PROFESSIONAL ETHICS, LEGAL DEONTOLOGY AND JUDICIAL ETHICS

Ética profissional, deontologia jurídica e ética judicial

André Gonçalves Fernandes
CEU Law School, Direito, São Paulo, SP, Brasil e UNICAMP Universidade Estadual de Campinas, Campinas, SP, Brasil
Lattes:http://lattes.cnpq.br/4949379610941712 ORCID: http://orcid.org/0000-0002-3474-3297
E-mail:fernandes.agf@hotmail.com

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ABSTRACT

As a premise, it presents professional work in contemporary reality and establishes the links between philosophical ethics and professional ethics and their reflections on jurisdictional praxis. Based on judicial awareness and jurisdictional work, it studies the importance of the ethical improvement of the judge within the community reality, criticizes the codifying vision of professional ethics and discusses the main principles of legal deontology. Guided by the bibliographic research method of foreign texts and works that are references on the subject, it aims to develop theoretical, practical and epistemological contributions to the ethical problem in the field of jurisdictional action of the magistrate, taken as a moral subject and inserted in a certain moral order, in order to provide, as a result, the unveiling of a proposal of praxis in which the judge manages the distribution of rights, duties, assets, awards, sanctions and honors, in final consideration to the historically situated concrete fair and based on the improvement of its moral character that implies the qualitative improvement of the jurisdictional provision.

Keywords: Work; Professional ethics; Legal ethics; Judicial ethics.

RESUMO

como premissa, apresenta o trabalho profissional na realidade contemporânea e estabelece os liames entre a ética filosófica e a ética profissional e seus reflexos na práxis jurisdicional. A partir da consciência judicial e do labor jurisdicional, estuda a importância do aprimoramento ético do juiz no seio da realidade comunitária, critica a visão codificante da ética profissional e discorre sobre os principais princípios de deontologia jurídica. Pautado pelo método de pesquisa bibliográfico de textos e obras estrangeiras que são referenciais no assunto, objetiva o desenvolvimento dos aportes teóricos, práticos e epistemológicos do problema ético no campo do agir jurisdicional do magistrado, tomado como um sujeito moral e inserido numa certa ordem moral, a fim de propiciar, como resultado, o desvelamento de uma proposta de práxis em que o juiz administre a distribuição dos direitos, deveres, bens, prêmios, sanções e honrarias, em consideração final ao justo concreto historicamente situado e com base no aperfeiçoamento de seu caráter moral que implique no aprimoramento qualitativo da prestação jurisdicional.

Palavras-chave: Trabalho; Ética Profissional; Deontologia jurídica; Ética judicial.

INTRODUCTION

Professional work, judicial labour and its ethical perspective

In the orbit of praxis, man acts within society and, in the current reality of History, a good part of this action is consumed by professional work, which is not contrary to a proper and due ethical normativity, in which general principles are determined by philosophical ethics.

Philosophical ethics consists of a theoretical knowledge that claims itself to be omnicomprehensive, but which develops from the basis of empirical data collected from the moral experience of the world of work, where legal activity can and must find its end and its holder, the legal professional, his personal fulfillment in good life.

In the contemporary world, three are the closely connected factors that contribute to the enhancement of the dimension of professional work in our society:

a) The theoretical enhancement of the transforming power of work, paradigmatically advocated since Descartes[1];

[1]From the Modern Age onwards, a change in perspective was triggered that would a few centuries later lead to the inversion of the classic paradigm: exaltation of work and devaluation of leisure that, little by little, also loses its classic and original sense. It all starts with Descartes (1996:61-62), in his *Discourse on Method*, which aims to "replace this speculative philosophy that is taught in schools with another radically practical one, through which, knowing the force and actions of the fire, the air, the stars, the heavens and all the other bodies that surround us (...) we could use them in the same way for all the uses to which they belong, and, thus, we shall become owners and masters of nature" (emphasis added). In other words, the change of interest in the object of study of philosophy, with immediate reflexes in science, from the elementary knowledge that can be obtained from the highest things to a deep and mathematical knowledge of material things of lesser importance leads thought in the search only for that which is endowed with an intrinsic utility of transforming the nature that surrounds us. Knowledge then leaves the orbit of contemplation and moves towards manipulation, closely related to what the Greco-Roman world knew as "work", although endowed with a greater claim to scientificity. It follows, as corollary, a straight line between Descartes, Bacon, Leibniz, Hume and Marx, among others that each in their own way, provide a greater drift in this philosophical paradigm shift or in this epistemological Copernican twist. The Cartesian statement contains three revolutionary consequences, to be judged, at least, by the effects felt by humanity in later centuries: a) the creation of a technique or method of speculative work, capable of mastering man over the world previously created. Here, it is worth remembering that this technique is a direct heir of the Aristotelian *techné*, whose aim was to direct the transformations, wrought by work (what the Greeks knew as *poiésis*), in nature. The end of Cartesian technique, far from resembling the *teoría* and *techné* of the Greeks, though still endowed with an aura of greater scientificity, in the end, coincides with the ultimate aim of the work of that people, that is, to subsidize the material human needs. In the background, Descartes aimed at transforming speculative philosophy into pure technical knowledge able (1996:61-62) "not only to invent a series of artifices that allow us to enjoy the fruits of the earth (...), but also to provide the conservation of health, without a doubt, the first good and foundation of the other goods in this life"; b) the absolutization of *homo faber*, a transformative being by essence. This is the effect of the premise contained in the previous item, a kind of coherent logical development of the Cartesian principle. The replacement of

b) The effective verification of this same power, incarnated, century by century, in a progressive and effective dominion over nature by man, raised to the existential condition of *homo faber*, which, in practice, reduced his dignity and turned him into a mere *animal laborans*;
c) The human reactions before the injustices that the implementation of this new conception of nature and man brings with itself at a given historic moment .

Therefore, nowadays, professional work is consecrated as a structuring element of the entire western civilization: the nobility and the status that derive from it acquire more and more importance and, therefore, (SPAEMANN, 2000:130) they begin to uncover their intimate nature and deeply personal essence. In that open flank, enters professional ethics.

The ethical perspective raises the issue of professional work from the ought to be in an absolute and radical fashion. From a moral point of view, two questions should be asked:

a) Why should we work?
b) How to work?

Let's start with the first question. The meaning that profesional work has in any person's life as a whole cannot be distinguished from that of any other human activity, namely, responding to one's vocation to good life.

speculative philosophy by strictly practical thinking demands the renunciation of one of the most radically uplifting dimensions of man: his contemplative aptitude (the *teoría* of the Greeks), in which lies precisely the idea of the cosmos as a harmonious and transcendent whole, with the multiplicity of repercussions that such an idea represents for the particular existence of each man in his social-historical reality and for the whole of humanity. In this absolutizing twist, man covered his ear "to the attentive noise of the being of things" (Heraclitus); c) the epistemological reduction of man's being. Man dwarfs himself in the dignity that characterizes him, because, by being mitigated only to its lower dimensions (because they involve the strict dealing with matter), diminishes his ability to transcend this world that he precisely seeks to transform and lord it over. This blindness to the higher dimensions of the spirit leaves man defenseless before itself, given the high degree of technical power that humanity has attained, accompanied by a general incapacity for a search for existential meaning for all of this. However, the Cartesian revolution of the 17th century did not consist only of a range of negative impacts. It gave man a fuller awareness of his superiority over the material orb and its role: that of mastery that shapes reality precisely through work. Undoubtedly, from this epistemological turn, human work came to be seen in a positive way in the social sphere.

Apart from that, any inattention could lead us to a totalizing perception of the ethical relevance that this activity has, which is very widespread in our culture, especially in those market economies that have become real market societies: all is relative to productivity, success and professional effectiveness.

Many of the goods that make up the good life can only be obtained, as points out Aristotle, based on the result of good ethical behavior in friendship-based communities – family, religion, school, work, intermediary societies and polis – so that the primary meaning of the professional work of an individual must be the promotion and satisfaction of the material and cultural needs of such communities,[2] in which he is organically linked.

If the primary meaning of work is based on a purely instrumental vision of this activity, the secondary meaning completes it and radiates a meaning larger and more transcendent. Individuals are not beings affected exclusively by material and cultural needs. As a human being, one's nature demands for more and better.

As a result, the world of work presents itself as a community of men for men, as a system of relationships in which the objective addressees of the productive process organized by professional workers are other human beings, equally called to realize their immeasurable value as a person in their professional relationships.

Thus, we must work because it is necessary in order to give an adequate solution to the scarcity of goods and means found in nature and within the core of the communities of friendship, however, through the realization of the personal value of the professional worker and those other professionals with whom he interacts in his work.

In response to the second question, we are able to affirm that work must be performed with aims of achieving the common good in the world of work. Concretely, the professional worker achieves this objective when he carries out his activity with (CHALMETA, 2011:140-146):

[2] Leo XIII (2001:41) recalls that "in a regularly constituted society there must still be a certain abundance of external goods «whose use is claimed for the exercise of virtue». Well, the fruitful and necessary source of all these goods is above all the work of the labourer, be it the work in the fields or in the workshop. Moreover: in this order of things, work has such an ethical fecundity and such effectiveness that it can be said, without fear of deception, that it is the only source from which the wealth of nations comes".

a) the negative intention of preventing its effects from rendering the personal fulfillment of others impossible or very difficult;
b) the positive intention of promoting with his activity some physical or cultural dimension of the personal value of the individuals involved, while simultaneously obtaining sufficient economic resources for themselves and for the members of their friendship communities to be able to live well.

Thus, our ethical vision of professional work comprises four distinctive axes[3]:

a) Centrality of the notion of person;
b) Dignity of the person to permeate human action;
c) The work put at the service of the person and its rights;
d) Work strained towards the common good of people.

Such axes make it very clear that not only philosophical ethics but, specifically, professional ethics are deeply rooted in the personal reality of human beings. Anyone who carries out a professional job is a person and their work will always be destined for one or other people.

