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ETHICS IN FINANCE AND PUBLIC POLICY. THE IBERCORP AFFAIR

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Abstract

The "Ibercorp affair" was front-page news in Spain at various times between 1992 and 1995. In itself, there was nothing particularly new about it: a newly formed financial group engaged in legally and ethically reprehensible behaviour that eventually came to light in the media, ruining the company (and the careers of those involved). What aroused public interest at the time was the fact that it involved individuals connected with Spanish public and political life, the media and certain business circles. Above all, it demonstrated the personal, economic, social and political consequences of a business culture based on the pursuit of easy profits at any price (what came to be known as the *cultura del pelotazo* or "get rich quick culture"). Again, this is all too familiar in business ethics. But it served to goad Spanish society into a rejection of such behaviour. This article describes the facts and their ethical implications.

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Introduction

On February 12, 1992, the Madrid newspaper *El Mundo* gave front-page coverage to the news that the management of Sistemas Financieros S.A., a company belonging to the Ibercorp group, had falsified the list of names of those who had sold shares of the company, effectively concealing the identity of certain public figures, including the Governor of the Bank of Spain, Mariano Rubio, the former Minister of Economy and Finance, Miguel Boyer, and his wife, Isabel Preysler, and other prominent members of Spanish society. This sparked off one of the biggest economic and political scandals in Spain in the last quarter of a century. Two years later the plot thickened when Mariano Rubio and other executives of the Ibercorp group were charged with tax evasion.

The purpose of this article is to give a succinct account of the Ibercorp affair and its ethical implications (1). It consists of an an introduction to the context within which small banks operated at that time in Spain, followed by a description of the group's background, its consolidation, the difficulties that began to emerge, the group's political presence and public image, the court cases and sentences, and the uncovering of the "Rubio affair" in 1994. The article concludes with some reflections on the ethical and social significance of the Ibercorp affair.

The context: the problems facing small banks in Spain

The economic boom that began in Spain in 1985, the deregulation and liberalization of the financial system and Spain's accession to the European Economic Community ushered in a period of financial euphoria, which had its social and moral counterpart in the aggressive manner in which certain people sought to take advantage of the opportunities to get rich quick.

By the end of the decade the environment had changed dramatically. The stock market crash of October 1987 ruined a large number of businesses; and the credit growth restrictions imposed by the Bank of Spain (from July 1989 to December 1990) combined with the economic crisis that began with the invasion of Kuwait by Irak in August of that year led to a deep recession.

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(1) The article is based on information published in the media. Occasionally, I have also used the book by Jesús Cacho and Casimiro García-Abadillo, *La Estafa. Ibercorp y el fin de una era* (Madrid: Ediciones Temas de Hoy, 2nd ed., November 1992). Despite my best efforts, the accuracy of certain facts and dates cannot be guaranteed.

It is hardly surprising that Spanish banks should have been hard hit, particularly the small banks that had expanded rapidly in the boom years. The fat profits some of them had made came not from ordinary banking activities, but from risky operations that often skirted the boundaries of legality or morality, encouraged by the stock market boom, the entry of new investors into the market, and the lack of clear rules. As the newspaper *El Mundo* put it, "Like so many similar businesses, Ibercorp is the kind of set-up that works in an expanding economy, but is incapable of withstanding a crisis" (1).

The Bank of Spain, whose responsibility it is to inspect and oversee the banking system, always tried to ensure that financial problems, whether of liquidity or of solvency, were speedily resolved. This it did either by granting emergency loans, or by arranging a takeover by another bank, or by having the Deposit Insurance Fund (*Fondo de Garantía de Depósitos*) acquire the troubled bank with a view to reorganizing and then reselling it.

The large banks, which were net lenders to the small banks in the interbank market, sounded the alarm when one of these small banks suspended payments in September 1991. As a precautionary measure, they withdrew credit facilities from twenty banks, which promptly ran into serious cash difficulties. The Bank of Spain came to their aid with loans of some 40 billion pesetas (384 million dollars) to six banks (2).

The Ibercorp group (3)

The Ibercorp group was the brainchild of Manuel de la Concha and Jaime Soto. Manuel de la Concha was a stockbroker, and Chairman of the Madrid Stock Market Council between 1981 and 1987. At the time the scandal came to light, he was copresident of Grupo Ibercorp S.A., president of Ibercorp Bolsa, Sociedad de Valores y Bolsa S.A., and vicepresident of Banco Ibercorp. He was an expert in the securities markets and had close relationships with a wide range of people in high society and the world of finance, economy and politics, for whom he acted as financial adviser or whose assets he managed. One of these people was Mariano Rubio, Governor of the Bank of Spain. The two had been friends since their student days and used to meet informally three or four times a month, often for a game of golf (4).

Jaime Soto was the financial brains of the group. He had held a number of executive posts in banking institutions. He was copresident of Grupo Ibercorp, president of Banco Ibercorp, and vicepresident of Ibercorp Bolsa.

