

INHERITANCE LAW AND GENDER IDENTITY IN THE *ROMAN DE SILENCE*

ERIKA E. HESS

Conflicts concerning inheritance propel the plots of a number of medieval French romances. In the twelfth-century epic poem *Raoul de Cambrai*, Raoul's wrongful disinheritance by King Louis sets in motion the series of events that culminate in the long and bloody battle between the families of Raoul and Bernais, his former liege-man.¹ This conflict frames the poem's extended discussion of the relative authority and rights of the monarch and his vassal. In *La Prise d'Orange*, the threat of female inheritance helps to drive the plot of the conversion of the Saracen princess and to defend the northern French crusade and conquest of the south.² In Chrétien's twelfth-century romance *Yvain, ou le Chevalier au lion* and in the thirteenth-century prose romance *La Queste du Saint Graal*, an older sister's decision to disinherit her younger sister catalyzes the adventure. Because of the older sister's decision to disinherit her younger sister, the younger sister sets out on a quest to find the *chevalier au lion* and arrive in the court of Arthur in time to settle the disputed inheritance.³

Similarly, Heldris de Cornuälle's thirteenth-century Arthurian verse-romance, the *Roman de Silence*, also concerns an inheritance dispute between two sisters.⁴ But

¹ The twelfth-century epic poem is preserved in a thirteenth-century manuscript: *Raoul de Cambrai: Chanson de geste* (Paris: Firmin-Didot, 1882).

² See Sharon Kinoshita's reading of *La Prise d'Orange*, "The Politics of Courtly Love," in eadem, *Medieval Boundaries: Rethinking Difference in Old French Literature* (Philadelphia: University of Pennsylvania Press, 2006), 46–74. *La Prise d'Orange: Chanson de geste de la fin du XIIe siècle*, ed. Claude Régner, 7th ed. (Paris: Klincksieck, 1986).

³ For a discussion of various types of inheritance at play in *Le Chevalier au lion* and *La Queste du Saint Graal*, see Grace M. Armstrong, "Questions of Inheritance: *Le Chevalier au lion* and *La Queste del Saint Graal*," in *Rereading Allegory: Essays in Memory of Daniel Poirion*, ed. Sahar Amer and Noah D. Guynn, spec. no. of *Yale French Studies* 95 (1999): 171–92.

⁴ Heldris de Cornuälle, *Le Roman de Silence*, ed. Lewis Thorpe (Cambridge: W. Heffer & Sons, 1972). For other studies of the rule of inheritance in the *Roman de Silence*, see: Craig A. Berry, "What Silence Desires: Female Inheritance and the Romance of Property in the *Roman*

in the *Roman de Silence*, as in *Raoul de Cambrai*, it is a king's decision to alter the standard inheritance laws of his kingdom that sets the scene for the adventure to follow. Because of the king's change in the inheritance law in the *Roman de Silence*, a count is driven to undertake an unconventional solution in order to preserve his right to leave an inheritance to his heir. The count's solution to his inheritance conflict opens the door in turn to an extended discussion within the romance of the relative power of nature and nurture in gender formation and to an examination of the *natural right* to inherit.

Although the place and date of composition of the *Roman de Silence* are clearly pertinent to a discussion of inheritance law within the work, it is difficult to specify either with certitude. Lewis Thorpe notes that the language of the poem has a "strong picard flavour" from the northwest part of that territory, but is unable to determine why the author refers to himself as "de Cornuälle."⁵ It is similarly difficult to know the exact date of the composition of the *Roman de Silence*, which is the only extant work by Heldris de Cornuälle, or of the unique manuscript in which it is found, Nottingham, University Library, MS. Mi LM6, the "Laval-Middleton," "Middleton," or "Wollaton Hall" manuscript. Scholars' estimates of the date of composition of the romance vary from approximately 1225 to the late thirteenth century. Thorpe, who identifies lines 5779–6706 of *Silence* as a "free adaptation" of the prose Vulgate *Estoire Merlin*, sets the earliest date of composition of *Silence* at 1230, the approximate date of *L'Estoire Merlin*.⁶ However, Thorpe leans toward a later estimate of the date of composition, based on the language of the romance—which he states is "that of the second half of the thirteenth century"—and the "state of mind" of the author/narrator, who frequently criticizes the social conditions and "decadence" of his time in a manner "typical of the poets who were writing in the third quarter of the thirteenth century."⁷ In contrast, F. Regina

de Silence," in *Translating Desire in Medieval and Early Modern Literature*, ed. Craig A. Berry and Heather Richardson Hayton (Tempe: ACMRS, 2005), 191–206; and Christopher Callahan, "Canon Law, Primogeniture, and the Marriage of Ebain and Silence," *Romance Quarterly* 49: 1 (2002): 12–20.

⁵ *Silence*, ed. Thorpe, 15–16.

⁶ *Silence*, ed. Thorpe, 10, 14. In Felix Lecoy's "Corrections" of Thorpe's edition of the *Roman de Silence*, however, he disagrees strongly with Thorpe's analysis of the role of *L'Estoire Merlin* in the *Roman de Silence*. Rather, Lecoy, following Lucy Paton, argues that Heldris would have been familiar with an earlier version of the Merlin story and it is this version that we find in *Silence*, not the *Prose Merlin*: Felix Lecoy, "Corrections: 'Le Roman de Silence d'Heldris de Cornuälle,'" *Romania* 99 (1978): 109–25, at 110–12. I am grateful to F. Regina Psaki for directing me to information on dating the romance and the manuscript.

