



**“LEGAL ETHICS AND PROFESSIONALISM IN COMPARATIVE PERSPECTIVE:
THE CASE OF SPAIN”**

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Good morning! My name is David Shirk, Director of the University of San Diego Trans-Border Institute, and I have the pleasure of introducing today's speaker. First and foremost, I would like to thank the Legal Research Institute for kindly hosting today's presentation by Dr. Rafael del Rosal García, who visits us from Spain to talk to us about Ethics and Professional Responsibility in the practice of law.

I should first mention that today's talk is part of a series of presentations we have been organizing on this same topic of Legal Ethics and Professional Responsibility. Our aim is to promote a dialogue among the different experts on legal ethics and compare their experiences; the experience of Spain, that of the U.S., Mexico's experience, that of Argentina, to see which are the best practices to ensure that the legal profession is one that promotes civil rights, human rights, and that is practiced successfully and ethically.

I should also mention that this series is sponsored by the Tinker Foundation, which is an American Foundation that promotes Iberia – America cooperation, that is, among institutions from Spain, the U.S., and Latin America, and we are very pleased to have a combination of all three of these elements in today's presentation. This event is part of a Justice Project that has existed for several years at the University of San Diego, in this case in collaboration with UNAM's Legal Research Institute.

For more information on this project and some of our products, please visit us on the web at: www.justiceinmexico.org, where you can find additional information on the subject as well as the results of this seminar.

Without further ado, please let me introduce Dr. Rafael del Rosal, who will talk to us for approximately 45 minutes, after which we will have a Q&A session where you'll have the opportunity to talk to him about legal ethics and the legal profession. Please welcome Dr. Del Rosal.

Muchas Gracias!

Dr. Del Rosal –

Thank you!

Good morning! And my warmest regards to all of you. It is both an honor and a thrill for me to speak before you today about professional ethics in the practice of law, of legal ethics, as this phase of Ethics in Comparative Perspective is called. It is an honor and a thrill not only because of the occasion, but also because of where we are; this is the Cathedral of Mexican Intellect, and so it is truly an honor for me to be able to share with all of you these words, these thoughts about legal ethics from a comparative perspective.

I must first thank the Trans-Border Institute at the University of San Diego, the organizers of this event, and of course its director Dr. David Shirk, and all his staff: Mr. Donnelly, Mr. Pope, who have helped so much in making the arrangements for me to be here. I also wish to thank the UNAM Legal Research Institute, its director Dr. Fierro, and all his team. Greetings from The Madrid Bar Association, on whose behalf I am here today, and from its Dean, Luis Martin Ingarro, who is also Chairman of the Iberian-American Association of Bars and other Legal Associations, who also sends his regards. Its Secretary General joins us in the public today, Mr. Daniel Quijano, illustrious counsel... thank you for being here, sir. And, finally, my thanks also to the Chairman of the Illustrious National Bar Association, whose help in preparing this presentation was invaluable.

Well, having said that, first I'd like to talk to you about how the legal profession is organized in Spain, which is the case that brings us together today. Secondly, I will share some thoughts about this organization – which is not unique to Spain, but is shared by other European countries – as to the why, when, and how of ethics and professionalism in the legal field and others, all of this with the intention of getting to some final thoughts with which I will close my presentation. Final thoughts about the crossroads the Mexican practice of law is at as far as reorganizing how legal professionals associate. It is an age of significant changes, and also a crossroads for politics and the law as a whole.

And I say “with the intention of” because I will not discuss in great detail how lawyers associate in Spain, since that would be incredibly boring and time consuming. I will only discuss it in order to lead to those final thoughts, to summarize what distinguishes our association, which is what can help us with the work our colleagues in Mexico are doing, as well as what we ourselves have left to do; the European legal profession is also undergoing change and transformation. It is not only the Mexican legal profession that is at a crossroads, the European profession is as well, and I wish we had your dedication and that we spent the time to debate the changes and transformations that should be done... the time that your spending on this, and so I congratulate you in advance for all the events you will organize.

If I had to define bar association in Spain, I would say that it is one of strong self-regulation. I like to call it that in contrast to what I consider to be weak self-regulated systems; and I don't mean weak in the sense that they yield weak results, but weak from the self-regulation point-of-view.

Later, we will discuss which systems and why.

So, Bar association in Spain is one of strong self-regulation. What characteristics define said association in Spain? Well, the legal profession is organized in professional institutions called Bar associations; some time ago they were called ‘Orders’, and this name survives in other countries in Europe, Italy, France, Portugal, and eventually south to Latin American countries; many Latin American countries still call them orders, in memory of their original denomination.

Well, we are organized in Bar associations. These Bars have three defining features, which is why I like to call them, and in fact do call them, strongly self-regulated. First, they each have area exclusivity. Within a particular area, there is only a single Bar association. The true political division is the Province, and so there is one Bar for Granada, one for Madrid, another for Seville, another in Barcelona, and so on. Only a few Spanish Provinces, Barcelona being one of them, have Bar associations for areas smaller than a Province, that is, for cities or non-capital towns within the Province.

Such is the case of Barcelona, which has Bar Associations for Sabadell, Manresa... the Manresa Bar was founded much, much earlier than the one for Barcelona, which is the capital city of the Province of Barcelona. But, in general, it is done per-province, so there is only one Bar Association in each of them. One and only one Association for the legal profession.

Second, membership is compulsory; anyone who wants to freely practice law has to belong to a Bar association. It used to be that you had to be a member of the Bar for each Province where you wanted to practice, but now, finally, a few years ago we achieved a single Bar membership, such that if I become a member in Madrid, I could also practice in Barcelona and anywhere else throughout Spain.

Finally... so far we have exclusivity within an area and mandatory membership... finally, they have disciplinary authority in ethics matters. What this means is that Bar associations in Spain have a dual nature: they are private organizations, so they look out for the benefit of the members. Lawyers join so they can have medical services, publishing services, mutual services, professional insurance, etc. So, it is a private organization, one of self-help. But at the same time, it also has a public nature. The State empowers Bar associations to impose administrative disciplinary actions on professional ethics matters. Therefore, the body that exercises ethical control on the profession in Spain is the governing board of each of the Bar Associations, each for their respective area of jurisdiction.

This is what I call a system of strong self-regulation. We will later see that there are systems of weak self-regulations; again, not because of their results, but as a form of self-regulation of the profession. Bar associations are grouped, are coordinated, are bound into independent Bar Association Councils. As you know, Spain does not have a Federal organization of the State, but is quasi-federal, or federalizing. It is what they call a union of autonomic units, which comes about with the Constitution of 1978.

Each autonomous, or independent, community – which in Mexico and the United States would be a state – has a Council of Bars for that territory, such that Cataluña has a Cataluña Bar Associations Council, which would be the body that coordinates all the different associations within that independent community – which, again, in Mexico, would be a state. Well, this Council has the authority to coordinate, to hear “administrative” appeals of disciplinary decisions passed by the governing board of a particular Bar Association; and, finally, Spain as a whole (all the Bar Associations and all the Bar Association Councils) are grouped under the Spanish General Board of Attorneys, which is the umbrella for the organization legal practice in Spain.

