical, we should abstain from committing this act and we should act according to our conscience. “In sum, a central difference between conducting business on a national level and conducting it on an international level is the absence in the latter setting of restrictive background institutions. In this situation a company without integrity – without a developed sense of what is ethically prohibited – seeks to promote its own interest in whatever way it can. Companies that feel constrained only by law and not by ethics in the United States feel few constraints in the international area. They feel no obligation beyond obeying the local laws in each country in which they operate, and then only to the extent that the laws are effectively enforced. Only their own perceived interests guide them when they stand outside the jurisdiction of national laws. That some companies do operate in this way is a fact; that all do is not; and that any should be allowed to so act is a defect calling for a remedy.” (De George, *Competing with Integrity in International Business*, p. 27)

Ethics in international business is influenced by different cultures, moral customs, political regimes, development level, financial situation, and economical structure. De George develops ten ethical norms for the activity of multinational companies:

1. Multinationals should do no intentional direct harm. They are responsible for making due compensation for any harm they do, directly or indirectly, intentionally or unintentionally.

2. Multinationals should produce more good than harm for the host country.
3. Multinationals should contribute by their activity to the host country's development.
4. Multinationals should respect the human rights of their employees.
5. To the extent that local culture does not violate ethical norms, multinationals should respect the local culture and work with and not against it.
6. Multinationals should pay their fair share of taxes.
7. Multinationals should cooperate with the local government in developing and enforcing just background institutions.
8. Majority control of a firm carries with it ethical responsibility for the actions and failures of the firm.
9. If a multinational builds a hazardous plant, it has the obligation to make sure that it is safe and that it is run safely.
10. In transferring hazardous technology to LDCs, multinationals are responsible for appropriately redesigning such technology so that it can be safely administered in the host country.

We remember the embittered reactions of the French defense companies that were forced to abstain from giving bribes in order to facilitate the selling of French armaments, according to the law of 1999. This decision was taken as a result of intensive pressure from the U.S., which adopted the Foreign Corrupt Practices Act in 1977 after the incident where Carl Kotchian, the CEO of Lockheed was

accused of having paid \$12.5M to Japanese agents and government officials of the Japanese government in order to obtain a contract of Nippon Air for the Tristar airplanes of Lockheed. The U.S. exercised very heavy pressure on the other exporters of armaments to prevent them from benefiting from the unjust advantages resulting from their fraudulent conduct. Finally, those countries have adopted similar laws to the U.S. law to enforce ethical conduct toward government officials of the importer governments. This case of the export of ethics to other countries is a very encouraging one, as otherwise it could have discouraged the U.S. government from receiving other ethical laws, which would not have been followed by their foreign partners. Twenty two years have elapsed between the adoption of the U.S. law against bribery in other countries and the adoption of the French law, which shows that it is never too late to be ethical.

De George develops ten strategies to face the ethical dilemmas in an environment of international corruption:

1. In responding to unethical activity do not violate the very norms and values that you seek to preserve and by which you judge your adversary's actions to be unethical.
2. Since there are no specific rules for responding to an unethical opponent, in responding ethically use your moral imagination.
3. When your response to immorality involves justifiable retaliation or force, apply the principle of restraint and rely on those to whom the use of force is legitimately allocated.
4. In measuring your response to an unethical opponent apply the principle of proportionality.

5. In responding to unethical forces apply the technique of ethical displacement.
6. In responding to an unethical adversary, system, or practice use publicity to underscore the immoral actions.
7. In responding to an immoral opponent seek joint action with others and work for the creation of new social, legal, or popular institutions and structures.
8. In responding to unethical activity be ready to act with moral courage.
9. In responding ethically to an unethical opponent be prepared to pay a price – sometimes a high price.
10. In responding to unethical activity, apply the principle of accountability.

We can differentiate between profitable and unprofitable companies not by the necessity to follow the minimal ethical norms, as all companies have to conduct themselves ethically even in extreme cases, but in the adherence to ethical norms that are beyond the minimal norms developed by De George. The international companies have to comply to three conditions in order to behave ethically: “Among those in the firm who act with integrity, the top managers are the crucial players. Unless they exemplify integrity, demand it of their employees, and support it throughout the firm, the company cannot – and so will not – act with integrity. However, the personal integrity is not enough. The second theme to emerge is that of ethical displacement. Ethical issues and dilemmas cannot always be resolved at the level at which they appear. For this reason corporate structures and policies are vitally important. Ethical individuals are constrained by the organization, structures, and policies of the companies for which they work. These may either reinforce ethical behavior or thwart it.... The third theme is the

urgent need for adequate background institutions to counteract the tendencies toward unfairness of the market, of the free enterprise system, and of perceived self-interest on all levels. Such social, political and economic institutions promote fair conditions of competition wherever they exist and will offset the otherwise unbridled power of multinational corporations and banks worldwide.” (De George, *Competing with Integrity in International Business*, p. 194-5)

In trying to define an international ethics, one should reject the theories of cultural relativism, which maintain that everything is relative and that there is no universal ethics, and those of Hobbes who believed that nations existed in the state of nature and were attempting to fulfill only their own interest without any moral obligation. The international law could be the basis of a universal ethics: “International law also consists in, and depends upon, certain fundamental principles of association, principles discovered in custom where they play the role of moral arbiters and reference points in international affairs. Included among such principles are those of ‘legal equality (among states), the right to national self-defense, the duties to observe treaties and to respect human rights, the concepts of state sovereignty and non-intervention, and the duty to cooperate in the peaceful settlement of disputes.’ With background concepts such as these, then, international law may be seen to presume aspects of international morality.” (Donaldson, *The Ethics of International Business*, p. 22)

The fundamental international laws according to Donaldson are:

1. The right to freedom of physical movement.
2. The right to ownership of property.
3. The right to freedom from torture.
4. The right to a fair trial.

5. The right to nondiscriminatory treatment (freedom from discrimination on the basis of such characteristics as race or sex.)
6. The right to physical security.
7. The right to freedom of speech and association.
8. The right to minimal education.
9. The right to political participation.
10. The right to subsistence.

Those rights have to be honored according to Donaldson by all countries, companies and persons. One should not exaggerate in the implementation of the principles of equality in the countries and economies, as they are not equal in all respects. If an international company pays Chinese employees a much lower salary than that of France or the U.S., it is because it adheres to the norms of salaries prevailing in China, otherwise it would not have established a company in this country but in France. The ethical question is whether the company pays salaries that are similar to other salaries in China or if it exploits its Chinese workers in comparison to other workers in the same country. “A multinational must forgo the temptation to remake all societies in the image of its home society, while at the same time it must reject a relativism that conveniently forgets ethics when the payoff is sufficient. Thus, the task is to tolerate cultural diversity while drawing the line at moral recklessness.” (Donaldson, *The Ethics of International Business*, p. 103)

Another cardinal source of universal ethics is the Universal Declaration of Human Rights, which ensures rights to employment, social security, education, etc.

Because of the importance of this declaration to the international aspects of business ethics and to the universality of ethics, it is given here in its entirety:

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by

teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in

the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Evidently, the basic ethical norms are common in all countries of the world, and the relativism is in the practice or the degree of implementation of the norms. One should not try to remake the societies in which the multinationals operate, but in no case should they conduct themselves in a manner that is unethical, even if the custom is contrary to the norms. The international ethical norms are therefore absolute and exist beyond the national and international laws.

Finally, as a preamble to the cases and films to follow, we resort to Wikipedia in order to present the main characteristics of - **Globalization**:

A typical - but restrictive - definition can be taken from the International Monetary Fund, which stresses the growing economic interdependence of countries worldwide through increasing volume and variety of cross-border transactions in goods and services, free international capital flows, and more rapid and widespread diffusion of technology. While being a complex and multifaceted array of phenomena, globalization can be broken down into separate aspects:

- *industrial* globalization (alias *transnationalization*) - rise and expansion of multinational enterprises
- *financial* globalization - emergence of worldwide financial markets and better access to external financing for corporate, national and subnational borrowers
- *political* globalization - spread of political sphere of interests to the regions and countries outside the neighbourhood of political (state and non-state) actors
- *informational* globalization - increase in information flows between geographically remote locations
- *cultural* globalization - growth of cross-cultural contacts

Globalisation/internationalisation has become identified with a number of trends, most of which may have developed or accelerated since World War II. These include greater international movement of commodities, money, information, and people; and the development of technology, organisations, legal systems, and infrastructures to allow this movement. The actual existence of some of these trends is debated.

- Greater international cultural exchange,
 - Spreading of multiculturalism, and better individual access to cultural diversity, for example through the export of Hollywood and Bollywood movies. However, the imported culture can easily supplant the local culture, causing reduction in diversity through hybridization or even assimilation. The most prominent form of this is Westernization, but Sinicization of cultures also takes place.
 - Greater international travel and tourism
 - Greater immigration, including illegal immigration
 - Spread of local consumer products (e.g., food) to other countries (often adapted to their culture)
 - World-wide fads and pop culture such as Pokémon, Sudoku, Numa Numa, Origami, Idol series, YouTube, and MySpace.

- World-wide sporting events such as FIFA World Cup and the Olympic Games.
- Formation or development of a set of universal values
- Technical/legal
 - Development of a global telecommunications infrastructure and greater transborder data flow, using such technologies as the Internet, communication satellites, submarine fiber optic cable, and wireless telephones
 - Increase in the number of standards applied globally; e.g. copyright laws and patents
 - The push by many advocates for an international criminal court and international justice movements.

The term "globalization" is used to refer to these collective changes as a process, or else as the cause of turbulent change. The distinct uses include:

- *Economically, socially and ecologically positive:* As an engine of commerce; one which brings an increased standard of living — prosperity — to Third World countries and further wealth to First World countries.
- *Economically, socially, and ecologically negative:* As an engine of "corporate imperialism;" one which tramples over human rights in developing societies, claims to bring prosperity, yet often simply amounts to plundering and profiteering. Negative effects include cultural assimilation via cultural imperialism, the export of artificial wants, and the destruction or inhibition of authentic local and global community, ecology and cultures.

It is often argued that even terrorism has undergone globalization, with attacks in foreign countries that have no direct relation with the attackers' own country.

Since World War II, barriers to international trade have been considerably lowered through international agreements such as the General Agreement on Tariffs and Trade (GATT). Particular initiatives carried out as a result of GATT and the WTO, for which GATT is the foundation, have included:

- Promotion of free trade

- Of goods:
 - Reduction or elimination of tariffs; construction of free trade zones with small or no tariffs
 - Reduced transportation costs, especially from development of containerization for ocean shipping.
- Of capital: reduction or elimination of capital controls
- Reduction, elimination, or harmonization of subsidies for local businesses
- Intellectual property restrictions
 - Harmonization of intellectual property laws across nations (generally speaking, with more restrictions)
 - Supranational recognition of intellectual property restrictions (e.g. patents granted by China would be recognized in the US)

Although the term 'globalization' was coined in the latter half of the twentieth century, and the term and its concepts did not permeate popular consciousness until the latter half of the 1980's; various social scientists have tried to demonstrate continuity between contemporary trends of globalization and earlier periods. Earlier forms of globalization existed during the Mongol Empire, when there was greater integration along the Silk Road.

The first steps towards Globalization as we know it nowadays were taken in Europe in the 16th and 17th centuries, when the Spanish Empire reached to all corners of the world. The effects on European industries were notable, e.g. the Silver Mining in Schwaz in Austria was partly abandoned, as silver was available from the Spanish colonies for lower prices. Globalization became a business phenomena in the 17th century when the first Multinational was founded in The Netherlands. During the Dutch Golden Age the Dutch East India Company was established as a private owned company. Because of the high risks involved with the international trade, ownership was divided with Shares. The Dutch East India Company was the first company in the world to issue shares, an important driver for globalization.

Liberalization in the 19th century is often called "The First Era of Globalization", a period characterised by rapid growth in international trade and investment, between the European imperial powers, their colonies, and, later, the United States.

The "First Era of Globalization" began to break down at the beginning with the first World War, and later collapsed during the gold standard crisis in the late 1920s and early 1930s. Countries that engaged in that era of globalization, including the European core, some of the European periphery and various European American and Oceanic offshoots, prospered. Inequality between those states fell, as goods, capital and labour flowed freely between nations.

Globalization in the era since World War II has been driven by advances in technology which have reduced the costs of trade, and trade negotiation rounds, originally under the auspices of GATT, which led to a series of agreements to remove restrictions on free trade. The Uruguay round (1984 to 1995) led to a treaty to create the World Trade Organization (WTO), to mediate trade disputes. Other bi- and trilateral trade agreements, including sections of Europe's Maastricht Treaty and the North American Free Trade Agreement (NAFTA) have also been signed in pursuit of the goal of reducing tariffs and barriers to trade.

The world increasingly is confronted by problems that can not be solved by individual nation-states acting alone. Examples include cross-boundary air and water pollution, over-fishing of the oceans and other degradations of the natural environment, regulation of outer-space, global warming, international terrorist networks, global trade and finance, and so on. Solutions to these problems necessitate new forms of cooperation and the creation of new global institutions. Since the end of WWII, following the advent of the UN and the Bretton Woods institutions, there has been an explosion in the reach and power of Transnational corporations and the rapid growth of global civil society.

The Global scenario group, an environmental research and forecasting organization, views globalization as part of the shift to a Planetary Phase of Civilization, characterized by global social organizations, economies, and

communications. The GSG maintains that the future character of this global society is uncertain and contested.

Critics of the economic aspects of globalization contend that it is not, as its proponents tend to imply, an inexorable process which flows naturally from the economic needs of everyone. The critics typically emphasize that globalization is a process that is mediated according to corporate interests, and typically raise the possibility of alternative global institutions and policies, which they believe address the moral claims of poor and working classes throughout the globe, as well as environmental concerns in a more equitable way.

In terms of the controversial global migration issue, disputes revolve around both its causes, whether and to what extent it is voluntary or involuntary, necessary or unnecessary; and its effects, whether beneficial, or socially and environmentally costly. Proponents tend to see migration simply as a process whereby white and blue collar workers may go from one country to another to provide their services, while critics tend to emphasize negative causes such as economic, political, and environmental insecurity, and cite as one notable effect, the link between migration and the enormous growth of urban slums in developing countries. According to "The Challenge of Slums," a 2003 UN-Habitat report, "the cyclical nature of capitalism, increased demand for skilled versus unskilled labour, and the negative effects of globalization — in particular, global economic booms and busts that ratchet up inequality and distribute new wealth unevenly — contribute to the enormous growth of slums."

Various aspects of globalization are seen as harmful by public-interest activists as well as strong state nationalists. This movement has no unified name. "Anti-globalization" is the media's preferred term; it can lead to some confusion, as activists typically oppose certain aspects or forms of globalization, not globalization *per se*. Activists themselves, for example Noam Chomsky, have said that this name is meaningless as the aim of the movement is to globalize justice. Indeed, the global justice movement is a common name. Many activists also unite under the slogan "another world is possible", which has given rise to names such as *altermondialisme* in French.

There are a wide variety of kinds of "anti-globalization". In general, critics claim that the results of globalization have not been what was predicted when the attempt to increase free trade began, and that many institutions involved in the system of globalization have not taken the interests of poorer nations, the working class, and the natural environment into account.

Economic arguments by fair trade theorists claim that unrestricted free trade benefits those with more financial leverage (i.e. the rich) at the expense of the poor. Some opponents of globalization see the phenomenon as the promotion of corporatist interests, which is intent on constricting the freedoms of individuals in the name of profit. They also claim that the increasing autonomy and strength of corporate entities shapes the political policy of nation-states.

Some "anti-globalization" groups argue that globalization is necessarily imperialistic, is one of the driving reasons behind the Iraq war and is forcing savings to flow into the United States rather than developing nations; it can therefore be said that "globalization" is another term for a form of Americanization, as it is believed by some observers that the United States could be one of the few countries (if not the only one) to truly profit from globalization. Some argue that globalization imposes credit-based economics, resulting in unsustainable growth of debt and debt crises.

The financial crises in Southeast Asia that began in 1997 in the relatively small, debt-ridden economy of Thailand but quickly spread to Malaysia, Indonesia, South Korea and eventually were felt all around the world, demonstrated the new risks and volatility in rapidly changing globalized markets. The IMF's subsequent 'bailout' money came with conditions of political change (i.e. government spending limits) attached and came to be viewed by critics as undermining national sovereignty in *neo-colonialist* fashion. Anti-Globalization activists pointed to the meltdowns as proof of the high human cost of the indiscriminate global economy. Many global institutions that have a strong international influence are not democratically ruled, nor are their leaders democratically elected. Therefore they are considered by some as supernational undemocratic powers.

The main opposition is to *unfettered* globalization (neoliberal; laissez-faire capitalism), guided by governments and what are claimed to be quasi-governments (such as the International Monetary Fund and the World Bank) that are supposedly not held responsible to the populations that they govern and instead respond mostly to the interests of corporations. Many conferences between trade and finance ministers of the core globalizing nations have been met with large, and occasionally violent, protests from opponents of "corporate globalism".

Some "anti-globalization" activists object to the fact that the current "globalization" globalizes money and corporations, but not people and unions. This can be seen in the strict immigration controls in nearly all countries, and the lack of labour rights in many countries in the developing world.

Another more conservative camp opposed to globalization is state-centric nationalists who fear globalization is displacing the role of nations in global politics and point to NGOs as encroaching upon the power of individual nations. Some advocates of this warrant for anti-globalization are Pat Buchanan and Jean-Marie Le Pen.

The movement is very broad, including church groups, national liberation factions, left-wing parties, environmentalists, peasant unionists, anti-racism groups, anarchists, those in support of relocalization and others. Most are reformist, (arguing for a more humane form of capitalism) while others are more revolutionary (arguing for what they believe is a more humane system than capitalism). Many have decried the lack of unity and direction in the movement, but some such as Noam Chomsky have claimed that this lack of centralization may in fact be a strength.

Protests by the global justice movement have forced high-level international meetings away from the major cities where they used to be held, into remote locations where protest is impractical.

Supporters of democratic globalization are sometimes called pro-globalists. They consider that the first phase of globalization, which was market-oriented, should be completed by a phase of building global political institutions representing the

will of world citizens. The difference with other globalists is that they do not define in advance any ideology to orient this will, which should be left to the free choice of those citizens via a democratic process. Supporters of free trade point out that economic theories of comparative advantage suggest that free trade leads to a more efficient allocation of resources, with all countries involved in the trade benefiting. In general, this leads to lower prices, more employment and higher output.

Libertarians and other proponents of laissez-faire capitalism say higher degrees of political and economic freedom in the form of democracy and capitalism in the developed world are both ends in themselves and also produce higher levels of material wealth. They see globalization as the beneficial spread of liberty and capitalism.

Critics argue that the anti-globalization movement uses anecdotal evidence to support their view and that worldwide statistics instead strongly support globalization:

- The percentage of people in developing countries living below US\$1 (adjusted for inflation and purchasing power) per day has halved in only twenty years, although some critics argue that more detailed variables measuring poverty should instead be studied.
- Life expectancy has almost doubled in the developing world since WWII and is starting to close the gap to the developed world where the improvement has been smaller. Infant mortality has decreased in every developing region of the world. Income inequality for the world as a whole is diminishing.
- Democracy has increased dramatically from almost no nation with universal suffrage in 1900 to 62.5% of all nations in 2000.
- The proportion of the world's population living in countries where per-capita food supplies are less than 2,200 calories (9,200 kilojoules) per day decreased from 56% in the mid-1960s to below 10% by the 1990s.

- Between 1950 and 1999, global literacy increased from 52% to 81% of the world. Women made up much of the gap: Female literacy as a percentage of male literacy has increased from 59% in 1970 to 80% in 2000.
- The percentage of children in the labor force has fallen from 24% in 1960 to 10% in 2000.
- There are similar trends for electric power, cars, radios, and telephones per capita, as well as the proportion of the population with access to clean water.

However, some of these improvements may not be due to globalization, or may be possible without the current form of globalization or its perceived negative consequences, to which the global justice movement objects.

Some pro-capitalists are also critical of the World Bank and the IMF, arguing that they are corrupt bureaucracies controlled and financed by states, not corporations. Many loans have been given to dictators who never carried out promised reforms, instead leaving the common people to pay the debts later. They thus see too little capitalism, not too much. They also note that some of the resistance to globalization comes from special interest groups with conflicting interests, like Western world unions.

Others, such as Senator Douglas Roche, O.C., simply view globalization as inevitable and advocate creating institutions such as a directly-elected United Nations Parliamentary Assembly to exercise oversight over unelected international bodies.

To what extent a nation-state or culture is globalized in a particular year has until most recently been measured employing simple proxies like flows of trade, migration, or foreign direct investment. A more sophisticated approach to measuring globalization is the recent index calculated by the Swiss Think tank KOF. The index measures the three main dimensions of globalization: economic, social, and political. In addition to three indices measuring these dimensions, an overall index of globalization and sub-indices referring to actual economic flows, economic restrictions, data on personal contact, data on information flows, and data on cultural proximity is calculated. Data are available on a yearly basis for

122 countries. According to the index, the world's most globalized country is the USA, followed by Sweden, Canada, the United Kingdom, and Luxembourg. The least globalized countries according to the KOF-index are Togo, Chad and the Central African Republic.

PERCEPTION OF ETHICS IN INTERNATIONAL BUSINESS CASE - INTERNATIONAL PURCHASING

(All the characters and plot and all the names of the companies in this case are fictitious)

Umberto was surprised when Marcello, CEO of Aircraft Retrofits, transferred him from his senior position in Sales to be VP Purchasing. "Why Purchasing?", asked Umberto, "I am a salesman by nature, I enjoy my work, I am successful, my customers are satisfied, I bring profitable orders to the company..." But Marcello insisted, he explained to him that purchasing is like sales but the opposite, it would be for him a promotion as he would be a VP and a management member, and on top of everything he needs an ethical executive for this job who would not receive bribes from the suppliers but would be smart enough to bring the best contracts for the company. The first assignment that Umberto received was to find a subcontractor for a \$30M project. Although the total project of aircraft retrofits was much larger, the subcontractor segment was essential to the success of the project and it was imperative to find a suitable subcontractor that would not only give the cheapest bid but also would meet the tight time schedule in order to avoid paying penalties in case of late deliveries. Umberto flew to the US and visited several companies that could fit the needed profile of the subcontractor. At the end of the tour two companies remained in the short list: one was a large Californian conglomerate with a proved long time experience in this field that gave a proposal of \$25M and a delivery schedule that met Aircraft Retrofits' requirements. The second one was Ziegelman Corporation, founded by Jacob Ziegelman, a self made man. The company was located in a small town in Michigan. Ziegelman had two sons and two daughters and none of them wanted to continue working in his company. He was very disappointed by their conduct and contemplated selling the company and retiring.

The proposal of Ziegelman was \$32M, but he hadn't a proven record in this field. The company met usually its time schedules but in the past there were three cases in which it was far behind schedule, but they said that it was not their responsibility. That is why Marcello was very surprised when Umberto recommended him Ziegelman. "Why on earth Ziegelman?", he asked, "they are much smaller than the Californians, they are much more expensive, they are not active in this specific field and didn't meet the schedule several times in the past. Only the penalties that we would have to pay could be much higher than the whole profitability of our company. Why shouldn't we go on a safe ground with the Californians?" But Umberto insisted: "Marcello, you have to rely on my judgment. Have I ever disappointed you when I was in Sales? I sense positive vibrations from Jacob. He wants very much the project and would be willing to walk the extra mile for it. He promised me to be involved personally on the success of the project. Believe me, at the price they are offering us they will lose money. I got lost with the conglomerate and they were very indifferent and patronizing at me, they will treat the project as one of the dozens projects they have and wouldn't give the management attention that we would get at Ziegelman's. They would always prefer the larger companies and we would be the last ones in their order of preference and not the first one as we should be." Marcello answered him: "If Ziegelman wanted so much the project they could have lower their bid to \$24M instead of \$32M and they would be at least the lowest bidder. I don't know why you like him so much. If you were not already married I would think that he promised you one of his single daughters." When Umberto insisted, it was decided that if Ziegelman would lower his bid to \$24M as requested by Marcello, he would consider giving him the order.