⁷ *Silence*, ed. Thorpe, 10, 13. Sarah Roche-Mahdi, Christopher Callahan, and Katie Keene also place the work in the second half of the thirteenth century. See Sarah Roche-Mahdi, ed. and trans., *Silence: A Thirteenth-Century French Romance*, Medieval Texts and Studies 10 (East Lansing, MI: Colleagues Press, 1992), xi; Christopher Callahan, "Canon Law, Primogeniture, and the Mar-

Psaki places the romance in the first half of the thirteenth century, citing “its narrative structure, its rehearsal of lovesickness, its connection to *De planctu Naturae*, its closeness to certain set-pieces in Chrétien de Troyes, and its play with the narrating voice (which resembles *Guillaume de Dole* more than it does later verse romances)” as some of the details that lead her to this decision.⁸

Attempts to date the manuscript Mi LM6 as a whole do not significantly clarify the dating of the romance. Frederick Cowper speculates that the manuscript may have been compiled for Béatrix de Gavre, on the occasion of her marriage to Guy IX de Laval, in approximately 1286.⁹ Thorpe agrees with Cowper’s argument, as does Keith Busby.¹⁰ Busby identifies thematic parallels between this possible context for the compilation of the manuscript and the overriding concerns with inheritance in the *Roman de Silence* and in *Ille et Galeron*, another work included in the same manuscript. As Busby notes, the topic of inheritance would have been of interest to Béatrix on the occasion of her marriage.¹¹ Yet, as Thorpe notes, the manuscript is written in “several different hands,” and includes works that may well have been composed prior to the date when they were compiled together, so dating the manuscript itself does not greatly help to date the composition of the *Roman de Silence*.¹² We are left with an imprecise understanding of the date of the composition as being some time in the thirteenth century, likely between 1225–1286.

The Legal Background

Historically, the eleventh and twelfth centuries were a period of tremendous change in inheritance laws in France. In his extensive work *L’Evolution du testament en France des origines au XIII^e siècle*, Henri Auffroy traced changes in French hereditary laws and customs from the time of the Gauls to the thirteenth century, identifying

riage of Ebain and Silence,” *Romance Quarterly* 49 (2002): 12–20, at 13; Katie Keene, “‘Cherchez Eupheme’: The Evil Queen in *Le Roman de Silence*,” *Arthuriana* 14 (2004): 3–22, at 10.

⁸ From private correspondence with the author.

⁹ F.A.G. Cowper, “Origins and Peregrinations of the Laval-Middleton Manuscript,” *Nottingham Mediaeval Studies* 3 (1959): 1–18, cited in *Silence*, ed. Thorpe, 11.

¹⁰ *Silence*, ed. Thorpe, 11–12; Keith Busby, “Reading in Context,” in idem, *Codex and Context: Reading Old French Verse Narrative in Manuscript*, 2 vols. (Amsterdam and New York: Rodopi, 2002), 1:367–484, at 415–16.

¹¹ Busby, “Reading,” 415–16. Busby notes also that the character Ille is Breton, and that Gautier d’Arras dedicates *Ille et Galeron* to another Béatrix, Béatrix de Bourgogne, empress of Germany. Additionally, Busby, who states that “the probable association of this manuscript with Béatrix de Laval arguably constitutes one of the keys to understanding its function and composition,” notes that the opening sequence of Mi LM6 is “strongly female in its emphasis” and that *Silence* and *Ille et Galeron* share numerous thematic links and references (416–20).

¹² *Silence*, ed. Thorpe, 8–10.

the sources of French medieval inheritance laws in Roman, Germanic, Visigothic, Burgundian, and canon legal traditions.¹³ Writing in the late nineteenth century, Auffroy notes that although the people of France had become increasingly centralized by the tenth century, territories and legal practices remained highly fractured for several centuries:

A l'organisation féodale de la publique correspond l'état coutumier du droit. Les races gallo-romaines et barbares se sont fondues en un seul peuple; mais l'unité de l'Etat franc a été brisée, et le sol s'est réparti entre une multitude de petites souverainetés territoriales, dont chacune observe un ensemble de règles juridiques, identique pour tous les habitants de son ressort, différent du droit des châellenies voisines, et résultant du mélange des traditions antérieures qui évoluent sans cesse sous l'action de la pratique et de la juridiction locales.¹⁴

This decentralized state created a situation in which kings or local rulers could create their own laws or alter traditional legal practices, leading to legal discrepancy, as we find in the *Roman de Silence*.

Questions of inheritance rights had been a topic of considerable interest to early Roman legislators. Roman legal writers had considered at length the limits of testamentary freedom, or the right of testators to leave a will (testament) of their own choosing, as well as the right of children and other close family members to receive a portion of that inheritance. In his chapter on medieval inheritance law, "Testamentary Freedom and the Inheritance Rights of Children," Charles J. Reid, Jr. describes key aspects of early Roman inheritance law, the modifications made by early Christian and medieval legal writers, and the importance of medieval canon law to both the clergy and lay people of the period.¹⁵ As Reid emphasizes, early Roman inheritance law established the structure of later, medieval inheritance law.

In late Republican Rome, the right to make a will was limited to Roman citizens, while those who were denied the right included the insane, the severely disabled (such as deaf-mutes), and women, except with the consent of guardians who would not themselves be affected directly by the will.¹⁶ Reid expands on the catego-

¹³ Henri Auffroy, *Evolution du testament en France: Des origines au XIII^e siècle* (Paris: Librairie Nouvelle de Droit et de Jurisprudence, 1899).

¹⁴ Auffroy, *Evolution*, 365.

¹⁵ Charles J. Reid, Jr., "Testamentary Freedom and the Inheritance Rights of Children," in idem, *Power Over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Grand Rapids and Cambridge: Eerdmans, 2004), 153–210.

