The Giving and Withholding of Consent in Late Twelfth-Century French Literature

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My investigations into the depiction and punishment of rape in late twelfth-century literature in northern France stem from a particular interest in some of the earlier branches of the *Roman de Renart*. One of these early tales recounts how Renart first committed adultery with the wolf's wife, Hersent, and then how, soon afterwards, he raped her, and was seen to rape her by her husband, Ysengrin.[1] There is also a closely related story, a sequel, in which Ysengrin and Hersent complain to Noble, the lion and King of the Animals, their feudal overlord, about this crime, and seek justice at his hand.[2] In my efforts to see how far these stories reflect or distort relevant legal practice and to assess some aspects of their authors' art, I have been examining the depiction of rape and the giving and withholding of consent in other tales, and exploring medieval law on serious sexual offences. What follows is in the nature of an interim report on the progress I have made in these areas.

The prologue to the Reynardian tale of adultery and rape contains a strong hint that it will be about men who fight over a woman and get involved in conflicts which are the result of their committing serious sexual offences:

> Seigneurs, oï avez maint conte
> Que maint conterre vous raconte,
> Conment Paris ravi Elaine,
> Le mal qu'il en ot et la paine:
> De Tristan ...
> .....
> Mais onques n'oïstes la guerre,
> Qui tant fu dure de grant fin,
> Entre Renart et Ysengrin ...[3]

The story which unfolds divides into two parts: in the first there is a scene of seduction and adultery, and in the second of rape. In the first part a prowling fox accidentally stumbles on the entrance to a wolf's

den and falls into it. The animal setting suddenly changes and we are in a castle, in the chatelaine's room where the chatelaine, Hersent, is nursing her young children. Renart, now a noble baron, is at first afraid; but Hersent is very welcoming and, within a short time, offers herself to him. He is delighted and, in an outburst of frenzied triumph after they have made love, throws the children - sons of the King's constable - out of their bed, urinates and defecates all over them, calls them bastards, and vandalizes the room. Hersent is left with a lot of explaining to do when Ysengrin returns home from the hunt. There is a terrible scene, but Hersent manages to explain everything away by describing Renart as an unprovoked aggressor. Ysengrin gets her to agree that they must declare war on Renart and attack him at the first opportunity. A week passes by. Out hunting together, Hersent and Ysengrin come across Renart. They promptly give pursuit, and Renart returns at high speed to his castle-den. Hersent outpaces her husband and, right on Renart's tail, pursues him into his den, but the entrance is too small for her. She gets stuck, half in, half out. Renart emerges from another passage and takes advantage of the situation. Hersent defends herself as best she can, with her tail:

> Il n'est ileuc qui la resqueue
> Fors que seulement de sa queue,
> Qu'ele estraint si vers les rains
> Que des deus pertuis deerains
> Ne pert un dehors ne dedens ...[4]

But to no avail:

> Et Renars prist la queue aus dens
> Et li reverse sor la croupe
> Et les deus pertuis li destoupe:
> Pui li saut sus liez et joianz.[5]

And while Renart enjoys himself, she cries out:

> Renart, c'est force et force soit![6]

A recent French translation of this line reads:

> Renart, c'est un viol. Eh bien, vas-y.[7]

(Renart, this is rape. Ah well, carry on). My own translation of this line would be:

> Renart, this is rape; let it be understood that
> it <u>is</u> rape.

The difference in sense and emphasis is all-important for, as I hope to show shortly, Hersent - and her creator - had the laws concerning rape in mind here.

Renart's assault on Hersent causes the whole den to echo; and when he has finished the first time, he begins again. Eventually Ysengrin catches them up and witnesses the coupling. He cries out:

> Haï, Renart, or bellement!
> Par les sainz dieu mar m'i honnistes.[8]

One notes that he considers himself to be the injured party, the one who is dishonoured. Renart quickly withdraws, insisting that he was really trying to do Hersent a service by extracting her from the narrow passage:

> Veez con Hersent est ci prise!
> .....
> Pour dieu, biau sire, ne creez
> Que nulle rien i aie faite,
> Ne draps levez ne braie traite.[9]

And he goes on to argue both his and Hersent's innocence, and says he is prepared to swear on oath, before Ysengrin's best friends, that this is so:

> Onc par cest corps ne par ceste ame
> Ne mesfis rien a vostre fame.
> Et pour moi et pour lui desfendre
> Partot la ou le voudrez prendre
> Un serement vous aramis
> Au los de vos meillors amis.[10]

Readers familiar with the Tristan story may well think there is some parodying going on here, and this may be so. Contemporary audiences would also, however, recognise an allusion to a controversial legal procedure. Ysengrin brushes aside both protestation and offer:

> Serement? traïtres prouvez,
> Voir pour noient i conterez ...
> .....
> Cudez vous que ne voie goute?
> En quel terre empaint on et boute
> Chose que on doit a soi traire,
> Con je vous vi a Hersent faire?[11]

Renart continues to use, ironically, arguments which relate to the nature of eye-witness evidence - he had to push Hersent, and repeatedly, to get her out, for the entrance to his den got wider as you went further in. In any case, a few days ago he broke a leg so he could only push, not pull. Thereupon Renart disappears down a hole out of Ysengrin's reach, leaving him to extricate his wife from her predicament. When he has freed her he rains blows and abuse upon her until she manages to calm him by clever argument, stressing that she was raped, not consenting, and that by laying charges at Noble the Lion's court they could get their revenge:

> Sire, voirs est, il m'a fet honte.
> Mes n'i ai mie tant mesfet
> Endroit ce que force m'a fet ...
> .....
> Ja cist meffez n'iert amendez
> Por cose que nos en dïon.
> En la cort Noble le lion
> Tient on les plez et les oiances
> Des mortex gueres et des tences:
> La nos alons de lui clamer.
> Bien le porra tost amender,
> Se ce puet estre champete.[12]

