

### Legal Fictions: Literature and Law in *Grisel y Mirabella*

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Romance, fantastic tales recounting the magical adventures and sometimes fatal loves of an idealized aristocracy, was, as Scordilis Brownlee affirms, “one of the most protean and long-lived [genres] in Western European Literature” (viii). Despite its popularity, or perhaps because of its universal appeal, romance has traditionally been disparaged, condemned as at best frivolous and at worst pernicious by “contemporary guardians of taste and learning” (Frye 23). Modern critics have a different perception of romance. Northrop Frye considers it to be “the structural core of all fiction” (15). Joseph Gwara & Michael Gerli recognize it as “a touchstone for understanding the development of European imaginative prose” (xiii) and Alan Deyermond has discussed the symbiotic relationship between Peninsular romance and the society that produced it: “The effect of the genre on life was even stronger than its literary influence” (239).

An intimate relationship between romance and life –and their mutually evocative influences– is especially evident in the parallel development of literary and legal narratives in the Middle Ages. Referring to *Grimalte y Gradissa*, Joseph E. Gillet was the first to credit Juan de Flores with creating a relationship between text and reader in his romances, where “fiction overflows its frame into the reality outside” and reality “may suddenly emerge from fiction” (180). Flores’ works, in fact, personify the truly symbiotic relationship between literature and life in the Middle Ages. To the medieval mind, the frontiers between ‘legal’ and ‘literary’ matters were more fluid than we perceive them to be today. Medieval scholars and writers of romance, were clearly conscious of the “reciprocity of influence” between law and literature (Balsamo xiii).

It was not until the Enlightenment that knowledge was differentiated into discrete categories such as the scientific or the expressive, the instrumental or the aesthetic (Steiner 2). It follows that the modern separation between legal and literary practices and processes, which has its roots in the development of literature in two “antithetical directions,” classified by Scholes and Kellogg as the empirical, “historical, fact, the actual past” and the mimetic, “allegiance not to truth of fact but to truth of sensation and environment” (13) is likely to obscure the understanding of Medieval texts because they are not predicated on such a division.

The impact of legal doctrine and procedure on medieval Spanish literature has indeed been recognized by contemporary scholars (Kirby 165; Von der Walde 1996). Examples may be seen in works such as the *Cantar de Mio Çid*, the works of Gonzalo de Berceo, and *El Libro de Buen Amor*. Where it has remained little studied, however, is in the romance, indisputably the major secular genre from the time of Chretien de Troyes to Chaucer (c. 1180-1480), whose predominance continued well into the sixteenth century (Scordilis Brownlee viii). Not only is romance one of the most long-lived genres in Western European literature, but it is also the genre which most

faithfully personifies the symbiotic relationship between literature and life. Deyermond observes that the effect of romance on life “was even stronger than its literary influence” (239).

Accepting Deyermond’s statement as axiomatic, this article will examine the fascinating and problematic portrayal of the relationship between jurisprudence and fiction in Juan de Flores’s sentimental romance, *Grisel y Mirabella* (1495). In Flores’s romance, one can see reflected a moment in which the frontiers between law and literature were shifting and re-defining themselves. Flores’s work, which demonstrates an acute awareness of the relationship between fiction and romance, law and patronage, testimony and narrative, makes patent anxieties resulting from his personal knowledge of the similarities between fiction and legal practices during the final decades of the fifteenth century.<sup>1</sup>

The plot of *Grisel y Mirabella* is relatively simple. A Scottish king has but one child, a daughter, Mirabella. Although she has many noble suitors, her father refuses to allow her to marry. Because her beauty causes conflicts between knights and nobles, the king imprisons her in a tower to prevent her suitors from killing each other. Despite the king’s precautions, two knights secretly breach the walls of the tower in order to woo Mirabella, and when they realize that they are rivals, they fight a duel and one is killed. The victor, Grisel, becomes Mirabella’s lover. A disloyal maidservant reveals the pair’s illicit relations to her own lover, the king’s servant, who then tells all to the king. The king imprisons both Grisel and Mirabella.

An ancient law of the land demands the execution of the one most culpable for the illicit relationship, but even under torture, neither will blame the other. Unable to determine who should be condemned to be burned at the stake, the king arranges for a public debate. He invites two advocates, Torrellas and Braçayda, each to defend his or her gender and to prove the culpability of the other. After a lengthy and bitter debate, the all-male jury declares Torrellas the winner. The king sentences Mirabella to be burned according to the Law of Scotland. However, Grisel, who has been sentenced to witness the execution, throws himself on the pyre meant for Mirabella. With one of the lovers executed, justice is served and Mirabella is pardoned. However, filled with despair, she eventually jumps into the royal lion pit, where she is torn apart.

After the trial, Torrellas declares his love to Braçayda while secretly confiding to his friends that he intends to seduce and then abandon her. Braçayda and the queen, Mirabella’s mother, plan to avenge themselves and womankind. Braçayda lures Torrellas to a secret meeting place where the court ladies bind, gag and subject him to a mock trial while removing his flesh from his bones with hot pincers. After burning his remains, the women gather his ashes and place them in lockets around their necks as a symbol of their triumph.

