

**THE ORAL AND EFFICIENT PROCESS BEFORE THE THOUSAND-YEAR-OLD
THE VALENCIAN WATER TRIBUNAL
(ABRIDGED VERSION)***

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The *Tribunal de las Aguas de la Vega de Valencia* (the Valencian Water Tribunal) was recognised by James I of Aragon after he had taken the city from the African Berbers in 1237. The following year, he granted the inhabitants of the city and kingdom of Valencia the Privilege and right to “*regar e pendre aygues sen alcuna servitut, e servici e tribut, que prenats aquelles aygues segons que antigament es o fo staablit e acostumat en temps de sarrahins*”¹ (Aureum Opus Privilegiarum Civitatis et Regni Valentie). In Morella, on 14 February 1250, this same king of Aragon enacted another Privilege allowing the irrigators of Valencia the right of “*exhigant et extorquant poenas constitutas in consuetudine*”² (“Aureum Opus” cit.), which was clearly the origin of the jurisdiction of the *Tribunal de las Aguas*. “imposing and executing the penalties established in custom” Later, at the height of the predominance of centralist absolutism, the monarchy issued a series of decrees (almost all in the 18th century) setting out the privileges of each of the Valencian irrigation channels, and the obligation of their *Síndicos* (Trustees) to meet each Thursday morning at the Cathedral *Llotgeta* (small gallery).

In the 19th century, the Water Acts of 1866 and 1879 used the Water Tribunal as a model to establish the standard for the *Jurados de Riego* (Irrigation Juries). Despite many vicissitudes, these have survived in the modern Water Acts. The Second Republic, in its Decree of 5 April 1932 (having constituted the government with the President of the Republic in Valencia, at the suggestion of the Minister of Industry, Don Indalecio Prieto y Tuero), confirmed the “autonomy of jurisdiction” of the Tribunal. The Valencian Statute of Autonomy passed in 1982 and 2007 continued to confirm this existence, and the *LOPJ* (Organic Law of Judicial Power) of 1985 declared that it is a “common and traditional tribunal”, thus expanding on Article 125 of the Constitution.

The Tribunal has jurisdiction and competence over the conflicts that arise between members (and also between these and third parties) over the de facto

* Translated from Spanish into English by Paul Turner.

¹ “to irrigate and take water without servitude, service or tribute, and take those waters in accordance with that established and customary in the time of the Saracens”.

² “imposing and executing the penalties established in custom”.

possession of the water in the eight irrigation channels of the *Vega* of Valencia (the upper channel, that of Moncada, is not one of them), which are those of Tormos, Mestalla, Rascaña (the former left bank of the River Turia) and Quart, Benacher and Faitanar, Mislata, Favara and Rovella (the former right bank of the river) and any incidents that may affect them. However, it may not intervene in matters of property or other rights, which remain the preserve of the ordinary courts.

It can therefore be described as a tribunal for plenary suits dealing with the matters it has knowledge of and nothing else.

The members of the Tribunal must be farmers of the *Huerta* (the market garden and orchard region of Valencia), chosen from among the members of each of the eight *Comunidades de Regantes* (Irrigation Communities), according to their own terms. The community of Tormos tells us of their preference for “farmers of unblemished probity and honesty” and that of Mestalla for “well-thought-of and quite representative individuals”. The post of Trustee may or may not be renewable, depending on the ordinances of each community: the elders, with their science and experience of the rules of the *Huerta*, serve the Tribunal as advisers, called “*Electos*”. There are also *atandadores* (persons in charge of establishing the turns for the water supply) and *veedores* (inspectors or observers). The *Guardas* (Water Guards or distributors) have a similar role to that of the Attorney General’s Office.

The first part of the process takes place in the doorway of the so-called “*Casa-Vestuario*” opposite the Cathedral, or in the *Casa del Tribunal*. The second part, which is completely oral, takes place in the street, below and in front of the vault of the Door of the Apostles of the Cathedral. A simple half-railling separates the Tribunal from the crowds that come to witness their judgements. The bailiff ensures order and respect.

The process begins with a hearing phase (at which the public is not present). The Tribunal hears from the Trustee in whose section the events have taken place (damage to the channel, accidental irrigation through overflow from a higher channel, illegal diversion of water, construction of obstacles to the flow of water, etc.). It acts on reports from the Water Guards or on complaints from private individuals. The instructing Trustee verifies the preparation of the hearing: judicial inspection, interrogation of witnesses, examination of documents, etc. If the matter appears to constitute an infraction of the regulations or custom of the *Huerta*, it is submitted to the Tribunal and the parties are summoned to appear before it the following Thursday before 12 a.m. The Trustee-Instructor can rule the trial as over if an agreement has been reached between the parties and the general interest of the Community has not been affected, or if the offender settles *incontinenti* the amount of compensation for the damages caused.

