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# The Eternal Quest: Justice and Don Quixote in Sixteenth Century Spain

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# THE ETERNAL QUEST

JUSTICE AND DON QUIXOTE IN SIXTEENTH CENTURY SPAIN

*Musisi Kiwanuka*

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‘The judgment of the man in green with regard to Don Quixote of La Mancha was that he had never seen anyone like him in manner or appearance...a form and appearance not seen for many years in that land’.<sup>1</sup> The knight of the Green Coat reacted, to his meeting with Don Quixote, in a manner common to most characters in the novel. Don Quixote, to them, is an anachronism, a madman, albeit well-intentioned. It is this view that gives the word ‘quixotic’ its modern meaning “idealistic and unrealistic”.<sup>2</sup> This paper asks whether a similar chasm existed over a (if not ‘the’) central theme of the novel: justice. Don Quixote, after all, became an errant knight to “right all manners of wrongs”.<sup>3</sup> What is Don Quixote’s conception of justice and where does this conception stand in relation to his contemporaries’ conceptions of justice?

“Justice, Senor Governor, justice, and if I don’t find it on earth, I’ll go and look for it in heaven!”<sup>4</sup> So cries the female plaintiff to Sancho Panza, the new governor of the island, as she demands compensation from the man she accuses of forcibly taking her virginity. We observe in the woman’s plea to Sancho a conception, one dominant from medieval times, of the sovereign as dispenser of justice. Don Quixote shares this conception as is evident when he uses the words ‘governor’ and ‘judge’ interchangeably.<sup>5</sup> One could argue, consequently, that Don Quixote is in accord with contemporary thought. Further investigation, however, yields proof of a fundamental disagreement between Don Quixote and his contemporaries. Don Quixote criticizes two emerging trends in his era: first, the royal monopolization of the administration of justice and second, the specialization of the role of judge. His critique, in a broader sense, fundamentally questions the role and mission of his social peers, the *hidalgos*. While it is often thought, as the Knight of the Green Coat thought, that Don Quixote longed for and represented a world long gone, this paper will argue and show that, in the sphere of justice at least, Don Quixote evoked a world only recently gone and that his arguments and criticisms were not only rational but also echoed those of some

of his contemporaries.

### IN THE NAME OF THE KING

If justice was the primary duty of the monarcha sovereign, (as Don Quixote, his contemporaries of the 16<sup>th</sup> century, and their predecessors believed), it followed that the power to dispense justice and enforce laws was the most important political power. Castile, however, had had, historically speaking for much of its history, had more than one institutional source of law and, therefore, more than one institutional enforcer of justice. Since the time of the Muslim Conquest (the eighth century), regions had possessed their own bodies of laws, *fueros*, which differed greatly from the royal *fuero*, the *Fuero Juzgo*.<sup>6</sup> Furthermore, the regional *fueros* were supreme within their jurisdiction because the Christian monarchs, heavily pressed by the Moors and eager to retain the loyalty of the aristocrats, municipalities, and monasteries, had ceded ultimate jurisdiction authority to these entities. From the time of Alfonso X (1252-84), the Castilian monarchs had sought to regain ultimate jurisdictional authority. To this end, Alfonso had compiled the *Fuero Real*, which, in theory, had supremacy over the regional codes.<sup>7</sup> Such supremacy, of course, remained theoretical. Alfonso XI (1312-50) sought to make this supremacy real and to that end, sent royal representatives (corregidores) to the municipalities.<sup>8</sup> Their impact was limited.

The Trastámara Dynasty (which ruled Castile between 1369 and 1504), keenly aware of its illegitimacy (its founder, Henry II, usurped the throne from the legitimate heir, his half-brother Pedro), took up Alfonso's mission in a bid to justify its position. A just sovereign, after all, was a legal sovereign. Henry II was able to win acceptance for his corregidores in some municipalities, which were afraid of "a newly created and aggressive aristocracy", but most local jurisdictions remained free of royal interference.<sup>9</sup> The monarch, suspicious of the aristocracy, was eager to retain the loyalty of the municipalities and so did not press them to accept representatives. The rise of the Catholic Monarchs, Isabella and Ferdinand, in the 1470s, changed the political equation. With the coming of the Catholic Monarchs, the situation changed. Isabella and Ferdinand had unquestioned military dominance and thus could press the municipalities without fearing adverse consequences. Isabella began to send out corregidores in the 1470s, initially with little success. Faced, however, with the fact that most aristocrats either supported Isabella or were neutral towards her, the towns eventually had no option but to accept the imposition of corregidores. The

corregidor, ostensibly sent to arbitrate between the violent political conflicts endemic to Castilian municipalities, enforced the observance of royal law, whenever possible. The patricians accepted the corregidor's presence as long as it seemed that the corregidor was their only protection from the land-hungry aristocracy.<sup>10</sup> When the monarch proved to be partial to the aristocratic cause, the patricians grew dissatisfied with the corregidores, an important factor in the comunero uprising of 1520-1.<sup>11</sup>

Charles V ended the uprising but conceded many of the municipalities' demands. Importantly, he agreed "never to intervene personally in the administration of royal justice and instructed his ministers to do the same".<sup>12</sup> Satisfied as to the neutrality of royal law and worried by the egalitarian sentiment of the urban poor, which had emerged during the latter stages of the uprising, the urban notables embraced royal authority. Royal law, then, looked to be in the ascendancy in the sixteenth century and more and more Castilians chose to litigate in royal courts, a sign of its growing legitimacy.<sup>13</sup> What, though, of Don Quixote? Did the Knight of the Sorrowful Face look upon this development with joy?

