

## Cervantes' *Don Quijote*' as Legal Commentary

SUSAN BYRNE

THE SCENE IN *Don Quijote* I, 3, in which Cervantes' protagonist is knighted by the *ventero*, has been commented on by a number of scholars. Opinions range from it being "historically and legally precise,"<sup>1</sup> to it being one of Cervantes' most audacious gibes,<sup>2</sup> or a farce in "grotesque imitation of the sacred ceremony,"<sup>3</sup> to a defense of

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1 "[A]l proceder el *ventero* a dar *la negra orden de la caballería* a Don Quijote, dícele: '...que todo el toque de quedar armado caballero consistía en *la pescozada y en el espaldarazo*», lo cual histórica y legalmente era exacto; pues citanse repetidos ejemplos de caballeros armados sin otra ceremonia que la indicada por el mesonero" although the article's author doesn't specify where those examples are to be found (Martínez Olmedilla 20). Martínez Olmedilla notes that certain details of the novel bear a relation to specific laws, but advises: "mas téngase en cuenta que yo jamás he pensado que Cervantes pueda ni deba considerarse como un jurisperito, y menos aún como un jurisconsulto" but, given that the novel has some of everything, "lógico es que encierre algunas referencias legales y jurídicas" (20). My argument herein is to the contrary, as I believe that Cervantes was quite conscious of his (ab)use of the laws as written, and had a specific parodic intent with regards to same.

2 Pemán asks: "¿el capítulo cervantino no va más allá de un cruel 'pastiche' irónico de una de las escenas monótonamente exigidas en aquella moda literaria de la época...?" (9), and concludes that Cervantes caricatures not only "la burlesca 'armazón de cavallería'" but "todos modelos heroicos y caballerescos" as part of his age's "batalla humanística y moderada": "es, desde luego, una de las burlas más audaces de Cervantes" (18).

3 "aquella noche, tras una grotesca imitación de la sagrada ceremonia de la vela de las armas, el *ventero* se presta a la farsa de armar caballero a don Quijote. Lo más noble y elevado de la religiosa solemnidad de armar caballero queda ahora reducido y rebajado a una burla soez y miserable" (Riquer 86-87).

its fictionality and right to be bound only by literary, as opposed to positive, law,<sup>4</sup> to Redondo's 1991 article recognizing the scene as an incisive parody not only of the *libros de caballerías* but also of very specific details of the proscriptions in law and in contemporary "how-to" manuals for such knightings.<sup>5</sup>

Although conceding to don Quijote's plea that "mañana en aquel día me habéis de armar caballero" (I, 3; 40)<sup>6</sup> because he needs something to laugh about that night, the ventero demurs when confronted with the plan that "esta noche en la capilla deste vuestro castillo velaré las armas" (I, 3; 40). Substitution of a patio for the capilla is necessary, he tells don Quijote, because the capilla "estaba derribada para hacerla de nuevo" (I, 3; 41). With his exact words, he threads the thinnest of lexical lines between the law's proscriptions on the unmaking, remaking, and making anew of churches and capillas. In focusing on the detail of the capilla derribada, I've come to believe that there's another level of specific parodic commentary running through the text, in the form of an ironic gloss on certain legal compendia and statutes.<sup>7</sup>

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4 Palacín takes issue with Riquer's conclusion: "conviene resaltar, pues, que Don Quijote no es armado caballero, miembro de una orden militar, sino caballero andante, y que en el acto de armarle no se sigue la ceremonia tradicional, sino 'las hasta allí nunca vistas ceremonias.... Y caballero andante, era—y es históricamente—personaje de ficción" (2). He adds: "Si miramos en todos los aspectos del Quijote la realidad y aplicamos a ella los preceptos de las Partidas, se rompe con frecuencia el encanto y sentido de la obra" (6). I agree that seeing the fiction as no more than a perversion and denial of reality's details would be in error, but I also believe that, by taking those precepts into account as part of the historical context behind Cervantes' creative commentary in the novel, we don't lose the enchantment but, rather, gain another level of understanding, as well as a deeper appreciation of his creative daring.

5 In one of the *Lecturas* that accompany Rico's 1998 edition of the novel, Mari Carmen Marín Pina says: "la parodia de la vela de armas y de ritual de los combates caballerescos se convierte finalmente en una típica escena de farsa o de entremés" (23). The same source offers a list of previous studies of the scene (23-24). In his edition, Clemencín offers various points of contact with ceremonies as portrayed in *libros de caballerías*.

6 Here and subsequently, all cites to the novel are from the recently reissued Sabor de Cortazar y Lerner edition. I'm further indebted to Professor Lerner who, in his class on *Don Quijote*, posed a question about the legitimacy of the "capilla derribada," that led me to begin this study.

7 We know that, once knighted, the caballero will enforce a law based on honor and expectations, a natural philosophy of justice that tries to persuade before it resorts to force, an idea of right and wrong that we can all understand without having a degree in law. This philosophical approach to justice in the *Quijote* has been studied: "Ilustres juristas han observado

Prior to the 13<sup>th</sup> century, the laws of the Peninsula weren't very specific regarding caballeros<sup>8</sup> or capillas.<sup>9</sup> The 7<sup>th</sup> century's *Liber iudiciorum* of the Visigoths, translated as the *Fuero Juzgo* in the 13<sup>th</sup> century and pub-

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que algunas de sus descripciones fenoménicas sobre la vida del crimen alcanzan el valor de verdaderos documentos humanos ante la criminalología [sic]" (Basave Fernández del Valle 193). The same author notes a connection between Cervantes' protagonist and the *Partidas*: "Don Quijote aparece como un defensor en el peculiar significado que se determina en las *Partidas*" (196), but fails to note the author's parodic commentary through his spokesperson-protagonist. Castro Dassen states simply: "la justicia es el mismo don Quijote" (13), and "es el libro al par que el más triste y el más alegre, el más jurídico de cuantos existen" (111). Galbis accepts earlier findings limiting the intent and/or scope of legal commentary: "si queremos encontrar un común denominador de los incidentes forenses, debemos remontarnos, no a las normas o preceptos codificados desde las *Siete Partidas*... sino a los principios del Derecho natural como lo entendía el español del siglo XVI" (703). More recently, Vega Carney has distinguished between the workings of natural law and state law in the *Quijote*: She finds many actual legal topics treated, but does not believe they are the focus: "It is also evident to the reader that Don Quixote's concept of justice is a more important element in the development of the plot than any mimetic representation of the prevailing legal system of the period. While natural law appears in the text as a motif bound to the theme of chivalry and to the main plot, man-made law does not emerge as part of the incidents arranged in the plot until the end of the story" (40). As I argue herein, I believe that man-made law is a focus throughout, from the very start of the text, but in a parodic, rather than mimetic fashion. Childers has declared that the commented-on difference between "natural" justice v. legal bureaucracy is misplaced as "this apparent dichotomy dissolves on closer inspection, for monarchical power ultimately contains both" (3). González Echevarría seems to side with those who argue for the "natural justice" concept as the main focus, saying that the text shows "an increasingly abstract and foundational consideration of the law, with his [Cervantes'] interest more in its origins and principles than in the details of its codification and application in specific cases" (223).

8 Some fueros did exempt caballeros from paying certain taxes, although others rescinded those rights (see *infra*). Even the twelfth century's *Fuero de Molina*, which came to be known as the *Fuero de Molina de los Caballeros*, doesn't specify who one is or how one is made although, like some of the other legal codes, it does grant caballeros freedom from taxes: he who has horse and arms "nada non peche" (Sancho Izquierdo 64, quoting from *cédula* IV of the *fuero*). Sancho Izquierdo dates the added phrase "de los caballeros" to Francisco Díaz's 1474 version of the codex, and to later editions (44-47).