(1) February 20, 1992, p. 53.
(2) The line of credit opened in the name of Banco Ibercorp was for 5.3 billion pesetas (51 million dollars), of which only 4 billion pesetas were operative (this was the amount of the guarantees provided) (*El Mundo*, February 20, 1993, p. 53; *El País*, January 22, 1995. p. 22). According to the audit carried out in connection with the merger of the group, Banco Ibercorp had share capital of around 1 billion pesetas (9.6 million dollars) and a net worth of around 4 billion pesetas (38.4 million dollars). The volume of credit granted by the Bank of Spain was determined in relation to the group's consolidated capital. Dollar equivalents are given at the average exchange rate for each year.
(3) "The Ibercorp group" is used to refer to the entire complex of businesses of the various companies that made up the group to distinguish it from Grupo Financiero Ibercorp S.A., which was one of the group companies.
(4) According to statements made by Mariano Rubio in court on May 20, 1992. Cfr. *La Gaceta de los Negocios*, May 21, 1992, p. 25.

The first joint operation undertaken by de la Concha and Soto was the acquisition of Sistemas AF S.A. in July 1986. Sistemas AF manufactured office furniture, and had been reorganized by Banco Urquijo following a suspension of payments. The acquisition was made by Traya S.A., one of the companies used by the Ibercorp group (1). Traya contributed 244 million pesetas (1.7 million dollars) and the rest was supplied by Banco Urquijo itself in the form of a 1.44 billion peseta (10.3 million dollars) loan. In November 1986 Traya sold part of its holding to Urbiplaner (a front company) and to other companies acquired from the Deposit Insurance Fund (2). Shortly after this, de la Concha and Soto floated 35% of Sistemas AF's share capital on the stock market for 1.2 billion pesetas (8.6 million dollars). The operation was a success, and in a bull market the share price climbed rapidly, so that they were later able to sell the rest of their shares at a substantial profit (3).

In 1986 Manuel de la Concha and Jaime Soto formed a stockbroking company, Investban S.A. (subsequently renamed Investcorp and, later, Grupo Financiero Ibercorp), which was the embryo of the future Ibercorp group. However, the big take-off opportunity came in March 1987, when Investcorp, Manuel de la Concha and Jaime Soto acquired the banking license of Banco Trelles S.A. from Banco Español de Crédito. The bank’s name was changed to Investbanco de Negocios S.A. and, later still, to Banco Ibercorp S.A. (4).

In March 1988 Manuel de la Concha and Jaime Soto bought two companies from the Deposit Insurance Fund: Ibercorp Leasing S.A. and Ibercorp Financiaciones S.A., and in July 1989, Ibercorp Bolsa, Sociedad de Valores y Bolsa S.A. But this was only the visible, "official" part of the group; it was shadowed by a tangled network of companies that served to make the group's operations less transparent (5).

The next step was the purchase in June 1989 of a small mutual insurance company, Munat, which they turned into a limited company and sold to the La Mondiale group. In October 1989 La Mondiale bought 40% of Munat's shares for 1.3 billion pesetas (11 million dollars). (6).

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(1) Traya S.A. was owned by Soto, de la Concha and Scipio, a company that had been bought from the Deposit Insurance Fund by the wife of Juan Antonio Ruiz de Alda, then Deputy Governor of the Bank of Spain and president of the executive committee of the Deposit Insurance Fund. Among Scipio's shareholders was the Governor of the Bank of Spain, Mariano Rubio.

(2) *ABC*, July 6, 1994, p. 82.

(3) According to de la Concha, one third of the shares were sold through Urbiplaner, another third through a British broker, and the rest through various companies used as a cover. The profits obtained through the British intermediary were left outside Spain to evade taxes. Urbiplaner sold 420,000 shares for 1.21 billion pesetas (8.6 million dollars), making a net profit of 1,600 pesetas per share, and evaded income tax amounting to some 200 million pesetas (*ABC*, July 9, 1994, p. 33; September 7, 1994, p. 57; and October 9, 1994, p. 75).

(4) In view of the serious banking crisis of the late '70s, the Bank of Spain was very reluctant to grant new banking licenses. For this reason, the most commonly used method was to buy the license of an existing bank that had either had its assets frozen or that had suspended payments, as was the case with Banco Trelles.

(5) According to the magazine *Tribuna*, the Ibercorp group comprised 33 companies: five directly subordinate to Banco Ibercorp, 4 investment funds and 24 companies set up for specific operations in order to conceal the identity of their owners. Over time, many more companies were discovered.

(6) The 1990-1991 audit showed that Munat's net worth was not as satisfactory as it had seemed at the time of its sale to La Mondiale. The auditors recommended writing down the value of the buildings by 993 million pesetas (9.5 million dollars, an amount equal to the revaluation carried out by Ibercorp) and identified a capital loss of 138 million pesetas (1.3 million dollars) resulting from the purchase of shares in Grupo Financiero Ibercorp, and an outstanding debt to former members amounting to 387 million pesetas (3.7 million dollars). Cfr. Cacho and García-Abadillo, *op. cit.*, p. 72.

In February 1989 Sistemas AF sold its industrial assets (AF Sistemas S.A.) to Steelcase Strafor for 9.7 billion pesetas (81.8 million dollars), making a profit of 2.5 billion pesetas (21 million dollars). Sistemas AF remained as a holding company and changed its name to Sistemas Financieros S.A. As part of the Ibercorp group, Sistemas Financieros engaged in buying and selling shares in other companies. Taking advantage of the buoyant price of Sistemas Financieros's shares, de la Concha and Soto gradually sold off the 65% stake they had retained.

