

THE LEGAL DIMENSIONS OF MADNESS AND MENTAL HEALTH CARE SYSTEMS IN DON QUIXOTE

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ABSTRACT: The goal of this brief study is to analyze the issues regarding the legal dimensions of madness and the mental health care systems effective in the past and now. We paid special attention to the repercussion of these systems on the Brazilian legal system, drawing a parallel with the form used by Cervantes to depict the measures imagined by this author that should be taken to deal with Don Quixote's madness. We also contrast Cervantes' and Avellaneda's *Don Quixote*, aiming to demonstrate the clear difference of focus between the original author and the other one concerning the policies of mental health care, transposing this difference to the Brazilian legal system, showing its contradictions and the difficulties in implementing a new paradigma based on citizenship and freedom.

KEYWORDS: Law and Literature; Health Law; Mental Health; Madness; Don Quixote.

INTRODUCTION

The goal of this study is to relate the book *Don Quixote*, by Miguel de Cervantes, to the legal dimensions of madness and the mental health care systems effective in the past and now.

We begin the study with the analysis of the starting and end points of the Knight's journey, so as to establish which were the measures imagined by Cervantes to deal with Don Quixote's madness. We compare these

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measures with the ones presented by Avellaneda, author of an apocryphal book which was contemporary to the work by Cervantes.

Following that analysis, we aim to identify the change of paradigm which was happening in the 17th century and demonstrate the connections between Cervantes' book, *Law and madness*. We outline a brief history regarding this change, from the Greeks until the appearance of psychiatry. From there, we talk about the Brazilian mental health policies, the emergence of the psychiatric reform – which started in the middle of the 20th century -, and the search for new systems in the country, ending with the legal system effective now in Brazil.

Lastly, after the necessary historic support outlined above, we go back to the comparison between Cervantes and Avellaneda. This comparison is situated not only in the context of the paradigm alteration which happened during the 17th century, but also of the transition happening today, which is characterized by contradictions and difficulties for the implementation of a new mental health care system based on citizenship and freedom.

DON QUIXOTE'S STARTING AND END POINTS

The journeys of the Knight of the Sad Countenance have, in the two volumes imagined by Cervantes, the first published in 1605 and the second in 1615, a year before the death of the author, the same starting and end points. Both volumes start at the gentleman's home. There lives Don Quixote, who was almost fifty; his housekeeper, who was "over forty"; and his niece who "was not yet twenty". Both books end there as well: on the first part, the gentleman leaves the house and goes back there twice; on the second part, once. Every time the gentleman went on a journey, when he hoped to "undo harms and right the crooked", he left his housekeeper and his niece, as well as friends from the village, the priest, and the barber, and eventually even the curate Samson Carrasco, bothered by his disappearance and worried with his condition.

Thus is described the scenery of his first return, when he is brought home, all hunched, by a peasant known in the village:

When it was what seemed to him the proper time he entered the village and went to Don Quixote's house, which he found all in confusion, and there were the curate and the village barber, who were great friends of Don Quixote, and his housekeeper was saying to them in a loud voice, "What does your worship think can have befallen my master, Senor Licentiate Pero Perez?" for so the curate was called; "it is three days now since anything has been seen of him, or the hack, or the buckler, lance, or armour. Miserable me! I am certain of it, and it is as true as that I was born to die, that these accursed books of chivalry he has, and has got into the way of reading so constantly, have upset his reason; for now I remember having often heard him saying to himself that he would turn knight-errant and go all over the world in quest of adventures. To the devil and Barabbas with such books, that have brought to ruin in this way the finest understanding there was in all La Mancha!"

The niece said the same, and, more: "You must know, Master Nicholas"—for that was the name of the barber—"it was often my uncle's way to stay two days and nights together poring over these unholy books of misventures, after which he would fling the book away and snatch up his sword and fall to slashing the walls; and when he was tired out he would say he had killed four giants like four towers; and the sweat that flowed from him when he was weary he said was the blood of the wounds he had received in battle; and then he would drink a great jug of cold water and become calm and quiet, saying that this water was a most precious potion which the sage Esquife, a great magician and friend of his, had brought him. But I take all the blame upon myself for never having told your worships of my uncle's vagaries, that you might put a stop to them before things had come to this pass, and burn all these accursed books—for he has a great number—that richly deserve to be burned like heretics."

"So say I too," said the curate, "and by my faith tomorrow shall not pass without public judgment upon them, and may they be condemned to the flames lest they lead those that read to behave as my good friend seems to have behaved."

All this the peasant heard, and from it he understood at last what was the matter with his neighbour, so he began calling aloud, "Open, your worships, to Senor Baldwin and to Senor the Marquis of Mantua, who comes badly wounded, and to Senor Abindarraez, the Moor, whom the valiant Rodrigo de Narvaez, the Alcaide of Antequera, brings captive."

At these words they all hurried out, and when they recognised their friend, master, and uncle, who had not yet dismounted from the ass because he could not, they ran to embrace him.

