

Letters from Arcadia: State of Nature in Cervantes and Vitoria

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Abstract: In the history of legal and political ideas, the state of nature was a mental exercise to imagine how society would be in the absence of the state: for some golden age while for others, iron age. In this context, of the multiple paths that a jurist might take in a reading of *Don Quixote*, the myth of the golden age features prominently, in the celebrated adventure of the galley slaves, suggesting a further comparison with the myth of the state of nature, as viewed by Francisco de Vitoria, another classical author of that time.

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(A) THE MYTH OF A GOLDEN AGE

The 4th Centenary of the death of Miguel de Cervantes is an ideal moment to return to a reading of the *The Ingenious Gentleman Don Quixote of la Mancha*, the most important work in Spanish literature and one of the outstanding works in universal literature.¹ It is a great classic, and we always reread the classics to shed light on our sentiments and feelings, those of love, friendship, discord, hate, suffering and happiness. The classics enable us to engage in dialogue on the important values and problems in our society. And in a world such as ours, what better way to celebrate the centenary than to seek in Cervantes a response to the eternal question of freedom; ultimately, as Luis Rosales holds, the crisis of freedom is the axis of Cervantes's world and, at the same time, a challenge of our times.²

Of the multiple paths that a jurist might take in a reading of *Don Quixote*, one myth in particular that features prominently in one of his most celebrated adventures, and which offers an appropriate perspective to examine, is that of a golden age: the adventure of the galley slaves which suggests a further comparison with another fundamental myth of that time, namely that of the state of nature, as viewed by Francisco de Vitoria, another of our classical authors.

In fact, the myth of a golden age is rooted in a far more distant era. In the constant dream of a nostalgic abode, that we hope to find and which we eternally seek. This nostalgia for a place and time in which men lived in a state of grace and innocence can be found in all religions –Christianity, Hinduism, Taoism, the Quran– and throughout all the ages.³ In fact, we can find it in Genesis:

“God planted a garden in Eden, which is in the east, and there he put the man he had fashioned from the soil, God caused to grow every kind of tree, enticing to look at and good to eat, with the tree of life in the middle of the garden, and the tree of the knowledge of good and evil.”⁴

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¹ H. Bloom, *¿Dónde se encuentra la sabiduría?* (Taurus, Madrid, 2005).

² L. Rosales, *Cervantes y la libertad*, Complete Works, volume 2 (Trotta, Madrid, 1996) at 22.

³ U. Eco, *Historia de las tierras y los lugares legendarios* (Lumen, Barcelona, 2013) at 145 *et seq.*

⁴ Sagrada Biblia, *Edición Oficial de la Conferencia Episcopal Española* (Conferencia Episcopal, Madrid, 2011).

However, the myth of the golden age was created long before, and we can find it in Hesiod's *Works and Days*:⁵

"First of all the deathless gods who dwell on Olympus made a golden race of mortal men who lived in the time of Cronos when he was reigning in heaven. And they lived like gods without sorrow of heart, remote and free from toil and grief: miserable age rested not on them; but with legs and arms never failing they made merry with feasting beyond the reach of all evils. When they died, it was as though they were overcome with sleep, and they had all good things; for the fruitful earth unforced bare them fruit abundantly and without stint. They dwelt in ease and peace upon their lands with many good things, rich in flocks and loved by the blessed gods."

The myth has continued to be portrayed over time without interruption, appearing once more in the Prometheus story in Plato's *Protagoras*,⁶ and in Ovid's *Metamorphosis*.⁷ In the Elysian Fields we find it again in book VI of the *Aeneid*,⁸ in the *Georgics*, or Virgil's *Eclogue VI*. It arises in the form of nostalgic ideal in Horace's famous epode *Beatus Ille*,⁹ or in Albio Tibulo's *Elegías*,¹⁰ and it is a common theme in Renaissance literature, for example Petrarch's *On the Solitary life*, in Fray Luis de León's —*The Life Removed*— or Garcilaso de la Vega's *Eclogue I*.

