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A DIFFERENT STORY LINE FOR *12 ANGRY MEN*: VERDICTS REACHED BY MAJORITY RULE—THE SPANISH PERSPECTIVE

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INTRODUCTION

The film *12 Angry Men*[1] deals with one of the main aspects of trial by jury, namely, the process of deliberation. Not only does it consider the difficulties involved in reaching a unanimous verdict under U.S. legislation, but it also points out other weaknesses of the judicial system, particularly, in my view, jury prejudice towards the defendant and the indifference of those called to perform jury service. The title *12 Angry Men* appears more realistic than the more obvious title of *12 Impartial Jurors*.[2] The members of the jury are not depicted as impartial in the film and furthermore, some of them are shown to be unable to fulfill their responsibilities as members of a jury.

Spain has adopted the classic system of trial by jury, as opposed to the European model consisting of a mixed court with lay assessors.[3] Constitutional provisions on the subject of lay participation, under Article 125, were given expression almost twenty years after the approval of the current Con-

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1. 12 ANGRY MEN (Orion-Nova Productions 1957). In Spain, the title of the movie has been translated as *12 hombres sin piedad*, literally "12 men without mercy." It has been argued that the original title in English should be translated in Spanish as *Doce hombres cabreados* (slang). *See* J.L. GÓMEZ-COLOMER, EL PERFIL DEL JURADO EN EL CINE 36 (2005).

2. *See* Nancy S. Marder, *Why* 12 Angry Men*? (1957): The Transformative Power of Jury Deliberations*, *in* SCREENING JUSTICE—THE CINEMA OF LAW 157 (Rennard Strickland, Teree E. Foster & Taunya Lovell Banks eds., 2006).

3. *See* Mar Jimeno-Bulnes, *Lay Participation in Spain: The Jury System*, 14 INT'L CRIM. JUST. REV. 164, 170 (2004) [hereinafter Jimeno-Bulnes, *Lay Participation*]. For a longer Spanish version, see Mar Jimeno-Bulnes, *La Participación Popular en la Administración de Justicia Mediante el Jurado* (C.E. art.12), 2 DOCUMENTOS PENALES Y CRIMINOLÓGICOS 297 (2004). Also, for an article on the Spanish jury as well as the Russian one, see Stephen C. Thaman, *Europe's New Jury Systems: The Cases of Spain and Russia*, 62 LAW & CONTEMP. PROBS. 233, 237 (1999) [hereinafter Thaman, *Europe's New Jury Systems*]. And, for a more extensive article about the Spanish jury, see Stephen C. Thaman, *Spain Returns to Trial by Jury*, 21 HASTINGS INT'L & COMP. L. REV. 241, 250 (1998) [hereinafter Thaman, *Spain Returns*].

stitution, in the form of the Ley Orgánica del Tribunal del Jurado 5/1995 ("LOTJ"), the Spanish jury law.[4] Nevertheless, the jury system in Spain is to some extent unique and particularly so in the verdict phase: in the first place, under Spanish legislation, the verdict is decided by the majority rule;[5] second, and perhaps more unusually, the verdict must be "reasoned" in a similar way to the judicial decision itself, albeit expressed in the language of the layperson.[6] Had *12 Angry Men* been set in the context of a Spanish courtroom, these two requirements would have radically changed the plot of the film.

These two specific aspects of jury proceedings leading up to the verdict constitute the most significant difference of the jury system in Spain, when compared to the concept of trial by jury that evolved in the U.K. and that was subsequently practiced in the U.S.[7] Whereas the traditional Anglo-Saxon jury system applies the unanimity rule to a jury of twelve—above all

4. Ley Orgánica del Tribunal del Jurado (B.O.E. 1995, 122) [hereinafter LOTJ]. The Ley Orgánica del Tribunal del Jurado 5/1995, or Organic Law on Jury Courts, has been in force since November 24th, 1995 and amended twice by Organic Laws 8/1995 (November 16th) and 10/1995 (November 23rd) of the Criminal Code. Juan Alberto Belloch, the Minister of Justice at that time in Felipe González's Socialist Government, saw the traditional jury model as a personal challenge in contrast to the supporters of the mixed court model, such as prestigious professors V. Fairén Guillén, V. Gimeno Sendra, J. Martín Ostos, E. Pedraz Penalva (who wrote on whether the jury court was necessary at all!), and A. Pérez-Cruz. For a list of several works by these professors, see Jimeno-Bulnes, *Lay Participation*, *supra* note 3, at 181–85. Thaman, *Spain Returns*, *supra* note 3, at 253, considered the mixed court as the best solution for Spain. For a selection of Spanish as well as Latin-American bibliographies providing comparative views of jury proceedings in different Spanish-speaking countries, see the general work JUICIO POR JURADOS EN EL PROCESO PENAL (Julio B.J. Maier et al. eds., 2000), with contributions by Ernesto Pedraz Penalva at 239–333 and Agustín-Jesús Pérez-Cruz at 335–88.

5. LOTJ art. 59(1).

6. LOTJ art. 61(1)(d) (requiring "a succinct explanation of the reasons why the members of the jury have declared, or refused to declare, certain facts as having been proved" to be one of the contents of the verdict form). For a comparative view of Spanish and U.S. legislation, see specifically E. VÉLEZ RODRÍGUEZ, LA MOTIVACIÓN Y RACIONALIDAD DEL VEREDICTO EN EL DERECHO ESPAÑOL Y EN EL DERECHO NORTEAMERICANO (2006).

7. For a general view of the jury in common law countries, see Neil Vidmar, *Foreword: The Common Law Jury*, 62 LAW & CONTEMP. PROBS. 1 (1999). For specific literature from the U.K. on classic studies, see, for example, SEAN ENRIGHT & JAMES MORTON, TAKING LIBERTIES: THE CRIMINAL JURY IN THE 1990S (1990); JAMES GOBERT, JUSTICE, DEMOCRACY AND THE JURY (1997); HARRIET HARMAN & JOHN GRIFFITH, JUSTICE DESERTED: THE SUBVERSION OF THE JURY (1979); JOHN JACKSON & SEAN DORAN, JUDGE WITHOUT JURY (1995). In Spanish, see Mar Jimeno-Bulnes, *La Institución del Jurado en el Reino Unido y el Régimen Especial de Irlanda del Norte*, 1–3 REVISTA DE DERECHO PROCESAL 343 (2001). Reference is made to the English jury because different rules and systems are provided for juries in Scotland. *See especially* Peter Duff, *The Scottish Criminal Jury: A Very Peculiar Institution*, 62 LAW & CONTEMP. PROBS. 173 (1999).

For a recent discussion of the U.S.A. jury system, see Symposium, *The Jury at a Crossroad: The American Experience*, 78 CHI.-KENT L. REV. 907 (2003); NANCY S. MARDER, THE JURY PROCESS (2005). In Spain for the translation of classic works, see REID HASTIE, STEVEN D. PENROD & NANCY PENNINGTON, LA INSTITUCIÓN DEL JURADO EN LOS ESTADOS UNIDOS: SUS INTIMIDADES (1986); *see specifically* I. Esparza Leibar, *El Jurado en los Estados Unidos de Norteamérica: Problemática General: El Procedimiento de Selección*, 1 REVISTA DE DERECHO PROCESAL 295 (1995); *see also* RODRÍGUEZ, *supra* note 6, at 85–130.

in the U.S.,[8] as the majority rule was introduced in the U.K. some years ago[9]—Spanish legislation merely requires the agreement of a majority of the nine jurors to reach a non-guilty verdict and seven votes for a guilty verdict.[10] The most controversial question remains the legal requirements for the reasoning behind the verdict itself. Not only is this disputed by scholars but, more importantly, it is a thorny problem in judicial practice and has stirred up numerous jurisprudential conflicts in the Spanish superior appeal courts that have overturned verdicts and even entire sentences.