Definitely, it is not intended to show that ethics intends to limit the legal work under rigid molds, but to open the necessary moral furrows so that all its activity has as a reference frame the concrete just, which, in the end, means respecting the person of the addressee of the norm.

But hasn't legal activity been considered this way for centuries? In fact, the concrete just and the legal task have always gone hand in hand. However, let us remember that the work of the legal professional is inserted in the world of work and, therefore, it is not immune to the way in which an entire society sees the essence of professional work.

The influence of the Modern Age on the consideration of human work ended up shaping a conception of work that will find its value – exclusively – in elements external to it: production, success and efficiency. In these elements, added to other factors, the industrial revolution and economic liberalism will converge.

[3] Our theoretical framework in this matter is composed of the teachings of the Church's social doctrine, taken from four pontifical documents, famous for their importance in diagnosing the effects of extreme economic liberalism on many social problems: *Rerum Novarum* (1891), *Quadragesimo Anno* (1931), *Laborem Exercem* (1981) and *Centesimus Annus* (1991). These encyclicals gave nuance to and re-signified the structuring axes of previous conceptions of professional work ethics, in favor of a strict and real dignification of human work.

In the words of Arendt (2009:17), “the Modern Age brought a theoretical glorification of work, the consequence of which has been the transformation of the entire society into a society of work. But labor becomes, to a large extent, a mere commodity, capable of being acquired according to the laws of supply and demand” (free translation).

In this world-view of professional work, its actors become technicians, who demand, as an evaluative parameter, goals and results that are always increasing in numbers. This will lead to the understanding of professional performance through the epistemological lens of autonomous, self-sufficient and self-referring normative activity.

For this epistemological model, there is no better professional than the one who perfectly masters the technique of work and at the same time produces the best and most numerous yields. In many cases, it has come to be considered licit or good not the professional that respects the due ethical parameters but he who meets the established quotas, a determining criteria of laboural evaluation.

This situation leads the professional to, among others, a position of axiological asepsis and consequently to a progressive loss of meaning and of the ethical-personal and critical scope of work. In Law, this will have a direct impact on the way legal activity is understood and will lead to Kelsen's normative positivism[4].

From now on, the legal professional and, above all, the judge, will be considered a technician, from whom concrete goals are required and the good professional (and the good judge) will be the one who will master, with perfection, the working technique and the means to produce the expected results. It is enough to remember that the reality of the courts, for some time now, is nothing more than a factory for the production of serial sentences in this efficient vision of the forensic daily life[5].

[4] Kelsenian legal positivism is like an umbrella: it protects, but compels. It shelters, but is a nuisance. In the limit, the world of umbrellas is a gray universe of faceless people. Sheltered, protected but, like the society they are art of, devoid of vitality and personality.

[5] On the subject of efficiency in the world of work transforming a healthy "culture of goals" into a "fetish for goals" it was written under the title "O fetiche do CNJ" (FERNANDES, 2017:2): Numbers and more numbers. Filling out the spreadsheet for a judicial movement takes more time than sentencing a simple case also because due to our natural repulsion for numbers, it can be said that this work already begins half overdue just by thinking about doing it. So it is best to delegate it and just review it at the end. Our judicial dome is grateful for the bureaucratic filling time stolen in favor of the sentencing of cases. Since it was created, our judicial dome has done much for the administration of Brazilian justice, assuring it of credibility, accessibility, professional ethics, impartiality, modernity, probity and transparency. But in the aspect of governance (planning and strategic management), its performance tends toward an excessive focus on goals and numbers. In 2010, at the 7th National Meeting of the Judiciary, headed by the same CNJ, ten priority goals and fifteen objectives were elected, all of

And the mission of this "judicial technician", as of any other technician, will consist in knowing the details of the forensic machine in order to make it work to the maximum. We must not forget that if each "judicial technician" strives to invent a new machine, his task will be useless.

The judge must strive to ensure, fundamentally, that the "forensic machine" functions. In this way, they will be, par excellence, an employee: a faithful vassal of the legal machinery in force, a normative complex formed by a paraphernalia of laws endowed with much formal cohesion, but which, in terms of justice, produces little social cohesion.

We can intuit that, in the medium and long term, this efficientist vision will undermine the natural commitment that a legal professional or a judge should have with *tout court* ethics and the concrete justice: the observance of positive normativity in a position of axiological asepsis and absence of any critical sense is enough.

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which should be subject to regional strategic plans, aligned with the national plan. Among the goals, only one was structural in nature; among the objectives, only three concerned structural improvements within the Judiciary. The remaining goals and objectives involved productivity and more productivity, with more fields and spreadsheets to be bureaucratically filled in. To summarize it all: in the short term, productivity at all costs for judges and civil servants, without a minimum of structural counterparts and with the risk of, in many cases, denying the just and concrete in favor of strict compliance with the untouchable goals and objectives. In the long run, as has already been seen, a fact that generates professional stress, existential dilemmas and, added to the natural sedentariness and responsibility of the profession, illnesses and addictions. All this at the price of the world-class and superhuman record of an individual average of 1,500 decisions issued per year. And now? Having recently finished the 8th National Meeting, we have two fresh pieces of news. And another old one. Mixed together, as Guimarães Rosa would say. The old news was that seven goals were approved and six of them start with the more-of-the-same "prioritize the judgment" of this and that, without any mention of structural counterparts. The first new piece of news recommends, albeit timidly, "increasing the number of cases resolved by conciliation. And the second news item determines the creation of a "strategic guideline focused on the care of health conditions and quality of life at work for magistrates and civil servants. Numbers and goals, it seems, continue to take part in the fetishistic imaginary in the governance of our judicial cupola. In short, they continue to be an end in themselves: as a friend said, the judicial decision has become a market and consumer item and, in the end, they forget to remember that the strategic centrality of the goals and priorities should revolve around the intellectual activity and the person of the magistrate, who demands reasonable time for study and decisive consideration of the concrete case, with its own time, according to its greater or lesser complexity. The calculation of the institutional effectiveness of a power is justified because, after all, judges must be accountable to taxpayers. But when this calculation is accompanied by a certain instrumental rationality, typical of structures that are governed by the systemic integration mechanisms of the political and economic system, the healthy culture of goals is transformed into the cult of goals. As a harmful effect of this, an excessive bureaucratization of control and documentation activities is created as a response to the need to demonstrate the indicators of goals and priorities. The cult of goals, thus, becomes divided by another devotion: that of praising and worshipping the deus ex machina of the judicial movement spreadsheets. More numbers, reports, productivity, and less structure and focus on the person and the health of the magistrate and his or her work team. It is time for our judicial leaders to rethink the "world of ideas" of judicial governance, in order to overcome this reductionist institutional vision, recommending, at least for now, to my fellow judges and public servants, more Prozac and less Plato.

Faced with this discouraging picture, it is worth remembering (TORRES-DULCE, 2003:222) that "the very function of legal ethics consists in providing those whose job it is to practice law with a certain set of guidelines that will enable them to become good professionals and not only good technicians - experts in laws - but also faithful interpreters of the real and concrete justice of cases" (free translation).

Let's go back to the world of work. The contemporary efficientist mentality - because it is founded on an ethical pragmatism and an economical vision of production relations - exported to other cultures thanks to the phenomenon of globalization, is immune to the personalist vision of work, or, at least, prevents it from being more deeply rooted in labor relations.

Many warn that the current process of economic globalization, governed by fundamentally utilitarian parameters, will deepen this sad vision of the human being and his professional activity that, at the end of the day, only serves the pretensions of productivity and efficiency that are increasingly alienating from what corresponds to the truth of man's being[6].

[6] On this topic (FERNANDES, 2015:2), under the title "Meu trabalho, minha vida?", it was written: "I was talking, after an ordinary general correction in our court, with our illustrious chief judge when after being praised by him on the performance of the notary's office he asked me if I could "do a little more" since the CNJ's goals had been satisfactorily met. I replied that as laudable as the suggestion was I would think about it carefully because I had serious "epistemological" problems in accepting it: these goals had become a kind of fetish and, above all, my work was never my life. Thanks to Hegel and Marx, the world of work underwent a major change. The initial change took place in the fact that man, instead of feeling that his world was stable, began to think that its bases were always changing: due to the evolution of technology, the goods that he had built, which shaped his world, began to be replaced by better ones. And, from then on, at an ever-increasing speed, even though this phenomenon already existed, but was not perceptible in the space of a lifetime. This capacity for technical improvement of goods endures to this day. The durability of a product is no longer a desired quality, as it would be an obstacle to renewal. The world continues to be shaped by technological processes that provide us with other objects, which practically become obsolete while new ones are being made: just remember my first cell phone and compare it with the current one. I do not question the many advantages that technology has provided to life. However, we have become worshipers of productive work, even if it is sometimes the bearer of new fears that invade man in the face of the potential destructive or manipulative capacities of the technique embedded in it. When productive labor rises to the condition of a society's configurator, the question is elementary: is a reality forged exclusively by this type of labor a truly human reality? Can't the unbridled praise of work lead us to a new reality that turns against man himself, trapped in this restless labor and without contemplation of any transcendence? There are many who believe that their life is their work, because it is so intense and decisive that it fulfills all their aspirations. A kind of highly effective drug for self-esteem. In this way, we will be contaminated by a labor mentality that will eventually lead us to extenuation on our own initiative. A society that lives on labor productivity - and, consequently, on results - is a community of exploitation without domination, because it involves a voluntary submission to labor habits that stifle life. And, because it is a servitude placed under the sign of freedom, it is tremendously effective in terms of results. Until we face failure and take responsibility for it. On the other hand, a work that becomes a means of searching for existential meaning leads, sooner or later, to the instrumentalization of some over others. Arendt criticized this utilitarianism when she pointed out that, in the modern labor process, one's results are judged by someone else in terms of convenience for the proposed end and for nothing else. What is the utility of utility, then? our philosopher asked, concluding, in a stroke of genius, that utility, established as

However, we can also affirm that this conception of professional ethics, depriving work of any intrinsic value, has a counterpoint in certain visions that, throughout the history of thought, have placed the person, his dignity, and his most elementary demands at the center of their attention.