That is how the profession is organized and these would be their features: area exclusivity, compulsory membership, and power to exercise disciplinary control. Of course, it is all controlled by a regulatory agency, and which is the regulatory agency that controls the legal profession in Spain? Well, the regulatory body is mentioned in Article 36 of the Spanish Constitution, which acknowledges the existence of the Bar and its uniqueness as a professional association, setting it apart from unions and from any other association of individuals that is not professional in nature.

The person who achieved getting this mentioned in the Spanish Constitution was the then-Chairman of the Spanish General Board of Attorneys, Dean Pedrol Rius from Madrid, who was a royally-appointed senator, and who managed to have the Bar Associations included as a unique professional association in the Constitution. This became very important later to have a constitutional court declare that mandatory membership was not unconstitutional in Spain... because it came down to a ruling due to allegations in that regard; you hardly hear such allegations anymore because the precedent is now well-established. But a constitutional court had to issue rulings on the matter in the early 80s, and thanks to it being mentioned legislators were well informed as to the structuring and design of Bar associations in Spain (with those same features they had and still have); However, legislators had the authority to change them, they could say: “membership is no longer compulsory” or “now there can be more than one Bar per area”; a legislator could do that and it would not go against the Constitution, so authority is clearly given to the legislator to be able to organize professional associations in Spain, including the Bar.

Second, there is the organic law of the judiciary, which governs the legal profession, and finally the State Professional Association Act, the Autonomic Law of Professional Associations, the profession’s General Bylaws, and finally the Code of Ethics for the Spanish Legal Profession, and the European Code for European lawyers, which is only used today for transnational exercise of the legal profession; that is, if a Spanish lawyer were to exercise in Germany, neither the Spanish nor the German Code of Ethics would be used, but the European Code of Ethics, which, again, is only applicable in transnational, cross-border activities.

Now, I know first-hand that a European Code of Legal Ethics is being drafted with the intent of it being applicable to all the European Union countries, but it is still being drafted and it is still unclear whether it will be implemented, because although the way the legal profession is organized is similar throughout Europe – with certain exceptions I will mention later, and England is an interesting case, by the way, talk about their Codes of Ethics being different! – they’re not exactly the same. So I think it will be difficult to achieve, because of the difference between the British system and that of continental Europe, don’t you think?

OK, these I think are the most important facts in order to understand how the legal profession is organized in Spain, the things that set it apart from the practice of law in the United Kingdom or the practice of law in North America or what could be happening, and we’ll see why in a minute, in different Latin American countries, including Mexico.

As I said, disciplinary authority, and with this I am getting to the end as to how the practice of law is organized in Spain, is in the hands of the governing boards of the different Bar associations. Therefore, any complaint by an individual that comes to the Bar association from any source and by any means goes to a department that starts a case file under the control of the governing board, which names an attorney

and which issues or adopts the final ruling, filing the complaint and either imposing a sanction against the lawyer or closing the case, or whatever the case may be depending on the individual complaint.

These rulings by the governing board are subject to executive appeal to the Bar Association Council for the independent unit I mentioned before, and they can be further appealed as an executive legal action so that a judge can decide whether it complied with legal standards... and this goes back to what I was saying earlier about the need to also modernize our system in Spain and in other countries. Judges in Spain cannot legally authorize a complainant in an ethics case to appeal, under a jurisdictional process, an order of dismissal issued by the Bar. As I'm sure you understand, this inability to go beyond merely seeing if the order of dismissal meets legal standards perpetuates a certain degree of corporatism, because if the case is not going to be reviewed by a judge, you see, if it is not going to be reviewed by the person who could actually resolve its legality, there is the somber possibility that it would exonerate from liability instead of demanding it.

And so, you should know that in Spain we still have – and I will finish with this – modernization efforts to do away with a trace of archaic corporatism that still persists and still bears weight over Bar associations. But this will definitely become a thing of the past, that is, the complainant in an ethics case should have the right to bring his case before a judge who can who can decide in and of himself whether the dismissal stands or not.

Where are we in the practice of law in Spain? What trends do we see as to professional association of lawyers in Spain? What us the recent history of this type of organization?

This type of association is very old; it pre-dates the 20th Century, of course, and even the 19th Century. What happens is that the Spanish 20th Century still followed the inertia of that old absolutist corporatism. The bourgeois revolution does not occur in Spain, there is a bitter taste of frustration of the liberal reform of the Spanish practice of law. This bitter corporatism leaves its mark on everything I have been telling you about; this issue of judges telling the complainant he has no recourse to appeal a dismissal of his case by the Governing Board. These are traces of the persistence of that absolutist corporatism, right? Of that lack of liberal revolution in Spain. And then we also suffered the Franco dictatorship for 40 years, which caused a collapse in the performance of the Bars, in the broadest sense of the word; in its most genuine sense, which was ethics control and which was the protection of the prerogative of the lawyer in the exercise of the defense.

The Bars functioned rather as the driving belt of the exercise of power, as a means to enter those organic courts created by the Franco dictatorship and through the constitutional third would enter the court as deputies; this led to the creation of unsuspected professional associations, of unsuspected professions as a means to access those Franco courts through the so-called corporate third.

And then, after the political reform, after the proclamation of the 1978 Constitution, an age comes about in Spain which I would define through three characteristics.

The first, and with this I will close the part about professional association in Spain. First I would say that we are in an age of modernization – a bit like what is happening with our colleagues in this wonderful country, who are also in an age of modernization. We are in another place with different characteristics, but we have work left to do. We have to regenerate the corporate control instrument; we have to update it, to clean it of those corporate leftovers with little transparency, we have to make that effort to... anyway, the work we've been doing in the last 30 years is significant. We have given value to Codes of Ethics, we have given value to disciplinary action. The courts of honor that were established during the Franco dictatorship; we have regained the authority of the governing boards and therefore we are creating a truly dogmatic doctrine of ethics regulations for the Spanish legal profession. An example of which is this book I have brought for you to find out what that dogmatic, scientific development of ethics regulations is about. This is all an endeavor to bring the effect of these regulations to date, their enforceability, of a stable doctrine, so that professionals, individuals, and agencies can be abreast of it. Not with too much transparency, it is filtered through publications and studies done by certain specialists, but it not taught at universities yet;

the university has not been linked to the practice of law yet, and so no scientifically achieved doctrine has been achieved by the universities; this is something that will happen slowly and that will take some time. But, without a doubt, we are decisively working on the modernization of this professional discipline.

Second, significant legal changes are taking place; a law for entering the profession has been approved; the European Union had been working on this issue and Spain was the last country without one. There will now be an admissions exam for Bar membership, meaning that anyone with a law degree who wants to practice law in Spain will have to, after 4 years, have to pass an admissions exam. This law was passed this year, in 2007. The second significant regulatory law that was passed and which makes evident the changes being undergone by our profession is the regulation of the labor relationship between attorneys and legal firms, which used to be only that of association. It will now become an employer-employee relationship, and so important changes are happening in how firms are organized and in how our profession is practiced. Finally, the firm incorporation law that allows law firms to organize themselves as a corporation. This, in my opinion, has been the most significant change because, as we will see, it changes the paradigm of the practice of law.