I. THE PLOT OF *12 ANGRY MEN*

The plot of *12 Angry Men* is well known in Spain.[11] Almost all of the one and a half hours or so of action takes place in a single room, except for some scenes in a washroom and a few scenes at the start and end of the film that take place in the courtroom itself. A jury of twelve men plays out the key roles, and the protagonist, the only dissenting member of the jury who votes in favor of a "non-guilty" verdict in the first vote, is played by Henry Fonda (Juror #8). He only decides "to talk" after the first vote has been conducted in accordance with a "verdict-driven" deliberation model;[12] his concern being that a possible death sentence against the young defendant at the very least merits a minimum degree of consideration. Furthermore, he harbors a "reasonable doubt" about the "presumption of guilt," something that most members of the jury seem to have taken for granted. He goes on to assume a leadership position in the group, unlike the foreperson, Juror #1, whose role is merely administrative.[13]

The jury is drawn from a wide spectrum of late-1950s American society (1957). It could hardly be considered a representative group, above all

8. *See* FED. R. CRIM. P. 31(a); FED. R. CIV. P. 48; *see also* MARDER, *supra* note 7, at 164–71. On the role of juries and the juror, particularly in civil proceedings, see, for example, VALERIE P. HANS, BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY (2000).

9. Criminal Justice Act, 1967, c. 80, § 13 (Eng.).

10. *See* I. Esparza Leibar, *Algunas Cuestiones Sobre el Veredicto en la Ley del Jurado*, 4 REVISTA TRIBUNALES DE JUSTICIA 451 (2000); *see also* JUICIO POR JURADOS EN EL PROCESO PENAL *supra* note 4, at 389–98.

11. For specific literature in Spanish, see, for example, BENJAMÍN RIVAYA & PABLO DE CIMA, DERECHO Y CINE EN 100 PELÍCULAS: UNA GUÍA BÁSICA 199–207 (2004); *see also* FRANCISCO SOTO NIETO & FRANCISCO J. FERNÁNDEZ, IMÁGENES Y JUSTICIA: EL DERECHO A TRAVÉS DEL CINE 59–76 (2004). Also for a comment on *12 Angry Men* and jury movies in general, see GÓMEZ COLOMER, *supra* note 1, at 52–55.

12. *See* Marder, *supra* note 2, at 159–60. "Verdict-driven" deliberation is opposed to "evidence-driven" deliberation, two methods of proceeding according to when the voting takes place, either before or after any discussion. For a more extensive discussion on both styles of deliberation, see MARDER, *supra* note 7, at 154–60.

13. *See* MARDER, *supra* note 7, at 153.

nowadays, as all of the jurors are white males sitting in judgment over a Puerto Rican/Hispanic youth. There are neither women jurors nor jurors belonging to other ethnic or minority groups, although the jurors do differ in terms of age, social and educational background, and attitude. As jurors,[14] they all remain anonymous and none of their names are mentioned until the final scene outside the courthouse, in which the protagonist, Juror #8—Henry Fonda—gives his name as Davis in reply to Juror #9, who introduces himself as Mr. McCardle. They form a representative cross-section of society and include a high school sports coach, an entrepreneur, a bank clerk, a stockbroker, a youth from a deprived slum area, a painter/manual laborer, a watchmaker, a garage owner, a salesman, an advertising executive, a retired businessman, and the protagonist, an architect played by Henry Fonda. Thus, the jury includes various members of the middle classes, one of whom outshines the rest as the most cultivated member of the team, in sharp contrast to the rude ignorance demonstrated by Juror #3 (Lee J. Cobb) and the simplicity and irresponsibility of Juror #7 (Jack Warden).[15]

The atmosphere is very oppressive—hence the title *12 Angry Men*—in the hot jury room. Sidney Lumet, the film's director, is determined to create a claustrophobic atmosphere,[16] complicating the task of reaching a unanimous verdict. Most of the participants appear to express anger at having been chosen for jury service and they want to finish quickly; they are uninterested in fulfilling their duties as jurors, and are in a hurry. This reveals one of the great weaknesses of the judicial system:[17] people's indifference to the responsibilities of jury service. This is not the only weakness; there is also that essential point concerning the institution of the jury itself, which is the need for the jury to reach a unanimous decision. The film also deals with other issues: the role of an *ex officio* defense lawyer, the death penalty, enforcement of the principles of the presumption of innocence and

14. The only distinction between jurors is made according to the positions at the round table starting with the foreman, Juror #1. About the jury's composition, it has been said that "[e]ven in the 50s, it would have been unlikely to have an all-male, all-white jury," and also that "it was improper for Juror #8 to act as a defense attorney" and that "[t]he 'angry' interactions between some of the jurors seem overly personal and exaggerated." See these and other comments on FilmSite.org, 12 Angry Men (1957), http://www.filmsite.org/twelve.html (last visited Apr. 17, 2007).

15. *See* SOTO NIETO & FERNÁNDEZ, *supra* note 11, at 64.

16. The director, Sidney Lumet, confessed that he had used this special approach to create a tense feeling of suffocation present throughout the dialectical confrontation. *See* RIVAYA & DE CIMA, *supra* note 11, at 201.

17. That is the main title for a discussion of this film in SOTO NIETO & FERNÁNDEZ, *supra* note 11, at 62.

in dubio pro reo, and weaknesses in testimonial evidence.[18] The film remains highly relevant given the continued importance of these issues today, even though it was made fifty years ago and is in some respects out of date (filmed in black and white, 1950s scenery and dress, and so on).

As a professor of law, I decided to show the film to undergraduate students in 2005 and 2006 at Burgos University School of Law (Spain) as part of an optional subject entitled *Law and Cinema*. Although the students initially had mixed reactions of surprise and even disinterest, as they viewed the film[19] they become more engrossed and they thoroughly enjoyed the way it ended, which was reflected in their written work. Indeed, the film has been placed on their list of all-time favorites. They were only required to submit one essay for assessment,[20] and out of a lengthy list containing many other modern films, many of the students chose to write about this one, which proved their interest in the film. In addition to the excellent performances of its characters, they particularly enjoyed its script. The plot is a wonderful excuse for introducing a classroom discussion on the trial-by-jury system as opposed to the system of mixed courts that are more frequent in the Spanish judicial system.

The students showed less enthusiasm for the jury system in Spain. I am not only referring to the opinions that they expressed after having viewed the film, during an informal discussion, but also to the points of view they conveyed in their essays. They appeared to be rather critical of the nature of the trial by jury system currently in place in Spain.[21] It should also be stated that their views are not at all atypical but are representative of public opinion in general in Spain, where there is reluctance to express confidence in lay participation in the judicial system. This may be due to

18. Such overvaluation of testimony, as opposed to the undervaluation of documentary evidence, is also well known in Spanish judicial practice.

19. This is one of the oldest movies on the viewing list of the Law and Cinema study module at Burgos School of Law, and the only black and white film. Interesting to note that most of the twenty-year-old students had never before watched a black-and-white movie.

20. The official list of the fifteen films is available at http://www.ubu.es/inforalumno/academica/prog_libreasi.htm (number 4987).