It is telling that Don Quixote's musings on and experiences with justice almost invariably happen within seigniorial estates or on the road, i.e. outside the royal purview. Sancho, after all, receives his governorship from a duke, not from a *corregidor* acting in place of the king. Royal law was only truly supreme within the municipalities, which meant that most Castilians were primarily under the jurisdiction of seigniorial and ecclesiastical courts. The crown had limited influence within seigniorial estates.<sup>14</sup> One can tentatively posit that Don Quixote, in letting Sancho accept the duke's offer, was inclined in favor of a decentralized judicial system. This tentative inference is further confirmed when we examine the nature of Don Quixote's advice to Sancho. He never once advises him to administer justice according to the royal *fuero* but rather to draw on God's law. Thus Don Quixote counsels him to "commend" himself "to God and...to always have the firm and steady intention of doing the right thing in everything" for "heaven favors virtuous desires".<sup>15</sup> Divine law being ubiquitous, it follows that customary law is to be a permissible source of legal action as long as it accords with God's law. Perfectly permissible is Sancho's manner of administering justice: Hence, Sancho, when judging, he decides cases, not by drawing inspiration from written laws, but rather through use of the communal memory as is evident when he cites his preacher's sermon as the inspiration for one of his decisions. Don Quixote, then, would have preferred a plural-

ity of sources of the law, as long as they are based on divine law. As a multiplicity of legal sources creates confusion, the question to ask of Don Quixote is why he finds a plurality better than a monopoly?

“According to what I’ve seen here, justice is so great a good that it’s necessary to use it even amongst thieves”, Sancho remarks upon observing Roque Ginhart’s careful distribution of loot amongst his men.<sup>16</sup> The remark is made in response to Roque’s comment that “if one were not scrupulous with these men, there would be no way to live with them”.<sup>17</sup> Demonstrated here is the belief that justice has one overriding goal: to preserve peace, a goal which Don Quixote thought to be “the greatest good that men can desire in this life”.<sup>18</sup> To fulfill this goal, a judge’s decisions must be acceptable to the people under his jurisdiction. It is doubtful that the people of the village would have easily accepted Sancho’s decisions had he simply cited a text as the basis of his decision. It was necessary that he demonstrate the mechanics of the decision, which he did when he explained how he judged the old man to be guilty of offence and when he gave a live demonstration, in the case of the woman who claimed to have been raped, of the workings of justice. In drawing on communal memory for his decision, he also ensured that the principles upon which his decision was based were principles widely shared; thus, he ensured peace. Justice, then, as long as it was accepted and based on divine law, could take on any form: seigniorial and customary or; royal and written. Don Quixote, then, would have viewed the contemporary, centralizing ethos, which privileged royal law exclusively, with displeasure.

It could be argued, however, that Don Quixote was inconsistent in his reasoning. He thought the monarch to be the most important source of justice. Surely then, as many urban notables argued, the monarch most effectively fulfilled this role if he possessed exclusive judicial powers.<sup>19</sup> It is tempting to attribute this logical inconsistency to his madness. Some, indeed, have done so.<sup>20</sup> To unravel this paradox, it is necessary to understand the basic premise of Don Quixote’s views on justice. All laws derived from divine law. Hence, all men, proven in faith and character, were qualified to judge cases. Neither the monarch nor the *letrados* (who will be dealt with in the next section) had a monopoly on justice and thus centralization served no good purpose. This view highlights the second fundamental divide between Don Quixote and his contemporaries: who should administer justice? judge?

## THE LEARNED CARTEL

As the Catholic Monarchs sought to expand the royal monopoly on justice, the question of who would enforce justice in their name necessarily became of concern. Wary of empowering local notables and aristocrats, who after all had a vested interest in the failure of royal justice, the Catholic Monarchs came to rely greatly on the *letrado*, a term which referred to those individuals with graduate degrees in either civil or canon law. To ensure the qualifications of this group, the crown decreed, in 1493, that all *letrados* would have to possess degrees.<sup>21</sup> It has been calculated, however, that *letrados* composed at most thirty percent of the *corregidor* corps during Isabella's reign.<sup>22</sup> A similar scenario existed in most judicial bodies well into the early sixteenth century. *Letrados*, in many ways, were the perfect aides to the crown. Having been trained in Roman law, these men had a deep reverence for universal, uniform codes of laws and found the current, patchwork legal system repugnant. Jurists had aided Alfonso X in his compilation of the *FueroFuero Real* and had continued to favor the extension of royal law throughout Castile in the succeeding centuries.<sup>23</sup> These jurists had in mind "a uniform world drawn from Roman law" with "the king at the apex of a divinely ordained and immutable hierarchy of institutions administered by anonymous servants, uniformly trained in law".<sup>24</sup> Thus, there was a congruence of goals between the monarchy and *letrados*: a desire to subject Castile and Castilians to one law.