In adherence with Hobsbawn (1997: 302-311), we can state that "it is a matter of the recognition that people have a legitimate moral right to certain basic elements of life," (free translation) even if such demands cannot be legally defended before the courts.

In the final analysis, despite the praise for it, from a professional ethical point of view, we must foster an awareness of the threatening character of the spontaneous market order: the game of supply and demand is not able to ensure the intrinsic respect for people's dignity and equality, nor to the ethical demands that follow from this.

In our view, legal activity has a clear ethical meaning: the replacement of violence and arbitrariness with a procedure that ensures, in a much more humane way, the legitimate aspirations of the human person. Throughout history, we can note the conviction that Law, and more specifically the judicial office, is at the service of the eradication of violence and injustice in all circumstances.

Therefore, the legal professional and above all the judge, when he or she places himself or herself on an inclined plane toward the concrete just also, in a final analysis, works in favor of the peace that every society needs for harmonious development. And peace, in Augustine's words, is order in the tranquility of things.

Since times immemorial (GARCÍA DE ENTERRÍA, 2001:10), as a Roman emperor pointed out to his pretores (the judges of the time), "soldiers are not the only ones who fight in the name of our mighty empire. The praetors also do it with determination, because they, with their active ethical voice, defend and ensure, in the concrete case, through their virtues and fair decisions, the life and posterity of those who suffer" (free translation).

The legal virtues - in relation to the judge, judicial virtues -, as we shall explain later, present themselves as concrete ways to achieve the ethical sense and reason for the conduct of a legal professional. In this area, the issue of the formation of judicial conscience is of particular

meaning, generates meaning. The primacy of productive work in the consideration of the idea of society ends up reducing human society to a mere labor organization, where coexistence is artificially articulated in such a way that people can converge their faculties only in labor and to always produce more and better. It would be a kind of mechanistic anthropological vision that turns politics into a technique, and society into a building, in which each of its elements is alien to the whole, being integrated only due to extrinsic factors. An edifice based on the error of considering man only as a being destined to labor productivity and, therefore, to be constantly persuaded to "do little else". A building without any solid enough support to be reformed in its foundations: a problem that not even Archimedes could solve. As for me, I keep on working to live. And not the other way around".

importance, since it is through this dimension that legal ethics is encouraged to become a concrete reality in the forensic world.

DEVELOPMENT

The judicial conscience

What is conscience? In colloquial language, conscience is a fundamental moral reality: "acting in conscience," "defense of freedom of conscience," "conscientious objection," among many other conscientious expressions.

Literature and philosophy are not far behind. Dante, through the mouth of Virgil, says: "O worthy and upright conscience, for you, a little fault is a bitter remorse[7]". Victor Hugo calls conscience "the compass of the unknown[8]". Homer takes it as "the proximate norm of morality[9]".

Augustine advises to "enter into the core of your conscience and interrogate it, so that you do not pay attention to what flourishes outside, but to the root that lies in the inner ground[10]". Rousseau calls conscience "the voice of the soul[11]" and Cicero always warns us that "the testimony that conscience gives of vice and virtue is of great weight, and if you suppress it, nothing remains[12]" (free translation).

Messner (2001:256) qualifies it as "a restraining force, which supposes a permanent exercise, a constant election, and which serves to identify every man: we are what we say, but, above all, we are, inevitably, what we do" (free translation).

All these authors have in common the fact that they consider the conscience to be the most intimate and hidden core of the human being, where good or evil is determined throughout his life. The conscience is the norm of morality, but its referent is the moral law[13] and, in the case of the judicial office, the natural law and the just positive law.

According to its nature, conscience is a judgment or dictate of practical reason that qualifies the goodness or badness of an action done or to be done. Conscience is given the first principles of

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[7] *Divine Comedy*, Purgatory III, 8.

[8] *Les Misérables*, Vol. V.

[9] *Iliad*, Song IV.

[10] *Sermon* 355.

[11] *Emile*, L. IV

[12] *De natura deorum*, III, 35.

[13] The moral law, according to Thomas Aquinas, is an expression comprised of the eternal, natural, and human laws, the latter being composed of the positive just laws.

theoretical reason - the principle of noncontradiction, for example - or of practical reason - the golden rule, for example - and formulates a judgment. Therefore, consciousness is neither a potency nor a habit.

The consciousness formulates its judgments according to a set of normative criteria that are prior to it, in relation to which the consciousness itself does not create, but rather unveils, quite the contrary to what a good part of moral philosophy, beginning with Kant, has attempted to propose theoretically.

In other words, the consciousness is not autonomous, if autonomy is understood as creating its own law. If autonomy is understood as freedom, then the conscience is autonomous: it will never be licit to coerce it for any purpose that is intended.

The conscience should not be confused with synderesis[14], philosophical ethics (or moral science), and prudence[15]. Each of them has its own attributes, but these differences do not mean that the conscience is something totally separate from synderesis, philosophical ethics and prudence.

On the contrary, the exercise of conscience - application of synderesis - leads the subject to acquire the habit of prudence, which, in turn, perfects conscience and, concomitantly, to the extent of personal possibilities, causes a further intensification of philosophical ethics.

Therefore, as we shall see further on, the formation of conscience brings with it the enhancement of prudence and philosophical ethics. But consciousness can be in various states. We will point out only those that are the most common in the exercise of the judicial function.
In relation to whether or not it conforms to natural law and positive law, conscience can be:

a) Upright: that which judges correctly, insofar as it is given with the truth of the first principles of practical reason, applied to the concrete case. For example, the subject acts with an upright conscience when it is stated that murder, as a rule, is a moral and penal illicit. It is prohibited by both natural and positive law;

[14] Synderesis is a natural habit of the intellect that understands and conceives the principles of the order of action, that incites to good and condemns evil, insofar as it judges what we find by means of the first principles of theoretical reason.

[15] Prudence is defined by Aristotle as a 'practical disposition accompanied by the true rule concerning what is good or bad for man (L. VI, 5, 1140 b 20 and 1140 b 5)". Thomas Aquinas (S. Th., V, 47, 2), some centuries later, will adopt a similar formula for the definition of prudence, the virtue of concrete intelligence, as being the *recta ratio agibilium*, the right reason applied to acting. Today, Portuguese language dictionaries translate the word prudence as caution, precaution, circumspection, sensatez or ponderação, expressions that have little to do with its original meaning.

b) Erroneous: that which judges falsely, insofar as it occurs with the falsity of the first principles of practical reason, applied to the concrete case, due to the agent's estimation that the same principles are true. False conscience can be scrupulous (it misjudges an action by excessively valuing details that lack objective importance), perplexed (seeing evil in all circumstances, it can decide for one extreme or the other), or lax (it does not give importance to what is morally grave and negative). The erroneous conscience can also be invincible (it believes, subjectively, to be an upright conscience and, therefore, because the agent is unaware of this misunderstanding, it cannot impute malice in the act of judgment) or overcome (when the misunderstanding can be noticed and overcome by the agent).

By reason of assent, consciousness can be:

a) Certain, that which judges with certainty the goodness or badness of an action;
b) Probable, that which pronounces a hesitant good or bad judgment about an action;
c) Doubtful, that which qualifies an action with a positive judgment, without being certain and with some fear of error, or does so negatively, without knowing whether the action is lawful or unlawful. It may involve a doubt of law (hesitation about the existence of a norm) or a doubt of fact (hesitation about an empirical fact).

In ethical matters, the best path for the conscience is to always judge an act with an upright and certain conscience, which presupposes knowledge, in the case of judicial work, of natural and positive law. In general, an upright and correct conscience is assumed to exist when the judge:

a) acts diligently;
b) does not abandon or neglect professional studies;
c) seeks to improve in the application of the first principles of practical reason;
d) has the time for serious and mature investigative reflection on the case to be judged;
e) has the habit of consulting or advising with more experienced people or those who have more expertise in the matter that demands a decision.

The reason for this path is clear, because (PÉREZ, 2009:45) "since conscience is a close and personal norm of morality, if conscience fails, the whole of ethical action also fails. This is inevitable from the logical point of view. In this case, the right and upright conscience must always be followed by the agent in the concrete cases with which he is confronted" (free translation).

In the other previous states, from the ethical point of view, the invincible erroneous conscience must be followed by the agent, because, whoever acts with mistaken judgment, believing himself to be upright, does nothing but adhere to this erroneous conscience because of the righteousness that is supposed to exist in it.

On the other hand, the defeasible erroneous conscience, from the same point of view, must be overcome by the ordinary mechanisms of professional action of a judge, such as diligence, study, improvement, consultation, advice, and investigation, among others.

Until this is done, it should not be acted upon or encountered. As for the scrupulous conscience that, for non-existent reasons or of little consistency, judges illicit what objectively is not, it should not be followed under any circumstances.

The lax conscience, being lax and often even indifferent in moral judgment, should also be avoided. The perplexed conscience, on the other hand, should only be applied when the perplexity is overcome in the same ways indicated for the emancipation of the defeasible erroneous conscience.

Ditto for the probable conscience, provided that the misunderstanding is overcome by the ordinary mechanisms of professional action of a judge, such as diligence, study, improvement, consultation, advice and investigation. A doubtful conscience does not lawfully allow the subject's action, until the hesitation is overcome, by resorting to the same ordinary mechanisms already indicated.

Sometimes, as this may not be possible given the factual or normative circumstances of the concrete case, the legal tradition itself, since Rome, has already taken charge of formulating some famous and perennial aphorisms about the doubtful conscience:

a) *Lex dubia non obligat*: the doubtful law does not oblige;
b) *In dubio standum est pro reo, pro quo stat praesumptio*: when in doubt, one must be in favor of the one whom the presumption favors;
c) *In dubio melio est conditio possidentis*: when in doubt, it is better to decide in favor of the one who owns the thing;
d) *In dubio pro reo*: when in doubt, it is better to decide in favor of the defendant.

