

THE RELUCTANT PIONEER: BERNARDO CREMADES

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For many around the world, Bernardo Cremades is the most public face of Spain's arbitration community. At home he promoted the reform of what was then an outdated arbitration regime and supported the launch of the Club Español del Arbitraje. As he marks his 40th year in practice, the man who is often seen as the godfather of international arbitration in Spain is clearer than ever about the challenges ahead for arbitration.

Bernardo Cremades es uno de esos abogados cuya reputación se extiende más allá de las fronteras españolas. Aunque a veces cuestione la habilidad de los despachos españoles para competir a nivel global, no hay duda de que como árbitro está considerado uno de los líderes internacionales. Ha construido su reputación en un área – el arbitraje – que ha llegado por fin, a un punto de gran madurez.

Since establishing his own legal practice in 1969, Bernardo Cremades has acted as an arbitrator in well over 200 international disputes. Arbitration has certainly come a long way in the past 40 years but nonetheless he emphasises that much remains to be done before it enjoys the same profile in Spain as in many jurisdictions elsewhere.

"One of the results of the economic crisis has been the increasing movement of lawyers into arbitration. But a recurring issue is their ability to embrace the 'spirit' of arbitration. Many with a background in litigation bring this attitude and approach and are therefore not always the right kind of lawyers we need."

He welcomes the creation of new institutions to promote a better understanding of arbitration – as President of the Spanish Court of Arbitration he supported the launch of the Club Español del Arbitraje – but has to date placed his own focus towards more international arbitration bodies, gaining senior past positions within the London Court of Arbitration (LCIA) and the International Bar Association (IBA).

As long as many Spanish private practice lawyers struggle to embrace the neutrality of arbitration, their clients will inevitably struggle as well, he insists – companies may have the perception of arbitration as a 'closed shop' with questions over independence and conflicts of interest.

"We cannot forget that most importantly we need to encourage the legal counsel of Spain's biggest companies to engage with arbitration – some of whom for one reason or another have unfortunately taken very strong positions against its use, at least domestically."

While sizeable domestic arbitrations are common, questions can arise over the independence of arbitrators – especially those appointed by parties. What is ultimately required to move things on is generational change, believes Cremades. "The future of Spanish arbitration lays with the next generation of lawyers not the current practitioners."

Education is vital and he takes comfort that most law faculties now offer specialist programmes. "I am told by law school Deans that it is now the best and brightest students who want to go into international arbitration – the union of commercial, corporate and investment treaty issues many now find hugely stimulating."

Recent years have seen Cremades in more demand than ever. But he denies that his reputation overshadows his firm or any of the other practitioners there.

"The lawyers who practise here do so because they enjoy what we do and collectively how we do things. Nobody can deny the profile that many here enjoy either domestically or internationally," he says, explaining that Inel Tejada and David Cairns, for example, are prominent in their own right.

Context

Throughout his career, Cremades has maintained a remarkably consistent practice focus, and while he may now be considered at the peak of his profession, life as a practising lawyer was not however his first career ambition.

Having completed a first degree at the University of Seville, Cremades went on to complete a PhD at the University of Cologne and become a Fulbright scholar before joining the Universidad Complutense de Madrid aged 26, at the time Spain's youngest law professor.

The subsequent four decades have seen him build a firm with an international profile, albeit from the same Madrid location. A decision, which reflects his belief that when it comes to law firms, small is best – albeit he has encouraged his sons to begin their legal practices among the elite law firms of New York.

Cremades fashioned his own early practice specifically towards international corporate law, with an emphasis on disputes. He spent time in Paris, Germany and Belgium, before returning to Madrid to found J&B Cremades & Asociados, alongside his brother Juan Antonio. The initial focus was towards international business law drawing on their own expertise.

"Early on we thought it was important to have a network to match our international client profile – we opened in Paris and Brussels and also in New York and London, where we were the first Spanish law firm to do so," he says.

The firm also subsequently established a number of international referral relationships. But despite rapid early expansion, Cremades ultimately took the decision to limit further growth and concentrate his own focus towards international disputes.

"For a number of years we were successful and concerned with building an international network, but soon it became evident that simply managing the firm was taking up too much of my time," he says.

