

The Citizen Litigant and Don Quixote

[*In the manner of ostentatious erudition.*]

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Justice systems are the kernel and seed of all human civilizations. Without justice violence and chaos ensues from within a culture. Advancing peaceful conflict resolution within a culture grows that culture. And, mercifully appealing to a higher authority for justice is an innate human value. In ancient Babylon, the Code of Hammurabi (circa 1750 BCE) was engraved into pillars and publicly displayed. The people of Babylon were free to examine, discuss, and learn the boundaries and consequences of their laws. Under the code, an accuser and the accused would stand before a judge to present a claim and a defense. Each party was self-representing before a judge. Today, self-representation in a court of law is extinguished. The contemplation of justice and the authority of law is high art. The modern-day Pro Se¹ litigant is perceived as an irregular. In many ways, the modern citizen litigant is analogous to the protagonist in Miguel de Cervantes' novel "*The Ingenious Gentleman Don Quixote of La Mancha*". Both Don Quixote and the citizen litigant are on a quest to correct injustices. Admittedly, Don Quixote's exploits are fanciful delusions of grandeur fueled by the chivalric code of a bygone era; and the modern citizen litigant is out of temporal sync with notions of modern justice. However, while Don Quixote's chivalric values are relics that do not fit his era, it is paradoxical and maybe obtuse to suggest that it is modern justice out of temporal sync with modern times and the citizen litigant.

¹ Pro se "Latin: on one's own behalf" (Cornell).

Spanish writer Miguel de Cervantes is the creator of the gentleman protagonist Don Quixote. Cervantes colors Don Quixote as a former nobleman turned delusional knight errant² and practitioner of a phantasmic code of chivalry. From the beginning, Don Quixote pledges his heart, health, and honor to the imagined beauty of Lady Dulcinea. William Shakespeare³ was a contemporary of Cervantes. Shakespeare's 46th Sonnet reads "Mine eye and heart are at a mortal war, How to divide the conquest of thy sight." When these words are mapped onto Don Quixote, the quickening of his heart and his restless state of mind toward Lady Dulcinea are exposed. The citizen litigant also pursues the favor of a lady - Lady Justice⁴. Correspondence from the chambers of Lady Justice undoubtedly quickens the citizen litigant's heart and stirs his mind. Like Don Quixote the citizen litigant has also pledged his heart, health, and honor to the imagined beauty of a Lady.

In western cultures, Lady Justice is draped in flowing robes, wears a blindfold, bears a sword, walks over a serpent, and elevates a two-pan set of scales to gauge the weight of two conflicting views.⁵ Lady Justice is one of four classical Sisters of Virtue; her peerage are Prudence (introspection), Fortitude (courage), and Temperance (restraint). The ancient Greeks forward these virtues as an idyllic foundation for personal growth. The Greek

² "First Degree - Knight Errant, or the Questing Knight, is a landless Knight in training. As initiates to the Order, they are still learning the Order's tenets and codes, and expected to prove themselves by traveling and performing acts of courage and honor in service to the ideals of their Order" (Gothic).

³ Shakespeare and Cervantes were contemporaries who die one day apart. Miguel de Cervantes, Spanish writer, died: April 22, 1616, Madrid, Spain; William Shakespeare, English playwright, died: April 23, 1616, Stratford-upon-Avon, United Kingdom (Britannica).

⁴ [Easter Egg. Soundtrack for this paper and in tribute to Lady Justice, Tupelo Honey by Van Morrison] <https://youtu.be/F09EKEybLy0>

⁵ Lady Justice is based on the Greek goddess Themis, and the Roman goddess Justitia who sometimes holds a cornucopia instead of a sword (Lewis). Occasionally Lady Justice is shown with her sister Prudence. Sister Prudence is known for self-discipline thru the use of reason; she symbolically looks into a hand mirror while a serpent attempts to distract her from the pursuit of reason. The axiom "know thy self" is associated with the personification of Prudence (RomeArtLover).

philosopher Plato furthers the idea of justice from a personal virtue to a culturewide virtue, saying: “Justice in the life and conduct of the State is possible only as first it resides in the hearts and souls of the citizens”.⁶ These words have been elevated and engraved in granite relief, and then affixed to the U.S. Department of Justice Building in Washington D.C.; etched on another corner of the same building are the words, “Justice is founded in the rights bestowed by nature upon man. Liberty is maintained in security of justice”⁷. The ideas expressed by these words seem to suggest that a sense of justice is an innate and natural human value.