In the sequel (Martin's Branch Va) which tells what the wolves' charges were, and how they were presented and received, much is made of the nature of the evidence and the standing of the chief witness. In both baronial and royal feudal courts in late twelfth-century northern France, the judge (i.e. the presiding baron or king, or their chosen representative) hoped first and foremost for an admission of guilt. This was regarded as the best kind of proof. (Renart consistently denies the charges anticipated in Branch II and made at the royal court in Va.) Failing an admission, the judge preferred the oral evidence of reliable witnesses to the alleged crime. This means he preferred the evidence of noblemen of good standing, especially when supported by other noblemen of good standing (often kinsmen or close friends of the witness) sometimes called 'oath helpers'. (In Va much is made of Ysengrin's standing, for he is the king's constable and the only witness to the alleged crime.) Most relevant *Coutumiers* listed unacceptable, unreliable kinds of witnesses. These include convicted criminals, lepers, Jews accusing Christians, the excommunicated, non-believers, perjurers, anybody defeated in a judicial duel, women, children and serfs.

Failing oral testimony by reliable witnesses, the judge looked for written evidence by acceptable witnesses; i.e. by noblemen or by letters bearing a seal of authority. But this was considered inferior evidence. (There is in fact no attempt in the *Roman de Renart* to introduce written evidence.) Failing an admission of guilt, or oral or written evidence by acceptable and reliable witnesses, the judge would accept - but only in Normandy and Picardy during the period under consideration - a *serment purgatoire* with oath-helpers. Elsewhere this practice had fallen into disfavour, and was soon to do so in Normandy and Picardy. In Normandy this was known as the process of *deresne* (*diraisna*), while in other areas, and especially in Reims, it was known as *escondit* and the oath-helpers as *escondisseurs*. (Renart, it will be recalled, offers to make this kind of oath in Branch II, and in Va it is finally decided that he shall make such oath, with oath-helpers, and that Roonel the Dog shall be president of the court in place of Noble the Lion.) Lastly, failing all these other kinds of 'evidence', the judge might accept that of a judicial duel.[13] (This is not even considered in Branch Va, but it does seem as if Hersent thought - perhaps even hoped - the judicial duel would be acceptable to Noble since, at the end of Branch II, she refers to a form of justice she describes as *champete*, presumably justice determined in the *champ clos* of the judicial duel. Such a duel takes place only in Branch VI.)

From these more general considerations, let us turn to the specific crime of rape. Here it is particularly important to grasp the medieval concept of rape. Rape occurred when an unmarried woman was forced to have sexual intercourse against her wish, or when a legally married woman was forced by somebody other than her husband. She could not refuse her legally wedded husband. Apart from the fact that in some countries a woman can now bring, in certain circumstances, a charge of rape against her husband, this definition of rape may at first seem modern rather than medieval. The real difference lies in what is understood to be a legal marriage, and the social status of the man and the woman concerned.[14]

In general the legal position on almost any matter is difficult to ascertain for any one place or period. Did Germanic customary law, or did written Roman law prevail? If it was Germanic law, was it the customary law, of say, the Duchy of Normandy or the County of Flanders? Furthermore, is this a period and area where an *ordonnance seigneuriale*, a law promulgated by a feudal overlord, might be relevant and applicable? These began to appear in the eleventh century, and were quite numerous and really effective in the twelfth century. As

Beaumanoir wrote in his version of the*Coutumes de Beauvaisis*: 'Chascuns barons est souverain en sa baronie' and in the *Etablissements de Saint Louis* we read 'li rois ne puet metre ban en la terre au baron sans son asantement.'[15] Some barons and indeed some kings promulgated laws affecting marriage, and in the *Roman de Renart*, Branch Va, we hear the echo of one of these laws when Ysengrin complains to Noble:

> Vos feïstes le ban roial
> Que ja mariage par mal
> N'osast en freindre ne brisier:
> Renars ne vos velt tant prisier
> N'onques ne tint por contredit
> Ne vostre ban ne vostre dit.[16]

I must admit that I have not yet traced a twelfth-century royal proclamation of the kind apparently referred to here. Fortunately where marriage is concerned it seems that we do not have to take into account the laws which applied to particular towns or communes since, as far as I can discover, none of these affected the marriage laws embedded in either Germanic customary law or in written Roman law, or the laws issued by great feudal overlords. In this list of the different kinds of law which we have to take into consideration, I have left till last canonical law, at the height of its influence and power in the first feudal period (tenth to thirteenth centuries). Canonical law was immensely powerful by the end of the twelfth century in northern France (as elsewhere) where marriage is concerned. This fact considerably simplifies the otherwise complicated and complex, ever-evolving legal situation in the areas we think of as northern and central France.[17]

In *Le Chevalier, la Femme et le Prêtre*, Duby is at pains to show how, over two centuries (from the tenth to the twelfth) the Church concerned itself with marriage; and how, by the end of the twelfth century, its authority was, in this area, by and large, accepted.[18] And Chénon shows that the Church aimed above all, in the marriage contract, to establish the *consent* of both parties; and then having got its way in this, to impose its views on divorce, incest, polygamy and rape. Chénon also shows that customary Germanic marriage law slowly gave way in northern and central France to Roman law which had, by this time, also become *customary*; and this was done under the growing, powerful influence of canonical law.[19]