"Hold!" said he, "for I am badly wounded through my horse's fault; carry me to bed, and if possible send for the wise Urganda to cure and see to my wounds."

"See there! plague on it!" cried the housekeeper at this: "did not my heart tell the truth as to which foot my

master went lame of? To bed with your worship at once, and we will contrive to cure you here without fetching that Hurgada. A curse I say once more, and a hundred times more, on those books of chivalry that have brought your worship to such a pass."

They carried him to bed at once, and after searching for his wounds could find none, but he said they were all bruises from having had a severe fall with his horse Rocinante when in combat with ten giants, the biggest and the boldest to be found on earth. (Cervantes, 2015, Chapter V).

It is possible to notice the same care coming from family and friends on the second time the Knight of the Sad Countenance returns to the village as a result of an ingenious plan created by father Perez and the barber Nicholas with the intention of bringing him home so he could be looked after:

[...] and at the end of six days they reached Don Quixote's village, and entered it about the middle of the day, which it so happened was a Sunday, and the people were all in the plaza, through which Don Quixote's cart passed. They all flocked to see what was in the cart, and when they recognised their townsman they were filled with amazement, and a boy ran off to bring the news to his housekeeper and his niece that their master and uncle had come back all lean and yellow and stretched on a truss of hay on an ox-cart. It was piteous to hear the cries the two good ladies raised, how they beat their breasts and poured out fresh maledictions on those accursed books of chivalry; all which was renewed when they saw Don Quixote coming in at the gate.

[...] Don Quixote's housekeeper and niece took him in and undressed him and laid him in his old bed. He eyed them askance, and could not make out where he was. The curate charged his niece to be very careful to make her uncle comfortable and to keep a watch over him lest he should make his escape from them again, telling her what they had been obliged to do to bring him home. On this the pair once more lifted up their voices and renewed their maledictions upon the books of chivalry, and implored heaven to plunge the authors of such lies and nonsense into the midst of the bottomless pit. They were, in short, kept in anxiety and dread lest their uncle and master should give them the slip the moment he found himself somewhat better, and as they feared so it fell out (Cervantes, 2015, Chapter LII).

On the second part of *Don Quixote*, when his last journey is told, again we see the care and worry shown by his family before his new adventure, and on the occasion of his return.

The following passages portray the care given to the Knight of the Sad Countenance before his third journey:

Cide Hamete Benengeli, in the Second Part of this history, and third sally of *Don Quixote*, says that the curate and the barber remained nearly a month without seeing him, lest they should recall or bring back to his recollection what had taken place. They did not, however, omit to visit his niece and housekeeper, and charge them to be careful to treat him with attention, and give him comforting things to eat, and such as were good for the heart and the brain, whence, it was plain to see, all his misfortune proceeded. The niece and housekeeper replied that they did so, and meant to do so with all possible care and assiduity, for they could perceive that their master was now and then beginning to show signs of being in his right mind. This gave great satisfaction to the curate and the barber, for they concluded they had taken the right course in carrying him off enchanted on the ox-cart, as has been described in the First Part of this great as well as accurate history, in the last chapter thereof. [...] (Cervantes, 2015, Chapter I).

And, again the same care was given on his third and last return home: “And the good wenches (for that they undoubtedly were), the housekeeper and niece, helped him to bed, where they gave him something to eat and made him as comfortable as possible” (Cervantes, 2015, Chapter LXXIII).

Similarly, when the knight falls ill, condemned by the doctor, the reactions of those surrounding the deathbed are moving:

His friends called in the doctor, who felt his pulse and was not very well satisfied with it, and said that in any case it would be well for him to attend to the health of his soul, as that of his body was in a bad way. *Don Quixote* heard this calmly; but not so his housekeeper, his niece, and his squire, who fell weeping bitterly, as if they had him lying dead before them. [...].

The confession over, the curate came out saying, “Alonso Quixano the Good is indeed dying, and is indeed in his right mind; we may now go in to him while he makes his will.”

This news gave a tremendous impulse to the brimming eyes of the housekeeper, niece, and Sancho Panza his good squire, making the tears burst from their eyes and a host of sighs from their hearts; for of a truth, as has been said more than once, whether as plain Alonso Quixano the Good, or as *Don Quixote of La Mancha*, *Don Quixote* was always of a gentle disposition and kindly in all his

ways, and hence he was beloved, not only by those of his own house, but by all who knew him. [...]

At last Don Quixote's end came, after he had received all the sacraments, and had in full and forcible terms expressed his detestation of books of chivalry. The notary was there at the time, and he said that in no book of chivalry had he ever read of any knight-errant dying in his bed so calmly and so like a Christian as Don Quixote, who amid the tears and lamentations of all present yielded up his spirit, that is to say died (Cervantes, 2015, Chapter LXXIV).