On the timeline of human existence, Psychology is a relatively newborn discipline. The idea of mapping human thought and behavior was inconceivable before the European Age of Enlightenment (1620). In the late 1800s, the lexicon of Psychology was born, sired by the discipline of Philosophy. Psychology offers a scientific lens through which human thought and behavior are viewed. The discipline of Psychology grows when its professionals' express theories and lab results on paper - complete with citations and attribution. Then, the paper is published in scholarly journals and scrutinized by professional and academic peers. Published papers with repeatable results are favored. Psychology research in regard to cultural justice is plentiful; but research regarding an innate human need for justice is spartan. [Egad!] A few sources offer some insight.

Now ask. Is the human sense of justice - innate? Is a sense of justice nature or nurture? Dr. Wolfgang Fikentscher weighs these possibilities in a scholarly article “The Sense of Justice and the Concept of Cultural Justice”, published in 1991 in *The American*

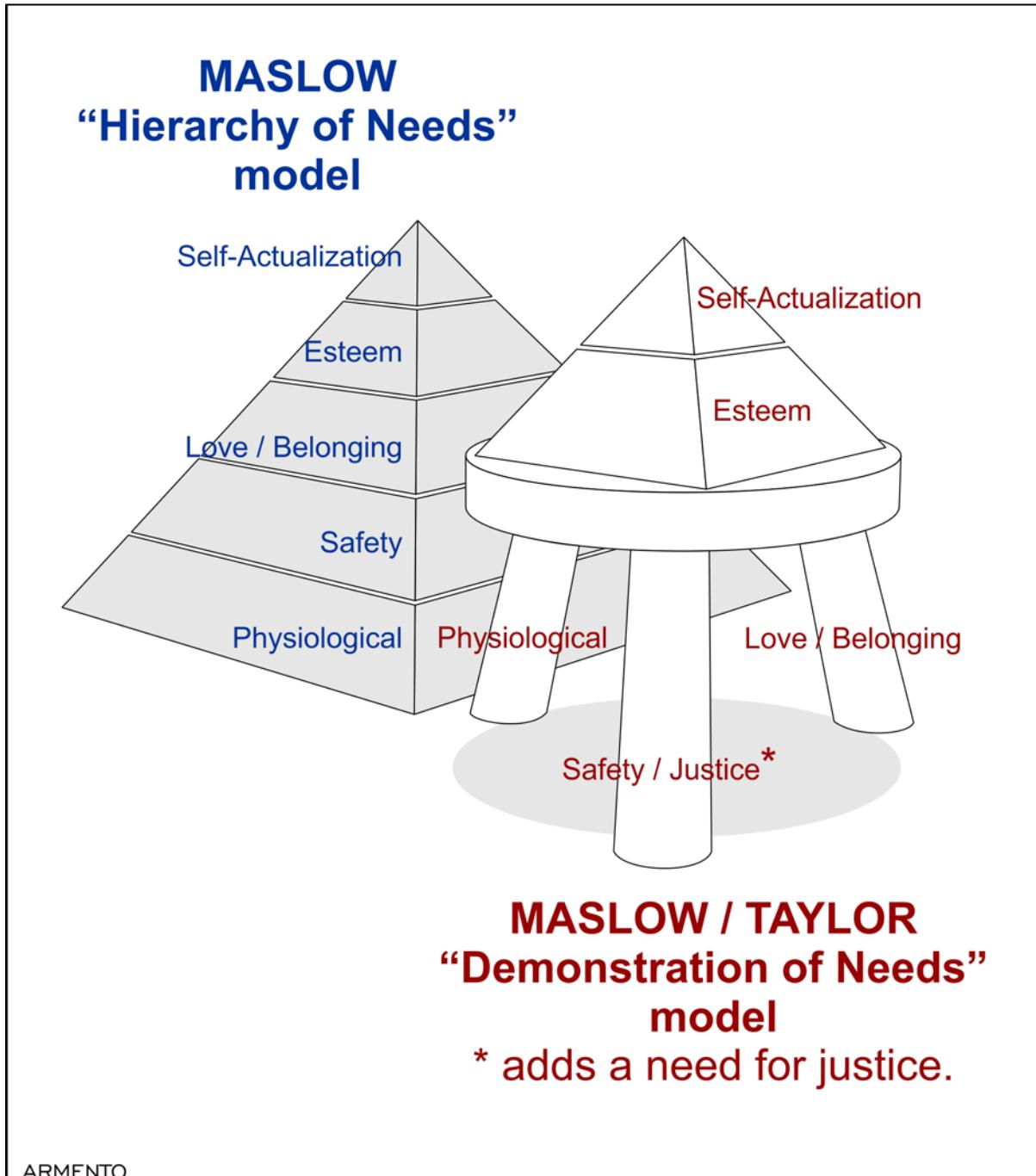
⁶ Exterior engraving on Robert F. Kennedy Building, U.S. Department of Justice, Washington D.C.; corner of 10th & Pennsylvania Avenue. (Waymarking)