9 Canon law of the fifteenth and sixteenth centuries refers to the proscriptions found in common law, and says they should be adhered to (Pérez-Coca Sánchez-Matas II.528). It also reprehends bishops who were allowing powerful persons to build churches and chapels "con plena autonomía" (II.261), and reacts to these abuses by prohibiting construction of new sacred places "sin licencia del perlado diocesano" (II.262). Although this particular text doesn't comment as to unmaking or remaking of such places, it does offer interesting details as to certain abuses: "los que en ellas entran juegan, blasfeman y hazen otros atos muy descomenientes a la santidad y onestidad de la yglesia" (vol. II.266). The cites are to documents from synods of the second half of the sixteenth century.

lished in a newly-glossed edition in 1600, neither defines nor legislates specifically as to *caballeros* or *capillas*. Nor do the local *fueros* conceded to cities reconquered during the 10<sup>th</sup>-14<sup>th</sup> centuries. The *Fuero Viejo*<sup>10</sup> accords all sorts of rights to noblemen, “ricos omes” and “hijosdalgo”—but doesn’t address *caballeros* or *capillas*. Nor does the early to mid-thirteenth century’s *Fuero Real*.<sup>11</sup>

It’s only in Alfonso X’s *Partidas* that the *caballero* is fully described, and the process for knighting him is laid out in detail, and that’s where we also find the laws about *capillas derribadas*. The *Partidas* were meant to be a complete compendium of jurisprudence, the logical answer to the Peninsula’s plethora of extant and, sometimes contradictorily operative *fueros*. They were first promulgated in the thirteenth century but, like the *Fuero Real*, they were also fiercely resisted and, so, partially withdrawn by Alfonso and his heirs, who established an order of applicable codes that included the *Partidas*, but only as a last-resort, appellate source to be used in the king’s court. The order of legal texts to be consulted goes like this: first, all are to abide by the laws in “this book” —whichever is being written at the time. In 1348 it was Alfonso XI’s *Ordenamiento de Alcalá de Henares*, in 1505 it was the *Leyes de Toro*, and in 1567 it was the *Recopilación de las Leyes de estos reinos*.<sup>12</sup> If the answer to the case isn’t found in “this book” then check the local *fueros*<sup>13</sup> and, if the answer

<sup>10</sup> Martínez Marina gives a probable date of 1155 (32-33). The Prologue to an edition of the *Fuero Viejo* gives a date of 1250.

<sup>11</sup> The *Fuero Real* starts privileging the Church over the nobles and, not surprisingly, it’s rejected by the latter who petition for, and are granted, a return to the *Fuero Viejo* and its judgments based on *costumbre* and *hazañas*. According to García Gallo, this request by the nobles “tiene sentido frente al Esþéculo que regula el Derecho público, pero no frente al *Fuero real* que sólo trata del Derecho privado y penal” (390-91, para. 738). He goes on to point out that the *Fuero Real* continued to be granted as law to certain cities in the late 13<sup>th</sup> and early 14<sup>th</sup> centuries while, at the same time, the local *fueros* were reworked and given definitive form (390-91, para. 738).

<sup>12</sup> This compilation is also referred to as the *Nueva Recopilación*. Herein, I refer to it as *Recopilación de Leyes*.

<sup>13</sup> But only as to matters they’ve been used to decide before, and only if we haven’t altered them herein, in “this book”, and only if they’re not contrary to “God and reason”: “establescemos e mandamos, que los dichos *fueros* sean guardados en aquellas cosas que se usaron, salvo en aquello que Nos falláremos que se deben enmendar e mejorar, y en lo al que son contra Dios y contra razón, e contra las leyes que en este nuestro libro se contienen” (*Leyes de Toro*, Ley primera, included unaltered in the 1567 *Recopilación de Leyes*, as Libro II, Tít. I, ley iii). Here and

still isn't found, then it will be in the *Partidas*.<sup>14</sup>

Over time, this method seemed to assure that the *Partidas* would be promulgated, in a sort of trickle-up fashion, despite the fact that, early in the 14<sup>th</sup> Century, they were re-formulated and deemed more a legal textbook than an applicable code. In practice, however, they were applied as law.<sup>15</sup> Given their scope and level of specificity, they were the favorite of jurists, who not only made inadvertent mistakes as they copied the codes, but also intentionally altered the law to suit them.<sup>16</sup> In the *Leyes de Toro*, a new set of *Partidas* “enmendadas y concertadas” is ordered to be drawn up, to be kept and guarded with *sellos de oro y plomo* in order that they might serve as the final unadulterated reference.<sup>17</sup> But this is said in another “this book,” the *Leyes de Toro*, which, by the middle of the sixteenth century, would replace the *Partidas* as the favorite of many jurists, one of whom declares that “entre nosotros las Leyes de Toro son estimadas más que las otras constituciones de España, porque creemos no hay en ellas cosa alguna que no se hubiese discutido, y con mucho juicio considerado para la pública utilidad.”<sup>18</sup> In 1555 another jurist says that the *Leyes de Toro* should be the first laws consulted, and only then the *Partidas*

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in subsequent references, I cite from the 1528 edition of *Las pragmáticas* (see *infra*, n. 40) which includes the *Leyes de Toro*.

14 See García Gallo, vol. 1, pp. 394-95, paragraph 745, *El orden de prelación de fuentes*.

15 García Gallo pp. 392-3, para. 741 and p. 91, para. 188. Referring to the late 13th and early 14th centuries, García Gallo explains that “las Partidas, aun sin fuerza legal, inspiraron las decisiones del tribunal supremo del rey y formaron la mentalidad de los nuevos juristas” (90, para. 188)

16 “é porque sean ciertas é no hayan razon de tirar y enmendar en ellas cada uno lo que quisieren, mandamos hacer de ellas dos libros, uno sellado con nuestro sello de oro, é otro sellado con nuestro sello de plomo, para tener en la nuestra cámara, para en lo que oviere dubda que lo concertedes con ellas...” (ed. of Llamas y Molina 32, Ley 1 of *Leyes de Toro*).

17 “Nos mandamos las requerir e concertar, y enmendar en algunas cosas que cumplia, e assi concertadas y enmendadas, porque fueron sacadas y tomadas de los dichos de los Santos Padres e de los derechos e dichos de muchos sabios antiguos, e de fueros e costumbres antiguas de España, dámoslas por nuestras leyes;” (Llamas y Molina 21, Ley 1 of *Leyes de Toro*, included unchanged in the 1567 *Recopilación de Leyes*, as Libro 2, Tít. 1, ley 3). Towards the middle of the sixteenth century, the variants were sorted out and cleaned up, and the *Partidas* were thoroughly glossed by the jurist Gregorio López.

18 Gaspar de Baeza, translated by, and cited in Llamas y Molina, who also offers the original quote in Latin: “Ibi apud nos leges Tauri supra caeteras Hispaniae constitutiones in pretio sunt, nihil in eis crecimus esse, quod non discussum, ac magnopere consideratum ad publicam utilitatem fuerit” (Llamas y Molina 7).

which, he adds, should be followed even if it can't be proven that they're in use: "aunque no se pruebe que estén en uso"<sup>19</sup>—which tells us quite a bit about the standing of the *Partidas*: attorneys were undermining their authority by proving that they weren't even "in use."<sup>20</sup> Nonetheless, in that same year 1555, the *cédulas* are granted to the newly-glossed edition of the *Partidas*, "revisada y enmendada por el Consejo real."<sup>21</sup>

So what was happening to the *Partidas*? Just like all the Peninsula's other legal compendia, they were in flux, competing for jurisdiction and authority. They were in use, but it could be proven that they were not in use; they were obsolete, yet updated and official; they were taken seri-

19 The jurist was Antonio Gómez, and he's cited in Llamas and Molina, p. 90, para. 229, who call his an inversion of the order of consultation, and says that it "causa no pequeña admiración" para. 230). The inversion of order of laws to be applied isn't that surprising, given that the first law of the *Leyes de Toro* states to the same order of consultation, as did every "this book"; after referring to the local *fueros* and saying they should be used and applied as they have been unless changed in "this book" the same *Ley I de Toro* states: "por las cuales leyes de este nuestro libro mandamos que se libren primeramente todos los pleitos civiles é criminales; é los pleitos é las contiendas que se no pudieren librar por las leyes de este nuestro libro é por los dichos *fueros*, mandamos que se libren por las leyes de las Siete Partidas, que el rey don Alfonso, nuestro visabuelo, mandó ordenar" (cited in Llamas y Molina 31-32).