From the first lines of the work, Flores makes it very clear that the concept of justice will be integral to this romance: “En el regno de Scocia huuo vn excelle[n]te

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<sup>1</sup> Gwara asserts that “Flores was appointed chronicler to the Catholic Kings on May 20, 1476” (1987a, 108) and “he almost certainly circulated freely in Fernando and Isabella’s company, and he undoubtedly had privileged access to information about public affairs” (1987b, 206).

Rey / de todas virtudes amigo. Y principalme[n]te en ser iusticiero. Y era tanto iusto: como la misma iusticia” (Flores 2).<sup>2</sup> The repetition of the words *iusto*, *iusticiero* and *iusticia* with reference to the king links this romance with contemporary legal practices. This is in fact the first time Flores unites the reality of contemporary legal practice with the ideal in this work. The second and most easily recognizable instance of the conscious examination of the overlapping functions of authors and advocates is that of the role of Torrellas, the Men’s Advocate. The king first consults with his *letrados*,<sup>3</sup> or court lawyers, who declare themselves unable to resolve the issue because of their lack of personal experience in the amorous arts: “que como fuessen personas mas dadas al studio / delas leyes q[ue] delos amores: que no sabia[a] / en aq[ue]lla caus-sa determinar la verdad” (Flores 2). This is, in itself, an interesting situation. Logic, or law, denies its own authority over subjectivity in the search for truth. Thus, the king, on the advice of his *letrados*, sends for a man and a woman experienced in love to represent each sex and to assist the crown in ascertaining who is more to blame, man or woman, and to decide the fates of Grisel and Mirabella:

E assí mesmo fue buscado en los regnos  
deSpanya hun caballero q[ue] para tal pleyto p[er]tenecia.  
Al qual llamaua[n] Torrellas. Hu[n] special hombre en el  
Conocimiento delas mugeres. Y muy osado en los tra-  
tos de amor. Y muy gracioso como por sus obras  
bie[n] se prueuaua. (17)

As I have stated previously,<sup>4</sup> the characterization of Torrellas is one of the most important stylistic elements in the text. It places the work in a specific cultural and literary context. Critics agree that Flores modeled the fictional Torrellas upon his real-life contemporary and sometimes literary rival, the Castilian poet Pedro de Torrellas (Matulka 95). Thus, Torrellas’ identity as both protagonist and possible reader of the text is one aspect of Flores’s narrative experimentation that has been the object of

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<sup>2</sup> For convenience, I have numbered the Academia Real’s 1954 facsimile of the 1495 *Grisel y Mirabella* starting with Flores’s dedication, designated as page 1, and continuing until the last page of the text, designated as page 68.

<sup>3</sup> This is one of the first of several instances in which Flores employs, by design or serendipity, a vocabulary that lends itself to either literature or law. For all questions of lexicon, I consulted the *Diccionario de Autoridades* and Covarrubias’s *Tesoro de la lengua castellana o española*. I also cross referenced legal terminology with *The Interpreter’s Companion* (Mikkelson), the reference used by state and federal court interpreters. For *Letrados*: “El docto en las ciencias. Se llama comúnmente a Albogádo” (*Dic. Aut.*). Also, the use of this term portrays a historical reality. The Council of Castile consisted of “a prelate, three caballeros and eight or nine jurists (*letrados*)” (Elliot 90). The composition of this council was to limit the power of the magnates.

<sup>4</sup> For a study on the effects of repeated translation on Torrellas’s role as an independent character, see Cathleen Tarp. For Flores’s use of independent figures, see Barbara F. Weissberger’s analysis of the use and effects of the presence of the independent characters, Pamphilo and Fiammetta, protagonists of Boccaccio’s *L’Elegia di Madonna Fiammetta* (66-67).

inquiry.<sup>5</sup> However, what has not been heretofore discussed is how Torrellas' dual roles as both advocate and author signal an awareness of the similarity between the role of lawyer and writer of romance.

Once again Flores inserts contemporary jurisprudence practices into his romance by assigning Torrellas the role of advocate, outside counsel brought in by the king to resolve a local legal question. As Elliot affirms, "there also appeared in some towns during the fourteenth century a new official known as the *corregidor*, who was chosen by the king and came from outside the municipality to assist the *regidores* with governmental matters" (94). This aspect of his identity is realized on several levels. First, Flores consciously recycles traditional romance *topoi* in new and inventive ways. The hero coming from outside to champion a cause is, in this case, mirrored, perhaps ironically, in the reality of the traveling *corregidores*, who were modern day paladins. The literary figure of the romance hero combines in Flores' work with the real member of contemporary legal bureaucracy to create a new representation of the romance adventure, thereby raising the legal to the mythical. However, the quest in this romance is not for an object, but for an abstract ideal. As Todorov notes, "the Grail narrative relates a quest; what is being sought, however, is not an object but a meaning" (33). Thus, the search for justice and the urge to define, to seek, and to explore the meaning of justice is the core of this work.