In early customary Germanic law, a woman became a wife when she was in effect bought by her future husband from her father. In short, she

became a married woman *when her father consented to her wedding* with a particular man. Agreement had to be reached only between these men, and what they had to agree on was the size of the sum involved. In later customary Germanic law the price of the woman became less important. Nevertheless, as Cecily Clark has recently shown, in the Anglo-Norman kingdom of 1180, lists of noble orphans and widows were kept at the royal court with the express purpose of ensuring that a large sum of money was obtained by the king (who was legal guardian of these orphans and widows) in exchange for their hand in marriage.[20] The important legal point in Germanic customary law was that, on payment of the agreed sum and the performance of a simple ceremony, the woman passed from her father's to her husband's jurisdiction. And here Germanic and Roman law coincided. In Roman law, however, not only did the woman's father have to agree to hand her over to a particular man, but the couple also had to agree to take each other, and to do so publicly.[21] (Up to the twelfth century the woman said nothing at the wedding ceremony; but by letting her father place her right hand in her husband's right hand, she in effect gave her consent. Only after the twelfth century was the woman allowed to signify her consent by saying a word or two in the vulgar tongue.)[22] In short, in Roman law, not only was consent required between father and future son-in-law, but also between bride and groom, and this had to be done before witnesses, and demonstrated to them if only by gesture. The marriage contract was complete when their public acceptance of each other was followed by the *deductio uxoris in domum mariti*.[23] Then, as in Germanic law, the woman passed from her father's to her husband's jurisdiction. In practice, however, the father's consent was *far* more important than the daughter's. If she did not accept the agreement her father made, he could make her life very difficult; and might even disown her.[24] Also as important as the daughter's consent, and possibly more important, was open and public acceptance of the marriage - Society's consent.[25] Clearly elopements were illegal. A man who eloped with a woman would be seen as an abductor, and her father would probably see him as a rapist.[26] One recalls the verb used by the author of the prologue to that branch of the *Roman de Renart* which is in part about rape when he recalls the story of Paris and Helen: 'Paris (qui) *ravi* Elaine'.[27]

Let us now consider the punishments which might be meted out to a proven rapist. In defining the medieval concept of rape I asserted earlier that the real difference between it and the modern concept depended primarily on what was understood by a legal marriage, and by the social status of the man and woman involved. Where the

punishment of a proven rapist is concerned, social status was all-important. In principle rape was a major crime subject to capital punishment. In this respect it ranked with pre-meditated murder, certain kinds of robbery, and arson.[28] But rape was a capital offence only if the victim was of noble birth, or the wife of a nobleman. It may be recalled that in Andreas Capellanus's *De Amore*, a treatise pre-occupied by class distinction, a nobleman is encouraged to rape a peasant woman if he lusts after her. Peasants, Andreas tells us, are naturally led to accomplish Venus's work as a horse and a mule accomplish it. If however a man who may serve in Love's court (i.e. a nobleman) is attracted by a peasant woman, he should, if a suitable occasion presents itself, take her by force (' ... si locum inveneris opportunum, non differas assumere quod petebas et violento potiri amplexu').[29] In passing, I draw attention to the fact that the only genre other than the courtly romance and the *Roman de Renart* in which rape is occasionally depicted in the period and place under consideration is the *pastourelle*, the lyric poem in which a wandering knight accidentally comes upon a lonely shepherdess: he beseeches her to love him, and she either refuses or consents; if she refuses, she is either rescued by nearby peasants who hear her shouts, or she is taken by force ... A man of standing, a nobleman, might with impunity rape a peasant woman, a woman of no standing - or so literary texts such as the *De Amore* and the *pastourelles* tell us. Conversely, in literary texts, one of the worst punishments or fates that men can think up for a woman of standing is to give her to men of no standing, to *vilains*, etc. for them to rape. For example, in Chrestien de Troyes' *Chevalier au Lion*, Yvain rescues a baron's daughter from the giant Harpin who threatens to give her to be the sport of the vilest and lewdest fellows in his house, for he would scorn to take her for himself. As the baron reports this to Yvain:

> ..... et quant il l'avra
> as plus vix garçons qu'il savra
> en sa meison, et as plus orz,
> la livrera por lor deporz,
> qu'il ne la deigneroit mes prandre.[30]

Later, hurling insults at the baron whose sons he already has in his possession, Harpin is reported to say:

> ..... il desfie
> ses filz de mort, s'il ne li baille
> sa fille; et a sa garçonaille
> la liverra a jaelise,

car il ne l'ainme tant ne prise
qu'an li se daingnast avillier;
de garçons avra un millier
avoec lui sovant et menu,
qui seront poeilleus et nu
si con ribaut et torchepot,
qui tuit i metront lor escot.[31]

This incident may remind one that the vicious raping of a noblewoman by a giant, and the punishing of the rapist, has an ancient and honorable pedigree in Arthurian romance. It first appears in Geoffrey of Monmouth's *Historia Regum Britanniae* and in Wace's *Brut* when King Arthur himself fights a giant called Dinabruc because he had taken prisoner a young beauty called Elaine, and raped her, causing her death. Arthur challenged the giant because of this misdeed and killed him in single combat. In so doing Arthur adds to his personal glory as does Yvain in Chrestien's story. I have not found any documentary evidence to prove that a noblewoman might be punished for certain crimes by being given to commoners as a kind of whore, nor have I uncovered any documentary evidence which proves that a peasant woman might not bring a nobleman to trial for rape. However, one may guess that Andreas's advice was within the law.