Throughout the course of the sixteenth century, *letrados* composed an ever increasing number of judicial officers in Castile.<sup>25</sup> Royal decrees aided this trend. The crown set aside most judicial posts for *letrado**letrados*. In 1525, it decreed, at the behest of the Cortes, that all *corregidores**corregidores* had to be *letrado**letrados*.<sup>26</sup> The *letrado**letrados*, by midcentury, dominated virtually all royal courts.<sup>27</sup> Justice, more and more, was considered to be the exclusive competence of *letrado**letrados*. The monarchs aided this impression with their general reluctance to intervene in cases. Charles V began this trend with his declaration that he would not intervene in cases. It was a promise he kept, much to the magnates' chagrin. When advising his son in 1543, he implored him to leave the administration of justice to the judges. Philip II heeded this advice scrupulously. The result was an ever-increasing specialization of the role of judge. By the early seventeenth century, it had become nigh impossible for the monarch to appoint judges without the approval of the *letrado**letrado*-dominated Royal Council.<sup>28</sup> It was argued, and

increasingly thought, that only men well-trained in the law could effectively and fairly administer justice.<sup>29</sup> The urban notables, and those who thought as they did, argued that professional judges, in theory impartial, would make decisions that considered only the inherent justice of the parties' claims as opposed to the king, who, beleaguered by political difficulties, often sacrificed justice to the appeasement of the aristocrats. With this knowledge of contemporary thought in mind, we now turn to Don Quixote's musings on the question of who should administer justice.

"First, my son, you must fear God, because in fearing him lies wisdom, and if you are wise, you cannot err in anything".<sup>30</sup> In putting the stress on piety, rather than education, Don Quixote immediately reveals his preferences. Wisdom, that most essential attribute of a judge, was to be found not in dusty tomes at Salamanca but in faith in God. Faith, unlike knowledge, is available to all men. Thus, in choosing faith, not book learning, as the most essential attribute of a judge, Don Quixote implicitly argues for a more inclusive approach to judicial appointments. Indeed, so little emphasis does Don Quixote place on the importance of book learning to the position of judge that his only lament, in this area with regard to Sancho's education, is that Sancho is illiterate. Yet, as Sancho replies, even this impediment can easily be overcome by hiring a literate assistant. It is interesting to note that such a state of affairs was the norm well into the second decade of the sixteenth century in Castile.<sup>31</sup> As most *corregidores* lacked a professional legal background, they would take *letrado* aides with them to their municipal posts. Each *corregidor* was entitled to two legal aides, one with expertise in canon law and the other in civil law.<sup>32</sup> The *letrado* would advise the *corregidor* on the legal minutiae but the *corregidor* made the final decision. Don Quixote's proposal, then, was practical and, indeed, had been the recent norm. The proposal, however, in an era of widespread religiosity, begged the question: As anyone could have faith, how was one to choose judges? What other basis was there but knowledge? Don Quixote proffers one alternative in his advice to Sancho: character.

"Those who are not of noble origin should bring to the gravity of the position they hold a gentle mildness, which guided by prudence, may save them from the malicious gossip that no station in life can escape...take more pride in being a humble virtuous man than in being a noble sinner...blood is inherited, and virtue is acquired, and virtue in and of itself has a value that blood does not", Don Quixote advises Sancho.<sup>33</sup> From this quote, one can adduce two important beliefs. The first one, which Don Quixote shared

with many of his contemporaries and which pervades the book, is that those men who possessed noble of rank were likely to have good character, an assumption which did not extend to the non-noble population and thus meant that Sancho's new subjects would think his character suspect. Don Quixote, it seems, believed that it was virtue which enabled men to attain noble rank for, as he tells his niece "the confusion surrounding lineages is great...the only ones that appear distinguished and illustrious are those that display those qualities in their virtue, and in the wealth and generosity of their nobles"<sup>34</sup>. Hence, noble rank was a reliable marker for noble character. As "praise was always the reward of virtue", respect was paid by all to the nobles.<sup>35</sup> For this reason, Don Quixote, therefore, would have looked favorably upon judges drawn from aristocratic ranks. The goal of justice being to preserve peace, it was essential that judges be men that the populace respected. Such would certainly be the case with magnates. The importance of authority to the position of judge was of long standing. In Jerez de la Frontera's petition to Charles V, on the eve of the comunero revolt, that municipality asked only that its new corregidor be a "'conscientious person' and a 'caballero [knight]'"<sup>36</sup>.

It is important, however, to remember that Don Quixote would have shown a preference for aristocrats only because he assumed them to be men of virtue. As the quote at the head of the previous paragraph illustrates, however, he did not restrict noble character and virtue to the nobility. As he tells his niece, many noble families have degenerated "through idleness and vice"; many a baseborn one has risen "through ambition or virtue".<sup>37</sup> This point is the second important one adduced from the quote: even Sancho, peasant that he was, could possess the character necessary to be a judge. Virtue, however, revealed itself through one's behavior and it is to ensure that Sancho's virtue would be manifest to his new subjects that Don Quixote advises Sancho both on how he should judge and how he should act. The second part Behavior was just as important as the first judging because if Sancho did not win the respect of the populace, his decisions would carry no weight. It was, perhaps, even more important for Sancho who, as a peasant, had no reputation that could attest to the strength of his character. The populace would seek evidence of his character, therefore, from his actions. It is noteworthy that Don Quixote only becomes convinced of Sancho's suitability for the task of governor, when Sancho shows that his soul, and thus his piety, is of more importance than any momentary gain he might receive from the office of governorship. It is this humility that convinces Don



Quixote of the strength of his character and thus his suitability for the position of judge. Character and piety, not nobility or learning, were to be the criteria for appointing judges. It is in this context, then, that we should understand Don Quixote's various discourses on arms and letters.