20 At the same time, *partidarios* of the *Partidas* were trying to prove the same of the *Leyes de Toro* (see *infra*, n. 22). After the *Leyes de Toro* and the *Partidas*, Gómez only then allows consultation of the local *fueros* and, failing all of the above, he determines that "se han de sentenciar por el derecho común de la jurisprudencia romana y emperadores" (cited in Llamas y Molina 31-32). Llamas and Molinas points out that this "causa no pequeña admiración" (para. 230) not only for the inversion of order and exclusion of certain laws that are in the royal order, but also because it ignores an existing royal decree that actually prohibits the use of Roman law: "Todavía es más digno de notarse que suponga como una consecuencia deducida de la ley, que cuando no basten los expresados cuerpos legislativos nacionales para la determinación de las causas, se deben juzgar por el derecho común de los romanos, no haciendo la ley la más mínima mención de tal derecho, y antes bien virtualmente prohíbe que se pueda hacer uso de él, cuando después de referir las leyes que se deben usar y guardar, añade: «y no por otras algunas.»" (para. 230).

21 "por nuestro mandado los del nuestro consejo, con asistencia del dicho Licenciado Gregorio López, la vieron [la obra] y entendieron, y por muchos días platicaron sobre ella: y con gran deliberación y acuerdo examinaron la dicha letra, y e[n]miendas por él hechas, y determinaron como quedassen..." reads the *cédula* headed "El Rey" and signed "La Princesa, por mandado de... Juan Vázquez" dated 7 September 1555. I had the good fortune to be able to consult the Abadiano copy of the text in the Rare Books room of New York Public Library. The Spanish text of the *Partidas* is found in a center box on each page, with López's gloss surrounding it. In subsequent references, *Partidas*. In citing the work, I follow this text, citing Partida, Title, and law so that, for example, (P. I, Tit. II, ley vii) would refer to Partida I, Title II, law number 7.

ously by some, but dismissed by others.<sup>22</sup> In *Don Quijote*, Cervantes offers his own gloss on certain laws, with a protagonist who is an anachronism that sixteenth century *pragmáticas* and *ordenanzas* kept trying and failing to recreate, on the basis of a model laid out in the *Partidas*.<sup>23</sup>

The *Partidas* not only define a caballero: “son los Caballeros, a quien los antiguos dicen Defensores” (P. II, Tít. XXI),<sup>24</sup> they also offer a history of professions once considered good training for caballero status: butchers “because they’re accustomed to killing, and spilling the blood of live things”;<sup>25</sup> or hunters, trappers, woodsmen, carpenters, blacksmiths and stonecutters “because they’re strong of hand, and accustomed to wounding.”<sup>26</sup> But then they go on to explain that there were problems with these types of strong men, most importantly, that “non aviendo verguenza” they would lose the drive to win and, so, the battle.<sup>27</sup> Thus, “los sabidores, que catasen omes para estas cosas” concluded that the preferred choice for caballero is one who has “verguenza naturalmente” and one who is described physically, specifically, as “el ome flaco, e sofridor”

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22 Kagan states it clearly: “Castilian justice in the sixteenth and seventeenth centuries was a hodgepodge of confused laws and competing jurisdictions that crafty litigants exploited to their own advantage” (31). He blames the confusion mainly on “the way courts...were organized and run” (37). His study leaves no doubt as to that source of confusion, but there was also competition between the sets of laws themselves. While the jurists who favored the *Leyes de Toro* were proving that the *Partidas* “weren’t even in use” the *Partidas*’ 1955 glosser, Gregorio López, affirms that, in his opinion, it’s the *Leyes de Toro* that must be proven to be “in use” (García Gallo 398, para. 752).

23 The anachronism was noted by Castro Dassen, who says that the protagonist, as did Cervantes: “sentía profundamente las maldades sociales y ansiaba corregirlas; pero para su desgracia, y para obscurecer la alegría de los lectores, nunca, ni una vez, pudo hacer verdadera justicia” and offers two reasons for the failure: “el anacronismo de la institución de los caballeros andantes, y la inocencia, candor y locura de don Quijote” (114), which he later expands to “el anacronismo de las leyes y de las instituciones” (118). The anachronism noted by Castro Dassen is my focus here, for its particulars.

24 This section is from the introduction to P. II, Title XXI, and bears no law number.

25 “los carniceros, por razon que usan matar las cosas bivas, e esparzar la sangre dellas” (P. II, Tít. XXI, ley II).

26 “porque usan mucho a ferir, e son fuertes de manos” (P. II, Tít. XXI, ley II).

27 “E esta manera de escoger usaron los Antiguos muy grand tiempo. Mas porque estos atales vieron despues muchas vegadas, que non aviendo verguenza, olvidavan todas estas cosas sobredichas, e en logar de vencer sus enemigos, vencianse ellos” (P. II, Tít. XXI, ley II). Maravall cites various fifteenth-century texts whose writers complain about another, probably related reason for military losses, avarice and greed among the soldiers (41).

(P. II, Tit. XXI, ley ii),<sup>28</sup> *medurado* as to his eating habits, in order that “les fiziessen las carnes recias, e duras” and, when it comes to sleeping: “Otro si los acostumbraban, que non fuessen dormidores” (P. II, Tit. XXI, ley xix). The figure is clearly reflected in Cervantes’ protagonist: skinny, long-suffering and of measured habits or, as Cervantes describes him: “era de complexión recia, seco de carnes, enjuto de rostro, gran madrugador, amigo de la caza” (I, I, 28).<sup>29</sup> Don Quijote himself explains the sufferer part to Sancho: “no es dado a los caballeros andantes quejarse de herida alguna, aunque se le salgan las tripas por ella” (I, VIII, 73).

The *Partidas* explain that “vergüenza naturalmente” is found in “omes de buen linaje...en lenguaje de España...los llamaron Fijosdalgo” and, they go on, the lineage should be proven hidalgo “fasta en el quarto grado, a que llama bisabuelos” (P. II, Tit. XXII, ley ii). Cervantes’ narrator specifies that Don Quijote’s arms and escudo “habían sido de sus bisabuelos” (I, I, 31).

The *Partidas* also specify that it’s a good thing for the caballero to have an “amiga” to whom to dedicate his deeds: “E aun porque se esforzassen más, tenían por cosa guisada, que los que oviessen amigas, que las nombrassen en las lides, porque les creciessen más los corazones, e oviesen mayor vergüenza de errar” (P. II, Tit. XXI, ley xxii). In Part I, chapter XIII, Don Quijote defends the same practice when challenged by Vivaldo, using the legal formula “usage and custom”:<sup>30</sup> “ya está en uso y costumbre en la caballería andantesca que el caballero andante que al acometer algún gran fecho de armas tuviese su señora delante” (I, XIII, 107).

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28 “Que la vergüenza vieda al Cavallero, que non fuya de la batalla, e porende ella le faze vencer. Ca mucho tovieron que era mejor el ome flaco, e sofridor, que el fuerte, ligero para fuyr. E por esto, sobre todas las cosas, cataron que fuessen omes de buen linaje, porque se guardassen de fazer cosa, por que podiessen caer en vergüenza” (P. II, tit. XXI, ley II).

29 Sabor de Cortázar notes that “la caza era el deporte de los señores” (44), the poor menu described for Alonso Quijano matches “el tipo clásico del noble de escasos recursos” (47), and that this “tipo social se ha transformado en tipo literario” in Spanish letters.

30 Castro Dassen notes that in the *Quijote* “es harto frecuente la alusión a los usos y costumbres” (41), as well as many other legal formulas, “dichos jurídicos” and episodes with legalistic language, themes and characters (20-111). Childers also notes that the *Quijote* is “saturated with formulas lifted from legal documents” (1). Close finds in Don Quijote’s language “a host of comic species and colloquial or technical registers (thieves’ slang; proverbs; the commonplaces of everyday speech; notarial, commercial, liturgical terminology, and so on)” (115).