Umberto flew once again to the US, this time with three engineers specializing in the project's technology who were asked to give their objective opinion on the capabilities of Ziegelman. After a tiring week of negotiations and enquiries a letter of intent draft was prepared in which Ziegelman committed to the

specifications and time schedule for a consideration of \$24.9M. They also agreed to pay penalties in case that the project would be late because of their fault and to ensure that - they were willing to give a \$5M bank guarantee. The impressions of the engineers were mixed. One of them said that he preferred the California company, the second one said that he could live with Ziegelman but there were risks, the third one told Marcello in private that he suspects that something is not Kosher in the special relationship between Umberto and Ziegelman. He spoke with some of the Michigan employees and they told him that they suspected that Ziegelman has promised some benefits to Umberto, as otherwise they could not understand the reasons of this bizarre transaction. Marcello faced a grave dilemma. He believed in the integrity of Umberto, it was one of the reasons he promoted him to his new position, but on the first assignment he gave him as VP Purchasing he probably failed. He convened to his office Domenico - the Ethics Officer, as well as the Legal Counsel and the VP Human Resources in order to discuss the matter. When he presented to them his dilemma, the VP Human Resources suggested to transfer Umberto back to his previous position in Sales, the Legal Counsel proposed to hire an American detective agency in order to discover what has Ziegelman promised to Umberto, and Domenico said that he would investigate the matter but he thought that Marcello would have to fire Umberto. Marcello told Domenico angrily: "On what ground do you want me to fire Umberto? He didn't commit any fraud, on the worst case he made a wrong decision. If I would fire in this company all those who made a wrong decision, I would remain with no employees. Only you probably would remain, full of self righteousness, but let us see if you would be able to bring to our company even one dollar profit."

Marcello waited for the whole week-end until he reached a decision. He knew that it would never be possible to prove that Ziegelman offered Umberto a bribe in order to prefer him over the others. On the other hand, he was sure that it smelled a rat, as it seemed strange that a company would lower its bid so much from \$32M to \$24.9M, especially as they said that they were losing money on the

former price. The three engineers didn't backup Umberto and he himself preferred to take the Californian proposal. Marcello could not put at risk the success of the company for Umberto's sake. He met Umberto at his office and told him: "I am very uncomfortable with your decision to prefer Ziegelman. After I consulted the engineers and some others I decided to overrule your decision and to give the order to the Californian company. The price is almost identical and Ziegelman didn't go down to \$24M as I have requested. And I have doubts if he would be able to meet our time schedule, as he is going to lose money and he is not an expert in this field. There are rumors that you were promised some benefits in return for your decision but I don't believe in those rumors. In view of my decision, can you live with it and implement it fully? You can always return to your former position in Sales..." Umberto answered him dryly: "There is no need. I submit you now my resignation. You are questioning my integrity and I see it as an insult and lack of trust from your part. I have not a lot in life, just my good reputation. Be well and I hope not to see you."

Marcello convened once again the former forum. The VP Human Resources was not surprised by Umberto's reaction as he knew he was an ethical manager who made probably a mistake in his judgment as he was new in his position in Purchasing. The Legal Counsel said: "I am glad that we got rid of him, Marcello! You would have suffered a lot of grievance from him in his job. He didn't look trustworthy even when he was in Sales, but there - he was not able to get bribes." While Domenico added: "You'll be cross at me once again, but I predict that Umberto will start working with Ziegelman within a couple of months. His friend must have promised him that if their scheme would not succeed, he would offer him a job in the States to compensate him." And indeed, a few weeks later Marcello heard that Umberto started working at Ziegelman's company as his Executive VP and candidate to replace him. Marcello wondered if he was right in his decision, if there was smoke without fire, if he was responsible for the loss of a brilliant manager and the cause of his immigration to the US.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: PERCEPTION OF ETHICS IN INTERNATIONAL BUSINESS ETHICS CASE - INTERNATIONAL PURCHASING

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Marcello, CEO of Aircraft Retrofits, 2. Umberto, VP Purchasing of Aircraft Retrofits, 3. Domenico, Ethics Officer of Aircraft Retrofits, 4. Jacob Ziegelman, CEO of Ziegelman Corporation.

* Do you think that the intentions of Umberto were pure and he really was convinced that Ziegelman was the right choice?

* If yes - how do you explain that he went to work for Ziegelman right after his resignation from Aircraft Retrofits?

* Describe the frustrations of a purchasing manager who is always suspected of receiving bribes from his suppliers.

* There is no smoke without fire. Is it true generally, in our case?

* Why has Ziegelman agreed to reduce his price by more than 20% and is it common?

* Why has Ziegelman offered to Umberto after his resignation to replace him in the US?

* What are the qualifications of Umberto that entitle him to replace Ziegelman as the CEO of a company selling \$200M in the US?

- * If there was a bribe, is it reasonable that Ziegelman would offer to Umberto (a corrupted man) to replace him, is it a reasonable compensation for helping him with the project?
- * Why has Marcello appointed Umberto - VP Purchasing, although he had only sales experience?
- * Is Purchasing really like Sales, but the opposite?
- * What are the qualifications needed from a good VP Purchasing?
- * Why was Marcello furious at Domenico, although Domenico was allegedly right by predicting that Umberto would go to work for Ziegelman?
- * What was, generally speaking, the attitude in the company towards the Ethics Officer?
- * What is, generally speaking, the attitude towards the Legal Counsel?
- * What do you think of the attitude of the VP Human Resources in this case?
- * Would Umberto have chosen Ziegelman even if he didn't foresee an opportunity to work there in the future?
- * Do you think that Ziegelman hinted or promised Umberto to work for him in the future? Has he offered him the job only after Umberto resigned and called Ziegelman to tell him about it?
- * Was Marcello right when he decided to send with Umberto the engineers to check his decision?

- * Was Marcello right when he agreed in principle to give to Ziegelman the project if he would go down to \$24M? Did he really believe that he would go down so much?
- * How was Marcello's conduct as a CEO?
- * How did Marcello react to all the delicate personal attitudes of his subordinates?
- * How would you behave if you were in Marcello's position, Umberto, Domenico, VP HR?
- * Umberto is married, how do you think were the reactions of his wife at the critical crossroads of the case: Appointment as VP Purchasing, the decision of Umberto to choose Ziegelman (if Ziegelman promised him something would he tell her?), the resignation, the job in the US?
- * Do you think that Umberto will succeed in his new job in the US?
- * Why has Umberto resigned? He could retain his position while suffering from the overruling that could be attributed to his lack of experience, he could return to his old position in Sales, he could find another job in his country.
- * How did Domenico have the hunch that Umberto would go to work for Ziegelman?
- * Was the forum that Marcello chosen on behalf of Umberto an adequate one? Would you suggest another forum?
- * The argumentation of Umberto on behalf of Ziegelman did not seem very convincing. Give better arguments.

* Do you think that Umberto is right in saying that the Californian company wouldn't try too hard on their behalf, while Ziegelman by giving his personal attention would be much better? What is the difference between management attention of mega corporations and small ones?

* Do you think that there is a different perception of ethics in Marcello's country and in the US? What about your country?

* What are the lessons that you draw from this case? Describe other dilemmas that you have encountered in purchasing departments in companies.

CONCLUSION

Ziegelman didn't promise Umberto a thing in return of choosing his company for the project. The choice of Umberto was genuinely based solely on his professional judgment. Umberto could be mistaken but he certainly was not a crook, he was extremely ethical with an impeccable integrity. He suffered as many of the purchasing managers from the prejudices that most of them receive bribes from their suppliers. He suffered also from a different perception of ethics in his country as compared to the US. Umberto believed indeed that Ziegelman would go the extra mile for his company in order to meet the targets. He used all his convincing skills to convince Ziegelman to reduce his bid to \$24.9M, explaining him where he could save and what he could do to reduce the costs. Ziegelman could make his profits from the subsequent orders and from the change orders, provided that he met the time schedule and quality.

That is why Umberto was offended profoundly when Marcello didn't believe him and he decided to quit the company. Back home, he consulted his wife on the alternative courses of action. She backed him fully and agreed that he shouldn't remain in a company that suspected the honest people. In her sharp senses she perceived for Umberto an opportunity if he would inform Ziegelman on the reasons he was forced to leave the company. She guessed that Ziegelman likes her husband, otherwise he wouldn't have agreed to reduce his bid so much. She heard from Umberto that Ziegelman is looking for a heir and hoped that Umberto would be offered the job. She didn't mind to immigrate to the US, she was born in New York in a Sabbatical year of her father who was a philosophy professor. She was a microbiologist and knew that there is a lot of demand for her profession in the States.

Umberto phoned Ziegelman with mixed feelings and told him what happened, his reasons for quitting, and his doubts on his future career. Ziegelman asked him: "Would you like to work in the US?", and when Umberto answered him that it is

indeed a possibility and his wife is an American citizen, he continued: "Now I can tell you that I enjoyed very much working with you. I was very flattered that you believed in me and preferred my company over the Californian mega corporation. Now I see that you even jeopardized your career on my behalf. Don't look at the proposal that I'm about to make you as a compensation on your courage, as I truly believe that you could succeed very much as my Executive VP. You have an excellent strategic understanding, you are talented, like to work hard, you have an excellent background in Sales, an MBA, an impeccable integrity, a rare persuasion capability (I learned it when you convinced me to reduce the price). You know that I am frustrated that none of my children wants to continue working in my company. Come, join me, and if you will be good - I give you the presidency within a year or two and retire, what I wanted to do a long time ago."

Umberto immigrated to the US. He succeeded beyond all expectations in Ziegelman's company. Within nine months he was appointed the CEO of the company and six months later Ziegelman resigned from his position as Chairman of the Board. Umberto conducted an outstanding turnaround plan, expanded to new markets throughout the world and within six years the company reached a turnover of a billion dollars and became the market leader in its market. Ziegelman treated him very generously and gave him one quarter of the ownership of the company. Today, Umberto has shares with a valuation of several hundred million dollars. He kept throughout the years his integrity and ethics. The customers, suppliers, workers and the minority shareholders have learned to know that he keeps all his promises, he treats all of them fairly, and was even chosen as the most ethical executive in the American industry. Umberto contributes every year 5% of his Net Profit to the community.

BUSINESS ETHICS IN INTERNATIONAL M&A CASE - OBTAINING MARKET SHARE THROUGH MERGERS

(Due to confidentiality and editing reasons some of the names and details have been changed. The amounts are given for indication purpose only)

Jean-Jacques reclined his chair in the Concorde. An elegant French stewardess offered him an expensive present. It's interesting, he thought, how they manage to give at every flight a different present, I'll soon be able to have a set of all the art objects that I have received. She asked him what kind of aperitif will he have and he answered her - orange juice. What a waste, he thought, I am flying on the most expensive flight in the world, flying me in three hours from Paris to New York, I am offered the most expensive food and what I chose is orange juice and a vegetarian meal. Air France must save a lot of money on my ticket... He pinched himself in order to assure that he was not dreaming, while flying on top of the world in supersonic speed. He, Jean-Jacques, who started his life in the most miserable school with rain pouring through the broken roof, flies every few days to the US to conduct negotiations for acquiring an American company for the high tech company where he is a VP, the most profitable company in his country, to a large extent because of his contribution, and that has decided that the local market was too small for them and wanted to expand to the US.

Only six years ago he spent six weeks in Fort Worth for tough and long negotiations, but today his time is worth a lot of money and he cannot afford to be out of his company for more than a day or two consecutively. That is why he has decided to fly on the Concorde for conducting negotiations and due diligence on the American company Night Vision US. The acquisition costs are high anyhow, lawyers, auditors, consultants, and some tens of thousand dollars wouldn't make a

lot of difference on the acquisition price of \$24M. He had no doubts that Joshua, the American entrepreneur who started Night Vision US less than ten years ago and who came to the meetings in jeans and an open shirt, looked at him with an ironic smile, the European snobbish businessman with the expensive three-piece suits flying on the Concorde...

Advanced Systems sold in his country to a saturate market and put a lot of emphasis in trying to find foreign markets for its sophisticated high tech systems, especially in the US. It wanted to acquire new technologies, expand to civilian markets related to the defense markets in which it operated. Advanced Systems wanted to establish in the US a base for its American operations necessary for its FMS sales, benefiting from the grants and loans from the US to the local defense forces. The precondition from the local companies was that they should sell to the local army products with more than a 50% American content, and the only way to do it was to acquire an American company and having part of the manufacturing in the US. After a thorough market research Jean-Jacques managed to find Night Vision US, a rather small company that sold \$20M annually of night vision systems, mainly to the civilian markets. The American technology was protected by patents and was revolutionary in its simplicity. In the first stage, a 50%-50% joint venture was established to develop systems combining the local and American technologies, but soon enough it was decided to acquire 100% of the American company. The entrepreneur was not willing to sell the whole company as he thought that he would be able to make it public in the near future. He wanted to remain with 50% of the ownership, but it was agreed later on that the locals would acquire 66% of the shares for \$16M and leave Joshua for another year as CEO of the company. Only after Joshua decided to leave the company, the last third was acquired and Night Vision US became a wholly-owned subsidiary of Advanced Systems. But this case occurs in 1984, when only two thirds of the company was acquired, in order to describe the mechanism that was set to manage the international joint venture. Jean-Jacques, who was the driving force of this

transaction, was appointed to the Board of Directors of the joint venture and was the reference officer of the American company in the local company.

Night Vision US operated in a market with a growth potential of 50% annually, much more than the annual growth of Advanced Systems. Its systems complemented the systems of the local company and were integrated successfully in several projects. Jean-Jacques hoped that it would be feasible to make public the joint venture on the NASDAQ, as in these times only very few local companies were traded in the US. There were some companies that were traded in parallel in the US and locally, but very few shares remained in the US and most of them were purchased by local investors. Only a large IPO in the US could change the situation with massive sales to Institutions. And indeed, Advanced Systems was issued in 1987 in NASDAQ. But in 1984, Joshua still thought that the joint venture might be issued, and he insisted, being very ethical, that 13% of the 33% of the shares remaining in his possession would be distributed to key employees. He therefore sold 66% of his shares to Advanced Systems, gave 13% to the key employees, and remained with 20% of the shares.

The sales forecasts of Night Vision US were very high. The forecasts were that in the next five years the civilian sales would increase to \$70M, the military sales that were only in an embryonic stage in the company would amount to \$80M, and that the sales of combined systems with Advanced Systems would amount in 1989 to \$60M. Altogether, the sales would increase from the existing level of \$20M to \$210M in five years. Jean-Jacques thought before turning to an academic career that it would be interesting to examine what happens actually to the business plans prepared before an acquisition with the very bright prospects required for justifying the high valuations. All the business plans forecasted growth of twenty to fifty percents annually, profitability of at least 20%, and reduction in costs by tens of percents. In many cases, if not most of them, the actual results were much lower than the forecasts, but apparently nobody minded. Was it ethical to do so, towards the management, the shareholders, the company?

The profitability was forecasted to reach in 1989 \$20M "only", ten percent of sales, indicating a very conservative approach, although the total sales of the company were in 1984 - \$20M. The accumulated present value of the company at an actualization rate of 8% annually amounted in five years to \$35M. The present value of the investments required to reach such a profitability was \$11M, thus leaving a present value for the company of \$24M, which was (surprisingly) the same amount paid for the company by Advanced Systems. The author of the business plan was honest enough to mention some risks, such as the fact that the sales of the American company increased in the last few years by only 10% and that the joint venture has not succeeded until now to develop part of the military products. But those risks were negligible in comparison to the prospects of establishing a bridge to the American market - sales, IPO and FMS.

The American company had 220 employees, three main patents, a technological and operational infrastructure that was sufficient to the present sales but that needed an additional investment in order to meet the increase in sales. The joint venture hoped to raise within a few years \$40M in NASDAQ. A conservative sales forecast was devised with sales of only \$140M in 1989 but an optimistic forecast of sales of \$230M was also devised, thus making the \$210M sales forecast the realistic forecast. As mentioned before, this forecast justified the valuation of \$24M which was achieved in the negotiations.

In the acquisition agreement Advanced Systems committed to purchase two thirds of the shares of Night Vision US for \$16M. The previous joint venture between the two companies, with a 50%-50% ownership, ceased to exist and Adam, the CEO of the venture, saw how his dream to manage an independent company vanishes, as Joshua became the CEO of the merged company. The agreement was signed by Michael, the President of Advanced Systems, and Joshua and the effective date was set on October 3, 1984. The closing was very ceremonial, it took place in the local headquarters, the parties toasted local wine and

complimented Jean-Jacques on his excellent work. But on the night after the closing Jean-Jacques woke up with cold sweat covering him. He remembered how on the closing at five o'clock pm, he phoned his bank in New York and instructed them to transfer the amount of \$16M to Joshua's account. The bank manager who received Jean-Jacques's phone call was very cooperative and transferred immediately the amount, so that a few minutes later when Joshua phoned his bank he could verify that the amount was already in his account and the closing was made. Jean-Jacques didn't notice at this moment that he or somebody else could have transferred the money to his private bank account and the bank would have done it politely and cooperatively. The following morning he entered his office in a rush and prepared a bank transfer procedure requiring a written instruction with two signatures of accredited executives of Advanced Systems, followed by a verbal confirmation. When he phoned in the afternoon the American bank he reprimanded them and sent them the new procedure, asking them why they didn't require a written instruction with authorized signatures and speaking with a manager who knew him personally and would have recognized his voice. They didn't understand why he was so cross at them, as their motto was always to satisfy the client and prompt service was above all.

In the agreement the seller gave many representations, inter alia that they were the shareholders, that the company didn't break any law, there were no unreported liabilities, there was no deterioration in the business of the company since the date of the financial statements of 30.6.1984, there were no undisclosed commitments since this date, no new liens, no changes in the ownership of the shares, no unusual increases in salaries, bonuses and benefits of the employees, no assets were sold not in the normal course of business, they continued to work with the same customers and suppliers, there was no increase in bad debts, and so on. The company declared that it paid all its taxes and it had all the necessary permits, it had no trade unions, no labor disputes, no lawsuits, etc.

The representations included the assets, the stocks, accounts receivable, accounts payable, rentals, liens, status of bank accounts, outstanding orders, the salaries of the executives and employees, the patents and the know-how, the R&D. It was decided that the sellers would compensate the buyers on every liability that was not included in the representations and would be discovered after the closing, on damages caused by undisclosed representations, on every amount not paid by the customers beyond the reserves, and so on. To ensure the fulfillment of those clauses it was decided to hold a sum of \$2.4M in escrow for a period of 18 months with contractual instructions how it would be possible to receive money from this escrow. It was agreed that Joshua would not compete with the company as long as he is an officer or a director of the company and 15 months afterwards. The sellers would do their best efforts to comply with the budget attached to the agreement, although they didn't commit to it.

The buyers committed to do their best efforts to invest in the company \$6M in R&D as was stipulated in the joint venture agreement. The buyers committed that if it would be necessary to raise investments for the operations of the company as the Board of Directors would decide, they would use firstly the company's reserves, then they would give the company loans and guarantees up to a sum of \$2M annually in three years from the effective date, or \$6M in total. Finally, after exhausting those two means, they would invest in equity in the company. The company was entitled to receive loans from banks and issue its shares on the stock exchange. This sequence of funds raising needed for the company was devised in order not to dilute the minority shareholders as happens often in similar cases.

As for the public offering of Night Vision US's shares it was decided that it will take place after the company will reach sales of \$100M while keeping an adequate profitability, but if it was feasible the company would go public at an earlier date. We will not go into the contractual details that are too intricate, as the purpose of this case is to describe the acquisition of an American company by a foreign company while the previous owners remain as minority shareholders but

continue to manage the company. It was stipulated that the buyers will bear their acquisition costs and that the sellers will be entitled to cover up to \$50K of their selling costs from the company's funds. The lawyers of the sellers gave an opinion to the buyers on the existence of the company, its status, the breakdown of its equity and its entitlement to the assets of the company. The law of the agreement was the law of the State in which Night Vision operates while the court location was New York.

The Board of Directors of the company comprised 10 directors, 6 nominated by Advanced Systems, 3 by the minority shareholders, and one was Adam, the former CEO of the joint venture. In several issues a special majority of 75% was requested: sale of all or almost all the assets of the company and merger of the company with another company, ceasing voluntarily the operations of the company, application for bankruptcy. The shareholders were granted a first refusal option on purchasing shares of the company that were offered by the shareholders for sale. The company will purchase shares of the company that will be offered for sale on the following aggregate conditions: sales of \$100M annually, growth rate in the same year and forecasted in the following year of 30%, the net profit of the company is at least \$10M and so it is forecasted for the next year, the added value for this year is at least \$70M and so it is forecasted for the following year, the company is not intending to go public. The valuation of the company will be done by an external assessor.

These clauses are of the utmost importance for the minority shareholders. In many cases the minority shareholders are stuck with their shares without having the possibility to sell them at a reasonable price because there are not many buyers for minority shares. If the company will meet its forecasts, which is subject to the competence of the management, the owners and the entrepreneur who remains as the CEO of the company, would be able to sell their shares. This, of course, would happen if Advanced Systems wouldn't or couldn't go public. Joshua received an employment contract with a salary of \$100K annually for a period of

one year, renewable every year unless one of the parties gives an advance notice of 120 days prior to the renewal date that he is not willing to renew the contract. The location of the company is the present one and the CEO is willing to travel on behalf of the company 20 working days a year as he used to do in the past. If the CEO met those conditions he will be entitled to an annual bonus of \$50K that will not be lower in any case of \$20K and will not be higher than \$80K, even if he exceeded his objectives.

Jean-Jacques and Michael continued to be directors in Night Vision US for several more years, after a year Joshua left the company and a new American CEO was appointed, Advanced Systems bought the remaining shares of Night Vision US which became wholly-owned. Board of Directors' meetings were held every few months and soon it was clear that Night Vision US doesn't meet by far its forecasts. Nevertheless, it became the focus of the FMS sales of the local company, as the American company met with the FMS requirements of manufacturing in the US with an American added value of more than 50%. Advanced Systems manufactured subassemblies, shipped them to the States, Night Vision added its own subassemblies and made the final assembly, delivering the final systems to the local army. The annual deliveries were tens of million dollars, the American components in the local subassemblies, the American subassemblies and final assemblies, overhead, sales and G&A expenses, as well as profits amounted to more than 50% of the sales turnover to the local Army. Advanced Systems has never examined if the business plans of the acquisition were met or not and if the price paid to Joshua was justified. The feasibility was integrated in the overall strategic considerations of the local company, but the acquisition was undoubtedly not justified on behalf of the sales of Night Vision products and systems. Yet, the FMS sales and profitability and the edge that Advanced Systems received in 1987 while making its IPO, stating that it had a substantial American entity, were instrumental in the success of Advanced Systems.

Jean-Jacques doesn't fly anymore with the Concorde. He spent long weeks in New York in the IPO process and almost never visited the American subsidiary. Other executives received the responsibility on Night Vision US and Jean-Jacques was no more interested in the results of the company and was no more excited of having an American subsidiary. In 1987 he had other responsibilities, other challenges, other ambitions; he managed to make a successful IPO of Advanced Systems in Wall Street with the most important investment banks in the world...

ANALYSIS AND TOPICS FOR CONSIDERATION ON: BUSINESS ETHICS IN INTERNATIONAL M&A CASE - OBTAINING MARKET SHARE THROUGH MERGERS

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Joshua, President and Owner of Night Vision US, 2. Michael, President of Advanced Systems, 3. Jean-Jacques, VP Advanced Systems, 4. Adam, President of Advanced Systems US.

- * Has the acquisition of Night Vision US met the expectations of an introduction to new markets and technologies?
- * Was the acquisition price of \$24M justified in view of the past sales, the business plans, the objectives of Advanced Systems?
- * Why was it worthwhile for Advanced Systems to acquire Night Vision US?
- * Was the reason of the acquisition only to establish an American base for receiving the FMS funds, was it not less expensive to find a different solution?
- * Was anyone of those who prepared the business plan, justifying the high valuation of the American company, interested to prove the feasibility study or was the plan only a façade for justifying the valuation?

- * If we would conduct an academic research, as suggested by Jean-Jacques, to examine the actual results compared to the forecasts in the business plans and strategic plans, what would have been the results of this research? Why? Is it important after all?
- * What is in your opinion a reasonable price for the American company and was it possible to obtain it in with a more sophisticated negotiations process?
- * What were the considerations of Joshua in selling his shares to the local company?
- * Why has Joshua decided to sell the residual of his shares to the locals and resign from the company?
- * What was the mistake in the business plan that forecasted an increase in sales from \$20M to \$210M in five years?
- * Why did Jean-Jacques and Michael believe that they could make an IPO of Night Vision US in NASDAQ?
- * Why was such a low actualization rate chosen for the American company - 8% for a high tech company with a high risk?
- * Do you believe that Adam opposed or was in favor to the merger with Night Vision US?
- * Why was Michael so eager to acquire the American company?
- * Why has Jean-Jacques, who was a tough negotiator, chosen to be lenient in the negotiations with Joshua?

- * What kind of representations did the sellers give on Night Vision US?

- * Who benefited or lost from the acquisition of the American company: Joshua, Michael, Jean-Jacques, Adam, Advanced Systems, the employees of Night Vision US?

- * What was wrong with the bank transfer of the consideration to the Americans?

- * Is Ethics the cornerstone of the business world? What would have happened if Joshua or Jean-Jacques would act unethically? When would the fraud be discovered if Jean-Jacques would have transferred the money to his private account?

