

## EDITORIAL

### Towards a quijotization of the Criminal Law

Miguel de Cervantes Saavedra left this world of mishaps it does, exactly, 400 years. The most admired writer of all the times, died in the absolute poverty without imagining that his pen would leave a legacy without precedents for the whole humanity. Thanks to the charity of the Orden Tercera Franciscana, it received his grave in the convent of the nuns Trinitarias Descalzas. Even it makes the world small it was surprised by the news of the “appearance” of his remains, four centuries after having made the trip that does not admit returns.

It is impossible to speak about Miguel de Cervantes Saavedra without doing allusion to *Don Quijote de la Mancha*. Without doubts, if *El Quijote* did not exist, the surest thing is that Cervantes would not be memorado nowadays. In 1605 publishes in Madrid the first part of his work *El ingenioso hidalgo don Quijote de la Mancha*, without the recognition deserved on not having been considered to be a serious work of artistic expression, in a Spain in the Century called of Spanish Gold where there were imposing themselves authors of the height of Lope de Vega, Fernando de Rojas, Francisco de Quevedo, between others. Nevertheless, with the years the work caught the attention, not only of the Hispanic world, but of the whole humanity. As the years went by, *El Quijote* stopped being seen as a humorous novel that parodied the books of cavalry, to acquire additional values. Inside all these cosmovisiones that have spread out lengthways and width of the planet, for some *El Quijote* is a lesson on the greatness and the misery of the condition humanizes. For others, an agreement of psychiatry; others, on the contrary, consider it to be a study on the divided personality. For Foucault, the novel is a part of a linguistic code to major scale that substitutes the prominent figures, and that is precise that the psychology is replaced with the linguistics. Others think that the novel of Cervantes teaches us the spiritual greatness, the audacity, the solidarity of one of the most noble of the men. This way they will exist infinity of opinions depending of the crystal with the one that looks, which enriches the debate about the work.

In my limited one to understand *El Quijote* is a X-ray photography of Cervantes, that is to say, an autobiography. A novel that it portrays. The author fuses with his work leaving to the overdraft the integrity of his person. This thought develops along the whole work and has maximum expression on having concluded when, when don Quijote dies (or Alonso Quijano), Cide Hamete said to his pen: “Here you will remain hung of this hook, because only for it you was born don Quijote and you for him...”. Cervantes himself is not more famous than *El Quijote*. The personage of the work acquired

own life almost displacing the author, though to be coherent with the exposition before exposed, it does not displace it, actually it describes it. This is not common that it happens so, not even *Hamlet*, is a mixture with Shakespeare.

In very concrete terms *Don Quijote de la Mancha* is the classic one of the universal literature. On having done this affirmation I am not saying anything new (I do not try to say in a few brief lines anything either that it should not have been said before by experts of the work). Nevertheless, what is the classic one? Someone expressed that it is a book that defies the passage of time, or probably one that confirms that the time is never static; a book capable of molding to a nation; or a book which blemishes are elegantly thrown aside in favour of his findings, which are so substantial as lasting. In my opinion it is a work that admits so many points of view as readers have without none of them could have the last word. It is a question of a useful work for the humanity without it could, an alone area of the knowledge, was thinking his only addressee. This is the work of Cervantes, an interminable source of consultation for the psychology, the psychiatry, the history, the philosophy, the politics, the sociology, the right, between others.

Come to this point, it wanted to link the work of Cervantes with the Law, especially with the Criminal Law, not original at all task, but I want to emphasize it to an in force reality. The Today Criminal Law exposes a speech deshumanizante, relaxes the conquests of the penal illustrated thought, relativizes the guarantees of the good liberal Criminal Law, they believe categories of you do not present, and in synthesis, a perverse demand towards the penal system like mechanism for the resolution of the social problems, in absolute opposition to his character of ultima ratio. For whom they are busy with studying the penal thought, they tend to find in Cesare Beccaria, the point of item for the construction of the postulates of the liberal Criminal Law, valid affirmation if we bear in mind the demands raised by the Marquess of Bonesana in his work *Of the crimes and of sorrow*, published in 1764.

The postulates defended by Beccaria continue being in force demands in spite of having passed more than two centuries and a half since his work unmasked the wild exercise of the punitive power that was reigning in the Europe of his days. Nevertheless, already for the days of Beccaria, *El Quijote* was a work that was relying on a tradition of more than 150 years that, undoubtedly, he was exercising influence in almost the whole Europe of the 18th century. In fact, the first language into which the novel of Cervantes was translated went to the Italian. In the year 1622, Lorenzo Franciosini translates the first part of the novel. The second part appeared in 1625, exactly century and a half before Beccaria's work. On having studied the work of Cervantes and Beccaria's work, is observed that many of the claims presented by the Italian author, already they were immersed in the work of the Spanish. Cervantes woke consciences up in the generations who him continued and I want to think that Beccaria read Cervantes, specifically, to *El Quijote* and that, in a sense, this reading influenced his work, still when he lacks objective elements to do certain affirmations to this respect, except the availability of the novel in the language of that one, as well as the writer's condition of the Italian. Now then, to

think that the ideas exposed in *Of the crimes and of sorrow* had an influence marked with the work of Cervantes, it does not do that it changes Beccaria's concept but, on the contrary, it enlarges the task of the one who could decipher the immersed codes in *El Quijote* to expose them in a clear and direct language that they used as flag to the construction of a new model of Criminal Law, with the consequences that such a risk was implying assuming in the days in which the book went out to the light.