Knowing all the care given to the knight, it is importante to note that the friends and family never think of putting Don Quixote in one of the “mad houses” of the time, which were starting to become popular in Europe. On the contrary, all their efforts, even when they went searching for him, are to try and make him go back home where, they believed, under the care of his niece and housekeeper, he would return to his senses.

A different solution was found in the apocryphal *Don Quixote* by Avellaneda, published in 1614, a year before the second part by Cervantes was published.

The book, which was intended to be the sequel of the journeys of the knight of La Mancha described in the first volume, and had a prologue full of criticism about Cervantes, was signed by an author under the pseudonym Alonso Fernández de Avellaneda. Today, four centuries after the book was published, the identity of the author is still discussed.

About Avellaneda’s identity, says Vieira: “Certainly Cervantes knew very well who Avellaneda was, but he would not mention his name – it would immortalize him – and used rhetoric resources to say while not saying, appearing indifferent to the criticisms of the apocryphal author” (2010, p. 21).

Despite not mentioning Avellaneda’s identity explicitly, Cervantes, on the second part of *Don Quixote*, indirectly references the author of the apocryphal book, not only about his identity, but also referencing passages and characters present in Avellaneda’s book, mentioning references of the apocryphal work, which the knight of La Mancha actually reads. Says Vieira:

The curious thing is that the Knight not only knows about the publication of a false account of his journeys, written by some Avellaneda, but he also looks through the book and comments on the style of the author who, according to his impressions, seems to be Aragonese (chapter LIX). As if that is not enough, when he is in Barcelona, he decides to enter a typography and there, among other titles which are being printed, he finds the second apocryphal part (chapter LXII). A little after, having returned to his village, he meets a character from the apocryphal book – the Granadine Knight called Don Alvaro Tarfe – who finally recognized the knight of La Mancha is the real Don Quixote (chapter LXXII), and not the protagonist of the Aragonese writer (2010, p. 30).

The fact that must be noticed, as it concerns this article, is that at the end of the apocryphal book, Don Quixote is sent to a mad house and isolated from society. Cruz writes about this solution:

Despite the fact that “the mad” is considered a common character in Spanish society, that is not to say that during that time there were not ways of reprimanding the mad, and that there were no mad houses. The apocryphal Don Quixote, the protagonist by Alonso Fernández de Avellaneda, is incarcerated in a mad house, more specifically in the *Casa del Nuncio*, which was a mad house in Toledo. It was built in the beginning of the 16th century, and is considered to be one of the most important mental health hospitals of the 16th and 17th centuries (2009, p. 133).

The historic moment when *Don Quixote* was published illustrates the change of paradigm which was taking place at the time referring issues related to madness. It is necessary to outline a brief history of this change and its repercussions, so as to demonstrate the connections between madness, the book by Cervantes, and the Law.

BRIEF HISTORY OF MADNESS

The way of seeing madness is different throughout history. These views are reflected on the way legal systems have reacted to its repercussions in society.

In ancient Greece, madness was seen as a form of manifestation by the Gods. Things said by mad people were considered to be important and necessary information, capable of interfering in the fate of humankind. In this context, there was no repression to those who presented mental

disorders. Madness was, during this period, a form of expression. Says Vasconcellos:

The “masters of truth” had three designations or were three species: those who predicted all the futures, who had eyes turned forward, were called prophets or soothsayers; Those who remembered all the pasts, who had eyes turned backwards, were called poets or aedos; and those who mixed elements of nature to make ointments were called shamans. They were all possessed by the Gods. Possession which, in Greek, means *enthousiasmos*. The soothsayers were possessed by Apollo; the aedo by the goddess Mnemosyne or by the Muses, her servants; and the shaman was possessed by Dionysus. The poet, the prophet and the shaman all had to go through a process of possession – that is, maddening – for establishing contact with the Gods. De-reasoning was necessary for achieving “divine reason” (2000, p. 15).

During the middle ages, madness started to be considered as an expression of the forces of nature, of something non-human. The incomprehensible speeches by mad people were seen as ways of contacting something occult and trying to comprehend its mysteries. A type of exaltation of madness remained, even if spiked with a mixture of horror and attraction.

The Catholic inquisition, especially after the 15th century, played an important role in the change of paradigm in the treatment of madness, since it started to repress all who were different and in some way represented a risk to the hegemony of the Catholic Church. Thus, the Church repressed Jews, Protestants, witches and mad people who, since they could be considered heretic, were subject to the inquisitorial system and to execution, many times by being burned to death (Alencar *et al.*, 2003, p. 13-14).