21. Almost all the students expressed a hypothetical preference for a professional judge instead of a jury if they were ever brought to court one day, and the mixed court model was only considered acceptable where necessary. Other forms of lay participation were considered acceptable in the administration of justice, such as the popular action provided for under Article 125 of the Spanish Constitution. *See* Jimeno-Bulnes, *Lay Participation*, *supra* note 3, at 164–65; *see also* Julio Pérez Gil, *Private Interests Seeking Punishment: Prosecution Brought by Private Individuals and Groups in Spain*, 25 LAW & POL'Y 151 (2003).

Article 125 of the Spanish Constitution states, "Citizens may engage in popular action and take part in the administration of justice through the institution of the jury, in the manner and with respect to those criminal trials as may be determined by law, as well as in customary and tradition alcourts." An English translation is available at http://www.constitucion.es/constitucion/lenguas/ingles.html (last visited Oct. 27, 2007.

negative opinions towards past and present judicial practice (e.g., the "scandalous" acquittal in the *Otegi* case,[22] and the retrial ordered in the controversial *Wanninkhof* case, following the quashing of Dolores Vázquez's wrongful conviction in first trial).[23] Let us now turn our attention to jury deliberations in Spain and to the provisions of Spanish legislation with respect to jury verdicts, which is where jury rules in Spain differ markedly from those in the Anglo-Saxon system.

22. Mikel Mirena Otegi Unanue was acquitted of the murder and attempted murder of two Basque policemen under the exemption of "temporary mental disorder" after a jury trial held in the Basque Country. Following an appeals procedure, the Supreme Court of the Basque Country, on December 9, 1997, overturned both the verdict and the sentence pronounced by the magistrate-president of Gipuzkoa on March 10, 1997 and ordered a retrial. The decision was upheld on March 12, 1998, STS Mar. 12, 1998 (R.J., No. 2355), when the Supreme Court rejected the defense appeal, and upheld again on December 20, 2004, in Constitutional Court ruling STC 246/2004. Nevertheless, a retrial was not possible because the defendant escaped and Spanish criminal legislation requires as a general rule the presence of the accused in criminal proceedings, except when the penalty is less than two years of imprisonment. Ley de Enjuiciamiento Criminal [Spanish Criminal Procedural Law] art. 786(1) [hereinafter LECrim]. This acquittal was highly criticized as it was thought that the jury pronounced its verdict out of fear of possible reprisals by the Basque terrorist group ETA with which the accused supposedly had ties. Contrary opinions were also expressed, for example, by the defense lawyer Miguel Castells. *See* E. FOREST ¿PROCESO AL JURADO? CONVERSACIONES CON MIGUEL CASTELLS (1997); Juan Igartúa Salaverria, *El Jurado y la Motivación de su Veredicto: A Propósito de la STC Sobre el "Caso Otegi,"* 51 REVISTA VASCA DE ADMINISTRACIÓN PÚBLICA 215 (1998). In English, see Thaman, *Europe's New Jury Systems*, *supra* note 3, at 255; Thaman, *Spain Returns*, *supra* note 3, at 405–11 (also discussing other judicial practices in jury courts on subsequent pages).

23. Rocío Wanninkhof, a nineteen-year-old girl, was assassinated in the province of Málaga on October 19, 1999. Dolores Vázquez, a friend of the victim's mother, was declared guilty by seven favorable votes against two non-favorable votes, satisfying the majority rule required under Spanish legislation. The verdict as well as the sentence pronounced by the Provincial Court of Málaga on September 25, 2001, were overturned after an appeal to the *Tribunal Superior de Justicia de Andalucía* (Supreme Court of Andalusia) on February 1, 2002 on the grounds of "lack of reasoning" in the verdict as required in Article 61(1)(d) of the LOTJ; a retrial was ordered with a new jury. This pronouncement was ratified on appeal by the Supreme Court (*Tribunal Supremo*) on March 12, 2003, which upheld the previous decision for a retrial. STS, Mar. 12, 2003 (R.J. No. 2576). During this time, the accused, Dolores Vázquez, had spent seventeen months in custody.

But the most extraordinary aspect of this case came after a DNA test presented as evidence in a separate murder case led to the sentencing of Tony King for the murder that took place in Coín (Málaga) of a young girl named Sonia Carabantes. In the second *Wanninkhof* trial, recently concluded in December 2006, the verdict of the jury, pronounced on December 13, was unanimous in declaring Tony King guilty of the murder of Rocío Wanninkhof. For numerous articles regarding the case in the Spanish press around this time, see El Pais, http://www.elpais.com (search for "Wanninkhof") (last visited Aug. 24, 2007). More extensive references can be found in the literature on this case. *See, e.g.*, J. Igartúa Salaverria, *El caso Wanninkhof: ¿Tiro de gracia al jurado?*, 50 JUECES PARA LA DEMOCRACIA 63 (2004) (arguing that responsibility for this judicial mistake lay with the magistrate-president of the jury court). Also, some comments are addressed by C. Sanchis Crespo, *El Jurado y la Presunción de Inocencia: A Propósito de la Película "Veredicto final,"* 25 ESTADOS PENALES Y CRIMINOLÓGICOS 311, 325–29 (2005) (questioning the credibility of the jury institution itself, its main theme being the Spanish version of a "Final verdict" (*Veredicto final*)).

Precisely, because of the great debate sustained after such a case putting in evidence the credibility of the jury institution, the Pro-Jury Association made a public declaration regarding the *Wanninkhof* case through its president, Miguel Cid Cebrián, on behalf of jury trials. *See* Miguel Cid Cebrián, Press Release, Nota Sobre el "Caso Wanninkhof" de la Asociacion Pro-Jurado (Sept. 23, 2003), *available at* http://www.estudiojuridicomiguelcid.com.

II. THE VERDICT IN SPAIN

Without doubt, the Spanish system is distinguished by the legal requirements that relate to the adoption of the verdict. Two of the main points are the majority rule and the need for the jury to give its reasoning or "explanations" for returning a "guilty" or a "not-guilty" verdict. Had these two points been applicable to the plot of the film, a very different story line would have ensued. There would, in effect, have been no plot at all, as the film would have ended after the first vote with the majority of the jurors in favor of a "guilty" verdict, leaving the defendant to face the death penalty. In order to demonstrate that the plot of the film could not be applied to the trial-by-jury system in Spain,[24] these two requirements are detailed below.

A. The Rule of the Majority

Under the Jury Law in Spain, five votes are required to prove a fact as "favorable" to the accused but seven are required to prove a fact as "unfavorable."[25] Unlike the initial and general guilty or not-guilty verdict that establishes the culpability of the accused in the traditional Anglo-Saxon system, Spanish law requires, in the first instance, that the jury deliberate on each particular item on the verdict form or, more exactly, on the "object of the verdict" for which legal provisions are also made.[26] The form is given to the jury with the judge's habitual "directions to the jury" and "summing up"[27] at the end of a jury trial. Thus, deliberation in the Spanish

24. References to inefficiency are of course only made in relation to the diversity of rules surrounding the Spanish jury and verdicts and not in relation to the film itself, which remains an excellent portrayal of jury deliberations.

25. LOTJ art. 59(1).

26. *See* Jimeno-Bulnes, *Lay Participation*, *supra* note 3, at 178; Thaman, *Spain Returns*, *supra* note 3, at 321–23. Article 52(1) of the LOTJ stipulates that this written verdict form must be reviewed by the judge (magistrate-president of the jury court) and he or she must narrate "in separate, numbered paragraphs the facts alleged by the parties, which the jury should declare to be proved or not, differentiating between those which are against the defendant, and those which are favorable." *Id.* at 322 (providing the English translation). In Spanish literature on this point, see J.M. BERMÚDEZ REQUENA, EL OBJETO DEL VEREDICTO EN LA LEY DEL TRIBUNAL DEL JURADO (2004); *see also* D. de Alfonso Laso, *La Determinación del Objeto del Veredicto: Problemas Practices y Reales que se Pueden Llegar a Plantear*, *in* LA LEY PENAL 27–44, 111–120 (2005) (giving practical examples and including other examples of verdict forms).