By mid-1989, however, with almost all of Sistemas Financieros's capital in the hands of third parties, the risk of a takeover bid was high. To ward off the threat, they arranged a capital increase of 2.8 billion pesetas (23.9 million dollars) and an issue of convertible bonds worth a further 3 billion pesetas. Also, Sistemas Financieros made deposits in three banks of 1 billion pesetas (8.4 million dollars) each; with these deposits as a guarantee, the banks granted three loans of 1 billion pesetas each to three front companies for the purchase of shares and convertibles in Sistemas Financieros. This effectively banished the threat of a takeover bid. And the bond issue was distributed among friends of Manuel de la Concha and Jaime Soto, attracted by the hope of high returns.

The problems begin

The capital increase –in August 1989– received a very cool welcome and the company itself had to buy up half the issue (1.48 billion pesetas, 12.5 million dollars). Sistemas Financieros's share price fell 400 points in five months. Also, Ibercorp Leasing and Ibercorp Financiaciones needed shoring up, as their growth had slowed as a result of the credit ceiling imposed by the Bank of Spain and the central bank's demand that they increase their equity base. Sistemas Financieros had to boost the two companies' capital by 20% in October 1989, and by a further 10% in January 1990.

To be able to do this, de la Concha and Soto proceeded to sell Mecalux S.A., a company in which they had acquired a 90% stake in December 1988 for 7.1 billion pesetas (61 million dollars) (1). Their attempt to float Mecalux on the stock market in early 1990 failed because by that time the stock market was falling. Frustrated in their efforts to sell the company to a foreign group and in urgent need of cash, they ended up selling Mecalux back to its previous owner for 6.2 billion pesetas.

In 1990 the Ibercorp group was also forced to sell Ibercorp Financiaciones and Ibercorp Leasing to the French bank Crédit Agricole. In the first stage of the operation, Crédit Agricole paid 5.23 billion pesetas (51.3 million dollars) for 70% of the two companies (which had originally cost 50 million pesetas, 425,000 dollars). De la Concha, Soto and Tamayo, (2) who owned 27% of the companies (through front companies), received 1.43 billion pesetas, while Grupo Financiero Ibercorp took the rest (the sale of the remaining 30% was postponed until 1994, but never actually took place) (3).

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(1) *ABC*, June 8, 1994, p. 69.
(2) Benito Tamayo was one of the managers of Sistemas AF and a partner of the group from the outset.
(3) A Zurich-based company that had not been involved in the sale received a commission of 8% of the value of the operation; it was clearly a question of concealing the money from the tax authorities.

At around that time, the Ibercorp group set up a mechanism for purchasing its own shares, involving numerous companies created specially for this purpose. These companies bought at high prices, using loans granted by Sistemas Financieros. These transactions generated substantial profits for the sellers, who were not all the shareholders but only a privileged few. Subsequently, the companies that had acquired the shares were bought up by Sistemas Financieros, which thus took upon itself both the capital losses in these companies' portfolios and their debts.

In June 1990 the Ibercorp group agreed to reduce Sistemas Financieros's capital by amortizing treasury stock, and at the same time to increase capital by raising the par value of the shares, to be charged to reserves. As a result, Sistemas Financieros's share price fell by almost 50% in the second half of 1990. At that time, the group's financial situation had already deteriorated considerably. Besides the stock market slump, there was the sale of Mecalux (at a price well below its book value). To add to this, the newspaper *El Mundo* began to harrass Ibercorp with reports about de la Concha's alleged use of privileged information when he acquired shares in Banco Hispano Americano just before it merged with Banco Central in May 1991, about his disputes over the sale of Mecalux, and about Sistemas Financieros's swollen treasury stock portfolio.

In an attempt to resolve the group's financial problems, a merger was planned whereby Sistemas Financieros S.A. and Grupo Financiero Ibercorp S.A. would be absorbed by Banco Ibercorp S.A. The ultimate objective was probably to sell off the bank resulting from the merger. "The balance sheet of the merged bank –the Ibercorp group announced– shows, as of December 1990, share capital of 2,724 million pesetas (26.7 million dollars), reserves of 5,455 million pesetas (53.5 million dollars) and a capital gain from the merger of 2,719 million pesetas (26.6 million dollars). Therefore, without counting the capital gain, which will be amortized within the period stipulated in current legislation, the bank will have a starting capital of 8,179 million pesetas (80 million dollars)." (1).

However, an audit conducted by Price Waterhouse prior to the merger reflected a capital loss of 6.4 billion pesetas (62.7 million dollars) in the value of the three companies. And in the audited accounts for 1990, presented in July 1991, the results for the year were adjusted downwards by 82%. According to the CNMV (*Comisión Nacional del Mercado de Valores*) (2), the subsequent investigation did not reveal any illegal conduct or insider trading, although the movement in the portfolio (27% of the capital) seemed "irregular" (3). From October 1991, de la Concha and Soto began preparations to sell the bank resulting from the merger.

