https://doi.org/10.7203/Celestinesca.5.19529

"'EL TRIUNFO DE CELESTINA': THE GO-BETWEEN AND THE PENAL CODE OF 1870"

Noël M. Valis
University of Georgia

On the whole, Spanish law prior to the 1800's must be considered a harsh and highly punitive mechanism for governing the disorderly elements of society. A case in point is the legal status of the go-between, who could be flogged, tarred and feathered, thrown out of town, delivered into the hands of an outraged and dishonored husband, heavily fined, or even burned at the stake, according to Gothic Law and a variety of medieval *fueros*.[1] By the second half of the nineteenth century, however, celestinesque figures had acquired a modicum of legal acceptability, although it was not always reflected within society itself. In 1867, for example, a cuckolded Spaniard pressed charges not only against his wife but also against the presumed accomplice, her maid, who received a prison term of twenty-four months and was made to bear the burden of part of the court expenses for her duplicitous role in the affair. But on June 3, 1874, the Supreme Court overturned the earlier tribunal's decision because, it maintained, punishment of the go-between ran counter to Article 449 of the Penal Code of 1870.[2]

Though the Court agreed the maid's behavior was reprehensible and contrary to the dictates of morality, in abrogating the sentence, it, in effect, declared the go-between innocent or, at least, not guilty. What did Article 449 say that it should cause this rather stunning reversal of a judgment which clearly mirrored society's true feelings toward the role of the *celestina* in cases of adultery? And why, in particular, was the criminal code of 1870 cited in this instance? The legal history behind the 1870 code is illuminating. Until 1822 there was no Spanish penal code in existence, other than *recopilaciones* and *fueros*; and this first code, shaped by the precepts of the Enlightenment and the reformer Beccaria, lasted only a very short time. The 1870 measure is based on two previous attempts to codify criminal law, those of 1848 and 1850, and is considered the most important reform effected in this particular branch of Spanish law for two particular reasons: its incorporation of some of the principles of the Glorious Revolution of 1868, and its systemized, orderly, and even elegant presentation of crimes and their punishment. It is significant that the code continued to be, with very minor changes, the same code

in effect during the Second Spanish Republic, and that it still constituted the foundation of criminal law during the Franco era.[3]

Early reception of the 1870 Penal Code was in general extremely favorable, but by the 1880's criticism, in the form of newspaper articles, books, and a series of legal drafts or *proyectos* intended to improve the code, was now heaping abuse on the presumed defects and omissions of that very same legislation.[4] One of its severest critics was don Luis Silvela de Le Vielleuze, at one time a professor of law of the University of Madrid. Brother of the Conservative politician Francisco Silvela, don Luis was a highly respected jurist, a deputy and a *senador vitalicio* in the Spanish Parliament, a writer, and a contributor to *La España Modern*, *El Imparcial*, and other journals of the day. He died on May 2, 1903.[5]

On August 30, 1880, Silvela, under the anagram of "Elías Visllú," inaugurated in *Los Lunes de El Emparcial* a series of highly critical articles on the Penal Code of 1870. The second of these, entitled "El triunfo de Celestina," appeared on September 27, 1880, and like the others in this series was later reprinted in Silvela's book, *El código penal y el sentido común* (Madrid, 1886). In this piece, the eminent jurist explains why Article 449 of the code is legally flawed in its position toward the supposed culpability of the go-between in acts of adultery.

Article 449 declares that "no se impondrá pena por delito de adulterio, sino en virtud de querella del marido agraviado. Éste no podía deducirla sino contra ambos culpables, si uno y otro vivieren, y nunca si hubiere consentido al adulterio o perdonado a cualquiera de ellos."[6] As Silvela lucidly points out, the key words in the article are *sino contra ambos culpables*: as interpreted in the Supreme Court decision of June 3, 1874, and as understood by lawyer Silvela, this means a retaliatory husband can initiate a complaint only against the offending wife and her lover, if both should be living at the time. No mention is made of a possible accomplice, such as a go-between. Thus, in effect, the law, by its omission, has winked an eye at the hoary institution of the *celestina* in nineteenth-century Spanish society.