"The science of knight errantry...contains all or most of the sciences in the world, because the man who professes it must be a jurist...he must be a theologian so that he may know how to explain the Christian law...he must be a physician...so that he may know in the midst of wastelands and deserts, the herbs that have the virtue to heal wounds...of all these great and trivial parts a good knight errant is composed, and so your grace may judge...if the science learned by the knight...can be compared to the noblest that are taught in colleges and schools".<sup>38</sup> Don Quixote's argument, here, in favor of arms over letters is predicated on a single premise: the preponderant value of experience. Experience molds a man's character. It also leaves a record that men can easily examine when they wish to judge one's character. The argument is easily extended to that of the question of who should be appointed judge. The soldier, a proxy for men of practical experience, has experienced so many situations, both adverse and favorable, that he, not the scholar, is the one best placed to discern the good from the evil. He, not the scholar, can best provide decisions that balance the competing interests at stake and provide peace. Beholden to no abstract ideology, save his faith, he can judge matters impartially. Hence, men of wide ranging experience should be the ones appointed to such a venerable post.

Experience can come in many forms, two of which are provided in the novel. The first is social experience, which is transmitted through tradition. It is this experience that Sancho draws upon when he decides cases. The second form is personal experience, which is best embodied by errant knights, like Don Quixote. Men, in Don Quixote's opinion, should seek to derive truth and knowledge primarily from nature. We see evidence of this belief when he advises Don Diego that, "In short all the ancient poets wrote in their mother tongues, and they did not look for foreign languages in order to declare the nobility of their ideas...the natural poet is a poet born when he comes from his mother's womb...with no further study he composes things".<sup>39</sup> Study, in his opinion, improves but it can not create virtue. Virtue consists in following nature; it consists in a wide-ranging experience of nature. The poet, like all men, should strive to derive his knowledge from nature, not obscure it with false learning. The value of having practical men of experience as judges and sovereigns is evinced in the events of the gover-

norship of Inigo López de Mendoza in Granada, a rule that which began in 1492. Mendoza, having been granted suzerainty over that territory by the Catholic Monarchs, sought to maximize revenues and minimize conflict. To that end, he advocated a policy of religious moderation. His virtually unquestioned authority allowed him to hold to such a course.<sup>40</sup> The *letradoletrados*, however, in combination with the clerics, sought the implementation of a uniform religious policy throughout Castilian possessions, which would augment the royal power.<sup>41</sup> Hence, the religious lassitude promoted by Mendoza came to an end in the late 1490s as the new archbishop ordered the burning of Muslim books and a series of forced mass baptisms. An uprising duly followed. Nevertheless, the monarchy continued to express a strong preference for learned men as judges as is evinced in Philip II's instruction, in 1586, to his secretary to "strike from the lists of potential judges 'those who have not studied in nor have graduated from recognized universities'".<sup>42</sup> For such instructions, Don Quixote would have had little but contempt.

Particularly noxious to Don Quixote would have been the curriculum of the universities, which seemed to confirm the perfidies of theory devoid of experience. For, until the eighteenth century, Castilian *letradoletrados* were trained only in Roman law, which explains their preference for a uniform, universal legal code.<sup>43</sup> Castilian law was considered inferior to Roman law for just as churchmen sought the establishment of the universal monarchy of Christ on earth, so Castilian jurists sought the return of the Roman Empire, which, they believed, with its codified, universal laws had guaranteed peace to Europe. Castilian lawyers, thus, came into contact with their monarch's laws only when they emerged from the university. In an era of ever increasing litigation, the impact of this ignorance could only be deleterious. The Cortes, as a result, complained to Charles V in 1528 about the need to change legal education so that Castile might have better legal practitioners for at the moment, "'when the *letradoletrados* leave the universities, they cannot handle judicial business properly nor even understand the law well enough to make proper judgments'".<sup>44</sup> This precarious situation was compounded by the fact that for most of the sixteenth century, virtually all judges were recruited directly from the university. Hence, the most important legal decisions in the realm were made by men, who had no prior understanding of Castilian law. Philip II somewhat remedied the situation when he decreed in 1588 that judges first prove themselves in the lower courts before they earned promotion to higher courts.<sup>45</sup>

The value of experience over theory is further substantiated by the con-

sideration that the most influential legal educators were not university professors or *letradoletrados* but rather the *prácticos*, men whose understanding of the law had been gained in and around the courts rather than in a classroom in Salamanca.<sup>46</sup> The *prácticos* wrote legal aid texts, in Castilian, which introduced Castilians, both the literate and illiterate, to the law and thus enabled them to argue their cases knowingly.<sup>47</sup> Once more, the virtues of experience were made manifest.

The problems of choosing men on account of their education, as opposed to their character, were evidenced in the legal developments of the seventeenth century. An elite group of *letradoletrados* emerged through intermarriage and nepotism.<sup>48</sup> The *colegios mayores*, the chief nursery of future royal judges, became the personal preserves of a handful of families.<sup>49</sup> These elites were chiefly interested in creating “a *mayorazgo* [entail] for their heirs” not in serving the state.<sup>50</sup> The value of their legal degrees diminished as family connections became of more importance than legal accomplishments. Justice accordingly suffered. Such a travesty, Don Quixote would have maintained, would have been averted had the monarch focused on appointing men of good character, rather than learned men of ever doubtful character. Ironically, the legal elites, whose *raison d’être* had been the expansion of royal authority through the law, now fought to check this authority. Philip IV attempted and failed to reassert royal prerogative in judicial administration. The appointments he made without the assent of the *Cámara* were resented; the *visitas* he ordered were resisted and eventually repealed.<sup>51</sup> The Council argued that the judicial system would be compromised and its verdicts worthless, should the king take a hand in the matter. The monarch found his self-proclaimed advocates to be, in actuality, his jailers. The crippling of the monarch, though, was gradual and, in truth, not inevitable.<sup>52</sup> The real danger was tyranny.