The sale of shares in Sistemas Financieros

Throughout 1990, some of Sistemas Financieros's shareholders, including the company's top executives and their family and friends, sold large volumes of the company's shares back to the company. Afterwards the share price fell dramatically, when it was announced that the Board of Directors had decided on a reduction of capital. Many small shareholders suffered as a result. This raised three legal and ethical questions:

(1) Cfr. *La Vanguardia*, March 7, 1992, Economy and Business Supplement, p. 4.
(2) The Spanish securities market regulator.
(3) *La Vanguardia*, February 21, 1992, p. 49.

1) Treasury stock. According to a report (March 9, 1992) by the CNMV, at January 1, 1990 Sistemas Financieros's treasury stock – including both direct and indirect holdings – amounted to 11.9% of the share capital, and 4.6% at December 31 of that year (1) In other words, Sistemas Financieros's holdings of its own shares had been in excess of the maximum permitted by Spanish company law (5 per cent). And the obligation to dispose of any excess treasury stock within a maximum period of one year had been ignored. Furthermore, Spanish company law prohibits companies from providing advances, loans or other financial assistance for the purchase of their own shares, a rule that was also flouted. As far as stock market regulations are concerned, the Ibercorp group failed in its obligation to report significant shareholdings and the level of treasury stock (2).

2) Purchase and sale of shares from March 1990 to June 1990. According to the above-mentioned CNMV report, 1,681,765 shares in Sistemas Financieros were sold through Ibercorp Bolsa between March 1 and June 31, 1990. Of these shares, 650,998 were bought directly by Ibercorp Bolsa (for the sum of 2.49 billion pesetas, 24.4 million dollars). Three companies connected with the group stood out among the sellers: RTS, Padilla de Inversiones and Schaff Investments (3). Between January 1990 and June 1991, a large group of Ibercorp Bolsa's clients disposed of all or part of their shares in Sistemas Financieros (4).

Miguel Boyer, former Minister of Economy and Finance, was one of those who sold shares in Sistemas Financieros. In court he claimed to have obtained a return of 42.37% on the 11.8 million pesetas (115,000 dollars) invested in the operation. Mariano Rubio, who had entrusted the management of his financial assets to Manuel de la Concha without a signed contract and with managerial discretion, claimed to have held an average balance of between 5 and 10 million pesetas in Ibercorp Bolsa, and to have made a loss of 10% on the sale of these shares (5).

In view of this, the CNMV concluded that there had been discrimination between shareholders in the company's offer to buy back its own shares, and that a serious violation may have occurred in the sale of the treasury stock, through concealment or simulation of transfers or the use of middlemen

3) The process of share price formation. The CNMV also found evidence of price manipulation, as group companies were particularly heavily involved in the buying and selling of Sistemas Financieros shares (more than 80% of all transactions in the company’s shares in the first half of 1990, more than 90% in the second half of that year, and more than 59% between January and June 1991).

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(1) Not counting the 437,000 shares held by RTS Internacional, a group company belonging to Sistemas Financieros.
(2) In December 1990 the shares held by some of the front companies were sold by means of complex operations to other companies, which financed the purchase (as in earlier operations) with loans from Sistemas Financieros.
(3) Schaff Investments attracted great attention on account of its being connected with relatives of the Governor of the Bank of Spain. Schaff was based in Luxembourg (a tax haven). In 1990 it came into the hands of two Panamanian companies set up by front men. According to the CNMV, the Governor's sister and brother-in-law held a large stake in Schaff, and its chief administrator was Carlos Pittaluga, who was Mariano Rubio's nephew (*Expansión*, April 29, 1992, p. 13).
(4) Some of these sales were made directly to customers whose assets Ibercorp Cartera managed, sometimes without any explicit order to purchase.
(5) Because of the fall in Sistemas Financieros's share price in the last quarter of 1990, some of the investors who sold obtained a tax-deductible capital loss, and immediately bought back the shares, only to sell them again a few months later (although not all the customers performed this latter operation).

The Ministry of Economy and Finance later imposed fines totalling 1.3 billion pesetas (12.7 million dollars) on various group companies for resisting inspection, fraudulent practices, simulation of transfers, price manipulation, failure to give priority to clients' interests, and failure to disclose information to the CNMV. Also, Manuel de la Concha and Jaime Soto were barred for five years from holding administrative or executive office in financial institutions (1).

The list of sellers of shares

In July 1991 *El Mundo* published three articles denouncing Sistemas Financieros's large holdings of its own shares and suggesting that there had been clashes with shareholders who had lost money as a consequence of the collapse of the company's share price. As a result of these reports, on October 8 the CNMV asked Ibercorp to supply a list of the shareholders who had sold shares back to the company between December 1990 and April 1991. The list sent on October 21 included the identity card numbers of all the individuals but replaced some of the names with an initial, or suppressed part of the surname. It was these alterations that *El Mundo* denounced on February 12, 1992, triggering the scandal.

As soon as the news broke, Ibercorp Bolsa sent in the correct list. It emerged that the names of Manuel de la Concha and some of his relatives, those of the former Minister of the Economy, Miguel Boyer, and his wife, Isabel Preysler, and those of other individuals had been disguised. The name of Mariano Rubio had not figured in the first list, but was included in the second.