27. *See* Jimeno Bulnes, *supra* note 7, at 373–77. Articles 54(1) and (2) of the LOTJ stipulate that the magistrate-president of the jury court will hand over the verdict form to the jury and at the same time, "will instruct them on the contents of the duties conferred on them, the rules that govern their deliberation and voting and the way in which they should reflect their verdict" as well as "the nature of the facts under discussion, which determine the circumstances constitutive of the crime with which the defendants have been charged, and those which refer to allegations of exclusion or modification of guilt." First translation by the author and second translation from Thaman, *Spain Returns*, *supra* note 3, at 353. In the Spanish literature, see MARÍA-ÁNGELES PÉREZ CEBADERA, LAS INSTRUCCIONES AL JURADO (2003) (providing a comparative view of the North American system). Also from another point

system starts with an itemized vote on a list of "sequentially articulated propositions," unlike the "simple guilty/not-guilty" Anglo-Saxon verdict[28] that is provided for in other common law legislations, and does not even require a unanimous verdict.[29] Afterwards, the jury votes for a second time on the culpability or non-culpability of the defendant for every offense and, once again, the majority rule is applied.[30] It has been suggested that this verdict with "two-steps" or "echelons" should be applied to U.S. juries.[31]

It should be noted that the jury court in Spain is composed of nine citizens[32] (with two alternate jurors) and is headed by a magistrate belonging to the Criminal Section of the Provincial Court: jurors provide the verdict and the magistrate-president, having reviewed the verdict, pronounces sentence and imposes the punishment.[33] Naturally, secrecy of deliberation

of view, see J.M. de Paúl Velasco, *Instrucciones al Jurado: Observaciones Practices con Alguna Icursión Teórica*, *in* CONSEJO GENERAL DEL PODER JUDICIAL [SPANISH GENERAL COUNCIL OF THE JUDICIARY BRANCH OR C.G.P.G.] PROBLEMAS DEL JUICIO ORAL CON JURADO 203 (1995). For a more recent, general view on future proposals, see Nancy S. Marder, *Bringing Jury Instructions into the Twenty-First Century*, 81 NOTRE DAME L. REV. 449 (2006).

28. According to Article 52(1) of the LOTJ the issues that must be addressed for each crime and each defendant are as follows:

> (1) the facts which prove the commission of the crime (*corpus delicti*) and the defendant's identity as the perpetrator; (2) the defense allegations; (3) the facts which could completely justify or excuse the charged criminal acts; (4) a narrative of the facts that determine the degree of execution or participation in the offense, or any statutory aggravating or mitigating circumstances; and (5) the criminal act as to which the defendant must be declared guilty or not guilty . . . .

Thaman, *Spain Returns*, *supra* note 3, at 322.

29. For example, in the U.K., the Juries Act 1974, c. 23, § 17(1), for England and Wales states "the verdict of a jury in the Crown Court or the High Court need not be unanimous if: (a) in a case where there are no less than eleven jurors, ten of whom agree on the verdict; and (b) in a case where there are ten jurors, nine of whom agree on the verdict." Thus, a qualified majority rule of sorts is allowed. *See* Jimeno-Bulnes, *supra* note 7, at 379–81 (providing a bibliography and examples). Also, the majority rule is provided for in Scottish criminal juries according to the Jurors Act 1825; in this case, a simple majority requires eight votes in a fifteen-person jury. But certainly the most peculiar aspect of Scottish jury law is the choice of three possible verdicts, i) guilty, ii) not proven, and iii) not guilty. However, the "not-proven" verdict counts as much as an acquittal as does a not-guilty verdict, the difference being that it is not a positive declaration of innocence but simply implies that the guilt of the accused has not been conclusively demonstrated. *See* Duff, *supra* note 7, at 190–97.

30. Again, seven votes are required to prove the culpability and just five votes for the non-culpability of the accused. LOTJ art. 60(2); *see* J. López Sánchez, *El Veredicto de Culpabilidad del Jurado*, 12 REVISTA TRIBUNALES DE JUSTICIA 1159 (1999). *See generally* A. Lorca Navarrete, *La Deliberación del Jurado en la Declaración del Hecho Probado y Proclamación de la Culpabilidad o Inculpabilidad del Acusado en la Doctrina y en la Reciente Jurisprudencia*, DIARIO LA LEY, Mar. 11, 2003, at 1.

31. *See, e.g.*, GEORGE P. FLETCHER, LAS VÍCTIMAS ANTE EL JURADO 246–56 (1997).

32. LOTJ art. 2(1). However, previous legal precedents exist in Spain, especially that of the Jury Law of 1888, confirmed on April 20, 1888 (known as the "Pacheco Law"), which provided for a jury panel of twelve jurors presided over by three professional judges. The latter was influenced by the French as a first step towards a mixed court or *escabinado* model that was to appear at a later date. The verdict at that time was one of guilty or not guilty.

33. LOTJ arts. 2–4. The LOTJ establishes this lay participation of citizens as jurors as both a "duty" and a "right," in a very particular way, as explained in Article 6 of the LOTJ. Inasmuch as it is a

is a strict requirement[34] and the voting is carried out orally in alphabetical order. The foreperson (the first name on the jury list) votes last of all, and all jurors who choose to abstain are fined.[35] Specifically, the Preamble to the LOTJ explains why the unanimity rule is not chosen for the verdict, stating that even though it would appear to be "the most appropriate method of obliging jurors to perform the most thorough deliberation" it is not adopted to avoid the breakdown of the deliberation process itself (hung juries).[36] The majority-rule option is therefore preferred, as it is likely to counteract excessive dissolutions of the jury,[37] unless in enforcement of the Jury Law. As far as I have been able to ascertain, no proposed amendments have been submitted on this point, although they have been submitted on other points (particularly, the authority to modify the list of offenses which entail a right to a jury trial).[38]

right, the law guarantees a remuneration: the Resolution of September 21, 2006, of the Sub-Secretary of the Ministry of the Presidency determines a daily payment of 67 € to every juror and 33.50 € to prospective jurors as well as compensation for travel (0.19 €/km by car), lodging (65.97 €, breakfast included), and 18.70 € maintenance expenses (lunch and evening meal). More comments on juror tasks and jury selection are included in Jimeno-Bulnes, *Lay Participation*, *supra* note 3, at 173, 177.

34. According to Article 56 of the LOTJ a jury will remain "in a closed session" until a verdict is reached; logically, if deliberations take a long time and the jury needs rest, recess should be arranged by the magistrate-president through jury sequestration. Also, meals and accommodation are arranged if necessary in restaurants and hotels that are provided for by the justice administration.

35. LOTJ art. 58. Legal fines amount to 450.76 €. If abstention persists, it will be counted as a favorable vote to the accused.

36. LOTJ pmbl., pt.V (covering the verdict and deliberation and voting); *see also* MARDER, *supra* note 7, at 172 (defining a hung jury).

37. Of course, the LOTJ contemplates the dismissal of the jury if the verdict does not reach the number of legally required votes, which forces a retrial with a new jury. LOTJ art. 65. Another possibility is the advance dismissal of the jury at the request of counsel, when either counsel or the magistrate-president considers that there is insufficient evidence, LOTJ art. 49, or when the accused reaches an agreement, LOTJ art. 50, similar to plea-bargaining in the U.S. to plead guilty to a particular charge.

