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DON QUIXOTES OF THE BAR¹

By JUDGE MARIANO A. ALBERT *

About a week ago, there passed away, amid the most dramatic circumstances, a Filipino lawyer. The fact that he was also a politician and a good deal of a diplomat, as well, is for our purpose beside the point. You are all familiar with the manner of his death, for I am of course referring to Don Pedro Guevara—may he rest in peace!

We all know that the night before he died there were a number of people at his home, and he was feeling very unwell. His friends advised him not to appear in court the next day, but to turn over the oral argument to somebody else. But he insisted that he owed it to his client to do everything he could for the defence of his rights, and so long as he could drag himself to the Supreme Court, just as Chief Justice Araullo used in his last days to have himself carried into Court,—he would do so.

At the Court, he donned the black robe and in his turn got up to address the highest tribunal in the land. He spoke in defence of his client's rights, till the effort began to tell upon him, and his breath came in gasps, and his heart ached. Clutching at his breast, he prayed to be excused by the Court, and upon being permitted to rest, sank into a chair. He had hardly sat there two or three minutes when he sighed deeply, and the blood left his cheeks, and his whole frame stiffened. A second sigh was heard as a shadow of pain crossed his face and then passed away. Don Pedro was dead. Dead in the scene of his trials and triumphs as a lawyer, dead in the service of Justice! He had died in harness, a symbol of duty faithfully performed.

Now, here was a man who, as all of you know, thought for himself, and arrived at conclusions of his own, and his conclusions were not merely opinions, but convictions. Convictions which he would rather suffer for, and sacrifice for, than be

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* Judge Court of Appeals.

false to. We are free to believe that when he first went to the United States as Resident Commissioner, to work for independence, he was absolutely certain that that was the best thing for his country. But there can be no doubt that twelve years of experience in America and of constant familiarity with the nature of the relations between that country and ours, convinced him that a Protectorate with Home Rule would be the best thing for the Philippines. He might have said nothing about his own private conviction, and have gone on towards the promising political future for himself; but he could not be false to that conviction. It haunted him, it drove him on, it compelled him to make a clean breast before the whole world, although he knew even as he did so, that his political future was shattered forever. And, what is just as admirable, when he came back, he settled down with the greatest cheerfulness and optimism to begin the practice of law all over again: he would start just like a newly admitted lawyer.

I will not say that he was the ideal of a lawyer in all things, as no human being is perfect, but I do wish you would see that he had what is all but essential to the true lawyer: he had conviction. I can well believe that whenever a case was brought to him, his first consideration would be not how much the client was willing to pay him, but what were the rights and wrongs of the case. And in deciding this point, he would, I like to believe, not rush to his library and dig his head into the sand of decided cases, but holding it high, look around for himself, and see what there was to see, regardless of the turn of thought, be it in favour of, or against, the client. What is the just thing to do? That, is the proper and primary consideration of judges, and it should be the proper and primary consideration of counsel, whose function in the polity of nations is to aid judges in the administration of justice.

It is no secret that the inherently noble profession of law has in our country suffered a considerable loss of prestige. The glamour and reverence that surrounded the barristers of old like a halo, have vanished into thin air. The majority of lawyers today are looked upon with the respect born of fear, rather than with that blended with admiration. Why is this so? What has happened to the profession?

I think there can be little debate upon the real cause of this deplorable falling-off. The profession has degenerated into a business. The first consideration has ceased to be, What does

the law really mean? It is apt to be, What does the client offer? Whether counsel is to espouse one side or the other is decided, not before, but after, settling the terms of the contract. It must be admitted that the way of solving points of doubt in law at present, lends itself to this fatal facility in advocating one side or the other according to the wholly irrelevant circumstance of the financial consideration,—irrelevant, that is, to the merits of the case. The last number of the *Lawyers' Journal* contains an editorial exposing this radical defect in the method of to-day's Philippine jurisprudence. *Stare decisis* is carried unwarrantable lengths. From being a means of corroborating a conclusion arrived at independently by an unprejudiced consideration of the facts of each case, it has become for many the sole rule of reasoning. Since it obviates the necessity of reasoning at all, it may without exaggeration be described, as the suicide of judicial thought, the atrophy of juridical reasoning. This is an observation that I commend to the directors of Schools of Law. I believe there should be a general movement away from the present fossilized form of legal instruction. Each and every student ought to be expected and required to think out each legal problem himself, and to be ready to give reasons of his own for his conclusion. And these conclusions should not merely be conclusions: they ought to be efforts to perceive the real rights of the case. What's the fair and just thing? This ought to be the question the law-student should ask himself at every step. For I conceive that law is not an end in itself, but a necessary means to effect justice. And in an ideal judiciary the phrases, 'Administration of Law', and 'Administration of Justice', ought to be interchangeable, not because the legislature is considered to be able to make no mistake, but because it is always presumed to will the just adjudication of cases.

How can this desirable state of things be brought about? Do not be startled at the formula. In the last analysis, it is the lawyers who can alone usher in this judicial millennium; and they can do it by being real, noble, impassioned Quixotes of the Bar! Those of you who some years ago saw the excellent version of that Spanish classic, interpreted by the greatest of modern Russian operatic actors, Feodor Chaliapin, can have some idea of what is really meant by such a phrase. So long as that crazed belated knight of La Mancha went about his high-hearted and impossible tasks, tilting against windmills, slaying giants, and so forth, we saw only the absurdity of his conduct, and

laughed at what we took for excellent comedy. But when at the end the spell was at last broken, and his beloved books of knight-errantry went up in flames before his eyes, and when he lay upon his bed of death, the profound significance of the whole history bursts on us suddenly, and we see as in a revelation that what gave meaning and pathos to Don Quixote is that he was a man following an ideal though all the world was against him, and laughed at him. And, realizing the unfathomable nobleness of the man, who could bear to laugh at him again? To our new eyes, then, Sancho Panza himself brought only tears.