Secondly, it is also important to note that Torrellas, the *letrado* selected to take the role of the defender of men and *pesquisidor* of women, is also a writer, a dual role apparently played by Flores himself. "The same Juan de Flores who wrote *Grisel y Mirabella*, *Grimalte y Gradissa*, and *Triunfo de Amor*, and almost certainly, [...] *La coronación de la Señora Gracisla*" (Gwara 1987a, 108) was also *corregidor* / *pesquisador* "in Ávila during the late 1470's" (214-15) and royal chronicler to the Catholic Kings (108). Torrellas' identity as both author and advocate quickly becomes and remains a focal point of the text. When the narrator, first introduces Torrellas, he describes him thus: "y mucho gracioso como por sus obras / bien se prueuaua" (Flores 18) making a reference to the poet's real-life literary works. Torrellas himself makes references to his dual role as author and lawyer, and even goes so far as to indicate in his court statements that his sources, or *auctoridades*, for both his literary and his judicial endeavors are *one and the same* (emphasis mine). In fact, he cites his own works as evidence in the case, giving himself the status of an *auctoridad*: "Y por esto como ya otras veces dixen en alguna obra mia" (Flores 38). His attitude here is indicative of the end of medieval Scholasticism's dominance and the rise of Renaissance subjectivity. Torrellas and his own works, both literary and judicial, are his sources; the authority of both derived from his own personal experiences. Flores supports that role by granting Torrellas authority within the text as the hero, thus reaffirming that the search for justice is a mythical quest. Thus, Flores demonstrates that he is aware of the collective literary tradition, but is not himself bound by it.

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<sup>5</sup> "Flores had established a highly sophisticated literary paradigm: a fictional debate based on a contemporary courtly debate which was itself rooted in literature. It is not only an experiment in creative writing, but also a comment upon the integral role which literature plays in creating reality" (Tarp 12).

While it is not clear from the text itself what kinds of works Torrellas has written, it is generally accepted that the references to Torrellas' *obras* are references to the real-life poet's works of fiction:

In some cases Juan de Flores has laid in Torrellas' mouth almost the very arguments which the poet had used in his *Coplas* [...] he has Torrellas speak about his *obras* and refer to them for a more explicit statement of his case. (Matulka 146)

During the trial, there are several references to his role as an author and *auctoridad*, as when he says, "por lo qual segun que y a otra vez dixen en vn mi libro" (Flores 38). Further, Torrellas's repeated use of the terms, "*pregonar*" and "*publicar*" during the trial further emphasizes the connection between writing fiction and testifying, since these terms were used to express either making something public, as in testimony, or the act of publishing a text (Covarrubias 832). Thus a close relationship is established between his published literary works and his legal treatises; both are speech acts, both are narratives. Lastly, the equivalency between his roles as author and as Men's Advocate is irrevocably established when, in the brutal end of the romance, he is punished for his previously published misogynistic works as much as for his participation in Mirabella's trial and his intended seduction of Braçayda:

y alli practican-do las maldades dell. y trayendo ala  
memoria sus ma-liciosas obras: cadauna dezia ala  
Reyna que no les parecia que quantas muertes daquell  
mal hombre se pudiessen dar porque passasse largos años [...]  
y an-si vino a soffrir tanta pena delas palabras:  
como delas obras. (Flores 65)

Once Torrellas' identity as both author and legal counsel is clearly established, the text begins to bring into focus the creative aspect of each role Torrellas plays. The imaginative aspect of Torrellas' in-court testimony and previously produced works of fiction is apparent in Braçayda's remark that: "Ansí que crehet que venistes a fazer emienda de las cosas por vos contra las mugeres compuestas" (20). Braçayda speaks about his oral testimony given in his role as advocate as an opportunity to emend what he had written in his role as author.

The parallels between Torrellas' and Flores' roles as both writers of fiction and creators of legal treatises are not surprising given historical realities. Medieval schools of rhetoric did not readily distinguish between the skills and techniques needed to be a lawyer, historian or poet; the creation of fictitious narratives was an integral and natural part of any rhetorician's training. There were two types of legal fictions integral to the practice of law: the first was the use of hypothetical cases to demonstrate points of law, and fictions such as that encountered in Roman law, in which foreign litigants involved in litigation with a Roman citizen were temporarily

deemed to be citizens for purposes of convenience (Fitzpatrick 143); the second was the creation of fanciful legal cases which followed a development similar to that of romance, including shared subject matter:

Fictitious matters of dispute, which no longer had any connection with reality, were invented. A fictitious legal machinery and even fictitious statutes were assumed. Pirates and wizards were introduced to make these imaginary situations more exciting [...]. The Middle Ages regarded these fabricated lawsuits as fiction. (Curtius 154)

*Grisel y Mirabella* is an example of the second variety of legal fiction. It is a work of fantasy heavily mixed with current reality, designed to both entertain and propose thorny questions to be discussed and debated. The text continues to emphasize, perhaps negatively, the symbiotic relationship between the practice of literature and that of law. The qualities inherent to both disciplines, those very aspects which make literature so enjoyable –its flexibility, its creativity, its subjective interpretation– are those which make law suspect. By emphasizing the literary nature of law through his characterization of Torrellas, and by his assigning justice its grail-like status within the work, Flores is demystifying the ideal or *mythos* of law.