- * Do you think that skeletons in the closets were discovered during the due diligence on Night Vision US that necessitated to activate the guarantee clause of \$2.4 M?

- * Is the non-competition clause of 15 months sufficient?

- * Why was it more worthwhile for Advanced Systems to acquire the residual of the company than to fulfill the obligations of completing the investments in Night Vision US?

- * What do you think of the clause that makes it difficult to dilute the minority shareholders? Is it effective?

- * Why was it so important to Joshua that Night Vision US would go public and why did he insert in the agreement a clause in this respect?

- * Why was the objective of \$100M sales chosen as a trigger for going public and not a higher or lower amount?

- * Why were the acquisition costs of the American company so high? Would they be higher if the negotiations were longer? Was it worthwhile to invest more in the company agreeing to a high valuation in order to reduce the acquisition costs?

- * In which cases is a special majority required for special reasons that necessitates the approval of the minority shareholders?

- * In which cases was it mandatory for the merged company to acquire the minority shares?

- * Describe cases that you know of in which the minority shareholders were stuck with their shares without having the possibility to sell them at a reasonable price? Were the clauses introduced in the agreement effective?

- * Was the employment contract with Joshua a fair one?

- * Why was Joshua offered an employment contract of only one year with an advanced notice of 120 days and not an agreement of five years?

- * Why was a minimal amount of an annual bonus introduced even if Joshua doesn't meet his objectives?

- * To what extent was the fact that Advanced Systems had a company in the US selling tens of millions of dollars instrumental in the success of the IPO of Advanced Systems in the US in 1987?

- * Why nobody in Advanced System has ever examined the justification of the decision of acquiring Night Vision US for \$24M?

- * Why has Jean-Jacques ceased to be interested in the financial results of Night Vision US?

- * What is wrong in the assumption that a company operating in a market segment would continue to grow according to the growth rate of the market segment?

- * Could Joshua sell his company to an American at the same high price paid by the locals?

- * Why has Joshua insisted that 13% of the shares should be distributed to key employees of his company and agreed to be diluted accordingly?

- * What are the lessons that you can learn from this case and how would you operate if you were Jean-Jacques or Michael?

CULTURAL, ETHICAL AND MENTALITY GAPS IN INTERNATIONAL BUSINESS CASE - THE IMPORTANCE OF BEING A POLYGLOT

(Due to confidentiality and editing reasons some of the names and details have been changed. The amounts are given for indication purpose only)

English has become a long time ago the international business language. Most of the international agreements are written in English and the business negotiations are held in this language. The due diligence is performed in English, and businessmen from Sweden, Italy, Russia, Japan, Argentina, Egypt and Israel speak among themselves in English, with a foreign accent, with spelling and grammatical mistakes, but they understand each other quite well. Only one country in the world insists in keeping its language and heritage in spite of the global trends and refuses to be swept by the English tides - France. It is very harsh for the nation of Louis XIV, Napoleon and De Gaulle to relinquish its international position after being until half a century ago a global superpower with a transcontinental empire, with a fabulous history, a magnificent culture, leadership in all the fields: technology, science, aviation, cinema, theater, fashion, gastronomy, tourism, literature, music, arts and most of the other fields. Furthermore, French was until a century ago the international diplomatic language, French schools were scattered all over the world, and the francophone culture did not succumb to the English culture that became the dominant culture after World War II. Towards the end of the 20th century cracks started to appear in the French fortress and the young French businessmen speak fluently English, sometimes even without an accent. The high tech revolution, New Economy and the Internet, globalization and M&A are the main reasons for this change, and France has discovered that if it wanted to survive in the global economy, being in the center of Europe (and the world...?), it had to speak English as everybody

else. Board meetings of French multinational companies, such as Alcatel, Vivendi and Thomson, are held in English, correspondence is in English, even French/European business schools become the Business Schools for the World and courses are held exclusively in English. The language of the European Union is effectively English, in spite of its official 20 languages, and all the largest legal and audit firms in France operate in English, if they are not American or British firms located in Paris.

The mother tongue of Emile was French. He was not born in France but in one of the francophone diasporas and in the French school where he studied in his childhood the young children: Jews, Moslems, Christians, French, Italians, Greeks, Armenians and Copts, learned about the French heritage, their forefathers the Galls, and learned by heart the poetry of Hugo and the plays by Racine. The exposure to multiculturalism was a major ingredient in the personality of Emile and he was fluent in more than ten languages - French, English, Spanish, German, Italian, etc. In the M&A negotiations he had a very important edge when he could speak with his business colleagues in their mother tongues, about their culture: Lorca, Moliere, Shakespeare, Pirandello or Brecht. In 1979, a few days after the birth of his youngest daughter, he conducted business negotiations in Taiwan for six long weeks on a huge contract. The Chinese decided to submit this European businessman to Chinese torture in attrition tactics that succeeded in most of the cases. They held for a long week negotiations on the penalties clause, made long breaks, and were convinced that this young businessman will not be able to stay for such a long period in Taipei, which was not very "international" in those days. Emile and his colleague stood alone against hosts of Chinese counterparts, exhausted and homesick. They knew that the Chinese had among them one who was fluent in their tongue and they volunteered disinformation in this tongue while communicating also in Romanian, the mother tongue of Emile's wife, which he learned in order to understand her culture. But as the weeks went by and because of the intellectual curiosity of Emile, he started to study Chinese and he told his Chinese colleagues every morning what new sayings of Confucius he had

learned. His Chinese accent was despicable but his colleagues learned from his attitude that he was not ready to succumb to their tactics. He joked that his people was a people as ancient as the Chinese, and both nations were known for their patience. After Emile started to go every night to Chinese operas, his counterparts gave up and agreed to the conditions of Emile. The contract was signed after six weeks, the most profitable contract ever in Emile's high tech company. Emile learned a lesson that he was to cherish throughout his whole business career that a multicultural attitude is the cornerstone of most of international negotiations.

Philippe, the President and owner of Electronique France, was a fervent catholic, aged seventy, who prayed devotedly every day in the ancient cathedral of his hometown near Paris. He started his own company that manufactured electronic components for electronic scales when he was quite aged as he hoped that his son Louis will continue to manage the company. But over the years he had to admit that Louis, in spite of being a brilliant salesman and a good engineer, was not made of the stuff of a manager and preferred to be employed most of his time in the flourishing flower business of his second wife. Philippe didn't speak English but Louis spent many years in the US with his first wife and was fluent in English. Philippe called the shots, but his health was deteriorating and he wanted to sell his company as soon as possible. The only company that was interested in Electronique France was Scales, a foreign company that needed the French technology. Richard, the CEO of Scales, was a successful businessman who managed his company very efficiently. He came to Philippe at the beginning of the negotiations, assisted by foreign auditors and lawyers. The negotiations with Philippe, who belonged to the old school, did not succeed and the main problems were in the cultural gaps between parties. Richard who didn't understand French decided to hire Emile, who spoke this language fluently and had a vast experience in doing business with French companies.

Emile insisted that the first meetings with Philippe, after his employment in mid October 1997, were to be held tête-à-tête and indeed within a short while he found

a common language with Philippe and a good chemistry was established between the aged fervent catholic and the agnostic Emile who was twenty years younger. They talked about French literature, theater, history, Paris, arts and almost any subject other than business. Frenchmen, especially those of the older generation, want to evaluate firstly your character, your culture, your scope of interests, your integrity, before they start to speak about business. With the same generalization, and indeed one should not generalize, an American will treat you as an extraterrestrial if in a business lunch you'll speak with him about Arthur Miller or Scott Fitzgerald. The maximal detour from business allowed in a lunch is a discussion about the merits of the restaurants in New York, San Francisco or Los Angeles. After breaking the ice between Emile and Philippe, they started to talk business and a formula was found within a short while that could overcome the gaps. As a matter of fact there was not a large gap between the parties in the prices and conditions. The gaps were in the payment terms, as Philippe was afraid that the (greedy?) foreigners would not pay the last payments that would be withheld until the acquisition was completed. In their original proposal the buyers requested that the Dutch law would prevail in this contract and finally the parties agreed on the French law. Emile convinced Richard to give up on immaterial clauses which raised the suspicion level of Philippe, as he knew that Richard was an honest person and Philippe's apprehensions were not justified.

Scales is a public company with a sales turnover of \$100M and plants in England, Germany, Israel, the US and China. The company, which one third of its ownership is held by a British company selling \$400M annually, had several product lines including electronic scaling and they needed the electronic components of the French company in order to rationalize and decrease the production costs. After acquiring the French company, the buyers wanted to appoint a local VP Finance. Later on, they wanted to appoint a French CEO and Emile was asked to find with a local head hunter a French candidate. Finally, a Scales executive with a French background was sent to manage the company. Scales was registered as a Dutch company for various reasons. They offered the

French \$2M for the company as the valuation seemed fair for the know-how, the plant (1,200 sq.m.), the on-going concern and the employees. In M&A there is a minimal threshold of price, which below that renders the acquisition expenses prohibitive. In fact, if we calculate the acquisition expenses, including legal and audit - French and local, the remuneration of Emile, the frequent trips, hotels, French meals, due diligence, restructuring costs and so on, we can arrive to a conclusion that those expenses amount to a substantial part of the acquisition costs. But in our case, in spite of those considerations, Scales paid those expenses willingly as the know-how of the French company was very valuable for Scales' operations. Philippe wanted to sell his company at any price as he didn't have a genuine alternative, operating in a very small niche, and he thought that the valuation that he received was adequate.

Electronique France was a sarl company, as most of the small companies in France. In the Financial Statements of 9.9.97 it was stated that the two companies (operations and assets) had no Boards of Directors, the CEO had very large responsibilities, there was no need of an audited report, the accepted accounting standards were not needed for the financial reports, there could be only one shareholder and the exclusive signature requirements could be only of the CEO. In a SA company there was a Board of Directors comprising of at least 3 people, an external audit has to be nominated who would be employed for at least 6 years, the Financial Statements have to be audited according to accepted accounting standards, there should be at least 7 shareholders, the responsibilities of the CEO are similar in both methods. The social benefits in Electronique France amount to 42.5% of the salaries, 13 monthly salaries are paid every year, the salaries are examined twice a year. It was found that \$200K were missing to the pension funds. After the due diligence it was decided to acquire the equity of the company with its shares and not only its assets and liabilities. On 14.10.1997 Richard sent to Philippe a Letter of Intent specifying the terms and conditions of the acquisition. It was proposed that \$1.1M would be paid for the company upon signature of the contract, \$0.6M would be paid a month after receiving the audited

1997 report of the company and \$0.3M would be paid within 6 months of the signature. The topics requiring due diligence were decided upon, it was decided that the company would not be offered for sale until the expected signature date of 15.1.1998, that the parties would bear each his own expenses, there would not be a public disclosure until the signature, validity, law, and so on.

In the clause 2.2 of the Letter of Intent it was stated that the severance pay of Louis, Philippe's son, would be deducted from the purchase price. It was not stated what was agreed already that Scales would reimburse the loans that Philippe has given to Electronique France, Philippe objected and disagreed that his company would be part of the transaction that should be exclusively with the shareholders of the company with a guarantee of Philippe to the accuracy of the financial reports of the company. Philippe was surprised that the transformation of his company to a SA has become a prerequisite of the transaction, he was ready to discuss financial adaptations but only according to French accepted accounting standards. He insisted that only \$0.4M of the consideration would be withheld until the date of the acquisition financial statements. He wanted to be reimbursed of the \$200K that he had given as a loan to his company and he was willing to be a guarantor on the accuracy of the financial statements up to a maximum of 40% of the consideration price. He insisted that the French law would prevail on the transaction. In this intricate situation Emile started his involvement in the project. He approached several law firms, but because of economic considerations they remained with the original law firm that Richard has hired although another partner was chosen. The audit firm, which was one of the largest ones in the world, chose another auditor, who had worked in the past several times with Emile. This audit firm was also the auditor of Scales. Emile held in the 3rd to 7th of November meetings with the lawyers and auditors, visited the company and met with Philippe.

Electronique France sold \$5M annually and had 32 employees. The breakdown of sales was: 75% products and 25% services. Materials were 23% of sales and

subcontractors 17%, labor costs 50% and depreciation 5%. The Net Profit amounted to 5% of the sales. The equipment was obsolete and the insurance companies evaluated the net value of the company at \$7M. In the balance sheet of the company to the end of 1997 there were \$100K in cash, accounts receivable \$1.3M, stocks \$0.9M, fixed assets (excluding the plant) \$0.1M, in total \$2.9M. The bank loans of the company amounted to \$0.5M, accounts payable \$0.4M, Net Worth \$1M. In the Assets company (the Plant of the company) the assets amounted to \$0.9M and the bank loans to \$0.6M, loans from Philippe's family \$150K, the Net Worth \$40K. It was decided that all the expenses of the transformation of the company to a SA would be paid by Scales. 84% of the shares of the company were held by Philippe's family and 16% by partners who agreed a priori to Philippe's moves. Richard learned that upon signature of the agreement three directors have to be appointed, while the CEO has to be a citizen of the EU. As in a SA there has to be at least 7 shareholders it was required to give the names of 4 people or companies on top of the three directors. It was agreed to reimburse the \$200K loan that Philippe gave to the company, the guarantee of Philippe to the company on the accuracy of the financial statements was limited to \$400K. The acquisition agreement that was written in French was signed on 12.2.1998. It was between Philippe's family and Scales. Philippe committed to transfer to Scales all the shares of the company, including those of his partners. The patents of the company were included in the agreement. Philippe stated that the stocks were salable, there is no lien on the equipment, that there are no legal claims against the company, that it has paid all its taxes, that the employment contracts have no clauses that are not standard, that the company complies with the ecological requirements, that there was no deterioration in the business conditions of the company since the date of the 1997 financial statements until the date of the acquisition, that the loans of the company are \$200K, etc. It was decided that the French law would prevail on the acquisition contract, no competition for five years, arbitration clauses and so on. In a separate contract the ownership of the plant and its liabilities was transferred to Scales.

A few months after Emile became to be involved in this case an agreement was signed between Electronique France and Scales. During those months dozens of meetings were held between Philippe and Emile, Louis and Emile, as well as meetings with Richard, the lawyers and the auditors. The hurdles were overcome and the parties have reached a high level of trust. The acquisition of the company was done without any problems and all the consideration was paid on time to the owners. Possibly, a few prejudices also disappeared. The good ambience was also due to the gourmet meals in the hometown of Philippe and in Paris, the good wine and the excellent food contributed to the high spirits and to the flexibility of the parties. All parties were satisfied with the results of the negotiations although they saw previously insurmountable hurdles that disappeared, often because of the contribution of Emile who put things in the right proportions, and assisted in overcoming the cultural gaps. No turnaround plans were devised, no sophisticated negotiations tactics were used, the due diligence was rudimentary and the length of negotiations was relatively short. Richard participated only in the decisive meetings and of course on the signing of the agreement, thus saving a lot of his management attention and enabling him to attend more important matters. He didn't understand a word of the documents he signed, of the financial statements and of the representations. He leaned now and then towards Emile and whispered to him: "I trust you blindly, I depend on you that you wouldn't put us in a difficult situation because of misunderstandings due to the language and the contents". Emile assured him that he can count on his competence and integrity and he would not have to regret the signature of the agreement and the trust that he put on him. And so, Richard continued to sign the hundreds of pages... This case describes the cultural gaps facets of international business, which are neglected in many cases, but are one of the main causes of the failure of those business. Many workshops are held on negotiation tactics in Japan and China, but this case proves that it would be advisable to try and understand cultural gaps much closer home, in countries like France, Germany or Italy.

ANALYSIS AND TOPICS FOR CONSIDERATION ON: CULTURAL, ETHICAL AND MENTALITY GAPS IN INTERNATIONAL BUSINESS CASE - THE IMPORTANCE OF BEING A POLYGLOT

Topics for consideration on the personal, business and ethical dilemmas of the main protagonists of the case: 1. Richard, President of Scales, 2. Philippe, President of Electronique France, 3. Louis, the son of Philippe, 4. Emile, manager of the M&A program.

- * Describe the importance of the knowledge of languages and cultures in the modern business world.
- * English has become the international business language, can we be satisfied with that?
- * The importance of Ethics and the knowledge of languages and business cultures in the business faculties - a necessity or a luxury?
- * Describe problems of cultural gaps that you have encountered in your business career? In the US?
- * Is France an exception in its business mentality or is it common to all Europe?
- * Describe the Chinese experience of Emile, was it because of intellectual curiosity, negotiations tactics, or both?
- * Businessmen learn golf in order to reach a common "language" with their colleagues, why shouldn't they learn languages and cultures?
- * Were the suspicions of Philippe based on prejudices or ignorance?

- * Describe the mentality gaps between Philippe and Louis.

- * Why was Philippe convinced that he made a good deal in spite of the low valuation of his company?

- * Would the negotiations end successfully without the involvement of Emile?

- * To what extent is the personality of Emile an exception in the modern business world?

- * What was the background of the trust that Richard had to Emile?

- * What would have happened if one of the parties, including Emile, would not act in good faith?

- * What were the mistakes of Richard, if any, in the conduct of negotiations with Philippe prior to the employment of Emile?

- * Do the French, English, Chinese or Americans have prejudices towards their business counterparts and even towards their compatriots?

- * If we will not do business with those who have prejudices towards us, with whom will we do business?

- * Is it easy or difficult to overcome suspicions between people from different cultures and are the necessary steps to be taken in order to overcome them prohibitive?

- * What is the proportion of the fixed costs out of the total costs of every transaction: legal, audit, consulting and so on?

- * Is it more difficult to conduct negotiations with French businessmen than with Americans, Italians, Germans or Chinese?

- * Is there a distinct business mentality to the French, British, Dutch, Scandinavian, Japanese, Latin American, Singaporean, Swiss businessmen?

- * Is it important for a foreign company conducting business in France not to agree to have the French law as the binding law of the acquisition agreement?

- * Richard had companies in England, Germany, Israel, the US and China. Why has he encountered problems only in France?

- * Are there ethical gaps between France, Great Britain, Singapore and the US?

- * Why did Emile insist that the first meetings with Philippe will be held tête-à-tête?

- * Why have Philippe and Emile found a common language despite of the huge differences between them?

- * Is the mentality of Emile similar to a chameleon that adapts himself to every interlocutor, or does it have a backbone?

- * Are the French businessmen, as they appear in this case, more intellectual than the Americans, or is it only not usual to speak in the US about culture in business dinners? What about Germany, China, Japan, Italy, Spain and other countries?

- * Would there be a better chemistry if the negotiations would be held between Richard and Louis?

- * What is preferable for a foreign company acquiring a French company, to appoint a French, foreign, or foreign with a French culture as a CEO?

- * Is it preferable to have the Europeans headquarters in Paris, London, Zurich, Rome, Amsterdam, Brussels, or Frankfurt?

- * What is the difference between a sarl and a SA company in France, why did Scales insist to change the company to SA before its acquisition? Is it because of the consolidation of the financial statements with the parent company?

- * To what extent is it difficult for a foreign company in France to adapt to the labor legislation and the high social benefits?

- * What are the differences between the Letter of Intent of Richard and the final agreement?

- * How can you explain that Louis learned from the Letter of Intent that he had no job in the merged company?

- * Why did Philippe answer with such a harsh letter to the Letter of Intent of Richard?

- * Is the business valuation of Electronique France equal to the Net Worth in the Balance Sheet - \$1M, the selling price of \$2M, the valuation for insurance purposes - \$7M, other? Is it important in view of the fact that the company was sold?

- * Do you learn from the financial statements of Electronique France about any problems or is the company in a sound financial condition?

- * Why did Philippe agree to be a guarantor of the accuracy of the financial statements?

- * Why was the company that had the ownership of the assets of Electronique France a separate company from the company that was responsible for the business activities?

- * Was the length of negotiations between the parties reasonable?

- * How were improved, with the assistance of Emile, the relations between Philippe and Richard, and how they became by the end of the negotiations almost friends?

- * Describe your impression on the importance of the cultural gaps in business. How do you think that you will be able to overcome those gaps in your business career?

UNIVERSALITY OF ETHICS

THE PLAY "THE VISIT" AND THE AFRICAN FILM "HYENAS" - SUMMARY AND ANALYSIS

Based on the play:

The Visit (Der Besuch der alten Dame), 1964, by Friedrich Duerrenmatt.

The films are based on the play with some changes:

Hyenas, 1992, 113 min., Director Djibril Diop Mambety, African film

The Visit 1964, 100 min., Director Bernhard Wicki, with Ingrid Bergman

Summary and Analysis:

The town Guellen, where the play happens, is probably in Switzerland, the homeland of Duerrenmatt, but could be also in Africa, India, Israel, US, France or anywhere where money has a supreme importance overshadowing all other values. Goethe visited Guellen, Brahms has composed there a quartet, it has cultural institutions, a mayor, a teacher, a priest, all very civil, all of them honorable men with culture and values. But the town is in bankruptcy and its inhabitants need money at all cost. The play demonstrates what the trade-off between money and values is. Duerrenmatt believes that only a desperate town would agree to sacrifice a person for a billion dollars. Duerrenmatt is not aware of the ethics of some modern corrupted businessmen, otherwise he would know that the price is too high for such a minor "crime". In the beginning of the play the citizens do not know who has caused their bankruptcy. They blame the usual people: the Freemasons, the Jews, the business tycoons, the communists. In fact, it is Claire Zahanassian, the richest person in the world, who has caused it in order to take revenge of Ill and the citizens who have wronged her in her youth, when

she was pregnant with Ill's child. Ill hired false witnesses to prove that it was not his child, as he wanted to marry a rich woman.

The mayor asks Claire to donate large amounts to the town in order to help them on those harsh days, they praise her and overlook the causes of her departure from the town. They even ask Ill to convince her to rescue the bankrupt town. Ultimately she agrees to donate one billion dollars to the town and its citizens in return to the execution of Ill. Claire, the widow of the richest man in the world, tries to corrupt all the officials - the mayor, the chief of police, the priest, the doctor - and make them collaborate to her scheme. Ill was very popular in town and was about to be nominated as mayor, but the citizens are dazzled by the huge amounts at stake (Duerrenmatt wants to prove that everyone has his price, is it true? if yes, what is yours?) and after protesting vehemently they agree to execute Ill. Not even one objects, including his wife and children. Ill tries to convince Clara that he married the rich Mathilda to save Clara from a wretched and poor life with him. This excuse that the wrongdoer commits a crime for the benefit of the victim is common to all criminals, such as Cesar in *Jean de Florette*, Gekko in *Wall Street* and The Mayor in *An Enemy of the People*. But this time the victim is too clever and rich.

Claire has not forgotten a thing, she is willing to invest any sum in order to get a revenge. Scoundrels tend to say that they have "a great soul" and look ahead but the victims cannot look ahead until they get their revenge. Why is it always the victims who have to pardon their aggressor? Not all the victims can afford to avenge the offences but Clara can do it. The mayor is shocked by her proposal, he refuses in the name of humanity, it is better to remain poor but pure, but Claire gives them credit to satisfy their needs and when she asks for repayment they have to sacrifice Ill and their conscience. We can give recent examples in the business world and in some regimes where people sacrifice their conscience and innocent people (not guilty ones like Ill) for much less than a billion. The friends of Ill buy on credit from his store as they know that he can't afford to turn them

down, they promise to repay him, but he knows that they will do it only after his death. Ill asks the chief of police to arrest Claire but he refuses as he doesn't have "smoking gun evidence". This is what is requested also from minority shareholders and stakeholders who are wronged, but they can't afford to gather those evidences, especially as most of the ethical crimes are committed in the dark and are subject to the laws of Omerta. Ill goes to the Mayor and tells him that he is afraid. But the mayor answers him that as he is himself guilty towards Claire he has not the moral right to ask for protection. Is it true?

Ill is doomed but everyone treats him nicely, Claire, the mayor, the teacher and practically all the citizens. Ethical criminals tend to be nice to their victims, they wrong (or kill) them with a smile and with all the best intentions, as it is for their benefit, as nothing is personal. The priest even finds references from the bible that Ill is not entitled to mercy as he has offended Claire and it is only just that he should be punished. But how can you justify a murder in order to remedy an offence which happened long ago and who was subject to imprisonment, and if so, why didn't they apply their "justice" before Claire returned? The teacher states that it is impossible to compromise with one's conscience and offers Claire to buy the assets of the town, but she answers him that she has already done it secretly and she has caused the bankruptcy of the town. He asks her to forgive them and she answers that nobody forgave or pitied her when she was thrown away from the town forcing her to become a prostitute and to lose her child, although she was innocent and loved Ill, who abandoned her for a rich woman. Now that she is rich she is entitled to revenge. She says that noble sentiments apply only to normal people, the richest men have their own code of conduct and they are allowed to transgress all moral laws as money transcends them. An honest man is one who pays and Claire is willing to pay, prosperity in return to a corpse...