When one turns to the punishments which might be imposed on a man convicted of raping a noblewoman, one discovers that much depended on her marital status - virgin, widow or wife. If the size of fines which might be imposed is any guide, the least severe punishments were reserved for virgin victims; punishments considered to be of medium severity were imposed when the victim was a widow; severest punishments were imposed when she was married.[32] Much also depended on her character. If she was of good character, then the severest punishments reserved for each category (virgin, widow, wife) were likely to be imposed. If she were of bad character, her assailant might get off scot-free. In this connection, Heath Dillard has recently pointed out that in eleventh-century Castile 'women who ignore expected norms of behaviour lose the protections the law provides for women who adhere to standards set by the society. Thus, it is lawful to strike the shameless woman ... who insults verbally any person of repute, and it is permitted to kill her without penalty if it is discovered that she has slept with two or three men. Public prostitutes are totally without honour, and may be defamed or raped with impunity, but many fines result when an honorable woman is physically or verbally abused.'[33]

In the period which concerns us the convicted rapist of a noblewoman of good character would almost certainly be put to death, and he risked being physically maltreated, possibly tortured first.[34] The form of execution varied from place to place. He might be burned at the stake, drowned, hanged, broken on the wheel, decapitated or garrotted. The most vicious punishment I have discovered was imposed in thirteenth-century Germany where, if the victim, whether virgin, widow or wife, was forced into her violator's house and raped there, and if she shouted out for help and was heard by three people, not only was the rapist condemned to death, but every animal and every person in the house at the time of the crime. The law specifies what or who they might be in this order: oxen, horses, cats, dogs, hens, geese, ducks, pigs, and all other inhabitants of the house, male or female, young or old. The house was then to be razed to the ground.[35]

The punishment of rapists in literature generally and in Arthurian literature in particular seems rather swifter and more dignified than it was at law; that is to say they are usually killed in single combat by the victim's knight rescuer-avenger. Occasionally however, literary artists allowed their imagination to inflict punishments which I have yet to discover ever existed in the minds of their judge-contemporaries, as when, in Chrestien's *Conte del Graal*, Gauvain punishes the rapist Greoreas by making him eat with the dogs for a month, his hands tied behind his back.[36]

The reader will recall that, at the moment of Renart's sexual assault on Hersent, she cries out:

> Renart c'est force; force soit!

It seems to have been very important for the woman to cry out as she was attacked, and if possible to name her assailant.[37] It is not only mentioned in customary laws (such as the one referred to above which prescribes the killing of everything and everybody in the violator's house) but also in sermons. Speaking of the example of the woman who did not defend herself and did not cry out at the time of the attack, one preacher imagines himself asking her, on this last point, 'how loud did you shout?' and when she answers that she did not shout out at all, he says she was at fault not to do so.[38] Then he imagines the case of a woman raped by a man of great strength who held his hand over her mouth, and raped her in the open country out of earshot and sight: provided she defended herself and shouted out as loud as she could, naming her attacker, she had not committed any kind of sin. On the contrary, she had been the victim of awful torture.[39] The preacher

concludes with advice to his imaginary victim: 'she should bite, scratch and struggle with all her might'.[40] I therefore conclude that Hersent's 'Renart c'est force; force soit' is because she knew she was required to name him and to shout out in the hope that witnesses would hear her. And her physical resistance (tail between her legs) was not just a natural reaction but an attempt to conform to the law's requirements and, perhaps, to the Church's teaching on this. Indeed, if the medieval Church took to heart the only teaching there is in Holy Scripture on rape, its preachers will have called to mind those words in *Deuteronomy* which say: 'If a girl who is engaged is seduced within the walls of a city, both she and the man who seduced her shall be taken outside the gates and stoned to death - the girl because she did not scream for help, and the man because he has violated the virginity of another man's fiancée ... But if the deed takes place out in the country, only the man shall die. The girl is as innocent as a murder victim; for it must be assumed that she screamed, but there was no one to rescue her out in the field.'[41]

Before I bring this essay to an end with some further comments on rape in the *Roman de Renart*, I would like to draw attention to a few other examples of rape, or near rape, in the romances of Chrestien, and to some aspects of the way he treats the question of consent and non-consent.

At the beginning of the partnerships between Chrestien's heroes and heroines, reference is nearly always made to the giving of consent in the narrower legal sense - consent of the woman's legal guardian, and consent which is publicly made and accepted by Society. In *Erec et Enide*, Erec asks Enide's father for her hand without any prior reference to Enide; and Enide's father gives her to Erec without any prior consultation with her:

> tot a vostre comandemant
> ma bele fille vos comant.'
> Lors l'a prise par mi le poing:
> 'Tenez, fet il, je la vos doing.'[42]

Enide clearly consents by allowing the language of gesture to speak for her. And the story makes it plain that the vavassour loves his daughter dearly, and she him. Though neither father nor suitor discusses the price to be paid for Enide, Erec does tell the vavassour immediately after asking for her that he is the son of a king and that Enide will eventually become the queen of three cities. Furthermore, it is not long before her parents are sent the most generous gifts, apparently promised

to them.[43] As for general acceptance of the union: first we learn that *both* Enide's parents are happy about it,[44] and then that so is Arthur's court to which Erec takes her, where royal approval is readily given, and where numerous representatives of aristocratic society assemble to witness the ceremony.[45] In the first two and a half thousand lines of *Cligés* where the story of Alexandre and Soredamors is told, emphasis is put on Soredamors' consent, coupled with that of her immediate feudal superior, Queen Guenievre:

> ... a lui s'otroie an tranblant,
> Si que ja n'an metra defors
> Ne volanté, ne cuer, ne cors,
> Que tote ne soit anterine
> A la volanté la reïne ...[46]

Guenievre then gives Soredamors to Alexandre:

> La reïne andeus les anbrace
> Et fet de l'un a l'autre don.
> Ansimant dit: 'Je t'abandon,
> Alixandre, le cors t'amie;
> Bien sai qu'au cuer ne fauz tu mie.
> Qui qu'an face chiere ne groing,
> L'un de vos deus a l'autre doing.
> Tien tu le tuen, et tu la toe.'[47]