Flores questions the ideal of truth in justice by pointing out the creativity inherent in each discipline. Both advocates and authors rely upon oral narratives, written texts and oral debates to produce a cohesive whole. Both processes are inherently creative and re-shape materials to serve their own purposes. The importance of this last point becomes clear when Torrellas himself recognizes that rhetoric is a tool that can break in the hand. His own beliefs about women change as a result of his post-trial infatuation with his rival, Braçayda. However, although due to his desire for Braçayda he no longer agrees with his previous arguments, he understands that his prior misogynistic rhetoric will be used in perpetuity by others to support that which he himself no longer believes: “...Y quando alguno quiere contra las damas maldezir, con malicias del peruerso Torrellas se fauoreçe” (Flores 56). Texts, whether fiction or testimony, will eventually form part of society’s consciousness of itself and will, in turn, shape society. Those who shape texts shape their world.<sup>6</sup>

This is an important juncture in the text because it makes clear that rhetoric, far from serving truth or justice, is simply a tool to craft a result rooted not in logic but in the author’s or advocate’s subjectivity. An expert rhetorician can manipulate the facts to support a desired position, just as any author shapes his text to that form most pleasing to his audience. Eugene Vinaver points out this pitfall inherent in the study of rhetoric:

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<sup>6</sup> This also might be interpreted as a commentary on the *autoridades*. The selection of each authoritative text, or source, is dependent not so much upon the quality of the source upon the writer’s subjectivity. Those who hate women will automatically choose those texts that support their already formed opinion. This is an important criticism on the part of Flores of the process by which authority and authorities are created.

This method was bound to result in the remodeling of the matter itself, or at least of those parts of it which were at variance with the thoughts and feelings one wished to convey....the adaptor could become to all intents and purposes an original author...he would care above all for the way in which he told his stories and measure his achievement in terms of such new significance as he was able to confer upon the existing body of facts.  
(22)

While such manipulations benefit romance, they cast doubt on legal proceedings. As Braçayda remarks, clearly pointing to the arbitrary nature of rhetoric, “y vosotros, que teneys la pluma en la mano, pintays como quereys [...] publicais los yerros que no pensamos” (Flores 33). The “facts” in any case can be presented to support whatever the speaker wishes. This creative aspect of Torrellas’ testimony clearly reflects the imaginative, audience-responsive aspect of rhetoric. Both reader and juror are moved by the quality of the tale and talent of the teller. The reader becomes a juror just as the narrator becomes a lawyer, adapting his text to best influence his audience. Rhetoric was:

conceived as a means of conveying the speaker’s concept of the case, his way of looking at the case, his way of looking at the events and the people concerned [...] [and] adapt it to a given point of view [...] [and] bound to result in the re-modeling of the matter itself. (Vinaver 22-27)

Thus, both romance and legal treatises as well as testimony are innately creative. The Men’s Advocate is a writer, an author, a teller of tales, a narrator of fictions, a man of the law. The recognition of the similitude between writing fiction and the role of the advocate once again mirrors Flores’ own experience as both author, *pesquisidor* and royal *cronista*. As Howard Bloch states, the role of the writer or chronicler is, just like that of the inquisitor, “an attempt to capture the facts ... and to register the truth of the tale” (203). Flores’s text demonstrates that in this moment in time the division between the empirical, “fact, actual past” and the mimetic, “allegiance not to truth of fact but to truth of sensation and environment” (Scholes 3), or, history as opposed to literature, has not yet been established.

Lawyers such as Torrellas are creators of fiction in both the imaginary narratives they create and the truths they try to portray in the courtroom. Torrellas himself acknowledges that creativity played a large part in his role as advocate:

¡O maldicha seas, Fortuna, que ansi mi sentido priuaste: contra aquellas por quien todas las gentilezas y inuenciones se hazen, yo –peruerso, malo– inuencionaua malicias! (Flores 31)

The necessity of or motivation for re-shaping or remodeling a text in order to present it in a pleasing light is an important issue in the romance. Both the lawyer's and the writer's success and well-being depend upon gaining and maintaining the patronage of those with influence and money. From the beginning, in *Grisel y Mirabella* the line between advocate and performer is blurred through the liberal mixing of the spectacle of court entertainment with the seriousness of a judicial proceeding, and by exposing what motivates each advocate. Both find personal glory the operative motivator, and only tangentially desire to assist Grisel or Mirabella. Both advocates are feted and promised economic reward and royal patronage for their performances:

...fueron magníficamente recibidos [...]. La Reyna, madre de Mirabella, fizo grandes fiestas a Braçayda que ellas, por si, fueron dignas de scripturas memoradas. Y esto fazia la reyna por la tener mas contenta y por que mas en cargo tuuiesse la offiença de su fija [...]. Y ansimesmo el Rey fijo recogimento a Torrellas, pero, por que no se mostrasse parte de los hombres o de su fija, non le fazia fiestas tan sobradas. Pero muchos caualleros que para ver aquell acto alli maiuntados muy magnificos se mostraron en el recebimento de Torrellas. Al qual com muchas dadiuas y valerosas joyas le recebian. (18-19)

Thus, both Torrellas and Braçayda receive gifts and praise so they will perform to the best of their abilities. The lawyer who hopes to be well compensated for his efforts would try much the same to please a royal patron as would a *trovador*. As Cummins notes regarding the courtly oral debate, "It was [...] in the poets' interest that the King and courtiers be amused; skillful debating [...] would be rewarded with reknown and by material benefits" (308). The text makes clear that justice is an abstract value, whose merit would be evaluated by the audience's response.