⁷ Exterior engraving on Robert F. Kennedy Building, U.S. Department of Justice, Washington D.C.; corner of 9th & Pennsylvania Avenue. (Waymarking)

Behavioral Scientist. Dr. Fikentscher utilizes judicial anthropology to narrow the debate to “nativists” verses “historicists” schools of thought. The “nativists” say justice is innate to humanity, while the “historicists” are of a mind that governance confers a sense of justice upon humanity. Dr. Fikentscher concludes that justice is a “native human universal”, and that governance augments a sense of justice. Also, Dr. Wolfgang Fikentscher sees “cultural justice” as a best practice; much like Plato furthering the idea of justice from a personal virtue to a culturewide virtue.

As cornerstones go within the discipline of Psychology, Abraham Maslow’s (1943) paper “*A Theory of Human Motivation*” is still a noteworthy model. Maslow’s model expresses a “Hierarchy of Needs” for all humans. Maslow establishes five basic human needs, that are ultimately arranged as five stacked tiers in the form of a pyramid. In Maslow’s “Hierarchy of Needs” the foundation of the pyramid is its largest tier. Maslow establishes Physiological needs (food, water, warmth, rest) as a foundation for all humans. Maslow determines the next human need is Safety, which stacked upon the foundational tier, and then a need for Love and Belonging (relationships, family, friends) fills the middle tier of the pyramid. A need for personal Esteem (accomplishment, success) is the fourth highest tier, and Self-actualization (achieving one’s full potential) is the pinnacle of Maslow’s pyramid model. However, Maslow’s model is strangely silent when establishing a personal need for justice. Where does a need for justice fit into Maslow’s Hierarchy of Needs? Should the need for justice reside at the pinnacle of the pyramid with self-actualization, or on the foundational tier, or in between? Enter PhD. Anthony Taylor (*professor emeritus*) Victoria University of Wellington, NZ, who re-imagines Maslow’s pyramid by including a three-legged stool. The top two tiers of Maslow’s pyramid model - personal Esteem and Self-actualization - are stacked on top of a stool. The bottom three tiers of Maslow’s pyramid are distributed as

stool support legs: Physiological leg, Love and Belonging leg, and Safety leg. Taylor also adds an innate need for Justice to Malsow's need for Safety. Taylor says the human need for justice is "an inalienable feature of the human condition". The Maslow/Taylor "Demonstration of Needs" model is born. The three-legged stool model demonstrates the precarious nature of Esteem and Self-actualization.