38. For example, the exclusion of "bagatelle/trash offenses"—e.g., threats or trespass of a dwelling—as well as the introduction of other more socially relevant offenses—e.g., sex crimes and unlawful deprivation of liberty—despite the intentional exclusion of the former from the final draft of the jury law because of the excessive social sensitivity that these offenses cause. *See* Jesús María González García, *Constitución de 1978 y Justicia Popular: Siete Años de Tribunal de Jurado*, *in* LA CONSTITUCIÓN ESPAÑOLA DE 1978 EN SU XXV ANIVERSARIO 933–40 (Centro de Estudios Políticos eds., 2003); Gustavo López-Muñoz y Larraz, *Don Quixote y Sancho en el Jurado: La Reforma*, 17 REVISTA VASCA DE DERECHO PROCESAL Y ARBITRAJE 41, 59–62 (2005), *available at* http://www.pacientes.org/quixote.htm. Gustavo López-Muñoz y Larraz is one of the most courageous supporters of the jury in Spain and was the first President of the Pro-Jury Association for several years from 1982 until the reestablishment of the institution in Spain in 1995. His personal web page is available at Bufete del Letrado Dr. Gustavo López-Muñoz y Larraz, http://www.jurylaw.net (last visited Aug. 24, 2007). For a more extensive discussion on the future of the jury, see Gonzalo Quintero Olivares, *El Tribunal del Jurado y sus Competencies: Perspectivas de Futuro*, *in* JOSÉ ANTONIO MARTÍN PALLÍN ET AL., LA LEY DEL JURADO EN SU X ANIVERSARIO 41 (2006).

A proposal to amend the authority of jury courts was suggested by the Office of the General Attorney in 2001. *See, e.g.*, ANNUAL REPORT OF THE OFFICE OF THE ATTORNEY GENERAL 2005, at 659 (Madrid 2006). Other proposed amendments include, for example, the extension of criminal responsibility for jurors and the drafting of a specific offense applicable to jurors insofar as they act as judges, or pervert the course of justice. *See* MARTÍN PALLÍN ET AL., *supra*, at 17, 22 (the author was a magis-

Thus, Spain along with other countries, such as the U.K. since 1967, is in favor of the majority rule for reasons of "efficiency."[39] In contrast, to facilitate the deliberation process, U.S. rules have created smaller juries for certain federal or state courts (six or eight jurors rather than twelve), especially in civil cases; the verdict still has to be unanimous, at least in federal courts, although a number of state courts also apply the majority rule to civil proceedings.[40] These changes in the United States, especially the reduction in the size of the jury, constitutionally accepted in *Williams v. Florida*,[41] gave rise to major debates during the 1970s between supporters of both the twelve-person jury[42] and the six-person jury,[43] who argued vigorously in favor of and against both options. Examples of the arguments proposed by both sides are the need for a more balanced representation of the community on the panel set against the need for a shorter jury deliberation time.[44] It is clear that the amendments relating to a smaller jury size and the watering down of the unanimity requirement were adopted to counter the complexity of jury deliberations,[45] and support the preference of the Spanish legislature for a nine-person jury and the majority verdict.

trate of the Supreme Court, Criminal Chamber, until he retired in 2007); *see also* F.J. Alvarez García & F.M. Pereira González, *La Prevaricación Judicial y el Tribunal del Jurado*, DIARIO LA LEY, Feb. 16, 2006, at 1. *See generally* ANTONI LLABRÉS FUSTER & CARMEN TOMÁS-VALIENTE LANUZA, LA RESPONSABILIDAD PENAL DEL MIEMBRO DEL JURADO (1998).

39. *See supra* note 9.

40. *See* MARDER, *supra* note 7, at 166–67.

41. 399 U.S. 78 (1970). A list of different U.S. states with twelve-person, eight-person, and six-person juries was compiled by R. Arce & J. Sobral, *Tamaño del Jurado y Regla Resolutoria*, *in* LA PSICOLOGÍA SOCIAL EN LA SALA DE JUSTICIA 49, 54–55 (R. Arce & J Sobral eds., 1990). On the relation the between number of jurors and functioning of the jury in its deliberations, see HASTIE, PENROD & PENNINGTON, *supra* note 7, at 64–71.

42. *See, e.g.*, Hans Zeisel, *Twelve Is Just*, TRIAL MAG., Nov.–Dec., 1974, at 13.

43. *See, e.g.*, Edward Thompson, *Six Will Do!*, TRIAL MAG., Nov.–Dec., 1974, at 12.

44. Sometimes a minimum term of deliberation is even required, e.g., in U.K. Practice Direction of May 11, 1970, issued by Judge Parker, Court of Appeal, Criminal Division (Lord Chief of Justice).

> In the future any verdict of a majority of a jury shall not be accepted until two hours and 10 minutes have elapsed between the time when the last member of the jury has left the jury box to go to the jury room and the time when there is put to the jury the first of the questions set out in paragraph 3 of the Practice Direction 51 Cr.App.R.

Such paragraph 3 of the previous Practice Direction of July 31, 1967, contains a questionnaire form that the judge will address to the jury in order to verify if the verdict has been adopted unanimously or by a majority. For the current rules regarding this issue, see Ministry of Justice, Consolidated Criminal Practice Direction § IV.46, *available at* http://www.justice.gov.uk/criminal/procrules_fin/contents/practice_direction/pd_consolidated.htm.

45. *See, e.g.*, GOBERT, *supra* note 7, at 90–92 (talking about the "dialectics of deliberation"); R. Arce, J. Sobral & F. Fariña, *Análisis de la Deliberación del Jurado*, *in* LA PSICOLOGÍA SOCIAL EN LA SALA DE JUSTICIA, *supra* note 41, at 77 (arguing that most studies of jury decision-making processes concentrate on the time factor).

Finally, a few statistics should be given here regarding the number of convictions and acquittals in Spanish jury courts over 2004 and 2005:[46] a total of 351 conviction sentences, set against a mere 50 acquittal sentences, gives a figure of 87.53% of all jury trials in favor of conviction in 2004. This proportion increased slightly in 2005: 278 conviction sentences, and 27 acquittal sentences, gave a percentage of 91.15%, once again favorable to conviction. Surprisingly perhaps, it cannot be assumed that Spanish juries will be more lenient than professional judges, despite the bitter experience of "scandalous acquittals" such as the *Otegi* case,[47] even though a rationale for those verdicts is required by law.

B. The Requirement for a "Reasoned" Verdict

Certainly, the most noteworthy aspect of the Spanish system is the requirement that a reasoned explanation be provided for the verdict, which might astonish anyone familiar with traditional jury systems.[48] A quintessential element of the classic Anglo-Saxon jury system is precisely the absence of any kind of explanation; the verdict is by nature spontaneous.[49] It appears that there is at least one legal precedent in comparative law, which is found in section 331(e) of the Austrian Code of Criminal Procedure, which allows the jury to write down the reasons for its verdict.[50] The requirement in the LOTJ that the verdict be reasoned is derived from constitutional rules, especially that which refers to the grounds of the *judgment* as set down in Article 120(3) of the Spanish Constitution.[51]

46. *See* Consejo General del Poder Judicial, Memoria Annual 2006, *available at* http://www.poderjudicial.es/eversuite/GetRecords?Template=cgpj/cgpj/pjexaminarmemoria.html&TableName=PJMEMORIAS&dkey=25.

47. *See supra* note 22.