There have been a fair number of comments on Don Quijote's "advanced age," but the legal age exemptions for caballero service fluctuated.<sup>31</sup> The 1484 *Ordenanzas de Castilla* which, although never sanctioned nor officially promulgated as law<sup>32</sup> were in practice, just like all the other legal compendia, applied as law throughout the sixteenth century, offer two different laws, one exempting those over 60, and the very next exempting all those over 40 (Libro IV, Tít. I, leyes iv-v).<sup>33</sup> Felipe II's officially sanctioned and promulgated 1567 *Leyes de recopilación* only exempt those over 60.<sup>34</sup> Cervantes imprecise age for Alonso Quijano, who "frisaba...los cincuenta años" (I, I, 28), keeps him in active service age.<sup>35</sup>

One would think that being crazy would exempt one from the profession of caballero and the *Partidas* do state that a *loco* can't be a caballero (P. II, Tít. XXI, ley xii).<sup>36</sup> But unlike all the other legal compendia, they alone add a condition to the legal exemption for "loco," saying that it only applies to "aquel que fuese loco de tal locura, que non sabe lo que se face" (P. I, Tít. I, ley xxi) and Don Quijote himself tells us that he knows exactly "que se face," emphasizing in three verbal tenses: "todo cuanto yo he hecho, hago e hiciere, va muy puesto en razón" (I, XXV, 211).<sup>37</sup> Of

31 Don Quijote volunteers at an age when, as Redondo points out, "está ya en la vejez, a los cincuenta años, lo que acentúa todavía más el carácter burlesco de su gesta" (31). Nonetheless, per statute, his age would not have exempted him.

32 Although never sanctioned, all towns were mandated to have a copy and, by 1567, there had been 28 editions of this "unofficial" compendium: "Aunque no recibe sanción oficial, su utilidad es sin embargo tan grande que los Reyes Católicos mandan a los pueblos tengan un ejemplar de ellas...y los juristas las citan, alegan y comentan como si fuesen obra legislativa. Hasta 1567 se hacen veintiocho ediciones de ellas" (García Gallo, vol. 1, p. 396, para. 747).

33 In subsequent cites, *Ordenanzas*.

34 "pero que el Cavallero, que fuere de edad de sesenta años arriba, no sea tenuto de ir por su persona a la guerra" (Libro IV, Tít. I, ley primera).

35 Thompson speaks to problems with the advanced age of the earlier militias of *cuantiosos caballeros* (21), who continued to be called up all throughout the sixteenth century.

36 In his edition of the text, Gaos notes that "no podía ser caballero quien hubiese recibido una vez la caballería por escarnio.' ...[T]ampoco podía serlo 'el que es loco,' ni 'el muy pobre'" (I, 3: p. 83, n. 3b). Martínez Torrón observes that the protagonist's madness may have a practical end: "el *Quijote* sería, desde el punto de vista que planteo, el texto de crítica social e ideológica más fino de la época, y sin haber tenido ningún problema con la censura, precisamente por la locura del protagonista" (34).

37 Most of Spain's fueros did not prosecute in the case of a loco, much as the ventero tells the *harreros*: "El ventero daba voces que le dejasen, porque ya les había dicho como era loco, y que por loco se librería, aunque los matase a todos" (I, 3: 43). Just how crazy Don Quijote is is

course, once he's a caballero he is exempt from the law - but only according to the *Partidas*; that exemption is not found in the rest of the legal texts.<sup>38</sup> Don Quijote insists on this right in a flood of rhetorical questions full of legalisms: "¿Quién fue el ignorante que firmó mandamiento de prisión contra un tal caballero como yo soy? ¿Quién el que ignoró que son esentos de todo judicial fuero los caballeros andantes, y que su ley es su espada, sus fueros sus bríos, sus preámbricas su voluntad? ¿Quién fue el mentecato, vuelvo a decir, que no sabe que no hay secutoria de hidalgo con tantas preeminencias ni esenciones como la que adquiere un caballero andante el día que se arma caballero y se entrega al duro ejercicio de la caballería? (I, XLV, 404-5). In one of their many *pragmáticas* mandating *cuantiosos caballeros* to defend Spain, Fernando and Isabel stress the particular importance of caballeros and hidalgos having the proper horse and arms in order to protect "las libertades privilegios y prerogativas de sus hidalguías y esenciones" (*Las pragmáticas*, Folio XCV, ley ciii).<sup>39</sup>

These *pragmáticas* address, among other things, late fifteenth- and sixteenth-century Spain's problems with a lack of caballeros armados. From the Reyes Católicos to Cervantes' day they tried, in essence, to draft them or, at the least, maintain them in ready reserve. Fernando and Isabel complain about this lack, brought about by their own success in bringing peace to the land: "nos fue hecha relación diciendo que por

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a running commentary in the text, and has been frequently commented on: see, for example, Johnson. Of Don Quijote's *locura*, Gaos says: "Alonso Quijano está cuerdo, pero decide volverse loco, esto es, hacerse don Quijote. Es un acto voluntario y lo demuestra el que en ningún momento es inconsciente de su deliberada transformación. Don Quijote sabe que está loco, o, al menos, que por tal lo han de tener los demás" (165; see Vol. 3, Apéndice "La locura de don Quijote" 162-188.). Gaos comments on various episodes in which Don Quijote's *locura* is a topic of discussion in the novel, and concludes: "Don Diego de Miranda, uno de los personajes más discutidos del Quijote, es el instrumento de que se sirve Cervantes...para contrastar locura y cordura" (166). Martínez Torrón also believes that Don Quijote's *locura* is an intentional device to get around the censure.

38 "los caballeros que han a defender la tierra, e conquerirla de los enemigos de la Fe por las armas, deben ser escusados, por no entender las leyes...ca bien es derecho y razón, que aquel que su cuerpo aventura en peligro de prisión, o de muerte, que nol den otro embargo, porque aquello se estorbe...fuera ende si el caballero ficiese traicion, o falsedad, o aleva, o yerro, que otro home debiesse entender naturalmente que mal era..." (P. I, Tít. I, ley XXI).

39 A number of *Bulas y pragmáticas* were published in 1528, along with the 1505 *Leyes de Toro*. In subsequent references, *Las pragmáticas*, followed by reference to Folio and law number (where the latter is not specified, the text does not offer a number for the law).

la mucha paz y tranquilidad que mediante la divina clemencia en estos nuestros reinos ha habido y hay<sup>40</sup>...no ha habido ni hay armas ofensivas ni defensivas como solía<sup>41</sup>...por tal manera cuando que para alguna cosa que cumple a nuestro servicio y a la ejecucion de nuestra justicia o para prosecucion de algunos malfechores conviene que salga alguna gente de alguna ciudad o villa o lugar: aquella va por la mayor parte desarmada con mucho peligro: mengua y deshonor suya...” (*Las pragmáticas*, Folio XLC, ley ciiii).<sup>42</sup> Cervantes will have Don Quijote respond to a question as to the need for a caballero armado such as he “por tierra tan pacífica” (I, XIII, 105).

The same *pragmática* goes on to mandate the “armas convenientes ofensivas y defensivas” that all their “súbditos y naturales de cualquier ley y estado o condición”<sup>43</sup> must keep at the ready in their homes,<sup>44</sup> with

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40 “después que nos reinamos acá: en muchas de las dichas ciudades y villas y lugares [a list of cities and towns, beginning with “Burgos cabeza de Castilla nuestra cámara...” and ending with “todas las provincias y ciudades y villas y lugares de los dichos nuestros reynos y señoríos”] y comunmente en la mayor parte dellas...”

41 “: y así toda la gente así los caballeros y omes hijos dalgo. como los ciudadanos escuderos y labradores estaban y están desarmados: porque mediante la dicha paz y seguridad los unos deshicieron las dichas armas: y los otros las vendieron: y los otros por diversas maneras las perdieron y destruyeron:...”