In addition to characterization of the similitude between the practice of law and literature as professions, the text demonstrates similarities in the rhetorical devices utilized in both disciplines. In fact the two areas are so closely related as to be nearly indistinguishable. Both professions shared a lexicon reflecting their transmission and position within the school of rhetoric. Considering that the literary debate was, for all intents and purposes, identical in form and function to the judicial debate (Murphy 114), it should not surprise anyone that the portions of the text devoted to representing this shared rhetorical device employ a vocabulary appropriate to it.

Flores has saturated the text with legal terminology (Von der Walde 1992, 1996). In fact, by design or serendipity, all of the protagonists themselves seem well versed in the language of law. For example, Grisel distinguishes between his *yerro*s –common crimes– and his *crime[n]* (12). The term, *crimen*, or *laesae maiestatis*, has a very specific legal sense in that it describes a grave offense against the king or God (Covarrubias 367). Grisel also informs his rival knight, "*hallo causa yo que tan iusta sea,*" (Flores 4) and the other knight replies, "*y non quiero con vos ninguno pleito*"



(5). The term, *pleito*, means “litigio judicial entre partes” as well as “batalla que se determina por las armas” (*Dicc. Aut.*). Words such as *hallar*, *pleito*, *publicar* and *pregonar* have both legal and literary connotations, depending upon the circumstances. Others including, *crimen*, *no ha lugar*, *dar fe* and forms of *fallar* pertain solely to the rhetoric of jurisprudence.<sup>7</sup> I have included in an appendix a list of legal terminology used in *Grisel y Mirabella*.<sup>8</sup>

Let us now consider rhetorical devices employed by both authors and advocates. Flores emphasizes that the rhetorical devices used by writers and lawyers are identical. The first is the debate, or *disputatio*. The debate, the maximum representation of medieval dialectic, influenced all forms of formal discourse. “Apparently every medieval university student underwent some form of the disputation process, either as an integral part of his classroom work, or as a form of examination” (Murphy 102). These classroom exercises became a model for writing since the debate was considered to be “the principal source of all eloquence” and useful not only to rhetoricians, but “writers on the arts” (105). Thus, the methods and objectives personified by the debate and inherited from the rhetorical tradition were held in common by both students of law and of literature and constituted what today we call persuasive writing.

Flores uses the debate as both the theoretical and structural basis for this work. As Régula Rohland de Langbehn affirms, “todo este material es discutido por los personajes de las obras y se inserta en ellas motivando el progreso de la acción” (575). Apart from *Grisel y Mirabella*’s place within the courtly debate tradition, this work’s most prominent structural feature is the series of debates. Mercedes Roffé puts the count at four: “El encuentro inicial de los dos caballeros, el combate de generosidad, el juicio de los abogados y la disputa entre el Rey y la Reyna frente a la sentencia contra Mirabella” (45). Flores integrates the debates into the narrative structure itself. Each debate and its failure precipitate another temporal sequence. Flores offers the first implicit *sic et non* while setting the scene for the plot’s development.

I contend that there is another debate, cleverly camouflaged as a simple narrative passage imbedded in the text: the controversy over what to do with marriageable daughters. In describing the king’s dilemma, the narrator couches his retrospective version of the king’s woes in debate form, pitting the King’s position on marrying his daughter against the judgment of the narrator. This debate maintains the integrity of structural and dialectical elements established normative to this device and established in the universities of the time (Murphy 105):

**Step 1:** The Master poses a question, *Sic et Non*?

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<sup>7</sup> “*Fallar*” is, in fact, a form of *hallar* used only in a legal context. The preponderance of terms identified by the *Diccionario de Autoridades* as originating from and being used mainly in the *fueros* of Aragon is an interesting aspect of the text that merits further investigation.

<sup>8</sup> For purposes of comparison, I offer, in that same appendix, a list of the same from *Grimalte y Gradissa*, another Flores work, in order to show that the legal-vocabulary employed by Flores in *Grisel y Mirabella* is not simply a characteristic of his writing style.

**Step 2:** Proposition in answer by a senior student.

**Step 3:** Objections to proposition by another senior student.

**Step 4:** Determination by Master (*determinatio*).<sup>9</sup>

The narrator gives a retrospective summary of the conflict faced by the king: Is it better to wed his daughter to an unsuitable suitor, or to not marry her at all?