In some cases, the myth consists of a description of place and the longed for return to a bygone age, and on other occasions the myth propounds a place in the present time, an ideal refuge to retire to as in *Scorn of the Court and Praise of the Village* (1539) by Antonio de Guevara. And naturally, following the discovery of the New World, the myth was reshaped as a yearned for ideal, such as Thomas More's *Utopia* (1516), the Dominican friar Tomasso de Campanella's *Civitas solis, poetica idea Reipublicae philosophicae* (1623) or Francis Bacon's *New Atlantis* (1627) to mention just some of the utopias imagined in Cervantes's era.

The myth of a golden age was a familiar concept in his time. The age of the encounter between the old and new worlds saw utopian thinking flourish and many of those reaching the new world were motivated by this philosophy. It was prevalent among members of religious orders in particular (i.e: the New Jerusalem, etc).¹¹ Utopian thinking also directly influenced the higher ranks of the church in the Indies. In fact, the influential first bishop of México himself, fray Juan de Zumárraga, possessed a heavily annotated copy of More's rationalist fantasy, *Utopia*.¹²

Following a different path, Cervantes, whose erudition was evident,¹³ skilfully combined —and not without a touch of irony—¹⁴ all these topics and ideas of classical and Renaissance authors on that

⁵ Hesiod, *Los trabajos y los días: Mito de las edades* (Biblioteca Básica Gredos, Barcelona, 2000) at 107-202.

⁶ Plato, *Protágoras*, In *Dialogues I* (Biblioteca Clásica Gredos, Barcelona, 1993) at 321 *et seq.*

⁷ Ovidio, *Metamorfosis*, I *Alma Mater*: Colección de Autores griegos y latinos (CSIC, Madrid, 1992) at 89 *et seq.*

⁸ Virgil, *Eneida*, I, *Alma Mater*: Colección de Autores griegos y latinos (CSIC, Madrid 1992) at 634-648.

⁹ Horace, *Odas y Epodos* (Porrúa, México, 1992) at 67 *et seq.*

¹⁰ Tibulo, *Elegías*, Libro I, Colección de Autores Griegos y Latinos (CSIC, Madrid, 1990).

¹¹ A vivid example of the power of that motivation was the fascinating diary of the voyage of a group of 16 Dominicans to Chiapas that left San Esteban (Salamanca) on January 12, 1544. See T. de la Torre and F. Ximénez, *Diario de Viaje: De Salamanca a Ciudad Real de Chiapa 1544-1545* (OPE, Salamanca, 1985).

¹² A. Pagden, *Spanish Imperialism and the political imagination. Studies in European and Spanish-American Social and Political Theory 1513-1830* (Yale University Press, New Haven, 1990) at 25.

¹³ A. Castro, *El pensamiento de Cervantes* (Noguer, Madrid, 1970).

¹⁴ M. de Riquer, *Para leer a Cervantes* (El Acantilado, Barcelona, 2003) at 146.

idealised time when virtue and goodness reigned supreme throughout the world. He had already addressed this theme in *The Bagnios of Algiers* (1583-87) when he has Aurelio declaim in Act II:¹⁵

“Oh blessed time, through our evil ways now passed, to which our ancients gave the sweet name of Golden Age!! How surely and freely those that trod the world in that era lived out their mortal days! Never on the air were heard the sounds of the miserable captive’s voice, raised in protest at his cruel misfortune. Then it was that freedom reigned, and the hateful name of servitude was never spoken. But when without reason, without light, blinded by avarice, the mortals weighed down by earthly sorrow, discovered the fair mineral of gold until that time concealed beneath the earth, the source of all our woes, he who little gold possessed, envious of he who with his superior skill had garnered greater riches, sowed the base and mortal discord of theft, fraud and deception, of cheating and deceitful conduct.”