¹⁶ Reid, *Power*, 155. As Reid notes, we find already in Roman law a variety of terms to describe the ability to make a will. Gaius, for example, in the *Digest*, referred to "the right of making a will" (*testamenti faciendi ius*), while Modestinus, also in the *Digest*, talks of a "faculty of making a will" (*testamenti faciendi facultas*), and the emperor Leo, in the *Codex*, referred to a "free faculty of making a will" (*testandi . . . libera facultate*), 155.

ries of those excluded from making a will, noting that they all suffer from reduced mental functioning:

Other groups excluded from testamentary capacity included those who had not yet reached the age of puberty; the insane, who might, however, make a will during a lucid interval; the ‘prodigal,’ i.e., spendthrifts who had lost the right to manage their own affairs; perpetual deaf-mutes, although an exception was made for ‘literate and learned’ men who subsequently lost their capacity for hearing or for speech; the blind; and those held captive by Rome’s enemies.¹⁷

Reid concludes his discussion of testamentary freedom by underscoring the importance to Roman society of managing and preserving property and thus the necessity to entrust this important function only to those capable of carrying it out in a thoughtful and thorough manner.¹⁸

Roman testamentary freedom, however, not only was a right and “solemn and sacred trust,” but also involved an obligation to provide for one’s offspring. As long as children demonstrated appropriate “piety” (*pietas*) toward their parents, parents were expected to respond in kind by honoring their children’s “natural right to inherit.”¹⁹ Indeed, the *lex Falcidia* (40 BC) required that testators leave one-fourth of their property to their children (often referred to as the “Falcidian fourth”).²⁰ If a testator chose to disinherit an heir, whether a son or daughter, the testator had to state clearly his intention to disinherit the heir rather than simply ignoring him/her.²¹ If sons, daughters, or other heirs had been disinherited, they could make a claim against their parents by saying that their parents were “not of sound mind” and for this reason had drawn up an ‘inofficious will.’ Whereas such a will might appear to be valid, it failed ‘the duty of piety’ (*ex officio pietatis*).²²

¹⁷ Reid, *Power*, 155–56.

¹⁸ Reid, *Power*, 157.

¹⁹ Reid, *Power*, 165.

²⁰ Reid cites an excerpt of Paulus from the *Digest* that summarizes the *lex Falcidia*: “This decree . . . recognized that testators had a ‘free faculty of bequeathing’ (*liberam legandi facultatem*) up to three-fourths of their estate. ‘All Roman citizens,’ the text went on, ‘shall have the right and power (*ius potestasque*) of conferring legacies of money or property’ on whomever they wished, provided the bequests be so given that ‘the heirs shall take not less than one-fourth’”: Reid, *Power*, 166. The amount of inheritance due to children who behaved with appropriate *pietas* toward their parents became known as the “legitimate portion” (*legitima portio*) or “due portion” (*debita portio*). Reid notes that Justinian used this term repeatedly in legislation found in the *Codex* and that the term acquired a specialized significance that was retained into the Middle Ages (169). Cf. also *Inst.* 1.1 (*suum cuique*).

²¹ Reid, *Power*, 166.

²² Reid, *Power*, 167. Reid notes that the justification for the claim—the insanity of the testator—was “a classic example of a legal fiction that served to reconcile the tension inherent

We find further examples of the reciprocal nature of Roman inheritance rights and obligations in the use of *fideicommissum*. According to Justinian's revision of the *lex Trebellionia* which governed *fideicommissum*, heirs were required to meet the terms of a testator's request to leave an inheritance to a third party, but the heirs could first withhold the Falcidian fourth before meeting these terms. The heirs to an estate were thus obliged to fulfill the testator's requests, but were entitled at the same time to retain the Falcidian fourth.²³

Late antique Christian writers preserved most of the structure of Roman inheritance law, but added a new social and religious dimension. For these writers, the right and freedom to make a will, the *testamenti faciendi ius*, ought also to support the church and help care for the poor.²⁴ Augustine, for example, in his sermon "On Christian Discipline" (*De Disciplina Christiana*), urged the wealthy man to provide for the poor as well as for his own family when making his will:

Behold one who is wanting, do you count him among your sons? Count your sons, and add one to your sons, your Lord. You have one son. Let [the Lord] be a second. You have two sons. Let Him be a third. You have three. Let Him be the fourth.²⁵

Initially, to help provide for the poor, the church became increasingly implicated in the administration of final confessions and last wills and testaments to the point of coercing the sick and dying to leave large sums of money to the church. Eventually, the abuses of priests and monks had become so widespread that a council of Paris curtailed their power in the early thirteenth century.

In medieval France, the legal traditions of the Roman, early Christian, and medieval legal writers thus combined with Germanic customs to create "a mosaic of legal practices," especially as concerns the rights of daughters and women to receive an inheritance.²⁶ Whereas Charlemagne's reforms during the eighth and

in a system that prized both testamentary freedom and an almost transcendent duty to transmit wealth to the next generation" (167). It is also important to bear in mind when discussing the inheritance right of children in Republican Rome that children were classified into three categories — legitimate biological children, adopted children, or illegitimate children — and each class of children had different possible inheritance claims.

²³ Reid comments on the importance of this law to later canon legal writers: "The *lex Trebellionia*, promulgated as a *senatusconsultum* in about AD 56, summarized by Ulpian in the *Digest*, established the basic framework for analyzing the relationship of the *fideicommissum* and the natural obligations testators had toward their heirs. Although this law underwent massive revisions by Justinian, the canonists nevertheless continued to refer to the legal principles represented by this decree as the 'trebellonian law': Reid, *Power*, 169–70.

²⁴ Reid, *Power*, 157.

²⁵ *Sermo de Disciplina Christiana*, 8, PL 40.674; cited in Reid, *Power*, 158.

²⁶ Kathryn Reyerson and Thomas Kuehn, "Women and Law in France and Italy," in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell (New York and London: Garland

ninth centuries had made it possible for daughters to share in the family inheritance and for widows to control their husband's or son's property,²⁷ historians differ in their analysis of laws governing female inheritance during the following centuries. Reyerson and Kuehn, who note that inheritance customs are "important roadmaps to the status of women under French law," state that early medieval French laws generally differed along a north/south division, with the laws of southern France being closer to Roman legal traditions and the laws of northern France being more aligned with Germanic common law. Reyerson and Kuehn identify inheritance laws as offering a particularly good example of the differences between legal traditions in the two regions and of the place of women in French medieval society, noting that the early Salian Franks, in the northern region, did not allow women the right of succession in real property, whereas the Visigoths in the south favored the equal division of inheritance between male and female heirs.²⁸ Additionally, the inheritance rights of urban and rural women within the same region often differed dramatically, as did the rights of women of different social and legal status.²⁹

Reyerson and Kuehn again stress regional variations in inheritance laws during the high and late Middle Ages in France, noting also that the right to a dowry could preclude the right to an inheritance:

Such practices continued to reflect a great variety of provisions from primogeniture in the male line, which excluded women entirely, to a system of equal division among male and female heirs, to a complex mixed system in the region of Paris which required the return of any property previously obtained before participation at equal levels in the paternal inheritance was possible. In towns of the south of France, urban statutes generally excluded daughters who had already received dowries from further participation in the paternal and maternal inheritance. In all of these cases, statutory or codified law determined the parameters of intestate inheritance. Through the use of last wills and testaments, which were especially common in the south of France in the High and late Middle Ages, the testator could make whatever arrangements he or she wished.³⁰

Highlighting the manner in which the system of primogeniture affected female inheritance, Helen Jewell notes that in medieval England, although a daughter or daughters generally could inherit if there were no sons, by the twelfth century the

Publishing, 1999), 131–42.