And immediately afterwards we learn that Gauvin, Soredamors's brother, approves of the union, as does King Arthur.[48] Private, then family, then public consent to the marriage are thus given, but Chrestien passes rapidly over family and public consent. In this part of his romance, Chrestien seems to be taking greater pains than he did in *Erec* to show how much the couple were attracted to each other before the heroine was given to the hero. And he is no doubt preparing for a vivid contrast with the fate of the heroine in the second part of this romance. In the *Chevalier au Lion*, Laudine, a sovereign lady and widow without father, other legal guardian or overlord, is first urged by her barons to take a husband, then gives her hand privately to Yvain, then publicly, with her barons' consent.[49]

It is in *Cligés* that Chrestien focusses most powerfully on the problem a woman faced when she was married to a man with whom she had no desire to have sexual relations: in short, with threatened rape by husband. In a recently-published study, David Shirt has tried to show that the marriage between Alis and Fenice was not really legal. He may well be right.[50] But it is a fact that Fenice is first promised to Alis by her father, and this is done publicly.[51]Fenice then goes through a

marriage ceremony with Alis even though she has fallen in love with Cligés since being promised to Alis. Like most women she evidently felt she could not refuse to comply with the agreement made between her father and her suitor:

> Comant puisse le cors avoir
> Cil a cui mes cuers s'abandone,
> Quant mes peres autrui me done,
> Ne je ne li os contredire.[52]

One notes that Chrestien does not describe the marriage ceremony between Alis and Fenice, thereby avoiding mention of Fenice's formal acceptance, in public, of Alis - if only by letting the customary language of gesture speak for her. However, Fenice's statement (just quoted) highlights the supreme importance of the father's (or other legal guardian's) consent to the marriage, and shows how empty, really, was any question of public consent given by the daughter at a marriage ceremony - a situation which was bound to last as long as, in law, a family's property and wealth were at stake and a woman remained permanently under her father's jurisdiction until she was legally given to the man who became her husband and under whose jurisdiction she remained for as long as the marriage lasted.

Chrestien's romances abound in episodes which are centred on the giving or withholding of consent, each of them illustrating, sooner or later, the awful consequences of relationships which are not fully consenting ones. The large majority of these episodes concentrate on the non-consenting woman's viewpoint and on her suffering, although the man who forces himself upon her is always shown to suffer too, eventually, as a direct consequence of his lusting. In *Erec et Enide*, for example, both Count Galoan and the Count of Limors attempt to wed Enide against her wishes.[53] Erec severely wounds the former, kills the latter. In the *Joie-de-la-Cort* part of this romance we are presented with the relationship between Mabonagrain and Enide's cousin, clearly meant to be contrasted with the relationship between Erec and Enide herself. Here I would draw attention to the cousin's description of how she and Mabonagrain came together: when she was very young indeed ("ancor estoie anfes asez")[54] she fell in love with him; they pledged themselves to each other; eventually they eloped:

> si nos an venimes andui
> que nus ne le sot mes que nos...[55]

Their union was not legal. They lacked parental consent (her father could have charged Mabonagrain with abduction) and they lacked

Society's consent. In stark contrast to this are Enide's first words to her cousin after being told these things:

> Bele cosine, il (i.e., Erec) m'espousa,
> si que mes peres bien le sot
> et ma mere qui joie en ot.
> Tuit le sorent et lié en furent
> nostre parant, si com il durent ...[56]

The non-consenting male victim is also found in Chrestien's romances. Perhaps the most striking and interesting example is to be found in the *Chevalier de la Charrete* where Lancelot is greatly distressed. This is when, after a particularly trying day as he searches for the missing Guenievre, he meets a beautiful maiden who offers him hospitality provided he promises to share her bed. After dinner, the lady disappears from Lancelot's view, but is soon heard by him screaming for help. He rushes to her only to find her unclothed, thrown across a bed by a man clearly intent on raping her. He jumps in to the rescue and is wounded in the ensuing fight. It turns out, however, that this was a 'put-up' job; that the lady was, in some way that is not entirely clear, trying Lancelot out. Anyway, she dismisses the assailant who dutifully goes away and then insists on Lancelot getting into bed with her. This he does, but most reluctantly. The way Chrestien describes this moment, and the vocabulary he uses, shows that he thought of it as an attempted rape by a woman of a man:

> Et cil a molt grant poinne mise
> au deschaucier et desnüer:
> d'angoisse le covint süer;
> totevoies par mi l'angoisse
> covanz le vaint et si le froisse.
> Donc est ce force? Autant le vaut;
> par force covient que il s'aut
> couchier avoec la dameisele ...[57]

Chrestien no doubt meant these incidents to show Lancelot's bravery (going to the damsel's rescue against great odds) and his loyalty (not wanting to be unfaithful to Guenievre), as well as contributing to his narrative-poetic commentary on consent; the main point of which, it seems to me, is to stress the need for consent and the importance of the love that makes consent natural, and all this within the bonds of marriage.

While the giving or withholding of consent may, to some extent, inform Chrestien's first two romances and provide a centre of interest for many an isolated incident in them and in his three later romances, only Branch Va of the *Roman de Renart* provides a full-length narrative of the trial of a rapist in the period which concerns us.

At the end of the tale about seduction, adultery and rape told in the last part of Branch II, it is Hersent who suggests to Ysengrin that they should lay formal charges against Renart at King Noble the Lion's court. It seems that it was indeed for the woman to instigate proceedings for rape, and to have charges laid on her behalf.[58] This practice seems to have been widespread in western and central Europe. For example, we learn from the *Dresdener Bilderhandschrift des Sachsenspiegels* that, in the twelfth century a woman alleging rape, after having cried out in distress at the time in the hope that witnesses would see the assailant, had to display torn garments and dishevelled hair; but if there were no witnesses, she had to tell the first person she met what had happened, and go straight to a tribunal to lay a complaint before it.[59] This is in effect what Hersent does in Branch II. However, the first person she meets is her husband!