**Quaestio:** ...is it better to marry one's daughter or not to marry her at all?

**Opponens:** The king

**Reason 1:** no one in the kingdom is worthy of her

**Reason 2:** she is my only heir and so cannot marry away from the kingdom

**Reason 3:** I love her too much to let her go

The king weighs his options and locks his daughter up in a tower. The narrator, taking the role of *respondens* criticizes this poor decision:

**Respondens:** The Narrator

**Sed contra:** y como ya muchas vezes acaheçe quando ha dilacion en el casamiento delas mujeres: ser causa de caer en verguenças y yerros: Assi a esta despues acahecio. (Flores 3)

The pattern, which establishes the narrator as *respondens*, is repeated passim. In these narrative segments, the narrator takes the master's role and presents a question and records the protagonists' responses. At times he summarizes the events and interprets the actions. In doing so, the narrator effectively re-frames or glosses the events for the reader, thereby mirroring Torrellas' own creative testimony. Traditionally, this practice of commenting, so common to biblical and Scholastic studies, served to clarify texts and to aid in their interpretation. However, in this instance it does not work that way. By continually re-spinning his tale, he does not simplify the reader's role, but rather complicates it. The narrator's constant re-telling of texts already existing or his refusal to relate all he knows produces several different versions, sometimes conflicting, of the same piece of information. Just as in the case of *Genesis*, the reader must choose between versions by judging each upon what is more pleasing. The necessity of choice places Flores as the master and the reader as *respondens*.

Another aspect of the debate's role in the text is the apparent distance between the case at hand and the advocates' arguments offered in defense of each sex. From the beginning, it seems that the advocates do not address the particular case of Grisel and Mirabella. In fact, it appears that they are not concerned with defending either of the

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<sup>9</sup> It is important to note there is a true and official *determinatio* only in the *juicio* between Braçayda and Torrellas.

accused. Arriving at court, Braçayda tells the queen in a very blunt fashion that Mirabella's case is not why she has come to Scotland. In fact, she has no pity for Mirabella, but has come to defend womankind in general:

...alo qual respondio: que ninguna necessidad sera en cargar gelo ni mandar gelo: que ella mucho en cargo lo tenia: y ahun *que* la compassion y peligro de Mirabella no la mouiesse a piadad: la moueria el general amor delas mugeres todas. y solo *aquell* desseo de saluar las de qúantas malicias los hombres contra ellas dezian. por lo qual se quizo poner al cargado camino. (18)

For the men, defending Grisel is not as important as maintaining their ascendance over the women and by establishing their authority to do so, "*que* si de alli quedassen condemnados: para siem-pre con las mugeres quedauan perdidos" (19).

The content of the *disputatio* between Torrellas and Braçayda, specifically the lack of connection to the specific case at hand, is a topic of discussion among critics. The fact that neither the Women's nor the Men's Advocate even mentions the particulars of the case is significant. First, it is true that this central debate "se amplia así a las dimensiones del debate general" (Beysterveldt 4) but what is of greater interest is the very fact that it is formulaic, archaic, and the *razones* are indeed disconnected from the case at hand. As Jorge Checa affirms, "su debate implica la traslación de un problema concreto –quien es más culpable, Grisel o Mirabella– a un plano universal –el hombre o la mujer" (372). The seemingly arbitrary nature of the arguments, *razones*, that Torrellas has used to both attack and defend women, is exactly the point, a clear depiction of contemporary judicial practices:

The function of the feudal court was essentially commemorative. Its public, oral, and formulaic procedures were designed to recall the practices of the past in order that they might be applied to the situation in the present. They were in no way intended to judge an individual cause according to its particular merit....Based upon formula, gesture, and ritual, the procedures of the feudal court resembled more than superficially the literary performance. (Bloch 3)

It is precisely this generalizing tendency within contemporary legal practice that Flores rejects. He further underlines the theoretical distance between the case at hand and the public debate by trotting out all of the time-worn, and sometimes ridiculous arguments which are part of the age-old, irresolvable debate. He reiterates how the arguments against women are the same used to praise them. In doing so, he emphasizes the relative nature of language and rhetoric. In the end, logic will not resolve this question. Instead, subjectivity and *interés* will interpret the value of each *razón*, as it has done since the beginning of the romance. This repetition of rhetorical devices which have no relation to the case at hand is not accidental. It forces the reader to make judgments

upon the rhetoric of justice and the constant occurrences of what the reader has to perceive as injustice. In other words, Flores has created a text in which “the event itself is less important than our perception of it” (Todorov 31).

Apart from the structure and methodology that rhetoric provided to both disciplines, the debate represents yet another link between the creation of legal treatises and fictional texts: each is a consciously constructed narrative with an ideological agenda serving specific and sometimes complementary purposes.<sup>10</sup> As McCarthy states, “Both legal and literary texts [...] [offer] ideological suggestions as to what marriage is, and how people ought to act in relation to it” (2). In *Grisel y Mirabella*, Flores pairs elements that once played an active role in the medieval legal system, but that by 1495 were reduced to romance *topoi*, with the contemporary rhetorical devices that had displaced them in the field of jurisprudence. The use of the Trial by Ordeal as a counterpoint to the legal debate is an excellent example of this technique.

The juxtaposition of the debate and the Trial by Ordeal indicates, perhaps, an understanding of the author of the relationship between these two judicial rites. As Bloch affirms, “the epic ordeal of battle is reduced within romance to the proportions of a single hand-to-hand combat occurring outside the bounds of the social community” (199). The hand to hand combat was later reduced in the [sentimental] romance to the debate (Murphy 124).