42 I.A.A. Thompson identifies the “caballeros de quantía” with, specifically, “Andalusia and Murcia” (19). However, the 1528 edition of *Las pragmáticas* combined with the *Leyes de Toro* mandates horse and arms for “todos los de nuestros reynos y señoríos” and lists a number of places on the Peninsula that must comply with the “quantiosos caballeros” provisions, beginning with “Burgos cabeza de Castilla nuestra cámara” (Folio XCV, ley ciiii). Thompson points out Cervantes’ intimate familiarity with the problems of raising and provisioning the troops necessary when, acting on behalf of the Council of War, he ran afoul of the ecclesiastical authorities: “The excommunication of Cervantes for commandeering wheat belonging to the Church is only the most notorious of the many examples of similar treatment meted out to hapless commissaries as they went about the business of the council of War” (44).

43 It’s worthy of note that the first chapter of the *Quijote* is titled “Que trata de la condición y ejercicio del famoso hidalgo don Quijote de la Mancha” (I, I, 27, my emphasis).

44 This is the law updating and expanding the earlier calls for *cuantiosos caballeros*, who had to pass muster and swear twice a year that they were ready in case of need. First mandated in 1484 for Andalucía, and called up again, from a wide range of places, in this 1496 *pragmática* directed to “todos los que viven y moran en las ciudades y villas francas y exentas” of Burgos and its provinces, and also to “todas las provincias y cibdades y villas y lugares delos dichos nuestros reynos y señoríos” (*Las pragmáticas*, Folio XLC, law ciiii). There had been similar, prior orders; starting in the second half of the tenth century, laws had mandated that anyone with a horse had to be ready to be called into service—the “caballeros villanos” (García Gallo pp. 578-9, para. 1071).

certain arms for each “estado o condición” (*Las pragmáticas*, Folio XCV, ley ciii). Notwithstanding the treatment Cervantes’ narrator gives to the meager means of Don Quijote’s hacienda, which I believe can also be read as an ironic description of an hidalgo very *mensurado* in his eating habits (see *supra*), the protagonist’s arms qualify him for one of the statutes’ “más principales y ricos” for whom it is ordered: “que tengan unas corazas de acero y falda de malla o de launas/ y armadura de cabeza que sea capacete con su babera/ o celada con su barbote y mas gocetes o musequies y una lanza larga medida de veinte y cuatro palmos: y espada y puñal y casquete” (*ibid.*).<sup>45</sup>

Cervantes scatters the description of don Quijote’s arms but, in the first three chapters of Part I, for various reasons, we hear about the lanza, adarga, espada, coselete, peto, espaldar, brida, espuela and morrión,<sup>46</sup> with the only noted lacks from the mandated list that which the protagonist notes, a celada de encaje, for which he remedies his *morrión* with *cartón*, and the “falda de malla.” By Part I, chapter X, we get a reference to the “falda de loriga” as Sancho kisses it (I, X, 86). That puts Don Quijote in full compliance with the pragmática’s mandated arms.

Further pragmáticas (2 May 1493) mandate that all “aunque sea infante / o duque/ o marqués/ o conde/ o otro de mayor o menor estado/

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Thompson notes that despite the general move to more modern military techniques, Felipe II authorized the *Nueva Recopilación*, a new “this book” that again insisted on this need for the *cuantiosos caballeros*, and that includes some *Partidas* laws as to who they should be, and how they should come to be, but excludes others (i).

45 Translated into Cervantes’ terms: the *corazas* are the *peto*, *espaldar* (also *musequies*), and *coselete* (I, II); the *falda de malla* is a *falda de loriga* (I, X); the “*celada con su barbote*” is the *morrión* simple with the additions of *cartón* (I, I). The mandate for for those of “*mediano estado y hacienda*”: “que ayan de tener y tengan corazas y una armadura de cabeza aunque sea casquete/ y espada y puñal/ y una lanza larga...o lanza común y medio paves o escudo de pontevedra o de oviedo” and, for those of “*menor estado*”: “que tengan espada y casquete y lanza larga de veinte y cuatro palmas y dardo con ella: o en lugar de lanza larga una lanza medina medio paves o escudo de pontevedra o de oviedo” (*Las pragmáticas*, Folio XLC, law ciii).

46 Don Quijote is “un hidalgo de los de lanza en astillero, adarga antigua” (I, I, 27); on leaving the hacienda “se armó de todas sus armas...puesta su mal compuesta celada, abrazó su adarga, tomó su lanza” (I, II, 34); he’s seen approaching the inn: “armada de armas tan desiguales como eran la brida, lanza, adarga y coselete” (I, II, 37); when the “*doncellas*” help him unarm, they’re able to remove “el peto y el espaldar” but not the “*contrahecha celada*” (I, II, 38); after the ceremony, the *ventero* orders one of the *doncellas* “que le ciñese la espada” and then “le calzó la espuela” (I, 3: 44).

o dignidad" have a horse, and prohibit the substitution of a mule because, with this type of abuse: "muy prestamente se perdería en nuestros reinos la nobleza de la caballería" (*Las pragmáticas*, Folio CXLVI, ley cliii).<sup>47</sup> Another (1499) prohibits removing any horse from the kingdom and defines 'horse' as "cavallo/ o rocín/ o yegua/ o potro" (Folio CLI), and another describes the necessary qualities of the caballero's horse: "caballo o yegua de silla sea de arriba de dos años: y tal que en el pueda andar un hombre armado y pelear en el cuando fuere menester" (Folio CXXVII, ley cliiii). Rocinante fits the bill.

Even when it comes to escuderos, the *pragmáticas* prohibit the substitution of a mule for a horse (*Las pragmáticas*, Folio CXLVI, ley cliiii). Faced with Sancho accompanying him on an ass rather than a horse, Don Quijote tries unsuccessfully to remember "si algún caballero andante había traído escudero caballero asnalmente" and resolves to "acomodarle más honrada caballería" as soon as possible (I, VII, 69). The *pragmática*, however, fails to specifically prohibit riding an ass, although another does prohibit, for all towns south of the River Tajo, breeding a horse and an ass in order to get a mule: "no se pueden ni deben echar asnos a las yeguas" (*Las pragmáticas*, folios CXLIX-CL). Given that the escudero is supposed to be on a horse, it does seem that Sancho and don Quijote take full advantage of a loophole of omission in the law as written.

As to the place for the knighting ceremony, the *Partidas* stipulate that the day preceding the ceremony, the caballero must keep a vigil in a sacred place, for which the preparations are exacting: after bathing him and dressing him in the cleanest and best clothing,<sup>48</sup> the escuderos are instructed to bring him to the church,<sup>49</sup> in order to parallel that cleansing

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47 There are exceptions for men of religion and academics: "excepto que los perlados y clérigos de orden sacra y frailes y los doctores y licenciados y bachilleres en cualesquier ciencias no sean obligado..." (*Las pragmáticas*, Folio CXLVI, ley cliii).

48 "desde el medio día en adelante, han los Escuderos a bañar, e lavar su cabeza, con sus manos, e echarle en el más apuesto lecho, que pudieren aver. E allí le han de vestir, e de calzar los Cavalleros, de los mejores paños que tovierén" (P II, Tít. XXI, ley XIII).

49 López's 1555 edition of the *Partidas* offers an introduction to the law defining Iglesia in three ways: 1) a sacred place with walls and roof, where Christians go to hear the hours and to beg God's forgiveness for their sins; 2) the Christians themselves, the "faithful"; and 3) the prelates and *clerecía* of each place. Some of the sections' laws specify Iglesia and others, *capilla*. The laws

of the body with a vigil to cleanse the soul.