*El Quijote* contains postulates of a penal thought of advanced, if we see it in the context of beginnings of 17th century, in a Spain still with a way of feudal production. *El Quijote* was, first of all, a defender of the justice and of the freedom. It is impossible in this editorial mention the whole link that we can extract between *El Quijote* and the Criminal Law, which would justify for yes same a work destined for such an end. The alone space allows us to do allusion to a statement especially, permitting to choose capricious the government of Sancho on Barataria's Isle. Actually the government of Sancho on the island (the only island surrounded by land), is the government of *El Quijote* if we attend to that is the application of the advices given by this one. One of the magic aspects of the work is to observe as Sancho *quijotiza* and as *El Quijote* *sanchifica*.

The advices given by *El Quijote* to Sancho, contain the basic beginning of the Criminal Law as limits to the exercise of the punitive power and, the application of the advices on the part of Sancho, show the judicial guarantees today recognized in International Agreements. In a brief conversation, *El Quijote* gives a judicial training course to his page that they contain a great juridical and ethical wealth. We can mention some these dogmas in the following terms: *"it tries to know you you itself, and like that will not be swelled up yourself by you as the frog that wanted to be equal with the ox ... to exercise the post with prudence and soft smoothness. It tries always to discover the truth, and if some beautiful woman comes to ask for justice you, removes the eyes of his tears and your ears of his groans, and considers slow for what he asks you. And since it is not a better the reputation of the rigorous judge than that of the compassionate one, prove to be pious and merciful with the culprit"*. What a lot of wealth is not in each one of these advices!

Already in his role as governor, Sancho expired to cabalidad with the instructions got for his owner, exercising his function with high dignity. It dissolved all the conflicts with the highest concept of justice. In his labor like judge there prevailed the orality, the advertising of the judgments, especially of the tests, guaranteed the right of every part to be heard, always he respected the presumption of innocence, absolved in the cases of doubt, treated with "humanity" the persons, that is to say, there existed a judicial royal and effective guardianship. There is a case especially that enlarges our personage when he inclines the scale in favour of the life. A law was arranging that the person who wanted to pass along the bridge, could happen freely if it was telling the truth and it would be condemned to the death if it was lying. A man affirmed that if the bridge was happening he would die. The case was presenting a great juridical problem: the same law was condemning it and, at the same time, it was absolving it for having said truth and lie. The man would lie but it was telling the truth relating to his destination. The case is brought to the "judge Sancho", initially, it realizes an interpre-

tation exegética of the law to expose the insufficiency of this method for the resolution of complex cases. In this sense it expressed: *“that part that swore truth leave to happen, and the one that said lie hang it, and hereby the condition of the passage will be fulfilled to the letter”*, then expressed: *“it will be necessary that such a man divides in two parts, in lying and real; and if it divides, for force he has to die, and this way some thing is not obtained of for what the law asks, and is an express need that is fulfilled by her”*. Once demonstrated the inability to administer justice in the case doing literal application of the law, our personage, with magnificent mastery, it reasoned of the following way: *“he has the same reason to die that to live and to spend the bridge; because if the truth saves him, the lie condemns him equally; and, being this this way, since it it is, I am of seeming that you say to these gentlemen that to they me you sent that, since the reasons are in a fil to condemn him or to absolve him, that leave him to happen freely, so always is praised more did the good that the evil, and this it was giving signed in my name, if it could sign; and I in this case have not spoken about me, but one came to the memory a rule, between many that there gave to me my owner don Quijote the night before that was coming to be a governor of this isle: that was that, when the justice was in doubt, it was praising and receiving the mercy”*.

The previous thing confirms the concept of justice and existing freedom in our personage. On having solved the juridical problem, Sancho did not act as the judge who is a “mouth of the law”, in to say of Beccaria. I think, then that, in what to this aspect it refers, the exposition of *El Quijote* is of major advanced to that of the Italian author, on having allowed to the judge to create right doing the exercise of weighting that one inclined in favour of the right to the life. This way the things, the work of Cervantes continues speaking four centuries after the death of his personage. *El Quijote* is an inexhaustible source of discussion and dialog; a puzzle that probably it will need of other centuries more to be able to continue extracting his wealth. The novel has inspired in the cinema, the theatre, the painting, the videoes games, the music, and even, has survived the apocryphal attempts. We hope that the today Criminal Law doubles his cervix before the cervantine work and admits that to look at the past, it is not a waste. Often the construction of the future is in the past. I agree with the affirmation of Borges when it expressed: *“We are the past that we will be”*.

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