The result was the closure of the representative Brussels, London and New York offices and the demerger of its Paris office – which now operates as J&A Cremades led by his brother.

"I didn't want to be an entrepreneur and run a legal business, I wanted to again be a lawyer. We therefore adopted a new structure to reflect what it was we wanted to practise and how we wanted to do it."

Diaspora

Such a decision inevitably presented a cap on growth, says Cremades. "Law firms need infrastructure, including support staff and technical resources, but around 20 lawyers has always proved to me to be an ideal number for a firm."

An inevitable result of this enforced limit has been an almost constant trickle of lawyers away from the firm, including a number of highly respected partners over the years – it currently counts eight partners and 17 lawyers in total. Some competitors even suggest that Cremades, once among Spain's largest firms, could have rivalled firms such as Uría Menéndez had the focus remained

towards growth.

Notable departures include Juan Tena and his team who later established Jones Day's Madrid office. Carlos Pazos left Cremades to establish SJ Berwin in Madrid, with Ramon Gallardo who now leads that firm's Brussels office. Likewise, Javier Santos and Josep Maria Julia left to launch Squire Sanders & Dempsey in Madrid, now DLA Piper.



“ We embrace the idea of commoditisation because our strategy is not built on presuming we know all the answers. ”

Hugo Écija

But not surprisingly it is within arbitration that Cremades is credited with training a whole generation of leading practitioners – including Calvin Hamilton, Josef Frohlingsdorf and Mercedes Fernández (now at Jones Day), among others.

Despite the diaspora Cremades remains consistent in his belief that small is beautiful, and that the decision to restrict the firm's size has paid dividends.

"A number of prominent lawyers have left the firm and had a lot of success at the international law firms that have opened in Spain, but a significant number of our lawyers have been with us for decades – these are people who like the way we work and want to concentrate their practices on what we focus on."

In fact, such is the affiliation that many old members have with their firm that Cremades himself was the guest of honour at a special reunion organised by alumni last year.

"To be fair, Bernardo always made it clear that he wanted to keep a strong hand on the firm and keep it small," one alumni told Iberian Lawyer off-the-record. "We always knew where we stood."

Big is not always

best Despite having helped train many of the most prominent lawyers now practising in Madrid, and effectively opening the door to some of the international law firms now operating in Spain, Cremades remains content with both the reputation and profile of his firm.

He admits to being sceptical about law firms' desire to grow for growth's sake and sees many firms now facing unprecedented pressures.

"We have seen a change away from law firm partnerships to the concept of professional services firms that sell a legal product. The overriding message of the past decade, coming from London or the US, was that big was best. This inevitably places strains on the validity of the partnership model, and I believe the delivery and quality of the service given."

The result, he suggests, is that many of the biggest law firm structures are now inherently unstable. "Big structures generate huge costs and many will likely not survive without being restructured – more law firm bankruptcies may yet emerge owing to their armies of lawyers and their high office costs."

Cremades also questions the logic of Spanish firms competing directly with the leading UK and US firms.

"Spanish firms cannot begin to think that they can compete on equal terms all around the world – you first have to determine who you are competing with and where. They are misguided to think that they can compete in arenas such as international capital markets, for example. You have therefore to find some other areas of differentiation and specialisation."

International arbitration is being highlighted by some of the largest Spanish firms as a major area of practice growth, especially across Latin America.

This is not an easy proposition, suggests Cremades, who acknowledges the evident success of the US and UK law firms.

"Whichever way we may view this from Madrid, it is common practice for Spanish-speaking parties across Latin America to appoint US counsel – necessitating the translation of all documents and hearings into English."

He has nonetheless encouraged his own sons to practise outside of Spain, both of whom have recently graduated from law schools in New York, and are now joining leading US law firms.

"It is quite an experience to work in a large law firm, to appreciate different ways of practice and to understand the common law legal system. Now it is up to them to determine whether they enjoy being within a larger law firm structure."

What is important, he believes, is that any young lawyer who wants to work in the international sphere must have exposure to it. Having walked the walk as well as talked the talk, Cremades is content therefore with both the nature of his own practice and the evolution of his firm.

"At 65 I am not yet thinking of retiring. I believe that I am the perfect age and in the perfect position for what I do. I am not yet thinking of a life outside of the law – in any event, what would I do," he concludes.