These are the highlights of how the profession is organized in Spain: Strong self-regulation.

Well... what is 'strong self-regulation'? Why do we professionals want Ethics control? Why do we need Ethics control? What hides behind legal ethics? Why? How and when? Why is Spain organizing the profession like this? Why is the rest of Europe doing it too? Are lawyers, doctors, engineers trying to get into Heaven by doing so? Is this issue of Ethics one of salvation? Is it an issue of improving personal morals, or what is it? Or is it a different issue that we're resolving.

I think it's important to briefly delve into the issue so that we understand what it is we're talking about. So that we know, when we are organizing ourselves or when we want to institute changes, what it is we are talking about. What are we trying to do? How do we solve the problems that will no doubt arise?

Well, it all started recently, let's say, in the year of our Lord 47. Up until then lawyers were forbidden from charging fees for their work. Legal defense services were provided free of charge, the compensation paid by the defendant to the defender for protecting his honor notwithstanding (this is where 'honorario', the Spanish word for professional fee, comes from). They were usually nobles who had no need to work in order to put food on the table, since they had slaves for that, and they spent their time in rhetoric and on the high defense of contested legal cases.

Just imagine when advocates who charged for doing so first started to appear in the market. The economic development in Rome got to a point where people were no longer able to just defend themselves. The legislative development, the economic development... they now needed someone to defend them and people started to show up in the market who would say "for a fee, I can speak on your behalf, because I know how to do it". And so, there were now these laymen who were doing public defense. And charging was prohibited! The Emperor had to step in to put an end to it. In the Senate, the Fathers of the country would stand up and clamor "the markets are prostituting our work, these men who are now charging for providing defense services! So, in the year 300 B.C. the Emperor forbade the legal profession from charging for their services. Very well, this all lasted until the year 47 when Claudius, who you know from "I, Claudius", who we all know from that TV show... Claudius, under advice from the Senate, repeals the law that prohibited attorneys from charging fees, meanwhile, out in the streets people were secretly charging. Defenders had been penalized for charging by the Emperor, and the prominent noblemen who did not charge would say: "if this is approved Rome will fall! Just like now people say: "if non-professional capital is allowed to share in a corporation the legal profession will fall! We will always have these sorts of problems. Anyway, Claudius could resist no longer and he repealed the law, and we attorneys started charging for providing our services. And so, all of a sudden, the soul of the attorney was broken in two. We started doing two different things; one the one hand, we were businessmen, and on the other, a public institution. As businessmen, which laws applied to us? Same ones that apply to us today, right? To the law of maximum benefit in the shortest time possible in a service provision market.

On the other hand, we are a public institution, the home of the presentation of a defense, which is not subject to the laws of market or benefit. Because its intent is altruistic, it is there for the Rule of Law to work; and the fundamental right to a defense cannot be bought or sold, it is beyond commerce by man, as Civil Codes may say. What happens with this dual nature that exists within a single living person? Because they are diametrically opposed. Why? Because when a client comes to our office with a lost case and says: "Mr. attorney, what can I do about this sentence? We sit at our desk – with the client trembling – while we read the sentence, we start adding things up, and the businessman kicks in and comes up with a fee. Man, this case is going to bring me \$10,000 dollars! My vacation is set! My son's Master's as well, I'll even buy a house on the hills.

We go on reading the legal argument, and in the legal argument we can find no holes in the sentence. We know the appeal is already lost, and that public institution that we are tells us "Hey, we ought to tell him that it's a lost cause", and the businessman in us says "but if you tell him it's a lost cause we won't get the business!" Am I wrong? Is that not what the businessman in us would tell us? Something has got to resolve this profound contradiction, something has got to resolve it because this just doesn't work, does it? And that is what Ethics regulation does. Ethics regulations are a formula for resolving this irresolvable conflict where our profession makes the commitment before society to act as if were not also a business, to act solely as a public institution. And you would tell your client "this is a lost cause, the sentence is an appropriate sentence, you have no argument", and you will tell the client what he does not want to hear and there will be no business. You might get lucky and the client might say "Thanks, Mr. attorney! But in spite of that I want you to defend me on appeal". Wonderful! You give me the \$10,000 dollars, and will defend you. But he already knows that he will lose, or that chances are he will lose. The attorney would have to be honest with his client, risking the financial benefit he would receive as a businessman.

OK, so all this comes from Claudius and his Senate repealing the law. This resulting imbalance in the nature of the attorney, when is it resolved? When does ethics regulation arrive as the formula to resolve this conflict? In the year 1500; my dear friends, it took us 1500 years to get this problem fixed. Why? Because scandal arrived. Why? Because as we all know and as "Crash" tells us, the movie "Crash", you should see it, sometimes we're good people and sometimes we're bad, we are not always the good guy and we are not always the bad guy, and vice versa. In the morning, we abuse the power we have and we indecently grab a woman, and that same evening we rescue her from the car fire she was trapped in. Well, that's pretty much what an attorney does. One day he tells his client the truth, and the next he does not. One day he keeps the money offered as his professional fee, and the next he gives it back. We as attorneys do that just like anybody else, except for one difference, and that is that we want to be independent. Behind legal ethics there is an independence struggle. How did we resolve it and why did it take us 1500 years? Because along came sin and along came scandal. And first the Emperor and then the kings had to step in. Why? Well, because society would say "Hey, Emperor, attorneys are buying decisions left and right"; and this wasn't an issue of contingency fees, it was speculation on justice. Because there are chronicles by Juvenal and Marcial that describe the corruption in Roman law practice as of the repealing of the aforementioned law, but it happened before then, the law being repealed was just a symptom; attorneys were buying decisions left and right, just like they were buying cows. And the ailed for justice, because in the end the affected party ails for justice, and they would speculate on justice. And the Emperor had to step in by means of a para-ethics regulation; by means of a Code that had been gaining root little by little. And he forbade attorneys from charging contingency fees, from defending conflicting interests, from breaking the law, from having professional secrets. But it took the Emperor stepping in.

Does it sound similar to what's going on in the business world? Remember the Enron case? The Welcome case? The case of the French phone company? Do you remember all these business scandals? What happened? That the emperor had to step in. Because society was saying "hey, Emperor, they're getting away with our savings! They're hiding information only they have access to, and they sell before the bankruptcy they did not tell us about in the P&Ls happens, and they're leaving the thousand of workers who invested in ruin! We want Ethics, Emperor! And the emperor says "sound government practices". Well, that's what happened with the practice of law in the First Century, the Second Century, the Third Century; the emperor had to intervene. The public authorities could not allow this level of corruption by professionals. What happened? Then the feudal lord had to intervene, and then the king had to intervene,