And Cervantes takes up the same theme in Don Quixote’s discourse to the goatherds:¹⁶

“Happy the age, happy the time, to which the ancients gave the name of golden, not because in that fortunate age the gold so coveted in this our iron one was gained without toil, but because they that lived in it knew not the two words “mine” and “thine”! In that blessed age all things were in common; to win the daily food no labour was required of any save to stretch forth his hand and gather it from the sturdy oaks that stood generously inviting him with their sweet ripe fruit [...] Then all was peace, all friendship, all concord; as yet the dull share of the crooked plough had not dared to rend and pierce the tender bowels of our first mother that without compulsion yielded from every portion of her broad fertile bosom all that could satisfy, sustain, and delight the children that then possessed her.Fraud, deceit, or malice had then not yet mingled with truth and sincerity. Justice held her ground, undisturbed and unassailed by the efforts of favour and of interest, that now so much impair, pervert, and beset her. Arbitrary law had not yet established itself in the mind of the judge, for then there was no cause to judge and no one to be judged.”

This famous speech given by Don Quixote while clutching a handful of acorns, contains a temporal utopia —the nostalgia for an idyllic past—, a social utopia —with the abolition of property— and a natural utopia: a place of bliss and happiness, the Arcadia to which one retires or which one has conquered;¹⁷ no mean accomplishment without question, but it is Don Quixote’s plan and not necessarily that of Cervantes, who mixes his literature with a dose of reality. The myth would serve Don Quixote to rhetorically postulate the archaic restoration of a mythical and fictitious past, through the order of chivalry; and it served Cervantes to present Don Quixote as the embodiment of an ethical ideal and aesthetic way of life with which to criticise the vices and imperfections of his time. However, another myth had taken shape in the meantime, and in this case it was allied with the real problems of the age.

(B) THE MYTH OF THE STATE OF NATURE

That idea of primordial world has not only been promulgated in history of thought as a temporal, social or natural utopia, but the field of law has also taken up the concept. The myth of a golden age

¹⁵ Miguel de Cervantes, *El trato de Argel*, *Obras Completas*, Volume II (Biblioteca Castro, Madrid, 1993).

¹⁶ Miguel de Cervantes, *Don Quijote de la Mancha*, Part I, Chapter XI (Instituto Cervantes, Madrid, 2005).

¹⁷ F. Torres Antónanzas, *Don Quijote y el Absoluto. Algunos aspectos teológicos de la obra de Cervantes* (Universidad Pontificia de Salamanca, Salamanca, 1998).

has been perceived as the state of nature. At times it has been used to discover the *historic* origin of our societies; however, more often than not it has been used as a *hypothesis* to justify the foundations of legal institutions or to propose their reform, with the aim of establishing ways of organising life in human gatherings, within the framework of the state. In this last case of laying foundations that today we refer to as “institutional design”, the state of nature—for some golden age while for others, iron age—was no more than a mental exercise to imagine how society would be in the absence of the state: would it resemble Don Quixote’s golden age? or would it be an iron age?

While Cervantes was explaining his myth of a golden age, the Spanish school of natural law had recourse to the state of nature in establishing the origin of civil power and its legitimisation, and in questioning the policies of his time. Let us place both phenomena in their context. When the first edition of *Don Quixote* was published in the last two weeks of December 1604, the kingdom of Spain was already established as a nation state. The new state, which proclaimed its sovereignty was now a power that would brook no challenges, either from within or from outside its frontiers, and which monopolised the use of force, rationalising its exercise by means of the law, through the establishment of a bureaucracy or administration, and through the creation of courts served by judges, and by regulating who could administer punishment, and how much punishment could be meted out, along with the procedures they would use to apply these penalties. The first historic construction of the nation state was dominated in the 14th century by strong dynastic states, as was the case in Spain.¹⁸ Thus, when Cervantes has his hero set out from a “place in la Mancha”, a location still unknown to us, Spain had become one of the first European states, as well as an empire.

At times there were those who wished to locate paradise itself in such primitive communities,¹⁹ and others like Bartolomé de las Casas,²⁰ who in his *History of the Indies*, and again with further emphasis in his *Apologetic History of the Indies*, saw in such places the historical concretisation of the natural state.²¹ With the discovery of America, the issues raised by legitimising power gained momentum, and more daring theories arose on human nature as the basis of societies and their institutions, as well as the most advanced and humanitarian proposals of the *ius gentium*.