As I have suggested, Hersent probably hoped that the King would agree to their complaint being decided by a judicial duel between Ysengrin and Renart; if that were so she could be fairly sure they would win their case since Ysengrin was much bigger and more powerful than Renart. In spite of frequent criticisms and even condemnations by kings (e.g. St Louis, c. 1258) and other powerful authorities, the judicial duel was common among nobles well into the fourteenth century, and did not die out until the first half of the sixteenth century.[60] The fact is, when the wolves get to court, Noble never even contemplates the possibility of the duel, reflecting perhaps the author's contempt for this form of the dispensation of justice.

At the beginning of Branch Va, Ysengrin emphasises that the complaint is indeed about rape and not about the adultery alleged by his children and denied by his wife. He lists first the crimes against his children, his home and his honour, and deliberately excludes the possiblity that his wife had committed adultery:

> Por ce m'en cleim au conmenchier
> Que dant Renars ala tencher
> A mes loveax en la tesniere,
> Et si pissa sor ma loviere,
> Si les bati et chevela,
> Et avoutres les apela,
> Et dist que cox estoit lor pere,

Qu'il avoit foutue lor mere.
Tot ce dist il, mes il menti.[61]

He insists on rape, reminding the court of the circumstances in which it happened as already described by Hersent, and confirmed by himself as an eye-witness:

L'autrer estoie alez chacer,
Hersens estoit o moi venue.
La fu ceste descovenue
Que je vos ai ci acontee.
Je les sorpris a la montee ...[62]

It is interesting to compare what Ysengrin says about the crime against his honour with what medieval law said on this subject. It will be recalled that Ysengrin's first words on witnessing the rape were:

Haï, Renart, or bellement!
Par les sainz dieu, *mar m'i honnistes*![63]

Bringing shame on the husband and dishonouring him in this way was an offence at law,[64] and it was in eleventh-century Castile that it was dealt with particularly severely. As Heath Dillard writes: 'a husband or male relative of the victim is allowed to select a kinswoman of the offender and dishonor her with the same offence committed against his kinswoman.'[65] But in Flanders and areas where Germanic customary law prevailed, it was the woman's honour with which the laws were most concerned, and which they intended above all to protect. Nevertheless, even here, the victim's menfolk had much liberty in avenging her (and their own) shame. As Jacoby has pointed out, ever since the *Lex Salica*, the defamation of a free and honourable woman was a particularly grave crime (even without rape) and from the time of Charlemagne the inviolability of a royal vassal (and Hersent, through Ysengrin, is a royal vassal) was guaranteed, on pain of death, by royal power.[66]

Soon Noble has begun to examine the married couple about the alleged crime. By the questions he asks, the author of this tale seems to show how important he felt it was to eliminate the slightest suspicion of encouragement by the woman who makes the charge, and of possible connivance by her husband:

'Hersent' dist li rois, 'respondez
Qui vos estes ici clamee
Que dant Renars vos a amee:

Et vos, amastes le vos onques?'
'Je non, sire.' - 'O me dites donques
Por qei estiez vos si fole
Qu'en sa meson aleez sole ...?'[67]

and later, Hersent to Noble:

'Selonc le cleim que vos oez
Que je vos di, li connestables
Mes sires qui bien est estables,
Que il ensemble o moi la vint
Ou ceste vergoigne m'avint.'
'Ere il o vos?' - 'Oïl sanz faille.'
'Qui cuidast ce, que diex i vaille,
Que il esforcier vos doüst
La ou vostre mari soüst?'[68]

Eventually the King decides to seek advice, and he first calls on the Camel, Musart, a visiting papal legate from Lombardy. He babbles away at great length in almost incomprehensible Italianate French, obviously comic to his audience even in its linguistic apparel alone. He concludes that Renart is either guilty or not guilty, so he must either be severely punished or exonerated.[69] It is possible that through this speech by which the author gave the Church the first chance to help solve the problem, he shows that neither the Church nor Holy Scripture had a solution to it. Adultery, yes; rape, no.[70]

Noble then turns to the State, to the secular arm, represented by the barons who surround him. They arrive at a solution chiefly through the persuasive powers of Brichemer the Stag. Perhaps it should be remembered here that the stag was an ancient symbol, especially in celtic civilisations, of justice. Rouen's fifteenth-century *palais de justice* is liberally decorated with stags. And the main hall of Paris's *palais de justice* which was burned down in the seventeenth century was dominated by a giant statue of a gilded stag and called the *gallerie du cerf*.[71] Brichemer's decision is that there must be an independent witness to a serious crime; clearly neither a husband nor a wife could provide independent testimony.

In the end, the barons accept that proof of the alleged crime by admissable evidence is not possible, but not without much argument about accepting or rejecting Ysengrin's allegations on the grounds that he is a nobleman of high standing. This argument revolves round the fact, already referred to, that medieval law normally accepted the evidence of a nobleman of good repute provided he could produce

witnesses to his good character, witnesses known as 'oath helpers'. In this connection I return to Heath Dillard's comments on the way a raped woman should proceed if she wanted to bring her rapist to justice: 'Like murder, theft, and arson, rape is one of the most serious offenses in Castilian customary law. If a woman of Sepúlveda is raped, she must walk around the walls of the town and call out her complaints and the name of the rapist as she makes her way up to the gate of the castle, there summoning forth the town's elected officials to hear her grievances. The following Sunday she issues a complaint against the man with two kinsmen and two other citizens; the man can prove his innocence with twelve witnesses: five kinsmen, six citizens, and the tithe collector. If he is unable to do so, he pays fifty *moravedis* and becomes the personal enemy of the woman's kinsmen, pending appeal to the king if he chooses. At Cuenca a woman has three days to make her complaint and show her injuries to the town officials, a somewhat less public and spectacular, but equally degrading, accusatory process. Here, too, the man can absolve himself with twelve witnesses (citizens, not kinsmen); if he cannot, he is fined three hundred *solidos* and exiled, any accomplices being fined and exiled for a year. In both *fueros* rape is treated with the same gravity as regards penalties and follows similar procedure. The important difference is the presence in F. Sepúlveda of the kinsmen, both as witnesses supporting the woman and oath helpers supporting the man; these are not found in F. Cuenca.'[72] The presence of oath helpers is clearly meant to guarantee the high standing of the accused, and of their trust in him because if things go wrong, they can be found guilty of the same crime as the defendant, as accessories.