In court, Grupo Ibercorp's accountant, who was also general manager of Ibercorp Bolsa, declared that he did not know who had drawn up the falsified lists, but that it was Manuel de la Concha who had told him to draw up the second list. In an interview published in the magazine *Cambio 16*, de la Concha claimed that what had been done in the first list was "common practice in legal and judicial contexts. I did not hide anyone's identity. When you are asked to provide certain information and you want to protect people's privacy but you don't want to pervert the truth, this is the kind of procedure you have to resort to. It was done to protect certain people from 'prying eyes'. When you send a document to an official body, you never know whether it's going to be read by the person in charge or several dozen others besides."

In the subsequent trial, Manuel de la Concha admitted that the massive treasury stock transactions had contributed to the group's financial difficulties, and that they had benefited some shareholders (those who sold) at the expense of others. He claimed, however, that "there was no selection. There were some who sold and some who bought. They can't all come out winners. To mention just the most famous case, Mariano Rubio, he ended up losing money in Sistemas Financieros. I was personally responsible for managing his portfolio and I only sold part of the shares because I didn't think they were going to fall. I thought it was a good investment."

According to the President of the CNMV in his statement to the Economic Affairs Committee of the Congress, Sistemas Financieros's net worth fell from 13.4 billion pesetas

(1) The other individuals involved were not punished because it was felt that they had not known about or had not been involved in the infractions.

(113 million dollars) in December 1989 to 7 billion pesetas (67 million dollars) two years later. And treasury stock operations accounted for the bulk of the difference, although "an auditor would probably exclude a further 2.7 billion pesetas" in commercial paper issued by front companies, which had been sold to Sistemas Financieros to finance the purchase of Sistemas Financieros shares. On that basis, "the final net worth would stand at around 4.3 billion pesetas (41 million dollars), and the capital loss at 9.1 billion pesetas (87.5 million dollars) (1).

The political dimension of the affair

At the request of the Popular Party (*Partido Popular,* then in opposition), the Governor of the Bank of Spain appeared before the Economic Affairs Committee of the Congress of Deputies on February 20, 1992. He told the Committee that Manuel de la Concha was a friend of his, and that he had entrusted him with the task of administering his stock portfolio, which de la Concha had done with a great degree of independence and without this ever giving rise to preferential treatment on the part of the Governor or of the Bank of Spain. The only condition he had imposed was not to invest in bank shares, to avoid possible accusations of using privileged information. He also claimed to have had no part in the decision to sell shares that had led to the falsification of the lists, and that he had neither given any order to sell nor had known about it beforehand.

With regard to the relationship between the Bank of Spain and the Ibercorp group, Mariano Rubio said that he had not opposed the sale of a banking license to Ibercorp at the time as it was a legitimate request. He also stated that none of the three inspections the Bank of Spain had carried out in Banco Ibercorp since 1988 (the last one in 1991) had uncovered any anomaly.

At the end of this session the representatives of the various political parties expressed their confidence in the Governor. In an interview given in March 1992 to the magazine *Cambio 16*, Manuel de la Concha alleged that the ultimate target of the press campaign against Ibercorp was not the group itself but Mariano Rubio, whom he considered innocent beyond doubt. "Mariano Rubio – he said – is so obviously innocent that any objective assessment would prove as much."

On leaving the meeting of the Economic Affairs Committee, the Governor, together with the Minister of Economy and Finance, Carlos Solchaga, went to see the President, Felipe González. The Governor offered his resignation, but the President asked him to stay on until his term of office expired on July 24.

In his statements to the Economic Affairs Committee on February 20, Mariano Rubio had said that the situation of Banco Ibercorp was normal. However, a report dated February 6, 1992 on the inspection carried out by the Bank of Spain revealed the existence of irregularities. "The group's main activity (in terms of the results obtained) is speculating on its own shares [...] Although the group's computable equity is still above the required minimum, the weakening of its capital base (as a consequence of the activity mentioned in the previous paragraph) clearly represents a risk with regard to the maintenance of that

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(1) *Expansión,* April 29, 1992, p. 13.

minimum. The proposed merger of Sociedad de Valores Ibercorp (which has operating losses) with Banco Ibercorp will aggravate the situation." And the report concluded: "For all these reasons, there are serious doubts regarding the viability of Ibercorp" (1).

After this report was made public, Mariano Rubio admitted that he had known about it. He justified his statements to the Economic Affairs Committee by saying that he "neither could nor should reveal such information (...) What is said in an internal document that will be read by other senior inspectors and authorities of the Bank of Spain is one thing; a public statement by the Governor regarding the viability or otherwise of an institution is quite another." (2).

This new revelation aroused the indignation of the opposition, which accused the Governor of having lied to the Congress. From that moment on, the attitude of the political parties, the media and society in general towards those presumed to have been involved became more hostile. However, the Government did not relieve Mariano Rubio of his duties until July 22, 1992, on completion of his term of office.