To prove the law wrong Silvela sets up a fictitious case of adultery and *tercería* in his piece, a case in which he sympathetically (and somewhat humorously) juxtaposes the helplessness of a forgiving victim-husband to the scheming culpability of the celestinesque maid-accomplice. What is of particular interest in lawyer Silvela's critique is the quasi-fictional form it takes in "El triunfo de Celestina." It is not mere happenstance that the almost *costumbrista*-like sketch appeared first in the literary section of the prestigious Madrid daily, *El Imparcial*, i.e., *Los Lunes*. As the author himself satirically points out in a series of invented letters which passed between *alter ego* "Elías Visllú" and don Luis Silvela, "cuando aquellos artículos aparecieron en la hoja literaria del periódico a que se refiere, no pudo menos de causarme el más profundo asombro el ver tratados de un modo frívolo y ligero los problemas más oscuros y difíciles del derecho penal."[7] It was not as though nineteenth-century Spanish readers were no longer accustomed to the decisive role a go-between could play in affairs of the heart. Ramón Mesonero Romanos provides a juicy

example in la madre Claudia of his 1838 sketch, "De tejas arriba" (*Escenas matritenses*, Serie II). And celestinesque characters continue to appear after that date in, for instance, Benito Pérez Galdós' *La de Bringas* (the maid Celestina; 1884) and José Ortega Munilla's *Cleopatra Pérez* (doña Leticia; 1884). But in the case of Luis Silvela's invention, though the piece is structured as a narration, it is ultimately the didactic element which predominates, as the *moraleja* tacked on in the form of a concluding remark reveals: "Es decir--exclamó mi hombre,--que no hay remedio y que de todas maneras está asegurado el triunfo de Celestina" (p. 49).

Silvela prefaces his sketch with a quotation from Cervantes on the profession of the *alcahuete* (*Don Quijote*, Part I, Ch. XXII) and, then, using a first-person voice, launches into a meeting between the narrator-lawyer and an unknown, well-to-do gentleman "de cincuenta años, delgado, de aspecto tímido y triste, decentemente vestido, y aunque ninguna deformidad afeaba su rostro ni su persona, era ésta tal, que no dejaba de prestarse al rídiculo" (p. 38). Suspiciously Cervantine in appearance, the would-be client proceeds to tell his sad but familiar story of an unequal marriage between himself and a lovely, young, and penniless girl, who brings with her, as her only inheritance, an untrustworthy maid: "Si V. quiere,--says the narrator--la llamaremos Celestina" (p. 40). The unsurprising typicality of the client's subsequent tale of betrayal is enlivened by a number of realistic touches in the telling of it and in the good-humored though commiserative reaction of Silvela's first-person mouthpiece.

This invented case of adultery closely parallels in its outlines the real-life case cited in the 1874 Supreme Court decision, an instance which the narrator himself brings up in his discussion of the law's failure to castigate the *celestina*. ". . .Si la Celestina ayuda a la esposa a privar de la honra a su marido,--continues the lawyer--la ley pena a la mujer cuando el esposo agraviado se queja, y absuelve, aunque se queje, a la Celestina" (p. 46). The husband, who would like to forgive his wife but punish the maid, then declares: "Yo soy un ignorante, caballero; pero a mí eso me parece inicuo y monstruoso. Por ese camino vamos a llegar a lo que con mucho gracejo decía Cervantes: a considerar el oficio de las Celestinas como necesarísimo en la república bien ordenada, con número fijo, como los corredores y agentes, y que no se podrá ejercer sino después de examen previo, juramento y fianza" (pp. 46-47). Well, replies the jurist, the truth is, except in the case of minors (Art. 459 of the Penal Code), the go-between is free to exercise the profession in present-day society. And furthermore, he observes in an amusing exchange of dialogue (p. 48), it is not even possible to wreak vengeance on the go-between, for well-administered kicks and blows, no matter how justified they appear, are not admissible under the law (Art. 438).