Cervantes's narrator tells us that the quick-thinking *ventero* avoids a problem by telling Don Quijote that there is no chapel because it's been "derribada para hacerla de nuevo," and assuring him that the corral (or any place) is just fine for the vigil. His choice of words takes us only to the *Partidas*, which prohibit construction of a sacred place absent the specific mandate of a bishop, including "si fuese derribada de cimiento et la quisiesen facer de nuevo" (P. I, Tít. X, ley i).<sup>50</sup> In some editions, the following law goes on to qualify that "si cayese alguna partida della, o la desficien derribando poco a poco para refacerla" then it's okay. However, the newly-glossed 1555 edition adds a footnote that contradicts the "refacerla" loophole: "non potest fabricari de novo, neque si sit penitus dirupta refici."<sup>51</sup> We can add *derribador* of *caipillas* to the *ventero's* long list of known *tuertos*, and an etymological debate as to the distinction between 'refacer' and 'facer de nuevo' for the night's entertainment at the inn.<sup>52</sup>

I'd like to refer to two other points at which I believe that Cervantes, consummate wordsmith that he is, subtly parodies the law's lexical ambiguities. The first is Don Quijote's battle with the windmills. Both the *Fuero Juzgo* and the *Fuero Viejo* prohibit the "quebrantar" of a molino: "a quien quebranta guerto, o molino, o cavaña, o era, o monte de Ynfanzón, a sesenta sueldos de caloña" (*Fuero viejo*, Libro I, Título VI, ley i); "si algún omne crebantar molinos o las pesqueras, todo que crebrantó refá-

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on churches and *capillas* are contained in P. I, Tít. X, leyes I through XX.

<sup>50</sup> López adds a note referring to the proscriptions for construction of churches laid out in Exodus 25-26.

<sup>51</sup> "Et ecclesia pro ut primo modo sumitur, non potest fabricari de novo, neque si sit penitus dirupta refici, sine mandato Episcopi dioecesani, & alias non celebratur in ea sine eius consensu hoc dicit" (P. I, Tít. X, ley I).

<sup>52</sup> For 'rehacer' *Autoridades* offers: "Volver a hacer lo que se había desecho..."; "Vale también añadir nuevas fuerzas a lo que está deteriorado..."; "Vale asimismo aumentar o añadir el peso o la cantidad a alguna cosa..." with Latin roots of Reficere, Reparare, Augere, Addere, and Superaddere. For 'de nuevo': "Modo adverbial que vale lo mismo que nuevamente. Lat. Denou. *Ordenanzas de Castilla*"; Corominas finds 'de nuevo' earlier, in Berceo. The distinction 're' v. 'de nuevo' does get muddled if one includes one of *Autoridades'* multiple meanings for 'nuevo': "Vale asimismo repetido, o reiterado para renovarlo" which sounds an awful lot like "rehacer." Sevilla Arroyo's edition of the Quijote glosses the phrase "hacerla de nuevo" with: "de nuevo: nueva, con materiales nuevos" (I, 3: 102, n. 7).

galo fasta treinta días, e demás peche veinte sueldos" (*Fuero Juzgo*, Libro VIII, Título IV, ley xxx). The verbs used are the Latin derivative "crebantar" with a 'c' in the *Fuero Juzgo* and "quebrantar" with a 'q' in the *Fuero Viejo*. Written when a *molino* was "the old *aceña*, the paddle-wheel mill" (Aubrun 63), which could probably be broken or damaged without too much difficulty, and when the verb *quebrantar* had a whole series of possible meanings ranging from break to persuade to violate by force to rob on the road (*saltear un camino*),<sup>53</sup> the law was still on the books when the local mills grew into those big windmills with giant arms.<sup>54</sup> Although others equate or conflate 'quebrar' and 'quebrantar' without strict differentiation in meanings, Cervantes' contemporary Covarrubias does distinguish between the two, giving the meaning of 'break' only to "quebrar," and offering for 'quebrantar': "disminuir alguna cosa de sus fuerzas y de su entereza, *sin dividirla en partes*" (my emphasis), with examples: "quebrantar las leyes, quebrantar la cárcel, quebrantar el ayuno" and for 'quebrantado,' "cansado." The verb shows enough variety of uses that it could easily be one of those referred to by Sancho de Moncada in his complaint as to multivalence leading to confusion in the laws as written (see *infra*, n. 61), and Covarrubias' distinction in meaning points to the direction the meaning of the verb would take. I'd like to think of Cervantes testing the absurdity of the antiquated laws that prohibit the *quebrantar* / *crebantar* of a *molino*...and sending his protagonist out to do so.

53 *Autoridades* does not offer 'crebantar,' but defines 'quebrantar': "Romper, separar u dividir con violencia las partes de un todo. Lat. Frangere, Effringere, Elidere." and offers a series of other acceptations: "cascar o hender...moler o machacar...persuadir, inducir o mover con ardid, industria y porfía...causar lástima o compasión...violar o profanar algún sagrado, seguro o coto...metafóricamente vale violar alguna ley, palabra u obligación...romper, venciendo alguna dificultad...molestar, fatigar...debilitar, disminuir las fuerzas...en lo forense se decia por inutilizar e invalidar el testamento." *Corominas* offers the etymology: "del lat. crepare 'crujir, chasquear, castañetear, estallar' y en la baja época 'reventar.'" Nebrija offers equally "quebrar o quebrantar." Cejador y Frauca finds various forms of quebrantar and quebrar in the *Quijote*: quebrado(a), quebradizo, quebrantado, quebrantamiento, quebrantar, quebranto, with meanings ranging from 'broken' to 'tired' and offers the etymology of "crepare = reventar." The *Léxico hispánico primitivo* defines it: "crebantare, crepandare, crepantar, grebantare, krepantare. (Del lat. crepantare, der. de crepare) tr. 'Quebrar.'" and offers a number of meanings as used in the early *fueros*: 'quebrar'; 'allanar, atropellar'; 'saltear un camino'; 'obligar por fuerza'; 'quebrantar un pacto'.

54 Clemencín points out that, as to the windmills "su introducción debió proceder poco tiempo a la edad de Cervantes" (I, VIII, p. 120, n. 1).

The legal texts also explain a word substitution made by Sancho, when he responds to don Quijote's use of 'homicidio' with 'omecillo' (I, 10, 87), which most modern editions gloss as a misunderstanding and define as 'rencor'.<sup>55</sup> The *Fuero Viejo* lists "omecillo," spelled as Cervantes does with a 'c', as one of the prohibited words that can only be used as an insult if the person who says it has five witnesses ready to testify as to the act having occurred.<sup>56</sup> The *Partidas* define "omezillo" with a 'z': "Omezillo es cosa que fazen los omes a las vegadas con tuerto, a las vegadas con derecho" with the etymological roots: "Homicidium en latín tanto quiere decir en romance como matamiento de ome. E deste nome fue tomado omezillo según lenguaje de España" (P. VII, Tít. VIII, ley i). Sancho shows enough knowledge of the law to use the *Fuero Viejo*'s term, and to insist: "Yo no sé nada de omeçillos...ni en mi vida caté a ninguno" (I, X, 87), removing himself from any possible witness list.<sup>57</sup>

As described, Cervantes' protagonist offers minimal ironic compliance with the *Partidas*' and *Pragmáticas*' standards for caballeros but, as has been commented, he sallies forth to break more laws than he en-

55 Cejador y Frauca notes that the form 'omecillo' is used in the *Fuero Juzgo* for 'homicidio' but, like modern editors of Cervantes' masterpiece, thinks that Sancho has misunderstood: "No sé de odios ni los he visto en mi vida: así parece entenderlo Sancho" (793).