A good and concrete way for judges not to run the risk of falling into any of these defective states of conscience lies in the attitude of constantly forming and educating their conscience, through a constant professional project of diligence, study, improvement, consultation, advice and investigation.

In fact, to form and educate the conscience is a fruitful and challenging ethical ideal for any person, even more so in a world where the labor dimension, as we have seen, has taken on a totalizing bias of human life and of the society in which we live, to the point that, even if this is a mistake, our intrinsic dignity is measured by how hard we dedicate ourselves to the *animal laborans* that dwells in our being.

The principles for a good formation and education of the conscience can be summarized in five directives:

a) Sincerity of life: the transparency of the human being with himself, through the attentive and upright examination of his own convictions, intentions and tendencies;

b) Gradual acquisition of moral philosophy or ethical science: understanding presupposes moral theoretical knowledge which, for the judge, consists of access to the knowledge of natural and positive law;

c) Acquisition of personal virtues: as we shall see further on, above all, prudence, which leads to the habitually correct and upright judgment of conscience;

d) Ample freedom of the agent: the formation and education of conscience is not imposed coercively, because ethics only exists on the plane of freedom;

e) Moral openness to the other: an ethical or unethical action is never an exclusively private phenomenon. Its consequences always transcend the agent.

In short, the conscience is formed, perfecting or degrading itself, in a gradual manner, as a result of experience, knowledge, reflection, and practice. A good conscience is one that is freely enriched by ethical acquisitions, that is, by making the right judgments of conscience[16].

Higher levels of decisional information and formation of conscience require a higher degree of accuracy in the established judgments, especially when these judgments involve giving each his own and, in the social reality, end up affecting the legal sphere of the citizen in relation to his person, his rights, duties and assets.

Great powers, great responsibilities: the right judgment of conscience is always a prudent one, which is proper of the judicial office and a requirement, as we shall see below, of the philosophical ethics itself, which is applied in the working world: deontology.

Deontology or the theory of duty

Etymologically, deontology means the science of duty (*deon*, from the Greek for duty and *logos*, from the Greek for discourse or treatise) and was originally attributed to Bentham, to refer to the branch of ethics whose object of study would be the foundations of duty and moral rules. Nowadays, it refers to the theory of duties and, more specifically, to those arising from the exercise of a profession.

Deontology is, therefore, the application of philosophical ethics to the world of work, focusing on the duties and obligations of a profession. The deontological norm differs from the norm turned positive through law because, like the moral law, although it is not confused with it, it pre-exists the positive law and, in principle, binds human beings with the same obligatoriness as the moral law.

[16] It is the theme of our time (CASTRILLO, 2006:112-113) "the abandonment of the existence of a universal truth that nourishes the consciousnesses, because each consciousness tends to establish its own truth, which is individualistic and is based on the 'ethics of authenticity': the ethics of coherence with itself and under any value, even if it is a coherence in error" (free translation). Taylor (2011:190) warns that exacerbated contemporary individualism does nothing more than distort the concept of authenticity, taken by parasitic forms and which, in the end, tend to be reduced into a mere freedom of indifference: if the only value is in the strict fact of self-determination to elect this lifestyle and not that one, then any election made by any individual cannot have priority of value over the other choices made by other individuals. This lack of priority of value leads to the inevitable conclusion that all values mean the same and, as a corollary, it is the same to choose one thing or another. We fall into existential triviality. This empirical verification is not bad because it leads to relativism: it is blatantly false, because vital choices are only valuable if valuable horizons are in sight. According to the same author (TAYLOR, 2011:201), "one must strive for the true meaning of authenticity and try to persuade people that self-realization, which comes about through life choice, far from excluding unconditional relationships and elementary moral demands, requires them first and truly" (free translation).

Miralles (2008:157) points out that

> from this perspective, deontological rules are basically requirements of professional ethics. Therefore, as with moral norms, deontological norms present themselves to us prima facie as a duty of conscience. Thus, unlike the legal precept, which exists since its positivation, the deontological norm, as the ethical norm, pre-exists this one and, in principle, binds man with obligatoriness that covers the moral norm. As a consequence, criteria and parameters for action are established, regardless of the existence of deontological codes that sanction or not the non-compliance with such positive or negative duties (...) A deep analysis of the concept of deontological norm, on the other hand, reveals that it is not correct to maintain that it always maintains a perfect assimilation with the moral norm (...). It is certain that the deontological norm has an ethical nature, because, as already pointed out, ethics impregnates all dimensions of human action. In this sense, it could even be said that Law also has an ethical nature. However, the content and nature of deontological norms are not exhausted in the scope of ethics, nor can it be said that these norms have an exclusively moral character, since many of the deontological norms have a clear point of contact with social uses, arising from guidelines, practices or rules of behavior that become mandatory by force of social pressure.

Professional ethics is philosophical ethics applied to a specific object: situations and relationships that arise from the performance of a particular profession. It is salutary to emphasize the connection between philosophical ethics and professional ethics, because, ultimately, both pursue the same end, namely, the human good[17].

In the case of the judge, moral and social responsibilities become more acute, because the direct addressee of his or her work is the human person. Therefore, the judge must establish the means necessary to acquire an understanding of the rationale for his office, the ethical principles, the ends that inspire his office, and the consequences for the community that derive from it. Otherwise, the deontology of the judge becomes unbalanced.

Deontology provokes (MIRALLES, 2008:153) "a restless judicial conscience, submitted and open to a continuous formation that will make the deliberative process of practical reason strongly informed by some previous ethical postulates, without which everything would be nothing more than a sterile exercise of practical syllogism" (free translation).

And, furthermore, the same conscience ceases to understand itself as an absolutely autonomous and self-referential instance to conceive itself as a meeting point of certain moral demands, objective and valid for all, and personal singularity.

[17] Plato (2009:245) maintains that all human activity is subject to the rule of good, the supreme idea of the world of ideas: "In the last limits of the intelligible world is the idea of good, which is perceived with difficulty. But once it is perceived, one can only draw the consequence that one must keep his eyes fixed on this idea if he wants to conduct himself wisely in public and private life" (free translation).

As an effect, it is not possible to establish a different ethics for each profession, because, after all, they all drink from the same source of philosophical ethics. To consider professional ethics detached from philosophical ethics and focused exclusively on the peculiarities of a given work activity may lead us to observe the problems of a profession from an exclusively technicist perspective and, because of that, more manipulable in terms of instrumental reason.

Speaking of profession[18], we understand it as the social status by which a person joins the world of work, consisting (BITTAR, 2013:89) of "a reiterated and profitable practice, from which man extracts the means for his subsistence, qualification, moral, intellectual and technical improvement and from which derives, by the mere fact of its exercise, a personal and social benefit" (free translation).

It is precisely in this existential reality that the deontological norm - in the form of principles or codification - acts in order to promote a professional model with guidelines or behavioral guides for the holders of an occupation and, at the same time, to offer society a public and official standard of professional quality.

In the case of judicial activity, such guidelines are contained in the Iberoamerican Code of Judicial Ethics (VIGO, 2008), enacted in 2006, and the Code of Ethics of the National Judiciary (NALINI, 2019), enacted in 2009, which consist of the two main deontological normative codifications in force in our geographical reality.

Some time ago, the positivist codification wave reached the deontological orbit. Perhaps, in the eagerness to immediacy the ethical duty in the conscience of the professional, it was decided to concretize all the deontological normativity of the most varied professions.

The harmful effects of this wave (BITTAR, 2013:393) are:

a) the transformation of ethical prescriptions into legal mandates;

b) the excessive reification of the conceptual fields of ethics;

c) the compartmentalization of ethics according to the number of existing professions;

d) the juridicisation of ethical commandments.

[18] In this work, we use the expressions "activity", "labor", "occupation", "craft" and "work" as synonyms for "profession".

It is important to emphasize that the moment an entire professional deontological normativity becomes codified, ethics loses its main axis - conscience and freedom - and becomes a boring set of conduct prescriptions.

In a certain aspect, we would dare to say that, in addition, this normativity metamorphoses into a group of legal norms of administrative law, whose non-compliance entails the application of administrative sanctions, such as suspension, removal or loss of professional position.

Ethics is thus reduced to a kind of codified technology. Bittar (2013:394) summarizes very well this dangerous phenomenon of epistemological reduction, when he states that

> Thus, there are numerous factors that lead ethical commandments to the same direction as legal commandments. This wave becomes more and more pernicious to the extent that ethical thought and ethical practice is increasingly reduced to a set of precepts of a formal and abstract character, with no connection to effective praxis. Under penalty of a profound perversion of values and an emptying of one of the main human roots, ethics must reverse this tendency that drives man away from ethical reflection to make him an accomplisher of internal codes of conduct of companies, professional categories or public agencies. Especially when it comes to professional ethics, it should be noted that the technologization and pragmatization of ethics transform ethical commandments into institutional charges (awarding norms and sanctioning norms). This means, in other words, that ethical norms are transformed into legal norms, distorting the essential lessons of philosophical ethics, which are self-determination and free conscience.

In the same vein, he (BITTAR, 2013:395) also asserts that

> it is certain that the vulgarization of codes of ethics finds substantial reasons for its emergence. Codified ethics comes to fill a need to become something clear and prescriptive, thorough, clear and explanatory, for the purposes of corporate, institutional and social control, which navigates the uncertainties of philosophical ethics. If the field of morality is an open one for the various consciences, it is necessary that, when exercising their profession, the individual be prepared to assume responsibilities before themselves, before their co-workers, and before the community, which they might not want to assume in their innermost individual selves. The professions cannot be left to the free will of the professionals to act according to their subjective ethical rules. In other words, the absolute freedom to choose this or that ethics, according to which to act and guide their actions, is not completely valid for the professional field. In fact, the professional must adapt his personal ethics to the minimum commandments that surround the behavior of the category he joins. That is why codes are useful. When the expression "minimum commandments" is used, it means that professional ethics is minimalist, enunciated by prohibitive speeches, since it is expressed in the sense of restraining future and possible conducts of a certain professional category. Thus, the ethical freedom of the professional goes as far as the requirements of the corporation or institution that controls his acts.