²⁷ Amy Livingston, "Powerful Allies and Dangerous Adversaries: Noblewomen in Medieval Society," in *Women in Medieval Western European Culture*, ed. Mitchell, 7–30, at 9. For evidence from England see J. Walmsley, *Widows, Heirs, and Heiresses in the Late Twelfth Century: The Rotuli de dominabus et pueris et puellis*, MRTS 308 (Tempe: ACMRS, 2006).

²⁸ Reyerson and Kuehn, "Women," 131–32.

²⁹ Reyerson and Kuehn, "Women," 131.

³⁰ Reyerson and Kuehn, "Women," 132.

amount of this inheritance had been significantly reduced.³¹ Shulamith Shahar states, however, in *The Fourth Estate: A History of Women in the Middle Ages*, that throughout medieval Europe while laws barred women from holding any public office not held as a fief, or from participating in government institutions, there was no such restriction against inheritance: women did inherit fiefs and thus occasionally even ruled over territories.³²

The political and economic power of medieval French women is the topic also of Theodore Evergates and Kimberly LoPrete's collection of essays. In the introduction to *Aristocratic Women in Medieval France*, a collection of essays describing French landholding women based on historical documents and texts from the mid-eleventh through the thirteenth century from various regions of medieval France (Blois-Chartres in the northwest, Champagne in the northeast, Flanders in the far north, and Occitania in the south), Evergates and LoPrete take issue with Georges Duby's well-known analysis of the declining power of women and the transformation of the aristocratic family beginning in the eleventh century.³³ Evergates and LoPrete state that their collection of essays reveals instead a picture of women with diverse experiences, holding a wide range of social and political roles:

It is no longer possible to depict well-born women as powerless in medieval society, marginalized by purported changes in family structure and growing public powers exercised by territorial princes. As the authors clearly demonstrate, aristocratic families continued to be viewed in cognatic or bilateral terms, with women regarded as full members of both their natal and affinal families. Women were never entirely excluded from inheriting and controlling property, not even fiefs, although the extent of their rights varied according to regional customs and familial circumstances.³⁴

Evergates and LoPrete underscore the power of medieval French aristocratic women, rather than any legal, political, or economic limitations imposed upon them. Yet, even if historical aristocratic women in France were "never entirely excluded from inheriting and controlling property," the fact that women's inheritance rights could

³¹ Helen Jewell, *Women in Medieval England* (Manchester: Manchester University Press, 1996), 22.

³² Shulamith Shahar, *The Fourth Estate: A History of Women in the Middle Ages*, trans. Chaya Galai (London: Routledge, 1990), 11–12. Shahar adds that when abbesses and noblewomen inherited an office along with a fief, they were able to exercise an uncommon degree of power: "In utter contradiction of the law, [they] wielded powers of government such as they never had in Roman or Germanic society nor in modern Western Europe before the twentieth century" (12).

³³ Kimberly A. LoPrete and Theodore Evergates, "Introduction," in *Aristocratic Women in Medieval France*, ed. Theodore Evergates (Philadelphia: University of Pennsylvania Press, 1999), 1–5.

³⁴ Evergates and LoPrete, "Introduction," 4.

vary regionally and according to “familial circumstances” opens a space for the literary exploration of this topic in medieval literature.

Inheritance Law in the *Roman de Silence*

In the prologue to Heldris de Cornuälle’s *Roman de Silence*, a king alters the traditional inheritance laws in his land by outlawing female inheritance. In this tale, the narrator tells of a disputed inheritance claim between twin sisters. Following their marriages, the husbands of the twin sisters each claim to have married the *older* twin:

Atant vint uns cuens en la tiere
 Ki avoit .ii. filles jumieles.
 .jj. conte esposent les puchieles.
 Cho dist cascuns qui a l’ainsnee;
 Por quant le uns a la mainsnee. (278–282)

Although one husband is willing to split the land, the other husband fears he will receive the smaller amount. A battle results as each husband fights for a greater share of the twins’ land:

Mellee i ot por son avoir,
 Car cascuns [violt] la terre avoir.
 Li uns le violt par mi partir.
 Li altres dist qu’il iert martyr
 Et vis recreäns en bataille
 Ançois qu’il a plain pié i falle. (284–288)

Others join the battle, and in the end King Ebain has lost so many of his men because of the inheritance conflict between the twin sisters that the king outlaws female inheritance in his land:

Or a li rois Ebayns grant ire.
 “Ahi! ahi!” fait il. “Chaielses!
 Quel duel por .ii. orphans pucieles!
 Que mes barons en ai perdus
 J’en sui certes moult esperdus:
 Mais, par le foi que doi Saint Pere,
 Ja feme n’iert mais iretere
 Ens el royaume d’Engletiere,
 Por tant com j’aie a tenir tiere.” (308–316)

The tale of the twin sisters and their disputed inheritance closes with the king’s denunciation of the husbands’ greed:

Escrire i fait: "Par covoitise
Tolt a maint home sa francise,
Et plus avoec quant s'i amort
Troter le fait jusque a la mort." (329–332)

This relatively minor incident is all but forgotten as the narrator moves on to other stories in the life of King Ebain and his vassal, Cador. The reader (audience) does not hear anything more about the inheritance dispute at all until Cador and his wife, Eufemie, await the birth of their first child. Cador informs his pregnant wife that, owing to a prior controversy surrounding a female inheritance claim, the king has ruled that women can no longer inherit in his kingdom:

"Devant le colp ai grant dotance,
Biele, que nostre engendreüre
Tort a femiele porteüre,
Se Dex tant done que il nasce;
Que li rois Ebayns pas ne lassce
Que femes aient iretage
A son vivant, por le damage
Des .ii. contes pas les jumieles,
Sin ont moult perdu les femieles." (1686–1694)

To circumvent this ruling, Cador devises a plan, before Eufemie has given birth, to conceal the baby's true sex. Cador explains to Eufemie that she will have only one attendant at the birth, a cousin of Cador's, who will announce that Eufemie has given birth to a boy, whether the baby is truly male or female:

Li dame si est ma cosine
Et somes trestolt d'une orine.
Cesti seule vos voel livrer
Quant cho vendra al delivrer.
Lequel qu'aiés, masle u femiele,
Par la dame me mandés, biele,
Que un bel fil avés eü,
Oiant trestols qu'il soit seü. (1743–1750)

Thus, even if the baby is a girl, they will raise her as a boy and hide her sex under boy's clothes:

Faisons li com un fil norir,
De priés garder et bien covrir,
Si le poons, del nostre engier.
Nus nel pora ja calengier. (1757–1760)

Cador chooses the Latin name of Scilentius for the baby, reasoning that if the child's "true nature" is ever discovered, they will change the final *-us* to an *-a* in the Latin name and Scilentia will assume her "natural" female gender. Cador explains:

Se nos le tolons dont cest –us
 Nos li donrons natural us,
 Car cis –us est contre nature,
 Mais l'altres [Scilentia] seroit par nature. (2079–2082)

The child is indeed born a girl, and the father carries out his idea of raising the child as a boy. Within the narrative frame of the *Roman de Silence*, the royal restriction against female inheritance creates a socioeconomic necessity that motivates the need to disguise an infant's sex, to raise a girl as a boy.

Although the child, named Silence, is raised as a boy and excels at the typical pursuits of noble boys of the time, the text makes clear that Silence is born female. Before Silence's birth, the narrator tells us that Nature has used a special set of molds to create the most beautiful and perfect girl possible. Nature attends to every detail and inscribes Silence's features on her face:

Les oreilles li fait petites
 Nature, ki les a escrites
 Les sorcils brun et bien seoir,
 Nul hom ne puet si bials veoir. (1917–1920)³⁵

The narrator establishes for Silence an unambiguous genesis and female body prior to her cultural inscription.

At the moment of Silence's birth, her father sees and acknowledges her sex and is "greatly pleased" with her beauty:

Li cuens s'en a forment vanté,
 Qu'il ne donroit mie une tille
 Desolte a un fil de sa fille,
 Car ainc ne vit si bieles cose. (2028–2031)

According to the narrator, in no way did Cador feel disappointed by Silence's sex; he would not have preferred to have had a real son, in spite of his intention to make of this child a "boy." Cador and Eufemie do, indeed, raise Silence as a boy, covering her in boy's clothes and educating her as a noble boy of her times. Silence maintains her cross-dressed identity until the end of the romance when she is stripped of her clothing as a result of a prophecy by Merlin. Silence is then identified as female and marries the king.

³⁵ See also ll. 1865–1868, 1882–1887, and 1900–1901 for Nature's creation of Silence.

In the *Roman de Silence*, the economic and legal settings provide a rationalization for Silence's cross-dressing. In a sense, Silence appears as a victim—an innocent victim of the economic law of the land into which she was born, a law that led to her father's unconventional solution. Silence inherits cross-dressing as a strategy that will enable her to inherit her father's wealth. In no way does Silence's cross-dressing imply a "lifestyle choice." Silence's cross-dressing is normalized; it is part of a "progress narrative," a narrative that explains an individual's cross-dressing as the result of the benefit or progress that it brings.³⁶

In French medieval narrative fiction of the thirteenth and fourteenth centuries, the cause of transvestism generally differs for women and for men: men usually cross-dress in order to have access to the woman they desire, whereas women do so in order to benefit from masculine privilege, such as inheritance, or to be able to travel alone.³⁷ Michèle Perret emphasizes that asexual transvestism typifies female-to-male cross-dressing in this literature.³⁸ Perret has also identified the instrumental role of the father in the transvestism of all four of the medieval, female-to-male transvestites that she studies: Silence, Grisandole (*L'Estoire de Merlin*), Yde (Huon de Bordeaux's *Yde et Olive*), and Blanchandine (*Tristan de Nanteuil*).³⁹

Silence does, then, *inherit* cross-dressing as a means to inherit her father's land, and the narrator takes pains to emphasize her female sex and beauty at birth. Yet Silence's masculine performance is so successful and convincing that the reader might almost forget about her sex, were it not for the ongoing debates throughout the work between the allegorical characters Nature and Nurture, the inner turmoil that Silence undergoes during adolescence, and the narrator's periodic "asides" regarding the conflict between her sex and her gender. These reflections and disputes repeatedly refocus the reader's awareness of Silence's blended identity and also occasion much of the humor in the work. While the characters and the narrator within the work argue at times over whether Silence is "really" female or male, the reader's privileged vantage point renders this discussion irrelevant: Silence exists textually as simultaneously female and male.⁴⁰

In the *Roman de Silence*, several passages stand out as highlighting in a particularly notable manner the reader's advantaged perspective and thus the awareness of Silence's compound identity. The first debate between Nature and Nurture (2500–2656) draws the lines of the argument between the essentialist and social constructivist points of view. Nature emphasizes Silence's female essence, especially

³⁶ Marjorie Garber, *Vested Interests* (New York: Routledge, 1992), 69.

³⁷ Michèle Perret, "Travesties et transsexuelles: Yde, Silence, Grisandole, Blanchandine," *Romance Notes* 25 (1985): 328–40.

³⁸ Perret, "Travesties," 329.

³⁹ Perret, "Travesties," 331–32.