When the press comes to the town the law of Omerta applies and nobody tells the reporters of the deal offered by Claire. Only the teacher who is drunk wants to disclose the crime but Ill forbids him to do so as he is doomed anyway. Ill

achieves greatness when admitting his crime and recognizing that he deserves the punishment, he only asks his friends to condemn him as he doesn't want to alleviate their conscience by committing suicide as requested by the mayor. The teacher says that crime will not stop at Ill's death, once you start to become a criminal you perpetuate your conduct towards everyone, as there is no "justified" crime. The town stage a trial, or rather a "mock trial" where the true offenses and punishment is concealed in order to save the reputation of Ill for the sake of his family, but rather to keep appearances of an ethical town with high moral standards. The image of criminals should be kept intact, just as the gloves of Mack the Knife are always white, and his knife is never seen. Duerrenmatt conveys a message that wealth corrupts people. Most of the time the victims even cooperate with their oppressors even if they are completely innocent. There is a tendency of the victims to belittle themselves in front of the rich who are allowed to commit any crime. Duerrenmatt paints everything in the play in yellow or gold. The leaves are yellow in the fall, the new shoes are yellow, Ill drives in the yellow air with the new car that his family has purchased on credit waiting for his death. They go to a movie and he goes to his death.

If we state the ethical and unethical conduct of the protagonists of the play: Clara, Ill, Ill's wife, the teacher, the priest, the mayor, the chief of police, can we decide who is more ethical? Ultimately, the teacher states in a typical double standard rationalization that Ill is condemned in the name of justice. Murder is called by the powerful justice, the wronged minority shareholders are called speculators, the absurdity of the play perpetuates very often in the business world where absurdity is the name of the game, the wronged oppress their aggressors, the lamb offends the wolf, and humanists are called enemies of the people. Money equals conscience, crime equals morals, truth is murdered, opacity is the name of the game, transparency is the act of tell-tales, and the journalists report that Ill died happily, maybe during the intermission of the movie when his wife and children were eating their popcorn and drinking their cokes.

While the African version of *The Visit* (Hyenas) keeps with a chilling realism the spirit of Dürrenmatt, the version of Bernhard Wicki has a happy ending and Ill is not executed after being sentenced to death. The Old Lady decides to leave him among his "friends" and in this way she thinks that her vengeance would be complete. He'll know that his so-called friends were willing to murder him for money and he'll not forgive them, while the citizens will have every day in front of them the proof of their treason. Wicki is wrong and the African Mambety and of course the original author are right. Ill is corrupted, he is a criminal and deserves to be punished. He already sold his soul, his love and his child for a grocery store, he understands the mentality of his friends, his wife and children. After all, he could be an example for them and he should be the last one to complain when somebody sells his soul for money. On the contrary, the citizens are very ethical in comparison to Ill, they sentence to death a criminal that maybe doesn't deserve death but deserves a severe punishment, they have extenuating circumstances - their town is bankrupt, they are dying of hunger, they want to do what Ill did without any justification, except greed. So, if Ill remains in town he'll probably resume his good relationships with his friends, he will participate in the booty that Claire left and become even richer, he'll continue to love his wife and children, and probably he will be elected Mayor in the next election. Greedy and corrupted people find always a common interest and work in unison. Claire will not be avenged and everything will return to normal, or even worse, because now all the crooks will share her money and think in sarcasm how idiotic Claire was she wanted to punish them in such a clumsy way. Dürrenmatt and Mambety truly sense the atrocity of a corrupted society and an unethical business world and convey it in the clearest way in what can be perceived as a masterpiece in Business Ethics.

ETHICAL DILEMMAS OF MULTINATIONALS AND STAKEHOLDERS – McDONALD'S AND THE FILM "McLIBEL" - SUMMARY AND ANALYSIS

Based on the film:

McLibel, 2005, 85 min., Director Franny Armstrong, on McDonald's libel suit in the UK

McDonald's used the UK libel laws to suppress criticism of the press and activist organizations. The BBC and The Guardian apologized to McDonald's. But then the multinational sued gardener Helen Steel and postman Dave Morris. They refused to give in to McDonald's. In the longest trial in English legal history, the two underdogs represented themselves against McDonald's £10 million legal team. Every aspect of the corporation's business was cross-examined: from junk food and McJobs, to animal cruelty, environmental damage and advertising to children. Outside the courtroom, Dave brought up his young son alone and Helen supported herself working nights in a bar. McDonald's tried every trick against them, such as legal manoeuvres, top executives flying to London for secret settlement negotiations, and even spies. Seven years later, in February 2005, the marathon legal battle finally concluded at the European Court of Human Rights. And the result took everyone by surprise - especially the British Government. The two Don Quixotes won on every account. The film is about the importance of freedom of speech now that multinational corporations are more powerful than countries. Filmed over ten years by no-budget Director Franny Armstrong, McLibel is the David and Goliath story of two people who refused to say sorry. And in doing so, they changed the world.

Beginning in 1986, "London Greenpeace", a small environmental campaigning group distributed a pamphlet entitled *What's wrong with McDonald's: Everything they don't want you to know*. This publication made a number of allegations against McDonald's, including that the corporation sells unhealthy food; exploits its workers; practices unethical marketing of its products, in particular towards children; is cruel to animals; needlessly uses up resources; contributes to poverty in the Third World by forcing peasants either to leave their land in favour of export crops which could satisfy McDonald's needs, or to convert their land to raise cattle; creates pollution with its packaging; and is partly responsible for destroying the South American rain forests. In 1990, McDonald's responded by bringing libel proceedings against five London Greenpeace supporters, Paul Gravett, Andrew Clarke and Jonathan O'Farrell, as well as Steel and Morris, for distributing the pamphlet on the streets of London. Gravett, Clarke and O'Farrell apologised Steel and Morris, on the other hand, refused to back down and decided to fight the case.

The trial began in June 1994 and became the longest civil case in British history. In England the defendants had to prove that the criticisms of the leaflet were true. Morris was an out-of-work postal employee from Tottenham and Steel a community gardener for Haringey Borough Council. Furthermore, they were denied Legal Aid by the courts on the basis that it wasn't policy for libel cases. Although the pair were deemed no legal match for McDonald's enormous legal assets, they represented themselves, receiving much free legal advice, and doing enormous amounts of research in their spare time; they would eventually call 180 witnesses to prove their assertions about food poisoning, unpaid overtime, misleading claims about how much McDonald's recycled, and even about how McDonald's hired "corporate spies sent to infiltrate the ranks of London Greenpeace". McDonald's spent millions of pounds, while the protesters had £30,000 raised from public donations. The lack of funds meant Morris and Steel were not able to call all the witnesses they wanted, especially witnesses from

South America who would have testified in support of the claims about the destruction of the rainforest.

The corporation found itself on trial before the British people and the world, particularly with regard to those claims involving labour practices and the nutritional content of McDonald's food. The case became a media circus, especially when top McDonald's executives were forced to take the stand and be questioned by the two non-lawyers. In June 1995, McDonald's offered to settle the case (which "was coming up to its first anniversary in court") by donating a large sum of money to a charity chosen by the two; in addition, they would drop the case if Steel and Morris agreed to "stop criticising McDonald's". Steel and Morris secretly recorded the meeting, in which McDonald's executives said the pair could criticise McDonald's privately to friends but must cease talking to the media or distributing leaflets. Steel and Morris wrote a letter in response saying they would agree to the terms if McDonald's ceased advertising its products and instead only recommended the restaurant privately to friends.

On 19 June 1997, Mr Justice Bell delivered a more than 1000-page decision largely in favour of McDonald's, summarised by a 45-page paper read in court. Steel and Morris had proven the truth of three fifths of the claims in the original leaflet but were found guilty of libel on several points. Although a legal victory for McDonald's, the case had long since been deemed a Pyrrhic victory for the company, as Bell's decision found that the defendants proved many of the points made in the London Greenpeace pamphlet. Thus, Bell noted that McDonald's did endanger the health of their workers and customers by "misleading advertising", that they "exploit children", that they are "culpably responsible" in the infliction of unnecessary cruelty to animals, and that they are "antipathetic" to unionisation and pay their workers low wages. Furthermore, although the decision awarded £60,000 to the company, McDonald's legal costs were much greater, and the defendants lacked the funds to pay it. Steel and Morris immediately appealed the decision. Worse, evidence that surfaced during the trial regarding McDonald's

business practices proved extremely embarrassing for the company. It has been estimated that the case has cost McDonald's £10,000,000.

The European Court of Human Rights ruled in 2005 that "McLibel" environmental campaigners David Morris and Helen Steel should have been given legal aid by the British government. The British legal system breached the right to a fair trial and freedom of expression, the European judges said. The Strasbourg-based court ordered Britain to pay Morris and Steel a total of 35,000 euros and offer them a retrial. In its ruling, the court said the denial of state legal aid to the defendants, a part-time barmaid and an unemployed single father, had skewed the case from the start. "The denial of legal aid to the applicants had deprived them of the opportunity to present their case effectively before the court and contributed to an unacceptable inequality of arms with McDonald's," it wrote. The ruling also argued there was "a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate." This verdict was the end of a courtroom fight in which the pair accused the British government of breaching their human rights because British law denies libel defendants legal aid, and because the libel laws obliged them to justify every word of anti-McDonald's allegations contained in the leaflets they distributed.

The 2005 film quoted McDonald's as offering little comment on the European Court decision other than to point out that it was the Government and not McDonalds who was the losing party and that "times have changed and so has McDonald's." When the heroes of this saga left the Court they were applauded by the public. They have made their point by convincing the public that the issue will not be settled by the court but by public opinion. The media interviewed them and the public appreciated their struggle for transparency and maintenance of the public's rights versus the multinationals. The film juxtaposes the interview with Helen and David and the interview with the General Manager of McDonald's in the UK. Activism has won and proved who is the real "giant".

In response to public pressure, McDonald's has sought to include more healthy choices in its menu and has introduced a new slogan to its recruitment posters: "Not bad for a McJob". The word McJob, first attested in the mid-1980s and later popularized by Canadian novelist Douglas Coupland in his book *Generation X*, has become a buzz word for low-paid, unskilled work with few prospects or benefits and little security. McDonald's disputes the idea that its restaurant jobs have no prospects, noting that its CEO, Jim Skinner, started working at the company as a regular restaurant employee, and that 20 of its top 50 managers began work as regular crew members. In a bid to tap into growing consumer interest in the provenance of food, the fast-food chain recently switched its supplier of both coffee beans and milk. UK chief executive Steve Easterbrook said: "British consumers are increasingly interested in the quality, sourcing and ethics of the food and drink they buy". McDonald's coffee is now brewed from beans taken from stocks that have been certified by the Rainforest Alliance, a conservation group. Similarly, milk supplies used for its hot drinks and milkshakes have been switched to organic sources which could account for 5% of the UK's organic milk output.

McDonald's announced on May 22, 2008 that, in the U.S. and Canada, it will be introducing cooking oil for its french fries that contains no trans fats. The company will use canola-based oil with corn and soy oils by year's end for its baked items, pies and cookies. In April 2008, McDonald's announced that 11 of its Sheffield restaurants have been using a biomass trial that had cut its waste and carbon footprint by half in the area. In this trial, waste from the restaurants were collected by Veolia Environmental Services and used to produce energy at a power plant. McDonald's plans to expand this project, although the lack of biomass power plants in the U.S. will prevent this plan from becoming a national standard anytime soon. In addition, in Europe, McDonald's has been recycling vegetable grease by converting it to fuel for their diesel trucks.

GLOBALIZATION MODELS OF NIKE AND OTHER MULTINATIONALS - THE DOCUMENTARY FILM "THE BIG ONE" - SUMMARY AND ANALYSIS

Based on the film:

The Big One, 1997, 91 min., Director Michael Moore

The film *The Big One*, a funny odyssey movie follows Michael Moore's tour to promote his book on downsizing, one of the worst plague of the century's end, plumbing the depths of corporate America. Moore criticizes in his book the conduct of Nike and Procter & Gamble towards their employees and those of their subcontractors. The boom in the economy and globalization is followed by downsizing and reliance on temporary employees, with very low salaries and no social benefits. Moore encountered a different picture of America from the one painted by large U.S. corporations which boasted that profits were up, unemployment was down and the stock market was booming. "Every city I went to, people would tell me stories," says Moore. "Stories about how their company just posted a record profit and they lost their job; about how they had to work two jobs and still couldn't make enough to get by. Everyone was afraid they'd be downsized next. It was clear that even though things were better for corporate America, the 'good-times' were not trickling down to the rest of the country." We should remember Joseph Stiglitz's comments on the fallacy of the neo liberals that the boom is trickling down to the lower-paid workers. In fact workers pay always the price – in economic booms as plants are relocated to low-cost countries and in recessions as workers because of lay-offs and unemployment.

Moore invites Nike's CEO Phil Knight to visit with him one of his Indonesian subcontractor's company. When he declines his offer, Moore urges him to open a

shoe factory in Flint, Michigan, devastated by the downsizing of General Motors' factories. Knight declines this offer as well. Moore's film gives voice to well-reasoned arguments that have most easily gotten lost amid the Clinton-era boom's corporate downsizing and reliance on "temporary" employees. In cities like Des Moines, Minneapolis, St. Louis, and Portland, The film juxtaposes Moore's deeply biting humor speaking before bookstore patrons and confrontations with security personnel at companies such as Procter & Gamble. Moore speaks clandestinely with Borders employees organizing a union. The film is not merely about downsizing, it is a severe critique on globalization and its most salient models – Nike and Procter & Gamble, just as the film "Bad Seed" is a critique on the model of Monsanto. Moore concludes, "I set out to make a funny, entertaining and hopefully enlightening movie about what I saw on my trip across America. Ultimately I hope it will give people a chance to have a good cathartic laugh, and know that they're not alone, that however good things are for corporations, most Americans are just like them... I hope people leave the theaters laughing and shaking their fists, not in despair but in outrage. A democracy is, after all, only as good as its participants. If it becomes a spectator sport, it's all over."

In her article "Michael Moore, Sticking Out Like a Sore Thumb", Rita Kempley, Washington Post Service, published by the International Herald Tribune on April 23, 1998, writes: "Michael Moore has done for documentary films what Whiz did for cheese: made the dry form accessible, fun even, for the ordinary Joe or Jane, the very audience the native son of Flint, Michigan, wants to reach and aims to please. The writer, director and raconteur, who shambled onto the scene as the impudent protagonist of "Roger & Me," is up to his old tricks in "The Big One," a scathingly funny look at corporate hubris and political bombast. Some critics have suggested that "The Big One" refers to the 270-pound filmmaker, who shot the picture during a promotional tour for his book, "Downsize This!," then goes and appears in virtually every scene. But Moore begs to disagree: "If I were writing the review, I would say this is a selfless film by a guy who could have taken the money from 'Roger & Me' and gone on and made goofy summer-camp movies. I

got offered a million dollars to do a Dunkin' Donuts commercial a couple of weeks ago." No question he turned Dunkin' down... Documentary filmmakers are trained to follow a script or a theme, Moore explains. He decided to follow the schedule set by his publisher, Random House, and see what happened. "Nothing was planned in advance. The week we show up in St. Louis is the last week for those Payday workers. The day I shot in Milwaukee, we're getting lunch in the food court at the Mall of America and meet the ex-con who was a TWA reservations clerk while he was in jail." While the guerrilla filmmaker makes his patented house calls on various corporate executives, all but one are as elusive as General Motors' chairman, Roger Smith, whom Moore pursued with such hilarious futility in his 1989 debut, "Roger & Me." Astonishingly, the chairman of Nike, Phil Knight, one of Moore's "favorite corporate crooks," invited him over to the Nike campus for a strange and unguarded pair of interviews. Knight, who genuinely seems to believe in Nike's altruism, must have imagined he could justify his company's practices and his own dubious sentiments. Asked to justify the export of U.S. jobs overseas and its use of underpaid, underage laborers, Knight doesn't miss a beat. "Americans just don't want to make shoes," he says."

And like the McLibel case and many other activist cases the film *The Big One* resulted in a change of policy from Nike. In a stunning announcement on May 12, 1998, Phil Knight, CEO of Nike, declared that the minimum age of footwear factory workers in Indonesia would be raised to 18 years of age. The decision changes a history of child labor in Indonesia, where, according to watchdog groups, factory workers have been found as young as twelve years old. "I congratulate Nike and Phil Knight on the brave decision to raise the minimum age of factory workers," says Mr. Moore. "In making 'The Big One', I hoped that we could change social policy at one of the world's largest employers. I did not expect the change to happen this quickly."

GLOBALIZATION AND HUMAN RIGHTS – A DOCUMENTARY - SUMMARY AND ANALYSIS

Based on the film:

Globalization & Human Rights, 1998, 60 minutes, Writing Credits: Rory O'Connor, Danny Schechter, hosted by Charlayne Hunter-Gault

Summary and Analysis:

The famous documentary on this topic describes the impact of globalization on human rights. The film explains how the riots in Indonesia and Nigeria, massive layoffs of miners in South Africa and child labor are related to globalization. Uprisings in Indonesia and Nigeria, massive layoffs of miners in South Africa, and protests against child labor worldwide have all been reported as separate and distinct events. This public television special explores how these and other current events are linked to the forces of "globalization," the economic engine that is transforming the world in its own image.

Globalization and Human Rights takes viewers on a journey that starts at a summit for corporate decision-makers - the World Economic Forum in the Alps of Switzerland - and travels deep into the gold mines of South Africa, then visits the controversial Shell oil fields of Nigeria and Nike shoe factories in Asia while examining an emerging conflict in a new world order between those making macro-economic decisions and those struggling to cope with the impact of those decisions. At the core of the program is the ongoing debate over whether or not human rights concerns should be linked to economic policies.

Globalization and Human Rights goes behind-the-scenes to look at the role played by giant and powerful transnational corporations like Shell Oil and NIKE and multinational global agencies such as the International Monetary Fund and the World Bank. It also documents the response of workers and labor organizations, citizens' groups, and human rights activists to the rapidly changing world order, and features exclusive footage of the world's first Global March Against Child Labor.

Leading political and corporate figures, such as U.S. Treasury Secretary Robert Rubin, House Speaker Newt Gingrich, billionaire businessman/philanthropist George Soros, and South African Deputy President Thabo Mbeki, are joined by such human rights figures as Nobel Laureate Archbishop Desmond Tutu, consumer advocate Ralph Nader, Chilean writer Ariel Dorfman, and Amnesty International Secretary General Pierre Sane, as well as by labor leaders like AFL-CIO president John Sweeney, in assessing the impact of globalization on human rights and democracy.

The Davos forum comprises the most influential persons of world's economy, heads of states, CEOs of global companies, billionaires, ministers, well-known businessmen and industrialists. The concentration of so many influential people in one place attracts protest of people from all over the world. This time human rights activists are also invited in order to debate with the businessmen. It is perceived as the world summit, a very undemocratic event. The businessmen are apparently very worried from the global protest, as they think that globalization enhances human rights, increases the standards of living and enriches many. The labor unions leaders think that globalization causes unemployment. Ralph Nader says that the essence of globalization is the subjection of human rights, labor rights, consumer rights to the constraints of world trade and investment. The UN declaration of human rights should be implemented by the globalization.

In South Africa fifty thousand mine workers have lost their jobs because of speculations in gold. There is a dangerous concentration of power by very few people. There is a direct link between multinationals and abuse of human rights in Nigeria and South Africa. Nigerian activists maintain that the colonialism was replaced by neo colonialism and their economy is controlled by foreign powers. Shell is accused of cooperating with dictatorial and corrupted regimes in Nigeria in order to conduct their oil business without interference. Shell is accused of massive harming of Nigerian ecology, manipulation of the community, paying bribes and assisting the military regime in order to crash resistance and activists who oppose the government. But Shell responds with a very effective campaign of public relations.

There is a strong opposition in Asia against IMF. Globalization hit very hard Indonesia, with a sharp fluctuation in the rates of exchange of their currency. The workers are oppressed and they are not allowed to unionize. There are partnerships and strong connections between multinationals and Suharto's (former Indonesian President) family. There are local economic organizations that are completely corrupted and the economy is controlled by Suharto's family. The salaries of the workers are kept at very low levels. IMF is accused of wanting to transfer the control of the economy from Suharto's family to the multinationals. Following IMF's pressure Indonesia was forced to conduct very painful economic reforms as a precondition for receiving a loan of \$40 billion in order to rescue the economy.

The reasons for the Asian recession are: too many oligarchies, corruption, social breakdown, prevention from establishing labor unions. Rubin does not agree that economic aid should be subject to maintenance of human rights.

Nike's policy has become the focus of the anti-globalization movements. Nike refutes those allegations and maintains that it assists the third world economies. Nike does not enforce its ethical codes which remains theoretical. They say that in

countries where they are active the salaries increase and poverty diminishes. But armed security officers accompanied the interviewers in the Nike's factories in Indonesia.

Those in favor of globalization maintain that as Suharto was forced to resign in 1998 an undemocratic country cannot face globalization. In Thailand there is a lot of pressure to abolish child's labor. Amnesty International expects the business world to operate on behalf of maintaining human rights. International trade without democracy would necessarily bring pressure to lower the living standards. A more ethical activity is needed to oppose unethical companies as a result of globalization.

GLOBALIZATION AND ITS IMPACT ON STAKEHOLDERS – THE BOOK "NO LOGO" BY NAOMI KLEIN - SUMMARY AND ANALYSIS

Based on the book:

Klein Naomi, No Logo: Taking Aim at the Brand Bullies, Picador, 2000

Based on the film:

No Logo, 2003 V, 42 min., Director Sut Jhally, documentary based on the book "No Logo" by Naomi Klein on globalization, hegemony of brands and democratic resistance.

Summary and Analysis:

Naomi Klein was born in 1970 in Montreal, Canada, in a family with a history of activism, as does that of her husband Avi Lewis. Klein is a journalist, author and activist, well known for her political analyses of corporate globalization. She writes a weekly column in The Globe and Mail, Canada's national newspaper, and is also a frequent columnist for the British Guardian. Klein has traveled throughout North America, Asia and Europe, tracking the rise of anti-corporate activism. She is a frequent media commentator and has guest-lectured at Harvard, Yale and New York University. She lives in Toronto. Her book "No Logo" was called the Das Kapital of the growing anti-corporate movement by The London Observer. No Logo gave voice to a generation of people under thirty (she was also under thirty when she wrote the book), who have never related to politics until then. Klein analyses the rise of the superbrand, the impact on stakeholders and the globalization models of Starbucks, Nike, Ikea, Gap, Blockbuster, McDonald's, Monsanto, Reebok and others.

"The book is an attempt to analyze and document the forces opposing corporate rule, and to lay out the particular set of cultural and economic conditions that made the emergence of that opposition inevitable. Part I, "No Space", examines the surrender of culture and education to marketing. Part II, "No Choice", reports on how the promise of a very vastly increased array of cultural choice was betrayed by the forces of mergers, predatory franchising, synergy and corporate censorship. And Part III, "No Jobs", examines the labor market trends that are creating increasingly tenuous relationships to employment for many workers, including self-employment, McJobs and outsourcing, as well as part time and temp labor. It is the collision of and the interplay among these forces, the assault on the three social pillars of employment, civil liberties and civic space, that is giving rise to the anticorporate activism chronicled in the last section of the book, Part IV, "No Logo", an activism that is sowing the seeds of a genuine alternative to corporate rule." (Klein Naomi, No Logo, p.xxiii)

The resistance to the excesses of corporations is rising but is still marginal, as most of us are brainwashed and cannot reach the right conclusions. We are immersed by the logos, by the advertizing, it is everywhere. It induces us to spend much more than what we earn, we live on credit and in times of recession we may lose everything when we cannot reimburse our subprime loans. Klein assists us to see the situation as it is in her book which is based on an extensive research. Yet, we cannot resist and fight the predominance of the corporations as we work for them, we get loans from them, we buy from them and we supply to them, we need their contributions to community and charities. If we resist them we are perceived as whistleblowers, we lose our jobs, we become outcasts, enemies of the people. Therefore, while most of us think as Naomi Klein, only a few find the courage to act accordingly and to speak overtly. In any case, even that is difficult as the media belongs also to the large corporations, and so the publishers of the books and the producers of the films.