It has been said that in every man upon this earth, there is a Don Quixote and also a Sancho Panza: a man of ideals, and a man of practicality. What I am trying to point out is that in the profession of law among us, Don Quixote has also died, and Sancho Panza rules the roost. You are practical when you tell your client, 'Um, let me see. How much are you willing to stake upon this case?' That is just how Sancho Panza, the faithful clown, with practicality always struggling with idealism, and always having the upper hand, would have approached the matter. You are reasonably ideal, you are a man with a vision, you are entirely worthy of the lofty profession of law, when you tell yourself, 'Is this unfair? Then I will set it to rights, though it be the last thing I do.' That is the spirit of Don Quixote, that is the knightliness of law, and that is just what we need in order to raise Advocacy once more to that high estate which belongs to it by right.

You say, nobody does these things today? That is exactly what I have been trying to tell you all this time; very nearly nobody behaves like this today, and whoever does provokes smiles from all his friends for his pains. That, again, is what I have been driving at all along. The true lawyer cares nothing either for the censure or the ridicule of his fellows, any more than for their money: what he does care for with all his being is the integrity of law and the beauty of justice. He is enamoured of these things as Romeo was enamoured of Juliet, as Caesar was enamoured of power, as a saint is enamoured of the will of God. Such a man thinks nothing of devoting months and even years to the profound investigation of some knotty point of law.

Why is it that we have no erudite student of law among us? Why does no one follow the admirable example of Chief Justice

Arellano, who made a thorough and philosophical study of the civil law, seeing through all its inter-relations to the underlying principles based ultimately upon human nature, so that he was universally looked up to as the authority upon that subject? Or the equally inspiring example of Chief Justice Araullo, who not only brought all his learning and heartiness to bear upon every decision he signed his name to, but took time to go deep into the principles and rules of commercial law, until he had mastered it? Why does no one devote the riches of his experience and the precious hours of his free time to making comparative studies of our civil laws and those of the different countries of the civilized world?

For, it is clear, as President Bocobo has pointed out, that there is need to bring our laws into agreement with our customs. We need to codify our laws. But we have not the legal scholars to furnish us with the comparative and philosophical studies which every real code implies.

Since we are every day trying to make it harder to become a lawyer, we might as well require the study of subjects that the profession of law really needs. A working knowledge of history, familiarity with the chief languages of the world, a grasp of sociology, and an intimate acquaintance with local traditions and usages—these will supply the basis for the kind of legal scholarship that our jurisprudence is crying aloud for. And when every law graduate has the ground work ready, I believe the spark of Science will kindle spontaneously in many breasts, and the Golden Calf will not seem so divine as to be able to command all the worship of the profession. The passion for learning does not come down from Heaven like a special message from on high. It is gained, it is caught, by getting a sudden taste of it. If law students are given a taste of it, they will long for it ever after, and not rest content until they have strained themselves to the limit upon some favourite subject of theirs. No lawyer can serve two masters: you cannot serve with absolute loyalty both Law and Mammon. And when, on that happy and memorable day that I hope will come to you all very soon, you take the solemn lawyer's oath, you will be called upon to make this silent but momentous choice: Law or Lucre? And upon that choice, your whole life will depend; not only your professional life, but your private life as well, for such is the reach of this decision that whichever it be, it will leave an indelible mark upon your character.

A good many years ago, when the courts of the land were sought to be reorganized by an Act of the Philippine Legislature, the usual indistinct clamour was set up. But in the midst of that clamour one clear voice was heard—it was the voice of such a lawyer as I have been trying to depict. A famous lawyer from a nearby province, with a most profitable practice, feeling deeply the effects of such a so-called reorganization upon the Judiciary, plunged into the opposition, laying aside all other occupations, studying, working, writing, bringing every lawful influence to bear against the measure. He contended that as the Act setting up the whole Judiciary had been approved by the United States Congress, the courts created thereby, became in a manner of speaking constitutional courts, and the local legislature had no power to touch the arrangement. This, of course, is a purely technical argument. But what was the consideration that led him to plunge into the controversy? The consideration that if the local legislature might reorganize the courts, at any time in future, if any particular judge rendered a decision for any reason displeasing to the members of the Legislature, they could get rid of him under the pretext of reorganizing the Judiciary. That would be a blow at the independence of the Judiciary. It would be the wedge of politics being driven into the administration of justice: it would be merely a matter of time before the whole structure would collapse. This profound view of the matter was as real to him, as the technical argument was clear to the ordinary lawyer. He fought with all his might; he sacrificed his own lucrative practice during the period; and yet, he had nothing to gain—no one had promised to pay him if the organization did not go through. As a matter of fact, it did go through, in spite of all his endeavours. But that is nothing: the success or failure of such a lawyer's efforts are without meaning: the will is everything. And this lawyer I am referring to, whose modesty prevents me from giving out his name, has always shown an unselfish devotion to the noblest ideals of the law. He understood, as few others, the Quixotism of the Bar. Whenever he had a case on his hands, he would shut himself up in his study and be dead to the world while he poured out his whole soul in the preparation of the case. When he emerged, there was no difficulty, no doctrine, no argument, no authority, proximately or remotely relevant to the case that he did not have at his fingertips. He conducted each case like a perfect master of the Art of Advocacy. Is he the

best-paid or most widely-known lawyer in the Philippines? Not quite; but does it matter? He is a true, a noble lawyer; he is a Don Quixote of the Bar.

You are about to make a choice. Remember the glories of the ancient Bar, and the welfare of your countrymen, and then decide. Will it be Don Quixote or will it be Sancho Panza?