and so the years went by and legal practice got to a point where it had to face its independence. Why? Because “Johnny Landless” files a writ of habeas corpus and then the attorney has to go against his feudal lord and ask him to show him the “body”, “I want to see the body”, and the feudal lord would say; “you want to see the body?, take him to where the body is.” “You lawyer, you making all the waves, they’ll take you to see the body.” Of course, the attorney had to stand against the public authorities and to face these public authorities, what did he need? He needed freedom and independence. Starting in 1100, 1200, an attorney quote-end quote independence movement began. When did it arrive? When the feudal system crumbled; when the modern system was installed; when crafts and professions got independently organized. Attorneys, doctors, architects all got independently organized and told the king “We want to be independent! We want to self-regulate!” Why did they say this? Because the king would say “who is going to control the legal ethics I have controlled up until today? And the attorneys replied: “you grant us that power, and we will do it ourselves!” So then, what our profession was resolving through legal ethics was our independence from the public authorities, what was being fought for was independence. How was the issue resolved? Through professional associations, professional orders, which were the institutions that guaranteed the people that the profession would follow an ethics code by having the authority to implement disciplinary action, while guaranteeing the professionals that the public authorities would respect their freedom and independence. We had already had an independence that had not meant a return to the original Paradise. This was different, this was a formal independence, it was true freedom to defend against public authorities, and freedom of expression before public authorities which has been instituted as a protected statute in the practice of law. Thus, Bar membership was not imposed upon us, we claimed it from the public authority. And such was the independence movement for our profession in Europe; such was the way that this strong – what I previously told you was strong – self-regulation was installed. A single Bar association, for a single area, with mandatory membership and disciplinary power, in the hands of the profession itself. Why? Because while it guaranteed freedom and independence, it also had to guarantee adherence to the code of ethics. Many reasons have been given for mandatory Bar membership, but the only one I believe is truly acceptable is this one: If the attorney is to enjoy respect by the authorities of his freedom and independence which is to be protected by an institutional organization, they only way he can have it is if he allows it to control ethics in return; if in return he agrees to subject himself to it, agrees to be controlled as far as ethics is concerned. Now, why this single Bar membership? Because the independence that beats behind this whole issue can only be guaranteed by a single membership. If we were to put together a religious organization A, a religious organization B, a red, then a green, then a red political organization, all mandatory for attorneys, what do we have? That we will have to be something else before being attorneys, and the legal profession is characterized by its independence. And the mandatory membership for the same reason, to guarantee independence. That is the justification for a strong self-regulation.

So, how about the Americas? How does professional self-regulation come from Europe to America? It comes northbound and southbound. Northbound it jumps from England to the U.S., and southbound from Spain to Latin America. How? Northbound it comes across a revolutionary independence process that foresees a weak self-regulation. Why do I say this? Because the disciplinary authority lies not within the Bars; it is not their governing boards who exercise control over the professional associations. In this case, the control comes from the courts; it is the judges who control and have disciplinary authority, which somewhat weakens self-regulation. Again, not because of its results, but as self-regulation itself, since the judge is part of the public authority, and so it is the public authority who will control my actions from an ethics perspective, and if I’m going before a judge I risk his not exercising that authority properly, am I wrong? Lawyers in the U.S. must have a lot of trust in their judges to allow self-regulation to have to go through the courts. And this is perhaps the result of a culture wrought from the American Revolution, which made judges be on the side of the people, and the culture that prevails until today is that trust. But that can no doubt change. There might come a day when American attorneys will say “we now want strong self-regulation because the judges are doing a bad job.” It has not happened thus far, they seem to be happy with it. But that is what a weak self-regulation would be. Southbound, what arrives is a strong, or a strong-leaning, self-regulation. What’s going on? Well, that each country is in a different stage of development, just like in Europe about 500 years ago. There are no studies, mind you, as to how it occurred in France. How it occurred in Italy, how it occurred in Germany, because it would not have happened all at once, or in the same way everywhere. And thus we find that Panama has mandatory Bar membership, but has no

power it is exercised by the judges, by the Supreme Court; that some countries have mandatory memberships; that some countries require only one membership, others three. It is likely that this is the way it happened in Europe for many years, and we still do not have that data compiled because, unfortunately, we do not have in-depth studies on the development of legal ethics.

Mexico at a crossroads, and we will close with that. Mexico at the crossroads between the two Americas, Mexico at the crossroads between America and Europe, Mexico at a critical juncture, where all these tectonic plates meet, at a juncture as to how to resolve the issue of legal ethics, of professional ethics, but also at a crossroads as to how to move forward in the professional organization of the practice of law.

Europe has its problems, but Mexico has its own, and America in general has its own, both North and South, all of it. Because we are in permanent conflict. The legal world is a very complicated world; it is, well, one of the most advanced codifications of the Ethics principle, and the moral principle... of a civilizing principle. And when we refer to Ethics in the end that is what we're talking about, a civilizing principle.

Well, the news I bring is, and correct me if I'm wrong, is that Mexico has recently taken a huge step forward. Because Mexico is still Heaven on earth, so to speak, it is still in that primeval, original independence. There is no bar regulation, nor official regulation, of legal ethics. Furthermore, its is founded on the Constitution; that set of fundamental constitutional rights precludes both mandatory membership in a professional association and the authorities from exercising that disciplinary power that we were saying before the emperor had and then the king in Rome and then in the Middle Ages. And so, Mexican attorneys are like journalists elsewhere in the world. They answer to no one but God and history.

We are in Heaven on earth. Who will want to change that? Nobody! If someone came to Mexican attorneys and said: "Let's organize a Bar association with compulsory membership", they would say "Hey! Why would I do that when I am in Heaven on earth?! Why should I wear a loincloth when I am naked in my nakedness, without shame, without modesty, with no need to worry about food? Why, it is brought to me by the birds in the sky and the lilies in the fields! Why would I leave this Heaven? So what happens? That authorities cannot intervene nor does the profession want to self-regulate. Why, why should I self-regulate? I am as happy as I can be.

Why did the European attorneys fight for a strong self-regulation? Because they fought against government power for their independence. Therefore, like John Rawls on the conditions of justice, or Jeremy Waldron on the conditions of politics, Legal Ethics also has its own set of conditions. There will be no self-regulation as long as there is no need to have it. Of course there are always advanced groups in all the professions that see that it needs to be done, but from there to being able to do it... from there to getting most of their colleagues onboard to reach that critical mass that will bring about that solution, well, there is an abyss.

That would be my first note on the situation in Mexico. More than willingness, what's missing is steering and conviction. As long as the legal profession in Mexico as a whole does not clamor from independence from the authorities, there will be no self-regulation. Have you seen what's been happening in the business world? We were saying that the emperor would institute 'good government' practices after there were scandals, right? Have you heard what business is saying in the media? "Emperor, why are you butting into the private life of our companies? We don't want you to regulate the life of our businesses. We want to be independent. And the emperor says "yes, yes... self-regulate; because as long as you don't, I will. Why? Because I need to win the next elections and the voting public is tired of scams", right? When will businessmen self-regulate? Well, it took us attorneys 1,500 years from the time we were allowed to charge for our services, so I guess it's going to be a while. Let's hope it doesn't take them as long. If we help them, is we research legal ethics, if we tell them "C'mon, self-regulate!" How? Create an organism, claim the power to impose disciplinary action. But of course, in this case we have the authorities involved. The problem we have here [in Mexico] is that the authorities are not getting involved.

So, I have looked into the Mexican Federal Government's 2007-2012 Development Plan, and I honestly feel that Strategic Action number 11, which talks about mandatory association membership, is something to be applauded. I think this is a huge leap forward. This public intervention may come from either public

pressure or from pressure by the circumstances: economic, political, legal circumstances, any of them. That is, any outside pressure or push can get the authorities to get involved. Again, the introduction of Action 11, mandatory membership, indicates that the governing body in Mexico is taking measures.