And concludes (BITTAR, 2013:396) that

> Moreover, the freedom of the professional goes as far as his behavior hurts the collective requirements that revolve around that professional exercise; there is, in the professional exercise, a requirement of responsibility towards the immanent collective. The demand for these ethical norms is important, since they guarantee publicity, officialness, and equality. Besides being accessible to all, and being declared as a conduct guideline for the members of the corporation, its content, despite the practical problems of exegesis and application, offers the possibility of becoming aware of the set of existing prescriptions for professionals, so that when they choose and opt for a career, they are already aware of what their ethical duties are. In this sense, codes of ethics serve as a compass, but they are not the whole light. If this is the importance of codes of ethics, it should be pointed out that ethics is not reduced to this kind of concern. The use of ethical codes as a way to increase control over workers' behavior distorts the idea that ethics deals mainly with stimuli and not only with punishments. Moreover, philosophical ethics is indicating the opening of the human will and conscience beyond the normative and legal precepts contained in codes of behavior of certain professional categories.

Deontology in itself, far from being a system of precepts in a negative key, has, on the contrary, a radically positive function: it indicates not only the conduct that deviates from the principles that inspire the profession, but also indicates the model of person and profession to which one should aspire. Hence, the appeal to deontology implies starting from a certain vision of one's own occupation, understood as a sphere of personal fulfillment and not only of professional success.

This codifying perspective, regardless of the critical judgment that is made, reaches the world of judicial work, a special and very sensitive dimension for society, because the professional work of the judge carries a public element of undoubted transcendence: by performing the *jurisdictio* (from Latin, jurisdiction or saying the right), he gives everyone theirs (from Latin, *suum cuique tribuere*).

Jurisdiction is the last social redoubt to guarantee the rights, liberties and legitimate interests of citizens and entities representing diffuse or collective groups and, because it is conducted by other actors - lawyers, prosecutors, defenders, delegates and attorneys - in addition to the judge - the main actor - whose ultimate goal, for all of them, lies in the concrete justice, there is an epistemological demand for a common and proper deontology: it is legal deontology (genus), where philosophical ethics applied to the judicial office or judicial deontology (species) is inserted, as we shall see below.

General principles of legal deontology

Once the meaning and reach of a whole set of professions that orbit around the concrete just have been determined, it is inevitable to reflect on the means that allow for the attainment of their *telos*, that is, their ultimate end, under penalty of the good ethical postulates remaining merely theoretical.

Among such means, deontological principles - the directive rules of philosophical ethics applied to legal work - and professional virtues - which only make sense if they effectively lead to the ultimate end of the work under study - occupy a fundamental place.

Otherwise, virtues would be like a kind of door that opens to nothingness or emptiness. If the *telos* is removed or replaced by the mere personal interest of the professional, professional virtue loses its rectitude and is reduced to mere technical skill.

In this teleological sense, it is essential to affirm that the daily work of the judge - as, incidentally, of other legal professionals - implies (MARTINEZ DORAL, 1960:356) "an effort and a constant tension towards the concrete justice (legal justice and natural justice), seeking that each one has his or her own, by reason of their nature, the law or a pact or convention" (in free translation).

Therefore, we find ourselves before a never finished work and that always includes an (VILLEY, 2008:57) "even better". On the other hand, in this same work, by virtue of this continuous tension, the personal commitment in the search for truthful intellection also occupies an important place.

As Villey (2008:81) points out, "jurisprudence, as the craft of the just and the unjust, implies an effort toward truth quite analogous to that of philosophy," (free translation) along the lines of Aristotle (2009:280)[19], for whom "morality and law are primarily a matter of truth" (in free translation).

Kalinowski (2018:242), in the same vein, understands that "the judge's work should not leave aside any evaluative element and that it should not be reduced to the strictly put and descriptive, quite contrary to the positivist postulate of absolute requirement of separation between morality, truth and law" (in free translation).

[19] Nicomachean Ethics, L.VI, 9, 1142 b.

Having said this, we can affirm that legal deontology includes two principles that, due to their amplitude and generality, enjoy greater ethical weight than the others that follow them and are even applicable to all intellectually free professions. They are as follows:

a) Principle of acting according to science and conscience;
b) The principle of integrity and professional honesty (seeking the good of others and serving the common good).

The other principles are more restricted to the legal world and complement the first two. They are as follows:

a) Principle of professional secrecy;
b) Principle of professional independence and freedom;
c) Principle of diligence;
d) Principle of disinterest or of social function;
e) Principle of professional loyalty.

All these principles have been expressly recognized and rooted for centuries, whether in codified form, or as tradition or custom, or by doctrinal dogma, within the scope of the legal ethics of the most common legal professions: lawyers, prosecutors, defenders, delegates and public prosecutors, in addition to judges.

We shall not dwell too deeply on the analysis of these deontological directives in the legal field, under penalty of exceeding the objectives of this work, added to the fact that the issues involved in such directives are numerous and so varied that they would require an extensive and detailed treatment, already found in other books and authors who deal exclusively with the theme of legal deontology with unparalleled mastery.

The principle of acting according to science and conscience

It is the principle[20] of the principles of legal deontology, in the sense that all ethical evaluations of professional activity may converge on it. As Solo Nieto (2010:593) points out

[20] Regulated by chapters I, IV and VI of the Iberoamerican Code of Judicial Ethics and chapters II and X of the National Magistrates' Code of Ethics.

> the deontological principle of universal reach that requires acting according to science and conscience obliges one to discern good from evil, to distinguish what can and should be done and what should be avoided, since the answers of the judge - and even of the other operators of the law - must be elaborated, in the uncertain course of the process, in the light of some moral principles that endow them with meaning and efficacy.

The principle in focus refers, first of all, to the obligation of having the theoretical and dogmatic knowledge required to act correctly. It presupposes an entire body of scientific knowledge capable of making someone the holder of a profession.

Secondly, the principle emphasizes freedom and personal responsibility for acts practiced or omitted. In other words, the legal professional, especially the judge, must know how to exercise practical reasoning, to the point of being able to value the legal and moral implications of his decisions in each case under consideration.

As for science, in our forensic practice, we must work with the greatest possible technical perfection: a well-finished job allied to permanent training. We must achieve excellence in our daily work, in the search for an "even better" (VILLEY, 2008:57). At this point, the anthropological image of the Aristotelian *spoudaios* as a deontological model is very helpful.

Miralles (2008:86) explains this image by saying that

> ethics is not for Aristotle a theoretical discipline. It is fundamentally a practical matter. It does not consist so much in reflecting on the metaphysical relationship between the moral good and the perfection of man, but in investigating the concrete possibilities that human beings have to achieve their fulfillment and their happiness through their free elective judgments. In this line, Aristotle himself has already rightly defined man as "desiring intelligence and intelligent desire" (EN, L.VI, 2, 1139b). In his *Nicomachean Ethics*, he also stated that the ethical model cannot be other than that of the decisive man, who has had his powers actualized to the maximum, who seeks the "even better," who possesses the habit of the ethical and dianoetic virtues, the magnanimous man (*spoudaios*), in a word, the modes of being that arise from similar operations (EN. L.II, 1103 a-b) (free translation).

The requirement of the Greek *spoudaios*, this man endowed with maturity and practical rationality, should be taken by the legal professional, especially by the judge, who is given the task of deciding disputes. Dogmatic knowledge cannot be considered exhausted merely because of the possession of an undergraduate or graduate degree.

The good legal professional has the moral duty to maintain and update his studies throughout his professional career, because negligence, carelessness and neglect in the task of continuing education are a danger to which one must always be alert.

It is necessary to accompany the legislative modifications, the new jurisprudential tendencies and the advances in legal dogma, however teratological they may seem to the critical-professional eye or to the common sense of those who receive these advances that, in fact, in our vast professional experience, are often true retrogressions. But to conclude in this sense, it took study.

The judge, then, in addition to this, is also required - because he is legitimized to resolve human disputes - to have knowledge of the social and historical context in which he has lived, in addition to a restless tendency to seek a rich and broad extra-legal cultural formation.

As for conscience, it is important to distinguish it, in the strict sense, from the moral system or the code of ethics of a person or of the community in which he is inserted. Its postulates are not identified with conscience, but are part of personal or collective morality, which will include judgments and attitudes supported by freedom of expression or freedom of religion.

Nor does consciousness grant man absolute autonomy in terms of his being able to decide about good and evil. When Aristotle (2009:190)[21] defines man as "desiring intelligence or intelligent desire," he means that man's intelligence is capable of unveiling, in his deepest recesses, the existence of a moral law that blows to his heart and conscience, as pointed out by such diverse exponents as St. Paul and Rousseau.

Thus, conscience is not the ultimate source of human morality, that is, we do not grant ourselves our own moral principles. Conscience interprets and applies the first principles of practical reason in a given situation. Through conscience, reason recognizes the existence - and does not create them *ex nihilo* - of these principles while personalizing them.

To act with conscience consists in acting according to one's intrinsic dignity and the demands of one's personal being. In the end, (FINNIS, 2000:99) the ethical quality of a person's behavior depends on conscience. Conscience is the meeting point between certain ethical principles, of absolute validity, and personal singularity.

All this has a close connection with professional conscience[22], that conscience supported by the *ethos* of a particular occupation. The famous "call for conscience" is nothing more than (LEGA, 2003:70) "an objective parameter that is configured in relation to an ideal or abstract type of professional that possesses moral and technical skills for the exercise of the profession" (free translation), even if it includes, case by case, certain elastic margins of interpretation, but without tolerating excessive oscillations.