⁴⁰ For further discussion of Silence's hybrid status, see Erika Hess, *Literary Hybrids: Cross-Dressing, Shapeshifting, and Indeterminacy in Medieval and Modern French Narrative* (New York and London: Routledge, 2004).

the great beauty that Nature took such care to give “her,” and outlines the problems that Silence will have in the future when other women desire the beauty that they see in this male figure:

.m. femes a en ceste vie
 Ki de toi ont moult grant envie
 Por la bialtet qu’eles i voient,
 Car puet scel estre eles i croient
 Tel cose qu’en toi nen a mie.
 Et tels est ore moult t’amie
 Qui te haroit de tolt le cuer,
 Se il de toi savoit le fuer,
 Qu’el s’en tneroit a malballie
 Que s’esperance estroit fallie. (2513–2522)

Nature then entreats Silence to give up “her” unnatural boyish behavior, to stop traveling the woods, hunting and shooting, and to stay indoors sewing, “for Nature’s customs demand this” (“Cho violt de nature li us” [2529]).

Nurture, on the other hand, insists that she has already completely denatured Silence, and that environment has more power than nature in determining human behavior:

Se jo ne fac par noretüre
 .m. gens ovrer contre nature. (2599–2600)

Nurture’s comments may at this moment in the narrative seem more accurate than Nature’s, since Silence is clearly functioning competently and convincingly as a male, while Nature’s concerns over an eventual romantic conflict seem misplaced. Yet the reader’s double perspective makes Nurture’s comments also appear unfounded. Since we have not had any indication of a miraculous transformation, there would be little reason to think that Silence’s performance had truly effaced “her” nature, “her” female sex. Nature’s vexation and apprehension appear as an attempt to assert her power over Nurture; Nurture’s remarks appear only as boasting. The reader sees that Silence exists as both male and female without much difficulty other than the need for secrecy required by the society in which s/he lives.⁴¹

The masculine and feminine gender markers of Silence’s Latin name (Scilentius/Scilentia) have stimulated much critical discussion, within the text and amongst contemporary readers, concerning Silence’s dual identity. Noting that the suffix *-us*

⁴¹ Much of the humor of the *Roman de Silence* also hinges on the reader’s double perspective. It is only from this vantage point that the reader can appreciate the comical element in lines such as the narrator’s description of Silence as *very nearly* a boy (“Quunque on en voit est trestolt malles [l. 2478]), as Psaki points out in the introduction to her translation of the *Roman de Silence*: F. Regina Psaki, trans., *Le Roman de Silence* (New York: Garland, 1991).

not only marks the ending of a Latin nominative but also signifies “custom” or “tradition,” Kate Mason Cooper refers to Silence’s Latin name, Scilentius, as “a form of hiding or disguise”: the *-us* suffix conceals her feminine nature, replacing it with masculine customs.⁴² Perret develops this line of thinking by reading a deeper level of meaning into the feminine *-a*, as well as the masculine *-us*, that parallels the division between Nature and Nurture: “Si l’on a bien repéré dans ces quatre vers que le suffixe *-us* représente l’usage, la culture (*Noretur*), on n’a pas toujours vu que *-a*, troisième personne du verbe avoir, représente ce qu’elle possède réellement de par Nature: son identité sexuelle.”⁴³ R. Howard Bloch, however, disagrees with this straightforward association of the Latin gendered suffixes with Nature and Nurture.⁴⁴ He points out that in later passages Silence describes the *-us* as against both custom (“Por cho que l’us est encontre us” [2541]) and nature (“Car cis us n’est pas natureus” [2554]).⁴⁵ Nonetheless, as Peter Allen emphasizes, Silence’s parents do not actually call him/her by either of the gendered Latin variants.⁴⁶ They use instead the French version of the name which designates no gender at all: “The French name the child’s parents choose for her masks with the genderless desinence *-e* the choice they would have been forced to make in Latin: ‘Silence’ is a nominal zero, a placeholder for a name.”⁴⁷ But whereas Allen sees an absence in Silence’s genderless name, which he relates to the theme of the lack of language or speech, one could equally assert a presence. The name ‘Silence’ incorporates both genders; it successfully elides the need to choose one or the other.

At the same time, Silence’s Latin names also inform the thematics of inheritance rights in the *Roman de Silence*. Whereas the text itself explicitly foregrounds the contrast between the final *-us* and *-a* of the masculine and feminine Latin variants, a closer look at the final *-ius* (“right”) of “Scilentius” works powerfully to underscore the concepts of natural rights and inheritance in the romance. When King Ebain changes the inheritance law in his kingdom to outlaw female inheritance, not only does he set the scene for Cador’s later cross-dressing of Silence, but he also violates a long-accepted *natural right*—the right for a testator to leave an inheritance to his heir and the right of that heir to receive an inheritance. Ebain’s decree draws into question his judgment as sovereign.

⁴² Kate Mason Cooper, “Elle and L: Sexualized Textuality in the *Roman de Silence*,” *Romance Notes* 25 (1985): 341–60, at 347.

⁴³ Perret, “Travesties,” 335.

⁴⁴ R. Howard Bloch, “Silence and Holes: The *Roman de Silence* and the Art of the *Trouvère*,” *Yale French Studies* 70 (1986): 81–99.

⁴⁵ Bloch, “Silence and Holes,” 86.

⁴⁶ Peter Allen, “The Ambiguity of Silence: Gender, Writing, and *Le Roman de Silence*,” in *Sign, Sentence, Discourse: Language in Medieval Thought and Literature*, ed. Julian N. Wasserman and Lois Roney (Syracuse, NY: Syracuse University Press, 1989), 98–112.

⁴⁷ Allen, “Ambiguity,” 105–6.