One recalls the fate of Guanelon's oath helpers in the *Chanson de Roland*. So, when it is decided that the way out of the problem in Branch Va is to have Renart swear a solemn oath that he did not rape Hersent and was not guilty of the other crimes of which he is accused by Ysengrin, and when we are shown how first Ysengrin, then Renart marshal their kinsfolk to be with them at the oath-taking ceremony, they do, at least in part, what was normal at law. In fact, it looks as if what Heath Dillard says of eleventh-century Castile was by and large true of large areas of western and central Europe where customary law held sway. Of Flemish, Frankish and Germanic practices in the twelfth and thirteenth centuries, Jacoby observes that 'under old-fashioned formal procedures the man of unblemished reputation appeared without coercion to stand trial. He obeyed the summons. He was judged by his peers. ... he proved his innocence by his oath in which he was supported by the oaths of his friends and relatives, and his oath helpers

... If he found himself in physical danger, he could flee to a place of asylum where his personal safety was guaranteed normally for a long period of time ...'[73] This is especially relevant to Branch Va where Hersent and Ysengrin pose as high-ranking people of unblemished reputation, as does Renart, who claims to have been wrongly accused and who, in the end, feels compelled to flee to the safety of his own castle when he perceives himself to be in serious physical danger. The only reason Brun the Bear advances for insisting that they would be justified in dealing summarily with Renart is the fact that Ysengrin is the king's constable and ought to be treated as a man of very high standing indeed, while Renart is not of anything like the same standing.[74] Ysengrin should therefore be taken at his word.

Renart sees the trap which Ysengrin and Roonel, the presiding judge, have laid for him, and at the last minute decamps. He escapes, but only after quite a battle involving plaintiff, defendant, oath helpers, president of the court and onlookers. Could it be that the author of this branch also had reservations about the solemn oath as a means of resolving a rape charge? or any other charge for that matter?

The rape is not proved, but a kind of poetic justice *is* dispensed because we, the spectators of all these events, know that Hersent is a liar and an adulteress, and that Ysengrin has conspired to undermine the proceedings of a court of justice; and that, for Renart, there are extenuating circumstances. He was constantly set upon and plotted against by Ysengrin; and Hersent seduced him. The king, the premier judge in the land, was therefore right to ask the question of his assembled barons:

> Se cil qui est sorpris d'amor
> Doit estre de ce encopez
> Dont ses conpainz est escopez?[75]

can one find one member of a couple overwhelmed by love uniquely guilty and the other totally innocent?

Judges, it seems, found it as difficult in twelfth-century France as they do now to find an accusation of rape proved, especially when it was committed, as it so often is, without witnesses, or with family, even husband, as only witness.

It looks as if only *courtly* French literature is concerned with the depiction and punishment of rape. This is not surprising for rape was only of major concern to noblemen, one of whose compelling preoccupations was the continuation of the family line and the passing on of family property and wealth through legitimate male offspring.

Hence also the obvious abhorrence of adultery too in aristocratic circles. It is significant that rape is rarely depicted in the *fabliaux*, though adultery abounds in them. Rape is never entirely funny, but the depiction of adultery can be, especially when it happens in a social stratum where the family line may zigzag as much as it likes and there is no family property or wealth to hand on.

Notes

1. *Roman de Renart*, ed. E. Martin, Branch II, 1027–1314, and Va, 257–88.
2. Martin, Br. Va, 289–1272.
3. Br. II, 1–22.
4. 1269–73.
5. 1273–77.
6. 1282.
7. *Le Roman de Renart*, éd. bilingue, trad. de Micheline De Combarieu du Grès et Jean Subrenat, Paris 1981, I, p. 225.
8. 1302–03.
9. 1308–14.
10. 1315–20.
11. 1321–34.
12. 268–81.
13. This summary of the different kinds of admissable evidence and procedures preferred by medieval courts in northern and central France is very simplified and drawn from E. Chénon, *Histoire Générale du droit français des origines à 1815*, Paris 1926, I, 669–74.
14. The definition which I have given is, of course, my own. Medieval definitions do not refer to the woman's status (virgin, married, widow) and rarely to her rank or character. Typical is this definition from Ph. de Beaumanoir: 'Fame esforcier si est quant aucuns prent a force charnel compaignie a fame contre la volenté de la fame et sour ce qu'ele fet son pouoir du defendre,' vol. I, p. 430, para. 829. But see also n. 37, below.
15. Both quotations are to be found in Chénon, p. 518, together with precise references to their sources.