A historical review of human civilization seems to suggest that the psychological need for justice is innate - but augmented by governance to different ends. Bad justice destroys a culture, and good justice grows a culture. The power of a monarch is the oldest form of governance. From the time of the Hammurabi Code (circa 1750 BCE); thru King Cyrus the Great who established a measure of human rights⁸ in ancient Persia; and up to the time of King John of England begrudgingly signing the Magna Carta in 1215 CE. Governance has ebbed and flowed over humanity's innate sense of justice. The Magna Carta was unique to Europe. It enumerated the rights of land barons as separate and distinct from the absolute rights of the crown. The charter protected barons from capricious imprisonment and granted rights to women and children to inherit property. The Magna Carta is considered the first written constitution in Europe (Britannica). The barons were also granted the right to form judicial courts, so they may formally discuss, petition, and redress grievances against the king. In this way, judicial courts of citizenry were formally granted status in English law.

In the five-hundred and seventy-two years between the signing of the Magna Carta (1215 CE) and the signing of the Constitution of the United States (1787), the western world would drastically change. In the mid 1400's two separate events occurred in Europe. A German goldsmith named Gutenberg built a moveable-type printing press (circa 1450), and the last repository of the Roman Empire was sacked. The fortified walls of Constantinople were breached in 1453, all things Greek and Roman scattered across the region just in time to kickstart the Italian Renaissance. In 1492 the Americas were discovered. By the time of the American Revolution in 1776, the Gutenberg printing press had been doubling literacy

⁸ "In 539 B.C., the armies of Cyrus the Great, the first king of ancient Persia, conquered the city of Babylon. But it was his next actions that marked a major advance for Man. He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality." (HumanRights)

rates in Europe every hundred years (Roser). Martin Luther was a German theologian who published a critic of the Catholic Church titled *Ninety-five Theses* (1517) which began the Reformation of religion in Europe. Mathematician and astronomer Copernicus publishing *On the Revolutions of the Heavenly Spheres* (1542) marking the start of the Scientific Revolution in Europe. Gutenberg's moveable-type printing press magnified western thought. World scholars still debate the beginning of Europe's Age of Enlightenment, but two printed essays are typically cited as starting points: Francis Bacon wrote *New Organon, or True Directions Concerning the Interpretation of Nature* (1620) launching the scientific method of research; and René Descartes wrote *Cogito, ergo sum* (1637) ("I think, therefore I am") an essay regarding modern philosophical thought. During the Age of Enlightenment, evolutionary theories of political thought were freely expressed with little fear of imprisonment or retribution. Englishmen Thomas Hobbes wrote *Leviathan* (1651), and John Locke published *Two Treatises of Government* (1689), and a Frenchman Jean-Jacques Rousseau (in particular: *Emile, or On Education* (1762)) – these essays shaped the kernel of western governance and judicial thought. Guttenberg's moveable-type printing press duplicated more than just letters on a page – it distributed western ideas of religion, science, philosophy, justice, and governance beyond a favored few to an emerging class of literate citizens.

The creators of the United States of America had the benefit of Europe's enlightened political thought. In the American Declaration of Independence, the colonies declared "all men are created equal, that they are endowed by their Creator with certain unalienable Rights" (Jefferson). The United States of America would be a citizens' culture of justice and governance. The new American governance established the right for all citizens to redress grievances against all parties - including the new American government. Self-representation in a court of law was proper behavior in colonial America (Schachner, 2). A colonial

gentleman could rely on *The Constable's Pocket-Book*⁹ by Nicolas Boone to learn matters of the court, and, Blackstone's four-volume *Commentaries on the Laws of England*¹⁰ to further matters of jurisprudence (Schachner, 2). At present, the right to self-representation in the United States is guaranteed under Federal law in Title 28 *Judiciary and Judicial Procedure* of the United States Code, Section 1654. There are currently fifty-three voluminous Titles in the United States Code. [Egad!] Don Quixote's most popular adventure is his encounter with windmills – which he imagines to be “enormous giants” (Grossman, 71). A shame on the head of a knight that ignores roguish giants. Without regard for his own safety, Don Quixote readied his lance and committed “himself with all his heart to his lady Dulcinea, asking that she come to his aid at this critical moment” (Grossman, 72). Don Quixote charged the giants. The citizen litigant also sees giants when staring at volumes of legal text. The legal profession has been codified into laws, rules, regulations, procedures, precedence, and opinions that are generally bereft of common understanding and the metrics that mark repeatable results. The pernicious codification of jurisprudence has evicted ordinary citizens from the principles and protections of the law. The *Contemplation of Justice* and the *Authority of Law* is indeed high art¹¹. At this point, a voice of syllogistic reasoning might ask: If a justice