[21] Nicomachean Ethics, L.VI, 2, 1139 b, 5-10.
[22] Regulated by chapter II of the Iberoamerican Code of Judicial Ethics and by chapter III of the Code of Ethics of the National Magistracy.

Finally, acting in conscience is the moral ideal in a serious deontological approach. Such an ideal is not a utopia, because, in our forensic experience, we know of many examples of impeccable deontological behavior. These examples do not obey a simple behavioral spontaneity.

They are the result of a constant and methodical education of professional conscience, which does not imply a limitation of professional freedom, unless one confuses - mistakenly - professional freedom with professional libertinism, a very common reality nowadays, in which many preach a freedom of omnipotence that, deep down, is no longer a freedom of quality and is reduced to a freedom of indifference.

To have an adequate education is a prerequisite for a correct exercise of freedom, since this condition allows us to act with knowledge of all the dimensions and consequences of personal action in the professional field, and makes us able to gain professional prestige among other professionals.

A true education of professional conscience involves a demand for:

a) sincerity, integrity and righteousness of life, in order to (FINNIS, 2000:110) "avoid the deviations caused by sophisms that the intelligence creates so easily to 'rationalize' the excesses, opportunist behaviour and unmeasured self-love" (free translation);
b) the gradual acquisition of ethical science, in an effort to know and vivify the ultimate meaning and essential values of the profession, as well as its deontological principles.

In the remaining points of analysis of conscience - types of conscience, evaluation criteria, circumstances, the agent's intention -, we refer the reader to the homonymous topic previously discussed, for total detachment from redundancy.

The principle of integrity and professional honesty

The principle in question[23] may be understood as a concrete manifestation of the classical precept *honeste vivere*[24], originating in Roman Law. The integrity and honesty that should

[23] Regulated by chapters VIII and XIII of the Ibero-American Code of Judicial Ethics and chapters V and XI of the National Magistrates' Code of Ethics.

[24] "In analyzing those presented in the Digest as fundamental precepts of Law: - '*Juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere*' (D., I, 1, 10) (...) according to the prevailing opinion, these three principles reflect three major philosophical currents in Greece. Do no harm to others' would translate

characterize the performance of a professional is precisely the basis of trust that society as a whole has with respect to its class.

In our case, what society may come to have as common sense about Law will rest on the consciences of the professionals of this professional branch. Therefore, legal ethics not only interests society, but is also fundamental to society's own experience with Law.

The absence of this principle would generate a very serious repercussion, to the point of affecting the cohesion of society itself and, thus, what has already been called (CORTINA, 2003:15) the "hermeneutics of distrust" would be installed, the formation of a legal discourse endowed with ambiguity and vagueness that generates, on the part of the citizen, as the addressee of this discourse, a reaction of distrust in an expectation of a communicative elaboration endowed with rationality.

The transcendence of this principle is, above all, greater in the judicial orbit. Indeed, the entire system of justice in a rule of law is built upon the trust that citizens have in those who will make fundamental, and often unchangeable, decisions about their lives, rights, and property.

Bacon (2000:211-212) warns that

> the judge must be more cultured than ingenious, more revered than applauded, more reserved than exposed. Over all these things, integrity is his proper dowry and virtue. An impure sentence does more harm than many impure examples: for these corrupt the stream, but that corrupts the source. The judge has to prepare his way to arrive at a just sentence. Let no judge be so ignorant of his own law as to believe that he is not permitted, as a principal part of his office, a prudent use and application of the laws.

A lawyer once asked me in a lecture whether it was possible for a judge to be upright and honest in the professional but not in the personal sphere. Evidently, this question involves, in its core, a broader proposal that is beyond the limits of this work: a kind of ethical-judicial flowering of virtues in the person of the judge.

I replied that, necessarily, a judge does not need to be upright and honest personally to be so professionally, for we must learn to look at the intentionality of his or her moral action, whose motive is precisely this intentionality, capable of directing his or her ethical acts well or badly.

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the Epicurean orientation of a social order in which each man was only obliged not to harm others. The Law would have the purpose of defining the limits of individuals' actions, in a negative way, not imposing the duty to do something, but the obligation not to cause damage. The second principle: "live honestly", would be of Stoic inspiration, according to the ideal of achieving happiness with faithful subordination to nature, to the dictates of reason. The last of the precepts - to give to each his own - would already represent the Aristotelian lesson of distributive justice, as proportion of man to man according to his merits (...) In conclusion, we think that the so-called *praecepta iuris* do not help us to clarify the distinction possibly existing in the Roman world between Moral and Law, showing rather the high moral understanding that the jurisconsults had of the juridical life (REALE, 1993:632)" (free translation).

In other words, a judge may act with integrity and honesty in the work environment, not because he is a man who, behind the robe, lives the virtues of integrity and honesty, but because, for example, he has a lot of vanity for his image in front of his team of servers or he carries a certain fear of some correctional sanction.

Then, the moral action practiced by him enjoys deontological support, because he meets these principles in moral action, but his intentionality is distorted: he does not seek the good itself - integrity and honesty - but only the appreciation for his personal vanity, in the first case, or, in the second case, for a human respect.

Seen under the strict angle of an ethics of virtues, a judge, to be upright and honest - as a human being - will have much more ease and inclination to be upright and honest, not only professionally, but in any area of his life - as a father, teacher, researcher, citizen, sportsman, etc.. - with more constancy and, above all, rectitude of intention.

Professional honesty and integrity imply for legal professionals, but especially for the judge, the search for practical truth within the forensic litigations, in favor of the delivery of the concrete justice in the jurisdictional provision for which he has been provoked.

It is a misunderstood aspect, since, at present, there is a progressive abandonment, in many orbits of social life, of the idea of practical truth, driven by contemporary philosophical postulates - anti-metaphysical or political philosophy - that are disinterested in or even deny the search for theoretical truth, to be reflected in the truth of praxis.

Marías (apud LEGA, 2003:537) proposes that

> a program for the 21st century could be the reconciliation of man with truth. A return to Socrates. This would be, by assumption, the reconciliation of man with himself, that is, with his personal condition, with his irrenounceable freedom, with his double realization as man and woman, with his historicity, with his mortality and with his hope and at the same time with his absolute need to search for the truth in order to be nourished by it. When man accepts the truth of things, he accepts himself.

Practical truth[25] is a contingent truth, changeable according to the circumstances of the concrete case. It is the conformity between the dictates of practical reason and the demands of reality itself. The just means is the conformity of desire and action to the rational rule, which is their measure.

[25] According to Merleau-Ponty (1960:160), "practical truth is the memory of everything one has encountered along the way" (free translation).

If this rule also has its own measure, this measure is not another rule, under penalty of induction to infinity, but the reality of things itself and (GAUTHIER, 1992:71) "the conformity of the spirit to reality is not just means, but practical truth" (free translation).

Since practical truth is associated with all social praxis, Aristotle specifies several of its forms (individual, domestic, legislative, and political)[26] and ends up engaging all of society in a macro prudential process, so that all individuals become committed to the management of practical truth.

The problem of this aversion to practical truth arises when we remember that the realization of the concrete just inevitably demands an attempt to approximate reality. If a philosophy of law consciously gives up the search for practical truth, at the same time, it also gives up, ultimately, the inclination for the concrete just.

A good example of this is the philosophy that inspires the penal transaction. The basis of negotiated justice is precisely the renunciation of the search for practical truth in the criminal process in favor of the conclusion of an agreement in which, on one hand, the author of the fact exercises social charity or pays a fine and, on the other hand, the state prosecution system gets rid of one more lawsuit.

At the bottom of the perversion of this system lies a markedly utilitarian criterion: the most important thing is not that the system be fair, but that it be effective. Justice is not totally marginalized, but utility has taken its place and become an untouchable canon.

And what is the end of any civil or criminal trial? The search for the real truth, to the extent that the evidence gathered in the exhaustive cognition phase allows it. In other words, the process is a procedure for approximating the practical truth in the concrete case.

Ollero (1998:121), regarding the practical truth that we defend here, points out that

> all legal activity seems to us, in fact, as practical philosophy, which captures and conforms, in turn, - determines - these objective demands of justice, positivating them existentially. To positivize law - to do justice - is, therefore, to be willing to know a practical truth, inevitably to be done (free translation).

[26] *Nicomachean Ethics*, L. VI, 1139 a. According to Aristotle, individual prudence guides the decisions of the individual; domestic prudence, family decisions; legislative prudence, the decisions of the legislator; political prudence is divided into discretionary and judicial: the former corresponds to the prudence of the individual invested with the power of deliberation on public affairs; the latter guides the decisions of judges in judicial proceedings.

Principle of professional secrecy

Intimacy is an opening of the person inward and, as a deontological principle[27], reflects one of the main characteristic notes of the notion of person. However, intimacy is not only (YEPES STORK, 2006:71-72)

> a place where things are kept to oneself (...), but it is also, so to speak, an inside that grows, from which unprecedented realities are born and, therefore, the person is an intimacy from which novelties spring, an intimacy that is creative and capable of growing. As a consequence, it is not only a matter of protecting something inside from the gaze of others, but of ensuring that this "inside" guides, without illegitimate intrusions, the full development of each person according to his or her intrinsic dignity.

Hence, secrecy finds its ultimate foundation (PRATS, 2004:167) both in the professional and personal orbits, in the protection of intimacy and, ultimately, in personal dignity. It is a fundamental requirement, especially recognized and valued in Western societies.

Thus, professional secrecy would protect not only data of an intimate nature, but also many public facts known by reason of the professional exercise. Therefore, such is the transcendence of secrecy that nowadays it enjoys not only deontological recognition, but also civil and criminal sanctions.

Secrecy comprises not only the non-externalization of information obtained through this communicative channel, but (REBOLLO DELGADO, 2000:289) "the habits of discretion, prudence, moderation and care with oral and written language" (in free translation). In the case of the judge, this protection corresponds to all aspects related to the matter of the case to be judged, in addition to the personal data of the parties involved, even if without judicial secrecy and, otherwise, *a fortiori*.