56 *Fuero Viejo*, Libro II, título I, ley IX. Also called the *Fuero de Castilla*, its list of forbidden insults, or denuestos also includes: "traidor, cornudo, falso, fornesimo, gafo, boca fedienda, o fodiduncal, puta sabida" and adds two more in a note: "bastardo, hijo de puta" (ibid.). The list differs from that found in the *Fuero Juzgo*, which prohibits the following denuestos y "palabras ydiosas" when said "por sanna": "podrido de la cabeza o de la serviz, tinnoso o gotroso, vizcoso, toposo, o deslapreado, circuncido o sennalado, corcobado, sarracin" (Libro XII, título III, leyes I-VI). The *Fuero de Madrid* prohibits: "puta, hija de puta, leprosa, sodomita, hijo de sodomita, cornudo, falso, perjuero" (Sánchez 88). The *Fuero Real* prohibits "gafo, sodomético, cornudo, traydor, hereje, a muger de su marido puta" and then adds "tornadizo" (Libro IV, título III, ley II). The lists for the *Fuero Viejo*, *Fuero de Castilla*, and *Fuero Real* are taken from the *Novísima recopilación*. The *Fuero Juzgo* list comes from the 1815 RAE edition. Close lists the prohibited list as contained in the *Leyes de Recopilación*: "the six injurious words: gafo, sodomítico, cornudo, traidor, hereje, judío" (Close 26-7).

57 Others have commented on Sancho's awareness of specific legal matters; for example, in I, IX-X, as to his references to the Santa Hermandad. In the latter chapter, the same with the "omeçillos" statement, Sancho warns Don Quijote against imposing another penalty after a judgment has already been rendered: "Advierta vuestra merced, señor Don Quijote, que si el caballero cumplió lo que se le dejó ordenado de irse a presentar ante mi señora Dulcinea del Toboso, ya habrá cumplido con lo que debía, y no merece otra pena si no comete nuevo delito" (I, X, 88-89).

forces.<sup>58</sup> In this latter, he's not alone in the Spain of his day. Thompson tells us that "one procurador, in 1593, demanded that the Cortes 'make a general supplication that the corregidores be ordered to keep the laws of the kingdom without dispensing with any of them, because it is a great absurdity that no law that is made is observed'" (Thompson 64-5).<sup>59</sup> In a 1619 discourse offering legal advice to Felipe III, Sancho de Moncada points out that the laws of the kingdom are problematic, in part, because there are more than 5,000 of them, none are ever officially abrogated, they "hablan con palabras equivoacas, que admiten diferentes sentidos, y declaraciones"<sup>60</sup> and everyone breaks them.<sup>61</sup>

In a letter that don Quijote writes to Sancho about governing the *Ínsula Barataria*, he offers a practical remedy: "No hagas muchas pragmáticas; y si las hicieres, procura que sean buenas y, sobre todo, que se guarden y cumplan; que las pragmáticas que no se guardan lo mismo es que si no lo fuesen; antes dan a entender que el príncipe que tuvo discreción y autoridad para hacerlas no tuvo valor para hacer que se guardasen" (DQ II, LI, 799 (L)).<sup>62</sup> On leaving his governorship, Sancho echoes: "y aunque pensaba hacer algunas ordenanzas provechosas, no hice ninguna, temeroso que no se habían de guardar, que es lo mesmo hacerlas que

58 See, among others: Castro Dassen 112-13; González Echevarría 65-74; Vega Carney 41.

59 Maravall quotes the same complaint from Malón de Chaide (96).

60 A complaint evidenced in the variety of uses for "quebrantar" as discussed *supra*, n. 53.

61 "las Leyes de España deben de passar de cinco mil, porque solas las de la Recopilación son tres mil, y fuera de ellas hay las del Estilo, Partidas, Ordenamiento Real, Fuero Real, y Fuero Juzgo, Leyes de Toro, y Pragmáticas, que salen cada día, sin todo el Derecho común," a number which, he complains, makes it impossible for anyone to know them all. He also emphasizes the impossibility of anyone having the funds to buy so many legal tomes, or the time to read them, and says that many "no se usan" although they have not been "abrogadas"—so that they remain on the books, inviting abuse by unscrupulous judges, and adds: "El último, y principal daño es, que no se guardan [las leyes], en desprecio de la autoridad de los Legisladores, y gran perjuicio de la República" then advises a rewriting so that "las leyes que quedaren, hablen con palabras breves, y claras." (Sancho de Moncada, discurso VII). Coronas González speaks of complaints about the kings' themselves not obeying the law (62-63).

62 García Gallo tells us that there were questions as to the validity of a *pragmática* dictated solely by the king versus those *leyes* promulgated by the courts: "Las Cortes se inclinan por la negativa, pero de hecho prevalece la norma de que las Pragmáticas reales pueden derogar las leyes de Cortes" (395, para. 746). In the *pragmática* mandating a horse for all, Fernando and Isabel include a note that it should be read as having the force of a law issued in Cortes: "Queremos y mandamos que aya fuerza y vigor de ley como si fuesse fecha y promulgada en cortes."

no hacerlas" (II, LV, 825).<sup>63</sup>

The legal details help us better understand the historical environment in which Cervantes and his *desocupados lectores* found such pleasure in his protagonist.<sup>64</sup> The calls for *caballeros* kept on coming. Between 1585 and 1595 "el gobierno tuvo que imponer, por primera vez, el servicio militar obligatorio" (Ettinghausen 26). According to Thompson, militia calls went out in 1596 and in 1598<sup>65</sup> and then again, in 1602 and 1603, another call to arms went out for the militia, and for volunteers to serve as captains,<sup>66</sup> with a call-up area specifying various villas and pueblos in La Mancha, specifically in the Campo de Montiel: "Villanueva de los Infantes y las demás [villas] de su partido, Sigura de la Sierra

63 Thompson says that pretty much all of the laws mandating the *cuantiosos caballeros* were either ignored or ineffective (19-21).

64 As Ettinghausen says of Don Quijote's discourses: "se incluyen en la novela observaciones que difícilmente pueden entenderse fuera del contexto histórico" (27). Others have similarly stated: "si la obra literaria es un producto de un momento histórico y cultural determinado, tiene que responder a la coyuntura histórico-social en la cual se produce" (Sabor de Cortazar 41). Close disagrees with "the prior assumption that he [Cervantes] is different from the culture surrounding him by virtue of being endowed with an Olympian freedom to play ironically with its codes. I believe that one can only achieve a plausible understanding of his difference by pre-supposing that he is fully immersed in them" (5). Specifically as to the intersection of legal and narrative texts: "A través de los textos literarios—especialmente los de índole narrativa y dramática— en que el autor se propone reflejar la actividad social que le rodea y el ambiente en que vive, podemos percibir cómo las normas jurídicas eran entendidas por los contemporáneos e incluso cómo eran burladas; cómo la realidad reaccionaba contra las leyes y cómo en muchos casos éstas eran impotentes para conseguir el fin que el legislador se propuso al dictarlas. Los textos legales nos dicen lo que debía ser; los textos literarios lo que realmente era" (Ossorio Morales 18-19). Ossorio Morales comments on fragments of various literary works; of Don Quijote, he says that as to Quiteria's father's mandate that his daughter marry Camacho, Sancho "se muestra partidario del matrimonio por amor" in conformance with the *Fuero Juzgo*, and contrary to the *Partidas* (36-39), whereas Don Quijote prefers the latter, which accords the parents the right to choose a spouse. He goes on to point out that Sancho changes his tune when speaking of his own daughter's marriage (39-40).

65 "In September 1596 modified instructions were issued for the registration of all male Old Christians aged between eighteen and forty-four, and a further effort to get the militia under way followed at the beginning of 1598" (128).