And this seems to be a good thing, something to be congratulated. And if the profession was not self-regulating, and the constitution said that mandatory association membership could not happen, then the authorities need to do something and they are. Why? I have not studied it, you will know why better than I, but it has to get pressured by something. Whether by the public, the circumstances, the global economy, who knows? From many sides, but to have them get involved is in itself a great thing. Why? Because it is a prelude to action, and when it acts and the professionals feel the action of government on their back they will say: hey, government, wait a minute, I want to self-regulate! "Ok, great, fantastic!" "I will now organize a single, mandatory membership association with the power to impose disciplinary action". These are the conditions for legal ethics, so, how do we help the process along? Well, help the authorities get involved. Without a doubt! And the sooner the better! How do we do that? Well, that has to be studied in greater detail, and I am hesitant to draw guidelines, but you will certainly have to be mindful of one thing, and that is that this Strategic Item 11 is not the solution to the problem. Because the issue here is who is going to have the power to impose disciplinary action. Careful! Because we can create mandatory bar associations, but have what they have in some or many of the states in the U.S., have it be in the hand of the courts. Or we could have it be in the hands of the Administration. It does not have to necessarily be self-regulated. It is likely that this will be the case before reaching self-regulation. Why? Because of what we were saying before, because of the conditions of legal ethics. Do you think that the Mexican legal profession will all of a sudden reach critical mass and claim an independence it does not need? I do not think so.

Likely the public authorities would have to intervene first. They will require mandatory membership, but the power to impose disciplinary action would be in the hands of the court, U.S.-style, or in those of the Administration, in the old European style, prior to self-regulation. Well, it's OK, what's important is for it to intervene as soon as possible. Why? Because thanks to that intervention you will be able to convince your colleagues that you need independence, so, let's not waste energy on something that is not possible. Now, by this I'm not saying that when they require membership in bar associations as mandatory that they absolutely will not give them the authority to impose disciplinary action; if that happens, I will tip my hat to you and then we will come study the Mexico phenomenon as something truly extraordinary.

In any case, I feel that this is enough for us know what the situation is in Spain, and what we can work on in Mexico, or rather how can we use this knowledge to get that which we are interested in.

I would like to close with a poem... I have always dreamed about some poet, sometime, writing about a lawyer the kind of verses that Federico Garcia Lorca wrote about Ignacio Sanchez Mejia. These verses... let me clear my throat... go like this:

There was no prince in Seville
who could compare to him,
nor sword like his sword
nor heart so true.
Like a river of lions
was his marvelous strength,
and like a marble torso
his firm, drawn moderation.
The air of Andalusian Rome
gilded his head,
wherein his smile was a flower
of wit and intelligence.
What a great bullfighter in the ring!
What a good mountain man in the sierra!
How gentle was he with sheaves of wheat!

How forceful was he with the spurs!
How tender with the dew!
How dashing at the fair!

Thank you! That's it.

An excellent presentation, Dr. del Rosal, thank you. We have about 45 minutes for some discussion with the audience and questions and answers. I want to make sure that the microphone is used so that the questions can be heard on the recording.

Q: Don Rafael del Rosal, please let me tell you that few times in my life have I learned so much in so little time; and what's worse, on topics I thought that I knew about. I congratulate you, from the bottom of my heart. I am just sorry that so many of my colleagues were not here to be able to listen to you. Thank you so much!

A: Thank you, Javier. We have known each other for a long time and have done work together on legal practice, but perhaps we had not had the opportunity for me to hear you, who know so much, and to be able to share my research and my thoughts... you're very generous, thank you!

Q: I want to echo the comments by professor Javier Quijano... excellent presentation! You have more precise information than anyone; even than Dr. Luis Marti, who has always been very careful about that. Now, while all your comments are true about the reality that we're suffering in Latin America, it is also important to note that this happens not only with the legal profession, but with many other professions. Now, talking about the subject that brings us together today, the problem in Mexico, as it always has been, is that not only do we not have a culture of professional association, but also the problem of the proliferation of Law schools, colleges, and institutions that are out there and, regrettably, there are no regulations to control their behavior. This is a problem that has to be eradicated, and I think that the way that this could be done would be through better regulation; and to believe that our ethics and our professionalism – regardless of the country that we're in – has to be cultural; and that cultural process has to be started through education... through professional education which, fortunately (although it might seem contradictory) has to be through our institutions. And I'm hoping that betting on this preparation, and research, and ethics, can be part of a stronger bond between the experience they had in Europe and what we have in Latin America. I'm hoping that these seminars, such as this one being hosted by the Legal Research Institute and by the different important associations, such as the illustrious Attorney Association in Mexico or the Mexican Bar Association, who are the pioneers behind all of this, can continue to happen.

A: Thank you!

Q: Thank you. I would like to ask just one question. But before I get to my question, I would like to ask your opinion on a specific topic. We know that Legal Ethics are not only about what attorneys do in their activities, with the community, with their clients, but that what judges do is also a part of Legal Ethics, obviously. Mexico, as the person before me was saying, does not have mandatory association. Attempts have been made from academia, but very little attention has been paid to Academia. It's very difficult for me to think that we would have to wait until we have mandatory association in order for these legal ethics to come about, to take root. I have [excuse me] tried to look for alternatives, and I see that the attorney, as an aid in the administration of justice – of the courts, of the judges – could be an alternative. I don't think... because it would take too long, at least in this country, that we should bet on wait for mandatory association. I don't want to have to wait for that in order to be able to start talking about legal ethics. Which brings me to my question: How, knowing that an attorney is an aid in the administration of justice, how can we use the courts, or judges, as another road to reach legal ethics in this country? I would like your opinion on this topic.

My question, then, is as follows: I don't have too much trust, let's say, in Bar Associations, at least the ones I have seen working in Mexico, because in reality they are just a ghost that's there and that you have to fight against. There is a deep-rooted corporatism in Bar associations in Mexico. The governing boards of

these associations... I don't know if they really have the power to implement disciplinary action against their members. And so, I am fearful of this issue of Bar associations, when what I see in them is a deep-rooted corporatism. On the first subject, I would like your opinion, and your answer to the second. Again, my name is Javier Saldaña, and I am a researcher at the Legal research Institute.

A: Colleague Saldaña, it will be my pleasure. In relation to what you were talking about, I will try to answer very briefly so we can have more debate.