Principle of independence and professional freedom

The principles of independence and professional freedom[28] have a long and deep tradition in the legal professions, especially in the reality of the judge. Although they are deeply and closely

[27] Regulated by Chapter X of the Iberoamerican Code of Judicial Ethics and by Chapter IX of the Code of Ethics of the National Magistracy.

[28] Regulated by chapters I and VI of the Iberoamerican Code of Judicial Ethics and by chapter II of the Code of Ethics of the National Magistracy.

linked duties, each one has, from a common core, its own manifestations within the scope of ethics and deontology.

The principle of independence refers to the absence of any form of interference, interference, attachment or pressure from outside that seeks to influence or divert the action and decision of the legal professional. It has a fundamentally negative dimension.

Independence allows the legal professional, especially the judge, to remain on the plane of objectivity, from which it is possible to distribute the concrete just. Such independence is a (SUÁREZ VILLEGAS, 2001:92) "phatic condition of freedom, without which the legitimacy of the professional's performance, especially the jurisdictional, would be seriously shaken in terms of institutional confidence" (in free translation).

In relation to the judge, the principle of independence is the cornerstone of all his or her activity and, by virtue of this, added to the fact that it is a safeguard for the very recipients of his or her decisions, the judge has the power and duty to ensure its observance and resist any attempt to curtail or suppress it at the initiative of the other constitutional powers.

A judge who does not enjoy independence may be anything but a judge. Miralles (2008:271) states that

> in fact, the independence of judges in the exercise of their function and the absence of all types of interference is of such ethical transcendence that it may be considered one of the golden keys to any rule of law and any system of justice that ensures individual rights and guarantees.

The principle of independence, in the judicial sphere, includes, fundamentally, two dimensions:

a) the dimension referring to the State's organization, in order to better distribute institutionally the judicial public service, so as to allow a capillary access in the social environment;
b) the dimension referring to the personal and deontological status of each judge.

We will not deal with the first dimension in this paper, as it is far beyond its scope. However, in the second dimension the judge must, in practical terms, be free from pressures coming from

a) the other state powers, especially from the political power, which may be qualified as (FISS, 2003:60) "the phenomenon of political insularity" (free translation);
b) the other members of the judiciary's institutional body, respecting the hierarchy of the career and the appeal levels of jurisdiction;
c) the interests at stake and involved in the process in which he must say the law;
d) the press and public opinion, because, as a rule, their points of view with respect to cases that generate social repercussion usually generate more heat than light.

In summary, we can state that (LARKINS, 2006:611)

> judicial independence refers to the existence of judges who cannot be manipulated for political gain, who are impartial with respect to the parties to a judicial dispute, and who form a judicial organization that, as an institution, has the power to regulate the legality of governmental actions (free translation).

On its part, the principle of freedom is characterized by the legal professional's capacity for self-determination in making decisions that affect his activity. It requires the fullest autonomy from him and, therefore, it has a positive facet, unlike the principle of independence.

This principle can be brought back to the ethical demand, as previously stated, to act according to science and conscience: strictly legal matters would have a greater relationship with science, and the intertwined moral issues would keep a greater organic bond with the conscience of the legal professional.

The principle of professional freedom has very peculiar contours in the judicial office, but we will only deal with the question concerning the decision-making margin that a judge enjoys when making his or her decision in a case. It is a subject that intertwines philosophy of law and judicial deontology.

Law does not belong to the realm of the "ready and finished", but to that of practical reason. Therefore, we must keep in mind that one's own does not always jump to the judge's eyes in a diaphanous and unquestionable way. As a rule, the judge does a job of "procedural mining": he separates what is relevant and should be the object of motivation in the sentence from what is not.

There also lies an ethics of its own. The judge must speak and motivate according to Law[29] and according to the factual, evidential, and legal elements contained in the case records. On this point, the explanatory memorandum of the Iberoamerican Code of Judicial Ethics (VIGO, 2008:14) states that

> It is in this principle that we find the greatest innovation and originality introduced by the Model Code. In effect, the central idea is that a decision that lacks motivation is, in principle, *es, en principio, una decisión arbitraria, sólo tolerable en la medida en que una expresa disposición jurídica justificada lo permita (art. 20)*. It is worth noting that the term used in relation to unmotivated decisions is "tolerate" and that in order to achieve this it is necessary that some "justified" legal provision allows it. The ethical judicial duty to motivate consists in *expresar, de manera ordenada y clara, razones jurídicamente válidas, aptas para justificar la decisión (art. 19)*. Consequently, this requirement is a request that refers to formal logic and other criteria that are not strictly formal, but that have, as a limit, the Law in force (art. 27). If on the one hand the duty to state reasons refers to matters of fact as well as matters of law, it acquires a specific weight when it comes to decisions that restrict or deprive rights, or when the judge has a discretionary power to adopt the decision. The motivation does not consist of a mere invocation of the applicable rules or a mere generic reference to the evidence produced. The judge must try to point out the weight or significance that factual or normative arguments acquire in order to support the decision adopted. The purpose of the obligation of motivation (art. 18) is to legitimize the judge, facilitate the proper functioning of procedural challenges, control the judge's power and contribute to the justice of the decisions, endowing them with rationality and reasonableness (emphasis added by the author).

The judge (CASTRILLO, 2006:152) "must be able to establish with all sense and objectivity the narration of what happened by means of an intelligent and comprehensive valuation of such elements, in a way that this task attends, motivatingly, to the requirements of rectitude and prudence that must preside over all the procedures directed to the attainment of the practical truth"[30] (free translation).

Legal hermeneutics, a branch of the philosophy of law, has sought to highlight the complexity involved in the activity of subsumption of the Law, not only with regard to the highlighting of concrete data, but, above all, with regard to the interpretation of the normativity involved: the facts, the evidence and the laws involved in the concrete case do not appear before the judge in a mathematical manner.

[29] Regulated by Chapter III of the Iberoamerican Code of Judicial Ethics.

[30] This subject involves judicial deontology regarding facts - which involves respect for fundamental rights in obtaining evidence, evidence valuation and rational motivation - and judicial deontology regarding Law - which deals with the election of applicable normativity, its formal validity and constitutional legitimacy, and the delineation of the meaning and reach of this normativity. We will not elaborate on this subject, at the risk of exceeding the boundaries of our work.

As for the facts, they will not always appear in a transparent and unquestionable way. Witnesses may contribute contradictory versions and the evidence may not be conclusive. The judge must carry out a prudential judgment, relying on his science and experience, on the alleged and proven facts of the case.

This explains why the judge cannot be required, always and in every case, to have absolute certainty. Often, this certainty will be impossible to attain. In this case, a moral certainty that excludes all founded or reasonable doubt about the facts will be sufficient to dictate a sentence.

On other occasions, all moral certainty will be obtained by means of a sum of indications and evidence that, taken singularly, would not lend themselves to founding true certainty, but that, taken as a whole and on full and exhaustive cognition, prevent a reasonable doubt from arising.

Moral certainty differs from absolute certainty, which does not leave open the remote possibility of different options. On the other hand, moral certainty is distinguished from quasi-certainty (or probable awareness), which does not exclude all reasonable doubt and opens the door to a well-founded fear of error, so as not to provide a sufficient basis for a judicial resolution that reflects the objective truth of the facts.

In relation to the normativity involved, the coherence in the motivation of judicial decisions makes the articulation between legal argumentation and the postulates of its axiological justification increasingly complex. In this vein, legal hermeneutics becomes necessary in order to provide the legal professional, especially the judge, with a minimum repertoire of theses on the rational justification of decisions.

The effectiveness and enforceability regarding moral goods and constitutional rights, as well as the political and symbolic content subjacent to the prism of judicial sentences, makes jurisdiction an increasingly open field for the antagonism of philosophical lines between its protagonists and for the improvement of the narrative fabric of the decision handed down, with a view to elucidating the legal hermeneutics contained in a given concrete just.

This uncommon appeal for legal hermeneutics, in its most varied shades, arises as an effect, in the field of Law, from the philosophical problem of hermeneutics, whose deontic potentiality was perceived by many philosophers from the middle of the 20th century on.

In Germany (Esser, Kaufmann and Hassemer), in Italy (Viola, Zaccaria, D'Agostino and Amato), in France (Ricoeur), in Spain (Ollero and Serna) and even in the Anglo-Saxon world (Dworkin and Marmor) there have been attempts to face the crisis of the normative legal positivism through the use of the theoretical tools of hermeneutic philosophy.

Since the beginning of the 20th century, hermeneutic philosophy has moved between two great poles. On the one hand, it assumed the condition of a discipline in charge of methodically rationalizing the so-called sciences of the spirit; on the other hand, it sought an ontology centered on the strict interpretative character of human reality, a notion elaborated by Gadamer[31], based on Heidegger's teachings.

This variant strongly influenced the genesis of legal hermeneutics which, contemporarily, has, among its main objectives, to dismantle the concept of law inherent to the positivist tradition: a set of rules issued from a unitary center of power and destined to an immediate and mechanical application[32].

Thus, legal hermeneutics avoids, as in the epistemology of Kelsenian normativist positivism, the reduction of all judicial rationality to legal rationality, because when this happens, not only is the reality of the process of subsumption of Law ignored, but also the value of the conscience of the legal professional is completely despised.

It is worth emphasizing that the judge, by subsuming the facts to the normativity established, gives life to the law, because he contributes positively to making the legislative prescription a reality and, therefore, becomes co-responsible with the legislator in its social effects.

[31] Gadamerian hermeneutics is considered a post-metaphysical, linguistic and non-realist philosophical elaboration, but which, at the same time, takes up many Aristotelian themes and rejects the emancipatory characteristic of the standard version of philosophical hermeneutics (Carnap and the Vienna Circle), through its reference to pre-understandings and the legacy of tradition in thought.