48. LOTJ art. 61(1)(d).

49. For this reason, the predictability of the verdict is studied from a sociological and a psychological point of view. *See, e.g.*, HASTIE, PENROD & PENNINGTON, *supra* note 7, at 114–32.

50. § 331(e) StPO (Aus.); *see also* Thaman, *Spain Returns*, *supra* note 3, at 364 & n.556; Thaman, *Europe's New Jury Systems*, *supra* note 3, at 254.

51. Textually, "Judgments shall always specify the grounds therefore, and they shall be delivered in a public hearing." C.E. art. 120(3). The same arguments have been employed with respect to Article 24 in provision of effective judicial protection and due process of law, insofar as constitutional jurisprudence recognizes the right to obtain a "well-founded judgment"; or, more specifically, even as regards the right of being presumed innocent until proven guilty as prescribed in Article 24(2) and interpreted by the Constitutional Court as requiring "reasoned" evidence to be presented. This last argument advanced by Vincente Gimeno Sendra is found in several works. *See, e.g.*, Vincente Gimeno Sendra, *La segunda reforma urgente de la Ley del Jurado*, 39 REVISTA DEL PODER JUDICIAL 419, 427 (1995). The argument for the presumption of innocence in relation to the jury is also explored in Sanchis Crespo, *supra* note 23. In relation to this point, see, for example, J.M. Bermúdez Requena, *La sentencia del Tribunal del Jurado*, *in* DÉCIMO ANIVERSARIO DE LA LEY DEL JURADO 11, 24 (2006); J.M. García Moreno, *La motivación del veredicto del jurado popular*, 2 REVISTA DE JURISPRUDENCIA

Specifically, Article 61(1)(d) of the LOTJ stipulates that the verdict shall include "a succinct explanation of the reasons why they [the members of the jury] have declared, or refused to declare, certain facts as having been proved."[52] The main issue relates to whether the verdict form satisfies the requirement of providing a "succinct explanation of the reasons."[53] Judicial practice endeavors to resolve this issue on a case-by-case basis through the Supreme Court appeals procedures, as part of the judicial review of judgments pronounced in the Regional Supreme Courts,[54] and subsequently, if a defense appeal is promoted due to an alleged violation of constitutional rights (in this case, the right to effective judicial protection guaranteed under Article 24(1)),[55] through the Constitutional Court.

From a general standpoint, and in accordance with the interpretation provided by the Supreme Court, there are three alternative theses by which the suitability of the reasoning in jury verdicts may be assessed.[56] These positions vary from the strictest interpretation (the "maximalist thesis") that requires a thorough description of the whole deliberation process and that concludes with a declaration that certain facts have or have not been proven, to the most flexible interpretation (the "minimalist thesis"), which permits general references to the evidence with no greater detail. The intermediate position preferred by the Supreme Court[57] would appear to be

EL DERECHO 1 (2006). In relation to the presumption of innocence and the principle *in dubio pro reo*, see VÉLEZ RODRÍGUEZ, *supra* note 6, at 195–202.

52. Translation taken from Thaman, *Spain Returns*, *supra* note 3, at 364.

53. See interpretation provided by A.M. Lorca Navarrete, *La motivación del veredicto en la doctrina y en la reciente jurisprudencia: En concreto la denominada 'duda razonable,'* DIARIO LA LEY, Jan. 27, 2003, at 1; *see also* A.M. LORCA NAVARRETE, EL JURADO: EXPERIENCIAS Y FUTURO EN EL DÉCIMO ANIVERSARIO DE LA LEY DEL JURADO (1995–2005): LA PRÁCTICA ADVERSARIAL DEL PROCESO PENAL ORDINARIO DE LA LEY DEL JURADO EN LA MÁS RECIENTE TEORÍA Y JURISPRUDENCIA 674–72 (2005).

54. LECrim. arts. 847–48; *see also* JUAN MONTERO AROCA, LOS RECURSOS EN EL PROCESO ANTE EL TRIBUNAL DEL JURADO 165–79 (1996).

55. Textually, Article 24(1) of the Spanish Constitution states that "[a]ll persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defense." Provision for defense appeals or individual appeals is made for "citizens" (although extensive interpretation by the Constitutional Court has recognized this right as applied to foreigners) under Article 53(2) of the Spanish Constitution. Appeals may be made on the basis of any infringement of rights contained in Articles 14–29, except for the right of conscientious objection in Article 30(2).

56. *See* STS, July 7, 2005 (R.J. No. 894); *see also* García Moreno, *supra* note 51, at 2. Also, an extensive review of judicial practice by the Supreme Court is contemplated in J. Vegas Torres, *La motivación del veredicto en la jurisprudencia del Tribunal Supremo*, *in* MARTÍN PALLÍN ET AL., *supra* note 38, at 85. *See generally* J. CANO BARRERO, LA LEY DEL JURADO: JURISPRUDENCIA COMENTADA (DIEZ AÑOS DE LA APLICACION DE LA LEY DEL JURADO) 122–61 (2007).

57. *See, e.g.*, STS, June 13, 2005 (R.J. No. 6007); STS, Sept. 13, 2005 (R.J. No. 8658); STS, Oct. 18, 2005 (R.J. No. 7659); STS, Nov. 16, 2006 (R.J. No. 116). Despite accepting this type of verdict, at times the Supreme Court has declared that it can be improved. *See, e.g.*, STS, June 1, 2005 (R.J. No. 5892). In other cases, the Supreme Court argues the minimalist position, declaring that only cursory

the most appropriate, which supports an itemized specification of all points relevant to the evidence without requiring the accuracy of judicial reasoning (which in any case is provided afterwards by the magistrate-president when pronouncing sentence). In this context it must be remembered that the jurors are simply lay assessors and not professional judges. Judicial experience shows that an explanation of why facts are considered proven must be accurate when based on circumstantial evidence as opposed to direct evidence[58] and when they lead to a conviction rather than an acquittal.[59]

These same conclusions have been supported by the Constitutional Court when distinguishing between the verdict and the sentence. This is the case, for example, in STC 169/2004, of October 6, 2004, and STC 246/2004, of December 20, 2004, the former in denial of the defense appeal presented by Mikel Otegi because "none of the 91 facts—both favorable and not favorable to the accused—listed on the verdict form were summarily explained," and only a very general mention was made of the evidence as a whole.[60] The first ruling distinguishes between conviction and acquit-

reference to the evidence presented at the trial is necessary because of the principle of immediacy and where the authorship is "obvious." *See, e.g.*, STS, Apr. 8, 2005 (R.J. No. 4975).

The same tendency is noted in Provincial Courts drafting their respective sentences based on verdicts; for example, the judgment by the Provincial Court of Gipuzcoa, Mar. 29, 2005 (J.U.R. No. 192947), arguing in favor of a reasonable guilty verdict.

58. For example, STS, Apr. 8, 2005 (R.J. No. 4975), of the Supreme Court in which the documentary evidence was the weapon employed to commit the assassination that was presented at the trial as well as the scientific evidence that death was caused by the same weapon (a jackknife). In contrast, in STS, Feb. 16, 2005 (R.J. No. 4759), the only evidence was circumstantial insofar as it consisted of a declaration by a witness, which was not considered by the jury in the explanation of the verdict. Because the witness's declaration was not considered, the verdict was overturned by the Regional Supreme Court of Andalucía (Granada), as was the sentence pronounced by the magistrate-president, which is at present subject to appeal proceedings, the Supreme Court having dismissed the appeal on similar grounds. A further example is STS, Feb. 24, 2005 (R.J. No. 2719), in which both the Regional and the Supreme Court considered the reasoning to be sufficient that resulted in a guilty verdict based on circumstantial evidence. For more specific information, see Vegas Torres, *supra* note 56, at 100–10; *see also* CANO BARRERO, *supra* note 56, at 156–59.