Klein says that: "When this resistance began taking shape in the mid-nineties, it seemed to be a collection of protectionists getting together out of necessity to fight everything and anything global. But as connections have formed across national lines, a different agenda has taken hold, one that embraces globalization but seeks to wrest it from the grasp of the multinationals. Ethical shareholders, culture jammers, street reclaimers, McUnion organizers, human-right hacktivists, school-logo fighters and internet corporate watchdogs are at the early stage of demanding a citizen-centered alternative to the international rule of the brands. That demand, still sometimes in some areas of the world whispered for fear of a jinx, is to build a resistance – both high-tech and grassroots, both focused and fragmented – that is as global, and as capable of coordinated action, as the multinational corporations it seeks to subvert." (same, 445-446)

As a matter of fact, Naomi Klein has managed to find the holistic connections between the concepts of globalization, business ethics, social responsibility and sustainability. The book gives her personal credo but it is also the credo of millions as well all over the world. It is not only the credo of her generation, it is the credo of men aged eighty with their post war ideals, of those who participated in the students uprisings in the sixties, it is the credo of women, of temps, of poors and consciencious rich and of the middle class who feels that it is getting poorer every year while one percent of the population becomes richer and richer, it is the credo of the South but also of the North, as inequality increases also in developed countries, it is the credo of most of the world's population, except maybe of a few tycoons and multinational executives. Although those control the global economy and the media, influence the governments and even the universities, they are a negligable minority and the vast majorities can rally together, cease to succumb to the logos, buy, invest, work and supply only to ethical and sustainable companies. More and more companies, tycoons and executives are revising their policies, Naomi Klein and Paul Hawken are not anti-business, they are pro business, a reformed business, that is not trying to maximize profits at all cost but do mind much more to be socially responsible in

the first stage. Hopefully, this trend will extend in the near future to business ethics, sustainability and corporate governance as well.

From the Media Education Foundation Study Guide on "No Logo" written by
Jeremy Earp & Danielle Devereaux

<http://www.mediaed.org/videos/CommercialismPoliticsAndMedia/NoLogo/studyguide/NoLogo.pdf>

Since the mid-1990s, a massive popular movement has developed worldwide to challenge global business practices and the institutions that govern them. In *No Logo*, based on her best-selling book of the same name, Canadian journalist and activist Naomi Klein locates the source of this popular resistance in the expanding and increasingly unchecked power of multinational corporations to shape the course of economic and social life on a global scale. Klein's search for an organizing principle to make sense of both "globalization" and the backlash against it leads her across a chaotic cultural and economic landscape radically transformed by high-speed, border-defying flows of money, information, and imagery. She finds this principle in the corporate marketing strategy of "lifestyle branding" – a signal change in multinational corporate philosophy from marketing products to marketing people's very sense of identity and reality. Focusing on this new philosophy of the brand is crucial, Klein argues, because it provides a lens through which to understand both the essentially undemocratic character of current trade practices and the essentially democratic character of those working to reform them. Focusing on branding and its consequences, Klein therefore works both within and beyond the frame of commercial culture. She takes the power of the image seriously, revealing how "there is no aspect of our lives that is not open to being used in the theatre of the brand." But she also moves beyond the allure of commercial theatre to examine what brands and their producers work to keep offstage: unassailable evidence that multinational corporations have built their brand identities at a tremendous cost to community values, the environment,

universal human rights, competition, and the very principles of democracy. *No Logo* condenses years of research into an accessible tool for understanding the complex forces at work in today's global economy. Appealing to us as citizens, rather than as consumers and spectators, it calls on us to do more than just sit back and watch as multinational corporations re-create the world in the image of their brands. It challenges us instead to break through the hypnotic spell and spectacle of the new branded world – to check the power of multinational corporations and demand global economic and social justice.

NO SPACE

In its simplest form, the process of branding involves marketing a product with a consistent logo, image or mascot that conveys to the consumer a sense of consistency, quality and trust. The importance of branding grew with the rise of mass industrialization and mass transport at the turn of the century because it was a way for businesses to compensate for the distance and anonymity of modern production. These original logos and mascots – often people – were designed to give comfort to consumers by creating surrogate personal relationships that could replace disappearing personal relationships with farmers and shopkeepers. This fairly simple role of the brand is unrecognizable today in an era of “brand tribes” – we have moved from being reassured by brands about the quality of products to a world in which we organize our very identities around brands. A handful of all-American brands – Coca-Cola, Disney, McDonald's – were the first to understand the effectiveness of selling ideas and lifestyles rather than merely goods. Coke sold peace and love in the 60s; Disney sold the American dream; today Nike continues in this tradition by selling an idea about the nature of sports and its intimate connection to the American Dream; while Virgin has mastered the mass production of individuality and rebellion. One of the most disturbing aspects of this phenomenon is the devaluing of ideas and ideals when they become associated with commercial commodities. Companies experience “epiphanies” about how best to turn our most powerful ideas and ideals into brand content by

taking a “quasi-anthropological” approach to marketing. The “quasi-anthropological” approach involves identifying what consumers are feeling, thinking, and experiencing when they consume a product. This new marketing approach differs fundamentally from past approaches in this way: the old approach sought to create associations between desirable lifestyles and products by showing certain kinds of people consuming the product; the new way involves going into the culture and discovering where and how people actually live these lifestyles – in other words, where the brand idea lives independently of the brand or the product. The goal of this new approach is essentially to buy and own the independent ideas and lifestyles you’ve found, and to merge them with the brand. In this way, the strength of a brand is measured by the power it has to stretch and spread across the pop-cultural landscape: for example, the brand gets merged with the spirit of rock and roll through sponsorships of concerts, rock stars wearing the brand, rock bands performing in ads. Continuing with this example, the brand becomes so associated with rock and roll that it assumes its spirit, becomes the rock star itself, full with followers and groupies and the like – while actual rock stars, and the brand’s actual products, are now beside the point. Examples of this phenomenon can be found everywhere: from people wearing Tommy Hilfiger clothes that turn them into walking billboards for the brand, to people actually living inside the brand in the Disney-owned town of Celebration.

NO CHOICE

One of the chief casualties in the new branded world is choice: whether we like it or not, ads and brands are everywhere in our face, woven into the very fabric of popular culture and public space. This lack of choice is the realization of a marketing logic governed by the drive to crowd out and eliminate competition: for the giant brands to maintain market share and power, they must saturate space and the senses and eliminate choice. Virtually every aspect of our lives is now subject to aggressive marketing schemes as powerful corporations gobble up meaning, space, time, and every conceivable idea – including political ideas that would

otherwise challenge this corporate hegemony – and spit them out as props to advance their brand stories. This colonization of public space poses a threat to the fundamental need in democracy for a protected common area outside of the market where people can relate to each other and exchange ideas and information as citizens rather than as consumers. Malls present a striking example not only of the disappearance of public, democratic space, but also of its replacement by the illusion of a public, democratic gathering space. The virtual town square atmosphere of malls, replete with virtual sidewalks and trees and fountains, belies the essentially tightly-controlled, private and anti-democratic nature of these places: malls are “free” spaces only to the extent that the exercise of free speech within their walls doesn’t clash with the rules of buying and selling. There is nothing new in the idea that corporations, as private entities, censor inconvenient speech and information; what’s new is the scale of this censoring power as giant companies like Walmart exert greater and greater control across a widening expanse of culture and the economy. Walmart’s “family values” brand identity clashes with free speech not only when it decides to cover up magazines that work against its image; more importantly – because of its sheer size and market share – its aesthetic sensibility shapes the kinds of content that get produced in the first place. What we are seeing is a new form of “pre-emptive” corporate censorship: directly linked to the growing scale of these brand empires, the economic power of giant corporations works to shape economic conditions and determine choices before products are even made.

NO JOBS

Companies used to see their primary role as producing products, then branding them with a corporate identity. What’s different now is that companies see their primary role as producing brands, then fulfilling them through products. Key now for companies is to produce a brand identity, an image, and meaning that can be stretched into as many different arenas as possible. The fact that the product now takes a backseat

to the brand is clear when you consider a pair of Nike shoes: the shoes may have the Nike swoosh, but Nike didn't make them. They bought them before you did. The new corporate logic works this way: A company like Nike approaches a broker in Hong Kong; the broker tells them which factories will produce shoes for the lowest cost; the contract to make the shoes is then given to a factory in China, or Vietnam, or Indonesia; and these factories themselves then in turn decide they can get a cheaper price and make money by subcontracting. This is the "Nike Paradigm," held up when first tested as the future of the corporate world: a maze of contracted and subcontracted and sub-subcontracted factories designed to make it as cheap as possible to produce the actual product. This new paradigm, set up to lower the cost of production, relies at base on finding the cheapest labor force possible: because a baseline level of product quality must be maintained, companies achieve savings

by finding ways to pay – and invest in – workers as little as possible. To keep wages down, companies contract out to workers in parts of the world that have no minimum standards of pay and few public protections against corporate excess – and by setting up tight controls on their workforce: ensuring that workers don't organize for more pay, safer working conditions, and more control over their lives. Goods are produced in what are called export processing zones, industrial parks set up especially to

produce goods for the United States, Canada and Europe at the lowest possible cost in order to maximize profit. To assure total control, and undermine any possibility of workers organizing, these "free trade zone factories" are usually walled in and policed by armed guards – and employ a workforce that is young (18-25 on average), almost entirely female (80%), and far from home. The much-heralded claim that globalization will lead to development in poor countries and increases in wages is fundamentally contradicted by the logic and consequences of this global business model: a race to the bottom in which companies compete with one another at the expense of their workers. The Nike example is a case study in this logic of worker abuse: When Nike began buying its shoes, it first dealt with Japanese manufactures; when this became too expensive, Nike started

giving contracts to Korea and Taiwan; when workers in these countries successfully fought for a basic standard of living, Nike and companies like Reebok cancelled contracts with factories in these countries and moved onto the Philippines, Vietnam and China – whose governments offered tax holidays, zero tariffs, and guarded factories. A key aspect of brand building is that it costs much more than just the cost of advertising the product: companies make the expensive choice to follow the Nike Paradigm and build their brands, and the money it requires costs workers dearly. Because their hard-won legal right to basic protections and a decent wage are seen as too expensive in this new global business climate, American and European workers become casualties of this paradigm as well. Job cuts and layoffs have destroyed American and European communities that were built around factories and work, accompanied by a fundamental transformation in the very nature of work in the developed world. Service jobs have come to dominate the American labor landscape: low-paying retail jobs in places like Walmart and the Gap, temp jobs, and so-called “McJobs” – once viewed merely as transitional kinds of jobs – have replaced previously secure forms of work that offered good wages, benefits and more community-connected work.

ANTI-CORPORATE ACTIVISM

When we take a step back and look critically and clearly at some of the brands woven into the very fabric of our culture and everyday lives, a new narrative emerges to counter the one-sided narrative pushed by corporate public relations types. A single shoe now has the power to tell a story about the new economics of the brand: its globally produced parts linking up into a narrative about the global economy’s business models and practices, its disparities, its winners and losers. An unintended result of multinational corporate marketing strategies is that over the past few years the high visibility of brands is being turned against them: we are now witnessing an explosion in brand-based investigative activities, in anti-corporate campaigns that seek to peel back the glowing dream world of the brand

image to reveal the dark and unjust labor practices that make these brands possible. The irony in this new surge of activism is that high-profile brands like McDonalds and Starbucks and the Gap find themselves in the uncomfortable position of singing the praises of the free trade and the liberatory power of globalization while at the same time positioning armed guards around their stores during rising protests. While it helps to know whether the companies you do business with have some sense of ethics and justice, holding multinational corporations responsible for how their products are made requires more than just responsible shopping. Forcing change first requires understanding the difference between the rhetoric of “free trade” and the fundamentals of *fair trade*, and then organizing with others to make sure that multinational corporations understand the difference as well – and why it matters. This means joining forces with those who are taking the global trade issue to the doorstep of World Trade Organization (WTO), the World Bank and the International Monetary Fund (IMF), the institutions whose job it is to write and enforce the rules of global trade. Challenging these institutions means challenging the fundamental logic that determines their policies: specifically, the basic assumption that the rules of trade should be written in the interests of large corporations because what is good for global businesses will eventually benefit people around the world, their environment, democracy and justice. The crucial distinction is this: protesting current trade practices has nothing to do with being anti-trade and everything to do with rejecting the anti-democratic logic that is working to increase profits regardless of the social, political, and environmental costs. This means rejecting also the notion that it is the role of citizens in a democracy to be spectators who simply watch and wait for the corporate vision of corporate elites to deliver democracy and justice. Organized protest against unfair trade and global brand empires therefore organizes itself around the core democratic necessity and goal of protecting and maintaining the public space unfiltered by the market – the “commons” demanded by democracy for true discussion and debate. One way this is happening is by transforming the corporate monologue on the streets into a dialogue through culture jamming, adbusting, billboard liberation and other forms

of interruption and parody that send a competing message about how the product being advertised is actually produced. This kind of activism rejects the notion that people should wait to be granted rights that are already enshrined in law, especially the right to be heard: the issue then is not revolve around being for or against trade, but around being for or against democracy.

LABOR RIGHTS IN THE GLOBAL CONTEXT

THE DOCUMENTARY FILM "THE TAKE"

SUMMARY AND ANALYSIS

Based on the film:

The Take, 2004, 87 min., documentary directed by Avi Lewis, written by Naomi Klein.

Summary and Analysis:

The film "The Take", based on Naomi Klein's screenplay, describes the struggle of workers in Argentina against unemployment and bankruptcy of their factories, due to the collapse of the economy, IMF involvement and corruption. It shows that cooperative alternatives do work. Naomi Klein's parents were war-resistant, her father is an alternative doctor and her mother a militant feminist. Naomi crossed Canada at the age of 16, campaigning against nuclear power. She wrote her best seller "No Logo", attacking globalization, in her twenties. Klein's film about the economic catastrophe that hit Argentina relates the weary campaign of unemployed steel workers to join a couple of hundred other factory "occupations" and take control of their abandoned steel works. Klein and her spouse, Avi Lewis, were in Argentina for about six months, with a substantial crew and budget.

In suburban Buenos Aires, 30 unemployed auto-parts workers walk into their idle factory, roll out sleeping mats and refuse to leave. All they want is to re-start the silent machines. But this simple act - the take - has the power to turn the globalization debate on its head. Armed only with slingshots and an abiding faith in shop-floor democracy, the workers face off against the bosses, bankers and a whole system that sees their beloved factories as nothing more than scrap metals

for sale. With "The Take", Avi Lewis, one of Canada's most outspoken journalists, and Naomi Klein champion a radical economic manifesto for the 21st century. Argentina is a rich country that was impoverished by its regimes. Carlos Menem, President of Argentina in the nineties, reshaped Argentina's economy according to the directives of IMF: turnaround, downsizing, privatization, selling the government assets into private hands. This was followed by massive unemployment. The model was approved by the IMF and its management, including Stanley Fisher. This miracle, the recovery of Argentina's economy, soon turned into a disaster. Half of the country slipped beneath the poverty level. Argentina became the capitalistic Far West, with a large part of the population unemployed, with a free flow of money, utilized by the multinational banks to transfer out of the country 40 billion dollars without any opposition. The government panicked and froze all the bank accounts. The middle class Argentineans all of a sudden became poor, deprived of their savings while the rich people found ways to transfer all their money abroad.

But this could not occur without reaction. Millions invaded the streets, broke shop-windows, rioted. The people shouted slogans like "Que se vayan todos", down with all who were connected with this catastrophe. 30 people were killed by the police. Within three weeks five presidents took office, and during the same month that Enron went bankrupt, December 2001, Argentina also went bankrupt, the largest bankruptcy of any country in history. The basic rules of capitalism - repayment of loans and open bank accounts - were broken by complete adherence to the capitalistic precepts. The public was fed up with the model, in the same wave of resistance that spread from Seattle to South Africa. This economic policy was global and the resistance also became global. The advocates of globalization blamed Naomi Klein, Avi Lewis, and the anti-globalization movement in general for only being "anti", without suggesting alternative ways. Lewis and Klein looked for alternatives and they heard of a new movement starting in Argentina, a new economic model with hundreds of factories taken over by their workers after they were shut down by their owners. The workers operated the factories

independently, as cooperatives, without bosses. The national organization of the reorganized factories adhered to a slogan: seize, resist, manufacture. The film takes us to a factory - Forja San Martin, the steel factory of San Martin, whose workers received a permit from the bankruptcy court to find proof in the factory that the former owners had sold off factory assets without the court's permission. If they succeeded in finding the proof, they would have the right to take over the factory and manage it by themselves. They found that the owners had taken out the raw materials and the cables.

The workers decide to take over the factory, receive modest and equal salaries and manage the factory as a cooperative. They seize the company in order to prevent the owners from taking out other assets from "their" (the workers or the owners, to whom does the factory belong - to the owners who caused its bankruptcy and left it, or to the stakeholders, the workers who want to make a living out of the ruins) factory. The workers hope to convince the court to approve. The Zanon factory is their model; it is another factory where the workers have taken over. They manufacture ceramics; it has been operated successfully by its workers for two years now; it is the forefather of the resistance movement - the take. Zanon has 300 workers, the decisions are taken by the assembly of the workers, where every one has an equal vote; the salaries are equal for all. The former owners accumulated huge debts after receiving huge subsidies from the government and now, after the recovery, the former owner wants Zanon back. Zanon's owner is sure of his case, although he caused the collapse of the company and the workers made the turnaround. He says that the government owes it to him, but the workers guard the factory 24 hours a day and do not permit the restitution of the factory to its former owner. They fight the policemen with slingshots, they are backed by the public, as they are convinced that those who successfully operate the factory should own it and not the owner who caused its ruin.

The workers are employed, the ceramics are cheaper than before, so the customers also benefit from the take, and the future seems bright. The former owners

received huge subsidies from the government but didn't invest them in the factory. As we know, Argentina is one of the most corrupt countries in the world, and that is one of the main reasons for the collapse of its economy. If a factory owner had committed such a crime in Singapore, one of the most ethical countries in the world, we let you imagine what would have happened to him? Ethics should be enforced with determination by all countries. Nevertheless, one should also think of the legal implications of such takeovers. What should prevail - ethics or the law? The owner says that it is legally his factory, it is worth \$90M; therefore the workers have stolen his property from him. The workers answer that it is not stealing but confiscating, as the factory was idle anyhow. They donate ceramics to hospitals and schools. Thousands of sympathizers invade the factory every time the police want to interfere, defending their jobs by force. Today, the factory is still owned by the workers.

We remember the response of the French young people to the legitimate laws of a government who wanted to enable the employers to fire them without cause. They invaded the streets of Paris, rioted, clashed with the police; the students rallied to the struggle and they prevailed. Is it justified, legal, ethical, effective? More than 15,000 workers have taken over factories in Argentina. The number of takes doubles itself every year. It is not a new phenomenon. We could compare it to the worst dictatorial regimes of the Soviet Union or Cuba. But there the confiscation was done forcefully by a socialistic-regime, while in Argentina the takes come from the people and the factories are not managed by bureaucrats who are more corrupt than the darkest capitalistic regimes, but by the workers themselves. It proves, according to them, that no bosses are needed (what would business schools do if this model proves to be successful?). The takes happen in shipyards, in schools, in clinics, in ice-cream factories, in textile, all of them operated by cooperative management with their own unions, and today there are two hundred companies that have brought thousands back to employment. So is this phenomenon justified or should the government restitute the factories to their previous (legal?) owners?

However, the factories need business plans, marketing, "professional" management. They receive inspiration from a tractor factory, Zanelo, operated by its workers, which made a partnership with a group of former managers and with the distributors. Zanelo decided not to pay everyone the same salary, so the model of the take is not uniform and has many derivatives. Every factory decides what course of action to take; it is direct democracy. The Zanelo factory decides to send the raw material to the Forja San Martin, the Forja will manufacture the tractors parts and will sell them to Zanelo. The Forja workers hope that the judge, Dr. Fernandez, will understand their plea and approve the take. The cooperatives are a threat to many stakeholders: the owners, the receivers, the creditors who want their money back. These are factories that went bankrupt and the creditors are not paid by the workers who took over the factories, so what will happen to their debts? But what are their alternatives as the factories had virtually no assets and the equipment would be sold as scrap? In court, the judge, Fernandez, says that no one would want to buy a factory (the Forja) that was taken over by its workers. The receiver says that nothing is missing in the factory, but the workers say that a lot is missing. The judge tells the workers that they hinder the prospects of finding a buyer for the factory who would repay at least some of the debts. She requests that the workers leave the factory and give it back to the receiver.

Many citizens want Menem back, the leader who sold them the dream of recovery as he compared himself to Jesus. IMF proposes "the same old lady", a drastic cut of government expenses (it will not affect the rich of course, but only the poor and the former middle class, who have lost their money, their savings, their jobs and who receive some money from the government), a massive increase in the price of electricity and water (here again those who foot the bill are the majority of the people, but not the rich, who have most of the assets, if they are not already expatriated). One of the key employees of the IMF is arrested on corruption charges. The IMF is not very popular in Argentina, to say the least. A wife of one of the Forja's workers says that the politicians have stolen their self respect, as

there is nothing sadder than to see a man unemployed, a humiliated man, but she hopes that the take succeeds. The Brokeman suits factory is restituted to its former owners. It is not just one of the factories; it is the first factory that was taken. In the Brokeman factory the owners decided to face the competition from poorer countries by cutting the salaries of their workers and threatening to close the factory. One day the owners just left the factory and disappeared. But the workers decided to continue operations, did it successfully and now they have been thrown out of the factory, which was given back to the owner who deserted it. The Brokeman workers were very popular; they were adopted by the widows of May Square, who had lost their husbands when the fascistic Junta took over the government and murdered tens of thousands of "leftist" Argentineans without proper trials. Massive demonstrations are held in favor of the Brokeman workers .

But the Forja workers are luckier. The La Plata parliament votes in a law to give the Forja to its workers. The workers cry out of joy; in the background we hear a song by Mercedes Sosa: "Quien dijo que todo esta perdido, Yo vengo ofrecer mi corazon, Hablo de cambiar esta nuestra casa" - who said that everything is lost, I come to offer my heart, I speak of changing our home. Masses of workers attack policemen who are guarding the closed Brokeman factory. A former worker who got cancer tells us that the owners deducted the hours in which she went to receive chemotherapy treatments from her salary. However, the workers who now operate the company assist her, as they have moral values. When Naomi Klein and Avi Lewis came to Argentina the first time they received a letter from a local citizen saying: "We are your mirror that you should look into. We are the mistake that you should not make. Argentina is the ruin of a country that was globalized. We stand in the place in the direction all of you are going." But what they saw in Argentina was a country trying to learn from its mistakes. Menem finally lost to Nestor Kirshner. The workers hope that he will help the cooperatives and not the multinationals. The cooperatives are the way the Argentineans have found to create a modern world, to sweep away the old wicked one. Six months later, Naomi and Avi returned to Argentina, where they saw a Forja San Martin

operating successfully, Zanon has increased its production and hired new workers. In spite of his promises, Kirshner has signed a new agreement with the IMF, very similar to the former agreements. The parliament of Buenos Aires has restituted the Brokeman factory to ... the workers. The factory has opened once again and is now being operated by its workers.

**ATTITUDE OF CORPORATIONS TO
GLOBALIZATION – THE BOOK AND THE FILM
"THE CORPORATION" BY JOEL BAKAN
SUMMARY AND ANALYSIS**

Based on the book:

Bakan Joel, *The Corporation - The Pathological Pursuit of Profit and Power*, Free Press, 2005

Based on the film:

The Corporation, 2003, 145 min., Directors Jennifer Abbott, Mark Achbar, based on the book by Joel Bakan "The Corporation: A Pathological Pursuit of Profit and Power", with Noam Chomsky, Peter Drucker, Milton Friedman, Naomi Klein, Michael Moore, Howard Zinn, Ray Anderson

Summary and Analysis:

Paul Hawken maintains that the ultimate purpose of business is not, or should not be, simply to make money. Naomi Klein believes that multinationals give us no space, no choice and no jobs. Al Gore receives a Nobel Prize and an Oscar arguing that companies are destroying the earth with global warming. Oil and car megacorporations are accused of killing the electric car, other multibillion companies are polluting air, ground and water (*A Civil Action*, *Erin Brockovich*) causing death of hundreds, we have the Bhopal catastrophe causing the death of thousands, Enron and WorldCom collapsed with losses of billions, they are even poisoning our food (*Bad Seed*), so what else can we say against those "despicable" corporations? Joel Bakan is convinced that the reason for all that is

that corporations are psychopaths... As the law treats corporations as "persons", we should put their behavior under psychological examination. The Personality Diagnostic Checklist of a psychopath according to the World Health Organization ICD-10 Manual of Mental Disorders DSM-IV is as follows: 1. Callous unconcern for the feeling of others. A corporation that pays only 0.3% of the price of a product as labor costs to workers working in sweat shops without any rights, that discriminates workers and harass them, that its bosses behave to employees brutally hurting their feelings is indeed a psychopath. 2. Incapacity to maintain enduring relationship. A corporation relocating its facilities from country to country driven only by the maximization of profits, without having any concern to the communities that are ruined, that employs employees as temps, hiring and firing them when it pleases, is a psychopath. 3. Reckless disregard for the safety of others. Corporations that pollute with their chemicals the environment and our food killing many more people than by terrorist attacks and car accidents, externalizing the costs of pollution, that do not enforce safety regulations causing death and sickness, that are causing global warming and preventing remedy of the damage to the atmosphere are psychopaths. 4. Deceitfulness: repeated lying and conning others for profit. Corporations that advise the minority shareholders to buy their shares while their executives and controlling shareholders having insider information are selling their shares thus causing losses of billions to the public, that advertize their products as safe while they know that they are not, that their executives swear that cigarettes do not have addictive ingredients and preventing Dr. Wigand to disclose the truth, that evade paying taxes lying on their profitability with creative accounting are psychopaths. 5. Incapacity to experience guilt. Companies that do not admit their guilt and drag the cases in court for ten years, that pollute the environment and pay lawyers millions to prove that they are not polluting instead of investing less in preventing the pollution, that sue the whistleblowers instead of rewarding them for disclosing the truth are psychopaths. 6. Failure to conform to social norms with respect to lawful behaviours. Corporations that do not comply to social norms as fairness, decency, solidarity, compassion, transparency, integrity and ethics, that fire employees

when they have cancer sometimes caused by the companies, that closes their factories after causing an ecological catastrophe, that abuses the natives while exploiting their resources, that publish opaque financial statements, that are obeying the law and obstructing justice and ethics, employing expensive lawyers against the stakeholders are psychopaths. These psychopathic allegations refer of course only to unethical corporations.