The *letrados* had argued that entrusting the administration of justice to their hands would ensure that impartiality became the norm, not a happy accident, as was currently the case. Unfortunately, from Don Quixote’s perspective, their theory entailed the centralization of judicial authority in the hands of *letradoletrados*. What would Castilians do, now that they could only seek justice from the hands of *letradoletrados*, when those judges became corrupt, partial or the playthings of the crown? From whom would the people receive justice? This dilemma is illustrated in historical reality, in the case of the Belalcázar Lawsuit, and in Don Quixote.<sup>53</sup>

First, we examine the Castilian historical event: a lawsuit brought

by Toledo against the Duke of Bejar.<sup>54</sup> The Duke appears to have been clearly in the wrong. The particulars of the case, however, are not what interest us. What is of interest is the hostility of the Duke to the judges. The judges were men whose “links to the lesser nobility [hidalgos], years of legal training, and loyalty to the monarchy led them to be wary of the high nobility”.<sup>55</sup> This situation, in which one’s social enemies wielded the power of justice over one, was not likely to promote respect for or give the imprint of justice to court rulings. The aristocrats, moreover, could not resort to the monarch, who had declared an end to legal interventions. While the aristocratic plight might not invoke sympathy, it is the principle that would have been of importance to Don Quixote. If one’s enemies controlled the sole source of justice, there was little recompense available. In centralizing the power of justice in the hands of one group, which had entrenched itself in the legal faculties of the universities, and thus could perpetually occupy the seat of justice, the crown denied justice to Castilians. A similar danger is also evident in the plights of the duenna and the galley slaves.

“In short, the son of a very rich farmer...fell in love with my girl...promising to be her husband, he deceived my daughter, and now he refuses to keep his word; even though my lord the duke knows about it...he [the duke] ignores me...and the reason is that since the seducer’s father is so rich and lends him money...he doesn’t want to anger him...And so, Senor, I would like your grace to take responsibility for righting this wrong...for according to what everyone says, your grace was born into this world to redress grievances and right wrongs”, the duenna tells Don Quixote.<sup>56</sup> In response to the plea of the duenna, Don Quixote challenges the young man to a duel. Having been denied justice by the duke, the duenna receives it with from Don Quixote. Had the seigniorial court been the only court, it would have been to her lasting disadvantage. A similar plight would have faced Castilians in the sixteenth and early seventeenth centuries as the *letradoletrados* looked to monopolize judicial authority. A plurality of judicial authorities, not singularity, Don Quixote would have argued, was the only effective way to check tyranny for the tyrannical act could be challenged and defeated by any good man in the name of justice.

We see further evidence of the ameliorative effect of this plurality when we consider the adventure involving the galley slaves. Sancho, speaking in the manner of a *letradoletrado*, observes that “these are people who, because of their crimes, have been condemned to serve the king in the galleys by force” and later warns Don Quixote that “justice, which is the king himself,

does not force or do wrong to such people".<sup>57</sup> This statement is the logical conclusion of the theory of the *letradoletrados*. What the *letradoletrados*, and by extension the crown, decreed was right for them alone, as the sole judicial authority, could define what was just and what was unjust. Hence, their rulings were unquestionable. Yet Don Quixote, a man with little time for the justice of the *letradoletrados*, seeing only men unjustly deprived of their freedom, sets these men free. From this action, we can deduce that Don Quixote believed that the role of an errant knight, and other such men of good character, was to deliver the justice that craven theorists and despotic monarchs declined to grant. It follows from this belief that the move to restrict the administration of justice solely to *letradoletrados*, without regard for character, could bode only ill for the people of Castile. It had been, and should remain, the case that all men of good character and faith were eligible for the position of judge and the role of dispenser of justice.

Don Quixote, then, criticized both the royal monopoly of justice and the preference for men of theory over men of experience and character. The *letradoletrados* of the universities, as has been detailed, were behind both of these developments. Don Quixote, then, had implicitly attacked the *letradoletrados*. Yet, and it is this fact that makes Don Quixote revolutionary, he shared a social rank with the majority of *letradoletrados*: that of *hidalgo*.<sup>58</sup> Don Quixote's ultimate criticism of the Castile of his time is to be found not in his words, but, fittingly, in his actions. For in choosing the life of arms and knight errantry over the life of letters and royal officialdom, he represented the past life of the *hidalgo*. In making that choice, he presented a potential alternative life path for the Castilian *hidalgo* in the pursuit of what he, and they on occasion, thought to be their newfound goal as a social caste: the deliverance of justice.

### THE LAST HIDALGO

During the late sixteenth and the early seventeenth centuries, there was an explosion of interest in higher education.<sup>59</sup> The most popular discipline was the law, for several reasons.<sup>60</sup> The ever-expanding secular and ecclesiastic bureaucracies required more employees, preferably *letradoletrados*. Furthermore, the expansion of the royal courts and the relative domestic peace of the sixteenth century had encouraged Castilians to settle their differences in court. The increase in the number of lawsuits led to a concomitant increase in the value of a legal education. Members of all ranks, from the highest grandee to the lowest peasant sought to ground themselves in

legal basics so as to defend their property and possibly acquire new property. It should be noted that most students either sought only basic legal knowledge (aristocrats) or lacked the funds to complete the ten year program, necessary to receive certification as a *letrado*. It is estimated, that at most, Castilian universities turned out 175 *letrados* annually.<sup>61</sup> Those who graduated were men committed to attaining bureaucratic posts and the majority of these committed few came from the ranks of the *hidalgos*.<sup>62</sup>