59. This argument clearly differentiates between conviction and acquittal, and permits differing approaches to the requirement for a reasoned verdict, employed, for example, by the Supreme Court in STS, Feb. 23, 2005 (R.J. No. 7469). In this case, reasonable doubts were found concerning the alleged facts in the accusation and for that reason the presumption of innocence was not undermined. Another example is the above-mentioned STS, Sept. 13, 2005 (R.J. No. 8658). The same argument is employed by the Regional Supreme Court of Castilla y León (Burgos) in the judgments of Oct. 20, 2005 (A.R.P. No. 706), and Feb. 13, 2005 (J.U.R. 105372), in which appeals against acquittals based on a not-guilty verdict were rejected.

60. *See* Dec. 20, 2004 (S.T.C. No. 246). A database of Spanish constitutional jurisprudence is available at Tribunal Constitucional, http://www.tribunalconstitucional.es/jurisprudencia/ jurisprudencia.html (last visited Aug. 24, 2007). Both judgments have provoked several comments, especially the last one. *See* G. Serrano Hoyo, *Motivación del veredicto y tutela judicial efectiva en la sentencia del Tribunal Constitucional (Pleno) 169/2004, de 6 de octubre*, 1 RECOPILACIÓN TRIBUNAL CONSTITUCIONAL 13 (2005). In relation to both constitutional decisions, see Y. Doig Díaz, *Sobre la motivación del veredicto del Jurado*, 16 LA LEY PENAL 88 (2005); J. Pavía Cardell, *El deber de motivación del*

tal cases, considering that a lesser degree of reasoning is required in acquittal cases, not only with regard to the verdict but also with regard to the sentence. Such a constitutional precedent is also followed by subsequent jurisprudence, such as STC 192/2005, of July 18, 2005, and STC 115/2006, of April 24, 2006, which were also hotly debated as shown by the fact that dissenting opinions are present in both cases.[61]

This issue has important practical consequences because an unreasoned or inadequately reasoned verdict can be challenged twice. First, it can be reversed by the magistrate-president of the jury,[62] and second, an appeal may be made to the Regional Supreme Court against a sentence based on such a verdict[63] that, if upheld, will force the Court to overturn the whole sentence. Thus, the "appeal" is against the sentence and not against the verdict itself,[64] and, if it is found that the verdict is adequately reasoned, nullification will not necessarily imply a new trial with another jury and magistrate-president. A new trial is ordered, however, whenever a failure by the jury to observe due process as stipulated in Article 63(1)(e) of the LOTJ[65] results in the verdict being rejected three times by the Magistrate-President.[66]

The thorny issue of the rationale supporting the verdict has led scholars to advance arguments both for and against this requirement.[67] Leaving

vación del veredicto del jurado (Comentario a las Sentencias del Tribunal Constitucional, núm.169/2004, de 6 de octubre, y núm.246/2004, de 20 de diciembre), 14 LA LEY PENAL 94 (2005).

61. In STC 192/2005, a dissenting opinion is formulated by M.E. Casas Baamonde, who was at the time the president of the Constitutional Court. For comments on that opinion, see J. Igartúa Salaverría, *Un erróneo reflejo de la presunción de inocencia en los veredictos de inculpabilidad y en las sentencias absolutorias*, DIARIO LA LEY, Feb. 7, 2006, at 1. In the second case, STC 115/2006, the dissenting opinion of Judge Eugeni Gay Montalvo argued in favor of ample reasoning of a verdict, even if it resulted in an acquittal sentence.

62. LOTJ art. 63(1)(e).

63. LECrim. art. 846 bis c(a); *see* M.L. García Torres, *El control judicial de los defectos del veredicto*, 3 TRIBUNALES DE JUSTICIA 65 (2003).

64. See, for example, over recent years, STS, Feb. 25, 2005 (R.J. No. 2032); STS, Mar. 7, 2006 (R.J. No. 1984); STS, Apr. 20, 2005 (R.J. No. 6798). It is hardly an ordinary appeal because the facts are in no way challenged; despite its name, it resembles an extraordinary appeal. *See* Coral Arangüena Fanego, *El recurso de apelación contra sentencias en los procesos ante el Tribunal del Jurado*, 47 REVISTA DEL PODER JUDICIAL 207 (1997); José Garberí Llobregat, *El nuevo recursod de apelación de la Ley Orgánica del Tribunald el Jurado*, 8 REVISTA VASCA DE DERECHO PROCESAL Y ARBITRAJE 179 (1996); *see also* MARCO VILLAGÓMEZ CEBRIÁN, LA 'APELACIÓN' DE LA SENTENCIA EN EL JUICIO CON JURADO: ESTUDIO DEL RECURSO ESTABLECIDO POR LA L.O. 5/1995 DEL TRIBUNAL DE JUSTICIA (1998).

65. See recent jurisprudence such as STS, Feb. 3, 2006 (R.J. No. 1929), and STS, Feb. 15, 2006 (R.J. No. 2274).

66. LOTJ art. 65.

67. For example, the answers to the questionnaire promoted by the Center of Juridical Studies attached to the Ministry of Justice reflected the positions of the two camps for and against the "reasoned" jury verdict in Spain. *Respuestas a la encuesta*, *in* MARTÍN PALLÍN ET AL., *supra* note 38, at 117, 144–63. A very critical opinion is upheld by Manuel Lozano-Higuero Pinto, *Sobre algunos vicios, remediables, del sistema español del jurado (de la hipermotivación a la minoración de la presunción de*

aside the extensive doctrinal debate, it could be argued that the constitutional rule prescribed by Article 120(3) refers solely to the sentence in terms of a judicial decision[68] and not to the verdict given by lay persons. The Spanish legislature could have opted for the mixed court model as discussed in recent years.[69] Furthermore, Spanish jurisprudence has experienced serious problems when applying the LOTJ in relation to this requirement on several occasions, which has led to the suggestion that it be abolished.[70] According to statistics, more than fifty percent of all verdicts are improperly or inadequately reasoned.[71]

CONCLUDING REMARKS

Having read through this description of the key attributes of the verdict and the jury system in Spain, the reader will understand why the plot of the film *12 Angry Men* would have been completely different had it been set in the legal context of the LOTJ and Spain in 1995. The same deliberations as in the film could never have taken place, and Henry Fonda (Juror #8) would not have put in a performance that deserved an Oscar, despite never being nominated for one at the time. As argued by many people,[72] the film underlines that the unanimity rule leads to a more thorough debate than that which occurs in courtrooms where the majority rule applies. Indeed, in the latter case, there may be no discussion whatsoever if there is a majority at the outset. Thus, the unusual requirement under Spanish legisla-

inocencia, pasando por el regimen 'sui géneris' de impugnaciones), *in* DÉCIMO ANIVERSARIO DE LA LEY DEL JURADO, *supra* note 51, at 116.

68. *See* Ernesto Pedraz Penalva, *Motivación y control de las resoluciones jurisdiccionales*, 4 REVISTA DE CIENCIAS JURÍDICAS (EL SALVADOR) 31, 59–78 (1992). The same opinion is maintained by Juan Montero Aroca in his participation during the final discussion that took place in the session of December 13, 2005, in commemoration of the tenth anniversary of the Jury Law organized by the Center of Juridical Studies. *Diálogos Jurídicos*, LA LEY DEL JURADO EN SU X ANIVERSARIO, *supra* note 38, at 189, 235.