Thus, society and the law in the latter half of nineteenth-century Spain clearly diverge in their perception of the acceptability of the *celestina* and her mediating role. Middle-class morality and the still-present obsession with husbandly honor clash with the imperturbable finality of the law's omission of *tercería* as a recognized crime. In cases of adultery, then, only the originators, or *autores*, of their fate--the lovers --are guilty and liable to punishment.[8] Silvela's argument against the

law's failure to make accomplices responsible was a persuasive one in "El triunfo de Celestina" because, in the time-honored fashion of Horace, he forged a hybridized instrument of delight and instruction, of document and story, and, in the process, provided us with yet another example of the enduring social, literary, and even legal interest of the Celestina character in Spanish life and letters.[9]

NOTES

[1] Claudio Sánchez-Albornoz, *España, un enigma histórico*, I, 4th ed., (Barcelona: Edhasa, 1973), pp. 473-80; José Luis Bermejo Cabrero, "Aspectos jurídicos de *LC*," in *LC y su contorno social. Actas del I Congreso Internacional sobre LC*, Ed. Manuel Criado de Val (Barcelona: Borrás Ediciones, 1977), pp. 402-03; and Douglas Gifford, "El mundo de Trotaconventos," in *El Arcipreste de Hita. El libro, el autor, la tierra, la época. Actas del I Congreso Internacional sobre el Arcipreste de Hita*, ed. Manuel Criado de Val (Barcelona: S.E.R.E.S.A., 1973), pp. 129-30.

[2] José María Pantoja, ed., *Jurisprudencia criminal. Colección completa de las sentencias dictadas por el Tribunal Supremo en los recursos de casación y competencias en material criminal*, XI (Madrid: Imp. de la Revista de Legislación, 1875), pp. 17-19.

[3] For background on nineteenth-century reform in Spanish penal law, see Eugenio Cuello Calón, *Derecho penal*. Rev. by César Camargo Hernández. Tomo I, Vol. I, 16th ed. (Barcelona: Bosch, 1971), pp. 146-59 (Ch. VIII). The best account of the 1870 code is Ruperto Núñez Barbero's *La reforma penal de 1870*. Acta Salmanticensia, Derecho, XXIII (Salamanca: Universidad de Salamanca, 1969).

[4] Núñez Barbero, Ch. VI ("Críticas"). The two most important legal reforms proposed, among several, were the *proyecto Bugallal* (1880) and the *proyecto Silvela* (1884), the latter draft named for Luis Silvela. None of these attempts at reform was approved by the *Cortes* (see Cuello Calón, Ch. VIII).

[5] See "Silvela, Luis," *Enciclopedia universal ilustrada europeo-americana*, LVI (Barcelona: Espasa-Calpe, 1978), p. 276.

[6] *Código penal de 1870* (Con las modificaciones introduicidas por el Gobierno de la República). Colección Juris, V (Madrid: [Compañía Iberoamericana de Publicaciones], 1931), p. 198. D. Salvador Viada y Vilaseca, in his *Apendice al Código penal reformado de 1870*, 2nd ed. (Granada: Imp. y Librería de D. José López, 1876), Cuadro Núm. 66, gives a wide range of the possible lengths and kinds of punishment for adultery, starting with the minimum of one month and one day to a maximum of six years of imprisonment and a full scale of fines.

[7] Luis Silvela, *El código penal y el sentido común* (Madrid: Tipografía de Manuel G. Hernández, 1886), pp. 11-12. Hereafter cited within parentheses in text.

[8] Pantoja, ed., *Jurisprudencia criminal*, XI, p. 18.

[9] Núñez Barbero observes that "la tesis de Silvela, por la habilidad con que fue presentada, se abrió camino en la doctrina y la jurisprudencia" (p. 64).

Una Celestina del siglo diecinueve.

Ilustración a "La Celestina" de El Solitario, o sea, Estébanez Calderón.

Madrid, 1851.

Firmada: Gimenez.

Parmeno: "Ella tenía seys oficios, conviene a saber: labrandera, perfumera, , maestra de fazer afeytes y de fazer virgos, alcahueta y un poquito hechizera." (auto I)

Celestina: "No me la nombres, fijo, por Dios, que se me hinchen los ojos de agua . . . "(auto VII).

Figura: Kathryn W. Wolfe
Fotos: J. T. Snow