164 Heredity (*Hereditas*)

Celestial heredity is not lessened nor restricted by the multitude of heirs. In necessity it judges itself not to be heredity where that heredity is love.

Wherefore, Gregory, book 5, *Moralium* at the end.[[1]](#endnote-1) Anyone loves that heredity which the number of coheirs does not narrow; which in all things is one, and each one is the whole. But of all these the contrary is concerning earthly heredity, where anyone envies the other if his portion were less and hopes to be an heir there, he desires that he love one who desires to die.

Wherefore also Romulus killed his brother Remus believing his glory to be lessened if his brother lived. Just as Augustine says, *De civitate*, book 15. [Gen. 15:5]:[[2]](#endnote-2) “Look up to heaven and number the stars, if you can … So, shall your seed be,” as if saying, your heirs will not be like earthly heirs, where anyone is sent to expel another, but it will be celestial just like the stars where no one expels the other.

Again, Jacob after he supplanted his brother from his heredity, [Gen. 27:42]. He was killed unjustly, 2 Kings 21[:6-9]. Therefore, in no earthly heredity is rest.

Therefore, Avelenius, *Ad celestem,* according to that of Eccli. 24[:11]:[[3]](#endnote-3) “in all these I sought rest,” but it follows, “I shall abide in the inheritance of the Lord.” But if they say elsewhere,[[4]](#endnote-4) there is no rest. Therefore, the Lord did not wish that the sons of Levi would have a portion in the earthly heredity, Deut. 18[:20], and Num. 18[:20]: “The Lord said to Aaron: You shall possess nothing in their land, neither shall you have a portion among them: I am your portion and inheritance.” Psal. [15:5]: “The Lord is the portion of my inheritance and of my cup: it is you that will restore my inheritance to me.” And just as those losing their inheritance sorrow, so it will be concerning those brought forth to whom heaven was ordained if they lost this through fault, but unbaptized children will not have pain of the senses in this loss because to such ones the heredity of heaven had not been ordained [as] concerning those losing the heredity of heaven.

Just as it happens in some declamation, book 6, *Declamaciones* 3,[[5]](#endnote-5) there was a law among the Romans that upon the death of the father, the older son should divide the inheritance and the younger son should choose. There was also another law that a son from a female slave might have part in the heredity. It happened that one of the dying who had an older son from a legitimate wife and another from a concubine.

¶ Therefore, when the father died, the older son divided and placed the concubine in one part and the whole of the inheritance in the other part. The younger son by the natural feeling of generation chose his mother the female slave, however he accused the brother of fraud, that is, deception. The other responded that there was no fraud in the division, but in the choosing.

¶ For the proposition, Christ is our older brother divides and places in one part the heavenly matters, in the other part the earthly matters. Wherefore, Isai. 54[:17]: “This is the inheritance of the servants of the Lord, and their justice with me, says the Lord,” namely, to be with me in heaven. But the servants of the world will participate with the prodigal son, Luke 15[:11-32] who lost his heredity until remorse returns.

Again, Num. 32[:1-5], the sons of Gad and Ruben because of the pleasantness of the land around the Jordan did not want to go across the Jordan with their brothers so that they may possess the Promised Land.

Wherefore, it is evident that lust and avarice draw men from the heredity of heaven. The reason can be because the succession of the royal line proceeds according to a straight line, Gal. 4[:7]: “If a son, an heir also.” Whoever in truth declines from the straight line loses the law of heredity of which a man from the beginning was made straight, Eccle. 7[:30]: “God made man right.” Because if he had stood in that original rectitude, he would have had the inheritance of heaven by hereditary law, Psal. [36:29]: “The just shall inherit the land.” But according to Isai. 59[:8]: “Their paths are become crooked.” If therefore we who are crooked must go back, it is required that this happen through grace.

Wherefore, Augustine, *Super [Psalmum]* 37,[[6]](#endnote-6) if my father whips me, behold I am ready for the whip; because the inheritance is prepared for me. Because if you do not want the whip, the inheritance will not be given to you. Wherefore, spare me because he did not spare that one who did not commit sins.

1. Gregory, *Moralia* 1.5.41 (PL 75:729): illam haereditatem diligat, quam cohaeredum numerus non angustat; quae et omnibus una est, et singulis tota; quae tanto largior ostenditur, quanto ad hanc percipientium multitudo dilatatur. [↑](#endnote-ref-1)
2. Augustine, *De Civitate Dei*, 3.14.3 (PL 41:91): ubi Romulus occiso fratre regnaverat. [↑](#endnote-ref-2)
3. Avelenius, cf. Interlinear gloss: et in his omnibus requiem quesivi et in hereditate eius morabor

interl.| gentibus ex quibus congregatur Ecclesia qua eius est hereditas unde : hereditas mea preclara est mihi

https://gloss-e.irht.cnrs.fr/php/editions\_chapitre.php?livre=../sources/editions/GLOSS-liber32.xml&chapitre=32\_24 [↑](#endnote-ref-3)
4. Cf. Augustine, *Confessiones* 4.12.18 (PL 32:701): Non est requies ubi quaeritis eam. [↑](#endnote-ref-4)
5. Seneca the Elder, *Declamationes*, Controversiae6 casus 3 (LCL 463:504-509): Maior frater dividat patrimonium, minor eligat.

Liceat filium ex ancilla tollere.