69. This was also one of the clauses implicitly contained in the State Agreement to Reform Justice (*Pacto de Estado para la reforma de la Justicia*) signed on May 28, 2001, between the main political groups in Spain, *Partido Popular* (PP) and *Partido Socialista Obrero Español* (PSOE). Clause 17(i) contemplates the "retraining" of the jury system in accordance with the experiences and observations that have been noted over the time that the Jury Law has been in force. Nevertheless, such a move towards mixed courts had been already pleaded prior to the promulgation of the Jury Law that is today in force. *See* Gimeno Sendra, *supra* note 51, at 426.

70. For example, such an opinion is implicitly expressed in MAGDALENA GONZÁLEZ JIMÉNEZ, LA INSTITUCIÓN DEL JURADO: LA EXPERIENCIA ESPAÑOLA 335 (2006), and especially in Lozano-Higuero Pinto, *supra* note 67, at 122, 128. Also such problems are contained in *Respuestas a la encuesta*, *supra* note 67, at 144–46.

71. *See* M. Serra Domínguez, *El Jurado: éxito o fracaso*, *in* PROBLEMAS ACTUALES DE LA JUSTICIA PENAL 59, 62 (J. Picó y Junoy ed., 2001). The author supports the alternative of a mixed court.

72. *See* HASTIE, PENROD & PENNINGTON, *supra* note 7, at 177; MARDER, JURY PORCESS, *supra* note 7, at 164–65; Arce & Sobra, *supra* note 41, at 51.

tion for a reasoned verdict may represent an alternative to the unanimity rule, as it obliges jurors to participate in a debate of sorts or at least forces them to reflect more carefully on their decisions.

It is no less true, however, as is also argued,[73] that the type of scene played out in *12 Angry Men* is not frequent in judicial practice. In a more normal deliberation process the dissenting jurors, such as Juror #8 in the film, would be swayed by the majority. This fictional case is particularly unusual because there was initially just one dissenting juror and he was trying to persuade a group of men who were eager to complete their jury service as quickly as possible. Incidentally, Spanish citizens frequently seek to be excused from jury service for the numerous reasons that are provided for by law.[74] Disqualification on the grounds of conscientious objection has even been mentioned in a complainant's appeal before the Constitutional Court (*recurso de amparo*), which at the time stirred up a good deal of controversy.[75]

These questions undoubtedly touch on the reluctance of citizens to perform jury service and, more generally, the survival of the jury institution itself, at least in Spain. Statistics on public opinion show that citizens have less and less confidence in "lay justice" as opposed to professional justice.[76] These attitudes are more in line with the historical background of Spanish legal practice and doctrinal debates that, as mentioned earlier, have been stimulated by the tenth anniversary of the 1995 Jury Law,[77] are underway at a time when a possible move to the mixed court model is under

73. MARDER, *supra* note 7, at 156 (citing VALERIE P. HANS & NEIL VIDMAR, JUDGING THE JURY 110 (1986) (stating that outcomes such as the one in *12 Angry Men* "almost never occur in real life")).

74. The LOTJ establishes complicated systems for qualification and disqualification, which are contemplated under the legal status of the Spanish juror. In brief, aside from the requirements for qualification, LOTJ art. 8, there are four categories for disqualification under the headings of incapacity, LOTJ art. 9, incompatibility, LOTJ art. 10, prohibition, LOTJ art. 11, and excuses, LOTJ art. 12, which contemplate various personal and professional circumstances. *See* Jimeno-Bulnes, *supra* note 3, at 174–75; *see also* J.L. Gómez-Colomer, *Aproximación al estatuto jurídico de los juices legos en el proyecto de Ley del Jurado*, ACTUALIDAD JURÍDICA ARANZADI, Apr. 13, 1995, at 1. On this issue, with reference to the common allegation of a cause for disqualification, see González García, *supra* note 38, at 939.

75. In the only decision on this issue, STC 216/1999 of November 29, 1999, the Constitutional Court said it was "too soon" to appreciate any possible violation of the fundamental right to conscientious objection because the time to allege the causes of qualification determined by law had not yet been reached. Consequently, given the lack of a constitutional pronouncement, it is not clear whether there is a provision for conscientious objection. The only provision on the matter is contemplated under Article 30(2) of the Spanish Constitution and the doctrinal discussion is exclusively related to compulsory military service, which has since been abolished.

76. *See* J.J. TOHARIA CORTES & J.J. GARCIA DE LA CRUZ HERRERO, LA JUSTICIA ANTE EL ESPEJO: 25 AÑOS DE ESTUDIOS DE OPINION DEL CGPJ 81–83 (2005).

77. Sources on the tenth anniversary are cited throughout this paper, but see especially MARTÍN PALLÍN ET AL., *supra* note 38, at 189–260. For a commentary on the juridical debate, which took place on December 13, 2005, at the Center for Juridical Studies, see *Diálogos Jurídicos*, *supra* note 68.

discussion. Nevertheless, doubts over the accuracy and even the efficiency of the jury institution are not less prevalent in Spain than in other countries with traditional jury systems or even mixed courts.[78]

It will be fascinating to see what happens in the future in Spain and in other countries. For example, in the U.S. there is increasing mention of the term "cyberjuries,"[79] very much in keeping with our growing attachment at the turn of the millennium to new technology. No matter what happens in the future, *12 Angry Men* is one of the best films ever made from the perspective of the researcher in the field of trial by jury, and perhaps from the point of view of many picture-goers. It was the first attempt by Hollywood to deal with juridical issues and for that reason alone it deserves to be celebrated in its fiftieth anniversary. Even though the plot is dominated by the deliberations of the jury, the film will always remain relevant because of the various subjects that are expressed or implicitly mentioned.[80]

78. *See, e.g.*, JACKSON & DORAN, *supra* note 7, at 287–319 (criticizing the institution and declaring that "jury trials are an anachronism of a bygone age which should be abandoned in favour of professional trials"); HELENA KENNEDY, JUST LAW 95–120 (2004) (defending the use of the institution in the U.K.); *see also* BARBARA HUBER, *El Jurado: ¿Un órgano jurisdiccional eficiente?*, *in* CUESTIONES DEL DERECHO PENAL EUROPEO 83 (2005) (discussing Germany's system).

In Spain, one of the most critical positions is taken by E. PEDRAZ PENALVA, *Sobre el significado y vigencia del Jurado*, *in* CONSTITUCIÓN, JURISDICCIÓN Y PROCESO 59 (1990); E. Pedraz Penalva, *El Jurado como vía de participación popular*, DIARIO LA LEY, Apr. 24, 1994, at 1. For a discussion of the jury on the occasion of the tenth anniversary of the Jury Law 1995, see Alberto Montón Redondo, *Diez años de Jurado: Radiografía de un error*, 1 REVISTA DERECHO Y PROCESO (2006), *available at* http://www.ucm.es/info/procesal/revista.htm.

79. *See* Nancy S. Marder, *Cyberjuries: The Next New Thing?*, 14 INFO. & COMM. TECH. L. 165 (2005). For interesting recommendations on jury innovations in New York State, see JURY TRIAL INNOVATIONS IN NEW YORK STATE, *available at* http://www.nyjuryinnovations.org/materials/JTI%20booklet05.pdf.

80. As previously mentioned, the roll of an *ex officio* defense lawyer, the death penalty, the enforcement of the principles of presumption of innocence and *in dubio pro reo*, and the weakness of the testimony evidence are some of the subjects touched upon in the film. *See supra* text accompanying note 18.