The denouement

Before the scandal blew up, Manuel de la Concha and Jaime Soto had already begun preparations to sell the new Banco Ibercorp resulting from the planned merger. Once the group's difficulties had been exposed in the press, both they and the Bank of Spain redoubled their efforts either to sell the bank so as to obtain the funds the group needed (and find a satisfactory solution to a situation that was rapidly getting out of hand), or to reorganize it as a prelude to winding it up in an orderly manner. One after another, their attempts failed, until finally, on March 3, 1992, the Bank of Spain decided to take direct control of Banco Ibercorp "to prevent a serious deterioriation in the bank’s financial situation and consequent damage to its creditors."

What eventually triggered the intervention was the discovery that funds had been diverted to ends other than paying off outstanding debts (3). A declaration of suspension of payments was by now inevitable, and the petition was filed on March 4, 1992. Banco Ibercorp had debts in excess of 10 billion pesetas (98 million dollars) (4), and was taken over by the Deposit Insurance Fund in order to first pay the depositors (up to a maximum of 1.5

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(1) *ABC*, June 11, 1992, p. 45.

(2) *La Gaceta de los Negocios*, May 20, 1992, p. 23.

(3) *El País*, March 5, 1992, p. 50. 828 million pesetas, the last instalment from the sale of 55% of the mutual insurance company Munat to La Mondiale, were received on February 28, but on March 2 the group's top management transferred 450 million pesetas to a different institution.

(4) "Reliable sources indicate that there are debts of around 2 billion pesetas (19.6 million dollars) to other banks in the interbank market, 4.2 billion pesetas (41 million dollars) of debts to the Bank of Spain, already spent, and 6 billion pesetas (58.8 million dollars) in deposits, current accounts and other creditors. Shareholders' equity amounts to 1.4 billion pesetas (13.7 million dollars). On the assets side there are 4 billion pesetas (39 million dollars) in government debt, 1 billion pesetas (9.8 million dollars) in interbank loans, around 1.5 billion pesetas (14.7 million dollars) in sundry accounts (almost all non-performing loans) and around 6 billion pesetas (58.8 million dollars) in credit, of which more than 3 billion pesetas (29.4 million dollars) are loans granted to the group itself, which can be understood as non-performing" (*La Gaceta de los Negocios*, March 4, 1992, p. 18). Two days later, the same newspaper put the assets at 12.13 billion pesetas (118.8 million dollars) and the liabilities at 10.42 billion pesetas (102 million dollars), but pointed out that, correcting the valuations and taking the risks into account, liabilities could exceed assets by around 1 billion pesetas (9.8 million dollars) (March 6, 1992, p. 19).

million pesetas per account) and then either wind up the bank or sell it to pay the remaining creditors. Grupo Financiero Ibercorp did not suspend payments. The situation was finally resolved when Banco Ibercorp was bought by a savings bank, Caja Cantabria, its main creditor, for the symbolic sum of one peseta.

After February 1992 a series of lawsuits were brought for fraud, misappropriation, conspiracy to rig prices, misrepresentation, breach of official secrets and insider trading. In July 1994 the state prosecutor called for prison sentences totalling 84 years for Manuel de la Concha, Jaime Soto and Benito Tamayo for conspiracy to rig prices, misrepresentation and fraud (1). The committal proceedings of the Ibercorp case were concluded on January 20, 1995, but the case is still waiting to go to trial.

Privileged information, preferential treatment and other issues

The "Ibercorp affair" raised the question of whether there had been any other instances of illegal or immoral behaviour.

1) The loan granted by Banco Exterior de España. As Miguel Boyer was one of Ibercorp's clients who had made a profit by selling shares in Sistemas Financieros, there was the question of whether he had given Manuel de la Concha preferential treatment when Banco Exterior de España, of which Boyer was president at the time, granted Ibercorp Leasing a credit line of 1.5 billion pesetas (12.8 million dollars). In court, Miguel Boyer denied any prefential treatment and pointed out that the credit had been granted at market rates, applying criteria similar to those used by other banks that had also lent to Ibercorp Leasing (2).

2) Preferential treatment by the Bank of Spain. The question of whether the Bank of Spain had given Ibercorp preferential treatment centred around two issues: the credit granted in 1991, and certain operations involving the Deposit Insurance Fund.

As explained earlier, when the large banks withdrew credit from the small banks in the interbank market, the Bank of Spain decided to open special credit lines for these small banks should they need it. Mariano Rubio said in court that when the Executive Council of the Bank of Spain granted the credit to Banco Ibercorp, it had not yet received the inspection report. He also said that this type of credit was common practice among central banks as a means of preventing suspensions of payments by banks, which could upset the banking system.

The other point at issue was the sale to individuals connected with the Ibercorp group of certain companies belonging to the Deposit Insurance Fund, with possible administrative irregularities (3). One of the companies concerned, Scipio, was acquired by the wife of the Deputy Governor of the Bank of Spain, Juan Antonio Ruiz de Alda, who was president of the management committee of the Deposit Insurance Fund. Mariano Rubio also held shares in Scipio. Some of the other companies that were sold to people connected with the Ibercorp group had tax debts, which were used to offset the profits made in the flotation of Sistemas AF.