This past summer I was reading Jeremy Waldron – that is why I mentioned him in my presentation – and when he was talking about Law and the conditions of politics, he said something that really excited me. He said: “Every law is a miracle.” Reaching consensus so that it applies to everyone equally, among two or three completely opposing postures, such as political parties, is a miracle. Legal Ethics is another miracle. I would paraphrase to Waldron, and say that Legal Ethics is a miracle. It has defects, sure, how could it not? I mean, the State resolves the problem of social organization... but, is this democratic state and the law the end of the road? Is it definitive? Does Parliament work well? Do the judges work perfectly in each state? Does everybody behave? Does the Criminal Code do away with crime? No, of course none of that happens. Of course there is corporatism, but then again, there is more corporatism in the financial world, isn't there? And isn't the economic corporatist world more dangerous than the professional corporatist world? Much more dangerous! It can lead us to war, where hundreds of thousands of people could die! If Legal Ethics does not work, at least it doesn't lead to war. So, we are still at least lucky that if it works just OK, if it does not work quite right, at least the ills it brings about are not of the caliber of what happens when the States do not work well... or the UN. So, let's be happy about the fact that we have Legal Ethics, that we have a first step, a breadth, a smidgeon of Ethics somewhere. Particularly in liberal professions, which are the only human experience on Legal Ethics. With that I close my answer to the first question.

Now, today Ethics is brought to bear on everything... because it is en vogue, because it sells, because it has become a commodity. Here, the fool makes watches – as they say back home – and the genius makes Codes of Ethics. Everybody comes out of the woodwork and says: “We have a Code of Ethics for High School Students” “We have a Code of Ethics for Dentists”, I don't know... “We have a Code of Ethics for Boards of Directors.” Everyone comes out and says “let me show you my Code” “we have a Personal Ethics Code” “this is my Code.” Wonderful, but, what happens? Who enforces this code? Legal Ethics is only Legal Ethics when it is enforceable. That is, any public official or anybody who has a dependent relationship with their employer must behave ethically, just like any other human being, but they are not subject to Legal Ethics. The judge who issues a ruling does so independently, but he is not independent as far as his attitude regarding his behavior that he has to answer for before the State, so it is not a liberal profession. Legal Ethics is only good for resolving the issue of functional independence, as I was saying before... the judge is not independent within his organization. The judge is independent when he makes a ruling, but he depends on Public Administration and responds before it for his behavior. Therefore, he does not need Legal Ethics to be independent.

For me, Legal Ethics is a fight for independence. That is, the worker at Coca-Cola has to behave ethically because that is the way it should be, but he depends on Coca-Cola, he answers to Coca-Cola, he has an employer-employee relationship, so he is not independent. Liberal professionals are the sole example of Legal Ethics in the history of mankind; they require independence, and in exchange they accept Ethics, one regulated and controlled by an autonomous disciplinary power. Which can be the way they do it in the U.S., which as I mentioned is through the courts, or it can be done through Administration, as was done in Europe, or it can be done through the Bar Association Governing Boards, institutional organizations of the legal profession. But, in my own personal opinion, I don't consider a judge's Code of Ethics as Legal Ethics, because its organization is not self-regulated, he has to answer to the powers that be; and to compare lawyers with judges would be to give attorneys a semi-public official role, which I don't think they want. That's how I feel. You can look at it as you wish.

Right now it is quite en vogue in Spain to compare attorneys to public officials, not seeing them as an aide in the administration of justice, but as part of the Judicial Branch. I don't wholly agree with this line of thinking or with this concept. Why? Because attorneys could not be more different than judges. Attorneys are completely free and independent in the exercise of their profession, and the only person they answer to is their client. Now, if they should break ethics regulations, well, then they answer to the institution that regulates Ethics, which is a Code that when broken is sanctionable. Of course everything is arguable from

the legal perspective, but let's say that I only consider Legal Ethics that of the liberal professions, today, and in the future perhaps that of the business world, provided that they self-regulate, otherwise, I would not consider them, either.

OK, as to the last question, regarding trusting Bar Associations. Let's see... We can try to find solutions to corporatism. To the extent that, as in Spain, we can manage to have the claimant on an Ethics case be allowed to appeal a dismissal by the respective Bar Association Governing Board, the process will be more transparent and more reliable, since it give the judge control for that case. Or we could do what they have done in England; and I would propose that to the organizers of this event, to also have the case of England presented, because it is a very interesting one. Our British colleagues have invented a graded strong self-regulation, that is, it separates the government of the corporations from the exercise of disciplinary actions. How did they achieve it? Well, they have mandatory Association, and their Board is governed by the private sector. The public side, which is the disciplinary action, is done through a disciplinary authority created by the maximum authority for the legal profession in England, which is called, I think, the Law Society, or something similar. So, the governing Board does not have to affect one of its peers. Like our colleague Saldaña was saying, what happens when there is a complaint against an attorney who is a member in good standing at the Bar, would the Bar file action against them? Now, if the Governing Board is separate from the disciplinary authority – and also from the profession – but not below the basic association, then we will have a little less corporatism. That is, we are trying to find formulas... just like we try to find formulas to limit the power of the State, right? Doesn't the constitution of each country try to limit the power of the State? What are fundamental rights, if not a way to limit the power of government and protect the citizens? So, we move forward, little by little, right? But... these are the conditions of Legal Ethics.

Q: Yes, thank you so much! I would like to echo what Professor Quijano said. Truly, I have learned more during your conference than I had over several years of being concerned about this topic. I think this is a very important topic... I normally deal with it from the research perspective; and I am not interested in researching the formal aspect of it so much as the real aspect, if you know what I mean. So, I think that it is essential to continue having this dialogue on professional ethics and the organization of the profession because, I insist, that is the other half of justice, that is the other half of that famous judicial reform. And, like you said, there are already documents about this out there. I would add, in case you were not aware of this, three years ago, then President of Mexico President Fox sent an initiative to Congress, to the Senate, for an integrated reform of the Justice System. Part of what the bill proposed – which in the end, of course, was not passed, for different reasons – dealt with defense attorneys... only in criminal matters, and only for federal cases, but at least it was a start. The solution was as follows... I don't know if it was a good solution, but it is what you were mentioning, in the sense that the authorities got involved, and that leads to action, and hopefully that will create a better system. The solution was this: to ask the Federal Judicature Council, which is the equivalent of the Governing Board of the Judicial Branch in Spain, to every so often (I think it was every five years) certify attorneys who wanted to be able to work on federal cases. To have strong control by the judiciary. Now, Mexican regulations allow judges to admonish attorneys for, let's say, because they did something they were not supposed to. We have the *Amparo* law (similar to *habeas corpus*) and the Federal Code for Civil Procedure, it's just that they are not enforced. And they are not enforced because judges don't want to get on the wrong side of attorneys. They don't want to get on their wrong side because attorneys don't exactly have their hands tied behind their backs; they have ways of defending themselves, like mudslinging in the newspapers, and so on. They have different ways of exerting pressure and so the judge says "why do I want to cause myself trouble?" and so it does not get enforced. Which brings us to the question Dr. Saldaña mentioned, what possibility or probability do we have for a judge to actually do something that would help control the profession? I think it would be difficult for it to happen. I think it would have to be done through public legislation, and through Criminal Justice, later. Right now this is a heated debate in the Senate, this holistic reform of the Criminal Justice System. It is a new attempt at it, and they are saying that it is 99 percent ready, and that it will be published in about a month. I imagine, I don't know the details, but I think that it will have to do with the professional exercise. This is the deepest wound, the one that is bleeding most profusely, and it is perhaps where it would start, and then expand to other fields. It is absolutely essential. Now, there will be a reaction by the profession, I agree with you. I feel that in the end we will get to a system that works well

when the attorneys realize that they can exercise their profession and keep that independence, but they have to give something in return. The same thing happens in all political life, and all economic activity in our country. Parties are publicly funded, and so we expect something in return, and for the basis of this to be set forth in the Constitution. If there is to be economic freedoms, then there must be payment of taxes and a series of other things that will ensure ethical behavior.