The hearings begin before the Cathedral clock (the “Micalet”) finishes chiming twelve o’clock. Each party attends in person and is called by the bailiff to enter the space reserved on the public square for the Tribunal.

The Presiding Judge first allows the plaintiff to speak, or, if applicable, the Water Guard (it is practically taken for granted that the Water Guards are truthful in their declarations concerning the incident), with the aim of allowing them to formulate their allegations and, if appropriate, put forth their evidence. Next, the defendant is allowed to speak in his defence. The Presiding Judge directs the

pertinent questions at the parties in order to clarify the facts and does not allow them to exchange words, unless he decides to allow a cross interrogation with his intervention. Any sign of disrespect is punished *incontinenti* by imposing a fine, which the guilty party has to pay at the end of the hearing, together with the costs, if awarded against him, and the damages and the provisions to be carried out. The Presiding Judge may sanction the offender by expelling him from the enclosed area, thus preventing him from taking further part in the hearing.

As far as the evidential phase, which is always oral, is concerned, the expert evidence can raise the need for a *visura* or judicial inspection. In this case, the Tribunal is transferred to the location of the matter in hand and acts in that place. If the summoned experts are not present, the hearing is suspended and no judgement or commitment is imposed on the parties, witnesses or experts.

Subsequently, the Presiding Judge, still sitting in the same *coram populo* public session, asks for the votes of the other Trustee-Judges. These they give in secret. Here, the technique is exquisite; in twenty-five years of studying the tribunal –many of them sitting alongside its members, as an Honorary Trustee– I have never been able to hear what they say. In other words, the public “sees” the oral sentence being passed, but does not “hear” its preparation.

Up to this point –the climax of the orality–, the Tribunal has acted without a secretary, without any writing up of records. This is when the parties, together with the Water Guards, may or may not take part in the hearing, which then moves to the “Casa-Vestuario”, in one of whose rooms the Tribunal Secretary works. There, the sentence is written up. It contains a heading stating the name of the Irrigation Community and the corresponding Irrigation Channel in which the events took place, the names of the parties and the date. The body of the sentence contains a very brief foundation: the doctrine of individualisation is chosen. In the sentence, the party is absolved or condemned to do something (reconstruct the damaged channel), to cease doing something (taking water from a neighbour), to give or not give something specific, and, if applicable, the period in which those tasks should be carried out is established.

It is, therefore, a sentence with an implicit foundation. Even among the public, those people who pay attention to the expressions of the parties and the witnesses, and the questions and answers, get a “feeling” for the sentence that will eventually be passed.

There is no right of appeal. The maxim “the Sun does not stand still” governs in all its force. An appeal with suspensive effect would give rise to delays and sentences... by which time the fruit or other produce would be useless.

If they were to insist on creating an appeal court for the Water Tribunal, I would suggest that its Magistrates be inhabitants of the *Huerta*, and the procedure also oral. However, that would bring down the whole edifice. This procedure, absolutely oral and public, with the maximum attendance, enjoys great prestige in Valencia: it is the *Auctoritas* of the entire institution that dominates it all.

While it lasts, those persons who are in favour of centralism and, in the opinion of the author, excessive public control should sit back and consider the impossibility of creating another quicker, fairer procedural model.

On the other hand, the evolution of the state of affairs in the Valencian *Huerta*, the ill-considered advance of building development, to the point of an

invasion, could mean the end of the territory of the *Huerta*, and with it, the Tribunal itself. In its place, there would be masses of badly laid bricks, and the delicacies of the *Huerta* would have to be replaced by tinned food from California or Kenya. The beneficiaries of that diet will be deprived of it in the name of a “modernisation” of the process.

Today, doctrinally speaking (and here it is not my intention to bring into dispute the historical evolution), it is not a court of jurors, of a “verdict”, as there is none. All the Trustees participate in preparing the sentence, as they do not diversify in their treatment between facts and law; neither are there two sections in the Tribunal. This is a tribunal of *seniores*, of those most experienced in the hydrological law of the Valencian *Huerta* –a science superior to that of many university “specialists”.

Orality continues to the extreme and with great success. It can even be said to be the reason for the existence of the Tribunal.

On the other hand, the full-time dedication of the Trustee-Judges to agriculture, from sunrise to sunset and more, spending whole nights in the fields if their turn comes at an unsociable hour, is almost a guarantee against the spectre of politicisation, which I have so far failed to detect in it.

The Water Tribunal in action today was the reason the First International Conference on Irrigation Water Rights, at which I was invited to give the inaugural speech, was held in Valencia. It is known and valued throughout the world, but there is something in the genes of humanity that makes it difficult to create other tribunals or courts that so perfectly match the needs of a small-scale agricultural economy.