Bakan starts dramatically his book "The Corporation" describing the corporation's rise to dominance: "Over the last 150 years the corporation has risen from relative obscurity to become the world's dominant economic institution. Today, corporations govern our lives. They determine what we eat, what we watch, what we wear, where we work, and what we do. We are inescapably surrounded by their culture, iconography, and ideology. And, like the church and the monarchy in other times, they posture as infallible and omnipotent, glorifying themselves in imposing buildings and elaborate displays. Increasingly, corporations dictate the decisions of their supposed overseers in government and control domains of society once firmly embedded within the public sphere. The corporation's dramatic rise to dominance is one of the remarkable events of modern history, not least because of the institution's inauspicious beginnings." (Bakan, *The Corporation*, p.5)

One of the main problems of the corporation, according to Bakan, is that the corporate form generally protects the controlling shareholders and executives from legal liability, leaving the corporation, a "person" with a psychopathic contempt for legal constraints to be the main target of criminal prosecution. You have to prove smoking gun evidence for convicting the corporations and in the opaque corporations of today it is very difficult. Decisions normally result from numerous and diffuse individuals' inputs, and courts tend to attribute conduct to the corporate "person" rather than to the actual people who run the corporations. And so we reach the aberrant cases of "A Civil Action" and "Erin Brockovich" where multibillion megacorporations deny the allegations of poisoning the ground

and water of American communities and no executive is held responsible although they made the criminal decisions. If worse comes to worse they pay \$8 million or \$333 million, or even billions as in the case of tobacco companies related in the film "The Insider", but none of the executives goes to jail, although hundreds died or in the case of tobacco companies millions die because they did not know of the addictive ingredients in the cigarettes. Those who made the decisions knew of the pollution and of the ingredients, in the case of chemicals they know of the poisonous effects, yet they never go to jail. When the companies are fined, nobody cares because anyhow it is "other people's money", and even the controlling shareholders do not mind because corporations pay only a fragment of what they have saved because of externalities that were not discovered. It is very difficult to discover those, as the minority shareholders, or the creditors, or the customers do not have the funds, energy and time to fight the megacorporations, and only a few have the stamina of Erin Brockovich, Dr. Jeffrey Wigand, Karen Silkwood or Jan Schlichtmann to fight bravely the mega-corporations.

Is it too late to fight democratically against the abuses of corporations? "Is government so dominated by corporate power that it will never be able to regain control of corporations? Sometimes it feels that way. The evidence of corporate dominance is everywhere – the sheer size of corporations, some of whose economies dwarf those of small nations, the transnational scope of their operations, and their control of society and influence over government. There is surface appeal to the argument that economic globalization, and corporate domination more generally, have put corporations beyond government's grasp, possibly forever. However, that argument ignores one crucial fact – namely, that the corporation depends entirely on government for its existence and is therefore always, at least in theory, within government's control." (same, p.153) And government in democracies are within the people's control, so we can control corporations, it only depends on our willingness to do so. Let us not forget that the corporation was originally conceived as a public institution whose purpose

was to serve national interests and advance the public good. The modern for-profit corporation, programmed solely to advance the private interests of its owners, differs profoundly from these earlier versions of the institution. Yet in one crucial respect it remains the same: it is, as it has always been, a product of public policy, a creation of the state.

Finally, Bakan offers the following general prescriptions to control the corporation (same, p.161-164):

"Improve the regulation system – Government regulation should be reconceived and religitimated, as the principal means for bringing corporations under democratic control and ensuring that they respect the interests of citizens, communities, and the environment. Regulation should be made more effective by staffing enforcement agencies at realistic levels, setting fines sufficiently high to deter corporations from committing crimes, strengthening the liability of top directors and managers for their corporations' illegal behaviors, barring repeat offender corporations from government contracts, and suspending the charters of corporations that flagrantly and persistently violate the public interest. Regulations designed to protect the environment and people's health and safety should be based upon the precautionary principle, which prescribes that corporations be prohibited from acting in ways that are reasonably likely to cause harm, even if definitive proof that such harm will occur does not exist. The regulatory system should be reformed to improve accountability and avoid both "agency capture" and the centralized and bureaucratic tendencies of current and past regimes. Local governmental bodies, such as city councils and schools and park boards, should play greater roles in the regulatory system, as they are often more accessible to citizens than federal and state agencies and more willing and able to forge alliances with citizen groups around particular issues (as they have done effectively in relation to, among other things, restrictions on advertising in schools, urban sprawl, "box" retailers, and environmentally damaging practices). The roles of trade unions and other workers' associations in monitoring and

regulating the behavior of corporations should be protected and enhanced, as should those of environmental, consumer, human rights, and other organizations that represent interests and constituencies affected by what corporations do.

Strengthen political democracy – Elections should be publicly financed, corporate political donations phased out, and tighter restrictions imposed on lobbying and the "revolving door" flow of personnel between government and business. Though corporations have a place in representing their concerns to government and cooperating with government on policy initiatives, the special status they currently enjoy as "partners" with government endangers the democratic process. At a minimum, their influence should be scaled back to a degree more commensurate with that of other organizations, such as unions, environmental and consumer groups, and human rights advocates. Electoral reforms that would bring new voices into the political system and encourage disillusioned citizens to return to it, such as proportional representation, should be pursued.

Create a robust public sphere – Social groups and interests judged to be important for the public good or too precious, vulnerable, or morally sacred to subject to corporate exploitation, should be governed and protected by public regimes. Inevitably, people will debate the extent to which such groups and interests should be immune to corporate exploitation, the kinds of measures that should be used to protect them, and what groups and interests should be protected – children's minds and imaginations, schools, universities, cultural institutions, water and power utilities, health and welfare services, police, courts, prisons, firefighters, parks, nature reserves, genes and other biological materials, and public space are all likely candidates – but these are healthy debates to have, far healthier than the increasingly prevalent presumption that no public interest exists beyond the accumulated financial interests of individual corporations, consumers, and shareholders.

Challenge international neoliberalism – Nations should work together to shift the ideologies and practices of international institutions, such as the WTO, IMF, and World Bank, away from market fundamentalism and its facilitation of deregulation and privatization. The current ideological biases of these institutions are not written in stone. Indeed, their original mandate, formulated at Bretton Woods, reflected the economic theories of John Maynard Keynes, and thus a very different orientation than they have today.

More important, we must remember the most subversive truth of all: that corporations are our creations. They have no lives, no powers, and no capacities beyond what we, through our governments, give them."

Analysis of the film "The Corporation" from the Wikipedia:

The film starts with modern day corporate logos rapidly flashing across the screen. After the logos begin to flash steadily faster the narrator's voice emerges and starts recounting the history of the corporation. She asserts that the corporation is today's dominant institution replacing bygone monarchies and other totalitarian regimes. A speech made by George W. Bush starts the discussion about how a few "bad apples" are bound to be present in the corporate system. The narrator then points out the irony in that a metaphor with apples describes a machine that has and creates great wealth but also causes enormous and frequently hidden harms. Various interviewers then go on to use many other metaphors including a jigsaw puzzle, a sports team, a family, the telephone system, a whale, and Frankenstein's monster. Harvard University's Ira Jackson suggests the metaphor of a "majestic eagle", and scoffs at it immediately afterwards. Next, the interviewers ask the question, "What is a corporation?" Joe Badaracco, a professor of ethics at Harvard Business School, defines it as a group of individuals working together to serve various objectives, principally to create large, growing, sustained, legal returns for the owners of the business.

The beginning of the modern corporation is detailed starting with Ray Anderson, the CEO of Interface, the world's largest modular carpet manufacturer. He

explains that the Industrial Revolution began in 1712, when Thomas Newcomen invented a steam driven pump to increase the productivity and output of coal mines. The desire to increase product output per man hour, be it steel, pens, or computer chips, led to the modern corporation and the modern industrialized world. Noam Chomsky then explains the historical function of a corporation. In the past, individual states in the United States issued charters which stipulated what, where, and for how long a corporation could last in order to protect the public good. Richard Grossman states that in early America, the common viewpoint was that the corporation is a subordinate entity which is considered a gift from the people to help the general public. According to Howard Zinn, this all changed after the American Civil War, when the Fourteenth Amendment was passed to help ensure the rights of former black slaves. Corporate lawyers saw this as an opportunity to increase their powers considerably, by claiming that a corporation is in fact a sort of person who is being deprived of their rights. Mary Zepernick of the Program on Corporations, Law and Democracy further states that between 1890 and 1910 there were 307 cases brought to the Supreme Court dealing with the 14th amendment. Out of the 307 only 19 cases were made by African Americans, while the other 288 came from corporate lawyers seeking "equal" rights for their corporate entities.

A black-and-white clip is shown of two actors discussing how to create a corporation. One of the characters states that a corporation is in fact a legal person. After this, Noam Chomsky explains that a corporation is a very special kind of person with no moral barometer, solely concerned with generating the maximum profit possible for its owners. Various people are then interviewed and asked to explain what type of person they would describe particular corporations as. For instance, General Electric is a kind old man and Nike is young and energetic. Several interviewees refute this claim, saying that legally the corporation must look out for the interests of its shareholders above all else, including the environment and the community. In corporations' efforts to minimize cost and maximize profit they came up with *externalities*. Milton Friedman explains that an externality is the effect of a transaction between two

parties on a third party who is not involved. Such externalities include the use of national militaries to secure oil rights for energy corporations, and governments that provide roads and bridges to drive automobiles on.

The adverse effects of corporations are viewed beginning with the harm they inflict upon workers. Such harms include: layoffs, union busting, factory fires, and sweatshops. Charles Kernaghan, the director of the National Labor Committee, shows off various consumer goods made by sweatshops, and compares the prices they were selling for with the amount the workers were paid. He then recounts his travels to an El Salvador sweatshop where various guards and spies try to prevent him from talking with the workers. He eventually finds out the workers were making Kathy Lee Gifford brand clothing and a media circus followed in America. After various pledges were made to end the sweatshops, nothing significant changed. Michael Walker of the Fraser Institute offers a different take. He states that the places in the world where people are starving desperately need sweatshops which provide an opportunity to feed themselves. Walker continues by saying that corporations come in and raise the living standards until the people demand more money and the corporation moves on to the next starving part of the world.

The harm to others induced by the corporation is viewed next including: dangerous products, toxic waste, pollution, and synthetic chemicals. Samuel Epstein explains that in 1940 a miraculous change occurred. Chemists began formulating synthetic chemicals to combat things like disease and insect infestation. Some of these chemicals like DDT have been found over the course of many years to cause cancer and birth defects. Epstein makes a point about there being little difference between creating and allowing products that kill people over time and killing them with a gun.

The harm to animals is also accounted for, such as habitat destruction, factory farming, experimentation, and rBGH/rBST Posilac. Epstein recounts the deceitfulness of the Monsanto corporation when trying to cover up the harmful effects of Posilac on cows and humans. Jeremy Rifkin points out the uselessness of Posilac stemming from the fact that the world overproduces milk and the

demand for increased output is idiotic. A Monsanto promotional video is then shown instructing farmers to "inject every available cow" because the more cows you inject the more milk you produce, and the more milk you produce results in higher revenues.

The harm to the Earth's biosphere is then examined, including clear cutting, carbon dioxide emissions, and nuclear waste. Robert Monks, a corporate governance advisor, recalls a night in Brewer, Maine when he awoke with hay fever. He looked out the window and saw the pollution from the local paper factory was creating white suds in the river. Carlton Brown, a commodities trader, is interviewed next. He explains that traders only care about the money generated by commodities, and not about any environmental implications. Robert Weissman of the Multinational Monitor recites the biggest fines paid by corporations in the 1990s for breaking the law. Some of the biggest include \$125 million paid by Exxon for the mishap in Valdez, Alaska and several companies paying up to \$500 million for antitrust violations. Ray Anderson finally explains that all of the earth's major life support systems are in decline, but because there is still so much abundance left, no entity is willing to make the changes necessary for sustainability.

Dr. Robert Hare, a consultant to the FBI on psychopaths, draws parallels between a psychopath and the modern corporation. His findings corroborate the following behavior:

- Callous unconcern for the feelings of others
- Incapacity to maintain enduring relationships
- Reckless disregard for the safety of others
- Deceitfulness: Repeated lying to and deceiving of others for profit
- Incapacity to experience guilt
- Failure to conform to the social norms with respect to lawful behaviors

Noam Chomsky theorizes that flesh-and-blood humans are all basically made up of the same things, but the moral freedom in the species allows for many different types of behavior. Sam Gibara is then interviewed about his experiences as the CEO of Goodyear. He explains that he felt very bad about laying off over 20,000

workers and closing 8 plants since 1990, but that it was just the nature of the beast. Chomsky furthers this by stating that there is a large difference between the system of slavery and the slave owner, as well as a difference between the CEO and the corporation. While the system is inherently malevolent the people that contribute to it can be honorable and good. This is exemplified by Sir Mark Moody-Stuart, the former CEO of Royal Dutch Shell. A clip is shown of him and his wife, talking with and feeding a group of protestors staged in front of his house. After some discussion the student draws the conclusion that Sir Mark was a good person but the system was to blame. The narrator returns and states that while large corporations may donate some of their money to honorable causes, they still put the bottom line before all else. This is noted when a story about Nigerian oil production is shown. Nine protestors were hanged when they rose against the environmental standards set by Shell in Nigeria, which had created some of the worst pollution in the world.

Dr. Vandana Shiva gives an insight into the mind of a corporation by exposing the fact that corporations now genetically modify seeds to have a "suicide gene" built into them so they will self destruct after one season and can only be used if activated by the company's fertilizer. Marc Barry, a corporate spy, is interviewed next and recounts the extremely complicated measures he has taken to gain information from a company. He has personally set up an office complete with business cards and a corporate logo to woo an employee into interviewing for a fake job where he or she tells valuable information about his or her current employer. After this, Michael Moore gives an insight which states executives are not in touch with the rest of the world because they are "rich white men" and the majority of the world is colored, female and/or poor. Moore, Anderson, and others then come to the conclusion that being a member of the corporate machine is not a valid excuse and "passing the buck" has to stop eventually or the world's ecosystems collapse. After this, Carlton Brown gives another insight into the mindset by explaining how September 11, 2001 and the Iraq War benefited the commodities traders greatly because the price of gold nearly doubled. He explains

how other industries like defense manufacturers also made huge profits from the increased military spending after the attacks.

Jeremy Rifkin details how the current ideology of ownership came to be. In the 14th and 15th centuries, he argues, the common view was that God owned the land and the land owned the people. The church and the aristocracy simply made sure everything ran smoothly. However, beginning with Tudor England, the nobles started fencing off the land, claiming it as private property. This idea of private property spread across the world and began applying to the oceans for fishing, airwaves for broadcast, and airspace for commercial aviation. Elaine Bernard then presents the current history of private property and the fact that in the last twenty years laws have been created that states all life except human life can be considered intellectual property and can be owned by corporations. Michael Walker of the Fraser Institute continues the discussion in private property by telling us the amount of pollution created by a corporation is now a commodity and can be bought and sold. Walker then advocates the private ownership of every thing on Earth because people only value something when there is a price attached.

Susan Linn, a children's advocate, introduces how corporations manipulate children through advertising into buying their products. Lucy Hughes, the vice president of the marketing firm Initiative Media Worldwide, explains that in the late 1990s their firm conducted an experiment to determine the effectiveness of nagging on buying habits. They found that 20 to 40 percent of purchases would not have taken place without children nagging their parents. The study also concluded 25 percent of theme park trips and 40 percent of visits made to Chuck E. Cheese's resulted from nagging. She then says psychologists are hired along with 12 billion dollars a year spent on children's marketing in the United States. Hughes finally advocates "getting children early" so they can be profitable consumers for life. Kingswell, Chomsky, and others then began discussing the notion that corporations along with churches, governments, and other forms of power make it their job to mold the people into a "mindless consumer" that will continue to keep the entity profitable. Created wants or non-necessities are then

discussed and the role the corporations have in inventing things people feel they need through the philosophy of futility such as brand names. Finally, Chris Barrett and Luke McCabe are detailed and how they paid their way through college by becoming walking advertisements for First USA.

Richard Grossman begins with how over the past 50 years corporations have marketed themselves to appear important to the public and represent progress. Chris Komisarjevsky is then interviewed about his job as an executive at a corporate relations firm and how he helps corporations appear friendly and helpful to the average consumer. Some of his former clients include: Union Carbide, which killed 20,000 people in the Bhopal disaster, Phillip Morris, the cigarette company, and the Canadian Forestry Corporation, which clear cuts Canadian forests. The Senior Vice-president of Pfizer, Tom Kline, then is shown talking to the everyman and commenting on how Pfizer helped revitalize the area around their office building. He goes down into the subway system to show off the call-for-help system installed by Pfizer but Kline cannot manage to get the system to work. Grossman then returns to talk about how only the good aspects of the corporations are shown while the parts, such as the manipulating of the government through lobbyists, is buried from the public eye.

Naomi Klein describes how corporate branding is not advertising but rather a production that constantly surrounds us all. She then talks about Celebration, Florida, which is a whole town based on a brand. Clay Timon then explains how corporations like Disney differentiate their branding by having Mickey Mouse for children all the way to Touchstone Pictures which makes adult oriented cinema. The interviewer then asks if the human race can continue if all of our interactions with other human beings are a result of commercial branding. Jonathan Ressler, A Marketing Specialist, explains how in any given day the average person sees several different examples of undercover marketing. This marketing can range from a group of boxes with branding lying in front of your door, to a branded bottle of water in the company fridge, to a fast-food wrapper, to even people talking casually about a product. Ressler then says there is no way to escape marketing and you shouldn't be critical of those buying into a brand because

everyone buys into a brand and if the brand of product works and makes your life easier there is no reason to complain.

Jeremy Rifkin tells us how in the 1980s Professor Chakrabarty, a scientist for General Electric, "invented" microorganisms that ate hazardous waste. General Electric then went to the United States patent office claiming they had invented this bacteria and needed a patent. The Patent Office immediately turned down the request citing a living organism cannot be patented. To this the corporate lawyer went to the court system fighting for their patent rights. By a 3-2 decision the court overruled the patent office. Rifkin then appealed this decision by going to the Supreme Court. His argument was that if the verdict was upheld the blueprints of life would be owned by corporations without congress or the public's consent. By a ruling of 5-4 chief justice Warren E. Burger upheld the decision and seven years later the Patent Office wrote into its laws one sentence that stated any life except a full birth human being can be patented. Rifkin finally states the current race is on in the corporate biotech world to "cash in" on the Human Genome Project so they can patent the genetic code that causes all known diseases. Rifkin finishes by stating within ten years corporations will not only own all human life but that of every other species on Earth.

Jane Akre and her news crew for Tampa, Florida television station WTVT recount the battle they had with Fox Broadcasting Company and Monsanto in the late 1990s. She and her fellow reporters planned on airing an investigative report on the negative effects on Posilac. Before the story aired corporate lawyers for Monsanto threatened to sue Fox News if the story went on. The Fox Broadcasting Company owned 23 separate stations at the time and did not want a loss in advertising dollars, so they agreed to cooperate with Monsanto's lawyers. After over 83 rewrites were made to the story it still wasn't aired and the reporters were eventually fired. They sued and won \$425,000 in damages but the decision was overturned on appeal after Monsanto lawyers found a way to remove the "whistleblower" status of the news team. Their status was removed because falsifying news is not technically against the law. Today, some of the US milk

supply still comes from cows that have been modified with posilac to produce more milk.

The Narrator discusses the Cochabamba protests of 2000 brought on by the privatization of Bolivia's municipal water supply by the Bechtel Corporation. Up to one-quarter of the citizen's income had to go to pay for their water after the takeover and the collection of rainwater was made illegal. This did not sit well with Oscar Olivera and the rest of the Bolivian people so they started a massive riot to gain control of their water back. Six people died and 175 were injured but an agreement was eventually reached where Cochabamba regained full rights of its public water. Howard Zinn next discusses the collusions between fascist Europe and the role of the corporations. As Adolf Hitler and Benito Mussolini rose to power the business climate dramatically improved as radical leftwing dissenters and democratic bureaucracies were abolished. Michael Moore then brings up the collusion between American corporations and the Nazis during WWII. Edwin Black then explains how the IBM punch card computer was used to systematically sort and exterminate political enemies, homosexuals, Jews, and other persecuted groups and how Coca-Cola invented the Fanta orange subsidiary so they could continue making money on both sides throughout the war. The narrator then returns to list several American Corporations such as Chevron, Texaco, Citibank, and Exxon, which had been fined for trading with enemies of the United States. Chomsky and others concluded that a corporation has no national ties and only acts in its own best interest.

The narrator gives the history of the popular General Smedley Butler exposing a corporate coup against then US President Franklin Roosevelt in 1934 because the president's New Deal was seen as too progressive. The congressional investigation into the coup revealed some of the top industry players were involved in the plot including, J.P. Morgan, DuPont, and Goodyear Tire. Ira Jackson then explains how, because of globalization, governments have lost most of their power and multinational corporations have become the new dominant control. Marc Berry then gives an account of the Critical Thinking Consortium which was a meeting involving the heads of many large corporations and the CIA,

NSA, and FBI. This recount shows how corporations work with governments to gain power and control over policy.

The focus of why corporations try to not break laws and try to help others and the environment is examined. After various interviews from Anderson, Chomsky, and others a conclusion is drawn that corporations do these things in order to survive and make more money. Consumers will not buy a product if they feel strongly enough that it is harmful, so corporations manufacture a positive public image through various charities. Naomi Klein then states the biggest flaw in a corporation is the fact that it will do anything for money. Jim Lafferty then discusses the Unocal controversy and how he and many others fought to dismantle the corporation and return it to the public trust. A counterpoint is then made that socialist ideals like that can lead to unfavorable situations like Communist Russia. Moore returns to describe how personal accountability is important. An example given by him is that the main job for the parents of Columbine High School was Lockheed Martin, a company that manufactures weapons and his own parents who were auto workers which is one the biggest cause of global warming. The movie then shows Ray Anderson giving a speech pleading his fellow tycoons to develop sustainable industries so the planet does not get destroyed. This speech is met with guilty looks by other attendees as Anderson proclaims them (and himself) to be "plunderers of the earth." The interviewers then all state there is a way to fight the large corporations by working together. Michael Moore ends the film by pointing out the major flaw of a capital oriented entity: "The rich man will sell you the rope you'll use to hang him."

GLOBALIZATION'S PROSPECTS AND RISKS – THE BOOK "THE WORLD IS FLAT" BY THOMAS FRIEDMAN - SUMMARY AND ANALYSIS

Based on the book:

Friedman Thomas L., *The World is Flat - A Brief History of the Twenty-First Century*, Updated and Expanded Edition, 2006, Farrar, Straus and Giroux, 2006

Based on the film:

Charlie Rose with Thomas L. Friedman (August 31, 2005), 60 min., documentary. An interview of Thomas L. Friedman, columnist for the New York Times and author of *The World is Flat: A Brief History of the Twenty-First Century*, by Charlie Rose

Summary and Analysis:

Thomas L. Friedman, born in 1953, is a world-renowned author, columnist and journalist. He joined *The New York Times* in 1981 as a financial reporter specializing in OPEC- and oil-related news and later served as the chief diplomatic, chief White House, and international economics correspondents. A three-time Pulitzer Prize winner, he has traveled hundreds of thousands of miles reporting the Middle East conflict, the end of the cold war, U.S. domestic politics and foreign policy, international economics, and the worldwide impact of the terrorist threat. His foreign affairs column, which appears twice a week in the *Times*, is syndicated to seven hundred other newspapers worldwide. Friedman is the author of *From Beirut to Jerusalem* (FSG, 1989), which was on the *New York Times* bestseller list for nearly twelve months. Friedman also wrote *The Lexus and the Olive Tree* (FSG, 1999), one of the best selling business books in 1999. *The World Is Flat* (FSG, 2005) was given the first *Financial Times* and Goldman

Sachs Business Book of the Year Award, and Friedman was named one of America's Best Leaders by U.S. News & World Report. Friedman graduated summa cum laude from Brandeis University with a degree in Mediterranean studies and received a master's degree in modern Middle East studies from Oxford. He has served as a visiting professor at Harvard University and has been awarded honorary degrees from several U.S. universities. He lives in Bethesda, Maryland, with his wife, Ann, and their two daughters.