The first juxtaposition of the debate and the Trial by Ordeal is that of the two knights who first attempt to resolve their conflict by debating over which loves Mirabella more. When logic fails, they resort to combat to resolve the issue. Later, when the verbal Combat of Generosity between Grisel and Mirabella fails to resolve the question, the Trial by Ordeal is once again revived and the lovers are tortured in order to discover the truth. Death by burning was commonly decreed for crimes of a treasonous or sexual nature, and torture, such as that experienced by the protagonists, was, as Peter Brown affirms, a degenerate form of the Trial by Ordeal (35). Grisel condemns himself to the same fate and leaps into the pyre. Upon his death, the queen and court beg the King to pardon Mirabella “pues que el cielo vino por marauilloso milagro dar muerte a quien le merecia, que contra la voluntad de Dios no diesse pena a quien no la mereçe” (Flores 35). Trial by Ordeal has superimposed itself upon trial by jury. The motif of the ordeal repeats itself in the repellent and savage Last Supper in which Torrellas, poet / advocate, is tried, convicted, then tortured, murdered, and reduced to ashes at the hands of the Queen and her noble ladies.

It is not accidental that each debate is mirrored by now fictionalized literary reflections of an older set of judicial rites. The Trial by Ordeal, once a valid and accepted part of the judicial process and common to the epic, is now recognized to exist only as a part of a larger fiction. This might well be said of the *ley d’Escocia*, another very real element of ancient justice preserved in this text as *topos*. As Brown

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<sup>10</sup> McCarthy agrees with Menuge, arguing that “we should break down distinct generic barriers which force us to view romance as literature and legal cases and treatises as legal history” (1-2); see also Menuge 21.

has stated, the elimination of the ordeal and its replacement by trial by jury represents a shift from consensus to centralized authority as lay rulers developed their coercive power (35). In this case it might even indicate a contemporary conflict such as that created by the imposition of a consistent and stable legal system on the traditionally independent Castilian municipalities. Thus, these seemingly “literary” acts of violence actually are, or were, “legal” acts, and their inclusion might indicate that whoever this Flores was, he understood not only the use of legal forms in literature, the parallel development of the disciplines, but also had more than a passing knowledge of the law, past and present. The injustice and brutality of these ancient practices is in line with Flores’s own support of the Catholic King’s judicial reforms and subsequent rejection of past models: “Asimesmo como sea cosa cosa çierta que [...] en cada çibdad hazian justicias no acostumbradas en la vida del pasado rey” (Gwara 1987b, 216).

Finally, both literature and law support, create, and promulgate cultural ideologies. The romance itself is a legal fiction depicting two conflicting ideologies: the values of society vs. personal desires or obsessions. The conflicting ideologies portrayed in the text, law in conflict with personal interests, manifest themselves within the text through the repeated coupling of ancient legal practices which have become literary *topoi*. What was law is now literature.

The interpretation of fragmented evidence or narrations helps to construct the final link between legal fictions and fictional texts. In Flores’s romance, the reader is forced to make choices regarding which narrative to believe as well as to consciously assess the motivations behind each participants’ actions. Flores begins by revealing the subjectivity behind all his characters’ actions. The *maestresala* who reveals the lovers’ trespass to the king is moved by duty or by envy. The king, introduced as “la misma justicia”, is shown to be ruled and to rule by either love of duty or by incestuous desire or jealousy of the queen’s loving their daughter more than she loves him. The queen herself ostensibly desires justice, but rejects the court’s findings as unjust and so seeks personal vengeance.

From the first pages of the text, the idea of interpretation based upon subjective experience is prized over a purely intellectual, objective approach. The king’s *letrados* need help interpreting the case at hand because they have no personal experience in a case such as this. After the lovers’ trial, the indication is that the jury, all male, made the decision to condemn Mirabella based more upon their own gender loyalty than on the facts. Just as literature has to be interpreted, so law has to be interpreted. Just as the readers must decide how to interpret the individual words used in the work, they must also interpret the facts as presented in the narrative. Once again, the parallel between legal practices and narrative practices comes to the fore. Lawyers read and interpret texts, and as such are both audience and critic. Judges and juries interpret evidence and make decisions based upon evidence they have heard or read. In *Grisel y Mirabella*, Flores insists that the reader interpret the text by offering different interpretations of the events, the motivations behind the protagonists’ actions, and the narrator’s own interpretations of the events in the case. Flores purposefully

emphasizes ambiguity where one would expect clarity. He seems to say that the ideal of objective justice is simply another fiction extant in the subjectivity of both author and reader, lawyer and jury.