Your conference motivates me to continue delving into this topic more in depth. Of course, right now, because of other activities, I have very little time to do so, but, at least now I have a renewed intent to do so, thank you!

A: If you'll allow me, I'd just like to add something. In the first chapter of the book I brought for you, "Ethics Regulations in Spanish Legal Practice", which is my contribution to the creation of legal regulations for the practice of law in Spain. In the first chapter I discuss Bar Associations as a pact that is reached between the profession and the authorities: you give me independence and the power to protect it, and in return I will give you Ethics, and the powers to enforce it. That would be, so to speak, the legal nature of Bar Association, it is a pact between the authority and the profession, right? Of course, I talk about it in greater detail in the book, this is just a brief summary... but it has to be demanded by the profession, it doesn't just happen.

David Shirk: I just wanted to mention that we have copies of the book by Dr. Del Rosal here in the back. If anyone is interested, please feel free to pick up a copy.

Q: Good afternoon everyone, Luis Efrén Ríos. First, I would like to congratulate Dr. Rafael Del Rosal for his keynote conference, and of course, the organizers of this event for hosting these types of conferences. I wanted to share a case of Judicial Ethics in Spain, to share the case of Pérez-Tremps, who was a Justice in the Constitutional Court and who was kept from hearing a case on the constitutionality of the Catalan ordinances. I wanted to know your opinion on this, in other words whether one should be able to keep a judge from hearing a case when he has previously given an academic opinion on the matter. Of course there is the ethics issue of judicial independence, academic freedom, and it has to do with a recent case that happened just this year in the Constitutional Court. Thank you.

A: I am glad that you asked that question, as any politician would say when being interviewed by the press, right? I am so happy you asked that question, it is the one I was waiting for. This was a case that was quite heard about in the field of professional ethics in legal practice. This conference also talks about legal ethics in general, and the ethics of judges... I already said that the behavior of judges is not precisely "Legal Ethics", although any legal regulation – we all studied this while earning our degree – contains some moral information, albeit sometimes fuzzy. Laws, in general, do not have clear moral content, right? But, in this case, ethics regulations are more about regulating behavior. Of course, this is pure Ethics crystallized in the regular system; it is a diamond, right? It's pure, crystallized carbon. But, what is my opinion as to whether it is ethical or not? Well, it would depend. I think, again this is my opinion, that it would not necessarily mean it was unethical, because I should be able to hear any case that comes before me. Imagine this, the Supreme Court has already made a decision interpreting Article 435 of the Civil Code, does that mean it can hear no other cases regarding this Article, because it has become contaminated, and the attorneys and everyone else know what this Court's opinion is regarding Article 435? It does not seem like sufficient argument, and again, everything is arguable, under the law, is it not? But I think that the core problem is that the Justice System in Spain is at a very delicate juncture. I don't think that the Judicial Branch is very clearly resolved in the Constitution of 1978, nor was the matter of autonomy. I think it was a good solution for '78, but I think that the System should have been already revamped at the Federal level, and it just has not happened. Why? Because there is a very strong resistance opposing that solution. Why? Well, because that is the balance of power in Spain, what can we do? So we address one thing at a time. The issues of the judiciary in Spain are from being resolved, and this case that you commented about right now, is the child, so to speak, is the victim of that situation. Finally, what was more scandalous about this was that the Constitutional Court issued its decision to keep the judge from hearing the case based on a completely different criterion than it had used in a similar case – where it made the opposite decision – a year before. This is what caused the scandal. It was not so much about whether Justice Pérez Tremps was allowed or not to hear the case, but that the Constitutional Court, with a different

political and ideological composition had issued a different decision in two similar cases, a year apart from each other. In the first case they had no problem allowing the judge to hear it, but in this second case, since the justice was from Cataluña and they feared he would declare the Catalan ordinance unconstitutional, they had a problem with it. That is my humble opinion, but without a doubt, you can look at this case from many different angles, and all of them are being discussed in Spain. So, the discussion of justice in Spain has become a problem because in this world in which everyone should have peace of mind as regards trust in our judges, we are all worried: "if I get court 34 I get the red judges, and if I get 23 then I have a green one. It's a sad situation, because it creates a tectonic tension that has to be released somehow, somewhere. I, of course, am of the opinion that judges in Spain would have to be linked to the electoral ticket of the different parties, and then we would get rid of the problem once and for all. Why? Because this would happen every five years, and so it would not depend on the whim of Parliament. The idea is to do away with this negotiating, because the negotiations of the Governing board of the Judicial Branch can be bargained, and it is killing it. As it is, the re-certification of the judges is already 11 months behind and it is still not done, why? Well, because a political party opposes it. And I don't want to get into whether what they are doing is good or bad, all I am saying is that the only solution will be a Constitutional Amendment that says; every party shall include their nominees in their party ticket, allowing for independent voting, such that I can vote for this person that I think would be wonderful, whether he is from my own party or another. And then there would be no discussion, no pushing and pulling, no problems. The citizen then will vote not only for the politicians, but also for the Justice System nominees. Why? Because politicians are taking too long to do it, and they are showing their lack of capacity to resolve a problem that is drowning us. Now, I could not have said this at a conference in Spain, I dare say it here because I am free to do so, being on neutral ground. Not to say that I am not free to say this in Spain, but it would have led to a discussion that would not take us anywhere good.

David Shirk: Dr. I'm sorry, to try and stay on time, we will now move to a different question, my apologies.

Q: Thank you so much! Taking advantage of what Dr. Del Rosal said about being in neutral ground. I am on neutral ground too because I am a Human Rights teacher, not a lawyer. So, I would like to add the following comment: I think that a conference such as yours is a great way to slowly bring about a transformation where both practicing attorneys and the judiciary itself, both in Mexico and in other countries, contribute ever more to the creation of a better legal culture, both internally, and with the public; one that contributes to a greater knowledge and greater respect, at least in Mexico, of fundamental rights. While I was receiving my education in Human rights, and also in my academic work on Human Rights, I have become convinced that to the extent that both the public, attorneys, and judges know Human Rights, and the way to apply international treaties, and how to harmonize legislation in countries such as Mexico, this could improve the lives of our people, and the opinion that people have many times about attorneys and about the legal profession as a whole. I hope that these conferences will be repeated and duplicated, because bringing our efforts together is the only way of changing our reality, which is not always the one we would have wanted. Thank you so much, Doctor!

Good morning, my name is Ileana Rodriguez, and I teach at Tecnológico de Monterrey (Monterrey Institute of Technology); I also want to echo the congratulations. I was very pleasantly surprised by your presentation, by the clarity of your thoughts. I have a lot of questions, but first and foremost I would like to know your opinion regarding how you arrived at mandatory Bar membership in Spain, because we can't just say that by having compulsory membership for all, by saying "everyone must belong to a Bar", everybody would be ethical. We would also have to discuss a simultaneous effort by educational institutions to teach Ethics. That got me to thinking that, well, once this mandatory membership comes about, you mentioned that they would have to pass an admissions exam in order to become members of the Bar. So, my question is, is there a fee to belong to these Associations? What happens when an attorney passes the exam? They might have the capacity, and the Ethics, but it could be that the person just recently graduated and has no work, how does he pay to belong to this Association, to this organization? Those are my specific questions.