In an effort to trace the development of the phrase *ius naturale* from meaning “cosmic harmony or objective justice or natural moral law” to “a subjective natural right,” Brian Tierney has investigated the changing meanings of the Latin word *ius* in a series of articles and books.⁴⁸ Tierney notes that in classical Roman law, Julius Paulus defined *ius* as ‘what is right and good,’ which is similar to the language that Aquinas used to explain the term a thousand years later.⁴⁹ In the writings of the medieval Decretists, however, Tierney identifies a shift in the meaning of *ius naturale* to include additionally a subjective understanding of the term as a natural, individual right, “a faculty or ability or power of individual persons, associated with reason and moral discernment, defining an area of liberty where the individual was free to act as he pleased. . . .”⁵⁰ The association of individual liberty with reason and moral law was central to the Decretists’ understanding of subjective right, as Tierney underscores:

The medieval concern for subjective rights in practical everyday life reshaped the language in which discourse about natural right was conducted. By around 1200 many canonists were coming to realize that the old language of *ius naturale* could be used to define both a faculty or force of the human person and a ‘neutral sphere of personal choice,’ ‘a zone of human autonomy.’ But they did not, like some modern critics of rights theories, expect such language to justify a moral universe in which each individual would ruthlessly pursue his own advantage. . . . The first natural rights theories were not based on an apotheosis of simple greed or self-serving egotism; rather they derived from a view of individual human persons as free, endowed with reason, capable of moral discernment, and from a consideration of the ties of justice and charity that bound individuals to one another.⁵¹

Thus the new medieval concepts of natural rights did not include a free, unbounded, self-serving perspective of individual freedom, but rather a view of natural rights as tightly associated with natural moral law.

Focusing on the fluid social climate of the twelfth-century world of the canonists, Tierney emphasizes the pervasive concern for rights and the constant development of new rights:

⁴⁸ Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625* (Atlanta: Scholars Press, 1997), 46–47; idem, “Origins of Natural Rights Language: Texts and Contexts, 1150–1250,” *History of Political Thought* 10 (1989): 615–46; idem, “*Ius* and Metonymy in Rufinus,” in *Studia in Honorem Eminentissimi Cardinalis Alphonsi Stickler*, ed. Rosalio Castillo Lara (Rome: LAS, 1992), 549–58.

⁴⁹ Tierney, *Idea*, 46.

⁵⁰ Tierney, *Idea*, 54.

⁵¹ Tierney, *Idea*, 77.

Medieval society was saturated with a concern for rights. . . . The papal claim to 'rights of heavenly and earthly empire' (*terreni simul et celestis imperii iura*), included in Gratian's *Decretum* at *Dist.* 22 c. 1, gave rise to extensive theoretical argument among the canonists and to endless conflict in the sphere of real-life politics. . . . Since neither the spiritual nor temporal power could wholly dominate the other, medieval government never congealed into a rigid theocratic absolutism in which rights theories could never have taken root. Instead, in the vigorous, fluid, expanding society of the twelfth century, old rights were persistently asserted and new ones insistently demanded.⁵²

The issue of rights, as we can see in Tierney's work, was as urgent as it was fluid during the twelfth and thirteenth centuries.

Following the work of Tierney, Reid examines the impact that canonistic natural rights thought had on the structure of the domestic relations law of the twelfth- and thirteenth-century decretists and decretalists.⁵³ Reid notes that the language of the early Roman lawyers to describe inheritance rights often foregrounds the idea of the natural obligations and rights of the family, and views inheritance rights as a natural right of institution. In describing the importance of *pietas* in family relations, for example, the language of the Roman lawyers relied heavily on "naturalistic premises" and a belief in the "bonds of affection that must bind a family together."⁵⁴ However, as Reid point out, if children were expected to behave with "piety, honor, reverence, filial duty, and due deference," they could also expect to receive a portion of their parents' estate based on natural obligations and rights:⁵⁵

Paulus, for instance spoke of 'that which nature owes by way of inheritance.' The language and metaphor of naturalness was used as well in Justinian's legislation concerning inofficious wills. Thus a rescript of Justinian contained in the *Codex* condemned delays in the delivery of the amount 'naturally owing' (*debito naturali*) to an heir entitled to share in the 'Falcidian fourth.' Justin-

⁵² Tierney, *Idea*, 54–55.

⁵³ In addition to *Power over the Body, Equality in the Family*, see Charles J. Reid, Jr., "The Canonistic Contribution to the Western Rights Tradition: An Historical Inquiry," *Boston College Law Review* 33 (1991): 37–92; idem, "The Medieval Origins of the Western Natural Rights Tradition: The Achievement of Brian Tierney," *Cornell Law Review* 83 (1998): 437–63; idem, "Rights in Thirteenth-Century Canon Law: An Historical Investigation" (Ph.D. diss., Cornell University, 1995); idem, "So It Will Be Found That the Right of Women in Many Cases Is of Diminished Condition: Rights and the Legal Equality of Men and Women in Twelfth- and Thirteenth-Century Canon Law," *Loyola (Los Angeles) Law Review* 35 (2002): 471–512; idem, "Thirteenth-Century Canon Law and Rights: The Word *ius* and Its Range of Subjective Meanings," *Studia Canonica* 30 (1996): 295–342.

⁵⁴ Reid, *Power*, 168.

⁵⁵ Reid, *Power*, 168.

ian made use of the cognate expression *debetur ex natura* in *Novella* 1, which contained further legislation on the Falcidian share.⁵⁶

Justinian notes additionally that the invalidation of an inofficious will was done out of “‘respect for nature’ (*ad verecundiam naturae*),” and was available where those entitled to share in the ‘Falcidian fourth’ had been completely disinherited.⁵⁷

As the medieval canonists attempted to “revivify” the old Roman forms of inheritance law to apply them to the governance of the universal church, two decretals, *Raynutius*, issued by Pope Innocent III, and *Raynaldus*, issued by Pope Gregory IX, offered fundamental advances in the canon law of wills and testaments in the way in which they connected the language of natural rights to children’s rightful share in their parents’ estates.⁵⁸ In the first of the decretals, *Raynutius*, Pope Innocent III upheld the ‘legitimate portion’ (*legitima portio*) that was due to one of two daughters, saying that this debt was owed to her by ‘right of nature’ (*iure natura debita*).⁵⁹ In *Raynaldus*, Pope Gregory IX similarly ruled in favor of the natural right of children to inherit a share of their parents’ estate, as Reid explains:

Raynaldus . . . involv[ed] two brothers who attempted to divide an estate without taking adequate account of the ‘claim owing by nature’ (*naturae debitum*). Pope Gregory IX spoke of the necessity of keeping secure the right of institution created by the *lex Falcidia*. Gregory’s invocation of a ‘right of institution’ meant to refer to the share the offspring were entitled to claim in virtue of natural law. Taken together, the two decretals recognized the existence of a natural right of offspring to share in a statutory minimum of one-fourth of their parents’ estate.⁶⁰

⁵⁶ Reid, *Power*, 168–169.