In this regard, the work of Domingo de Soto, Melchor Cano, Bartolomé de Carranza, Bernardino de Arévalo, Bartolomé de las Casas, Bañez, Francisco Suárez and Luis Molina cannot be understood without first considering the works of Francisco de Vitoria. The work of Vitoria was, if not the first, certainly the most important contribution to that school of thought. As such it is therefore pertinent to refer to the use made of the idea of a natural state as a basis for public power and law as well as the new law of peoples. If Don Quixote, in order to defend his ideal of absolute freedom, mythicizes a

¹⁸ M. García Pelayo, *La idea medieval del Derecho. Obras Completas*, Volume II (Centro de Estudios Constitucionales, Madrid, 2009), at 1073 et seq.

¹⁹ See Christopher Columbus, *Relación del tercer viaje. Carta a los Reyes Católicos desde la Española* (May–August 1498), and the works of Antonio León Pinelo, *El Paraíso en el Mundo. Comentario apoloético, historia natural y peregrina de las Indias Occidentales, Islas de Tierra Firme del mar Océano* (1656).

²⁰ Bartolomé de las Casas, *Obras Completas* (Alianza, Madrid, 1988–1889).

²¹ V. Zorrilla, *El estado de naturaleza en Las Casas* (Servicio de Publicaciones de la Universidad de Navarra, Pamplona, 2010).

past golden age —as Rousseau was to do later—,²² in which the noble savage lived a blissful life with his every need met, Francisco de Vitoria begins his impressive *De Potestate Civili*, with a description of the state of nature which will be assumed by the Spanish school of natural law,²³ as the origin and foundation of civil law. In order to support his conclusions in *De Potestate Civili*, following Aristotle, Vitoria set out to seek the causes of human sociability. The conclusions of this *Relectio*, pronounced at Christmas 1528, were as follows:

“First conclusion: every public or private power by which the secular commonwealth is administered is not only just and legitimate, but is of God, and so cannot be abolished even by the consensus of the whole people.

Second conclusion: thus the majority of the republic may set up a king even if the rest oppose him so the majority of Christians may rightfully appoint a monarch against the opposition of others whom all the princes and provinces must obey.

Third conclusion: the laws and constitutions of rulers are such that whoever transgresses them is guilty of a crime in the court of conscience. The same holds true of the commands of parents to their children and husbands to their wives.”²⁴

And in contrast to the solitary and happy soul eulogised by Don Quixote in his golden age Eden, Vitoria saw that this man, “although man excels the other animals by his possession of reason, wisdom and speech guiding providence has nevertheless denied to eternal immortal and wise mankind many things.” With his different approach Vitoria proposed the Gordian knot in the following terms:

“but to mankind Nature gave only reason and virtue leaving him otherwise frail, weak, helpless and vulnerable, destitute of all defence and lacking in all things, and brought him forth naked and unarmed like a castaway from a shipwreck, into the midst of the miseries of this life and unable to do anything but bewail and lament his frailty with endless forebodings as one whose future life will bring so many ills as the poet said.”²⁵

Nothing to do then with a golden age: such is his privation and fragility that he is not even human yet, and society does not even exist. As Vitoria sees it, man, in order to exist as such, requires doctrine and experience to perfect his understanding; and understanding requires speech: “which in solitude can never be achieved”. Therefore, “Aristotle, in Book 1 of his *Politics*, shows that a social instinct is implanted in all men *by nature*”; and Vitoria adds in this regard:

“And again, in the case of will, whose ornaments are justice and amity what a deformed and lame thing it would be outside the fellowships of men. Justice can only be exercised in a multitude; and amity, ‘which we use on more occasions than fire and water themselves’, as Cicero says and apart from which Aristotle says no virtue can exist would disappear completely without some sort of shared life.”

Finally, he completes his reasoning with words that resemble those used by Hobbes, but with a different basis and purpose:

²² J. Rosseau, *Discurso sobre el origen y fundamento de la desigualdad de los hombres* (Alianza Editorial, Madrid, 2012).