[32] Hans Kelsen, the greatest exponent of legal positivism, recognized (RODRÍGUEZ PUERTO, 2011:2-3) "the impossibility of completely directing the legal decision from the content of the norm. The ambiguity inherent in human language makes it difficult to be precise about the meaning and the use of interpretative methodology cannot effectively overcome uncertainty, according to Kelsen, so that the decision will depend on the arbitrary choice of the interpreter. Kelsen indicates that this decision is not legal by the quality of the arguments that support it, but by the quality of its author: only the will authorized by the system creates law. The legality of a decision will be substantiated only by a formal requirement". It is interesting to note that the concept of magistrates creating law by delegation of the sovereign, which removes any purity from his theory, was already in Hobbes and Bentham. For Kelsen, the choice of elements, often value-based, that the judge uses as motivation for his decision lacks objectivity, because it is not something endowed with rationality. It derives from the personal ideology of the judge or of a community that, in the end, implies admitting the irrationality of law itself: any judicial affirmation is valid as law if it is not reformed by a higher instance.

The principle of diligence

Diligence, as a deontological principle[33], is the professional habit of diligence, such as speed in the processing of cases, punctuality in appointments, professional interest and motivation, attention and thoroughness in studying the various aspects of a case, and the diligence for professional improvement, whose effects are evident in the quality and outcome of professional work, in its technical and moral excellence.

Diligence must be a constant and permanent attitude, forged throughout the time of a career and, for this, it demands the concurrence of a determined will. In effect, diligence, lived as a professional virtue, is an authentic thermometer of the will to serve and to give due attention to the recipients of the legal work.

Regarding judicial activity, it is worth highlighting the requirement for speed in the procedural process, due to its interest for the correct administration of justice, because in our days, unjustified delay can be synonymous with injury or denial of justice.

On the other hand, a fair distribution of justice requires a certain distance and time. Therefore, the judge has the prerogative to define the time he or she will deem necessary to be able to carefully and calmly assess the circumstances and characteristics of each case, in order to render a fair decision.

Furthermore, many cases demand a slow updating of doctrine and jurisprudence and, in these cases, to be swift in judging a case can be synonymous with negligence. In other cases, the sentence needs to rest for a few days so that, when re-read, it can be made from the point of view of an "outside observer", in order to eliminate possible gaps or contradictions in the analysis of a complex range of facts and evidence collected during the procedural instruction.

As a corollary, it is advisable to be on the alert against all measures that, many of them, not infrequently coming from the top bodies of the courts, under the justification of reducing the excessive slowness of judicial administration, lead, in practice, to a reduction in the time that every judge needs to sentence a case.

[33] Regulated by Chapter XII of the Iberoamerican Code of Judicial Ethics and by Chapter VI of the Code of Ethics of the National Judiciary.

Principle of disinterest or social function

The principle of disinterestedness or social function[34] leads us to the idea that all professional activity is not only a means of personal fulfillment, but that it exists at the service of others and consists of a valuable contribution to the common good of a society.

As an effect of this directive, the legal professional and, above all, the judge, should orient his or her work for the benefit of society and, on this point, since Rome, the history of law has always recognized the high degree of personal and social transcendence of judicial work in relation to humanity as a whole.

Why? Because a just social order, in which everyone has what is rightfully his or her due, is the premise of social peace, and any rupture or change in this correct dimension produces an anomaly or social disorder: an unjust social order.

An adequate ethical attitude in this area will manifest itself, among other things, in the exercise of judicial power as a service, with which many consequences and practical behaviors will follow, such as the rejection of any position of arrogance or superiority, the ability to excel in study and reflection to achieve the necessary moral certainty in their practical judgments, and the willingness to listen to the parties and lawyers for as long as necessary.

In short, the judge must live his or her work - among so many other dispositions of diligent will and always with the eagerness to learn and to serve better - in a manner that reflects on the recognition of others in terms of generosity and dedication to the cause of justice.

Principle of Professional Loyalty

The principle of professional loyalty is the ethical way in which the legal professional's actions are articulated in relation to those who receive his or her work, so as to subordinate professional competence to general cooperation. It is intertwined with the principles of professional integrity, professional secrecy and disinterest[35].

Multiple demands derive from this directive: the duty to act in good faith, transparency[36] and truthfulness, to keep one's word, to fulfill promises, to treat the addressees of the justice system,

[34] Regulated by the Explanatory Memorandum (items III, IV and VI) of the Iberoamerican Code of Judicial Ethics and by the preamble of the Code of Ethics of the National Magistracy.

[35] We refer the reader to the footnotes regarding the principles indicated.

[36] Regulated by Chapter IX of the Ibero-American Code of Judicial Ethics and by Chapter IV of the Code of Ethics of the National Judiciary. It is important to note that, in the explanatory memorandum of the Ibero-American Code

as well as other professionals, in a cordial and respectful manner, to respect the rules of the procedural game, among many others.

For the judge, in addition to the aforementioned requirements, we can include the duties of clarity, concreteness, precision and order in the grounds for decisions, and the duty to raise impediments or suspicions on one's own initiative.

If the attitudes that violate this principle are, for the most part, devoid of deontological sanction, on the other hand, we should have in mind that such attitudes, given their great social transcendence, lead to the disapproval of the legal class as a whole and that, in practice, consists of a harsher sanction than the deontological one itself.

FINAL CONSIDERATIONS

Having analyzed the main attributes of professional ethics and legal deontology, with due emphasis on the nuances that, within this deontology, involve judicial deontology, we believe that the judge should be the first subject to be fully aware of the transcendence and social repercussion of his professional work.

He must know how to value the importance of the functions to which he is called, aware that things are distributed, a premise according to which he must be able to point out and distribute each one's own. Aware of the goods and interests that are at stake, the judge must be consistent and seek to acquire due knowledge of the raison d'être of his own activity, of the ethical and deontological principles that inspire it, without prejudice to the personal requirements that derive directly and indirectly from them.

The beauty and ethical responsibility of judicial labor have been recognized since Ulpian who, in the early years of our era, defined the task of jurisprudents - in them included the judicial pretores, those who administered Roman justice -, as set forth in the Digest (Justinian, 2014:29), *in divinarum atque humanarum rerum notitia, iusti atque iniusti scientia*.

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of Judicial Ethics (VIGO, 2008:18), "the requirement of transparency is based on the perspective that the judge does not appear as someone who conceals information (whose duty is to offer it) or who generates distrust about the way he or she performs. This duty is reflected in art. 60, which requires the judge to avoid behavior or attitudes that may be understood as unjustified or excessive search for social recognition and, in positive terms, obliges the judge to perform his or her duties without pursuing personal goals. In contemporary societies, transparency has a prominent projection in relation to the media, therefore, in addition to art. 58 recalling the generic duty of publicity and documentation of judicial acts, the following article requires the judge to be equitable and prudent so that the rights and legitimate interests of the parties and lawyers are not prejudiced" (emphasis added).

In free translation, "jurisprudence is the knowledge of things divine and human, the practical science of the just and the unjust". In this rich formula, an irrefutable fact is condensed: the professional ethical excellences, as acquired human qualities, enable the legal professional, especially the judge, to achieve the goods that are internal to the judicial praxis and whose lack effectively prevents them from realizing them.

For this reason, it is not enough for a community to have a technically competent judge who dominates all legal dogmatics and ethics. It is necessary that he or she possess some character traits, intrinsic to the vocation to the magistrature, so that, rather than being a good judge - an expert in theoretical rationality -, he or she is a good judge - an expert in practical rationality - and, in this way, provides that the improvement of his or her moral character, especially in the professional sphere, implies the ethical improvement of his or her prudential action and the qualitative refinement of the jurisdictional provision.

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Sobre o autor:

André Gonçalves Fernandes
Graduado em direito pela Faculdade de Direito do Largo de São Francisco (USP). Graduado em filosofia pela Faculdade de São Bento (SP). Mestre, Doutor, Pós-Doutor e Pesquisador em Filosofia e História da Educação pela UNICAMP (Grupo Paideia). Pós-Doutor em Lógica, Epistemologia e Filosofia da Ciência pela UNICAMP (CLE). Pós-Doutor em Antropologia Filosófica e Ex-Visiting Scholar pela Universidade de Navarra (ESP). Parecerista das Revistas Jurídicas IURIS POIESIS e DIGNITAS (Qualis A2) e articulista do Gazeta do Povo (Curitiba). Professor Titular de metodologia jurídica e de filosofia do direito do CEU Law School e da Faculdade Belavista. Professor de antropologia filosófica, hermenêutica, teoria do conhecimento e filosofia moral da Academia Atlântico e do ISEP. Juiz de Direito (TJSP). Ex-Juiz Formador da EPM (Escola Paulista da Magistratura) e da ENFAM (Escola Nacional de Formação e Aperfeiçoamento de Magistrados (2013/2018). Ex-articulista do Correio Popular (Campinas), com mais de 700 artigos não-indexados publicados (2002/2019). Ex-Moderador Familiar pelo Instituto Brasileiro da Família (IBF) (2018/2022). Ex-Consultor da Comissão Especial de Ensino Jurídico da OAB/SP (2014/2016). Membro da Associação de Direito de Família e das Sucessões

(ADFAS), do Comitê Científico do CCFT Working Group, da União dos Juristas Católicos de São Paulo (UJUCASP), da Comissão de Bioética da Arquidiocese de Campinas e da Academia Iberoamericana de Derecho de la Familia y de las Personas. Detentor de prêmios em concursos de monografias jurídicas e de crônicas literárias. Conferencista e escritor de livros publicados no Brasil e no Exterior e autor de artigos científicos em revistas especializadas. Titular da cadeira nº30 da Academia Campinense de Letras e membro honorário da Academia de Letras da Faculdade de Direito do Largo de São Francisco. CEU Law School, Direito, São Paulo, SP, Brasil e UNICAMP Universidade Estadual de Campinas, Campinas, SP, Brasil
Lattes:http://lattes.cnpq.br/4949379610941712 ORCID: http://orcid.org/0000-0002-3474-3297
E-mail:fernandes.agf@hotmail.com