⁵⁷ In *Novella* 115 (dated to A.D. 542, after the great plague of the sixth century), Justinian clarified the behaviors that could disqualify children from their natural share in the inheritance: “These reasons included the obvious: children who committed acts of violence against their parents, or who made an attempt on their parents’ lives were deemed ungrateful by law, as were children who became chronic criminals. The law also disapproved of certain sexual relationships within the family, especially incestuous ones. Thus a son who had sexual relations with his father’s wife, or with his stepmother, or with his father’s concubine, was thereby subject to disinheritance. . . . But by setting such limits, Justinian also made it evident that the usual frictions of family life were insufficient reasons for disinheritance”: Reid, *Power*, 169. For sixth-century documentary examples see J. Maspero, ed. *Papyrus grecs d’époque byzantine*, 3 vols. (Cairo: Musée égyptienne, 1911–1916; repr. Milan: Cisalpino-Goliardica, 1977), 1: no. 67097; 3: no. 67353. [also online at <http://scriptorium.duke.edu/papyrus/texts/DDBDP>]. See J. Urbanik, “Dioskoros and the Law (on Succession): *Lex Falcidia* Revisited,” in *Les archives de Dioscore d’Aphrodité cent ans après leur découverte*, ed. J.-L. Fournet (Paris: De Boccard, 2008), 117–42.

⁵⁸ Reid, *Power*, 170.

⁵⁹ Reid, *Power*, 170–71.

⁶⁰ Reid, *Power*, 171.

Hostiensis, in his gloss to *Raynutius* (found in his *Lectura*), extended yet further the natural right of offspring to inherit, stating that the share owing children might sometimes be one-third instead of one-fourth of the estate and that this share was 'a legitimate claim by right of nature' (*legitimam . . . debitam iure naturae*).⁶¹

In the fourteenth century, the canonist Johannes Andreae considered the problem of possible conflicts between the laws of new European kingdoms and principalities and the "canonistically-recognized" natural right to inherit. Johannes acknowledged that some secular legal systems might uphold rights and values that differed from those protected by canon law. He noted, for example that 'Gallican law' and the law of Sicily, which followed the 'law of the Franks,' granted substantial endowments to surviving spouses instead of surviving offspring. Provided that these provisions did not depreciate the third or the fourth owed by nature to the offspring, Johannes did not find them problematic.⁶² Reid notes that the concept of the "legitimate portion" became so widespread amongst medieval Romanists as well and medieval canonists that it became central to most European legal systems:

Although the medieval Romanists relied to a lesser extent than their canonistic counterparts on the language of natural rights, they nevertheless came to conclusions similar to their ecclesiastical brethren. The Falcidian fourth, whether understood, as the canonists conceived it, as the claim owing by nature, or as the Romanists thought of it, as a right of institution predicated on the civil law, became a central feature of inheritance law in the developing European common law. And indeed, this romano-canonistic synthesis would come to be shared by most European legal systems up to our own day.⁶³

Natural Rights and the *Roman de Silence*

Clearly, King Ebain's abolition of female inheritance in his kingdom in the *Roman de Silence* repudiates the *natural right* of Silence to inherit. That Silence should be allowed to inherit the family estate is upheld throughout the romance. As we have seen, Cador's solution to an eventual revelation of Silence's true sex underscores an underlying acceptance that Silence should be able to inherit her family's lands. Rather than expressing concern about the possible problems or dangers involved in deceiving the king and the rest of the world about Silence's identity, for example,

⁶¹ Reid, *Power*, 171–73. Reid emphasizes the medieval canonists' view of the "legitimate portion" as being a natural right: "Bernard of Parma, in the *Glossa ordinaria*, repeated at several points that the legitimate portion due heirs under the Trebellonian or Falcidian laws was a claim based on natural law. Innocent IV used similar language. By the time one arrives at the end of the thirteenth century, the term 'portion owing by right of nature' seems to have acquired the sense of a term of art" (173).

⁶² Reid *Power*, 173.

⁶³ Reid, *Power*, 179

Cador has stated that if Silence's true sex is ever uncovered, they will simply change the ending of Silence's Latin name from an *-us* to an *-a*—a simple act of renaming. The romance implies that it is fair and just that Silence, as the only offspring of Cador, inherit her family's estate. In contrast, King Ebain's decree outlawing female inheritance in his kingdom appears ill-conceived—a rash, authoritarian, and poorly-reasoned solution to the problems following the inheritance conflict of the twin sisters. Not only does Ebain's decree oppose the natural right to inherit, but it also appears insufficiently flexible to accommodate the situations that Ebain as king must confront. Prior even to the marriage of Cador and Eufemie, King Ebain himself has had to grant a special dispensation of his law in order to enable Silence's mother, Eufemie, to inherit the countship of Cornwall from her father, Count Renalt de Cornuälle. Ebain's rigid, inflexible, and *unnatural* decree draws into question his good judgment as king.

At the same time, the king's restriction against female inheritance creates an economic situation that motivates the need to disguise Silence's sex and to explore the roots of gender identity. Although the narrator and various characters argue for the power of either Nature or of Nurture in gender identity, the reader sees Silence as simultaneously occupying both roles: she is biologically female but performing successfully as a male. Silence's radical hybrid status throughout the romance functions as an intriguing and powerful force within the work. In the *Roman de Silence*, however, natural rights come into conflict with *natural* identity. If Silence were to assume her natural female gender in the course of the romance, she would be denied her natural right to inherit. In the end, Silence is stripped of her male identity and marries King Ebain, who restores female inheritance to his kingdom. The romance concludes with the restoration of order and the recovery of Silence's natural gender and thereby reinstates as well the natural right to inherit.