16. 319–24.
17. This summary of the different kinds of law which were to be found, sometimes overlapping and simultaneous, in northern and central France, is based on Chénon, pp. 489–538.
18. G. Duby, Paris 1981.
19. Chénon, pp. 381–84.
20. C. Clark, 'La réalité du mariage aristocratique au XII siècle' in *Amour, Mariage et Transgressions au Moyen Age*, ed. D. Buschinger and A. Crepin, Göppingen 1984, pp. 17–24.
21. Chénon, p. 384; M. Closson, 'Cour d'amour et célebration du mariage' in Buschinger pp. 515–34.
22. Closson, p. 521.
23. Chénon, pp. 62–3 and 381; see also illustration in Closson, p. 533.
24. Clark, p. 20.
25. Chénon, p. 384: 'cette nécessité de la *traditio* tomba en désuétude, et l'on finit par se contenter de l'échange *public* des consentements entre les époux. Il y a lá une influence évidente du droit canonique ... ' and 'les mariages se faisaient par le consentement des deux époux et *le consentement de ceux sous la puissance desquels ils se trouvaient*". The concluding part of the ceremony, the *deductio uxoris in domum mariti* (Chénon, p. 381) was clearly meant, in part at least, to notify the general public that the wedding had taken place, and the woman had passed from her father's jurisdiction to her husband's, and thereby received society's (tacit) consent. See also Closson, p. 519, under *Echange des anneaux* (2nd. para.); and p. 520: 'au second concile de Latran, en 1215, on impose la publication des bans ... '
26. J. Graven, *Le Procès criminel du Roman de Renart*, Geneva 1950, p. 40: ' ... le ravissement ou l'enlèvement, souvent confondu avec le viol parce qu'il en est "le prélude" sont menacés de sanctions graves.' See also Heath Dillard, 'Women in reconquest Castile' in *Women in Medieval Society*, ed. S.M. Stuard, Philadelphia 1976, p. 80 and p. 92 note 41. F.R. Jacoby, *Van den Vos Reinaerde*, Munich 1970, also points out (p. 30) that 'for the written laws ... the definitions of the crimes of rape with violence, forcible abduction of a woman, and extra-marital immoral conduct do not show codified terminology. Several terms - some with overlapping meanings - were in use.'
27. 1.3
28. This is often stated in the authorities. It is perhaps most clearly set out by Graven, pp. 35–44. See especially pp. 39–40. Ph. de Beaumanoir, after describing the major crimes, sums up thus:

'Quiconques est pris en cas de crime et atains du cas, si comme de murtre, ou de traïson, ou d'homicide, ou de fame esforcier, il doit estre trainés et pendus et si mesfet quanqu'il a vaillant, et vient la forfeture au seigneur dessous qui li siens est trouvés et en a chascuns sires ce qui en est trouvé en sa seigneurie,' vol. I, p. 429, para. 824.

29. *Andreas Capellanus: De Amore*, ed. E. Trojel, Munich 1972[2], Bk. I, ch. 11.
30. ed. M. Roques, Paris 1960, 3865–69.
31. 4108–18.
32. Graven, p. 40; and note 71, p. 131. Also, and particularly important, Dillard, p. 85.
33. Dillard, p. 86.
34. Graven, p. 40.
35. *Schwabenspiegel*, 1961 reprint of 1840, Aalen ed., para. 254, p. 115.
36. ed. W. Roach, Geneva 1959, 11. 7109–15.
37. See, for example, the *Coutume de Bretagne*, art. 155, quoted by Graven, p. 131, note 71: 'Et si aucun forceit famme, pour ce que elle ne fust putain, et il eust sa compaignie par force et oultre sa volonté comme il apparust *par le cri* ... '
38. Quoted from *Berthold von Regensburg, Sermons*, ed. Fr. Pfeiffer, Berlin 1965, 347, 16 and 18: "'wie lûte riefe aber dû" ... "Jâ sô habe dir die sünde mit den êren."
39. *Berthold* ... , 347, 30–31: 'sô ist ez ir deheine slahte sünde weder klein noch grôz, wen sô ist ez ir ein rehtiu martel.'
40. *ibid.*, 347, 24, 26: 'dû sol sie bîzen unde kratzen unde sol sich wern mit allen ir sinnen sô sie aller, meiste mac, unde sol schrîen sô sie aller lûtest mac.'
41. Quoted from *Living Bible Paraphrased*, London 1971; *Deuteronomy*, 22, starting at verse 23.
42. ed. M. Roques, Paris 1970, 11. 675–78.
43. 1845–1914.
44. 680–83.
45. 1915–2074.
46. ed. A. Micha, Paris 1975, 11. 2296–300.
47. 2302–09.
48. 2312–15.

49. ed. Roques, pp. 62–65; in particular, 2038–42 and 2115–36.
50. D. Shirt, 'Cligés: a 12thc. matrimonial case-book?', *Forum for Modern Language Studies*, 18, 1982, 75–89.
51. ed. Micha, 11. 2626–33.
52. *ibid.*, 11. 3126–29.
53. ed. Roques; for the Galoan episode, see 3086; for the Limors episode, see 4580 ff.
54. 6222.
55. 6234–35.
56. 6242–46.
57. ed. Roques, 1204–11.
58. Jacoby, p. 30 and notes 75 and 76.
59. J. Grimm, *Deutsche Rechtsaltertümer*, vol. 2, Berlin, 1956 reprint, pp. 190–191.
60. Chénon, pp. 673–74.
61. 363–71.
62. 374–78.
63. 1302–03.
64. Graven, pp. 40–2; also, Dillard Heath, p. 85: 'The married woman's honor and sexual shame reflect not only on herself but on her husband.'
65. Dillard Heath, pp. 86–87.
66. Jacoby, pp. 30–32.
67. 394–400.
68. 404–12.
69. pp. 172–74, 11. 444–97.
70. Exception made, of course, for *Deuteronomy* ch. 22 see note 41, above).
71. On stag symbolism, and on these facts, see Adrian Blanchet, 'Cernnunos et le Cerf de Justice' in *Bulletin de l'Académie Royale de Belgique*, lettres XXXV (1949), 316–28.
72. Dillard Heath, pp. 80–81.
73. Jacoby, pp. 43–44.
74. 539–51.
75. 502–04.