With the decline of the perpetual warfare so characteristic of medieval Castile, the *hidalgos* were unemployed; their existence pitiful; their lives purposeless.<sup>63</sup> The plight of Don Quixote at the beginning of the novel, where he is described as “one of those who has a lance and ancient shield on a shelf and keeps a skinny nag” whose food “consumed three-fourths of his income” and who regularly donned “dun-colored coarse cloth” is probably a good representation of the lot of most *hidalgos*.<sup>64</sup> A legal education allowed the *hidalgo* to escape this sterile existence for “no other existence or career offered such possibilities for economic and social advancement”.<sup>65</sup> *Letrado**Letrados*, however, were despised because the “ease of access into” the profession denied Castile “necessary artisanal and agricultural manpower” and the *letrado* “content to mediate conflict, rather than work to establish a truly just and Christian world” was “one of the major reasons Castile had lost God’s grace”.<sup>66</sup> To rescue their profession, *letrado**letrado**hidalgos* described themselves as “‘hands of justice’”.<sup>67</sup> Whether or not they believed these statements is not within the scope of this paper to determine. What is important, however, is that the *letrados* wished to be perceived as the ‘hands of justice’ and that, thus, there was a convergence between these *hidalgos* and their fictional counterpart, Don Quixote in self-perception, i.e. as the agents of justice. This goal, then, was the *hidalgo*’s new mission. As Don Quixote posited, justice was the surest path to that highest of goals: peace.

To the fulfillment of this shared goal, Don Quixote, however, through his actions, presents an alternative path, one based on the traditional image of the *hidalgo*. Where his fellows had sought to learn justice from Roman texts, he had imbibed justice with experience. Whereas they had sought to improve their social rank through bureaucratic service to the crown, Don Quixote had sought to improve (‘usurped’, perhaps, would be a better term considering how he blithely appropriates the honorific ‘Don’) his rank through service to justice. He was knighted at an inn, a much humbler habitat than the royal court. Nevertheless, the action reinforces his argument that

nobility and its accordant respect should be open to all, on account of their character. It should not be restricted to legal or aristocratic elites, a practice that hasd harmed Castile greatly. Situated in rural La Mancha, it is unlikely that he would have gone to university; the *letrados*, in contrast, were all university graduates as his fellows had done.<sup>68</sup> Yet, all acknowledge him, in matters not regarding chivalry, to be a wise man. Learning, then, is of doubtful importance. Where his fellow hidalgos had attempted to limit the judicial power to those learned in theory, Don Quixote asserted the rights of men of character and experience. Where they had served, unwittingly perhaps, to promote tyranny, he had combated tyranny. In their actions, his fellowhis peers hidalgos had sought to exclude and centralize; Don Quixote had sought to include and pluralize. The question he posed, and one which this paper has explored, is whether he or they had better served the cause of justice? Don Quixote concluded that it was he, not they, who had served the cause of justicein favor of himself.

During the sixteenth century and the early seventeenth century, the wheel of time seemed set to prove Don Quixote an anachronism. The centralization of justice continued apace; royal law slowly superseded customary law; and the king, then legal elites, monopolized justice. Then the wheel turned backwards. The exigencies of war forced Philip IV to grant considerable judicial autonomy to the cities, in exchange for taxes.<sup>69</sup> There was once more a plurality of sources of judicial authority. The economic downturn and the multiple wars of the seventeenth century lured young hidalgos to military service, a state of affairs salutary to justice in Castile.<sup>70</sup> The hidalgo of the past was now the hidalgo of the future. Yet the genius of that “ingenious gentleman” lay in his reconstruction of the role of the hidalgo: the path to a new goal, justice, was paved with the stones of the past. It is this Janus-like quality of Don Quixote, this ability to seek the future in the past and to evoke the two simultaneously, which makes the novel and the character, like justice, eternal.

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<sup>1</sup> Miguel de Cervantes, *Don Quixote*, trans. Edith Grossman (New York: Harper Collins Publishers, 2003), at 552

<sup>2</sup> [www.dictionary.com](http://www.dictionary.com) (Accessed Sunday, May 04, 2008)

<sup>3</sup> See Cervantes, *Don Quixote*, at 21

<sup>4</sup> *Ibid.*, at 751

<sup>5</sup> *Ibid.*, at 731. The relevant passage reads as follows, “If you bring your wife with you... smooth away her natural roughness, because everything a wise governor acquires can be lost and wasted by a crude and foolish wife...because it is true when I tell you that for

everything received by the judge's wife her husband will be accountable at the universal reckoning". (Emphasis mine)

<sup>6</sup> See Colin M. MacLachlan, *Criminal Justice in Eighteenth Century Mexico: A Study of the Tribunal of the Acordada* (Berkeley: University of California Press, 1974), at 3-14, for a brief overview of Castilian legal history. The *FueroFuero Juzgo* was compiled in the sixth century.

<sup>7</sup> *Ibid.*, at 6

<sup>8</sup> See Marvin Lunenfeld, *Keepers of the City: The Corregidores of Isabella I of Castile (1474-1504)* (Cambridge: Cambridge University Press, 1987), for a recount of the evolution of the corregidor.