The 17th century brings with it the kingdom of reason, represented by the first intellectual movements which proposed a new political model that decreased the absolute power of kings. Madness, in that context, is seen as a counterpoint to reason, as its absence. And in the kingdom of reason, where the Cartesian existence is tied to and inseparable from it (“I think, therefore I am”), there is no other fate for the mad than to be banned. So says Foucault:

The Unreason of the sixteenth century is a kind of open threat whose dangers could always, at least in law, undermine the relations of subjectivity and truth. The path of the Cartesian doubt seems to testify that in the seventeenth century this danger is conjured and that madness was placed outside the domain in which the subject has rights to truth: this area that, for classical thought, is reason itself. Henceforth, madness is exiled. If man can always be crazy, thinking, as exercise of the sovereignty of a person who is assigned the duty to realize the truth, cannot be mad. We draw a dividing line that will soon make it impossible the experience, so familiar to the Renaissance, of an unreasonable Reason, of a reasonable Folly. Between Montaigne and Descartes something happened: something that concerns the advent of a *ratio*. But it is disturbing that the story of a *ratio* such as the one in the Western world runs out in the progress of *rationalism*; it is an equivalent part, even if more secret, of this movement with which Folly plunged into our soil to get lost in it, no doubt, but also to take roots in it (2010, p. 47-48).

The result of this significant paradigm shift was the creation, in the seventeenth century, throughout Europe, of various confinement houses in order to banish from society not only the crazy, but also all those deemed unable to contribute to the process of production, of trade or of consumption. This movement, which went down in history as the "big hospital", reached abandoned elderly and children, people with disabilities and venereal diseases, the homeless and also the mad. Foucault comments this reaction:

The practice of internment means a new reaction to misery, a new pathetic - more broadly, another relationship of men with what might be inhuman in their existence. The poor, the miserable, the men who could not account for their own lives, assumed during the sixteenth century a figure that the Middle Ages would not have recognized (2010, p. 56).

Foucault (2010, p. 73) claims not to have been indifferent the fact that madmen were involved in what he calls "great proscription of idleness", asserting that from the beginning they had their place alongside the poor and idle, and were, along with these, subject to the rules of compulsory labor.

With the French Revolution and the principles that inspired, freedom, equality and fraternity, began a process of reabsorption of inpatients by the society, but the mad remained incarcerated for lack of proposals and because of the stigma that they could turn violent and dangerous on family and neighbors.

Until the end of the 18th century it cannot be said that there was a real interest of medicine to know what and why things were said by the insane. In 1793, with the appointment of Pinel for the direction of the Bicêtre, a French hospital where those considered insane were sent to, a new conception of madness began to spread, related to health. Pinel thought of mental illness as a disorder of intellectual functions of the nervous system. He considered the brain as the seat of the mind, and in the mind madness manifested. He divided the symptoms into classes: mania, melancholia, dementia and idiocy, and considered that the main causes of madness could be physical, resulting from the brain (head injuries, defective formation of the brain, and heredity) or moral, considered to be the most important, the result of intense passions and excesses of all kinds.

Madness acquires, then, the status of "mental illness", which required medical knowledge and specific techniques. The practice of confinement of the insane remained, but now in order to study them and try to find a cure, being noticeable, in this context, the prevalence of concepts of health and disease in a social perspective, although aimed at maintaining public order.

In this moment psychiatry is constituted, having the Alienism as its first school of specific medical knowledge, since madness, as a disease, required a specialized doctor. Alienism was based on the understanding of madness as unreason, that is, mental alienation. Its main representatives were Pinel, in France, and Tuke, in England; later, the French Esquirol was one of its greatest theorists. The treatment was based on the Asylum, which would have a therapeutic function, and consisted on confronting the mad with their confusion, their unreason, with the order of the asylum and the reason of the alienist who, therefore, had to be a person of unassailable morals.

Foucault is decisive in his criticism of the asylum model:

The asylum built by Pinel's scruples did not do any good and did not protect the contemporary world against the great tide of madness. Or rather, it did, it did a lot. If it freed the mad from the inhumanity of their chains, it chained man and his truth to the mad. Thus, men have access to themselves as being true, but this true being is only given to them in the form of alienation (2010, p. 522).

Indeed, the cure Pinel desired was not reached and asylums remained as locations for the disposal, abandonment and exclusion of people to which society had no alternative proposals of inclusion. Despite its failure, Pinel's classification continued to be used for a long time (Alencar *et al.*, 2003, p. 14-16).

BRAZILIAN MENTAL HEALTH POLICIES

The creation of the first Brazilian mental hospital, Pedro II, in 1841, in Rio de Janeiro, can be considered a milestone for the mental health policies in Brazil. The growth and redevelopment of urban spaces, imitating what had already occurred in Europe, led to the confinement of people considered "deviant", those who roamed the streets, unemployed, immigrants, beggars, orphans and also the mad, to the Asylums of Begging and Orphans (Asilos de Mendicância e de Órfãos), administered by the Holy House of Mercy (Santa Casa de Misericórdia), connected to the Catholic Church. Mad people were placed in the same place as the other "deviants", and were subjected to mistreatments that often led to death. In 1830, physicians, allied to the provider of the Holy House of Mercy, José Clemente Pereira, started a movement to create a specific place for the mad, which became known by the motto "to the mad, the hospice", and resulted in the creation of Pedro II. The hospital opened in 1852. However, the criticism by physicians did not stop, because of ill treatment, overcrowding and lack of healing of those considered "mentally ill".