The Israeli saying "Adam hou tavnit nof moladto", man is moulded by the landscape of his homeland, means that man's character is moulded or "formatted" by his parents, his homeland, his teachers, his wife, his friends, his colleagues. One cannot say whether Naomi Klein would have written "No Logo" with such criticism on globalization if she did not come from an activist family. According to Wikipedia, her grandfather was fired for labor organizing at Disney in the US, her father Michael, a physician, was a Vietnam War resister and a member of Physicians for Social Responsibility, her mother directed and scripted the anti-pornography documentary film, Not a Love Story. On the other hand, one cannot say either whether Thomas Friedman would have written "The World is Flat" with such a favorable attitude on globalization if (according to Wikipedia) Friedman's wife Ann did not come from one of the richest families in the world. Her father, Matthew Bucksbaum, is the Chairman of the Board of General Growth Properties, the real estate group that he co-founded with his brother in 1954. The Bucksbaums helped pioneer the development of shopping center in the US and as of 2007, Forbes estimated the Bucksbaum family's assets at \$4.1 billion, including about 18.6 million square meters of mall space. If Naomi Klein would be called Bucksbaum, would she criticize No Choice in the malls as a striking example not only of the disappearance of public, democratic space, but also of its replacement by the illusion of a public, democratic gathering space? Would she say that the virtual town square atmosphere of malls, replete with virtual sidewalks and trees and fountains, belies the essentially tightly-controlled, private and anti-democratic

nature of these places: malls are “free” spaces only to the extent that the exercise of free speech within their walls doesn’t clash with the rules of the market.

On the other hand, can we imagine Thomas Friedman glorifying multinationals and globalization if he would have come from an activist background? Is he so sympathetic with globalization and multinationals because he is part of their milieu, because he lives according to the July 2006 issue of *Washingtonian* in a palatial 11,400 square-foot house, valued then at \$9.3 million? Still, most of the communist and socialist leaders came from the bourgeoisie, so the situation is not clearcut and sometimes your conduct is opposite to your background. Most of the prominent literary and academic authors are biased – Zola, Tolstoy, Hugo, Ibsen, Miller, Joel Bakan, Naomi Klein, Joseph Stiglitz, Milton Friedman and Thomas Friedman. It is OK to be biased, to have an ideology, to say what you have to be said, academic "objectivity" could be very tedious unless you deal with physics and mathematics where you have to be unbiased. But in social sciences, in ethics, in globalization, you cannot be objective. Yet, if we had to recommend only one book on globalization to students, would it be Jagdish Bhagwati's *In Defense of Globalization* with his uncritical enthusiasm on globalization, would it be Naomi Klein's *No Logo*, Joel Bakan's *The Corporation*, Joseph Stiglitz's *Globalization and its Discontents*? One would probably recommend Thomas Friedman's *The World is Flat*, because it encompasses in a very interesting way the saga of globalization. He is enthusiastic, he loves the subject, he is eager to tell us the story, although he resorts to sophistries of flattening the world, 9/11 and 11/9, he plays on words, and uses too many details.

In his April 30, 2005 review on "The World is Flat" in *The New York Times*, Joseph Stiglitz writes: "Mr. Friedman is right that there are forces flattening the world, but there are other forces making it less flat. At issue is the balance between them. So is the world really much flatter than before? For instance, the new technologies that Mr. Friedman praises as levelers have also given rise to new opportunities for monopolization. Mr. Friedman praises Netscape's leveling

role: its browser has really helped to put a world of knowledge and information at each person's doorstep (or computer). But Microsoft was able to use its own market power through control of computer operating systems to effectively replace Netscape with its own browser, Internet Explorer. While Microsoft speaks eloquently of the need to reward innovation, the real rewards are often not reaped by the innovators. In addition, the underlying research for major developments like the Internet and Web browsers is expensive. Large, rich countries can pay for it; poor, small ones cannot. Mr. Friedman notes, but does not emphasize as much as he might, the important role played by government in financing such research before allowing private entrepreneurs to bring the actual products to market - and make the profits. American companies have a distinct advantage in benefiting from government-financed research, even though there are crumbs (some quite large) that those around the world can pick up. Meanwhile, the new "rules of the game" that were part of the last round of global trade negotiations - notably intellectual property regulations requiring all countries to adopt American-style patent and copyright laws - are almost surely making the playing field less level. They will make it easier for those who are ahead of the game to maintain their lead. One mark of a great book is that it makes you see things in a new way, and Mr. Friedman certainly succeeds in that goal. The world may not yet be flat, but there is no doubt that there are important forces - some leveling, some the opposite - that are changing its shape in critical ways. And in his provocative account, Mr. Friedman suggests what this brave new world will mean to all of us, in both the developed and the developing worlds."

Thomas Friedman reminds us of Voltaire's *Candide* that saw all the good things in the world while everything was crumbling: "Pangloss would say to Candide, 'All events are connected in the best of all possible worlds; for, after all, if you hadn't been driven off from a beautiful country residence with great kicks in the backside for the love of Miss Cunegonde, if you hadn't been brought before the Inquisition, if you hadn't lost all your sheep from the good land of Eldorado, you

wouldn't be here eating candied citrons and pistachios.' 'That's well said,' replied Candide, 'but we must cultivate our garden.' " (Voltaire, *Candide*, p. 164-6)

If we accuse Naomi Klein to be Don Quixotic we can compare Thomas Friedman's optimism to this of Candide who believed that "all is the best in the best of worlds", or in Friedman's words: "The flat-world platform is the product of a convergence of the personal computer (which allowed every individual suddenly to become the author of his or her own content in digital form) with fiber-optic cable (which suddenly allowed all those individuals to access more and more digital content around the world for next to nothing) with the rise of work flow software (which enabled individuals all over the world to collaborate on that some digital content from anywhere, regardless of the distances between them). No one anticipated this convergence. It just happened – right around the year 2000. And when it did, people all over the world started waking up and realizing that they had more power than ever to go global as individuals, they needed more than ever to think of themselves as individuals competing against other individuals all over the planet, and they had more opportunities to work with those other individuals, not just compete with them." (Friedman, *The World is Flat*, p. 10-11) While reading Friedman and Klein, Bakan or Stiglitz, one would tend to think that Friedman lives in a different planet. Not only everything is for the best, but he is afraid only of Bin-Laden and terrorism. He is not afraid of multinationals, of the rotten apples, of the monopolies and cartels in most of the industries, of the gap between North and South which is widening, of the middle class which is disappearing, of the temps which are becoming the norm instead of the exception, of the layoffs of tens of thousands, of the relocations that destroy whole communities. Friedman does not mention at all Naomi Klein, Joel Bakan or Joseph Stiglitz. If the Turkish fleet would have sent him to conquer Malta, would he have said as the Turkish Admiral "Malta Yok", there is no Malta, simply because he did not find it?

But Friedman is nevertheless politically correct. He says many right things but not in the right proportions, and in the right context. He is greener than Hawken, but he doesn't say a word about Monsanto and genetically engineered seeds. He is social responsible like Klein but when he mentions Nike it is just for saying that it would rather spend its cash and energy designing better tennis shoes, not supply chains, but nothing about sweat shops in Indonesia. He speaks a lot about individual empowerment but does not attack psychopathic companies oppressing their employees, firing them by the thousands and ruining their communities as Joel Bakan or Michael Moore do attack. McDonald's is mentioned many times in the book but only in neutral or positive terms. "McDonald's then met with its key suppliers and worked out, with them and with CI, a set of guidelines for what McDonald's calls 'socially responsible food supply'." (same, p.381) Not a word about McLibel, McJobs, McMalta Yok! Friedman speaks about McDonald's in the protest context, but in a "parve" way: "If populism really want to help the rural poor, the way to do it is not by burning down McDonald's and shutting down the IMF and trying to put up protectional barriers that will unflatten the world. That will help the rural poor not one iota. It has to be by refocusing the energies of the global populist movement on how to improve local government, infrastructure, and education in place like rural India and China, so the populations there can acquire the tools to collaborate and participate in the flat world." (same, p.472)

As the victims are always to be blamed for their situation and not the oppressors, Friedman puts the blame... on the antiglobalization movement, called "populist", why not "anti-business"? They should not protest against McDonald's (remember, all is the for the best in the best of McDonald's world, they are beyond criticism), they should refocus their energies on how to improve local government and infrastructure – it is not the role of the poor countries' governments, of the neo-liberals in the US, of the IMF or of the World Bank, it is the role of the populist antiglobalization movement... This argument reminds us of a well known Israeli writer who said that the Jews are the cause of the anti-Semitism. The victim is always guilty. Such politically correct arguments remind us of the Rabbi who

heard one pleader and told him that he was right. When he heard the other pleader he told him that he was right too. His deputy asked him how comes that both of them can be right, and he answered him: "You know what? You are right too!" In Friedman's terms everybody is right, except of course the populists' antiglobalization movement that should cure the infrastructure problems of the poor before criticizing McDonald's, Nike or Monsanto. And Friedman finishes mentioning McDonald's by telling us another sophism, that no two countries that both had McDonald's had ever fought a war against each other. Friedman has probably forgotten that Israel and Lebanon were at war, as well as India and Pakistan, Serbia and NATO. But, at second thought, he is probably right, as globalization has flattened the world with its uniformity of thought, with its McJobs, McLibel and McLogo...

Friedman deviates somewhat from his politically correct approach and has a mild criticism on oil companies and the Bush administration: "From a purely American point of view, we need a president and a Congress with the guts not just to invade Iraq, but also to impse a gasoline tax and inspire conservation at home and abroad. That would require a real American energy policy with long-term incentives for renewable energy - wind, solar, biofuels – rather than the welfare-for-oil-companies-and-special-interests that masqueraded as the 2005 energy bill. Enough of this nonsense that conservation, energy efficiency, and environmentalism are some hobby we can't afford. I can't think of anything more cowardly or un-American. Real patriots, real advocates of spreading democracy around the world, live green. Green is the new red, white, and blue." (same, p.504) Is it Thomas Friedman, Milton Friedman, Al Gore, Paul Hawken? But why criticize Thomas Friedman? His approach is Aristotelian, as the good conduct is incompatible with excess and one has to be moderate in order to preserve his moral qualities. Thomas Friedman is moderate, Gore is not, Hawken is not, Klein is not, Stiglitz is not, Bakan is not, even Milton Friedman is not. Yet, all those who are not moderate have changed the world for better and for worse, while the moderates are teaching at philosophy departments or are writing best sellers on a

world that is flat while not attacking multinationals, tycoons or potential buyers of the book. Bin-Laden will not buy the book anyhow, even Bush will not. But "The World is Flat" has its merits, it is a good book, well written, analyzing remarkably globalization, without its discontents, without any valid criticism, but sheer optimism is also a relief in those difficult times!

From the Wiki Summaries:

Thomas Friedman's examination of the influences shaping business and competition in a technology-fueled global environment is a call to action for governments, businesses and individuals who must stay ahead of these trends in order to remain competitive. In a narrative punctuated by case studies, interviews and sometimes surprising statistics, Friedman's message is clear: be prepared, because this phenomenon waits for no one. Without rhetoric or scare tactics, he paints a picture of a world moving faster than most can keep up. As we explore America's place in the fast-evolving world economic platform, Friedman presents not only the problems we face, but preventative measures and possible solutions. The World is Flat is an historical and geographical journey, with stories and anecdotes from the days of Columbus to a modern day Indian call center; from the Great Depression to the home office of a Midwestern-USA housewife demonstrating the pervasiveness of the world-flattening trend. Spanning a broad range of industries, cultures and schools of thought, the real-world examples presented as evidence of his theory are undeniable.

From teleconferencing to podcasts and manufacturing to restaurant order taking, The World is Flat leaves no stone unturned in a quest for answers to a problem that most cannot even define. Friedman's dissection of globalization is a valiant attempt at explaining and understanding the forces driving the flattening of the world, though he admits that the very nature of beast prevents one from having all of the answers. This candor is in keeping with the theme of the entire book, in that we must learn how to learn, teaching ourselves to stay curious and innovative, if we are to excel in a global economy. As he moves towards the end of this

presentation of his theory, Friedman warns of the forces that could seriously harm or slow the flattening of the world, particularly the threat posed by terrorist networks such as Al-Qaeda. His perspective is refreshing in a media driven largely by scare tactics and fear mongering as he encourages a realistic and objective approach to this threat. As people become more able to collaborate, compete and share with others of different cultures, religions, educational backgrounds and languages, *The World is Flat* is a necessary reality check to bring these factors into perspective and offer, if not answers to every problem, the drive to uncover working solutions.

Chapter One – While I Was Sleeping

As we are introduced to Friedman's theory that the world is flat, we accompany him on a journey to the various locations around the globe that led him to this conclusion. We start off in Bangalore, India, where he finds himself surrounded by advertisements of traditionally American companies such as Pizza Hut, Epson, HP and Texas Instruments during a round of golf. Traveling with a crew from the Discovery Times channel, he encounters Indian workers and businesspeople working for American companies, speaking in American accents and even adopting American names in their own country. A visit to Infosys Technologies Ltd leaves Friedman in wonder at the massive conferencing system they have created that allows people from around the globe to congregate and collaborate in one giant room via satellite and teleconferencing technology. Friedman guides us through the different eras of globalization as he has defined them in an historical narrative from the days of Columbus to our present day state. We see the ever increasing pace of globalization through his encounters with people such as Jaithirth "Jerry" Rao, an outsourced businessman in India, and others. Through Jerry, we learn about the process of information exchange online and the effect it has on businesses to perform various duties from remote locations with everything from tax preparation to hair appointment scheduling to hospital bookings cited as examples of outsourcing. As Friedman travels through Japan, China and back to America, we study various examples of the business outsourcing phenomenon and its impact, positive and negative, on the players

involved. Homesourcing and military outsourcing are explored as Friedman explains the sheer prevalence of outsourcing in our society.

Chapter Two – The Ten Forces That Flattened the World

We are introduced to Friedman's interpretation of the ten influencing factors that led to globalization and world flattening, the first being the falling of the Berlin Wall in 1989, which tipped the balance of power across the world towards democratic free market and away from authoritarian rule. A second flattener is identified as our ability to not only author our own content, but to send it worldwide with the 1995 launch of the Internet. Subsequently, free workflow software was developed, allowing people from around the world to collaborate and work together on projects using a shared medium. As Apache and Wikipedia came into play, we became able to develop and upload web content and community collaboration became another flattening force. Preparations for Y2K required resources beyond those available in the United States and as a result, we see that India became responsible for a huge portion of these preparations. Offshoring, using the Chinese manufacturing sector as a prime example, has forced other developing countries to try to keep up with their low cost solutions, resulting in better quality and cheaper products being produced worldwide. The seventh flattening factor is our introduction to supply chaining, which is discussed in much greater detail later in Chapter Fourteen. Rounding out his list with insourcing, in-forming and "the steroids", Friedman examines his flattening factors, their origins and the effect they will have on the way we do business in the future.

Chapter Three: The Triple Convergence

Acknowledging that the ten factors he discussed in Chapter Two could not have flattened the world all on their own, Friedman explains that as each of the factors came together, they had to spread and take root to create the environment rich for flattening. He credits this spread, the creation of complementary software and the internet, and political factors that caused several developing countries, including China, Russia, India and Latin America, to open their borders at this time with the creation of the perfect storm that led to the rapid-fire pace of globalization.

Through interviews with U.S. Embassy officials in Beijing, we explore the desperation of Chinese students to study and work in America. For the first time in history, we see that talent has become more important than geography in determining a person's opportunity in life. We follow the path of a Boeing jet as components of its manufacture are outsourced to Russia and then India, allowing for faster and cheaper development of more planes as Friedman demonstrates the need for individuals and businesses to be able to compete in a global marketplace. Friedman works to dispel common myths about globalization as we explore the dot.com boom and bust, the American government's misinformation of the public as the triple convergence took place and the IT revolution we have heard so much about in the last 20 years.

Chapter Four – The Great Sorting Out

Friedman calls for a reality check as we explore the manner in which countries and societies will cope with and adapt to the dramatic changes that globalization brings to the way we do business, as individuals and entities. His comparison of the Industrial Revolution to the current IT Revolution leads us to believe that the world flattening we see today could have been predicted by Karl Marx. An interview with Harvard's noted political theorist Michael J. Sandel discusses whether or not exploitation is globalization; are the outsourced people from India being exploited or given opportunity they would not otherwise have had? In search of an answer to this question, Friedman examines the India-Indiana story from 2003, where an Indian company was outsourced to upgrade Indiana's unemployment computer system, effectively taking work from people in Indiana in order to provide more work for people in India. We examine the blurring boundaries between companies and different groups of workers, as well as the relationships between communities and the businesses that operate within them. Friedman demonstrates that as little people begin to act big, so too are big people able to connect on the smallest level. Identities become harder to define, which will also need to be sorted out. The traditional roles of consumer, employee, citizen, taxpayer and shareholder have all become blurred and intertwined. Friedman summarizes the chapter with an examination of intellectual property

law and means that must be put in place to protect it, as well as the death of the human bond in the online world.

Chapter Five – America and Free Trade

Does free trade still exist in a flat world? As he sets out to explore this dilemma, Friedman considers the banning of outsourcing, an action called for by many, to protect our country's workers and the effect such an action would have on globalization. He concludes that erecting borders and walls would be detrimental to our goals and that Americans must instead be prepared to compete on a global playing field. Friedman encourages better education and training, as Americans now compete not only with other Americans, but with the most brilliant minds around the globe for positions. We explore the "lump of labor" theory and new job creation in a global economy. He identifies the workers that will suffer most, should they be unable to keep ahead of the globalization trend, and offers large-scale suggestions to remedy this problem. Using the history of the American agricultural industry as an indicator of future trends in various industries today, he stresses the importance of an ability to adapt and specialize where there is a need. We learn that fear stimulates change and that this is a good thing.

Chapter Six – The Untouchables

Friedman addresses a concern shared by many Americans: what do we tell our kids? As the competition for jobs stiffens, how do we prepare them for the increased competition? His suggestion that we must make ourselves "untouchables" is explored in detail as he identifies three broad categories of workers who will have job security in the flat world. Synthesizers, explainers, leveragers, versatilists and more are identified and explained as viable career options, as well as strategies for preparing for these positions.

Chapter Seven – The Right Stuff

In a frank discussion of the fear amongst Americans regarding competition and education, Friedman explores the "right stuff"; the educational requirements needed to survive in the flattened world and more importantly, the availability of said education in our current system. Stressing the importance of self-learning and learning to learn, Friedman offers valuable advice to parents unsure of their

children's educational and professional futures. He recommends building right-brain skills, or those that cannot be duplicated by a computer, and explores different vehicles to higher learning, including music. Friedman examines the factors necessary to create the right environment for this learning and contemplates methods of achieving this in modern day America.

Chapter Eight – The Quiet Crisis

We begin by examining the U.S Olympic Basketball Team's unexpected loss at the 2004 Games as an example of our complacency as the rest of the world is learning and catching up in areas we are used to dominating. An interview with Shirley Ann Jackson, 2004 President of the American Association for the Advancement of Science, demonstrates that a quiet crisis is happening slowly but surely as multiple and complex forces at work creating the perfect storm; demographic, political, social, cultural, economic, etc that could lead to America falling behind in innovation, science and technology. We explore the dirty little secrets that no one is talking about – a lack of highly skilled scientists and engineers, disinterest in math and science by our younger population, lack of ambition as television and video games take over, an outdated basic education system, lack of funding for research, lack of infrastructure as we focus on war and other countries focus on developing sustainable and innovative business. Friedman explores the differences between different country's educational systems with Bill Gates and ultimately poses the question, why are we so focused on idolizing Britney Spears when competing countries are idolizing Bill Gates? Friedman contemplates The "Innovate America" Report, a well-meaning document ignored by the President as he chased his own agenda – and wonders whether China will beat us to the implementation of our own innovation. He sums up the chapter with a call to action to kick-start the long process of preparing ourselves for the future into motion before we are literally left behind.

Chapter Nine – This Is Not a Test

In a call to action, Friedman stresses that we simply cannot do things the same old way anymore and people must be willing to change and adapt. He compares our current crisis to that we faced in competing with the Soviet Union and the launch

of Sputnik; the main challenge then came from those who wanted to put up walls while we now have to face those who want to tear them down. Now, as then, we must change our strategy to overcome these issues. He discusses the difficulty in getting America to stand up and take notice of the importance of this issue in a supercharged society where hype and terror are needed to get the public's attention and support. Friedman stresses the importance of shoving political barriers aside in what he calls "compassionate flatism" to prepare our country for what lies ahead. He questions leadership and education; who will lead us into the forefront of this new globalized economy? The necessity for lifelong learning and benefits to allow workers to remain mobile and adaptable is very real, though it seems to be at the bottom of our to-do list. Finally, Friedman examines how companies such as Capital One are working on the lifelong learning objective by providing training and upgrading to employees, increasing their own productivity and bottom line in the process, as he calls for social programs that encourage workers to be creative and hardworking.

Chapter Ten – The Virgin of Guadalupe

We see the Chinese manufacture of statuettes of The Virgin of Guadalupe and their subsequent importation into Mexico as an example of the problem created when one developing country competes with another, as China replaced Mexico as the U.S.'s number two importer in 2003. Friedman discusses the need for developing countries to put policies in place to create the right environment for their companies and entrepreneurs to succeed in the flat world. He states that countries must be brutally honest with themselves in determining their place in the world market if they are to adapt and survive. A comparison of countries who have opened their borders and adopted free trade policies versus those who have not and been left behind illustrates his point. The concept of reform retail and wholesale is introduced as we explore changes in education, infrastructure and governance. Ireland becomes a case study for financial success as their per capita GDP has risen to second highest in the European Union. Friedman contemplates a society's ability and willingness to sacrifice for the purpose of economic

development and leaders with vision as vehicles of change and conversely, the reason some countries will not.

Chapter Eleven – How Companies Cope

Friedman opines that companies willing to change and accept change are more likely to do things than have things done to them. In profiling Jill and Ken Greer, creators of Greer & Associates multimedia company, we learn of their experience with the rise of freelancers as their competition, as well as the fact that technology that should have simplified their operations made it more difficult by requiring more of them. We look into commoditization in a wide range of industries, where everything is the same and supply is plentiful. Clients are flooded with options and everyone becomes the same. Each company is driven to be more creative and innovative, or risk falling between the cracks. At this point we meet Fadi Ghandour, cofounder and CEO of Aramex, a home-grown package delivery service. His web-based global network cut costs and allowed him to compete with the biggest in the business and come out ahead. We see through other business models that globalization forces the big to act small: case in point, Starbucks learning from their customers to use soy milk in their coffees. We learn that companies must be willing to collaborate and focus on niche markets, doing themselves what they need to do to stay in front of their customers and outsourcing the rest. The best companies use outsourcing as a method of growth, not to shrink their workforce. Outsourcing allows them to provide more and better services more efficiently. We also explore socially responsible outsourcing; giving the outsourced workers a good wage and opportunity within their own country that they would not have otherwise.

Chapter Twelve: The Unflat World

Friedman shares stories of the world flattening but humbly announces that he does indeed realize the world is not yet flat. He wants to draw attention to the flattening and the ever-increasing pace at which it is occurring. Part of this understanding must come from a recognition of factors that are preventing globalization from occurring in some people. Friedman examines different groups of people he believes are disadvantaged for one reason or another and the way that this keeps

them from moving forward into a flattened world. The AIDS epidemic affects people who are too sick to hope they will ever make it to middle class. Disempowered people are those who live in areas touched by the flattening of the world but lack the means, knowledge and infrastructure to benefit from it. For example, in India only 2% of the entire population are involved in the high-tech and manufacturing for export sectors. Different societies and cultures are coming into contact with each other more frequently and more quickly than ever before, leading to great frustration. Using the Arab-Muslim world and his journalistic encounters with their youth as an example, Friedman explores the impact of freedom of thought and expression that world flattening has created and its impact on a traditionally closed society. He warns of a potential threat lurking in the not too distant future: a depletion of our natural resources as people compete to have more and better.