<sup>9</sup> *Ibid.*, at 15

<sup>10</sup> *Ibid.*, at 60

<sup>11</sup> *Ibid.*, at 157

<sup>12</sup> Richard L. Kagan, *Lawsuits and Litigants in Castile, 1500-1700* (Chapel Hill, NC: University of North Carolina Press, 1981), at 154

<sup>13</sup> *Ibid.*, at 103. Kagan argues, amongst other things, that the rise in litigation should be seen as a positive for most cases brought into the royal courts were ones that were not catered for by customary law or would not receive a fair hearing in aristocratic courts. Kagan also notes that 38% of the cases of the Chancillería of Valladolid in 1580 came from corregidor courts, a sign of the growing popularity of royal justice. *Ibid.*, at 109

<sup>14</sup> See Lunenfeld, *Keepers of the City*, at 108-9. Corregidores, according to a decree of 1475, could enter seigniorial estates only if they were pursuing criminals or checking on illegal construction of fortresses.

<sup>15</sup> See Cervantes, *Don Quixote*, at 737

<sup>16</sup> *Ibid.*, 779

<sup>17</sup> *Ibid.*, 857

<sup>18</sup> *Ibid.*, at 329

<sup>19</sup> See J.B. Owens, "*By my absolute royal authority*": *Justice and the Castilian Commonwealth at the Beginning of the First Global Age* (Rochester, NY: University of Rochester Press, 2005), at 31-7 for a close examination of the motivations behind the support of urban notables for a stronger monarch. A chief motivation was the desire to ensure their holdings were protected from a rapacious aristocracy. Also, as the biggest losers in any civil violence, they had a vested interest in a predominant crown, which could restrain the aristocrats and also adjudicate conflicts among themselves, conflicts which offered the lower orders a chance at power.

<sup>20</sup> See Kagan, *Lawsuits and Litigants*, at 127, where he describes Don Quixote as a man, who in dealing out justice as a knight errant, showed himself to be truly out of sync with his times.

<sup>21</sup> See Lunenfeld, *Keepers of the City*, at 159

<sup>22</sup> *Ibid.*, at 159

<sup>23</sup> See Kagan, *Lawsuits and Litigants*, at 24

<sup>24</sup> See Lunenfeld, *Keepers of the City*, at 74

<sup>25</sup> The change was, at times, astonishing. In 1512, less than half of corregidores were *letradoletrados*. By the middle of the sixteenth century, *letradoletrados* composed more than sixty percent of this corps. See Richard L. Kagan, *Students and Society in Early Modern Spain* (Baltimore: The John Hopkins Press, 1974), at 80.

<sup>26</sup> See Lunenfeld, *Keepers of the City*, at 184

<sup>27</sup> See Kagan, *Students and Society*, at 80. Starting in the late fifteenth century, the Crown



declared virtually all judicial posts to be the exclusive preserve of *letradoletrados*. The first such declaration was in 1480, which set aside the seats on the five regional *audencias*. See Kagan, *Lawsuits and Litigants*, at 176

<sup>28</sup> See Kagan, *Students and Society*, at 97

<sup>29</sup> See Owens, *Absolute Royal Authority*, at 143-4

<sup>30</sup> See Cervantes, *Don Quixote*, at 730

<sup>31</sup> As was noted in footnote 24, non-*letradoletrados* still composed a majority of *corregidores* in 1512.

<sup>32</sup> See Lunenfeld, *Keepers of the City*, at 77

<sup>33</sup> See Cervantes, *Don Quixote*, at 730-1

<sup>34</sup> *Ibid.*, at 494

<sup>35</sup> *Ibid.*, at 495

<sup>36</sup> See Lunenfeld, *Keepers of the City*, at 184. The author opines that for that reason it is likely that the proposal, that all *corregidores* be *letradoletrados*, was one initiated by the Royal Council, an institution, which dominated by *letradoletrados*, had a vested interest in the propagation of this edict. In 1462, the Cortes of Toledo had asked that “the *corregidor* ‘be a powerful person, of good reputation’”. *Ibid.*, at 158

<sup>37</sup> See Cervantes, *Don Quixote*, at 493

<sup>38</sup> *Ibid.*, at 570

<sup>39</sup> *Ibid.*, at 556

<sup>40</sup> Mendoza had been one of the chief contributors to the war effort in Granada. The Catholic Monarchs had rewarded him accordingly. See Lunefeld, *Keepers of the City*, at 143

<sup>41</sup> *Ibid.*, at 140-7

<sup>42</sup> See Kagan, *Lawsuits and Litigants*, at 157

<sup>43</sup> See Kagan, *Students and Society*, at 235

<sup>44</sup> *Ibid.*, at 234

<sup>45</sup> See Kagan, *Lawsuits and Litigants*, at 158. It remained the case, however, that most judges were drawn from the universities, which meant that at the lowest levels, the magistrates, at least initially, had no familiarity with the law they were supposed to be administering. Professors may have composed at least half of the appointments to the *chancillerías* in the 17<sup>th</sup> century. See Kagan, *Students and Society*, at 98. Practicing lawyers were thought to make bad judges because “‘they are accustomed to work for money’”. See Kagan, *Lawsuits and Litigants*, at 76

<sup>46</sup> See Kagan, *Lawsuits and Litigants*, at 148, for a closer analysis of the influence of the *prácticos*.

<sup>47</sup> *Ibid.*, at 149, where he postulates that the texts would have been read out to the illiterate. Similarly, in *Don Quixote*, chivalric novels are read out to the harvesters at the inn. See Cervantes, *Don Quixote*, at 267.