In 1890, Pedro II was renamed the National Hospital for the Alienated, reflecting the psychiatric school then in vogue. Reflecting the recent proclamation of the republic, the religious management was replaced by the medical, and the therapeutic proposal remained the "moral treatment" based on the isolation and organization of the therapeutic space, recommended by Pinel and Esquirol.

In the 1910s and 1920s, the therapeutic procedures of agricultural work and small workshops became the fashion, with Juliano Moreira as its most important theoretical, and the hetero-family support (AHF), modeled after the colony of Geel, in Belgium, in which patients were accommodated in the homes of locals and showed improvements in their mental state. Both proposals did not lead to the desired "cure". The perceived bad result of the initiatives strengthened the closed system model, and the proposal for "definitive hospitalization" for the chronically ill and considered incurable gained strength.

In the 1940s and 1950s there was a predominance of biological therapies, marked by electroconvulsive therapy, lobotomies, insulin therapy and new drugs. The 1960s saw the decline of public psychiatry, with the corresponding growth of private psychiatry (Alencar *et al.*, 2003, p. 16-21).

PSYCHIATRIC REFORMS

Since Pinel, little progress has been made in terms of proposals to deal with the so-called mentally ill, particularly with regard to their exclusion from society. The end of World War II, however, brought to the world, in a traumatic way, the need for labor forces for the reconstruction of cities, combined with a new standing order, incompatible with abuse and even the extermination of so-called mentally ill, since many were executed due to this condition by the fascist regimes which seduced Europe and openly sponsored eugenics.

The post-war world saw, then, the birth of some experiences that caused a radical change in the focus of psychiatry, which stopped being the "search for the cure" of mental illness, and became the promotion of mental health through social adaptation. Among these experiences we highlight the therapeutic communities, institutional psychotherapy, community or preventive psychiatry, anti-psychiatry, and the Italian democratic psychiatry.

The therapeutic community appeared in England, with Maxwell Jones, and was based on the democracy of relations, seeking to emphasize the participation of everyone in the organization of activities, in the administration of the hospital, in the therapeutic aspect, with emphasis on

work. It should be noted, however, that this experience insisted on action within the institution, sharing, thus, in the refusal still preceded by society in dealing with the different.

Institutional psychiatry finds its mark in France with Tosquelles. He insisted on the restoration of the therapeutic aspect of the psychiatric hospital, trying to free it from the stigma of having been transformed in place of violence and repression. However, institutional psychiatry was abstracted from the social reality in which the subject with mental health problems lived.

Community or preventive psychiatry has its origin in the United States in the 1960s, during the Kennedy administration, and was strongly influenced by Caplan jobs. It sought an approach to public health in general, intervening in cases of emergence of diseases, with the goal of prevention. It came to be adopted as a model by the World Health Organization and the Pan-American Health Organization, and although it has made important contributions to address the issue of prevention, today the idea that the concept of prevention applies to field of mental health in the same way as it applies in other areas of health has been discredited.

Antipsychiatry starts in England, in the 1960s, with Laing and Cooper, saying that psychiatry was not able to respond to problems experienced by people with mental health problems. It considered madness as a social and political fact, and even as an experience of liberation. Family was key in this process, and madness was considered a reaction to family imbalance. Antipsychiatry argued that the delirium of mad should not be contained, but accompanied by the group, using resources such as psychodrama and regression, looking for the change of social reality as a possible way out.

Finally, the Italian democratic psychiatry, which emerged in the late 1960s, with Franco Basaglia as its precursor, sought to recover the complexity of madness, assuming that it concerns men, society and family and, therefore, that it is not psychiatry alone that will solve the problems related to it. It does not deny the existence of mental illness, but suggests a more comprehensive way of dealing with it. Treatment should occur in society, which renders the psychiatric hospital useless, since it would be

characterized as a place of repression and suffering, and not care. The Italian democratic psychiatry caused enough repercussion in Brazil, inspiring some important initiatives and strongly influencing the construction of our attention to mental health policies, as will be seen in the following section (Alencar *et al.*, 2003, p. 21-27).

THE SEARCH FOR NEW MENTAL HEALTH SYSTEMS IN BRAZIL

In our country, the traditional model based on confinement was already showing signs of exhaustion since the late 1970s. This period, marked by a context of political democracy, saw health workers denouncing the terrible conditions that patients lived with in asylums, from the use of strong cells, to beatings and poor hygiene.

In 1978, the Movement of Mental Health Workers was created, which sought to articulate proposals and actions against the current system, starting the first attempts to change the confinement system.

In 1987, there was the First National Conference on Mental Health, which established the first minimum consensus between technicians regarding the need to change the psychiatric care system.