Quidam, cum haberet legitimum filium, alium ex ancilla sustulit et decessit. Maior frater sic divisit ut patrimonium totum ex una parte poneret, ex altera matrem nothi. Minor elegit matrem et accusat fratrem circumscriptionis.

Unus omnium exheredatus sum dividendo. Legisset, inquit, alteram partem. Tu solus talis potuisti esse filius qualis frater es. Lex te dividere, me eligere iussit: aperte ne minor circumscribatur timet. Sic divisit ut, si vellem non esse mendicus, relinquerem fratrem in egestate, matrem in servitute. Non est dividere ex altera parte patrimonium ponere, ex altera onus. Talis fuit ut illi coheredem pater ex ancilla tolleret. Elige ut aut patrimonio careas aut scelere. Circumscriptores dici solent qui aliquid abstulerunt: iste nihil reliquit. Tu, inquit, voluisti pauper esse. Cur ergo queror, si egestate delector? Obici, inquit, non potest quod lege factum est. Immo nihil nisi quod lege factum est; nam si quid aliter gestum est, per se inritum est. Circumscriptio semper crimen sub specie legis involvit: quod apparet258M in illa legitimum est, quod latet insidiosum. Semper circumscriptio per ius ad iniuriam pervenit. Lex iubet maiorem dividere, minorem eligere: nec tu divisisti nec hic elegit; sic a te alligatus est ut necesse haberet quod non expediebat malle. Nota fuit in matrem mea pietas; non timuit ne eligere possem alteram partem.

Pars altera. Ego nihil aliud quam divisi. Circumscriptio non in divisione est, sed in electione. Habes matrem, quam totis quidam bonis redemerunt; habes gloriam, quam per ignes quidam, per arma quaesierunt. Multa de patrimonio rapuit, cum haberet ius dominae ancillae inpudentia. Timebas ne in illam saevirem? Non expediebat mihi, cum in illa totum patrimonium habiturus essem. Nunc tantundem habes; habes enim partem quam voluisti. Ut tantundem haberes, nec pater voluerat; ideo matrem tuam ancillam reliquit.

The elder brother shall divide an estate, the younger make the choice.[1](https://www-loebclassics-com.proxy.lib.fsu.edu/view/seneca_elder-controversiae/1974/pb_LCL463.505.xml?result=1&rskey=jcY6Q1#note_LCL463_505_1)

It shall be legal to acknowledge a child born of a slave-girl.[2](https://www-loebclassics-com.proxy.lib.fsu.edu/view/seneca_elder-controversiae/1974/pb_LCL463.505.xml?result=1&rskey=jcY6Q1#note_LCL463_505_2)

A man with a legitimate son acknowledged another by a slave-girl, and died. The elder brother made a division by which he put the whole estate in one part and the mother of the bastard in the other. The younger son chose his mother and accuses the brother of fraud.[3](https://www-loebclassics-com.proxy.lib.fsu.edu/view/seneca_elder-controversiae/1974/pb_LCL463.505.xml?result=1&rskey=jcY6Q1#note_LCL463_505_3)

*For the younger brother*: I am the only son who has ever been deprived of his patrimony by means of a division.—“He should have chosen the other part.”

You alone were capable of being as cruel a son as you are a brother.—The law ordered that you should make the division, I the choice; clearly it is afraid that the younger son may get tricked.—He made the division in such a way that if I wanted to avoid beggary I had to leave my brother poor and my mother a slave.—It is no division to put the estate in one part and a burden in the other.—Such was his character that his father provided him with a legitimised co-heir—by a slave-girl.—Choose between beggary and crime.—The fraudulent, by normal reckoning, are those who have removed something; he has left nothing.—“You chose to be poor.” Why then am I complaining if I enjoy poverty?—“There can be no charge where something is done legally.” On the contrary, there can only be a charge where an act is legal; where it is illegal, it is automatically invalid. Fraudulence always wraps crime in a show of legality; the obvious part is legal, the hidden is the trap. Fraudulence always proceeds to illegal ends by legal means.—The law orders the elder to make the division, the younger to choose; you did not divide, and he did not choose: he was so trammelled by you that he had to choose what went against his interests.—My affection towards my mother was well-known; he did not need to fear I was capable of choosing the other part.

*The other side*: I did nothing but make the division. Fraudulence lies not in division but in choice.—You have your mother—some men have ransomed theirs at the cost of all their wealth; you have fame, which men have sought through fire and through weapons.—She stole much of the estate from me, for this impudent maid had a mistress’ rights.—Were you afraid I might be cruel to her?[3](https://www-loebclassics-com.proxy.lib.fsu.edu/view/seneca_elder-controversiae/1974/pb_LCL463.509.xml?result=1&rskey=jcY6Q1#note_LCL463_509_3) It was not in my interests, for she would have formed the whole of my inheritance. As it is you have as much as I; for you have the part you wanted.—Not even our father wanted you to have as much as me; that was why he left your mother a slave. [↑](#endnote-ref-5)
6. Augustine, *Enarratio in Psalmum* 37.23 (PL 36:409): et si flagellat me Pater meus, in flagella paratus sum; quia mihi haereditas praeparatur. Non vis flagellum, non tibi datur haereditas. Omnis enim filius necesse est ut flagelletur. Usque adeo omnis flagellatur, ut nec illi pepercerit (Rom. VIII, 32) qui peccatum non habuit (I Petr. II, 22). Quoniam ego in flagella paratus sum. [↑](#endnote-ref-6)