66 "in both 1602 and 1603, the marquis of Los Vélez compelled various militia units from the Adelantamiento de Murcia to serve on the galleys of Spain" (Thompson 129); "In 1611 and 1618 the marquis of Los Vélez again called out the militia of Murcia and La Mancha..." (130). My heartfelt thanks to Professor I. A. A. Thompson of the University of Keele, for providing information from his notes which helped fill out the specifics of the areas included in the 1602-1603 call-ups.

y las demás del suyo, & la villa de Torrenueva” (Thompson, personal communication).<sup>67</sup>

These calls were coming long after the caballero statutes had become formalities and/or exploited loopholes.<sup>68</sup> In the 1567 *Recopilación de Leyes*, Felipe II rescinds the caballero status of certain “caballeros pardos” who had been *armados* by Cardenal Francisco Jiménez, archbishop of Toledo; the new law particularly revokes the non-taxpayer status that had been granted on the basis of that knighting.<sup>69</sup>

In another semi-historical text that I’m working on in relation to the *Quijote*, we read that the Pope knighted two Aztecs brought back from the New World by Cortés.<sup>70</sup> Both of these knightings, the *caballe-*

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67 Cabrera de Córdoba identifies the marquis as “don Pedro Fajardo, quinto marqués de los Vélez.” This call-up, and abuses described by Thompson, of municipal recruiting improprieties that imposed militia duty or granted exemption at the whim of a particular official, with men jailed for refusing to be illegally conscripted, can help us understand Don Quijote’s insistence on questioning the galley slaves one by one as to their crimes. Although none fits the criteria of the militia conscriptions, Don Quijote does find what, to him, seems a haphazard and improper use of force: “que podría ser que el poco ánimo que aquél tuvo en el tormento, la falta de dineros déste, el poco favor del otro, y, finalmente, el torcido juicio del juez, hubiese sido causa de vuestra perdición” (I, 22, 189). Basave Fernández del Valle finds a lack of true understanding of the necessity of law in the act of freeing the galeotes: “La libertad que dio Don Quijote a los galeotes es un verdadero atentado contra la seguridad jurídica y contra la cosa juzgada... Si don Quijote hubiera comprendido la dignidad y la necesidad de la ley positiva, habría aceptado, como consecuencia, la coacción. Pero él sólo entendía la ley como un ordenamiento de la razón al bien común, privado de fuerza coercitiva” (199).

68 Of Don Quijote’s decision to become a caballero, Redondo points out the “significativa usurpación de *status social*. En efecto, el término *caballero*, más allá del significado que cobra en los libros de caballerías, al designar al que ha recibido la orden correspondiente, se aplica, a principios del siglo XVII, al auténtico aristócrata...” (31).

69 Both the *Ordenanzas de Castilla* and the *Recopilación de Leyes* tried to revoke this right, which Don Quijote insists on: “¿Qué caballero andante pagó pecho, alcabala, chapín de la reina, moneda forera, portazgo ni barca” (I, XLV, 404-5). Both legal compendia include a 1317 law that says that, if one is a *pechero*, or taxpayer, before being knighted, the new state of *caballería* doesn’t excuse taxpayer status, and a 1417 law that provides an exemption from taxpayer status to *caballeros* as to all taxes except those paid by “hijosdalgo” (*Ordenanzas*, Libro IV, Tit. I, leyes iii, iv, v).

70 “Éstas cosas obraron tanto con los Mexicanos, que como Cortés por mano de predicadores intérpretes, les dixiese mucho, de las cosas divinas, y del autoridad del Papa, y grandeza y valor del Emperador don Carlos, príncipe soberano, determinaron por determinación pública embiar por embaxadores dos illustres señores de su nación, que viniessen a España, y hiziness reverencia al emperador, y venerassen al Papa Clemente, Yo vi a estos embaxadores en Roma, y en color, cabello, y alegre condición, parecían a nuestros mulatos, y presentaron al

ros pardos and the *caballeros aztecas*, are directly contradicted by another *Partidas* law, which says that a man of religion cannot armar a caballero because they cannot “meter las manos en las lides” (P. II, Tít. XXI, ley xi). That didn’t keep them from doing it but, had they needed it, they could have found a legal defense in the *Ordenanzas de Castilla*, in which Fernando and Isabel say of the arming of caballeros: “y en nuestro querer, y voluntad sea que sean armados, y con solemnidad, y ceremonias, que las nuestras leyes de las partidas disponen, o sin ellas” (Libro IV, Tít. I, ley viii). It must be done by the *Partida* rules, or without them. The “sin ellas” loophole also provides cover for Don Quijote’s status as a caballero, despite all the irregularities of his knighting ceremony.<sup>71</sup>

The ventero’s statement as to the architecture *derribada* is a subtle cue.<sup>72</sup> It doesn’t come in his voice, but in that of Cervantes’s narrator, a voice that, like Don Quijote’s own, we can easily read as a commentator on laws throughout the novel. Cervantes gives us an ironic, fictionalized commentary on the social realities behind the plethora of Spain’s *pragmáticas* and *ordenanzas*, outdated and “no guardadas”—a fictionalized compendium of justice, individually conceived and/or altered at will by almost every character in the novel.<sup>73</sup>

Within a couple of years of the publication of part II of the *Quijote*,

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Papa, unas pequeñas ymágenes de oro, y él selas pagó bien, mandando les dar sendos vestidos de brocado. Y haziéndolos armar cavalleros, dio les dos taluartes, y dos espadas, y dos dagas doradas, y sendas cadenas de oro” (Giovio, Folio 198). I’m currently working on an edition of this text, and its relation to Cervantes and the *Quijote*.

71 Riquer refers to the *Partidas*’ proscription against a poor or crazy person, or anyone who has once become a *caballero* “por escarnio” or in jest, receiving the honor in serious terms: “Aunque hubiera recobrado la razón y aunque hubiera allegado una cuantiosa hacienda, el hidalgo manchego jamás hubiera podido ser armado caballero, porque una vez, contra lo legislado en la Segunda Partida, recibió la caballería por escarnio” (88). Gaos notes to the same: “no podía ser caballero quien hubiese recibido una vez la caballería ‘por escarnio’...” (ed. de Gaos I, 3: 83, n. 3b). As does Marín Pina in 1998: “por haber recibido la caballería por escarnio, amén de estar loco, ser pobre y haber sido armado por un pícaro, el hidalgo Alonso Quijana, aunque nunca dude de la validez del rito, jamás será un verdadero caballero andante” (23). The “con o sin” phrase would seem to negate the problem, much as it negates the law itself.

72 Close points out that “a large amount of Cervantes’ poetics of comic fiction consists not in formal pronouncements, but in more or less incidental comments” (8-9).

73 In addition to the large number of operative legal compendia, there were a greater number of *glossadores*, each interpreting the law as he saw fit. This is reflected in the multiple voices found in the *Quijote*.

there would be a new law, disbanding forever the *cuantiosos caballeros*.<sup>74</sup> Of necessity, new laws have to be introduced from time to time. Fernando and Isabel explain why: “la natura y astucia de los hombres de cada día inventa cosas nuevas y exquisitas malicias” (*Las pragmáticas*, Folio XXXVI, ley xlii, dated Madrid 4 dic. 1502).

Don Quijote is just such an invention, not only a new *caballero andante* for an age that celebrated his anachronistic ways, but also a fictionalized legal commentator who speaks for the *voz pública*, in a parody whose referent is, frequently, an actual legal text, whether *partida*, *pragmática* or *ordenanza*. We can read Cervantes’ protagonist as just answering a call to duty—the 1602 “llamada a filas”—while, at the same time, offering an incisive critique of the outdated legal underpinnings of that particular call to duty, which had become as *passé* as a *libro de caballerías*.

Foreign Languages and Literatures  
SUNY-Oneonta  
Oneonta, NY 13820  
byrnesk@oneonta.edu

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74 Sancho de Moncada complains to Phillip III of abuses committed by unruly *cuantiosos*: “El Servicio de Millones es muy dañoso a España. La experiencia, y la común voz, dice los Lugares que ha perdido, y despoblado este Servicio, y lastimosos daños que causa: quebrará las piadosas, y Reales entrañas de V. Mag. ver quitar de la boca al pobre jornalero el trago de vino, y a la pobre viuda, y huérfanos la corta ración de vaca, y aceite, que desea para trasnochar, y ganar un pan, y a los executores de ellos echar de las pobres pajas a los miserables, y todo sin tener en que ganar para pagarlos, como solían cuando los pagaban, porque ganaban para todo. Y no mande v. Mag. que le refiera el mal nombre que a este Servicio se ha puesto, pues le llaman Sifa, ni los inconvenientes que algunos hallan en mudar las medidas legales, ni otros muchos: y porque sería gran bien escusar estos daños, y lástimas, si se pudiesse sin daño de las rentas Reales. Digo, que España puede socorrer de nuevo a v. Mag. sin el Servicio de Millones” (Discurso II).

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