The Second National Conference on Mental Health, in 1992, already held under the assumptions of the 1988 Constitution, had the participation of representatives of patients, workers and service providers, and discussed the restructuring of mental health care in Brazil, in the context of the principles of decentralization and citizenship of people with mental disorders.

The proposals and discussions culminated in the publication, on April 6, 2001, of the Federal Law n. 10,216. This law was visibly inspired by the Italian democratic psychiatry. It dealt with the protection and rights of people with mental disorders, redirecting the mental health care model to establish the strategy of community mental health services (Psychosocial Care Centers - CAPS) as priority devices to the organization of mental health care.

We highlight from said law, particularly, the express establishment of the right of people with mental disorders to be treated with humanity and respect, with the only interest of improving their health in order to achieve their recovery by reintroducing them into their families, work and the community, and the right to be treated, preferably, in community mental health services (art. 2, II and IX).

Law n. 10.216 / 2001 also establishes, in its art. 4, that hospitalization be treated as an exception in the treatment of mental patients. It is indicated only in the event of insufficient extra-hospital resources, but the main purpose is the social rehabilitation of the patient and his reintegration. Furthermore, the hospitalization of patients with mental disorders in institutions with asylums characteristics became expressly prohibited.

The current Brazilian legal framework, therefore, focuses on citizenship and freedom of the individual. Of course, with the goal of establishing the policy of inclusion of people with mental disorders in society, with family involvement and community mental health services as priority treatments. Thus, confinement is the absolute exception to the current rule.

COMPARISON BETWEEN CERVANTES AND AVELLANEDA

After this necessary historic outline, it is important to realize that Cervantes' vision of madness and how to treat it is largely compatible with the psychosocial care model that values the involvement of family and social environment, placing the citizenship of the subject with mental disorders in the center of the treatment.

Avellaneda, on the other hand, at the end of his book, chose the model that would become effective mainly from the 18th century, based on the confinement and segregation, and that would extend until the mid to late 20th century.

As the two works are contemporary, it is clear that a paradigm shift was taking place at the time. Avellaneda's option is like a shadow of the brutal confinements that would extend from there until almost the end of the 20th century, comprising nearly four hundred years of denial of

citizenship to the protagonist of madness. Cervantes, on the other hand, brings an approach that sees the person with mental disorders in their complexity, within society in all its richness and peculiarities, away from the confinement that you would be imposed by the empire of reason launched by the Classical era. According to Foucault:

This world of the early seventeenth century is strangely hospitable, in all senses, to madness. Madness is here, at the heart of things and of men, an ironic sign that misplaces the guideposts between the real and the chimerical, barely retaining the memory of the great tragic threats—a life more disturbed than disturbing, an absurd agitation in society, the mobility of reason (2010, p. 44).

This scenario began to change in the course of the 17th century, and Avellaneda's decision to isolate Don Quixote from society is a sign of this paradigm shift.

Cervantes, as seen, chooses to keep Don Quixote with his family and close to his friends, and even the "treatment" proposed shows extreme respect to the person of the gentleman, seeking to enter into his world, his truth, and bring him back to his village. In this sense, the plans engendered by the priest and the barber, in the first book, and by the curate Samson Carrasco, in the second, with the purpose of bringing the knight of La Mancha home are important.

In addition, Cervantes builds a deep character, with layers and personality, while Avellaneda paints a superficial Quixote, treated as a puppet, in the words of García Salinero:

[...] while Cervantes' Don Quixote has a relevance and a personality that make the presence of the author unnecessary, this fake Quixote is an entelechy often used as a puppet; like a ventriloquist who uses dolls, Avellaneda uses this Don Quixote to provoke, using an absurd discourse. In short, Don Quixote is made of flesh and soul in Cervantes; in the apocryphal work, he is a symbolic spokesperson who conveys to the reader the tiring monologue which constantly invites the non-being [...] (1999, p. 13).

This respect to the subjective truth of the gentleman is characteristic of Cervantes work and is echoed in the way madness was treated at the time. According to Foucault:

Before the eighteenth century, the mad were not systematically confined. Madness was essentially regarded as a form of error or illusion. Still at the beginning of the Classical age, madness was seen as belonging to the chimeras of the world; it was possible to live among them and be separate in case of them taking extreme or dangerous ways. Under these conditions it is possible to understand the impossibility of the artificial space of the hospital to be a privileged place where madness could and should explode in its truth (2011, p. 120).

In the Classical era, as referred by Foucault, the transcendence of delirium gave madness a kind of interiority that never spread to the outside, keeping it in a relationship with itself (2010, p. 516).

A movement in the opposite direction started in the 18th century. At first, the different were simply segregated. After that, Pinel and Tuke began a process of searching for truth in the treatment of madness. The truth of madness must come objectively, related to previously defined external parameters, establishing thus the curious role of the psychiatric hospital of the nineteenth century as a place of classification and diagnosis, "botanical rectangles where types of diseases were divided into compartments whose arrangement resemble a vast garden" (Foucault, 2011, p. 122). Madness now had an external equivalent, expelling man from himself and lowering him to the level of simple nature, to things (Foucault, 2010, p. 156).

