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Reflections on a Very Specialized Tribunal

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On a recent brief holiday in Valencia, I was able to attend a session of the *Tribunal de las Aguas de la Vega de Valencia*, the "Water Court" or *Tribunal de les Aigües*, in Valenciano dialect used by that Court.

The *Tribunal* convenes in public at noon every Thursday at the "Door of the Apostles" (*La Puerta de los Apostoles*) of the Valencia Cathedral, facing out on the *Plaza de la Virgen*.

Valencia sits in a fertile plain, the "*Huerta*", which is irrigated by a complex series of channels that distribute water from the river Turia to every field of the 17,000 hectares under cultivation (much in of which is used to grow rice for the region's famous paella).

The *Tribunal de les Aigües* is composed of eight farmers from different parts of the *Huerta* (representing the eight principal canals), who are elected democratically for two-year terms by their fellow water users. These *Tribunal* judges rule on water use disputes and complaints (essentially when a farmer is accused of violating the statutes that apply to his canal) brought before them by their peers. They also have the power to access fines. The entire proceeding is verbal (even the charge and the acquittal) and the decision is pronounced in Valenciano immediately after the open-air oral proceeding terminates. The decisions are final with no right of appeal.

Blog readers will appreciate that the Tribunal President always comes from a canal area on the right bank of the river, and presides over trials of farmers from the left bank, and that the Tribunal Vice-President, who is always from the left bank, presides over trials of farmers from the right bank.

The *Tribunal de les Aigües* origins are believed to go back to Roman times, and is said to have operated in interrupted form since 960; its existence is clearly confirmed in 1238 when the new Christian King, *Jaime el Conquistador*, decreed the courts' continuation under his rule ("*segons que antigament es e fo establit e acostumat en temps de serrahins"* or *"según de antiguo es y fue establecido y acostumbrado en tiempos de los sarracenos"*). The *Tribunal* is a recognized traditional authority under Spanish law.

The day I attended the *Tribunal* a genre of Marshall shouted out for cases from each of the eight districts, but, to my disappointment, no cases were heard (the opening of the *Tribunal* can be seen on "You Tube" here). I was unable to speak to any of the rapidly disappearing judges (who promptly took off their ceremonial black smocks). But I was able to corner the *Tribunal*'s

"*abogado*", Rafaël Ordey, who kindly explained some matters to me. First, he noted that it is not that unusual that no cases were heard. Most accused water users are reluctant to appear in public, and they are only required to go before the *Tribunal* when they have received the third summons of a complaint against them. Prior to a mandatory appearance many accused water users accordingly fashion a private settlement. The settlement is made before Mr. Ordey. I could not resist asking him if that settlement was oral also. No, he replied, he draws up a written deed which the settling party must sign: "*una deformación professional*", I joked.

Beyond the quaint and historical nature of the *Tribunal de les Aigües*, I think it does provide a few principles for reflection, even if the international arbitrators in our world do not sit on 17th century chairs at the *Plaza de la Virgen* to hear parties they often know argue amongst each other over the application of ancestral rights.

For sure there are specialized arbitral regimes, such as GAFTA or LME arbitration where, as in Valencia, tribunals are composed of business persons from the same industry, the procedure is rapid, and there is peer pressure to resolve the dispute and get on with business (Contrast this with ICANN "domain name" disputes where efficiency and celerity comes from the narrowness of the online "proceedings" with the remedies essentially limited to the transfer or retention of the disputed domain name).

In the larger investment and commercial world, arbitrator and counsel are often confronted with a multi-faceted dispute, where there is no common culture or continuing business between the parties, and where there is pressure to escalate and not just settle. Most often, the parties will never be required to work together again: it is a contested divorce and/or property settlement. To this mix can be added the distension caused by the development, over the last twenty years, of a veritable "Arbitration Industry" and the phenomenon of the "professional arbitrator". But international commercial and investment arbitration was never the warm ancestral south that certain arbitration critics imagine with nostalgia. There are, furthermore, good reasons why some of the complex, and often politically-tinged, disputes today submitted to arbitration require much time and money to resolve.

Still I am struck by the contrast between the solid farmers who show up for unpaid duty on the backsteps of Valencia's Cathedral at noon on Thursday, and full-time international arbitrators arranging their crowded schedules to fit in more cases.

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