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(1) *ABC*, July 14, 1994, p. 39.
(2) *ABC*, February 26, 1992, p. 67, and March 14, 1992, p. 65.
(3) *ABC*, July 8, 1994, p. 36.

3) Privileged information. Mariano Rubio declared in court that he had never disclosed to Manuel de la Concha nor to anyone else connected with the Ibercorp group information regarding the Bank of Spain’s interest rate policy (1). Whatever the case, the question of whether or not there had been any insider trading remained unanswered, as it was impossible to prove.

1994: Act Two

In April 1994 *El Mundo* opened a new chapter in the affair when it reported that "Mariano Rubio had an undeclared 'secret account' in Ibercorp, with over 130 million pesetas" (1.1 million dollars in 1988). This led to another court case (the so-called "Rubio affair") against Mariano Rubio and Manuel de la Concha on charges of tax evasion and, in the case of de la Concha, persistent misrepresentation in public records (in his capacity as a commissioner for oaths). As a result of this trial, Mariano Rubio spent 15 days in prison, and Manuel de la Concha a few days more.

In the ensuing investigation it was discovered that Mariano Rubio held two accounts in the Ibercorp group. The second of these accounts (opened in 1994, when Rubio was already Governor of the Bank of Spain) was used to carry out transactions involving the sale and purchase of securities (2). The profits from these transactions did not figure in the Governor's income tax returns (3) nor in his wealth tax returns. The account held funds belonging to other members of the Rubio family and was managed by Mariano Rubio's nephew, Carlos Pittaluga, apparently without the Governor having any direct knowledge of the transactions carried out (4).

The money that Mariano Rubio kept in these two accounts came, it seems, from the flotation of Sistemas AF S.A., in which the then Governor held shares through Scipio. The flotation brought him a profit of 115 million pesetas; Mariano Rubio admitted that 60% of the profits generated by the 'secret account' were his, since apparently this was his contribution to the Sistemas AF flotation (5).

These fresh revelations prompted a radical change in the attitude of the politicians. It was generally agreed that Mariano Rubio had committed irregularities in his private dealings, but there was an effort to ensure that the actions of the Bank of Spain remained above suspicion (6).

(1) In a statement published in *Cambio 16*, Manuel de la Concha said: "The idea that the Governor of the Bank of Spain is going to call up his friend Manuel to tell him what's going to happen to interest rates is frankly ludicrous. And it's even more absurd to imagine that Manuel is going to go around telling everyone, 'They’re going to bring interest rates down! Mariano told me!' Really, it's ludicrous."

(2) The account was "opaque", as the transactions were conducted in Treasury bills, which did not require that the holder be identified (although any income obtained had to be recorded in the holder's tax return).

(3) The amount of taxable income that Rubio had failed to declare was estimated at 6.1 million pesetas (*La Vanguardia*, June 7, 1994, p. 16). According to statements made by Mariano Rubio in February 1992, the part of his personal wealth managed by de la Concha amounted to 10 million pesetas. However, he later admitted that between 1985 and 1986 it reached 100 million pesetas (*ABC*, September 14, 1994, p. 40).

(4) Some of the transactions on this account were carried out through Nalvi S.A., a company belonging to the de la Concha family. Nalvi acted as a "pooling account" in Manuel de la Concha's office for chanelling investments in Treasury bills by various clients, so that they could not be detected by the tax authorities.

(5) *El País*, June 21, 1994, p. 18, and March 12, 1998; *El Mundo*, March 11, 1998.

(6) In a television interview, Rubio declared, "I have not lied to the President nor to the former Minister Carlos Solchaga [who was Minister of Economy and Finance at the time the events occurred] as far as my public activity is concerned. I have lied in an important area of my private life. (...) I believe that I have done wrong. I obtained substantial income that I did not declare in my tax return for 1987" (*El País*, June 24, 1994, p. 15).

In July 1994 the trial judge opened the hearing against Mariano Rubio, Manuel de la Concha and nine others (some of them relatives of Rubio) on charges of fraud, conspiracy to rig prices, bribery, misappropriation, misrepresentation in commercial documents, breach of trust and exercise of undue influence. However, the judge pointed out that "there are no indications that in any of their activities the accused took advantage of their office or of any situation deriving from their personal or hierarchical relationship with public servants or authorities to obtain a profit" (1).

The reform of the Spanish penal code raised the threshold for tax evasion from 5 million to 15 million pesetas. As Mariano Rubio's debt with the tax authorities was below this threshold and had since been settled, the charge of tax evasion against Mariano Rubio and Manuel de la Concha was dismissed in May 1996 (2).

Conclusions

In itself, the Ibercorp affair may seem trivial: as a result of mismanagement and morally and legally questionable behaviour, a small financial institution was driven to the brink of bankruptcy. However, as public figures were involved, it acquired a political dimension, to the point where there were repeated calls for the resignation of senior Government ministers (3).

For the media and for large sectors of Spanish society, the affair was an indictment of the so-called "beautiful people", a class of wealthy and influential persons whose main aim in life was to get rich, spend, consume and flaunt their wealth, without caring how it was acquired: the representatives of what has since come to be known as the *cultura del pelotazo* or "get rich quick culture" (4). The Ibercorp affair was also an indictment of the easy (and often immoral) enrichment made possible by the economic and financial boom. It joined a long list of cases of public and private corruption that plagued Spanish society throughout the 1980s and early 1990s.