Avellaneda goes in that direction when he opts to segregate Don Quixote at the end of his book. It is the shift to the new model that would be effective little by little, and after, be consolidated, for only in the late 20th century it was questioned and revised.

Cervantes' Don Quixote remained with his friends and relatives, and in the second part of the work, published one year after Avellaneda's apocryphal, repeated the formula used in the first part, opting for the death of the knight of La Mancha at the end of the novel, even, we suppose, in order to prevent further apocryphal attacks to his mad hero.

Choza is illustrative in saying that the reason for the understanding of madness in Cervantes is the sense of recognition that takes place in the work. Mad is not seen as different, to be isolated, but as a friend, a neighbor, a relative, an equal:

Why is it possible to love some characters like this? Why is it possible to love a person like this? Because you are crazy, because you are a human ruin, because you are scattered in pieces that deserve to be picked up, much more than the dead deserve to be buried, because these pieces belong to a life that is still being lived, because these lives so simple, so deteriorated, are worth it, they are worth it because they are the life of a friend, of a neighbor, of an equal, of somebody who is mine, because this person is also me, because I see myself and recognize myself in that person (2005, p. 75).

The contrast between the views of Cervantes and Avellaneda on madness indicates that, even though they were contemporary, both works have quite different views on the subject. Cervantes anticipated the model that stands today in relation to mental health care, emphasizing the involvement of family and community, while Avellaneda goes towards the segregation of Don Quixote.

THE CONTRADICTION OF THE BRAZILIAN LEGAL SYSTEM

Applying this counterpoint to the Brazilian legal system, we can see here diverse and even conflicting positions on legislation about dealing with madness.

While the Federal Law n. 10,216 / 2001 establishes hospitals as exceptions in the treatment of mental health, with the rule being the treatment within the community and with family involvement, following Cervantes' option and in accordance with the current system, focused on the citizenship of people with psychological distress, the Civil Code of 2002, when talking about the patients, establishes, in Article 1767, that those who, due to illness or mental disability, do not have the necessary discernment to act in civil life, the "mentally handicapped", the "habitually drunk", the addicts and the "exceptional without full mental development" will be collected into suitable institutions, if they do not adapt to the home environment.

The existence of this civil device, which goes against the social and legal developments in the treatment of this issue, can only be explained by the still prevailing view in the collective subconscious of society that "mad

people belong in mad houses". That is, in the 21st century, this overcome model continues to influence the way people think and the legal processes.

It is not possible to break a complex and growing process towards the segregation of the different, a process that took four hundred years to be established and that only in the last century began to be questioned and revised, immediately and without risk of backlash.

This legal contradiction is only a demonstration of the delicate phase in which we find ourselves. A whole new model is being built, but the ruins of the former are still quite visible – in fact at times it override the new.

The migration process is slow and painful. It is not only about changing structures, but also changing the way people think. And this seems to be the hardest part. Says Sergio Alarcon, referring to Foucault:

A new way of thinking which includes madness in a broader sense, maybe with some positivity – maybe even as an experience of freedom – necessarily presupposes a new interpretation of ourselves, of how we think, of the practices this implies, of our relationships, and, thus, it must take into consideration especially the issue of the subject, its branches, its antagonisms, since it is the invention of the subject that creates the practices in which we become objects of our own knowledge. (2000, p. 25).

Don Quixote himself says:

"Freedom, Sancho, is one of the most precious gifts that heaven has bestowed upon men; no treasures that the earth holds buried or the sea conceals can compare with it; for freedom, as for honour, life may and should be ventured; and on the other hand, captivity is the greatest evil that can fall to the lot of man (Cervantes, 2015, Chapter LXVIII).

The fact is that today we are living the construction of a new mental health care model, based on citizenship and freedom of the subject. But we are still too close to the times when the mad were segregated – it only started to be questioned in the end of the last century. This proximity still brings us contradictory situations, such as the civil device mentioned above, and difficulties for the implementation of the new paradigm.

CONCLUSION

The journeys of the Knight of the Sad Countenance, told by Cervantes in his book, have been inspiring many interpretations throughout its history, some emphasizing its tragicomic madness, others the idealism which motivates the actions of the gentleman.

Madness, however, accompanies the book at all times. It is Don Quixote's madness, and the freedom Cervantes gives him, that allow the adventures of the knight of La Mancha and the story itself. It is not exaggerated to say that without the equation resulting from the madness and freedom of the protagonist, there would be no *Don Quixote*.

Cervantes builds his Knight as a human being who is free in the world, but is respected for his singularity. There are many moments of difficulty and risk related to the gentleman's condition, but it is the telling of these moments, with Don Quixote stating his truth and armed with values of justice, loyalty and solidarity, which dictate Cervantes' approach. This approach lets Don Quixote live in the society, where he makes friends and enemies, and with his acquaintances and family.