²³ In particular the work of the Dominicans Francisco Vitoria (1480-1546), Domingo de Soto (1494-1560) or Domingo Bañez (1528-1604), and the Jesuits Luis Molina (1533-1600), Francisco Suárez (1548-1617) and Juan de Santo Tomás (1589-1644), among others.

²⁴ Francisco de Vitoria, *De Potestate Civili*, in *Obras de Francisco de Vitoria* (Biblioteca de Autores Cristianos, Madrid, 1960).

²⁵ *Ibid.*, at 154-155.

“[...] and even if a man could live by and for himself alone, such lonely existence would be a dreary and unlovely thing.”

Thus, if we mentally eliminate society and the State as an experiment, the scenario that Vitoria presents is the antithesis of Don Quixote's longed-for golden age. According to Vitoria, the man at the margins of society is not human or, in any case, without civil society he would live in a kind of iron age, as civil society is “that in which human partnerships arose for the purpose of helping to bear each other's burdens”, because it is “the most natural community, the one which is most conformable to nature.”

The origin of society —such is the point of departure— is not the result of convention; it is not something invented by man nor should it be considered as something artificial:²⁶ “the primitive origin of human cities and commonwealths was not a human invention or contrivance to be numbered among the artefacts of craft, but a device implanted by Nature in man for his own safety and survival.” For Vitoria, from that social nature also derived the need for a power to keep society unified,²⁷ and he explains this as follows: “If all members of society were equal and subject to no higher power, each man would pull in his own direction as opinion or whim directed, and the commonwealth would necessarily be torn apart. The civil community would be sundered unless there is some overseeing providence to guard public property and look after the common good.

It is in this way that natural law requires both society and a need for a power.²⁸ Moreover, divine law itself establishes them as “public power is founded upon natural law, and if natural law acknowledges god as its only author, then it is evident that public power is from god, and cannot be over-ridden by conditions imposed by men or by any positive law.” We see therefore, how through a means which is adapted to the new era, Vitoria justifies Aristotle's definition of man as an essentially social being, as *zoonpolitikon*,²⁹ and society and power as institutions of natural law.

(C) CIVIL SOCIETY AND ITS LAWS

Vitoria and the Spanish school of natural law's recourse to the state of nature became the topic on which bold theories on the legitimisation of power and the obligation of obedience to the law were based. However, despite the natural and even divine origin of society and power, Vitoria introduced the idea of a ‘social contract’ in its foundation, albeit under another name, in order to explain both the constitution and the limits of specific political institutions.

The equal nature of all human beings served Vitoria to defend his thesis that supreme power is the prerogative of the community as a whole and is not placed in the hands of one or a few members of that society. The community alone holds sovereignty which it receives directly from god,³⁰ and as a result it cannot be disposed of or renounced. The community, which cannot of itself operate directly,

²⁶ Francisco de Vitoria, *De Potestate Civile*, 5, op.cit at 157 et seq.

²⁷ *Ibid.*, at 157.

²⁸ Francisco de Vitoria, *De Potestate Civile*, 6, op.cit at 158.

²⁹ Aristóteles, *Política, Libro I*, 1253^a (Biblioteca Clásica Gredos, Barcelona, 1989).

³⁰ Francisco de Vitoria, *De Potestate Civile*, 7, op.cit at 159.

agrees to transfer, not the sovereignty but the exercise of that sovereignty to a civil authority, albeit a monarchy or a republic, even though he himself chooses the former. In order to explain this delegated power, he has recourse to the ancient theory of *traslatio imperii*, by means of which the community democratically constitutes the governor –unanimity is not necessary, a majority is sufficient– and entrusts him with the exercise of power: the governor is not the sovereign, but becomes a type of agent with respect to its principal which is society itself. Such is the second conclusion of Vitoria's *Relectios*:³¹

“Thus the majority of the republic may set up a king even if the rest oppose him so the majority of Christians may rightfully appoint a monarch against the opposition of others whom all the princes and provinces must obey.”

And Vitoria also deduces in his third and final conclusion in his work:³²

“The laws and constitutions of rulers are such that whoever transgresses them is guilty of a crime in the court of conscience. The same holds true of the commands of parents to their children and husbands to their wives.”