<sup>48</sup> See Kagan, *Students and Society*, at 98-158, for a detailed examination of the process through which this *letradoletrado* elite came to exercise hegemonic influence in the universities and in the judiciary, hence ensuring that it could reproduce itself.

<sup>49</sup> *Ibid.*, at 93. The *colegio* graduates composed a majority on every prominent Castilian judicial body from the reign of Charles V onwards. These bodies included the two *Chancillerías*, the Royal Council of Castile (responsible from 1641 for professorial appointments), the Royal Council of the Indies, and the *Cámara de Castilla* (created in the late 1580s to present the crown with a shortlist of judges suitable for a vacant post).

<sup>50</sup> See Kagan, *Lawsuits and Litigants*, at 184. Kagan argues that the central problem was

that the judges continued to view their positions as personal rewards or as investments. Thus, they looked to recoup the expenses they had incurred in attaining those positions.

<sup>51</sup> *Ibid.*, at 200-7, for a recount of Philip IV's struggle with the *Cámara*. The '*visita*' (visitation) was an investigation of the conduct of all officers attached to the *chancillería*, including the judges. Testimony was solicited from the public. Evidence of wrongdoing resulted in punishment, which could range from fines to dismissals. The equivalent institution for *corregidores* was the *residencia*, which was initiated at the end of the *corregidor's* term.

<sup>52</sup> *Ibid.*, at 200-7. Kagan observes that the *letradoletrados* gained the upper hand only during the reigns of Philip III, whose lax administration emboldened the *letradoletrados* and Philip IV, who was occupied with the Thirty Years' War.

<sup>53</sup> See Owens, *Absolute Royal Authority*, which is devoted to an extensive analysis of the lawsuit as a prism through which to understand political and legal thought in fifteenth and sixteenth century Castile.

<sup>54</sup> *Ibid.*, at 9 for a brief summary of the facts of the case. John II, in 1445, granted territory to the House of Sotomayor, which eventually became the Dukes of Bejar, territory which had belonged to Toledo. Toledo sued the House of Sotomayor. The case was finally concluded in 1568, in favor of the Duke. The author argues, amongst other things, that the decision alienated the urban notables from the monarchy, which it came to view as biased.

<sup>55</sup> See Kagan, *Lawsuits and Litigants*, at 101

<sup>56</sup> See Cervantes, *Don Quixote*, at 771

<sup>57</sup> *Ibid.*, at 163-4

<sup>58</sup> See Kagan, *Students and Society*, at 95 where he writes, "The *letradoletrado* hierarchy also remained a *hidalgo* hierarchy, even though the average social rank of its members was on the rise. *LetradoLetrados* of 'peasant stock' disappeared, and those from the other end of the social scale were more numerous, but on the whole the *letradoletrado* hierarchy remained just that-the one sector of royal government dominated by families who owed their wealth...to the study of the law".

<sup>59</sup> *Ibid.*, at 200. The number of matriculations, if Kagan's figures are to be trusted, rose from around 13,000 in 1550 to 20,000 in the late 1590s, the precise time period in which *Don Quixote* would have grown up.

<sup>60</sup> See *Ibid.*, at 213-5, for a graphical representation of the law's overwhelming popularity at the Universities of Alcalá de Henares, Salamanca, and Valladolid.

<sup>61</sup> See *Ibid.*, at 202. The rate of attrition was extremely high. At most, thirty percent of matriculates received a *bachilleres*, the degree granted after four years of study. See Kagan, *Students and Society*, at 201.

<sup>62</sup> There is little hard evidence because academic registers only noted if a person was a *título*. *Hidalgos*, of course, did not possess titles. Aristocrats and important nobles, who were engaged in war, matters of state and administration of estates and thus had little to learn from the universities, shunned them and peasants were too poor and too illiterate to attend. InDeduction, therefore, tells us that the *hidalgos* must have been the group most invested in education. As a demographic that represented 10% of the population, they had the numbers to sustain the universities. The statistic is from Kagan, *Students and Society*, at 182

<sup>63</sup> *Hidalgos* were originally 'individuals who had been traditionally able to keep a horse and who had also participated in the Reconquista'. *Ibid.*, at 182. In short, the *hidalgos* had one sole purpose: war.

<sup>64</sup> See Cervantes, *Don Quixote*, at 19.

<sup>65</sup> See Kagan, *Students and Society*, at 85.

<sup>66</sup> See Kagan, *Lawsuits and Litigants*, at 73. The comments listed are the mildest Kagan provides. Needless to say, the sentiment expressed here bears a striking similarity to Don Quixote's anti-*letrado* critique that this paper has analyzed: a sign, if any was needed, that Don Quixote was, indeed, a man of his times.

<sup>67</sup> *Ibid.*, at 74

<sup>68</sup> See Kagan, *Students and Society*, at 179, where Kagan writes of Castilian students that "the vast majority were originally town-dwellers". Thus, it is unlikely that Don Quixote would have attended university. His comments to the young Don Lorenzo that he has studied only 'the science of knight errantry' would appear to support this proposition. See Cervantes, *Don Quixote*, at 570.

Also, see Kagan, *Students and Society*, at 48-9, where Kagan explains that nearly half of Castilian boys in grammar schools came from large villages and rural towns. It is most likely within such a setting that Don Quixote was educated.

<sup>69</sup> See Kagan, *Lawsuits and Litigants in Castile*, 226-235. The grip of the *letrados* and the crown on justice diminished accordingly.

<sup>70</sup> The soldier, it should be remembered, is the ultimate man of experience, in Don Quixote's opinion.