The ghost of segregation and the nullification of the gentleman are represented by Avellaneda's approach who, at the end of his apocryphal book, confines the Knight to a mad house in Toledo, predicting the brutal segregation that would extend from that time until four hundred years later, sentencing madness to silence.

The legal system effective now is a result of the psychiatric reforms which took place after the Second World War. In Brazil, its legal milestone was the Federal Law n. 10,216/2001, which defends the respect to the citizenship and freedom of the subjects, establishing a policy of reintegrating the person with mental health disorders into society, with the support of their family and of community mental health care services, which should be priority in the treatment. Segregation is seen as the absolute exception to the rule.

However, the ghost of Avellaneda persists, represented by the beliefs of most people, which are still marked by the recent and long history of segregation imposed to mad people. The Brazilian Civil Code, article 1767, threatens to segregate those who "do not adapt to domestic life",

encouraging the segregation impulse as an alternative to the difficulties which appear on the way.

May Cervantes always win!

REFERENCES

- ALARCON, Sergio. Aos homens de boa vontade: estudos sobre sujeição e singularidade. In: AMARANTE, Paulo (ed.). *Ensaio: subjetividade, saúde mental, sociedade*. Rio de Janeiro: Editora Fiocruz, 2000, p. 25-40.
- ALENCAR, Paulo Sérgio Silva de; BELMONTE, Pilar Rodriguez; JORGE, Marco Aurélio Soares; REIS, Valéria Lagrange Moutinho dos. *Textos de apoio em saúde mental*. Rio de Janeiro: Fiocruz, 2003.
- BRASIL. Lei n. 10.216, de 6 de abril de 2001. Disponível em: <http://www.planalto.gov.br/ccivil_03/Leis/LEIS_2001/L10216.htm>. Acesso em: 5 mar. 2012.
- BRASIL. Lei n. 10.406, de 10 de janeiro de 2002. Institui o Código Civil. Disponível em: <http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm>. Acesso em: 5 mar. 2012.
- CERVANTES, Miguel de. *Don Quixote*. Translated by John Ormsby. Disponível em: <<http://www.gutenberg.org/cache/epub/996/pg996-images.html>>. Acesso em: 4 mar. 2015.
- CHOZA, Jacinto. Don Quijote y la dignidad del loco. In: INSTITUTO DE MAYORES Y SERVICIOS SOCIALES (IMSERSO). *La salud mental es cosa de todos: primer congreso: el reto de la atención comunitaria de la persona con trastorno mental grave desde los servicios sociales*. Madri: Artegraf, 2005, p. 69-75. Disponível em: <http://books.google.es/books?hl=es&lr=&id=F3hVs5gUzkUC&oi=fnd&pg=PA69&dq=Quijote+Derecho&ots=VNoTmfVdcf&sig=6oFjr6iaXEDBpPQC u9G6q5wS-Xc&redir_esc=y#v=onepage&q=Quijote%20Derecho&f=true>. Acesso em: 19 mar. 2012.
- CRUZ, Ana Aparecida Teixeira da. *Dimensões da loucura nas obras de Miguel de Cervantes e Lima Barreto: Don Quijote de La Mancha e Triste Fim de Policarpo Quaresma*. Dissertação (Mestrado em Letras) Universidade de São Paulo, 2009. 205f. Faculdade de Filosofia, Letras e Ciências Humanas, Universidade de São Paulo.
- FERNÁNDEZ DE AVELLANEDA, Alonso. *El Ingenioso hidalgo Don Quijote de La Mancha: que contiene su tercera salida y es la quinta parte de sus aventuras*. Madri: Editorial Castalia, 1999.
- FOUCAULT, Michel. *História da loucura: na idade clássica*. 9. ed. Trad. de José Teixeira Coelho Neto. São Paulo: Perspectiva, 2010.
- FOUCAULT, Michel. *Microfísica do poder*. Trad. de Roberto Machado. Rio de Janeiro: Edições Graal, 2011.

GARCÍA SALINERO, Fernando. Introducción crítica sobre la obra y su autor. In: FERNÁNDEZ DE AVELLANEDA, Alonso. *El Ingenioso hidalgo Don Quijote de La Mancha: que contiene su tercera salida y es la quinta parte de sus aventuras*. Madri: Editorial Castalia, 1999, p. 7-37.

VASCONCELLOS, Jorge. Filosofia e loucura: a ideia de desregramento e a filosofia. In: AMARANTE, Paulo (ed.). *Ensaio: subjetividade, saúde mental, sociedade*. Rio de Janeiro: Editora Fiocruz, 2000, p. 13-23.

VIEIRA, Maria Augusta da Costa. Apresentação da segunda parte de D. Quixote. In: CERVANTES, Miguel de. *O engenhoso cavaleiro D. Quixote de La Mancha, segundo livro*. Tradução e notas de Sérgio Molina. São Paulo: Ed. 34, 2010, p. 13-31.

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