There were extensive repercussions. As one journalist pointed out, "the Ibercorp affair is a messy battlefield on which various battles are being fought at once. There is a tussle between the publishers of a rising young newspaper, *El Mundo*, and another that is fighting to retain its readership, *Diario 16*, (...) [*Diario 16*] levelled certain accusations against one of [*El Mundo*'s] star journalists regarding a conflict of interests. (...) The person concerned (...) got hold of a piece of information that implicated the financial group headed by Manuel de la Concha, which has close links with *Grupo 16*, and did not hesitate to publish it. Beyond the intrinsic interest of what was revealed, the publishing of this information benefited the 'peddlers of dossiers' (5); those who felt themselves 'victims' of Ibercorp in the

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(1) *La Vanguardia*, July 29, 1994, p. 13. At the time the shares at issue in the trial were sold, exercise of undue influence was not a statutory offence.
(2) *El País*, May 17, 1996, p. 58. The charges of misrepresentation were upheld. Not long after this, the high court in Madrid ruled against the dismissal of the tax evasion charge and so the case remained open.
(3) When Mariano Rubio was taken to trial on charges of tax evasion, Carlos Solchaga, who had already ceased to be Minister of Economy and Finance, gave up his seat in the Congress.
(4) Another thing that made an impression on public opinion was the scale of spending by Ibercorp group executives (including the purchase of a private jet), mainly at the expense of the company’s income statement.
(5) People who spread documents (fake or genuine) concerning business and political matters.

Sistemas AF debâcle; those adversely affected by the stock market reform promoted by Manuel de la Concha in his days as Chairman of the Madrid Stock Market Council; the politicians who detest the 'beautiful people'; the former senior executives of the Ibercorp group; those 'hounded' by the Bank of Spain in its supervisory role; those who hope to gain from the appointment of a new Governor. Each is busy waging his own private war: freedom of information against the right to privacy; wealth against submission to authority; honourableness against misfortune; politics against press interference; equality of opportunity against privileged information" (1). The way justice was done (or rather, the way justice was seen not to be done) in this case should prompt reflection among politicians, journalists and citizens in general.

The purpose of this article is not to make an ethical judgment of individuals. That is not the business of an academic paper, and could not be done without knowing the intentions of those involved, what they did and their assessment of the intended consequences of what they did, all of which we do not know. Nevertheless, people's visible acts are capable of an objective moral evaluation, which the reader will make for him or herself in the light of the information provided.

The Ibercorp affair offers a deplorable litany of illegal and immoral acts, and a number of problems with interesting ethical implications. Shareholders, clients, creditors and employees suffered as a consequence of the fall in the value of the company due to a lack of moral and professional integrity in its management, and above all to the accumulation of treasury stock and the violation of the bond of trust with clients, which is the basis for any kind of financial business. There were accounting dodges, fictitious revaluations and hidden accounts to deceive the potential purchasers of companies, the shareholders, the tax authorities and the regulatory bodies. There was price rigging, discrimination between clients and damage to some at the expense of others. There was tax evasion and fraud (with the consequent misrepresentation in documents). Fake commissions were generated for personal gain or to evade tax, and false capital losses were recorded for the same purpose. Legal requirements regarding treasury stock, loans for the purchase of treasury stock, disclosure, resistance to inspection, etc. were ignored. Secrets were divulged, libel and slander were used in self-defence or for revenge or for political purposes. There were offences against justice, prudence, temperance, fortitude and a long list of lesser virtues that form the basis for people's actions in business (and in politics).

Another human and moral problem raised by the affair was the behaviour of the Ibercorp group's employees. Those who gave evidence during the trial said that Manuel de la Concha took a very personal interest in the things that concerned him. This must have put his subordinates in a difficult position, when they found themselves obliged to go against the law or their conscience in obeying orders.

In view of the report drawn up by a parliamentary committee appointed to look into the political responsibilities behind the affair, the Congress made it clear that Mariano Rubio's behaviour in his private life was inseparable from his role as Governor of the Bank of Spain. The Congress concluded that Rubio had "contravened the standards of behaviour expected of all public servants and the very strict standards of personal ethics demanded of a person of such high rank: by using sham and front companies, either directly or through associates, for personal gain; by concealing information and lying to the Congress; by using financial instruments to deceive the tax authorities, and evading payment of tax" (2). One

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(1) Luis Ignacio Parada, "Spanish Beautiful Bank", *ABC*, February 21, 1992, p. 67.
(2) *ABC*, October 7, 1994, p. 73.

relevant conclusion to be drawn from the above might be that there is no such thing as a public morality, a business morality and a private morality: they are all facets of the same morality.

Another conclusion might be that it is vital to correct unethical behaviour as soon as possible. If we wait for the passing of time or a change of circumstances or a change in the economic climate or a desperate gamble to sort it out, it is sure to get worse.

And a third conclusion would be that transparency is key to business life. Anything that cannot be said in public without shame is, to say the least, suspicious. □