In this way Vitoria manages to construct a powerful theory on obedience to laws; powerful because as he sees it, that obedience derives from human nature, as later Thomas Hobbes was to hold with his *homini lupus* and his social contract.³³ Hobbes displays an anthropological pessimism, seeing the natural human as an egotistical being who considers that he is entitled to everything, and whose untrammelled greed leads to men warring against each other, thus necessitating a pact in which they entrust to a third party –the government– the absolute right to decide in disputes.

Chapter 29 of Hobbes' *Leviathan* is dedicated to “things that weaken or tend to the dissolution of a commonwealth” in its attempt to diagnose England's ills: the first infirmity is that “Sometimes a man wanting to obtain a kingdom settles for less power than is necessarily required for the peace and defence of the commonwealth.” A second disease is that of “the poison of seditious doctrines” in that “Every private man is a judge of good and evil action” when “it's obvious that the measure of good and evil actions is the civil law.” A third disease which merits rejection by civil society is the freedom of conscience, instead of accepting that “the law is the public conscience” and the citizen should be guided by it. A fourth opinion that is “hostile to the nature of a commonwealth is this: he who has the sovereign power is subject to the civil laws.” A fifth doctrine that tends to the dissolution of a commonwealth is that every private man has absolute ownership of his goods, excluding the right of the sovereign, and “A sixth doctrine that is plainly and directly contrary to the essence of a commonwealth is this: the sovereign power may be divided.” These are just some of the ills that in Hobbes's view had led in 18th century Europe, and England in particular, to a state of disorder, anarchy and war.³⁴

However Vitoria's vision is even more powerful than that of Hobbes, in that obedience to the law is also based on divine right. Notwithstanding, if in Hobbes the exercise of that power is defined as

³¹ Francisco de Vitoria, *De Potestate Civili*, 14, op.cit at 178.

³² *Ibid.*, at 181.

³³ N. Bobbio, *Estudios de historia de la filosofía: de Hobbes a Gramsci* (Editorial Debate, Madrid, 1985) at 22.

³⁴ T. Hobbes, *El Ciudadano* (Instituto de Ciencias Políticas, Madrid, 1966)

unlimited,³⁵ in Vitoria it is restricted by the idea of the *common good* of society; an idea that would constitute the reason for its power. In any case, unless that power is despotic, civil laws should be obeyed, not only because they are subject to punishment, but also because “civil and ecclesiastical laws are binding both in respect of punishment and of guilt”.³⁶

(D) FROM A GOLDEN AGE TO AN IRON AGE

It is clear that among the books in “the diverting and important scrutiny which the curate and the barber made in the library of our ingenious gentleman”³⁷ they did not come upon the *Relectios* of Francisco de Vitoria with his arguments for the necessity of obeying civil laws in this iron age, to which Don Quixote’s golden age had succumbed. For this gentleman and reader of the *Four Books of Amadis of Gaula*, the *Adventures of Esplandan* and *Amadis of Greece*, *Don Olivante of Laura*, *Florismarte of Hircania* or the *Knight of Platir*, it would not be through civil laws—which he scorned for their injustice—that the golden times could be recovered. His were the laws of chivalry and he clung to those, as witnessed by the misguided and famous adventure of freeing the galley slaves.

While Don Quixote discussed the possibilities of his faithful squire being raised to the title of count, “Don Quixote raised his eyes and saw coming along the road he was following some dozen men on foot strung together by the neck, like beads, on a great iron chain, and all with manacles on their hands. With them there came also two men on horseback and two on foot; those on horseback with wheel-lock muskets, those on foot with javelins and swords”:³⁸

– “That is a chain of galley slaves, on the way to the galleys by force of the king’s orders.

– How by force?, asked Don Quixote; is it possible that the king uses force against anyone?

– I do not say that, answered Sancho, but that these are people condemned for their crimes to serve by force in the king’s galleys.

– In fact, replied Don Quixote, however it may be, these people are going where they are taking them by force, and not of their own will.

– Just so, said Sancho.