⁹ Formally titled: “The constables pocket-book: or, A dialogue between an old constable & a new: Being a guide, in their keeping the peace, &c. In serving all warrants. Observing orders of courts. Summoning town officers, and town-meetings. Collecting rates and assessments. Serving writs, summons, & executions. How to make returns of all writs and warrants. Forms of bail-bonds, &c. An account of all lawful fees.” By Nicolas Boone, 21 editions published between 1710 and 1727 in English. (Boone)

¹⁰ English jurist, Sir William Blackstone (d. 1780) published a four-volume set of law books titled *Commentaries on the Laws of England* between 1765–1769 (Britannica).

¹¹ James Earle Fraser sculpted two statues titled *Contemplation of Justice* and *Authority of Law*, both statues flank entrance steps to the United States Supreme Court Building, Washington, D.C.

system is the kernel and seed of all human civilizations - as expressed at the beginning of this essay - what is the topsoil in this model? A civilizations' topsoil is its citizenry.

In 1790 America had a population of 3.9 million; today, the U.S. Census sets the human population of the United States at around 332 million (Rosenberg). In mathematical terms that is an 8,412% increase in population. Comparatively, back in 1790 America had 21 Federal Judgeships (and only thirteen States), now there are 870 Federal Judgeships across the United States. In mathematical terms, the number of Federal benches has increased 4,042%. The divergence between these two percentage numbers speaks to an issue regarding a citizens' access to justice and what Fikentscher and Plato call cultural justice. Simple economics asserts: when the demand for a necessity increases and the supply trend continues to decrease, the necessity becomes a scarcity and available to only a few. The topsoil of our American culture is missing a critical judicial nutrient.

The Order of Knight Errant is conferred upon Don Quixote by an innkeeper in mocking fashion (Grossman, 48). The newly minted knight sets out upon the land, and on that day Don Quixote's witnessed a labor dispute, between a peasant farmer and a boy. The boy was tied to a tree and being lashed by the farmer. Don Quixote and his charger stamped the scene (no doubt Lady Dulcinea would not see the defenseless boy suffer). The boy was hired to watch over a flock of sheep. The boy claims he is owed unpaid wages and the farmer claims lost sheep. Don Quixote demands the farmer render the unpaid wages owed to the boy. The farmer pleads – poor me – and outwits the aloof knight. The farmer suggests repayment when he arrives home. Satisfied with this outcome, Don Quixote spurs his horse away. The farmer turns to the boy and says "because I love you so much, I want to increase the debt so I can increase the payment." He seized the boy by the arm and "gave him so many lashes that he left him half-dead" (Grossman, 51). At this point, a rhetorical voice might ask: who represented justice in this quixotic model?

Oh, foolish knight, *Esse Quam Videri* “To be, rather than to seem”.

On this textual stage a comedy and a tragedy hath been mused. A troupe of players has formed: Lady Justice and her sisters Prudence, Fortitude, and Temperance are joined by Plato, King Hammurabi, King Cyrus, King John, Shakespeare, Cervantes, and yes, a fool. The citizen litigant and Don Quixote are both regarded as fools on a fools’ quest; both are labeled delusional, mocked, and ridiculed in their irregular pursuit to correct injustice. But on the stage of day-to-day human existence, as in the allegorical actions of “*The Ingenious Gentleman Don Quixote of La Mancha*”, no one experienced justice. The human condition remains ignorant, uninvolved, and tragically, unable to evolve an innate sense of justice.

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