I know that efforts are underway in Mexico and I know that we're still in diapers in comparison with what you have done, but just last year we saw the creation of two accrediting bodies for the purpose of avoiding

the proliferation of Schools that teach law, but don't comply with ethical requirements. There are cases that are hard to believe; for example, schools that were even renting libraries so that when the accrediting body came they would say "oh, they have a great library" and then they would just dismantle it the next day. So, how can we educate, how can we teach Ethics, when there is corruption even by those who are teaching Ethics! So, we can't begin to discuss a compulsory mechanism, of having mandatory Bar Association, if we do not create a culture of Ethics, and an ethical life in education. Thank you so much!

Q: Good afternoon! My name is Pedro Villegas, and my question is: we are talking about the concept of Ethics. This concept... you say, for example, that the legal Ethics of a judge are not valid because they are subordinate to the State. The Legal Ethics of the attorney, as an independent entity, does not always use Ethics and ends up being corrupted and so on. Now, the basis of legal ethics as such, what should it be based on to have validity? Regulations, or moral values? My mother, God rest her soul, used to say that moral values cannot be learned in school, they are learned at home, from birth... the way you are educated, in other words. Commonly, in school, they teach us concepts that help us perform professional work, but after that comes what you were talking about: I go in a different direction, I am dishonest, I am unethical, so that I can get what I want, profit from illegal activities, and what not. Ethics, in truth, what is its role for an attorney, of any walk of life? Whether independent, or works for the government, or in the private sector. How hard would you sanction or discipline the performance of an attorney in contrast with a judge, that is my question

A: OK, let's go in order. We'll start with the questions our female colleague was asking as to how we got to mandatory Bar membership. Well, mandatory membership in general, I don't know when it happened. But, mandatory membership is born out of the need for self-regulated Ethics control. This is when the profession claims its independence, and the power to implement disciplinary action for itself. So, mandatory association membership is born because the profession needs to guarantee the public that they will all follow Legal Ethics in order to protect its independence. That is, it was born out of need to be formally independent in their profession. So, behind mandatory association membership is a struggle for independence, as is the case of Legal Ethics in any other profession. I don't know if this answers your question. I think you also asked about fees. Well, the practice of law is a business, and as any business, it is born, it lives, it dies. That is, if I have no work, then I'm not a lawyer, I'm not an attorney, I am not in practice. It's that cut and dry. I mean, an attorney is not someone the Mayor appointed to sit and wait for customers, that is why it is called a "liberal" profession and that is why we have this Legal Ethics phenomenon; it would not happen otherwise. If you do not have money to pay the fee, well, they will cancel your membership! Not as a disciplinary action, but because you failed to meet the requirements for being a member. This happens in Spain. If an attorney gets to a point where he cannot pay the fee, his membership gets cancelled. It is not, again, a disciplinary measure, simply that he cannot bear the burden of continuing to be a member. It is hard, but that is the way it is. Because, like we said, the attorney, in addition to being a public institution, is also a private businessman, we have a dual nature. That the whole reason this phenomenon of Legal Ethics exists. I have tried to explain how this miracle, how this "plus" is created. The Civil Code is insufficient, the Penal Code is insufficient, both of these have some ethics content, but it is unclear. Ethics, then, is a civilizing principle, it is a plus that professions agree to be subjected to in order to preserve their independence. That is the end goal of Legal Ethics.

And, of course, Ethics are necessary for everything in life. I chose not to talk about Ethics in general because there is no time. Ethics is something magical, it is like pure carbon; Ethics is magical, and I will be very brief in my answer. Ethics is first, behavior, then value, then regulation. Ethics can be codified, just like carbon can crystallize. Why does that happen? It happens because the experience of translating survival first to the individual, then to the group, and then to the civilization as a whole led Homo Sapiens to realize that he should be good, because he can survive better if he is good; and he can survive longer, and more people will survive! That is why Ethics is a civilizing principle: it is transferring survival from the individual, to the group, and then to mankind. That's Ethics, a behavior, a value, then a regulation. It gets codified. The codification processes would be a very interesting topic, but a very abstract one, and that is not why we are here today.

Ethics is all three things. And so, we all are called upon to behave ethically. The cycle of Ethics resolves an issue of survival. The first man who screamed, when another group was attacking them, "women and children first" was not being gallant, he was resolving the strategic problem of the survival of the group. "I am going to stay here and bear the attacks so that the group can survive." Now, lyrically this is very beautiful, and it makes us cry, but what happens is, as Fernando Savater would say, we fall in love with the hero, because behind this survival behavior is lyricism, there is emotion. Masterful works have been written on heroic behavior, and why? Because when I say "women and children first" and become the hero who stays behind to die, it is beautiful! It is beautiful as a poem of survival, but it is value, and behavior, and it can be put into a Code. All religions put altruistic behavior into a Code, don't they? And what is the law without a general code? Ethics Codes are pure Ethics, crystallized into the conventional system. It is not some unclear information that is contained in Ethics regulations, it is pure Ethics data. Attorneys shall not enter into conflicts of interest. Attorneys shall seek their clients' financial benefit before their own. You've heard the joke, right? It was so cold in New York, that even attorneys had their hands in their own pockets instead of in the pockets of others. And I apologize for saying that about New York, could have just as easily been Madrid.

David Shirk: I would like to congratulate Rafael for a truly impressive presentation. It is a great contribution to our efforts, and to our Series, and I thank you for your capacity to express these ideas so clearly. I have to note that we are a very small audience here, much smaller than the public that we want to reach with these ideas. Thus, the results of this presentation will be made available on our website. We will upload the video, and also the audio, so that we can have a podcast, for those of you who have an iPod, where you can listen to it and watch it on the Web. This is the reason why we must stay within the timeframe, I am sorry that we cannot talk about these topics more in detail; the idea was that if we had two one-hour segments, one for the presentation and another for questions and answers, then we could use it as a tool in our classrooms, and in Law School curricula. We want for this dialogue to continue in other avenues and other contexts. I should also mention that it is going to be made available not only in Spanish, but also in English, because we want this conversation to be very accessible to those who study the law in the different disciplines.

Finally, we are going to produce a DVD with the 4 or 5 presentations that will be part of this Series. The presentation by Jose Ramon Cosio on the Case of Mexico is already available online if you want to look at it, as well as Dr. Claudio Pavlic's talk on the Case of Chile. In a few months we will have the Case of Spain, the Case of the U.S., and finally the Case of Argentina, for a Series of 5 presentations on this topic
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Finally, I would like to thank Dr. Fizz, the Instituto de Investigaciones Jurídicas [Legal Research Institute], the tinker Foundation, which also helped make this presentation a reality, and finally, I also want to recognize Rob Donnelly who is our Justice Project Coordinator, and who helped with this whole effort. Thank you, everyone!