– Then if so, said Don Quixote, here is a case for the exercise of my office, to put down force and to succour and help the wretched.

– Recollect, your worship, said Sancho, Justice, which is the king himself, is not using force or doing wrong to such persons, but punishing them for their crimes.”

Here it is Sancho who clearly differentiates between civil laws, that cannot be violated and the laws of chivalry. However, Don Quixote is not interested in the legal nature of the crimes for which the galley slaves were punished: thieves caught in the act, a villain who had to “sing under suffering”—that is, under torture—, or one who had confessed to pimping, bigamy or banditry as the likes of Ginés de Pasamonte. What mattered to Don Quixote is that “by force, and not of their own will,”

³⁵ T. Hobbes, *Leviatán o la materia, forma y poder de un Estado Eclesiástico y Civil* (Alianza Editorial, Madrid, 1999).

³⁶ Francisco de Vitoria, *De Potestate Civili*, op.cit at 183.

³⁷ Miguel de Cervantes, *Don Quijote de la Mancha*, Part I, chapter VI.

³⁸ Miguel de Cervantes, *Don Quijote de la Mancha*, chapter XXII.

they have lost their freedom. And this fits with the performance of his duty as knight errant, and anyway, how is one to trust the administration of justice?:

“—From all you have told me, dear brethren, make out clearly that though they have punished you for your faults, the punishments you are about to endure do not give you much pleasure, and that you go to them very much against the grain and against your will, and that perhaps this one’s want of courage under torture, that one’s want of money, the other’s want of advocacy, and lastly the perverted judgment of the judge may have been the cause of your ruin and of your failure to obtain the justice you had on your side. All which presents itself now to my mind, urging, persuading, and even compelling me to demonstrate in your case the purpose for which Heaven sent me into the world and caused me to make profession of the order of chivalry to which I belong, and the vow I took therein to give aid to those in need and under the oppression of the strong. But as I know that it is a mark of prudence not to do by foul means what may be done by fair, I will ask these gentlemen, the guards and commissary, to be so good as to release you and let you go in peace, as there will be no lack of others to serve the king under more favourable circumstances; for it seems to me a hard case to make slaves of those whom God and nature have made free. Moreover, sirs of the guard, *added Don Quixote*, these poor fellows have done nothing to you; let each answer for his own sins yonder; there is a God in Heaven who will not forget to punish the wicked or reward the good; and it is not fitting that honest men should be the instruments of punishment to others, they being therein no way concerned”.

Let us consider the reasons given by Don Quixote that justify freeing the captives. Firstly, they do not go to the galleys with “much pleasure” but “very much against the grain and against their will.” Secondly —and though he does not quite dare to say as much— it “may have been” due to torture, want of money or lack of resources to pay for a perverted decision of a judge, applying the famous *ley del encaje*. And in any case had they done anything, it is not the concern of the “sirs of the guard.”

In short, the state has no right to deprive anyone of their natural and unrestricted freedom in Don Quixote’s eyes; not only because it has been proven not to work but rather because Don Quixote makes a dual assumption from which he is not prepared to deviate: the injustice of depriving someone of their freedom and the choice, when this is questioned, in favour of freedom and liberty. One thing is justice and another law; and justice —whatever Sancho says— is above the law.

In this way, Don Quixote manages to reverse the terms; now the state representatives —“cuadrilleros”— are no more than “footpads with the licence of the Holy Brotherhood” or “band, not of officers, but of thieves” who rob the most precious thing a man has, which is his freedom; and whoever, like Don Quixote, opposes the law and power can never be called a “robber and footpad of the highways”:³⁹

“Come now, base, ill-born brood; call ye it highway robbery to give freedom to those in bondage, to release the captives, to succour the miserable, to raise up the fallen, to relieve the needy?”

The knight errant in pursuit of putting the world to rights is not constrained by any law, he is exempt of all jurisdictions, payment of any poll-tax, duty, queen’s pin-money, king’s dues, toll or ferry? The knight errant is a genuine *princeps legibus solutus*:

“Where hast thou ever seen or heard that a knight-errant has been arraigned before a court of justice, however many homicides he may have committed?”