When, in 1495, Juan de Flores presented *Grisel y Mirabella* to an increasingly sophisticated readership, Spain was just awakening to the distant Renaissance; internally Spain was still vibrating to the sounds of strife and armed conflict. *Grisel y Mirabella* is a product of that tumultuous time period in which:

Literature [becomes] synonymous with a discourse emanating from and belonging to a personalized self; the product variously of inspiration, imagination, genius, desire, neurosis, and dream ... law [comes]...to represent the collective discourse governing the relations between individuals or between individuals and the state. (Bloch 1)

It is my position that Flores, as writer of romance, chronicler, and royal *pesquisidor*<sup>11</sup> was well aware of the overlapping rhetorical and ideological foundations and practices between the roles of historian, novelist, and *justiciero*, and that this authorial self consciousness is the theoretical and structural foundation of *Grisel y Mirabella*. Flores demonstrates how rhetoric binds legal treatises to the world of fiction by integrating the debate into the very fabric of the narration, drawing parallels between the functions of narrative and those of juridical procedure, and blurring the line between poetics and justice. In *Grisel y Mirabella*, just as in *Grimalte y Gradissa*, Flores offers a set of explicit references to the relationship between those who create texts and the affects of those texts on society. It is not unreasonable to expect that the author who would reveal a consciousness of himself and others as “authors, readers, and characters of books” (Weissberger 65) in *Grimalte y Gradissa*, would also examine the parallels between those who create fiction and those who judge legal narratives. Taken in the context of the great changes to the national judicial system effected by the Catholic Kings, who were attempting “to re-introduce a stable legal system throughout the kingdom” (Gwara 1987a, 216), and Flores’s own condemnation of partisan justice, “que ningund corregidor, por principal cauallero qe fuese, no avia de usar de las toranias y codiçias del tiempo...nin perdonar delito por ningund creçido interese” (Gwara 1987a, 216), Flores’s romance, whether interpreted as a condemnation of personal, vigilante style justice on the part of the nobility or as a scathing commentary on the archaic and ineffective legal practices of the time, is in itself a highly sophisticated paradigm demonstrating an active awareness of the

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<sup>11</sup> This approach to the growing *corpus* of works attributed to the Flores is not completely novel. Gwara has already made use of Flores’ work as a royal historian as a way to determine “the prejudices and background of its author” (1987b, 215) and has identified several techniques, themes, and phraseology common to both Flores’ historical and fictional works. For *pesquisidor*, “El que hace pesquisas. Lat. *Questor*. *Quesitor*, or, *Juez*, el que se destina u envia para hacer jurídicamente la pesquisa de algun delito u reo” (*Dicc. Aut.*). For *corregidor*, “Corregidor. El que rige y gobierna alguna ciudad o vila de la Jurisdicción Real, representando es su Ayuntamiento y territorio al Rey” (*Dicc. Aut.*).

symbiotic, reciprocal nature of judicial process, literary creation, authority and ideology.

## Appendix

<i>Grisel y Mirabella</i>	frequency	<i>Grimalte Gradissa</i>	frequency
Acordar	1		0
Acuerdo	1		0
Acometer/acometieredes	1		0
		Acussar	2
Agruio	1		0
Alcalde	1		0
Allegar/alegar	4		0
Apelar/apello	1		0
Aponer	1		0
Auocados	1		0
Atorgar	6		0
Auctoridades leyes	1		0
Carga	1		0
Cargo	3		0
Caso	12		4
Causa	15		0
Comedo	1		0
Componer	1		0
Concluir	1		0
Condemnar	9		6
Conocedor	1		0
Conseja	1		0
Consejo	4		0
Crimen / criminoso	3		1
Culpa	21		15
Culpado	3		0
Culpar			2
Dar fe	1		0
Dar lugar	6	(a nuestros desseos)	2
		Danyos	6
		Defender	1
Defiença	1		0
Delliberar	1		0



<i>Grisel y Mirabella</i>	frequency	<i>Grimalte Gradissa</i>	frequency
Demandar/demanda	7		2
Descobrir(se)	2		0
Determinar	5		0
Diliación/Dilatar	1		0
Dilgencias	2		0
Disputar	2		0
Disolución	1		0
Drecho	3		0
Emender	11		0
Eerrado	1		0
		Errores	2
Examinar	2		0
		Execución	4
Fablas [fabulas] sustantivo	11		0
Faltas	1		6
Fallar/Fallasse (en su favor)	1		1
Haber lugar /Ha lugar	2		1
Hallar causa	5		0
		Hallar razón	1
Iniuria	7		3
		Iuzgar	11
		Iuzgado	4
		(de amor)	3
Iuezes	11		1
Iusticia	16		15
Iniusta/o	4		1
		Iustamente	4
Iusto/iustificado	10		3
Iuyzio	7		0
Iuramento	1		0
Justiciero	2		0
Letrados	3		0
Leyes	6	(de amor; gentilesa)	3
Manifiesto	4		5
Offiensas/offender	5		4
Pena	36		22
Pesquisa/pesquiza	2		0
Plazo (de muerte)	2		0

<i>Grisel y Mirabella</i>	frequency	<i>Grimalte Gradissa</i>	frequency
Plegar	1		0
Pleyto/pleito	7		0
Pregonar	2		0
Preguntar/ado:	1		0
Prouar/prueua	9		0
Propuesto	2		0
Publicar/publicado	10		37
Punir	1		0
Querellas	1		0
Razón	4		0
Remedio	9		0
Remmitir	1		0
Sentencia	5		0
Solicitud	1		0
Tractado/tractar	2		0
Trato	2		0
Trance	1		0
Trance de la batalla	2		0
Volver al propuesto	1		0
Yerro	19		0

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