Chapter Thirteen: Globalization of the Local

In this examination of the impact of globalization on world cultures, we learn that globalization came to be seen by many as Americanization, creating a backlash by those who felt that they would be steamrolled and homogenized into being mini-Americans. But as new forms of communication and innovation create a global platform for the sharing of work, entertainment and opinion, Friedman believes that globalization serves more to enrich and preserve culture than to destroy it, as each person is given their own voice and vehicle of expression through podcasts, websites, etc. The nature of the beast is such that the bad will always be there with the good. As humanitarians and businesses connect online to share ideas, so too do terrorists and predators.

Chapter Fourteen: The Dell Theory of Conflict Prevention

We begin with an in-depth study of the supply chain, using the purchase of Friedman's own computer as a case study. This leads to an examination of how geopolitical conflicts could derail or slow globalization. Friedman's theory is that two countries invested in a business together by being part of the same global supply-chain are less likely to go to war, as they are now heavily invested in the success of the business venture. Any interruption to that supply chain would be

critical. As we reflect on the evolution of supply chains and the effect they have had on politics and the stability of countries they affect, we remember that Asia, as opposed to much of the Middle East, has become more stable because they are part of many supply chains and therefore more interested in doing good business. Overall, the price of war is higher than it used to be and countries will have to consider the effect of a war on their place in the business world. Friedman explores both the China-Taiwan relations and India-Pakistan as examples of how the flattening of the world and supply chain have a calming effect and cause countries to think rationally about the true cost of war, making diplomatic solution more likely. As we explore the darker side of the supply chain phenomenon, we understand how Al-Qaeda and other terrorist networks form mutant supply chains for the purpose of destruction, not profit. In a flat world, the transmission of terror is much easier. We must examine our abilities to derail the nuclear threat by using our capabilities to disrupt the terrorists supply chain.

Chapter Fifteen: 11/9 Versus 9/11

We begin by examining two significant dates in world flattening: 11/9 as an example of creative imagination and 9/11 as destructive imagination. 11/9, with the destruction of the Berlin Wall, was the door opening to a freer, flatter, and more democratic world, where 9/11 saw our world try to snap shut against outside threat. This is Friedman's call for positive creativity and giving people the tools to do positive things with what is available through the opening of so many doors. We see the innovation and creativity that Bin Laden put into his 9/11 plan, as horrible as it was. Friedman concludes that the forces that flatten the world can be used to bring everyone up to the same level, or to bring them all down to the same level. Those of us who live in free and progressive societies must lead others to use their imaginations without allowing their imaginations to get the best of them – or us. Technology cannot protect us; we must harness that technology and decide how it will be used. This requires us to define the line between precaution and paranoia to keep things in perspective in a flat world. We are called to remember who we are to avoid losing our identity in a flat world. In exploring eBay as a virtual community, India as the second largest Muslim country where

the context and imagination are different than in other parts of the Arab world, and the curse of oil and how it keeps countries from moving forward in other ventures, we learn about different types of creativity. Friedman reflects on his story of Aramex from Chapter Eleven as an inspirational closing thought; one of a small Arab company that made it big in the world platform.

BUSINESS DILEMMAS IN FILMS, PLAYS, LITERATURE AND DOCUMENTARIES LIST OF WORKS

1. All My Sons by Arthur Miller

All My Sons, 1948, 95 min., Director Irving Reis, with Edward G. Robinson, Burt Lancaster

All My Sons TV 1986, 122 min., Director Jack O'Brien, with Aidan Quinn, James Whitmore

2. The Merchant of Venice by William Shakespeare

The Merchant of Venice, 2004, 138 min., Director Michael Radford, with Al Pacino, Jeremy Irons

The Merchant of Venice, TV 1973, 131 min., Director John Sichel, with Laurence Olivier

The Merchant of Venice TV 1980, 157 min., Director Jack Gold, with Warren Mitchell

3. An Enemy of the People by Henrik Ibsen

An Enemy of the People, 1978, 90 min., Director George Schaefer, with Steve McQueen

Ganashatru 1989, 99 min., Director Satyajit Ray, Indian masterpiece based on Ibsen's play

4. The Visit of the Old Lady by Friedrich Durrenmatt

Hyenas, 1992, 113 m., Director Djibril Diop Mambety, African masterpiece based on the play

The Visit 1964, 100 min., Director Bernhard Wicki, with Ingrid Bergman

5. Rhinoceros by Eugene Ionesco

Rhinoceros, 1974, 104 min., Director Tom O'Horgan, with Zero Mostel and Gene Wilder

6. The Great Gatsby by Frances Scott Fitzgerald

The Great Gatsby, 1974, 140 min., Director Jack Clayton, with Robert Redford, Mia Farrow

7. Jean de Florette by Marcel Pagnol

Jean de Florette, 1986, 122 min., Director Claude Berri, with Yves Montand, Gerard Depardieu

8. Israeli Context: Beware of Greeks' Presents by Jacques Cory
9. Erin Brockovich, 2000, 132 min., Director Steven Soderbergh, with Julia Roberts, Albert Finney
10. Wall Street, 1987, 120 min., Director Oliver Stone, with Michael Douglas, Martin Sheen
11. The Insider, 1999, 157 min., Director Michael Mann, with Al Pacino and Russel Crowe
12. The Crooked E, the Unshredded Truth about Enron, TV 2003, 100 min., Director Penelope Spheeris, with Christian Kane and Brian Dennehy, based on the book by: Brian Cruver - Anatomy of Greed, The Unshredded Truth from an Enron Insider.
Enron: The Smartest Guys in the Room, 2005, documentary film, Director Alex Gibney, 109 min., with Peter Coyote as Narrator, Andrew Fastow, Ken Lay, Jeff Skilling, based on the book of Bethany McLean and Peter Elkind, who also appear in the film - The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron.
13. Manon des Sources by Marcel Pagnol
Manon des Sources 1986, 113 min, Director Claude Berri, with Emmanuele Beart, Daniel Auteuil
14. A Civil Action by Jonathan Harr
A Civil Action, 1998, 112 min., Director Steven Zaillian, with John Travolta, Robert Duvall
15. Silkwood 1983, 131 min., Director Mike Nichols, with Meryl Streep, Cher, Kurt Russell
16. How to Succeed in Business Without Really Trying, 1967, 121 min., Director David Swift
17. The Threepenny Opera by Bertolt Brecht
Die Dreigroschenoper 1931, music Kurt Weill, 112 min., Director Georg Pabst, with Lotte Lenya
Mack the Knife 1990, 118 min, Director Menachem Golan, with Raul Julia, music Kurt Weill
The Beggar's Opera 1953, 94 min., Director Peter Brook, with Laurence Olivier, Hugh Griffith
18. La Curee by Emile Zola
The Game is Over, 1966, 98 min., Director Roger Vadim, with Jane Fonda and Michel Piccoli

19. Julius Caesar by William Shakespeare
Julius Caesar 1953, 120 min., Director Joseph Mankiewicz, with Marlon Brando, James Mason
20. The Divine Comedy by Dante Alighieri, (1999) Kultur Video
21. The Odyssey by Homer
The Odyssey TV 1997, 173 min., Director Andrei Konchalovsky, with Greta Scacchi, I. Papas
Helen of Troy 1956, 118 min., Director Robert Wise, with Rossana Podesta, Stanley Baker
The Aeneid by Virgil
The Trojan Horse 1962, 105 min., Director Giorgio Ferroni, S. Reeves
22. It's a Wonderful Life, 1946, 130 min., Director Frank Capra, with James Stewart, Donna Reed
23. Rogue Trader 1999, 101 min., based on Nick Leeson's autobiography about the disastrous collapse of UK's Barings Bank, Director James Dearden, with Ewan McGregor, Anna Friel
24. Les Grandes Familles 1958, 92 min., based on Maurice Druon's book, Director Denys de la Patisserie, with Jean Gabin, Bernard Blier, Pierre Brasseur, Jean Dessailly, Jean Murat
25. L'Argent TV 1988, 250 min, based on Emile Zola's book about the financier of La Curee – Aristide Saccard, Director Jacques Rouffio, with Claude Brasseur, Miou-Miou, Michel Galabru
L'Argent, 1928, 195 min., Director Marcel L'Herbier, with Pierre Alcover, Alfred Abel
26. Don Quijote by Miguel de Cervantes
Man of La Mancha 1972, 132 min., Director Arthur Hiller, with Peter O'Toole, Sophia Loren
27. Topaze by Marcel Pagnol
Topaze 1951, 136 min, Director Marcel Pagnol, with Fernandel, Jacqueline Pagnol
Topaze, 1933, 78 min., Director Harry d'Abbadie d'Arrast, with John Barrymore, Mirny Loy
Topaze, 1935, 103 min., Director Louis J. Gasnier, with Louis Jouvet, Edwige Feuillere.
28. Rigoletto 1982, 130 min., Verdi's opera with Piave's libretto based on Victor Hugo's play Le roi s'amuse, Director John Michael Phillips, with John Rawnslley

as Rigoletto and Marie McLaughlin as Gilda. The English National Opera in an adaptation to contemporary Mafia.

Rigoletto 1982, 128 min., Director Jean-Pierre Ponnelle, with Luciano Pavarotti

29. Henri Troyat, Zola (biography, J'Accuse, Dreyfuss Affair, Col. Picquart, whistleblowers)

Life of Emile Zola 1937, 116 min., Director William Dieterle, with Paul Muni, Henry O'Neill

30. Yes, Prime Minister, UK 1992, 461 min., Director Sidney Lotterby, with Paul Edington,

Nigel Hawthorne, TV series and books by Jonathan Lynn and Anthony Jay (Yes, Minister)

31. The China Syndrome 1979, 122 m, Director James Bridges, with Jane Fonda, Jack Lemon

32. Business Ethics: The Ethical Revolution of Minority Shareholders by Jacques Cory, published by Kluwer Boston in 2001

33. Activist Business Ethics by Jacques Cory, published by Kluwer Boston in 2001

34. Revisor by Nikolai Gogol

The Inspector General 1949, 102 min., Director Henry Koster, with Danny Kaye

35. Seven Samurai 1954, 190 min., Director Akira Kurosawa, with Toshira Mifune

36. Il Conformista 1970, 115 min., Director Bernardo Bertolucci, based on Alberto Moravia's book The Conformist, with Jean-Louis Trintignant, Stefania Sandrelli, Yvonne Sanson

37-40. Business Dilemmas in the folklore:

In Ladino (Abidiguar Almas/Cuentos), In Yiddish (Shalom Aleichem - Tebie the Milkman), in Arabic (Tales of Djoha), in Argentina (Tango Cambalache).

41. Babbitt, 1934, 74 min., Director William Keighley, with Guy Kibbee and Aline MacMahon, based on Sinclair Lewis' book - Babbitt

42. Executive Suite, 1954, 104 min., Director Robert Wise, based on the novel by Cameron Hawley, with William Holden, Frederic March, Barbara Stanwick, June Allyson, Walter Pidgeon, Shelley Winters, Nina Foch, Louis Calhern, Paul Douglas

43. *The Crucible*, 1996, based on Arthur Miller's play, Director Nicholas Hytner, 124 min., with Daniel Day Lewis, Winona Ryder.
44. *Death of a Salesman*, TV 1985, 130 min., based on Arthur Miller's play, Director Volker Schlöndorff, with Dustin Hoffman and John Malkovich.
45. *Pretty Woman*, 1990, 119 min., Director Garry Marshall, with Richard Gere, Julia Roberts
46. *Business as Usual*, 1987, 90 min., Director Lezli-An Barrett, with Glenda Jackson
47. *Disclosure*, 1994, 128 min., Director Barry Levinson, based on the novel by Michael Crichton, with Michael Douglas, Demi Moore, Donald Sutherland, Caroline Goodall
48. *Gentleman's Agreement*, 1947, 118 min., Director Elia Kazan, based on the novel by Laura Hobson, with Gregory Peck, Dorothy McGuire, John Garfield, Dean Stockwell, June Havoc
49. *Greed*, 1924, 239 min., Director Erich von Stroheim, based on the novel by Frank Norris, with Zasu Pitts, Gibson Gowland
50. *The Devil's Advocate*, 1997, 144 min., Director Taylor Hackford, based on the novel by Andrew Neiderman, with Al Pacino, Keanu Reeves, Charlize Theron, Jef. Jones, Judith Ivey
51. *Runaway Jury*, 2003, 127 min., Director Gary Fleder, based on the novel by John Grisham, with John Cusack, Gene Hackman, Dustin Hoffman, Rachel Weisz, Bruce McGill
52. *Scenes from a Marriage*, 1973, 168 min. abridged or 299 min. full TV version, Director and screenplay - Ingmar Bergman, w. Liv Ullmann, Erland Josephson, Bibi Andersson
53. *Barbarians at the Gate*, 1993, TV, 107 min., Director Glenn Jordan, based on the book by Bryan Burrough & John Helyar, on the Nabisco takeover, with James Garner, Jonathan Price
54. *Glengarry Glen Ross*, 1992, 100 min., Director James Foley, based on David Mamet's play, with Jack Lemmon, Al Pacino, Ed Harris, Alan Arkin, Kevin Spacey, Alec Baldwin, Jona. Price
55. *Startup.com*, 2001, 107 min., Director Chris Hegedus, Jehane Noujaim, documentary with Kaleil Tuzman and Tom Herman, on the rise and fall of the Internet company govWorks.com

56. Boiler Room, 2000, 118 min., Director Ben Younger, with Giovanni Ribisi, Vin Diesel
57. Other People's Money, 1991, 103 min., Director Norman Jewison, based on Jerry Sterner's play, with Danny DeVito, Gregory Peck, Penelope Ann Miller, Piper Laurie
58. Dealers, 1989, 87 min., Director Colin Bucksey, with Paul McGann, Rebecca De Mornay
59. The Bank, 2001, 106 min., Director Robert Connolly, with David Wenham, Anth. LaPaglia
60. Class Action, 1991, 110 min., Direc. Michael Apted, with Gene Hackman, M.E. Mastrantonio
61. Nova - Trillion Dollar Bet, 2000, 60 min., documentary on Long Term Capital Management
62. Warren Buffett - Oracle of Omaha, 2000, 60 min., about the story of Berkshire Hathaway
63. Biography, Andrew Carnegie, 2000, 50 min., documentary on Carnegie
64. Biography, J. Pierpont Morgan, 2000, 50 min., documentary on Morgan
65. Biography, Sam Walton: Bargain Millionaire, 2004, 50 min., documentary on WalMart
66. Biography, Henry Ford, 1999, 50 min., documentary on the Ford Automobile Company
67. Pirates of Silicon Valley, 1999, TV, 95 min., Director Martin Burke, with Anthony Michael Hall as Bill Gates of Microsoft, Noah Wyle as Steve Jobs of Apple, Joey Slotnick as Steve Wozniak of Apple, John DiMaggio as Steve Ballmer of Microsoft
68. Triumph of the Nerds: The Rise of Accidental Empires, 1996, 165 min., TV, Director Robert Cringely, documentary on the origins of the personal computer with Paul Allen (co-founder Microsoft), Steve Ballmer, Bill Gates, Steve Jobs, Steve Wozniak, Gordon Moore
69. Biography - Bill Gates: Sultan of Software, 2004, 50 min., documentary on Microsoft

70. Code of Ethics, 1997, 114 min., Director Dawn Radican, with Melissa Leo
71. F.I.S.T., 1978, 145 min., Director Norman Jewison, with Sylvester Stallone, Rod Steiger
72. Marie: A True Story, 1985, 112 min., Director Roger Donaldson, with Sissy Spacek
73. Modern Times, 1936, 87 min., Director Charles Chaplin, with Charles Chaplin, P. Goddard
74. No Logo, 2003 V, 42 min., Director Sut Jhally, documentary based on the book "No Logo" by Naomi Klein on globalization, hegemony of brands and democratic resistance.
75. Globalization & Human Rights, 1998, TV, 60 min., Writing credits: Rory O'Connor, Danny Schechter, hosted by Charlayne Hunter-Gault.
76. The Take, 2004, 87 min., documentary directed by Avi Lewis, written by Naomi Klein.
77. The Corporation, 2003, 145 min., Directors Jennifer Abbott, Mark Achbar, based on the book by Joel Bakan "The Corporation: A Pathological Pursuit of Profit and Power", with Noam Chomsky, Peter Drucker, Milton Friedman, Naomi Klein, Michael Moore, Howard Zinn.
78. Precarity, 2004, 197 min., Concept & Realization: Francesca Bria, Tora Krogh, Lize de Clercq. A compilation of 17 videos on victims of globalization, from Italy, Spain, Korea, Mexico, Japan, Netherlands, France, US, Michael Moore, Naomi Klein, The Take.
79. Damaged Care, 2002 (TV), 114 min., Director Harry Winer, with Laura Dern.
80. RJR/Nabisco, Braces for Buyouts, The History Channel, documentary, 2002, 50 min.
81. Ford: The Man and the Machine, 1987 (TV), 200 min., Director Allan Eastman, based on book by Robert Lacey, with Cliff Robertson, Hope Lange, Heather Thomas, R. H. Thomson.
82. McLibel, 2005, 85 min., Director Franny Armstrong, on McDonald's libel suit in the UK
83. The Big One, 1997, 91 min., Director Michael Moore, who tries to convince Phil Knight to open a Nike factory in Flint, Michigan instead of the sweat shops in Asia.

84. *Roger & Me*, 1989, 91 min., Director Michael Moore, GM plant shutdown, downsizing
85. *Manufacturing Consent: Noam Chomsky and the Media*, 1992, 167 min., Directors Mark Achbar and Peter Wintonick, about corporate media's role in modern propaganda
86. *The Yes Men*, 2003, 2003, 83 min., Directors Dan Ollman and Sarah Price, WTO satire
87. *Billetes, billetes*, 1988, 75 min., Director Martin Shor, with Mercedes Alonso, Max Berliner, business ethics in Argentina
88. *Beyond Borders*, 2003, 127 min., Director Martin Campbell, with Angelina Jolie, NGOs
89. *The Hucksters*, 1947, 115 min., Director Jack Conway, with Clark Gable, Deborah Kerr
90. *The Wheeler Dealers*, 1963, 107 min., Director Arthur Hiller, with James Garner, Lee Remick
91. *Life and Debt*, 2001, 80 min., Director Stephanie Black, globalization, IMF, Jamaica
92. *Milton Friedman*, 2002, 73 min., Interviewed by Gary S. Becker, Intellectual Portrait Series
93. *The Firm*, 1993, 154 min., based on the novel by John Grisham. Director Sydney Pollack, with Tom Cruise, Ed Harris, Gene Hackman, Jeanne Tripplehorn, Hol Holbrook
94. *The Little Prince*, 1974, 88 min., Director Stanley Donen, with Richard Kiley, Steven Warner, Bob Fosse and Gene Wilder. Based on the book "The Little Prince" by Antoine de Saint-Exupery.
The Little Prince, 2004 TV, 109 min., Director Francesca Zambello, with Richard Stuart.
95. *Novia que te vea (Like a Bride)*, 1994, 114 min., Director Guita Schyfter, with Angelica Aragon. Ladino business ethics.
96. *Fiddler on the Roof*, 1971, 181 min., based on Sholom Aleichem's book "Tevye the Milkman", Director Norman Jewison, with Topol. Yiddish business ethics, if I Were a Rich Man, Tevye's ruinous speculations on the stock exchange with Menahem Mendel

97. The World of Sholom Aleichem, TV, 1959, 90 min., Director Don Richardson, with Zero Mostel, Jack Gilford.
98. Monsieur Verdoux, 1947, 124 min., Director Charles Chaplin, with Charles Chaplin, Verdoux, a family man who murders rich women to support his invalid wife and child
99. The Gold Rush, 1925, 96 min. - silent or 69 min. remastered 1942 sound release. Director Charles Chaplin, with Charles Chaplin, Mark Swain.
100. Super Size Me, 2004, 100 min., Director and Actor - Morgan Spurlock. McDonalds, fast food unhealthy effects, the first ever reality-based movie, beginning and ending in 30 days.
101. Dasthaye Aloodeh, a.k.a. Corrupted Hands, 2001, 100 min., Director Cyrus Alvand, with Abolfazi Pour-Arab, Iranian film about crime, ethics and punishment
102. The Next Man, 1976, 108 min., Director Richard C. Sarafian, with Sean Connery, Cornelia Sharpe, business ethics dilemmas in the Arab world, Israel and Great Britain
103. Tai-Pan, 1986, 127 min., Director Daryl Duke, with Bryan Brown, Joan Chen, based on the novel by James Clavell, business ethics dilemmas in China and Great Britain
104. Working Girl, 1988, 115 min., Director Mike Nichols, with Harrison Ford, Sigourney Weaver, Melanie Griffith, Alec Baldwin, feminism and career in US business world
105. The Stranger, 1984, 75 min., Egyptian film in Arabic, Director Ashraf Fahmy, based on Albert Camus' novel Le Malentendu, with Sanaa Gamil, Nagla Fathi.
106. Nine to Five, 1980, 110 min., Director Colin Higgins, with Jane Fonda, Dolly Parton.
107. Millions, 2004, 98 min., Director Danny Boyle, with Alexander Nathan Etel.
108. Tin Men, 1987, 110 mi., Director Barry Levinson, with Richard Dreyfuss, Danny DeVito
109. Patterns, 1956, 83 min., Director Fielder Cook, with Van Heflin, Ed Begley

110. *The Carpetbaggers*, 1964, 150 min., Director Edward Dmytryk, based on the novel by Harold Robbins, with George Peppard, Carroll Baker, Alan Ladd, Martin Balsam
111. *The Best Intentions*, 1992, 180 min., Director Bille August, based on the novel by Ingmar Bergman, with Samuel Froler, Pernilla August, Max von Sydow
112. *China Blue*, 2005, 86 m., Director Micha X. Peled, documentary on globalization in China
113. *Charlie Rose with Thomas L. Friedman* (August 31, 2005), 60 min., documentary. An interview of Thomas L. Friedman, columnist for the New York Times and author of *The World is Flat: A Brief History of the Twenty-First Century*, by Charlie Rose.
114. *A Working Class Hero*, a play by Joshua Sobol
A Working Class Hero, 2006, 80 min., Director Oded Kotler, Hakameri Theater, Israel
115. *A Permit to Live*, by Itzhak Gormezano Goren, play based on the book by the same author "Shelter in Bavli"
A Permit to Live, 1998, 97 min., Director Sinai Peter, Beer Sheba Theater, Israel
116. *Strike*, 2005, 90 min., Directors Asaf Sudri & Amir Tausinger, documentary, Israeli TV
117. *Who Killed the Electric Car?*, 93 min., Director Chris Paine, Narrated by Martin Sheen
118. *An Inconvenient Truth*, 96 min., Director Davis Guggenheim, Narrated by Al Gore
119. *A Doll's House*, 1973, 105 min., Director Patrick Garland, based on Henrik Ibsen's play, with Claire Bloom, Anthony Hopkins, Ralph Richardson
120. *The Glass Menagerie*, 1973, 120 min., Director Anthony Harvey, based on Tennessee William's play, with Katharine Hepburn, Sam Waterston, Joanna Miles, Michael Moriarty
The Glass Menagerie, 1987, 134 min., Director Paul Newman, based on Tennessee William's play, with Joan Woodward, John Malkovich, Karen Allen, James Naughton
121. *The Constant Gardener*, 2005, 129 min., Director Fernando Meirelles, based on John le Carre's novel, with Ralph Fiennes, Rachel Weisz

122. Lois Gibbs and the Love Canal, TV 1982, 100 min., Director Glenn Jordan, with Marsha Mason, based on the Love Canal scandal
123. 16 Blocks, 2006, 105 min., Director Richard Donner, with Bruce Willis and Mos Def
124. Wal-Mart: The High Cost of Low Price, 2005, 95 min., Director Robert Greenwald
125. Bad Seed: The Truth about our Food, 2006, 112 min., Director Adam Curry
126. The Future of Food, 2004, 88 min., Director Deborah Koons Garcia
127. Biography – Ben & Jerry's, 2008, 50 min., starring: Ben Cohen, Jerry Greenfield
128. Syriana, 2005, 126 min., Director Stephen Gaghan, with George Clooney, Christopher Plummer, Matt Damon
129. Where is the World Going to, Mr. Stiglitz?, 2007, 380 min., starring Joseph Stiglitz
130. Outsourced, 2006, 103 min., Director John Jeffcoat, with Josh Hamilton, Ayesha Dharkar, Asif Basra, Matt Smith
131. Architecture to Zucchini: The people, companies and organizations pioneering sustainability, 2006, 129 min., 12 segment educational video
132. How to Save the World, 2007, 103 min., Directors Thomas and Barbara Burstyn
133. Miss Julie, 1999, 103 min., Director Mike Figgis, with Saffron Burrows & Peter Mullan
134. The New Great Transformation, 2007, 71 min., Paul Hawken hosted by Stewart Brand

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