³⁹ Miguel de Cervantes, *Don Quijote de la Mancha*, Part I, chapter XXV.

A disciple of Vitoria would have recommended that Don Quixote prior to freeing the galley slaves take note of his third conclusion in *De Potestate Civili*: that is that civil laws are binding on “not only penalty but guilt” (*no sólo a pena sino a culpa*) and admitting freedom of conscience in respect of civil laws —something that Cervantes defends however— would not only be a serious disease of the State, but the negation of life in society. In short, it would not be a return to the golden Age but a degeneration into the Iron Age. But Don Quixote’s library only contained books on chivalry.⁴⁰

“– Blockhead!, said Don Quixote at this, it is no business or concern of knights-errant to inquire whether any persons in affliction, in chains, or oppressed that they may meet on the high roads go that way and suffer as they do because of their faults or because of their misfortunes. It only concerns them to aid them as persons in need of help, having regard to their sufferings and not to their rascalities. I encountered a chaplet or string of miserable and unfortunate people, and did for them what my sense of duty demands of me, and as for the rest be that as it may.”

(E) DON QUIXOTE, AN ETHICAL AND AESTHETIC IDEAL OF LIFE

Every era interprets classic works in their own way.⁴¹ Romantic criticism of this passage interpreted the episode in a completely arbitrary manner, perceiving Don Quixote as a paladin of freedom and valiant adversary of tyranny. However, as Riquer adroitly explains, “Don Quixote reveals in this episode his maddening conception of justice, as he defends not just causes, but the most unjust causes such as the freeing of socially treacherous individuals who then stone him and Sancho, manifesting the despicable nature of their condition”.⁴² It is Sancho once again, fearful that the Holy Brotherhood will continue to pursue them following their feat, who recalls the risks inherent in violating civil laws.⁴³

“Your worship will take warning as much as I am a Turk,” returned Sancho; “but, as you say this mischief might have been avoided if you had believed me, believe me now, and a still greater one will be avoided; for I tell you chivalry is of no account with the Holy Brotherhood, and they don’t care two maravedis for all the knights-errant in the world; and I can tell you I fancy I hear their arrows whistling past my ears this minute.”

The whole book evidences mistrust for state institutions. Those who believe in the law as a principle of civilisation will find no alternative solutions in this work. Beyond the fleeting yet harsh, disdainful and negative criticism, there is no counterpoint with solutions for improving the existing government which is clearly and visibly undermined by its acts, methods and procedures. Don Quixote does not appear interested in reforming any institutions: our gentleman prefers to seek justice in a golden age where judges, governments or institutional restrictions of any kind do not exist.

Political philosophy is a minefield for those who, like all the ex-captives of Algiers, are closely watched by the Holy Inquisition. Political philosophy may be a productive area for Francisco de Vitoria, Domingo de Soto, Mariana or Suárez, illustrious exponents of the classical school of natural

⁴⁰ Miguel de Cervantes, *Don Quijote*, Part I, chapter XXX.

⁴¹ Pedro Salinas, *Estudios de Literatura hispánica* (Aguilar 1958) at 79.

⁴² M. de Riquer, *Para leer a Cervantes*, op.cit at 161.

⁴³ Miguel de Cervantes, *Don Quijote de la Mancha*, Part I, chapter XXIII.

law, concerned with finding effective expedients for improved control of power and reform of the states. Political reforms are the preserve of the doctors of the church, because Don Quixote prefers to take refuge in fiction, or in moral philosophy.

Don Quixote is in no way a political reformer. He represents more an ethical and aesthetic ideal with which Cervantes wishes to condemn some of the social ills of his time; and this is why, because of his ethical and aesthetic qualities, the book is one of literature's great classics, which merits rereading from time to time, irrespective of any fanfares regarding centenaries. Opposed to him or alongside him, Vitoria is another great classical writer, albeit vastly different, and one who was very much attuned to the reality of his time, and who on the basis of human nature, sought a set of institutions and political systems designed to improve the lot of his fellow men, contributing to the idea of the law of peoples and the humanisation of Spanish colonisation of the Indies.