

HISTORY OF TRIAL BY JURY IN THE SPANISH LEGAL SYSTEM

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PREFACE

Some years ago I had the pleasure of meeting Carmen Gleadow for the first time, at my chambers in Madrid, and after talking to her for a while about her Doctoral project on the Spanish jury system, I became absolutely sure of two things: firstly, that she was going to achieve her desired goal and secondly, that she was going to produce – as has been proven – a solid piece of work that would represent a meaningful contribution to a diversity of disciplines, including the Law. I noticed that she was, indeed, fully determined to explore and study all available sources of information, including personal contacts with judges at all levels, public prosecutors, university professors, members of the Spanish administration and lawyers; to put into her work all the required time and effort; to be broadminded in the analysis of the subject matter whilst not permitting the contamination of her work by preconceived ideas or ill-advised sources; to screen thoroughly all ‘input’ from her sources; and finally, though not least, to show a strong willingness to ‘suffer’ which, after all, is a key element always present in the life of anyone who wants to write.

I should add that the fact that Dr Carmen Gleadow is not only completely bilingual (English/Spanish) but, furthermore, absolutely ‘bicultural’, is a very important factor in explaining how well she has grasped all aspects of the Spanish political, sociological and juridical forces that have impacted in the long historical

battle for the reinstatement of democracy and for the participation of citizens in the administration of criminal justice through the jury.

I cannot proceed further without underlining the extreme generosity of Dr Carmen Gleadow in offering me the honour of writing the preface for this book. Certainly, it would have not taken her too much effort to find somebody of greater merit amongst the many distinguished scholars who advised her during the production of her excellent contribution. Notwithstanding, it is true that, as she outlines in Chapter Six, for many years my name has been associated in Spain with the defence and promotion of the jury, so much so that there was a time when people who met me in different parts of Spain would ask how the battle for the jury was going, rather than asking after the well-being of my wife or children ... That could be one sensible explanation for Dr Gleadow's decision aside, of course, from her very good nature which made her over-estimate my very limited assistance.

I am well aware that the role of the person invited to write the preface to a book should not be (as I have often seen evidence, to my dismay) to take advantage of the opportunity to write another book within it, one which can sometimes even reflect negatively upon it. In this case, there is no risk of that as, after very careful scrutiny of this work, I consider it to be in perfect accordance with the truth and reality of the struggle for the reinstatement of democracy and of the jury, as I personally have experienced it in Spain during the last two decades; that is to say, starting very shortly after the death of Franco in November 1975 and following through with the subsequent enactment of the Constitution voted in the Referendum of 6 December 1978.

There is no question in my mind that this work is not only a fine piece of legal research work but that it is also 'inter-disciplinary'. It focuses on the 60 years of the absence of the jury from Spain and, more specifically, deals with the very important question of why it took 20 years after the death of the Dictator for the reinstatement of the said democratic institution, even though it was proclaimed

in Article 125 of the Constitution of 1978. In order to answer such questions, Dr Gleadow goes deep into the very roots of Spanish socio-political history and all its fundamental nexus with mainland European countries (especially its neighbours, Italy, France and Germany) and, of course, with England. To study these very intricate relations Dr Gleadow has made effective use of an extremely accurate, valuable and coherent bibliography that, in itself, represents a contribution meriting the degree conferred upon her.

For me, the most impressive part of Dr Carmen Gleadow's work has been the profound historical study of the evolution (I would call it rather 'degradation') of the jury into what we call the *escabinado* in Spain – even though up to this date it has never existed in this country – also called the *échevinat* in France and the *escabinato* in Italy: this includes its strong political connotations with the conflictive political regimes in Germany prior to Nazism and Hitler, with the repressive regimes in the Italy of fascism and Mussolini, and in occupied France where, on 25 November 1941, the Vichy government of Marshal Pétain passed a law replacing the jury with the *échevinat*, though the term 'jury' was kept in order to make the dramatic change less noticeable to the citizens.

The tables in the book deserve special recognition for their simplicity of expression and the contribution they make, especially that of Table B in Chapter One. It is the first time that I have seen full clarification of the fact that some European countries which are classified as belonging to the *escabinado* model, do not, in fact, so belong. This is because even though, as happens in Austria, Belgium, Denmark and Portugal, the sentencing is performed together by the judge and citizens, the fundamental decision of **determining guilt or innocence** remains the domain of the **citizens alone**. No author that I know of has been able to compile in so meaningful and practical a way – and from such different sources – the main differences between the jury and its degraded form of citizens' participation in the administration of justice, the so-called *escabinado*.

I completely adhere to Dr Gleadow's opinion that the struggle in Spain regarding the reinstatement of the jury was basically centred on the form that the legal institution would take: jury or *escabinado*. Public participation in the administration of justice being a provision of the Constitution, all contending parties knew that sooner or later it would have to be developed into law. The small group of people completely against any form of participation by the citizens in the administration of justice (basically those ideologically belonging to the Franco regime) tried to interpret the constitutional provision not as a mandate but as a mere possibility without any binding force or urgency, while the large majority of jurists (educated under the system of judges-only tribunals but nevertheless willing to accept the mandate of the Constitution for the reinstatement of the jury) considered it was neither a primary need of the administration of justice nor that the form had to be that of the Anglo-American jury. In fact, the defensive approach of the latter grouping was that the *escabinato* represented the modern, continental European way of citizens' participation in the justice system while the Anglo-American model of the jury was accused of being out-cast and, moreover, foreign to our juridical system.

The Spanish Association for the Jury (*Asociación Pro-Jurado*), founded in Madrid in 1981 and over which I presided until 1998, had to cope with such recriminations by means of showing that it was essential for the jury system that the judge and citizens be separated in the moment of deliberation: this was especially so in a country like Spain which had suffered 40 years of military dictatorship and nevertheless, and against all pessimistic forecasts, had been able to perform an exemplary and peaceful transition to democracy to the extent that the judges, public prosecutors, law professors and the majority of the members of the public administration remained in their posts. Through many articles in law journals, conferences at law schools and bar associations, and extensive use of the media, a small group of democratically-advanced jurists (united under the flag of the *Asociación Pro-Jurado*) was able increasingly to establish the idea that there was only one model of jury, the one which had existed traditionally in Spain (*El*